

# **PENDING RULES**

## **COMMITTEE RULES**

### **REVIEW BOOK**

**Submitted for Review Before**  
**Senate Commerce &**  
**Human Resources Committee**  
**67th Idaho Legislature**  
**Second Regular Session – 2024**



*Prepared by:*

*Office of the Administrative Rules Coordinator  
Division of Financial Management*

*January 2024*

**SENATE COMMERCE & HUMAN RESOURCES COMMITTEE**

**ADMINISTRATIVE RULES REVIEW**

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**IDAPA 12 – IDAHO DEPARTMENT OF FINANCE**  
**12.01.04 – RULES PURSUANT TO THE IDAHO CREDIT UNION ACT**  
**DOCKET NO. 12-0104-2301 (ZBR CHAPTER REWRITE)**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 26-2144, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 218 - 224](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

Does not apply to this rulemaking.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rulemaking will not impact the state General Fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Anthony Polidori at (208)-332-8060.

DATED this 21st of November, 2023.

Anthony Polidori  
Deputy Director  
Idaho Department of Finance  
11341 West Chinden Blvd., Suite A300  
Boise, ID 83714  
Phone: (208) 332-8060

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 26-2144, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023. The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking was conducted pursuant to the [Executive Order 2020-01](#), “Zero-Based Rulemaking”, for the purpose of engaging in a thorough retrospective review of the cost and benefit of an existing rule. As a result, the proposed changes reduce regulatory burden by removing outdated requirements and providing clarity to industry regarding certain transactions.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

This rulemaking will not impact the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 2023 Idaho Administrative Bulletin, [Volume 23-8, pages 12 and 13](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Anthony Polidori at (208)-332-8060.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2023.

DATED this 1st day of September 1, 2023.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 12-0104-2301**

**12.01.04 – RULES PURSUANT TO THE IDAHO CREDIT UNION ACT**

**000. LEGAL AUTHORITY.**

This chapter is promulgated pursuant to Section 26-2144, Idaho Code. ( )

**001. SCOPE.**

These rules implement statutory intent with respect to the regulation and supervision of state chartered credit unions in the state of Idaho. ( )

**002. -- 004. (RESERVED)**

**005. DEFINITIONS.**

The definitions found in Section 26-2104, Idaho Code are incorporated herein and those defined terms have the same meaning in these rules. These rules have the following additional defined terms: ( )

**01. Associated Borrower.** As that term is defined in Section 26-2120(1)(b), Idaho Code. ( )

**02. Immediate Family Member.** As that term is defined in Section 26-2109(4)(c), Idaho Code. ( )

**03. Member Business Loan.** Means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, business, or agricultural purpose, except: ( )

**a.** A loan or loans secured by a 1 to 4 family residential property. ( )

**b.** A loan that is fully secured by shares in the credit union or shares or deposits in other financial institutions. ( )

**c.** A loan, the proceeds of which are used for a commercial, business, or agricultural purpose, made to a borrower or an associated borrower, which, when added to such other loans to the borrower, is less than fifty thousand dollars (\$50,000). ( )

**d.** A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, an agency of the federal government or a state or any of its political subdivisions. ( )

**04. Loan or Loans Secured by a 1 to 4 Family Residential Property.** Means a loan that, at origination, is secured wholly or substantially by a lien on a 1- to 4-family residential property for which the lien is central to the extension of the credit; that is, the borrower would not have been extended credit in the same amount or on terms as favorable without the lien. A loan is wholly or substantially secured by a lien on a 1- to 4-family residential property if the estimated value of the real estate collateral at origination (after deducting any senior liens held by others) is greater than 50 percent of the principal amount of the loan. ( )

**05. NCUA.** Means the National Credit Union Administration. ( )

**006. -- 039. (RESERVED)**

**040. MEMBER BUSINESS LOAN REQUIREMENTS.**

**01. Requirements.** The following requirements apply in addition to Sections 26-2119, 26-2120, 26-2120A, Idaho Code: ( )

**a.** Submission to Director and NCUA. A credit union must submit the proposed written policies, and any future amendments to the policies, to the Director for approval at least thirty (30) days prior to the proposed date

of implementation of the member business loan program or amendments. Any credit union that is NCUA insured must also provide notice and a copy of the loan policies or amendments to the appropriate NCUA regional office within thirty (30) days before adoption and implementation of the policies or amendments. ( )

**b.** Loan Policy Review. The board will review and approve the loan policies annually. ( )

**c.** Minimum Business Loan Policy Requirements. Credit unions that do not intend to make member business loans do not have to adopt and implement these policies. However, if such a credit union decides to begin making member business loans at some time in the future, the requirements of this section will apply, except that the specific business loan policies must be adopted and implemented no less than thirty (30) days before any member business loan is made, Pursuant to Section 26-2119, Idaho Code, member business loan policies must contain the following: ( )

i. Types of business loans that will be made. ( )

ii. The credit union's trade area for business loans. ( )

iii. Maximum amount of the credit union's assets in relationship to net worth that will be invested in business loans, not to exceed three hundred percent (300%). ( )

iv. Maximum amount of credit union assets in relationship to net worth that will be invested in a given category or type of business loan. ( )

v. Maximum amount of credit union assets, in relation to net worth, that will be loaned to any one (1) borrower or group of associated borrowers. ( )

vi. Qualifications and experience of personnel involved in making and administering business loans. ( )

vii. Analysis of ability of the borrower to repay the loan. ( )

viii. The following considerations shall be addressed unless the board of directors finds that they are not appropriate for a particular type of business loan and states the reasons for those findings in the credit union's written policies: balance sheet, trend and structure analysis; ratio analysis of cash flow, income and expenses, and tax data; leveraging; comparison with industry averages; receipt and periodic updating of financial statements and other documentation, including tax returns. ( )

ix. Collateral requirements, including loan-to-value ratios; appraisals, title search and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is to be reevaluated. ( )

x. Appropriate interest rates and maturities of business loans. ( )

xi. Loan monitoring, servicing, and follow-up procedures, including collection procedures. ( )

**d.** Loans to One (1) Borrower. The following restrictions apply to credit unions loans to one (1) borrower. ( )

i. The aggregate amount of outstanding member business loans to any one (1) borrower or group of associated borrowers shall not exceed twenty percent (20%) of the credit union's net worth. ( )

ii. Loan or loans secured by a one (1) to four (4) family residential property that is the member's primary residence or secondary residence, or loans secured by shares in the credit union or deposits in another financial institution, or loans insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the federal government or of a state or any of its political subdivisions, such portion shall not be calculated in determining the twenty percent (20%) limit. ( )

iii. Credit unions seeking an exception from the twenty percent (20%) limit must present to the Director the higher limit sought, an explanation of the need to raise the limit, an analysis of the credit union's prior experience making member business loans, and a copy of its business lending policy. In addition, at the same time this information is presented to the Director, any credit union that is NCUA insured must also submit a copy of the information to the appropriate NCUA regional office for its review and comment. ( )

iv. Any decision by the Director to grant any request to exceed the twenty percent (20%) loan-to-one borrower's limit will be made only after consultation and coordination with NCUA. ( )

e. Credit risk rating system. Credit risk ratings must be assigned to commercial loans at inception and reviewed as frequently as necessary to satisfy the credit union's risk monitoring and reporting policies, and to ensure adequate reserves as required by generally accepted accounting principles. At a minimum, the following credit risk ratings must be used: Pass; Special Mention; Substandard; Doubtful; and Loss. ( )

**02. Ineligible Borrowers.** A credit union may not grant member business loans to the following: ( )

a. Any senior management employee directly or indirectly involved in the credit union's commercial loan underwriting, servicing, and collection process, and any of their immediate family members; ( )

b. Any person meeting the definition of an associated borrower with respect to persons identified in Subsection 040.02.a. of this rule; or ( )

c. Any compensated director, unless the credit union's board of directors approves granting the loan and the compensated director was recused from the board's decision making process. ( )

d. The credit union shall not grant a member business loan where any requirement for the payment, or the amount of the payment, on the loan is conditioned on the profitability or success of the business or commercial endeavor for which the loan is made. ( )

**041. -- 049. (RESERVED)**

**050. NONPREFERENTIAL TREATMENT.**

**01. Nonpreferential Treatment.** The requirement of extending credit on "substantially the same terms as those prevailing...", found in Section 26-2119(2), Idaho Code, is also applicable to: ( )

a. Immediate family members of those persons listed in Section 26-2119(2), Idaho Code; ( )

b. Any business entity or venture owned, in whole or in part, by those persons listed in Section 26-2119(2), Idaho Code, or their immediate family members. ( )

**051. -- 059. (RESERVED)**

**060. PROHIBITION ON COMMISSION FOR MAKING LOANS.**

No officer, director, or employee of any credit union, or immediate family thereof, shall demand, accept or receive, directly or indirectly, any commission or other consideration on account of the making, extension, or renewal by said credit union of any loan, or extension of credit, to any person, firm or corporation. This prohibition shall not apply to consideration paid by a credit union to its employees. ( )

**061. -- 999. (RESERVED)**



[Agency redlined courtesy copy]

12.01.04 – RULES PURSUANT TO THE IDAHO CREDIT UNION ACT

**000. LEGAL AUTHORITY.**

This chapter is promulgated pursuant to Section 26-2144, Idaho Code. ( )

**001. SCOPE.**

These rules implement statutory intent with respect to the regulation and supervision of state chartered credit unions in the state of Idaho. ( )

**002. -- 004. (RESERVED)**

**005. DEFINITIONS.**

The definitions ~~used in this chapter are as follows~~ found in Section 26-2104, Idaho Code are incorporated herein and those defined terms have the same meaning in these rules. These rules have the following additional defined terms: (3-31-22)( )

- ~~01. Act. Means the Idaho Credit Union Law, Chapter 21, Title 26, Idaho Code. (3-31-22)~~
- ~~02. Applicant. Means a group of persons applying for a credit union charter. (3-31-22)~~
- ~~03. Department. Means the Idaho Department of Finance. (3-31-22)~~
- ~~04. Director. Means the Director of the Department. (3-31-22)~~
- ~~05. Corporate Credit Union. Means a corporate credit union chartered under the provisions of the act. (3-31-22)~~
- ~~06. Credit Union. Means a credit union chartered under the provisions of the act. (3-31-22)~~
- 01. Associated Borrower. As that term is defined in Section 26-2120(1)(b), Idaho Code. ( )
- 02. Immediate Family Member. As that term is defined in Section 26-2109(4)(c), Idaho Code. ( )
- 03. Member Business Loan. Means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, business, or agricultural purpose, except: ( )
  - a. A loan or loans secured by a 1 to 4 family residential property. ( )
  - b. A loan that is fully secured by shares in the credit union or shares or deposits in other financial institutions. ( )
  - c. A loan, the proceeds of which are used for a commercial, business, or agricultural purpose, made to a borrower or an associated borrower, which, when added to such other loans to the borrower, is less than fifty thousand dollars (\$50,000). ( )
  - d. A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, an agency of the federal government or a state or any of its political subdivisions. ( )
- 04. Loan or Loans Secured by a 1 to 4 Family Residential Property. Means a loan that, at origination, is secured wholly or substantially by a lien on a 1- to 4-family residential property for which the lien is

central to the extension of the credit; that is, the borrower would not have been extended credit in the same amount or on terms as favorable without the lien. A loan is wholly or substantially secured by a lien on a 1- to 4-family residential property if the estimated value of the real estate collateral at origination (after deducting any senior liens held by others) is greater than 50 percent of the principal amount of the loan. ( )

~~075.~~ NCUA. Means the National Credit Union Administration. ( )

~~006.—009.~~ (RESERVED)

~~010. CHARTER APPLICATIONS.~~

~~01. Guidelines for Approval of Credit Union Charters.~~ Each application for a credit union shall set forth or show: (3-31-22)

~~a.~~ The proposed name of the credit union; (3-31-22)

~~b.~~ The city, county, or area in which the proposed credit union is to hold its charter; (3-31-22)

~~c.~~ A description of the common bond for the field of membership of the potential members of the credit union. Said field of membership should indicate that there are enough potential members to allow the proposed credit union to successfully carry on credit union operations; (3-31-22)

~~d.~~ That the stability of employment of the potential members of the credit union or that the stability of membership in the association which comprises the common bond of membership is sufficient to allow the credit union to maintain a stable level of participation by members; (3-31-22)

~~e.~~ The economic characteristics of the proposed field of membership indicating the ability of members to provide funds in sufficient amounts to carry out the purposes for which the credit union is formed; (3-31-22)

~~f.~~ That the persons who form the common bond and potential field of membership of the credit union have indicated sufficient interest in the credit union that the Director may reasonably believe that credit union operations may be carried out successfully. (3-31-22)

~~011.—019.~~ (RESERVED)

~~020. SERVICES, ADVERTISING, REPORTING CRIMES, BONDS.~~

~~01. Credit Union Services.~~ (3-31-22)

~~a.~~ A credit union shall not allow, by contract or otherwise, any credit union bookkeeping or record keeping services for itself, whether on or off premises, unless assurances satisfactory to the Director are provided by both the credit union and the party performing such services, which indicate that the performance thereof will be subject to rule and examination by the Director or his duly authorized representative to the same extent as if such services were being performed by the credit union itself on its own premises. If this service is "on premises" then prior written approval of the Director must be obtained before service is sold or otherwise made available to any outside customer. (3-31-22)

~~b.~~ The assurances referred to above shall be submitted prior to the time the contract or agreement becomes effective in the form of letters from both parties and signed by a duly authorized officer of the credit union and by the party, or duly authorized officer or representative of such party, stating they will perform the services for the credit union, that the credit union and the party performing such services have entered into an agreement, that the performance of the services will be subject to rule and examination by the Director, and that such performance of services will be made available for examination. A copy of the contract or agreement covering these services shall accompany these letters. (3-31-22)

~~02. Advertising.~~ (3-31-22)

- ~~a. A credit union shall not issue, circulate, or publish any advertisement which misrepresents the nature of its shares, stocks, investments, certificates, or the rights of shareholders in respect thereto. (3-31-22)~~
- ~~b. No credit union may in any advertisement: (3-31-22)~~
  - ~~i. Use the words “chartered by the state of Idaho” unless said credit union has been issued a charter by the Director; (3-31-22)~~
  - ~~ii. Use the words “National Credit Union Share Insurance Fund” or any facsimile thereof; nor use any insignia, seal, or device whatsoever which represents that the shares or deposits of the credit union are insured by the Administrator, NCUA, unless, in fact, the credit union is so insured. (3-31-22)~~
- ~~e. The Director upon written notification to any or all credit unions may require that a true copy of the text of any advertisement be filed with his office at least five (5) days prior to the issuance, circulation, or publication of such advertisement. (3-31-22)~~

**021006. -- 039. (RESERVED)**

**040. MEMBER BUSINESS LOANS REQUIREMENTS.**

- ~~01. **Definitions.** For the purposes of this rule, the following definitions apply: (3-31-22)~~
  - ~~a. The term “member business loan” means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, business, or agricultural purpose, except the following are not considered member business loans for the purpose of this rule: (3-31-22)~~
    - ~~i. A loan or loans fully secured by a lien on a one to four family dwelling that is either the member’s primary residence, or the member’s secondary residence. (3-31-22)~~
    - ~~ii. A loan that is fully secured by shares in the credit union or deposits in other financial institutions. (3-31-22)~~
    - ~~iii. A loan, the proceeds of which are used for a commercial, business, or agricultural purpose, made to a borrower or an associated member, which, when added to such other loans to the borrower, is less than fifteen thousand dollars (\$15,000). (3-31-22)~~
    - ~~iv. A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, an agency of the federal government or a state or any of its political subdivisions. (3-31-22)~~
  - ~~b. “Reserves” means all reserves including the allowance of loan losses account and undivided earnings or surplus. (3-31-22)~~
  - ~~c. “Associated Member” means any member with a common ownership, investment or other pecuniary interest in a business or commercial endeavor. (3-31-22)~~
  - ~~d. “Immediate Family Member” means a spouse or other family members, related by blood or operation of law, living in the same household. (3-31-22)~~
- ~~021. **Requirements.** A credit union may make member business loans only in accordance with the following requirements. The following requirements apply in addition to Sections 26-2119, 26-2120, 26-2120A, Idaho Code: (3-31-22)(    )~~
  - ~~a. **Written Loan Policies.** Except as provided in this section, the board of directors must adopt specific business loan policies within sixty (60) days of the effective date of this rule and review them at least annually. Submission to Director and NCUA. A credit union must submit the proposed written policies, and any future~~

amendments to the policies, to the Director for approval at least thirty (30) days prior to the proposed date of implementation of the member business loan program or amendments. Any credit union that is NCUA insured must also provide notice and a copy of the loan policies or amendments to the appropriate NCUA regional office within thirty (30) days before adoption and implementation of the policies or amendments. (3-31-22)( )

**b.** Loan Policy Review. The board will review and approve the loan policies annually. ( )

**bc.** Minimum Business Loan Policy Requirements. Credit unions that do not intend to make member business loans do not have to adopt and implement these policies. However, if such a credit union decides to begin making member business loans at some time in the future, the requirements of this section will apply, except that the specific business loan policies must be adopted and implemented no less than thirty (30) days before any member business loan is made ~~that, at a minimum, address~~ Pursuant to Section 26-2119, Idaho Code, member business loan policies must contain the following: (3-31-22)( )

- i. Types of business loans that will be made. ( )
- ii. The credit union's trade area for business loans. ( )
- iii. Maximum amount of the credit union's assets in relationship to ~~reserves~~ net worth that will be invested in business loans, not to exceed three hundred percent (300%). (3-31-22)( )
- iv. Maximum amount of credit union assets in relationship to ~~reserves~~ net worth that will be invested in a given category or type of business loan. (3-31-22)( )
- v. Maximum amount of credit union assets, in relation to ~~reserves~~ net worth, that will be loaned to any one (1) ~~member borrower~~ or group of associated ~~members~~ borrowers. (3-31-22)( )
- vi. Qualifications and experience of personnel involved in making and administering business loans. ( )
- vii. Analysis of ability of the borrower to repay the loan. ( )
- viii. The following considerations shall be addressed unless the board of directors finds that they are not appropriate for a particular type of business loan and states the reasons for those findings in the credit union's written policies: balance sheet, trend and structure analysis; ratio analysis of cash flow, income and expenses, and tax data; leveraging; comparison with industry averages; receipt and periodic updating of financial statements and other documentation, including tax returns. ( )
- ix. Collateral requirements, including loan-to-value ratios; appraisals, title search and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is to be reevaluated. ( )
- x. Appropriate interest rates and maturities of business loans. ( )
- xi. Loan monitoring, servicing, and follow-up procedures, including collection procedures. ( )

**ed.** Loans to One (1) ~~Member Borrower~~. The following restrictions apply to credit unions loans to one (1) ~~member borrower~~. (3-31-22)( )

- i. The aggregate amount of outstanding member business loans to any one (1) ~~member borrower~~ or group of associated ~~members~~ borrowers shall not exceed twenty percent (20%) of the credit union's ~~reserves~~ net worth. (3-31-22)( )
- ii. ~~If any portion of a member business l~~ oan or loans is fully secured by a one (1) to four (4) family ~~dwelling~~ residential property that is the member's primary residence or secondary residence, or loans secured by shares in the credit union or deposits in another financial institution, or loans insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the federal government or of a state or any of its political

subdivisions, such portion shall not be calculated in determining the twenty percent (20%) limit. (3-31-22)( )

iii. Credit unions seeking an exception from the twenty percent (20%) limit must present to the Director the higher limit sought, an explanation of the need to raise the limit, an analysis of the credit union's prior experience making member business loans, and a copy of its business lending policy. In addition, at the same time this information is presented to the Director, any credit union that is NCUA insured must also submit a copy of the information to the appropriate NCUA regional office for its review and comment. ( )

iv. Any decision by the Director to grant any request to exceed the twenty percent (20%) loan-to-one borrower's limit will be made only after consultation and coordination with NCUA. ( )

~~de.~~ Allowance for Loan Losses. The determination of whether a member business loan will be classified as substandard, doubtful, or loss will rely on factors not limited to the delinquency of the loan. Non-delinquent loans may be classified, depending on an evaluation of factors including, but not limited to, the adequacy of analysis and documentation. Credit risk rating system. Credit risk ratings must be assigned to commercial loans at inception and reviewed as frequently as necessary to satisfy the credit union's risk monitoring and reporting policies, and to ensure adequate reserves as required by generally accepted accounting principles. At a minimum, the following credit risk ratings must be used: Pass; Special Mention; Substandard; Doubtful; and Loss. (3-31-22)( )

e. Loans classified shall be reserved as follows: (3-31-22)

i. Loss loans at one hundred percent (100%) of outstanding amount; (3-31-22)

ii. Doubtful loans at fifty percent (50%) of outstanding amount; and (3-31-22)

iii. Substandard loans at ten percent (10%) of outstanding amount, unless other factors (e.g., history of such loans at the credit union) indicate that a greater or lesser amount is appropriate. (3-31-22)

~~032.~~ **Prohibitions Ineligible Borrowers.** A credit union may not make grant member business loans to the following ~~nonvolunteer, senior management employees, or to any associated member or immediate family member of such employees:~~ (3-31-22)( )

a. ~~The credit union's chief executive officer; typically this individual holds the title of president, treasurer, or manager.~~ Any senior management employee directly or indirectly involved in the credit union's commercial loan underwriting, servicing, and collection process, and any of their immediate family members; (3-31-22)( )

b. ~~Any assistant chief executive officers; often the assistant manager.~~ Any person meeting the definition of an associated borrower with respect to persons identified in Subsection 040.02.a. of this rule; or (3-31-22)( )

c. ~~The chief financial officer or comptroller. The credit union shall not grant a member business loan where any provision for the payment, or the amount of the payment, on the loan is conditioned on the profitability or success of the business or commercial endeavor for which the loan is made.~~ Any compensated director, unless the credit union's board of directors approves granting the loan and the compensated director was recused from the board's decision making process. (3-31-22)( )

d. The credit union shall not grant a member business loan where any requirement for the payment, or the amount of the payment, on the loan is conditioned on the profitability or success of the business or commercial endeavor for which the loan is made. ( )

041. -- 049. (RESERVED)

050. NONPREFERENTIAL TREATMENT.

01. **Nonpreferential Treatment.** ~~The rates, terms, and conditions on any loan or line of credit either~~

~~made to, or endorsed or guaranteed by requirement of extending credit on “substantially the same terms as those prevailing...”~~, found in Section 26-2119(2), Idaho Code, is also applicable to: (3-31-22)(\_\_\_\_)

- a. ~~An official~~ Immediate family members of those persons listed in Section 26-2119(2), Idaho Code; (3-31-22)(\_\_\_\_)
- b. ~~An immediate family member of an official; or~~ Any business entity or venture owned, in whole or in part, by those persons listed in Section 26-2119(2), Idaho Code, or their immediate family members. (3-31-22)(\_\_\_\_)
- e. Any individual having a common ownership, investment, or other pecuniary interest in a business enterprise with an official or with an immediate family member of an official, cannot be more favorable than the rates, terms, and conditions for comparable loans or lines of credit to other credit union members. “Official” means any member of the board of directors, credit committee, or supervisory committee. “Immediate family member” means a spouse or other family members, related by blood or operation of law, living in the same household. (3-31-22)

051. -- 059. (RESERVED)

**060. ~~PROHIBITED FEES, COMMISSIONS, COMPENSATION~~ PROHIBITION ON COMMISSION FOR MAKING LOANS.**

~~A credit union may not make any loan or extend any line of credit if, either directly or indirectly, any commission, fee, or other compensation is to be received by the credit union’s directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or line of credit. However, salary for employees is not prohibited by this section. “Senior management employees” refers to those employees described in Subsection 040.03 of these rules. “Immediate family member” means a spouse, or other family members, related by blood or operation of law, living in the same household.~~ No officer, director, or employee of any credit union, or immediate family thereof, shall demand, accept or receive, directly or indirectly, any commission or other consideration on account of the making, extension, or renewal by said credit union of any loan, or extension of credit, to any person, firm or corporation. This prohibition shall not apply to consideration paid by a credit union to its employees. (3-31-22)(\_\_\_\_)

061. -- 999. (RESERVED)

## IDAPA 12 – IDAHO DEPARTMENT OF FINANCE

### 12.01.08 – RULES PURSUANT TO THE UNIFORM SECURITIES ACT (2004)

#### DOCKET NO. 12-0108-2301 (ZBR CHAPTER REWRITE, FEE RULE)

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 30-14-605(a), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 225 - 259](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

Rule 004.01: \$50 fee with each request for no-action position or interpretive opinion letter. Authorized pursuant to Sections 30-14-605(d) and 30-14-605(a), Idaho Code.

Rule 040.03: \$300 fee for annual renewal of registration statement. Authorized pursuant to Sections 30-14-305(b) and 30-14-605(a), Idaho Code.

Rule 053.01.b. and c.: \$300 fee for filing of notice of offering and annual renewal of mutual funds by investment companies, and \$100 filing fee for notice of offering and annual renewal of unit investment trusts. Authorized pursuant to Sections 30-14-302(b) and 30-14-605(a), Idaho Code.

Rules 053.02.b. and c.: \$50 fee for Regulation D Rule 506 notice filings. Authorized pursuant to Sections 30-14-302(c) and 30-14-605(a), Idaho Code.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking will not impact the state General Fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Anthony Polidori at (208)-332-8060.

DATED this 21st of November, 2023.

Anthony Polidori  
Deputy Director  
Idaho Department of Finance  
11341 West Chinden Blvd., Suite A300  
Boise, ID 83714  
Phone: (208) 332-8060

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 30-14-605(a), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023. The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking was conducted pursuant to the [Executive Order 2020-01](#), “Zero-Based Rulemaking”, for the purpose of engaging in a thorough retrospective review of the cost and benefit of an existing rule. As a result, the proposed changes reduce regulatory burden by removing outdated requirements.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

No fee changes have resulted from this rulemaking. The existing iteration of the rule included the following fees which have been retained through this rulemaking.

Rule 004.01: \$50 fee with each request for no-action position or interpretive opinion letter. Authorized pursuant to Sections 30-14-605(d) and 30-14-605(a), Idaho Code.

Rule 040.03: \$300 fee for annual renewal of registration statement. Authorized pursuant to Sections 30-14-305(b) and 30-14-605(a), Idaho Code.

Rule 053.01.b and 01.c: \$300 fee for filing of notice of offering and annual renewal of mutual funds by investment companies, and \$100 filing fee for notice of offering and annual renewal of unit investment trusts. Authorized pursuant to Sections 30-14-302(b) and 30-14-605(a), Idaho Code.

Rules 053.02.b and 02.c: \$50 fee for Regulation D Rule 506 notice filings. Authorized pursuant to Sections 30-14-302(c) and 30-14-605(a), Idaho Code.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

This rulemaking will not negatively impact the state General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 2023 Idaho Administrative Bulletin, [Volume 23-8, pages 12 and 13](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The Department seeks to provide a level playing field for all affected financial professionals by incorporating various policy statements of the North American Securities Administrators Association (NASAA) in order to promote uniformity among state regulators. This approach provides industry participants with a uniform approach to regulation (more certainty) while reducing compliance costs with the application of broadly accepted standards of conduct.



**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Anthony Polidori at (208)-332-8060.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2023.

DATED this 1st day of September, 2023.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 12-0108-2301**

**12.01.08 – RULES PURSUANT TO THE UNIFORM SECURITIES ACT (2004)**

**000. LEGAL AUTHORITY.**

This chapter is promulgated pursuant to Section 30-14-605, Idaho Code. ( )

**001. SCOPE.**

These rules relate to the offer and sale of securities and the giving of investment advice in the state of Idaho by licensed individuals and others. ( )

**002. -- 003. (RESERVED)**

**004. INTERPRETIVE OPINIONS.**

**01. Written Requests.** The Administrator may honor requests for formal interpretive opinions in writing, with respect to the provisions of the Act or any rule or statement of policy adopted thereunder. Each request for interpretive opinion letter shall be made in writing and include all information required by the administrator, accompanied by payment of a fee in the amount of fifty dollars (\$50). ( )

**02. Hypotheticals Not Considered.** The names of the company or companies, organization or organizations and all other persons involved should be stated and should relate and be limited to a particular factual circumstance. Letters relating to hypothetical situations will not warrant a formal response. ( )

**005. INCORPORATION BY REFERENCE.**

**01. Incorporated Documents.** IDAPA 12.01.08, “Rules Pursuant to the Uniform Securities Act (2004),” adopts and incorporates by reference the full text of the following Statements of Policy and guidelines adopted by the North American Securities Administrators Association (NASAA): ( )

**a.** “Loans and Other Material Affiliated Transactions,” as adopted with amendments through March 31, 2008; ( )

**b.** “Options and Warrants,” as adopted with amendments through March 31, 2008; ( )

**c.** “Corporate Securities Definitions,” as adopted with amendments through March 31, 2008; ( )

**d.** “Impoundment of Proceeds,” as adopted with amendments through March 31, 2008; ( )

**e.** “Preferred Stock,” as adopted with amendments through March 31, 2008; ( )

- f. “Promotional Shares,” as adopted with amendments through March 31, 2008; ( )
- g. “Promoters’ Equity Investment,” as adopted with amendments through March 31, 2008; ( )
- h. “Specificity in Use of Proceeds,” as adopted with amendments through March 31, 2008; ( )
- i. “Underwriting Expenses, Underwriter’s Warrants, Selling Expenses, and Selling Securities Holders,” as adopted with amendments through March 31, 2008; ( )
- j. “Unsound Financial Condition,” as adopted with amendments through March 31, 2008; ( )
- k. “Unequal Voting Rights,” as adopted March 31, 2008; ( )
- l. “Debt Securities,” as adopted April 25, 1993; ( )
- m. “NASAA Guidelines Regarding Viatical Investments,” as adopted October 1, 2002; ( )
- n. “NASAA Statement of Policy Regarding Small Company Offering Registrations (SCOR),” as adopted April 28, 1996. ( )

**02. Availability of Referenced Documents.** Copies of current “NASAA Statements of Policy” are available at the Department of Finance, 11341 West Chinden Blvd., Suite A300 Boise, ID 83714 and NASAA Web site at <https://www.nasaa.org/statements-of-policy/>. ( )

**006. -- 009. (RESERVED)**

**010. DEFINITIONS.**

- 01. CRD.** Central Registration Depository. ( )
- 02. Department.** The Idaho Department of Finance. ( )
- 03. FINRA.** Financial Industry Regulatory Authority. ( )
- 04. IARD.** Investment Adviser Registration Depository. ( )
- 05. NASAA.** The North American Securities Administrators Association, Inc. ( )
- 06. NASD.** The National Association of Securities Dealers, Inc. ( )
- 07. NASDAQ.** The National Association of Securities Dealers Automated Quotations. ( )
- 08. SEC.** The U.S. Securities and Exchange Commission. ( )
- 09. Transact Business.** For purposes of the Act, to “transact business” means to buy or to sell or contract to buy or to sell or dispose of a security or interest in a security for value. It also means any offer to buy or offer to sell or dispose of, and every solicitation of clients or of any offer to buy or to sell, a security or interest in a security for value. With respect to investment advisers and investment adviser representatives, “transact business” includes preparation of financial plans involving securities, recommendations to buy or sell securities or interests in a security for value, and solicitation of investment advisory clients. ( )
- 10. Unsolicited Order or Offer.** ( )
  - a. As used in these rules, an order or offer to buy is considered “unsolicited” if: ( )
    - i. The broker-dealer has not made a direct or indirect solicitation or recommendation that the

customer purchase the security; and ( )

ii. The broker-dealer has not recommended the purchase of the security to the customer, either directly or in a manner that would bring its recommendation to the customer; and ( )

iii. The broker-dealer has not volunteered information on the issuer to the customer; and ( )

iv. The customer has previously, and independent of any information furnished by the broker-dealer, decided to buy the security. ( )

b. Any offer or order to buy from a customer whose first knowledge of the specific security or issuer was volunteered to him by the broker-dealer is regarded as a solicited order. ( )

c. Any claim of exemption pursuant to Section 30-14-202(6), Idaho Code, shall be supported by the broker-dealer's certificate that the transaction in question was, in fact, unsolicited. ( )

**011. -- 019. (RESERVED)**

**020. APPLICATION FOR REGISTRATION OF SECURITIES.**

**01. Registration by Coordination.** A registration statement to register securities by coordination shall contain the following: ( )

a. A Form U-1 application and accompanying documents (including subscription agreement); ( )

b. A consent to service of process in compliance with Section 30-14-611, Idaho Code; ( )

c. The filing fee specified in Section 30-14-305(b), Idaho Code; and ( )

fd Any additional information or documents requested by the Department. ( )

**02. Registration by Qualification.** A registration statement to register securities by qualification shall contain the following in addition to the requirements of Section 30-14-304, Idaho Code: ( )

a. Financial Statements. Except for SCOR applications, registration statements filed pursuant to Section 30-14-304, Idaho Code, shall contain audited financial statements of the issuer for its last two (2) fiscal years. An issuer with less than one (1) year of operations may file reviewed financial statements until the end of its first fiscal year. ( )

b. Unaudited Interim Financial Statements. If the audited financial statements or unaudited financial statements required in Subsection 020.02.a. of this rule are not current to within four (4) months of the date of filing of the registration statement, additional unaudited financial statements as of the issuer's last fiscal quarter or any later date designated by the Administrator shall be included. ( )

c. Small Company Offering Registration (SCOR). A SCOR registration statement shall contain the following: ( )

i. A Form U-1 application and accompanying documents (including subscription agreement); ( )

ii. An executed "Notice of Sale of Securities Pursuant to Regulation D, Section 4(6) and or Uniform Limited Offering Exemption;" ( )

iii. A consent to service of process in compliance with Section 30-14-611, Idaho Code; ( )

iv. For SCOR offerings, the prospectus to be used shall be the Uniform Small Company Offering Registration Form; ( )

- v. The filing fee specified in Section 30-14-305(b), Idaho Code; and ( )
- vi. Any additional information or documents requested by the Department. ( )
- d.** Registration statements by qualification shall contain the following: ( )
  - i. A Form U-1 application and accompanying documents (including subscription agreement); ( )
  - ii. A consent to service of process in compliance with Section 30-14-611, Idaho Code; ( )
  - iii. Financial statements prepared in accordance with Subsection 020.02.a. of this rule; ( )
  - iv. A copy of the prospectus containing the information or records specified in Sections 30-14-304(b)(1) through 304(b)(18), Idaho Code; ( )
  - v. The prospectus shall be prepared using one of the following forms: Part II of Form 1-A of Regulation A of the Securities Act of 1933; Parts I and II of Form SB-2 of the Securities Act of 1933; The Uniform Small Company Offering Registration Form; or any other applicable form used to prepare a prospectus under the Securities Act of 1933, if approved by the department. ( )

**03. Other Forms.** Any other applicable form used to prepare a prospectus under the Securities Act of 1933, if approved by the Department, containing: ( )

- a.** The filing fee specified in Section 30-14-305(b), Idaho Code; and ( )
- b.** Any additional information or documents requested by the Department. ( )

**021. AMENDMENTS TO REGISTRATION STATEMENT.**

**01. Amendments Required.** The submission of a correcting amendment to an effective registration statement is required any time that the information contained therein becomes inaccurate or incomplete in any material respect. ( )

**02. Contents of Amendment Filing.** Each filing of a correcting amendment to a registration statement shall contain a copy of each item of the registration statement that has been changed, with all changes clearly marked. To be complete, a filing of a correcting amendment to the registration statement shall contain a report of material changes setting forth a summary of each material change and indicating the location of such change in the documents filed. ( )

**03. Time of Filing and Undertaking.** An amendment required under this section must be submitted by the earlier of: ( )

- a.** Two (2) business days after filing such amendment with the SEC; or ( )
- b.** Fifteen (15) business days following the event giving rise to the amendment. ( )
- c.** If not registered with the SEC, registrants shall file an amended registration statement if required within fifteen (15) business days following the event giving rise to the amendment. ( )

**04. Effect of Failure to Amend.** Solicitation of prospective investors through utilization of a prospectus containing information which is inaccurate or incomplete in any material respect represents a violation of the Act and constitutes a basis for the suspension or revocation of the registration. Nothing in this section shall be construed to require any open-end investment company registered under the 1940 Act and the Act to disclose fluctuations in its investment portfolio. ( )

**022. -- 035. (RESERVED)**

**036. NASAA STATEMENTS OF POLICY -- REGISTERED OFFERINGS.**

The Department will apply the applicable statement(s) of policy adopted by NASAA to an offering seeking registration in Idaho when conducting a review to determine whether an offering is fair, just and equitable. ( )

**037. REGISTRATION OF DEBT SECURITIES.**

In addition to the requirements contained in the NASAA Statement of Policy Regarding Debt Securities the issuer of debt securities will incorporate the following standards: ( )

**01. Suitability.** In establishing standards of fairness and equity, the Department has established the following investor suitability guidelines for debt offerings registered under the Act: ( )

**a.** No more than ten percent (10%) of any one (1) Idaho investor's net worth (exclusive of home, home furnishings, and automobiles) shall be invested in the securities being registered with the Department; and either ( )

**b.** A gross income of forty-five thousand dollars (\$45,000) and a net worth of forty-five thousand dollars (\$45,000) (exclusive of home, home furnishings and automobiles); or ( )

**c.** A net worth of one hundred fifty thousand dollars (\$150,000) (exclusive of home, home furnishings and automobiles). ( )

**02. Department May Establish Standards.** The suitability standard in Subsection 037.01 of this rule is a guideline. Higher or lower suitability standards may be established or may be required by the Department as a condition of registration. ( )

**03. Standards To Be Disclosed.** The suitability standards must be disclosed in the prospectus. ( )

**038. WITHDRAWAL/ABANDONMENT OF A REGISTRATION STATEMENT.**

**01. Withdrawal.** The withdrawal of an application (prior to effectiveness) may be permitted by the Administrator upon the written request of the applicant. ( )

**02. Abandonment.** The abandonment of an application, where there has been no activity on the application by the applicant for a period of six (6) months or more, may be considered to signify a request for withdrawal. ( )

**03. Time Limit.** An application for registration of securities pursuant to Section 30-14-303 or 30-14-304, Idaho Code, is deemed abandoned if such registration is not effective in the state of Idaho within one (1) year from the date of receipt by the Department of the initial filing of the application for registration. ( )

**04. Abandoned Applications Not Reinstated.** Once deemed abandoned, the original application shall not be reinstated. A new application including the registration statement, appropriate exhibits and filing fees is required. ( )

**039. REPORT OF COMPLETION OF OFFERING.**

**01. Completion Statement.** Within thirty (30) days of the completion of a registered offering in Idaho, the registrant shall provide a written statement to the Department that states the following: ( )

**a.** The date the offering was completed in Idaho; and ( )

**b.** The number and amount of registered securities sold in Idaho, for SCOR offerings and offerings registered by qualification. ( )

**02. Signatures.** The written statement must be signed by an officer, director or agent of the issuer or by an authorized signatory of the registrant. ( )

**040. ANNUAL REPORT FOR THE RENEWAL OF A REGISTRATION STATEMENT.**

To renew a registration statement for an additional year, the registrant shall file the following with the Department before the anniversary of the effective date of the registration statement in Idaho: ( )

- 01. Cover Letter.** A cover letter requesting renewal; ( )
- 02. Consent to Service.** A consent to service of process in accordance with Section 30-14-611, Idaho Code; and ( )
- 03. Filing Fee.** A filing fee of three hundred dollars (\$300) for all registered offerings. ( )

**041. SUBSCRIPTION AGREEMENT.**

The subscription agreement shall contain, among other things, an acknowledgment by the subscriber that he has received a copy of the prospectus. Each completed subscription agreement shall be kept in the office of the issuer or broker-dealer for a period of five (5) years and be subject to inspection by the Department. ( )

**042. DELIVERY OF PROSPECTUS.**

As a condition of registration, an applicant shall comply with the following: ( )

- 01. Registration by Qualification.** A person offering or selling a security under a registration by qualification, other than through a broker-dealer, shall deliver a copy of the final prospectus to each prospective purchaser before or at the time of the confirmation of a sale made by or for the account of the person. ( )
- 02. Registration by Coordination.** A person offering or selling a security under a registration by coordination shall deliver a copy of the prospectus as required by the Securities Act of 1933. ( )

**043. REGISTRATIONS -- NOTICE OF INTENDED IDAHO BROKER -- DEALER OR AGENT.**

At the time of filing of an application for registration of any security required to be registered in Idaho, written notice shall be provided to the Department of the name of at least one (1) broker-dealer or agent, registered as such in this state, that is intended or qualified to offer or sell such security in Idaho. The Administrator may deny or revoke effectiveness of any registration pending receipt of the notice or may hold the application without further review until the notice has been received. ( )

**044. RECORDS TO BE PRESERVED BY ISSUERS.**

- 01. Required Records.** All issuers who effect sales of registered securities, other than through a broker-dealer, shall preserve the following records for at least three (3) years following the expiration of the registration: ( )
  - a.** Copies of all documents contained in the registration statement; ( )
  - b.** Copies of all advertisements, including a record of the dates, names and addresses of media carrying those advertisements; ( )
  - c.** Copies of all communications received and sent by the issuer pertaining to the offer, sale and transfer of the securities, including purchase agreements and confirmations; and ( )
  - d.** A list of the name, address and telephone number of each investor to whom the securities were sold, and for each such person, information regarding: ( )
    - i.** The type of securities sold; ( )
    - ii.** The number and amount of securities sold; ( )
    - iii.** The type of consideration paid; and ( )

- iv. The name of the agent that sold the securities. ( )

**02. Retention Period.** An issuer will need to retain the records set forth in Subsection 044.01 of this rule for each investor at least three (3) years after the investor's investment has terminated, even if more than three (3) years has lapsed since the expiration of the registration. ( )

- 03. Form.** Records may be stored in paper form or electronically. ( )

**045. -- 051. (RESERVED)**

**052. ISSUER AGENT REGISTRATION.**

Any individual not exempted pursuant to Sections 30-14-402(b)(3), (4) or (5), Idaho Code, must be registered as an issuer agent or comply with the registration requirement of Section 30-14-402(a), Idaho Code, if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities. ( )

**053. FEDERAL COVERED SECURITIES (RULE 53).**

- 01. Investment Company Notices.** ( )

**a. Notice Requirement.** Pursuant to Section 30-14-302, Idaho Code, prior to the offer in this state of a series or portfolio of securities of an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940, that is not otherwise exempt under Sections 30-14-201 through 30-14-203, Idaho Code, the issuer must file a notice with the Administrator relating to such series or portfolio of securities. ( )

- b. Content of Notice.** Each required notice shall include the following: ( )

i. A properly completed filing notice; ( )

ii. A consent to service of process; ( )

iii. A filing fee of three hundred dollars (\$300) for mutual funds and one hundred dollars (\$100) for unit investment trusts; and ( )

- iv. Notification of SEC effectiveness. ( )

**c. Renewal of Notice.** The effectiveness of a notice required pursuant to Subsection 053.01.a. of this rule may be renewed each year for an additional one (1) year period of effectiveness by filing on or before the expiration of the effectiveness of such notice: ( )

i. A properly completed Form NF clearly indicating the state file number of the Notice to be renewed; ( )

ii. A consent to service of process (Form U-2) in accordance with Section 30-14-611, Idaho Code; and ( )

iii. A renewal fee of three hundred dollars (\$300) for mutual funds and one hundred dollars (\$100) for unit investment trusts. ( )

- d. Amendments.** Amendment filings are required for the following: ( )

- i. Issuer name change; ( )

- ii. Address change for contact person; and ( )

- iii. Notification of termination or completion. ( )

e. Other Documents. Documents other than those required in Subsections 053.01.b., 053.01.c., and 053.01.d. of this rule, unless specifically requested by the Department, should not be filed with the Department. Documents that should be filed with the Department only if specifically requested include, but are not limited to, registration statements, prospectuses, amendments, statements of additional information, quarterly reports, annual reports, and sales literature. ( )

**02. Regulation D Rule 506 Notice Filing.** ( )

a. Notice Requirement. Issuers offering a security in this state in reliance upon Section 30-14-301, Idaho Code, by reason of compliance with Regulation D, Rule 506, adopted by the United States Securities and Exchange Commission, are required to file a notice with the Department or with Electronic Filing Depository pursuant to the authority of Section 30-14-302(c), Idaho Code, if a sale of a security in this state occurs as a result of such offering. ( )

b. Terms of Notice Filing. The issuer shall file with the Department or with Electronic Filing Depository no later than fifteen (15) days after the first sale of a security in this state for which a notice is required under Subsection 053.02.a. of this rule: ( )

i. One (1) copy of a “Notice of Sale of Securities Pursuant to Regulation D, Section 4(6) and or Uniform Limited Offering Exemption” filed with the SEC-filed; and ( )

ii. The notice filing fee of fifty dollars (\$50). ( )

iii. A cover letter should be included in the notice filing which states the date in which the first sale of securities occurred in Idaho. ( )

**054. NOT FOR PROFIT DEBT SECURITIES NOTICE FILING.**

**01. Securities Exempt.** With respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness, such issuers relying upon the exemption from registration provided in Section 30-14-201(7), Idaho Code, shall file a notice with the Administrator at least thirty (30) days prior to the first offering of sale pursuant to such claim. Such exemption shall become effective thirty (30) days after the filing of a complete notice if the Administrator has not disallowed the exemption. ( )

**02. Notice Information.** The notice required in Subsection 054.01 of this rule shall specify, in writing, the material terms of the proposed offer or sale to include, although not limited to, the following: ( )

a. The identity of the issuer; ( )

b. The amount and type of securities to be sold pursuant to the exemption; ( )

c. A description of the use of proceeds of the securities; and ( )

d. The person or persons by whom offers and sales will be made. ( )

**03. Notice Requirements.** The following items must be included as a part of the notice in Subsection 054.01 of this rule: ( )

a. The offering statement, if any; and ( )

b. A consent to service of process. ( )

**04. Sales and Advertising Literature.** All proposed sales and advertising literature to be used in connection with the proposed offer or sale of the securities shall be filed with the Administrator only upon request. ( )



**05. NASAA Statements of Policy or Guidelines.** The Statements of Policy or guidelines adopted by NASAA may be applied, as applicable, to the proposed offer or sale of a security for which a notice must be filed pursuant to this rule. Failure to comply with the provisions of an applicable Statement of Policy or guideline promulgated by NASAA may serve as the grounds for disallowance of the exemption from registration provided by Section 30-14-201(7), Idaho Code. ( )

**06. Waiver.** The Administrator may waive any term or condition set forth in this rule. ( )

**055. MORTGAGE NOTE EXEMPTION.**

**01. Investment Contract or Profit-Sharing Agreement.** The exemption specified in Section 30-14-202(11), Idaho Code, shall not extend to any transaction in a security in the nature of an investment contract or profit-sharing agreement. ( )

**02. Definition “Offered and Sold as a Unit.”** As used in Section 30-14-202(11), Idaho Code, “offered and sold as a unit” means an offer and sale of the entire mortgage or other security agreement to a single purchaser at a single sale. ( )

**056. MANUAL EXEMPTION.**

For the purpose of the manual exemption (Section 30-14-202(2), Idaho Code), the following securities manuals or portions of the manuals are recognized. ( )

**a.** Best’s Insurance Reports- Life-Health. ( )

**b.** Mergent’s Industrial Manual. ( )

**c.** Mergent’s International Manual. ( )

**d.** OTCQX Best Market. ( )

**057. MINING, OIL OR GAS EXPLORATION EXEMPTION REQUIREMENTS.**

**01. Legal Opinion for Extractive Industries.** If the Department deems it necessary or advisable in the public interest or for the protection of investors, it may require an issuer engaged in mining, gas, or oil exploration or extraction to submit an opinion of counsel on the nature of the title held to the property noting any defects or liens or both, and the principal terms of any lease or option with respect to the property. If continued possession of the property by the issuer depends upon the satisfaction of certain working conditions, describe these conditions and state the extent to which they have been met. The Department may require other issuers to submit a status of title to any real estate which is material to the business of the issuer. ( )

**02. Quarterly Reports.** The issuer shall file quarterly reports, on the “Quarterly Report Form for Small Mining Issues.” during the time the securities remain registered. Such reports are due within thirty (30) days following the end of the issuer’s quarter. Failure to comply with this rule could be grounds for suspension or revocation of a permit. ( )

**03. Advertising.** The only advertising of exempt mining securities, whether on radio, television, print media, or other medium, shall be restricted to announcing the securities offering and stating the name and address of the issuer, the type of security, the underwriter, and where additional information may be obtained. ( )

**04. Offering Circulars.** All offers of the security must be accompanied by a complete, current offering circular previously reviewed by the Administrator adequate to satisfy the anti-fraud provisions of the Act. ( )

**058. STOCK EXCHANGE LISTED SECURITIES.**

Stock exchanges specified by or approved under Section 30-14-201(6), Idaho Code, are as follows: ( )

**01. The New York Stock Exchange;** ( )

- 02. The American Stock Exchange; ( )
- 03. The NASDAQ Global Market and Global Select Market; ( )
- 04. The Chicago Board Options Exchange; ( )
- 05. Tier I of the Pacific Stock Exchange; and ( )
- 06. Tier I of the Philadelphia Stock Exchange, Inc. ( )

**059. (RESERVED)**

**060. REGISTRATION OR EXEMPTION OF “BLIND POOL” OFFERINGS PROHIBITED.**

An offering in which it is proposed to issue stock or other equity interest without an allocation of proceeds to sufficiently identifiable properties or objectives shall be considered a “blind pool” offering and one in which the duty to provide full disclosure cannot be met. Because of the inability or failure to make full disclosure, the Department is of the position that the offering would work a fraud upon purchasers and, therefore, the offering may not be registered or qualify for an exemption from registration in Idaho. ( )

**061. CROSS-BORDER TRANSACTIONS EXEMPTION.**

By authority delegated to the Administrator in Section 30-14-203, Idaho Code, transactions effected by a Canadian broker-dealer and its agents that meet the requirements for exemption from registration pursuant to Section 084 of these rules, are determined to be classes of transactions for which registration is not necessary or appropriate for the protection of investors and are exempt from Sections 30-14-301 and 30-14-504, Idaho Code. ( )

**062. -- 077. (RESERVED)**

**078. IMPLEMENTATION OF CRD.**

**01. Designation and Use of CRD System.** Pursuant to Section 30-14-406, Idaho Code, the Administrator designates the web-based CRD to receive and store filings and collect related fees from broker-dealers, agents and investment adviser representatives on behalf of the Administrator. Forms U-4, U-5, BD, BR, and BDW shall be used to register or terminate agents, investment adviser representatives or broker-dealers, respectively, in the state of Idaho through the CRD system. The CRD system will be utilized to effect FINRA registration as well as registration, termination, and renewal in the state. ( )

**079. IMPLEMENTATION OF IARD.**

**01. Designation and Use of IARD.** Pursuant to Section 30-14-406, Idaho Code, the Administrator designates the web-based IARD operated by FINRA to receive and store filings and collect related fees from investment advisers on behalf of the Administrator. Unless otherwise provided, all investment adviser applications, amendments, reports, notices, related filings and fees required to be filed with the Administrator pursuant to the rules promulgated under the Act, shall be filed electronically with and transmitted to IARD. ( )

**02. Hardship Exemptions.** This rule provides two (2) “hardship exemptions” from the requirements to make electronic filings as required by the rules. ( )

**a. Temporary Hardship Exemption.** ( )

**i.** Investment advisers registered or required to be registered under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from the requirements to file electronically. ( )

**ii.** To request a temporary hardship exemption, the investment adviser may file Form ADV-H which can be found at 17 CFR 279.3 in paper format with the Administrator where the investment adviser's principal place of business is located, no later than one (1) business day after an electronic filing was due; and submit the filing that is the subject of the hardship request in electronic format to IARD no later than seven (7) business days after the

filing was due. ( )

iii. Effective Date - Upon Filing. The temporary hardship exemption will be deemed effective upon receipt by the Administrator of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the Administrator. ( )

b. Continuing Hardship Exemption. ( )

i. Criteria for Exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome. ( )

ii. To apply for a continuing hardship exemption, the investment adviser may file Form ADV-H with the Administrator at least twenty (20) business days before a filing is due; and, if a filing is due to more than one (1) securities regulator, the request must be filed with the Administrator where the investment adviser's principal place of business is located. The Administrator who receives the application will grant or deny the application within ten (10) business days after the filing the hardship request. ( )

iii. Effective Date - Upon Approval. The exemption is effective upon approval by the Administrator. The time period of the exemption may be no longer than one (1) year after the date on which the hardship request is filed. If the Administrator approves the application, the investment adviser must, no later than five (5) business days after the exemption approval date, submit filings to IARD in paper format for the period of time for which the exemption is granted. ( )

**080. BROKER-DEALER REGISTRATION -- APPLICATION/RENEWAL.**

**01. Initial Application -- FINRA Member Firms.** Broker-dealers applying for initial registration pursuant to Section 30-14-406, Idaho Code, and who are contemporaneously applying for FINRA membership or who are a FINRA member, shall file with CRD the fee required by the Act and such information as required by the Administrator. ( )

**02. Initial Application -- Non-FINRA Member Firms.** Broker-dealers applying for initial registration pursuant to Section 30-14-406, Idaho Code, and who are not contemporaneously applying for FINRA membership or are not a FINRA member, shall file with the Department: ( )

a. Written application as required by the Administrator; ( )

b. The filing fee specified in Section 30-14-410, Idaho Code; ( )

c. Audited financial statements; ( )

d. Documentation of compliance with the minimum capital requirements of Section 087 of these rules; ( )

e. Designation and qualification of a principal officer; ( )

f. A list of the addresses, telephone numbers and resident agents of all office locations within the state of Idaho, to be provided within sixty (60) days of becoming registered; ( )

g. A copy of the written supervisory procedures of the broker-dealer; ( )

h. Any additional documentation, supplemental forms and information as the Administrator may deem necessary. ( )

**03. Incomplete Applications.** After a period of six (6) months from date of receipt, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. ( )

**04. Annual Renewal.** ( )

**a.** A FINRA member shall renew its registration by submitting the renewal fee specified in Section 30-14-410, Idaho Code, to the CRD according to their policies and procedures. A non-FINRA member shall renew its registration by submitting to the Department current information required for initial registration, and the renewal fee specified in Section 30-14-410, Idaho Code. ( )

**b.** It is required that an application for the renewal of the registration of a broker-dealer must be filed with the Department before the registration expires, which is the thirty-first day of December next following such registration, per the provisions of Section 30-14-406(d), Idaho Code. Any registration that is not renewed within that time limit will be deemed to have lapsed, thus requiring the broker-dealer to reapply for registration with the Department in accordance with the requirements of the Act. ( )

**05. Updates and Amendments.** ( )

**a.** A broker-dealer must file with CRD any amendments to the broker-dealer's application. All broker-dealers must assure that current and accurate information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the application or by direct notice to the Department. ( )

**b.** An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. ( )

**c.** **Litigation Notice.** Any broker-dealer shall notify the Administrator in writing or through the CRD of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement does not include minor traffic violations or minor civil actions unrelated to the registrant's business as a broker-dealer. ( )

**d.** **Notice of Address.** Every broker-dealer shall provide the Department, with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. ( )

**e.** **Change of Name.** If a registered broker-dealer desires to change its name, notice of such an intent must be submitted to the CRD or this Department for non-FINRA members, either before or within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. ( )

**06. Completion of Filing.** An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all required submissions have been received by the Administrator. ( )

**07. Deferral of Effectiveness.** The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. ( )

**081. WITHDRAWAL OF BROKER -- DEALER AND AGENT REGISTRATION.**

**01. Application Withdrawal.** Withdrawal from registration as a broker-dealer or agent becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the Administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within sixty (60) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Administrator may nevertheless institute a revocation or suspension proceeding under Section 30-14-412, Idaho Code, within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration is effective. ( )

**02. Broker-Dealer.** The application for withdrawal of registration as a broker-dealer shall be completed by filing a withdrawal request with CRD. ( )

**03. Agents.** The application for withdrawal of registration as an agent shall be completed by filing a withdrawal request with CRD. ( )

**082. WITHDRAWAL OF ISSUER AGENT REGISTRATION.**

**01. Pending Revocation or Suspension.** Withdrawal from registration as an issuer agent becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the Administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within sixty (60) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Administrator may nevertheless institute a revocation or suspension proceeding under Section 30-14-412, Idaho Code, within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration is effective. ( )

**02. Issuer Agent.** The application for withdrawal of registration as an issuer agent shall be completed by filing a withdrawal request with the Department. ( )

**083. BROKER-DEALER AGENT/ISSUER AGENT REGISTRATION.**

**01. Broker-Dealer Agents.** Agents of broker-dealers applying for initial registration in the state of Idaho pursuant to Section 30-14-406, Idaho Code, shall file the following: ( )

a. With CRD, a completed Form U-4; ( )

b. With CRD, the filing fee specified in Section 30-14-410, Idaho Code; ( )

c. With CRD, proof of successful completion of the applicable examinations specified in Section 103 of these rules; ( )

d. With the Department, Subsections 083.01.a. through 083.01.c. of this rule, for any agent of a non-FINRA member. ( )

**02. Agents of Issuer.** ( )

a. Agents of issuers applying for initial registration in the state of Idaho pursuant to Section 30-14-406, Idaho Code, shall file the following with the Department: ( )

i. A completed Form U-4; ( )

ii. The fee specified in Section 30-14-410, Idaho Code; ( )

iii. Proof of successful completion of the applicable examination(s) specified in Section 103 of these rules; ( )

iv. Proof of a bond of a surety company duly authorized to transact business in this state, said bond to be in the sum of ten thousand dollars (\$10,000) and conditioned upon faithful compliance with the provisions of the Act by the agent, such that upon failure to so comply by the agent, the surety company is liable to any and all persons who may suffer loss by reason thereof. Provided, however, that the obligation of the surety bond must be maintained at all times in the amount therein provided; and provided further, that a certificate of deposit issued by any bank in the state of Idaho and assigned to the Administrator in an amount equal to the bond which would otherwise be required may be accepted by the administrator in lieu of a bond, if the certificate of deposit is maintained at all times in the amount and manner herein provided during the term for which the registration is effective and for three (3) years thereafter; ( )

**b.** Exceptions for officers. If there are not more than two (2) officers of an issuer, such officers may be registered as agents for a particular original offering of the issuer's securities without having to pass such written examination or file an agent's bond as provided by Subsection 083.02.a.iii. and 02.a.iv. of this rule, unless such person has registered under this rule within the prior five (5) years. ( )

**03. Incomplete Applications.** After a period of six (6) months from date of receipt, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. ( )

**04. Annual Renewal.** ( )

**a.** Broker-Dealer Agent. Agents of FINRA members shall renew their registrations by submitting the renewal fee specified in Section 30-14-410, Idaho Code, to the CRD. Agents of non-FINRA members shall renew their registrations by submitting a completed renewal application and a renewal fee as specified in Section 30-14-410, Idaho Code. ( )

**b.** Issuer Agent. Issuer agents shall renew their registrations by submitting a completed renewal application and a renewal fee as specified in Section 30-14-410, Idaho Code. ( )

**05. Updates and Amendments.** ( )

**a.** A broker-dealer agent or issuer agent must file with CRD, or with this Department, any amendments to the broker-dealer agent's or issuer agent's Form U-4. It is the responsibility of each broker-dealer agent or issuer agent to assure that current and accurate information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form U-4 or by direct notice to the Department. ( )

**b.** An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. ( )

**c.** Litigation Notice. Any broker-dealer agent or issuer agent shall notify the Administrator in writing or through the CRD of any civil, administrative, criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as a broker-dealer. ( )

**d.** Notice of Address. Every broker-dealer agent and issuer agent shall provide the Department with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. ( )

**e.** Change of Name. If a registered broker-dealer agent or issuer agent changes his or her name, notice of such must be submitted to the CRD or this Department within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. ( )

**06. Completion of Filing.** An application for initial or renewal registration is not considered complete for purposes of Section 30-14-406(c), Idaho Code, until the required fee and all amendments, including submissions requested by the Department, have been received by the Department. ( )

**07. Deferral of Effectiveness.** The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. ( )

**084. CROSS-BORDER LICENSING EXEMPTION.**

By authority delegated to the Administrator in Section 30-14-401(d), Idaho Code, a Canadian broker-dealer meeting all of the following conditions is determined to be exempt from the registration requirement in Section 30-14-401(a), Idaho Code: ( )

**01. Canadian Broker-Dealer.** The broker-dealer is registered in Canada, does not have an office or

other physical presence in this state, and is not an office or branch of a broker-dealer domiciled in the United States. ( )

**02. Registered Broker-Dealer.** The broker-dealer is registered with or a member of a Canadian self-regulatory organization, stock exchange, or the Bureau des Services Financiers and maintains that registration or membership in good standing. ( )

**03. Customers.** The broker-dealer and its agents effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by: ( )

**a.** An individual from Canada that temporarily resides or is temporarily present in this state and with whom the broker-dealer had a bona fide broker-dealer-customer relationship before the individual entered the United States; or ( )

**b.** An individual present in this state whose transactions relate to a self-directed, tax advantaged Canadian retirement plan of which the individual is the holder or contributor. ( )

**04. Disclosure.** The broker-dealer prominently discloses in writing to its clients in this state that the broker-dealer and its agents are not subject to the full regulatory requirement of the Act. ( )

**05. Jurisdiction.** Neither the broker-dealer nor its agents disclaim the applicability of Canadian law or jurisdiction to any transaction conducted pursuant to this exemption. ( )

**06. Anti-Fraud Provisions.** The broker-dealer and its agents comply with the anti-fraud provisions of the Act and of federal securities laws. ( )

**07. Consent to Service.** Prior to or contemporaneously with the first transaction in Idaho, the broker-dealer must file a consent to service of process in a manner that effectively appoints the Administrator as agent for service of process. ( )

**08. Provide Requested Information.** Any Canadian broker-dealer or agent relying on this exemption shall, upon written request, furnish the Department any information relative to a transaction covered by Section 084, of these rules, that the Administrator deems relevant. ( )

**085. RELICENSING (FORMERLY TEMPORARY AGENT TRANSFER (TAT) SYSTEM).**

**01. Relicensing Agents.** Transfer of agents from one broker-dealer to another shall be effected pursuant to, and in accordance with, the NASAA/CRD relicense program which allows for an automatic temporary license. ( )

**02. Relicensing Investment Adviser Representatives.** Transfer of investment adviser representatives from one (1) investment adviser to another shall be effected pursuant to, and in accordance with, the NASAA/CRD relicense program which allows for an automatic temporary license. ( )

**03. Temporary License Expiration.** An agent or investment adviser representative may not transact business in Idaho after the expiration of a temporary license unless a permanent license has been issued. In all cases, the Administrator retains the right to deny, suspend, or revoke a temporary license for the causes listed in Section 30-14-412, Idaho Code. ( )

**086. AGENT TERMINATION.**

Termination notice pursuant to the requirements of Section 30-14-408, Idaho Code, shall be given by filing within thirty (30) calendar days of termination, a completed withdrawal request. For agents terminating registration with a FINRA member, such notice shall be filed with the CRD. For agents terminating registration with a non-FINRA member, such notice shall be filed with the Department. ( )

**087. NET CAPITAL REQUIREMENTS FOR BROKER-DEALERS.**

Every registered broker-dealer shall have and maintain an adjusted net capital in compliance with 17 CFR 240.15c3-

1 under the Securities Exchange Act of 1934, as currently amended. ( )

**088. RECORDS REQUIRED FOR BROKER-DEALERS.**

**01. Required Books and Records.** Unless otherwise provided by order of the SEC, each broker-dealer registered or required to be registered under the Act shall make, maintain and preserve books and records in compliance with the SEC rules 17a-3 (17 CFR 240.17a-3), 17a-4 (17 CFR 240.17a-4), 15g-9 (17 CFR 240.15g-9) and 15c2-11 (17 CFR 240.15c2-11), which are adopted and incorporated by reference. ( )

**02. Compliance.** To the extent that the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended are not subject to enforcement action by the Department for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule. ( )

**089. INVESTMENT ADVISER REGISTRATION -- APPLICATION/RENEWAL.**

**01. Initial Application.** The application for initial registration as an investment adviser, pursuant to Section 30-14-406, Idaho Code, shall be made by completing Form ADV which can be found at 17 CFR 279.1 by filing with IARD. The application for initial registration shall also include the following: ( )

**a.** Proof of compliance by the investment adviser with the examination requirements of Section 103 of these rules; ( )

**b.** A bond of a surety company duly authorized to transact business in this state, said bond to be in the sum of twenty-five thousand (\$25,000) and conditioned upon faithful compliance with the provisions of the Act by the investment adviser such that upon failure to so comply by the investment adviser, the surety company shall be liable to any and all persons who may suffer loss by reason thereof. Except that an investment adviser that has its principal place of business in a state other than this state shall be excluded from these bonding requirements provided that such investment adviser is registered as an investment adviser in the state where it maintains its principal place of business and is in compliance with such state's bonding or minimum net worth requirements; ( )

**c.** A copy of the investment advisory contract to be executed by Idaho clients; ( )

**d.** A balance sheet, prepared substantially in accordance with Generally Accepted Accounting Principles, dated as of the investment adviser's prior fiscal year-end; however, if the investment adviser has not been in operation for an entire year, a balance sheet dated within ninety (90) days of filing shall be submitted; ( )

**e.** The fee required by Section 30-14-410, Idaho Code; and; ( )

**f.** Any other information the Department may reasonably require. ( )

**02. Incomplete Applications.** After a period of six (6) months from the date of receipt by the Department, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. ( )

**03. Annual Renewal.** The application for annual renewal registration as an investment adviser shall be filed with IARD according to their policies and procedures. The application for annual renewal registration shall include the fee required by Section 30-14-410, Idaho Code. ( )

**04. Applications Prior to Expiration.** An application for the renewal of the registration of an investment adviser must be filed with the Department before the registration expires, which is the thirty-first day of December next following such registration, per the provisions of Section 30-14-406(d), Idaho Code, unless an order is in effect under Section 30-14-412, Idaho Code. Any registration that is not renewed within that time limit will be deemed to have lapsed, thus requiring the investment adviser to reapply for registration with the Department in accordance with the requirements of the Act. ( )

**05. Updates and Amendments.** ( )



**a.** An investment adviser must file with IARD, any amendments to the investment adviser's Form ADV. All investment advisers must assure that current and accurate information is on file with the Department at all times. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. ( )

**b.** Within ninety (90) days of the end of the investment adviser's fiscal year, an investment adviser must file a copy of the investment adviser's balance sheet as of the prior fiscal year-end. ( )

**c.** **Litigation Notice.** Any investment adviser shall notify the Administrator in writing or through the IARD of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement does not include minor traffic violations or minor civil actions unrelated to the registrant's business as an investment adviser. ( )

**d.** **Notice of Address.** Every investment adviser shall provide the Department, through IARD, with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. ( )

**06. Completion of Filing.** An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all submissions have been received by the Administrator and until the investment adviser is registered in the jurisdiction where it maintains its principal place of business. ( )

**07. Deferral of Effectiveness.** The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. ( )

**090. INVESTMENT ADVISER REPRESENTATIVE REGISTRATION – APPLICATION/RENEWAL.**

**01. Initial Application.** The application for initial registration as an investment adviser representative pursuant to Section 30-14-406, Idaho Code, shall be made by completing and filing a Form U-4 application with CRD. The application for initial registration also shall include the following: ( )

**a.** Proof of compliance by the investment adviser representative with the examination requirements of Section 103 of these rules; and ( )

**b.** The fee required by Section 30-14-410, Idaho Code. ( )

**02. Incomplete Applications.** After a period of six (6) months from the date of receipt by the Department, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. ( )

**03. Annual Renewal.** The application for annual renewal registration as an investment adviser representative shall be filed with CRD. The application for annual renewal registration shall include the fee required by Section 30-14-410, Idaho Code. ( )

**04. Updates and Amendments.** ( )

**a.** The investment adviser representative is under a continuing obligation to update information required by Form U-4 as changes occur. All investment adviser representatives must assure that current and accurate information is on file with the Department, through CRD, at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form U-4. ( )

**b.** An investment adviser representative and the investment adviser must file promptly with CRD any amendments to the representative's Form U-4. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. ( )

**c.** Litigation Notice. Any investment adviser representative shall notify the Administrator in writing, through CRD, of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as an investment adviser representative. ( )

**d.** Change of Name. If a registered investment adviser representative changes his or her name, notice of such must be submitted to the CRD or this Department either before or within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. ( )

**e.** Notice of Address. Every investment adviser representative shall provide the Department, through CRD, with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. ( )

**05. Completion of Filing.** An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all submissions have been received by the Administrator. ( )

**06. Dual Registration Exemption.** A person may transact business in this state as an investment adviser representative if he is registered as an agent pursuant to Section 30-14-402, Idaho Code, and is employed by a broker-dealer registered pursuant to Section 30-14-401, Idaho Code, and ( )

**a.** The person's investment advisory activities are limited to recommending the investment advisory services of an investment adviser registered under Section 30-14-403, Idaho Code, or a federal covered adviser that has made a notice filing pursuant to Section 30-14-405, Idaho Code, and all such recommendations are made on behalf of the employing broker-dealer; ( )

**b.** The person is not compensated directly for making such recommendations; and ( )

**c.** The person provides written notice to the administrator that he is relying on this exemption from the requirement to be registered as an investment adviser representative. ( )

**07. Deferral of Effectiveness.** The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. ( )

**091. WITHDRAWAL OF INVESTMENT ADVISER AND INVESTMENT ADVISER REPRESENTATIVE REGISTRATION.**

**01. Application Withdrawal.** Withdrawal from registration as an investment adviser or investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the Administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within sixty (60) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Administrator may nevertheless institute a revocation or suspension proceeding under Section 30-14-412, Idaho Code, within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration is effective. ( )

**02. Investment Adviser.** The application for withdrawal of registration as an investment adviser shall be completed by filing a Form ADV-W withdrawal request with IARD. ( )

**03. Investment Adviser Representative.** The application for withdrawal of registration as an investment adviser representative shall be completed by filing a Form U-5 withdrawal request with CRD. ( )

**092. NOTICE FILING REQUIREMENTS FOR FEDERAL COVERED ADVISERS.**

**01. Notice Filing.** The notice filing for a federal covered adviser pursuant to Section 30-14-405, Idaho Code, shall be filed with IARD on an executed Form ADV. A notice filing of a federal covered adviser shall be deemed filed when the fee required by Section 30-14-410, Idaho Code, and the Form ADV are filed with and accepted by IARD on behalf of the state. ( )

**02. Renewal.** The annual renewal of the notice filing for a federal covered adviser pursuant to Section 30-14-405, Idaho Code, shall be filed with IARD. The renewal of the notice filing for a federal covered adviser is deemed filed when the fee required by Section 30-14-410(e), Idaho Code, is filed with and accepted by IARD on behalf of the state. ( )

**093. RECORDS REQUIRED OF INVESTMENT ADVISERS.**

Pursuant to provisions of the Act, every investment adviser registered or required to be registered under the Act shall make and keep true, accurate and current books and records as listed in 17 CFR 275.204-2 under the Investment Advisers Act of 1940, as currently amended. ( )

**094. CLIENT CONTRACTS – INVESTMENT ADVISERS.**

**01. Contract.** As used in this rule, “investment advisory contract” means any contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account for a person other than an investment company, as defined in the Investment Company Act of 1940, as amended. ( )

**02. Contents of Client Contract.** No investment adviser shall enter into, extend, or renew any investment advisory contract, or in any way perform any investment advisory contract entered into, extended, or renewed, after the effective date of this rule, unless such contract is in writing and contains the following: ( )

**a.** Provides that an investment adviser shall not receive compensation based on a share of capital gains upon or capital appreciation of funds or any portion of the funds of the client, except as exempted in 17 CFR 275.205-3 under the Investment Adviser Act of 1940; ( )

**b.** Provides that no assignment of the contract shall be made by the investment adviser without the written consent of the client; ( )

**c.** Provides that if the investment adviser is a partnership, the investment adviser shall notify the client of any change in the membership of such partnership within a reasonable time after such change; ( )

**d.** Provides the investment adviser’s policy regarding termination of the contract, in compliance with 17 CFR 275.204-3(b). ( )

**e.** Detailed description of the services to be provided; ( )

**f.** Terms of the contract; ( )

**g.** Amount of the advisory fee, the formula for computing the fee, and the amount of any prepaid fee to be returned in the event of contract termination or non-performance; ( )

**h.** Discloses whether the contract grants discretionary power to the investment adviser; ( )

**i.** A contract may not contain any provision that limits or purports to limit the liability of the investment adviser for conduct or omission arising from the advisory relationship that does not conform to the Act, applicable federal statutes, or common law fiduciary standard of care; or the remedies available to the client at law or equity or the jurisdiction where any action shall be filed or heard. ( )

**095. INVESTMENT ADVISER BROCHURE RULE.**

An investment adviser registered or required to be registered under the Act shall, in accordance with 17 CFR 275.204-3 under the Investment Advisers Act of 1940, deliver to each advisory client and prospective advisory client with a written disclosure statement that complies with 17 CFR 275.204-1(b) of the Investment Advisers Act of 1940. ( )

**096. REQUIREMENTS FOR CUSTODY.**

If an investment adviser registered or required to be registered under the Act maintains custody of client funds, it shall be done in accordance with the requirements and standards set forth in 17 CFR 275.206(4)-2 of the Investment Advisers Act of 1940. ( )

**097. INVESTMENT ADVISER AFFILIATION WITH BROKER-DEALERS/ISSUERS/AGENTS.**

If an investment adviser becomes affiliated with a broker-dealer or issuer, he will be under a continuing obligation to make full disclosure of the affiliation to all parties to the affiliation, and must provide written notice to the Administrator of any material changes concerning any affiliation. ( )

**098. NAMES USED BY BROKER-DEALERS AND INVESTMENT ADVISERS.**

**01. Unregistered Names.** ( )

**a.** Broker-dealers, Broker-dealer Agents. Upon written request, the Administrator, in his discretion, may allow use by a broker-dealer of the name of an entity which is not registered with the Department as a broker-dealer if, in all communications and advertising, a notation is prominently displayed indicating that all securities transactions are made through a named registered broker-dealer. However, any and all payments received must be in the name of the registered broker-dealer. The Administrator may impose any further conditions or restrictions on the use of the nonregistered name that he deems appropriate for the protection of the public. Except as provided in this rule, the use of unregistered names by a broker-dealer is prohibited. ( )

**b.** Investment Advisers, Investment Adviser Representatives. All advising, transactions, communications, and advertising regarding securities and the conducting of business as an investment adviser must be accomplished under the name of the investment adviser that is currently registered with the Department. Upon written request, the Administrator, in his discretion, may allow use by an investment adviser or investment adviser representative of the name which is not registered with the Department. ( )

**02. Change of Name.** If a registered broker-dealer, investment adviser, investment adviser representative or agent desires a name change, notice of such an intent must be submitted through CRD or to the Department within thirty (30) days after the effective date of the change. The name change will not be effective in this state until the notice is received. Any notice of a name change must include a copy of the rider to be attached to the investment adviser's surety bond, if such bond is required, reflecting the name change. ( )

**099. CIRCUMVENTION OF ORDERS PROHIBITED.**

A broker-dealer, investment adviser, agent, or investment adviser representative may not circumvent the imposition of an order denying registration or revoking registration by withdrawing the application through the CRD system after such order has been issued. Such action will not be recognized by the Administrator, and will have no effect on the outcome of the order. ( )

**100. WAIVER BY ADMINISTRATOR.**

The Administrator may, either upon request or upon his own motion, waive or modify the application of any particular section to a particular agent, broker-dealer or investment adviser when, in his opinion, just and reasonable cause exists for such action and the waiving or modifying of such rule would not be contrary to the provisions of the Act or to the public interest. ( )

**101. NOTIFICATION OF OPENING, CLOSING OR RELOCATION OF BRANCH OFFICES.**

Any broker-dealer or investment adviser, registered as such with the Department, shall notify the Administrator in writing or through CRD, no later than thirty (30) days after the opening, closing or relocation of any branch office. For purposes of this rule, "branch office" is defined by FINRA. ( )

**102. CANCELLATION OF REGISTRATION OR APPLICATION -- GROUNDS.**

If the Administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, salesman or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the Administrator may by order cancel the registration or application. ( )

**103. EXAMINATION REQUIREMENTS.**

- 01. Examination Required.** The following examinations are required for the following applicants: ( )
- pass:
- a.** Broker-dealer agent application. General agents of securities broker-dealers are required to take and ( )
- i. The applicable FINRA examinations; and ( )
- ii. Either the Series 63 or the Series 66 examination. ( )
- b.** Investment adviser representative and investment adviser qualifying officer application. Applicants for registration as investment adviser representatives or as an investment adviser qualifying officer shall take and pass: ( )
- i. The Series 65; or ( )
- ii. The Series 66, the Series 7, and the Securities Industry Essentials examinations. ( )
- c.** Specialized agent of a broker-dealer, issuer agent and qualifying officer for non-FINRA broker-dealer application. Specialized agents of broker-dealers, issuer agents and qualifying officers for non-FINRA broker-dealers application are required to take and pass: ( )
- i. The applicable FINRA examinations; and ( )
- ii. Either the Series 63 or the Series 66 examination. ( )
- d.** Sales of Viaticals. Persons selling viatical investments are required to take and pass the Securities Industry Essentials and Series 7 examinations. ( )
- 02. Specialized Examination Authority.** Any registration granted pursuant to a specialized examination will be restricted, and the registrant will be authorized to effect securities transactions only in securities of the type specified by the conditions of the license. ( )
- 03. Investment Adviser Representatives - Waiver.** An applicant for investment adviser representative or investment adviser qualifying officer registration may qualify for a waiver of the examination requirement if the applicant currently holds one (1) of the following designations: ( )
- a.** Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.; ( )
- b.** Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania; ( )
- c.** Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts; ( )
- d.** Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants; ( )
- e.** Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or ( )
- f.** Such other professional designation as the Administrator may by rule or order recognize. ( )

**04. Waiver.** The Administrator, in his sole discretion, may waive any examination required by this rule upon a sufficient showing of good cause and upon any conditions he may impose. ( )

**104. FRAUDULENT, DISHONEST AND UNETHICAL PRACTICES - BROKER-DEALER, BROKER-DEALER AGENTS, ISSUER AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES.**

**01. Fraudulent, Dishonest and Unethical Practices.** Any broker-dealer, agent, issuer agent, investment adviser or investment adviser representative who engages in one (1) or more of the practices identified in Subsections 104.02 through 104.47 of this rule is deemed to have engaged in one (1) or both of the following: ( )

**a.** An “act, practice, or course of business that operates or would operate as a fraud or deceit” as used in Section 30-14-501 and Section 30-14-502, Idaho Code; ( )

**b.** A dishonest and unethical practice as used in Section 30-14-412(d)(13), Idaho Code, and such conduct may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by statute. ( )

**c.** This rule is not intended to be all-inclusive, and thus, acts or practices not enumerated herein may also be deemed fraudulent, or dishonest and unethical. ( )

**02. Delivery Delays.** Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers. ( )

**03. Churning.** Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account. ( )

**04. Unsuitable Recommendations.** ( )

**a.** Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer, agent, or issuer agent. ( )

**b.** Recommending to a customer, to whom investment advice is provided, the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative. ( )

**05. Unauthorized Transactions.** Executing a transaction on behalf of a customer without authorization to do so. ( )

**06. Discretionary Authority.** Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the executing of orders. ( )

**07. Margin Accounts.** Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement before or promptly after the initial transaction in the account. ( )

**08. Segregation of Client Securities.** Failing to segregate customers' free securities or securities held in safekeeping. ( )

**09. Hypothecating Customer Securities.** Hypothecating a customer's securities without having a lien

thereon unless the broker-dealer secures from the customer a properly executed written consent before or promptly after the initial transaction, except as permitted by rules of the Securities and Exchange Commission. ( )

**10. Unreasonable Price, Commission.** Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit. ( )

**11. Failure to Supervise.** Failure by a broker-dealer or investment adviser to exercise diligent supervision over the securities activities of all its broker-dealer agents, investment adviser representatives and employees as set forth in Section 105 of these rules. ( )

**12. Unreasonable Fees.** Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business. ( )

**13. Sales at the Market.** Representing that a security is being offered to a customer “at the market” or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by such broker-dealer, or by any such person for whom the broker-dealer is acting or with whom the broker-dealer is associated in such distribution, or any person controlled by, controlling, or under common control with such broker-dealer. ( )

**14. Manipulative, Deceptive or Fraudulent Practices.** Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, which may include: ( )

**a.** Effecting any transaction in a security which involves no change in the beneficial ownerships thereof; ( )

**b.** Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. However, nothing in Subsection 104.14, of this rule, prohibits a broker-dealer from entering bona fide agency cross transactions for customers; or ( )

**c.** Effecting, alone or with one (1) or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others. ( )

**15. Loss Guarantees.** Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer. ( )

**16. Bona Fide Price Reports.** Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security. ( )

**17. Deceptive or Misleading Advertising.** Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. ( )

**18. Disclosure of Control.** Failing to disclose that the broker-dealer or investment adviser is controlled by, controlling, affiliated with, or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, the existence of such control to such

customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction. ( )

**19. Bona Fide Distribution.** Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member by, among other things, transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or parking or withholding securities. ( )

**20. Customer Communication.** Failure or refusal to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint. ( )

**21. Loans from Customers.** Borrowing money or securities from a customer, unless the customer is a broker-dealer, an affiliate, or a financial institution engaged in the business of loaning funds or securities, or immediate family. For purposes of this rule, the term "immediate family" means parents, mother-in-law, father-in-law, husband, wife, brother, sister, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and children. ( )

**22. Loans to Customers.** Loaning money to a customer, other than an immediate family member, unless the broker-dealer or investment adviser is a financial institution engaged in the business of loaning funds or the customer is an affiliate of the broker-dealer or investment adviser. ( )

**23. Unrecorded Transactions.** Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction. ( )

**24. Fictitious Accounts.** Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited. ( )

**25. Profit/Loss Sharing.** Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents. ( )

**26. Splitting Commissions.** Dividing or otherwise splitting the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person not also registered in Idaho as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control. ( )

**27. Unsolicited Transactions.** Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited. ( )

**28. FINRA Rules Compliance.** Failing to comply with any applicable provision of the FINRA Rules or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC. ( )

**29. Contradicting Prospectus Information.** Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead. ( )

**30. Inside Information.** In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer, agent, investment adviser or investment adviser representative is in possession of material, non-public information which would impact the value of the security, or communicating to customers or other persons bona fide information not generally available to the public that may be used in the person's decision to buy, sell, or hold a security. ( )

**31. Contradictory Recommendations.** In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstance of each investor. ( )

**32. Prospectus Delivery.** Failure to comply with any prospectus delivery requirement promulgated



under federal law. ( )

**33. Penny Stock Sales.** Effect any transaction in, or to induce or attempt to induce the purchase or sale of, any penny stock by any customer except in accordance with the requirements as set forth in the 1934 Securities Exchange Act, Section 15(h) and the rules and regulations prescribed thereunder. ( )

**34. Misrepresentations Concerning Advisory Services.** To misrepresent to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative or any employee of the investment adviser, or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading. ( )

**35. Unreasonable Advisory Fees.** Charging a client an unreasonable advisory fee. ( )

**36. Conflicts of Interest.** Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including: ( )

**a.** Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or ( )

**b.** Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees. ( )

**37. Guaranteeing Specific Results.** Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered. ( )

**38. Advertising.** Publishing, circulating, or distributing any advertisement that does not comply with 17 CFR 275.206(4)-1 under the Investment Advisers Act of 1940. ( )

**39. Disclosure of Private Information.** Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client. ( )

**40. Advisory Contract Disclosures.** Entering into, extending, or renewing any investment advisory contract unless such contract is in writing and discloses, in substance the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the written consent of the other party to the contract. ( )

**41. Protection of Non-Public Information.** Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information, or that are contrary to the provisions of Section 204A, and rules associated with it, of the Investment Advisers Act of 1940. ( )

**42. Waiver of State or Federal Law Prohibited.** To indicate, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of the Act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215, and rules associated with it, of the Investment Advisers Act of 1940. ( )

**43. Fraudulent, Deceptive or Manipulative Acts.** Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contrary to the provisions and associated rules of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940. ( )

**44. Outside Business Activities - Selling Away.** Any agent or investment adviser representative associated with a broker-dealer or investment adviser registered under the Act shall not engage in business activities, for which he receives compensation either directly or indirectly, outside the scope of his regular employment unless

he has provided prior written notice to his employer firm. ( )

**45. Third Party Conduct.** Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Act or any rules thereunder, or engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein shall apply to investment advisers and federal covered advisers, to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). ( )

**46. Misleading Filings.** For purposes of Section 30-14-505, Idaho Code, the term “proceeding” includes, but is not limited to, any investigation, examination or other inquiry initiated by the Department. ( )

**105. SUPERVISION OF AGENTS, INVESTMENT ADVISER REPRESENTATIVES AND EMPLOYEES.**

**01. Supervision Required.** Every broker-dealer, investment adviser, and designated supervisor shall exercise diligent supervision over the securities activities of all of his agents, investment adviser representatives and employees. ( )

**02. Broker-Dealer Procedures.** Every agent and employee of the broker-dealer shall be subject to the supervision of a supervisor designated by such broker-dealer. The supervisor may be the broker-dealer in the case of a sole proprietor, or a partner, officer, office manager, or any other qualified person. ( )

**03. Written Compliance Procedure.** Every broker-dealer shall establish, maintain and enforce written procedures and keep a copy in each business office, that set forth the procedures adopted by the broker-dealer to comply with the following duties imposed by this rule, and state at which business office or offices the broker-dealer keeps and maintains the records required by Section 30-14-411, Idaho Code: ( )

**a.** The review and written approval by the designated supervisor of the opening of each new customer account; ( )

**b.** The frequent examination of all customer accounts to detect and prevent irregularities or abuses, including a review for churning and switching of securities in customers’ accounts, as well as unsuitable recommendations and sales of unregistered securities; ( )

**c.** The prompt review and written approval by the designated supervisor of all securities transactions and all correspondence pertaining to the solicitation or execution of all securities transactions; ( )

**d.** The review of back office operations, i.e., all systems and procedures, including the currency and accuracy of books and records, the status and causes of “Fails to Receive” and “Fails to Deliver.” net capital, credit extensions and financial reports; ( )

**e.** The review of form, content and filing of all correspondence related in any way to the purchase or sale or solicitation for the purchase or sale of securities; ( )

**f.** The review and written approval by the designated supervisor of the delegation by any customer of discretionary authority with respect to his account to a stated agent or associate of the broker-dealer and the prompt written approval of each discretionary order entered on behalf of that account; and ( )

**g.** The prompt review and written approval of the handling of all customer complaints. As used in these rules, “complaint” is considered to be any written statement by a customer or by any person acting for a customer which complains about the activities of the broker-dealer, agent or associate in connection with the solicitation or execution of a transaction or the disposition of funds of that customer. ( )

**04. Investment Adviser Procedures.** Every investment adviser shall establish, maintain and enforce written procedures and keep a copy in each business office, that set forth procedures reasonably designed to prevent violation of the Idaho Uniform Securities Act and Rules and comply with the following duties as applicable to the

business of the investment adviser: ( )

a. The review and written approval by the designated supervisor of the opening of each new customer account; ( )

b. The frequent examination of all customer accounts to detect and prevent irregularities or abuses, including a review for unsuitable recommendations and recommendations of unregistered securities; ( )

c. The prompt review and written approval by the designated supervisor of all securities recommendations and all correspondence pertaining to the solicitation or execution of all securities recommendations; ( )

d. The review of form, content and filing of all correspondence related in any way to the recommendation of the purchase of any securities; ( )

e. The prompt review and written approval of the handling of all customer complaints. As used in these rules, a "complaint" is considered to be any written statement by a customer, or by any person acting for a customer, questioning the activities of the investment adviser or representative in connection with recommendations concerning, or disposition of, funds in the account. ( )

**106. -- 999. (RESERVED)**

[Agency redlined courtesy copy]

## 12.01.08 – RULES PURSUANT TO THE UNIFORM SECURITIES ACT (2004)

### **000. LEGAL AUTHORITY.**

This chapter is promulgated pursuant to Section 30-14-605, Idaho Code. ( )

### **001. SCOPE.**

These rules relate to the offer and sale of securities and the giving of investment advice in the state of Idaho by licensed individuals and others. ( )

**002. -- 003. (RESERVED)**

### **004. ~~SECURITIES EXEMPTIONS, OPINIONS, AND NO ACTION LETTERS~~ INTERPRETIVE OPINIONS.**

**01. Written Requests.** ~~Interpretative Opinions.~~ The Administrator, ~~in his discretion,~~ may honor requests ~~from interested persons~~ for formal interpretive opinions ~~and no action positions, including consideration of waivers, relating to an actual specific factual circumstance where appropriate and in the public interest, on the basis of facts stated and submitted~~ in writing, with respect to the provisions of the Act or any rule or statement of policy adopted thereunder, ~~provided such requests satisfy and conform to the following requirements:~~ Each request for interpretive opinion letter shall be made in writing and include all information required by the administrator, accompanied by payment of a fee in the amount of fifty dollars (\$50). (3-23-22)( )

**01. ~~Written Requests.~~** Such requests shall be in writing and include or be accompanied by all information and material required by any statute, rule or statement of policy under which an exception or exemption may be claimed, including but not limited to, copies of prospectuses or offering circulars if applicable or appropriate. (3-23-22)

**02. ~~Narrative.~~** The letter should contain a brief narrative of the fact situation and should set out all of

~~the facts necessary to reach a conclusion in the matter; however, such narratives should be concise and to the point.~~  
(3-23-22)

**032. Hypotheticals Not Considered.** The names of the company or companies, organization or organizations and all other persons involved should be stated and should relate and be limited to a particular factual circumstance. Letters relating to hypothetical situations will not warrant a formal response. ( )

~~**04. Fee.** Each request for a no action position or interpretive opinion letter shall be accompanied by payment of a fee in the amount of fifty dollars (\$50).~~  
(3-23-22)

**005. INCORPORATION BY REFERENCE.**

**01. Incorporated Documents.** IDAPA 12.01.08, “Rules Pursuant to the Uniform Securities Act (2004),” adopts and incorporates by reference the full text of the following Statements of Policy and guidelines adopted by the North American Securities Administrators Association (NASAA): ( )

- a. “Loans and Other Material Affiliated Transactions,” as adopted with amendments through March 31, 2008; ( )
- b. “Options and Warrants,” as adopted with amendments through March 31, 2008; ( )
- c. “Corporate Securities Definitions,” as adopted with amendments through March 31, 2008; ( )
- d. “Impoundment of Proceeds,” as adopted with amendments through March 31, 2008; ( )
- e. “Preferred Stock,” as adopted with amendments through March 31, 2008; ( )
- f. “Promotional Shares,” as adopted with amendments through March 31, 2008; ( )
- g. “Promoters’ Equity Investment,” as adopted with amendments through March 31, 2008; ( )
- h. “Specificity in Use of Proceeds,” as adopted with amendments through March 31, 2008; ( )
- i. “Underwriting Expenses, Underwriter’s Warrants, Selling Expenses, and Selling Securities Holders,” as adopted with amendments through March 31, 2008; ( )
- j. “Unsound Financial Condition,” as adopted with amendments through March 31, 2008; ( )
- k. “Unequal Voting Rights,” as adopted March 31, 2008; ( )
- l. “Debt Securities,” as adopted April 25, 1993; ( )
- m. “NASAA Guidelines Regarding Viatical Investments,” as adopted October 1, 2002; ( )
- n. “NASAA Statement of Policy Regarding Small Company Offering Registrations (SCOR),” as adopted April 28, 1996. ( )

**02. Availability of Referenced Documents.** Copies of ~~the current~~ “NASAA Statements of Policy” are available at the Department of Finance, [800 Park Blvd., Suite 200, Boise, ID 83712](http://www.nasaa.org/regulatory-activity/statements-of-policy/) ~~11341 West Chinden Blvd., Suite A300 Boise, ID 83714~~ and NASAA Web site at <https://www.nasaa.org/statements-of-policy/>. (3-23-22)( )

**006. -- 009. (RESERVED)**

**010. DEFINITIONS.**

<del>01.</del>	<del>Act.</del> The Uniform Securities Act (2004) set forth in Chapter 14, Title 30, Idaho Code.	(3-23-22)
<del>02.</del>	<del>Administrator.</del> The Director of the Department of Finance.	(3-23-22)
<del>03.</del>	<del>Agent of Issuer.</del> The term “agent of issuer” is used interchangeably with the term “issuer agent” through these rules.	(3-23-22)
<del>04</del> <b>1.</b>	<del>CRD.</del> Central Registration Depository.	( )
<del>05</del> <b>2.</b>	<del>Department.</del> The Idaho Department of Finance.	( )
<del>06.</del>	<del>EFD.</del> Electronic Filing Depository.	(3-23-22)
<del>07</del> <b>3.</b>	<del>FINRA.</del> Financial Industry Regulatory Authority.	( )
<del>08.</del>	<del>Form ADV.</del> The Uniform Application for Investment Adviser Registration.	(3-23-22)
<del>09.</del>	<del>Form ADV-H.</del> The Uniform Application for a Temporary or Continuing Hardship Exemption.	(3-23-22)
<del>10.</del>	<del>Form ADV-W.</del> The Uniform Request for Withdrawal of Investment Adviser Registration.	(3-23-22)
<del>11.</del>	<del>Form BD.</del> The Uniform Application for Broker-Dealer Registration.	(3-23-22)
<del>12.</del>	<del>Form BDW.</del> The Uniform Request for Withdrawal from Registration as a Broker-Dealer.	(3-23-22)
<del>13.</del>	<del>Form BR.</del> The Uniform Application for Broker-Dealer Branch Registration.	(3-23-22)
<del>14.</del>	<del>Form D.</del> The federal form entitled “Notice of Sale of Securities Pursuant to Regulation D, Section 4(6) and or Uniform Limited Offering Exemption.”	(3-23-22)
<del>15.</del>	<del>Form NF.</del> The Uniform Notice Filing Form.	(3-23-22)
<del>16.</del>	<del>Form 1-A.</del> A federal securities registration form of that number.	(3-23-22)
<del>17.</del>	<del>Form S-18.</del> A federal securities registration form of that number.	(3-23-22)
<del>18.</del>	<del>Form U-1.</del> The Uniform Application to Register Securities.	(3-23-22)
<del>19.</del>	<del>Form U-2.</del> The Uniform Consent to Service of Process.	(3-23-22)
<del>20.</del>	<del>Form U-4.</del> The Uniform Application for Securities Industry Registration or Transfer.	(3-23-22)
<del>21.</del>	<del>Form U-5.</del> The Uniform Request for Withdrawal of Securities Industry Registration or Transfer.	(3-23-22)
<del>22.</del>	<del>Form U-7.</del> The Uniform Small Company Offering Registration Form.	(3-23-22)
<del>23</del> <b>04.</b>	<del>IARD.</del> Investment Adviser Registration Depository.	( )
<del>24</del> <b>05.</b>	<del>NASAA.</del> The North American Securities Administrators Association, Inc.	( )
<del>25</del> <b>06.</b>	<del>NASD.</del> The National Association of Securities Dealers, Inc.	( )
<del>26</del> <b>07.</b>	<del>NASDAQ.</del> The National Association of Securities Dealers Automated Quotations.	( )

~~2708.~~ SEC. The U.S. Securities and Exchange Commission. ( )

~~2809.~~ **Transact Business.** For purposes of the Act, to “transact business” means to buy or to sell or contract to buy or to sell or dispose of a security or interest in a security for value. It also means any offer to buy or offer to sell or dispose of, and every solicitation of clients or of any offer to buy or to sell, a security or interest in a security for value. With respect to investment advisers and investment adviser representatives, “transact business” includes preparation of financial plans involving securities, recommendations to buy or sell securities or interests in a security for value, and solicitation of investment advisory clients. ( )

~~29.~~ **USA. The Uniform Securities Act (2004).** (3-23-22)

~~3010.~~ **Unsolicited Order or Offer.** ( )

a. As used in these rules, an order or offer to buy is considered “unsolicited” if: ( )

i. The broker-dealer has not made a direct or indirect solicitation or recommendation that the customer purchase the security; and ( )

ii. The broker-dealer has not recommended the purchase of the security to the customer, either directly or in a manner that would bring its recommendation to the customer; and ( )

iii. The broker-dealer has not volunteered information on the issuer to the customer; and ( )

iv. The customer has previously, and independent of any information furnished by the broker-dealer, decided to buy the security. ( )

b. Any offer or order to buy from a customer whose first knowledge of the specific security or issuer was volunteered to him by the broker-dealer is regarded as a solicited order. ( )

c. Any claim of exemption pursuant to Section 30-14-202(6), Idaho Code, shall be supported by the broker-dealer’s certificate that the transaction in question was, in fact, unsolicited. ( )

011. -- 019. (RESERVED)

## 020. APPLICATION FOR REGISTRATION OF SECURITIES.

01. **Registration by Coordination.** A registration statement to register securities by coordination shall contain the following: ( )

a. ~~The~~ Form U-1 ~~application~~ and accompanying documents (including subscription agreement); (3-23-22)( )

b. A consent to service of process ~~(Form U-2)~~ in compliance with Section 30-14-611, Idaho Code; (3-23-22)( )

~~e.~~ ~~A copy of the prospectus, including financial statements where:~~ (3-23-22)

~~i.~~ ~~The prospectus for a securities registration by coordination under Section 30-14-303, Idaho Code, shall be prepared using the forms required under the Securities Act of 1933, and~~ (3-23-22)

~~ii.~~ ~~All historical financial statements in the registration statement shall be in conformity with generally accepted accounting principles (GAAP) and financial statements filed with a registration statement by coordination that complies with the requirements of the United States Securities and Exchange Commission.~~ (3-23-22)

~~d.~~ ~~All exhibits filed with the United States Securities and Exchange Commission in connection with the registration statement;~~ (3-23-22)

- ec.** The filing fee specified in Section 30-14-305(b), Idaho Code; and ( )
- f-d** Any additional information or documents requested by the Department. ( )
- 02. Registration by Qualification.** A registration statement to register securities by qualification shall contain the following in addition to the requirements of Section 30-14-304, Idaho Code: ( )
- a.** Financial Statements. Except for SCOR applications, registration statements filed pursuant to Section 30-14-304, Idaho Code, shall contain audited financial statements of the issuer for its last two (2) fiscal years. An issuer with less than one (1) year of operations may file reviewed financial statements until the end of its first fiscal year. ~~Registration statements filed with SCOR applications on the Form U-7 shall contain the financial statements specified in the instructions to the Form U-7.~~ (3-23-22)( )
- b.** Unaudited Interim Financial Statements. If the audited financial statements or unaudited financial statements required in Subsection 020.02.a. of this rule are not current to within four (4) months of the date of filing of the registration statement, additional unaudited financial statements as of the issuer's last fiscal quarter or any later date designated by the Administrator shall be included. ( )
- c.** Small Company Offering Registration (SCOR). A SCOR registration statement shall contain the following: ( )
- i.** ~~The~~ A Form U-1 application and accompanying documents (including subscription agreement); (3-23-22)( )
- ii.** An executed ~~Form D~~; "Notice of Sale of Securities Pursuant to Regulation D, Section 4(6) and or Uniform Limited Offering Exemption:" (3-23-22)( )
- iii.** A consent to service of process (~~Form U-2~~) in compliance with Section 30-14-611, Idaho Code; (3-23-22)( )
- iv.** For SCOR offerings, the prospectus to be used shall be the ~~Form U-7~~ Uniform Small Company Offering Registration Form, ~~as adopted and revised by NASAA in September 1999;~~ (3-23-22)( )
- v.** The filing fee specified in Section 30-14-305(b), Idaho Code; and ( )
- vi.** Any additional information or documents requested by the Department. ( )
- d.** Registration statements by qualification shall contain the following: ( )
- i.** ~~The~~ A Form U-1 application and accompanying documents (including subscription agreement); (3-23-22)( )
- ii.** A consent to service of process (~~Form U-2~~) in compliance with Section 30-14-611, Idaho Code; (3-23-22)( )
- iii.** Financial statements prepared in accordance with Subsection 020.02.a. of this rule; ( )
- iv.** A copy of the prospectus containing the information or records specified in Sections 30-14-304(b)(1) through 304(b)(18), Idaho Code; ( )
- v.** The prospectus shall be prepared using one of the following forms: Part II of Form 1-A of Regulation A of the Securities Act of 1933; Parts I and II of Form SB-2 of the Securities Act of 1933; ~~Form U-7~~ The Uniform Small Company Offering Registration Form; or any other applicable form used to prepare a prospectus under the Securities Act of 1933, if approved by the department. (3-23-22)( )
- 03. Other Forms.** Any other applicable form used to prepare a prospectus under the Securities Act of

1933, if approved by the Department, containing: ( )

a. The filing fee specified in Section 30-14-305(b), Idaho Code; and ( )

b. Any additional information or documents requested by the Department. ( )

**021. AMENDMENTS TO REGISTRATION STATEMENT.**

**01. Amendments Required.** ~~A~~ **The submission of a** correcting amendment to an effective registration statement ~~shall be prepared and submitted to the Department~~ **is required** any time that the information contained therein becomes inaccurate or incomplete in any material respect. ~~The responsibility for identifying and reporting a material change lies with the registrant.~~ (3-23-22)( )

**02. Contents of Amendment Filing.** Each filing of a correcting amendment to a registration statement shall contain a copy of each item of the registration statement ~~which that~~ has been changed, with all changes clearly marked. To be complete, a filing of a correcting amendment to the registration statement shall contain a report of material changes setting forth a summary of each material change and indicating the location of such change in the documents filed. ~~Neither the Administrator nor any member of his staff shall be held to have taken notice of any item of material change not summarized in such a report.~~ (3-23-22)( )

**03. Time of Filing and Undertaking.** ~~Every registration statement shall contain an undertaking by the applicant to file correcting amendments to the registration statement whenever the information in the registration statement becomes inaccurate or incomplete in any material respect.~~ **An amendment required under this section must be submitted** by the earlier of: (3-23-22)( )

a. Two (2) business days after filing such amendment with the SEC; or ( )

b. Fifteen (15) business days following the event giving rise to the amendment. ( )

c. If not registered with the SEC, registrants shall file an amended registration statement if required within fifteen (15) business days following the event giving rise to the amendment. ( )

**04. Effect of Failure to Amend.** Solicitation of prospective investors through utilization of a prospectus containing information which is inaccurate or incomplete in any material respect ~~is a violation of Section 30-14-501, Idaho Code,~~ **represents a violation of the Act** and constitutes a basis for the suspension or revocation of the registration ~~under Section 30-14-306(a)(1), Idaho Code.~~ Nothing in ~~Section 021, of these rules,~~ **in this section** shall be construed to require any open-end investment company registered under the 1940 Act and the Act to disclose fluctuations in its investment portfolio. (3-23-22)( )

~~022. FINANCIAL STATEMENTS.~~

~~01. Application of Regulation S-X.~~ As to definitions, qualifications of accountants, content of accountant's certificates, requirements for consolidated or combined statements, and actual form and content of financial statements, the Administrator shall apply Regulation S-X of the SEC (17 CFR Part 210) in its most currently amended form as of the date of the filing of the application to all financial statements filed with the Department in connection with the registration of securities. (3-23-22)

~~02. Financial Statements Incorporated by Reference.~~ Where financial statements in a prospectus are incorporated by reference from another document, the Administrator may require that such other document be filed with the Department and be delivered to investors with the prospectus. (3-23-22)

~~03. Application of Antifraud Provisions.~~ Any financial statement distributed in connection with the offer or sale of securities under the Act is subject to the provisions of Section 30-14-501, Idaho Code. Any financial statement filed with the Department is subject to the provisions of Section 30-14-505, Idaho Code. (3-23-22)

~~023.~~ -- 035. (RESERVED)



**036. NASAA STATEMENTS OF POLICY -- REGISTERED OFFERINGS.**

The Department will apply the applicable statement(s) of policy adopted by NASAA ~~and incorporated herein by reference pursuant to Section 005, of these rules,~~ to an offering seeking registration in Idaho when conducting a review to determine whether an offering is fair, just and equitable. ~~Such an offering must comply with the requirements of such policy or policies, unless waived by the Administrator.~~ (3-23-22)( )

**037. REGISTRATION OF DEBT SECURITIES.**

In addition to the requirements contained in the NASAA Statement of Policy Regarding Debt Securities, ~~as adopted on April 25, 1993,~~ the issuer of debt securities will incorporate the following standards: (3-23-22)( )

**01. Suitability.** In establishing standards of fairness and equity, the Department has established the following investor suitability guidelines for debt offerings registered under the Act: ( )

**a.** No more than ten percent (10%) of any one (1) Idaho investor's net worth (exclusive of home, home furnishings, and automobiles) shall be invested in the securities being registered with the Department; and either ( )

**b.** A gross income of forty-five thousand dollars (\$45,000) and a net worth of forty-five thousand dollars (\$45,000) (exclusive of home, home furnishings and automobiles); or ( )

**c.** A net worth of one hundred fifty thousand dollars (\$150,000) (exclusive of home, home furnishings and automobiles). ( )

**02. Department May Establish Standards.** The suitability standard in Subsection 037.01 of this rule is a guideline. Higher or lower suitability standards may be established or may be required by the Department as a condition of registration. ( )

**03. Standards To Be Disclosed.** The suitability standards must be disclosed in the prospectus. ( )

**038. WITHDRAWAL/ABANDONMENT OF A REGISTRATION STATEMENT.**

**01. Withdrawal.** The withdrawal of an application (prior to effectiveness) may be permitted by the Administrator upon the written request of the applicant. ( )

**02. Abandonment.** The abandonment of an application, where there has been no activity on the application by the applicant for a period of six (6) months or more, may be considered to signify a request for withdrawal. ( )

**03. Time Limit.** An application for registration of securities pursuant to Section 30-14-303 or 30-14-304, Idaho Code, is deemed abandoned if such registration is not effective in the state of Idaho within one (1) year from the date of receipt by the Department of the initial filing of the application for registration. ( )

**04. Abandoned Applications Not Reinstated.** Once deemed abandoned, the original application shall not be reinstated. A new application including the registration statement, appropriate exhibits and filing fees is required. ( )

**039. REPORT OF COMPLETION OF OFFERING.**

**01. Completion Statement.** Within thirty (30) days of the completion of a registered offering in Idaho, the registrant shall provide a written statement to the Department that states the following: ( )

**a.** The date the offering was completed in Idaho; and ( )

**b.** The number and amount of registered securities sold in Idaho, for SCOR offerings and offerings registered by qualification. ( )

**02. Signatures.** The written statement must be signed by an officer, director or agent of the issuer or by an authorized signatory of the registrant. ( )

**040. ANNUAL REPORT FOR THE RENEWAL OF A REGISTRATION STATEMENT.**

To renew a registration statement for an additional year, the registrant shall file the following with the Department before the anniversary of the effective date of the registration statement in Idaho: ( )

**01. Cover Letter.** A cover letter requesting renewal; ( )

**02. Consent to Service.** A consent to service of process (~~Form U-2~~) in accordance with Section 30-14-611, Idaho Code; and (3-23-22)( )

**03. Filing Fee.** A filing fee of three hundred dollars (\$300) for all registered offerings. ( )

**041. SUBSCRIPTION AGREEMENT.**

The subscription agreement shall contain, among other things, an acknowledgment by the subscriber that he has received a copy of the prospectus. Each completed subscription agreement shall be kept in the office of the issuer or broker-dealer for a period of five (5) years and be subject to inspection by the Department. ( )

**042. DELIVERY OF PROSPECTUS.**

As a condition of registration, an applicant shall comply with the following: ( )

**01. Registration by Qualification.** A person offering or selling a security under a registration by qualification, other than through a broker-dealer, shall deliver a copy of the final prospectus to each prospective purchaser before or at the time of the confirmation of a sale made by or for the account of the person. ( )

**02. Registration by Coordination.** A person offering or selling a security under a registration by coordination shall deliver a copy of the prospectus as required by the Securities Act of 1933. ( )

**043. REGISTRATIONS -- NOTICE OF INTENDED IDAHO BROKER -- DEALER OR AGENT.**

At the time of filing of an application for registration of any security required to be registered in Idaho, written notice shall be provided to the Department of the name of at least one (1) broker-dealer or agent, registered as such in this state, that is intended or qualified to offer or sell such security in Idaho. The Administrator may deny or revoke effectiveness of any registration pending receipt of the notice or may hold the application without further review until the notice has been received. ( )

**044. RECORDS TO BE PRESERVED BY ISSUERS.**

**01. Required Records.** All issuers who effect sales of registered securities, other than through a broker-dealer, shall preserve the following records for at least three (3) years following the expiration of the registration: ( )

**a.** Copies of all documents contained in the registration statement; ( )

**b.** Copies of all advertisements, including a record of the dates, names and addresses of media carrying those advertisements; ( )

**c.** Copies of all communications received and sent by the issuer pertaining to the offer, sale and transfer of the securities, including purchase agreements and confirmations; and ( )

**d.** A list of the name, address and telephone number of each investor to whom the securities were sold, and for each such person, information regarding: ( )

**i.** The type of securities sold; ( )

**ii.** The number and amount of securities sold; ( )

- iii. The type of consideration paid; and ( )
- iv. The name of the agent that sold the securities. ( )

**02. Retention Period.** An issuer will need to retain the records set forth in Subsection 044.01 of this rule for each investor at least three (3) years after the investor's investment has terminated, even if more than three (3) years has lapsed since the expiration of the registration. ( )

**03. Form.** Records may be stored in paper form or electronically. ( )

**~~045. EXAMINATION OF APPLICATION.~~**

~~The Department shall conduct a special examination of each application for registration under Sections 30-14-303 and 30-14-304, Idaho Code, to determine the adequacy of disclosure and to fulfill the Department's obligations under Section 30-14-306, Idaho Code. This examination shall be based upon material contained in the registration statement and any other documentation which the applicant may be required to submit. Each application for registration shall be accompanied by the filing fee set forth in Section 30-14-305(b), Idaho Code. The examination report shall consist of the Department's written comments regarding the filing. (3-23-22)~~

**~~046. ON-SITE EXAMINATION OF ISSUERS.~~**

~~The business and records of issuers offering and/or selling securities in, or out of, Idaho may be subject to periodic on-site examinations by the Administrator, or his designee, at such times as the Administrator determines necessary for the protection of the public. (3-23-22)~~

**~~047. ADVERTISING.~~**

~~**01. Definitions.** The following words and terms, when used in Section 047, of these rules, have the following meaning, unless the context clearly indicates otherwise: (3-23-22)~~

~~**a.** "Sales literature" means material published, or designed for use, in a newspaper, magazine or other periodicals, radio, television, telephone solicitation or tape recording, videotaped display, signs, billboards, motion pictures, telephone directories (other than routine listings), other public media and any other written communication distributed or made generally available to customers or the public including, but not limited to, prospectuses, pamphlets, circulars, form letters, seminar texts, research reports, surveys, performance reports or summaries and reprints or excerpts of other sales literature or advertising to include publications in electronic format. (3-23-22)~~

~~**b.** "Sales literature package" means all submissions of sales literature to the Department under one (1) posting or delivery relating to a specific issue of securities. (3-23-22)~~

~~**02. Filing Requirement.** Pursuant to Section 30-14-504, Idaho Code, this rule requires the filing of all sales literature for review and response by the Administrator before use or distribution in Idaho. A complete filing shall consist of the sales literature package and a representation by the applicant, issuer or broker-dealer, that reads substantially as follows: "I ----- hereby attest and affirm that the enclosed sales literature or advertising package contains no false or misleading statements or misrepresentations of material facts, and that all information set forth therein is in conformity with the Company's most recently amended registration statement as filed with the Department on or about-----." (3-23-22)~~

~~**03. Exemption From Filing.** The following types of sales literature are excluded from the filing requirements set forth herein: (3-23-22)~~

~~**a.** Sales literature which does nothing more than identify a broker-dealer or investment adviser, and/or offer a specific security at a stated price; (3-23-22)~~

~~**b.** Internal communications that are not distributed to the public; (3-23-22)~~

~~**c.** Prospectuses, preliminary prospectuses, prospectus supplements and offering circulars which have been filed with the Department as part of a registration statement, including a final printed copy if clearly identified as such; (3-23-22)~~

~~d. Sales literature solely related to changes in a name, personnel, location, ownership, offices, business structure, officers or partners, telephone or teletype numbers; (3-23-22)~~

~~e. Sales literature filed with and approved by FINRA, the SEC, or other regulatory agency with substantially similar requirements; (3-23-22)~~

~~f. Sales literature relating to certain federal covered securities as set forth in Section 30-14-504(b), Idaho Code. (3-23-22)~~

~~04. **Piecemeal Filings.** The Department will not approve any sales literature package until a complete filing is received. Piecemeal filings will not be accepted and will result in the disapproval of any materials submitted therewith. (3-23-22)~~

~~05. **Application of Antifraud Provisions.** Sales literature used in any manner in connection with the offer or sale of securities is subject to the provisions of Section 30-14-501, Idaho Code, whether or not such sales literature is required to be filed pursuant to Section 30-14-504, Idaho Code, or Section 047 of these rules. Further, sales literature filed with the Department is subject to the provisions of Sections 30-14-501 and 30-14-505, Idaho Code. Sales literature should be prepared accordingly and should not contain any ambiguity, exaggeration or other misstatement or omission of material fact, which might confuse or mislead an investor. (3-23-22)~~

~~06. **Prohibited Disclosures.** Unless stating that the Administrator or Department has not approved the merits of the securities offering or the sales literature, no sales literature shall contain a reference to the Administrator or Department unless such reference is specifically requested by the Administrator. (3-23-22)~~

~~048. **DEPARTMENT ACCESS.**~~

~~Each issuer examined shall provide the personnel of the Department access to business books, documents, and other records. Each issuer shall provide personnel with office space and facilities to conduct an on-site examination, and assistance in the physical inspection of assets and confirmation of liabilities. Failure of any issuer to comply with any provision here of shall constitute a violation of Section 048, of these rules, and shall be a basis for denial, suspension or revocation of the registration or application for registration or other administrative or civil action by the Department. (3-23-22)~~

~~049.5. -- 051. (RESERVED)~~

~~052. **ISSUER AGENT REGISTRATION.**~~

~~Any individual not exempted pursuant to Sections 30-14-402(b)(3), (4) or (5), Idaho Code, must be registered as an issuer agent or comply with the registration requirement of Section 30-14-402(a), Idaho Code, if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities. ( )~~

~~053. **FEDERAL COVERED SECURITIES (RULE 53).**~~

~~01. **Investment Company Notices.** ( )~~

~~a. **Notice Requirement.** Pursuant to Section 30-14-302, Idaho Code, prior to the offer in this state of a series or portfolio of securities of an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940, that is not otherwise exempt under Sections 30-14-201 through 30-14-203, Idaho Code, the issuer must file a notice with the Administrator relating to such series or portfolio of securities. ( )~~

~~b. **Content of Notice.** Each required notice shall include the following: ( )~~

~~i. A properly completed ~~Form NF~~ filing notice; (3-23-22)( )~~

~~ii. A consent to service of process ~~(Form U-2)~~; (3-23-22)( )~~

- iii. A filing fee of three hundred dollars (\$300) for mutual funds and one hundred dollars (\$100) for unit investment trusts; and ( )
- iv. Notification of SEC effectiveness. ( )
- c. Renewal of Notice. The effectiveness of a notice required pursuant to Subsection 053.01.a. of this rule may be renewed each year for an additional one (1) year period of effectiveness by filing on or before the expiration of the effectiveness of such notice: ( )
  - i. A properly completed Form NF clearly indicating the state file number of the Notice to be renewed; ( )
  - ii. A consent to service of process (Form U-2) in accordance with Section 30-14-611, Idaho Code; and ( )
  - iii. A renewal fee of three hundred dollars (\$300) for mutual funds and one hundred dollars (\$100) for unit investment trusts. ( )
- d. Amendments. Amendment filings are required for the following: ( )
  - i. Issuer name change; ( )
  - ii. Address change for contact person; and ( )
  - iii. Notification of termination or completion. ( )
- e. Other Documents. Documents other than those required in Subsections 053.01.b., 053.01.c., and 053.01.d. of this rule, unless specifically requested by the Department, should not be filed with the Department. Documents that should be filed with the Department only if specifically requested include, but are not limited to, registration statements, prospectuses, amendments, statements of additional information, quarterly reports, annual reports, and sales literature. ( )

**02. Regulation D Rule 506 Notice Filing. ( )**

a. Notice Requirement. Issuers offering a security in this state in reliance upon Section 30-14-301, Idaho Code, by reason of compliance with Regulation D, Rule 506, adopted by the United States Securities and Exchange Commission, are required to file a notice with the Department or with ~~EFD~~ Electronic Filing Depository pursuant to the authority of Section 30-14-302(c), Idaho Code, if a sale of a security in this state occurs as a result of such offering. (3-23-22)( )

b. Terms of Notice Filing. The issuer shall file with the Department or with ~~EFD~~ Electronic Filing Depository no later than fifteen (15) days after the first sale of a security in this state for which a notice is required under Subsection 053.02.a. of this rule: (3-23-22)( )

i. One (1) copy of a “Notice of Sale of Securities Pursuant to Regulation D, Section 4(6) and or Uniform Limited Offering Exemption” filed with the SEC-filed ~~Form D~~; and (3-23-22)( )

ii. The notice filing fee of fifty dollars (\$50). ( )

iii. A cover letter should be included in the notice filing which states the date in which the first sale of securities occurred in Idaho. ( )

~~e. Terms of Late Notice Filing. An issuer failing to file with the Administrator as required by Subsection 053.02.b. of this rule may submit its notice filing with an additional fifty dollars (\$50) late filing payment within thirty (30) days after the first sale of a security in this state. Failure to file a notice on or before the thirtieth day after the first sale of a securities in Idaho will result in the inability of the issuer to rely on Section 30 14 302(e), Idaho Code, for qualification of the offering in Idaho. (3-23-22)~~

~~d. Issuer Agent Registration. Pursuant to Section 30-14-402(b)(5), Idaho Code, an individual who represents an issuer who effects transactions in a federal covered security under Section 18(b)(4)(F) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)(F)) is not exempt from the registration requirements of Section 30-14-402(a), Idaho Code, if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities. In addition, if such person is registered as a broker-dealer or agent in another state or with FINRA, or affiliated with a broker-dealer registered in another state, with the SEC or FINRA, then such person must also be similarly registered in Idaho. (3-23-22)~~

**054. NOT FOR PROFIT DEBT SECURITIES NOTICE FILING.**

**01. Securities Exempt.** With respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness, such issuers relying upon the exemption from registration provided in Section 30-14-201(7), Idaho Code, shall file a notice with the Administrator at least thirty (30) days prior to the first offering of sale pursuant to such claim. Such exemption shall become effective thirty (30) days after the filing of a complete notice if the Administrator has not disallowed the exemption. ( )

**02. Notice Information.** The notice required in Subsection 054.01 of this rule shall specify, in writing, the material terms of the proposed offer or sale to include, although not limited to, the following: ( )

- a. The identity of the issuer; ( )
- b. The amount and type of securities to be sold pursuant to the exemption; ( )
- c. A description of the use of proceeds of the securities; and ( )
- d. The person or persons by whom offers and sales will be made. ( )

**03. Notice Requirements.** The following items must be included as a part of the notice in Subsection 054.01 of this rule: ( )

- a. The offering statement, if any; and ( )
- b. A consent to service of process ~~(Form U-2)~~. (3-23-22)( )

**04. Sales and Advertising Literature.** All proposed sales and advertising literature to be used in connection with the proposed offer or sale of the securities shall be filed with the Administrator only upon request. ( )

**05. NASAA Statements of Policy or Guidelines.** The Statements of Policy or guidelines adopted by NASAA may be applied, as applicable, to the proposed offer or sale of a security for which a notice must be filed pursuant to this rule. Failure to comply with the provisions of an applicable Statement of Policy or guideline promulgated by NASAA may serve as the grounds for disallowance of the exemption from registration provided by Section 30-14-201(7), Idaho Code. ( )

**06. Waiver.** The Administrator may waive any term or condition set forth in this rule. ( )

**055. MORTGAGE NOTE EXEMPTION.**

**01. Investment Contract or Profit-Sharing Agreement.** The exemption specified in Section 30-14-202(11), Idaho Code, shall not extend to any transaction in a security in the nature of an investment contract or profit-sharing agreement. ( )

**02. Definition "Offered and Sold as a Unit."** As used in Section 30-14-202(11), Idaho Code, "offered and sold as a unit" means an offer and sale of the entire mortgage or other security agreement to a single purchaser at a single sale. ( )

**056. MANUAL EXEMPTION.**

For the purpose of the manual exemption (Section 30-14-202(2), Idaho Code), the following securities manuals or portions of the manuals are recognized. ( )

- a. Best's Insurance Reports- Life-Health. ( )
- b. Mergent's Industrial Manual. ( )
- c. Mergent's International Manual. ( )
- d. ~~Walkers Manual of Western Corporations~~ **OTCOX Best Market.** ~~(3-23-22)~~( )

**057. MINING, OIL OR GAS EXPLORATION EXEMPTION REQUIREMENTS.**

**01. Legal Opinion for Extractive Industries.** If the Department deems it necessary or advisable in the public interest or for the protection of investors, it may require an issuer engaged in mining, gas, or oil exploration or extraction to submit an opinion of counsel on the nature of the title held to the property noting any defects or liens or both, and the principal terms of any lease or option with respect to the property. If continued possession of the property by the issuer depends upon the satisfaction of certain working conditions, describe these conditions and state the extent to which they have been met. The Department may require other issuers to submit a status of title to any real estate which is material to the business of the issuer. ( )

**02. Quarterly Reports.** The issuer shall file quarterly reports, on the "Quarterly Report Form for Small Mining Issues." during the time the securities remain registered. Such reports are due within thirty (30) days following the end of the issuer's quarter. Failure to comply with this rule could be grounds for suspension or revocation of a permit. ( )

**03. Advertising.** The only advertising of exempt mining securities, whether on radio, television, print media, or other medium, shall be restricted to announcing the securities offering and stating the name and address of the issuer, the type of security, the underwriter, and where additional information may be obtained. ( )

**04. Offering Circulars.** All offers of the security must be accompanied by a complete, current offering circular previously reviewed by the Administrator adequate to satisfy the antifraud provisions of the Act. ( )

**058. STOCK EXCHANGE LISTED SECURITIES.**

Stock exchanges specified by or approved under Section 30-14-201(6), Idaho Code, are as follows: ( )

- 01. The New York Stock Exchange;** ( )
- 02. The American Stock Exchange;** ( )
- 03. The NASDAQ Global Market and Global Select Market;** ( )
- ~~04. The Chicago Stock Exchange;~~ ~~(3-23-22)~~ ( )
- ~~054.~~ **The Chicago Board Options Exchange;** ( )
- ~~065.~~ **Tier I of the Pacific Stock Exchange; and** ( )
- ~~076.~~ **Tier I of the Philadelphia Stock Exchange, Inc.** ( )

**059. (RESERVED)**

**060. REGISTRATION OR EXEMPTION OF "BLIND POOL" OFFERINGS PROHIBITED.**

An offering in which it is proposed to issue stock or other equity interest without an allocation of proceeds to sufficiently identifiable properties or objectives shall be considered a "blind pool" offering and one in which the duty to provide full disclosure cannot be met. Because of the inability or failure to make full disclosure, the Department is

of the position that the offering would work a fraud upon purchasers and, therefore, the offering may not be registered or qualify for an exemption from registration in Idaho. ( )

**061. CROSS-BORDER TRANSACTIONS EXEMPTION.**

By authority delegated to the Administrator in Section 30-14-203, Idaho Code, transactions effected by a Canadian broker-dealer and its agents that meet the requirements for exemption from registration pursuant to Section 084 of these rules, are determined to be classes of transactions for which registration is not necessary or appropriate for the protection of investors and are exempt from Sections 30-14-301 and 30-14-504, Idaho Code. ( )

~~**062. DESIGNATED MATCHING SERVICES.**~~

~~**01. In General.** Sections 30-14-301 through 30-14-305, Idaho Code, shall not apply to any offer or sale of a security by an issuer in a transaction that meets the requirements of this rule. A designated matching service shall not be deemed a broker-dealer subject to registration within the meaning of the Act or the rules thereunder. (3-23-22)~~

~~**02. Definitions.** The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise. (3-23-22)~~

~~**a. Designated Matching Service.** Means a matching service designated by the Administrator under Section 062 of these rules. (3-23-22)~~

~~**b. Designated Matching Service Facility.** Means a computer system operated, or a seminar or meeting conducted, by a designated matching service. (3-23-22)~~

~~**e. Individual Accredited Investor.** Means any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars (\$1,000,000) or any natural person who had an individual income in excess of two hundred thousand dollars (\$200,000) in each of the two (2) most recent years or joint income with that person's spouse in excess of three hundred thousand dollars (\$300,000) in each of those years and has a reasonable expectation of reaching the same income level in the current year. In addition each purchaser must evidence such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment. The term "individual accredited investor" also includes any self-directed employee benefit plan with investment decisions made solely by persons that are "individual accredited investors" as defined in Subsection 062.02.e. of this rule, and the individual retirement account of any such individual accredited investor. (3-23-22)~~

~~**d. Investor Member.** Means an investor who has been properly qualified by and uses a designated matching service. Either of the following investors may be properly qualified: any institutional investor as described in Section 30-14-102(11), Idaho Code, or an individual accredited investor as defined in this rule. (3-23-22)~~

~~**e. Issuer Member.** Means an issuer who uses a designated matching service facility. (3-23-22)~~

~~**f. Summary Business Plan.** Means a brief statement specifically describing the issuer, its management, its products or services, and the market for those products or services. Other information, including, specifically, financial projections, must not be included in a summary business plan. (3-23-22)~~

~~**03. Application.** A person may apply to the Administrator to be a designated matching service by filing such forms as required by the Administrator. No designation will be made unless the applicant demonstrates that it: (3-23-22)~~

~~**a.** Owns, operates, sponsors, or conducts a matching service facility limited to providing investor members with the summary business plans and identities of issuer members; (3-23-22)~~

~~**b.** Will not be involved in any manner in the sale, offer for sale, solicitation of a sale or offer to buy, a security other than as set forth in Subsection 062.03.a. of this rule; (3-23-22)~~

~~**e.** Will make a reasonable factual inquiry to determine whether an investor member is properly (3-23-22)~~



qualified; (3-23-22)

~~d. Is a governmental entity, quasi-governmental entity, an institution of higher education or an Idaho nonprofit corporation that is associated with a governmental or quasi-governmental entity or an institution of higher education; (3-23-22)~~

~~e. Does not employ any person required to be registered under the Act as a broker-dealer, investment adviser, agent, or investment adviser representative; (3-23-22)~~

~~f. Does not have, and does not employ any person who has a business relationship with any investor member or issuer member other than to provide such member access to the matching service facility; (3-23-22)~~

~~g. Charges fees only in an amount necessary to cover its reasonable operating costs and that are unrelated to the amount of money being raised by any issuer member or the amount of securities sold by any issuer member; (3-23-22)~~

~~h. Agrees to not use any advertisement of its matching service facility that advertises any particular issuer or any particular securities or the quality of any securities or that is false or misleading or otherwise likely to deceive a reader thereof; and (3-23-22)~~

~~i. Meets such other conditions as the Administrator considers appropriate for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act, and the rules thereunder. (3-23-22)~~

~~04. **Designation Consistent with Act.** Designation under this rule is not available to any matching service formed in a manner that constitutes part of a scheme to violate or evade the provisions of the Act or rules thereunder. (3-23-22)~~

~~05. **Withdrawal of Designation.** The Administrator, upon ten (10) days notice and hearing before the Administrator or a hearing officer, may withdraw a person's designation as a matching service if the person does not meet the standards for designation provided in this rule. (3-23-22)~~

~~06. **Disqualifications.** (3-23-22)~~

~~a. No exemption under this rule is available for the securities of any issuer if the issuer: (3-23-22)~~

~~i. Within the last five (5) years, has filed a registration statement which is the subject of a currently effective registration stop order entered by the United States Securities and Exchange Commission or any state securities administrator; (3-23-22)~~

~~ii. Within the last five (5) years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit or a misdemeanor involving financial fraud; (3-23-22)~~

~~iii. Is the subject of any state or federal administrative enforcement order, entered within the last five (5) years, finding fraud or deceit in connection with the purchase or sale of any security; or (3-23-22)~~

~~iv. Is the subject of any order, judgment or decree of any court of competent jurisdiction, entered within the last five (5) years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security. (3-23-22)~~

~~b. For purposes of this rule, the term "issuer" includes: (3-23-22)~~

~~i. Any of the issuer's predecessors or any affiliated issuer; (3-23-22)~~

~~ii. Any of the issuer's directors, officers, general partners, or beneficial owners of ten percent (10%)~~

~~or more of any class of its equity securities (beneficial ownership meaning the power to vote or direct the vote or the power to dispose or direct the disposition of such securities);~~ (3-23-22)

~~iii. Any of the issuer's promoters presently connected with the issuer in any capacity, including:~~ (3-23-22)

~~(1) Any person who, acting alone or in conjunction with one (1) or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer; or~~ (3-23-22)

~~(2) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, ten percent (10%) or more of any class of securities of the issuer or ten percent (10%) or more of the proceeds from the sale of any class of such securities; however, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of Subsection 062.06.b.iii. of this rule, if such person does not otherwise take part in founding and organizing the enterprise.~~ (3-23-22)

~~iv. Any underwriter of the issuer.~~ (3-23-22)

~~e. The exemption under this rule is not available to an issuer that is in the development stage that either has no specific business plan or purpose or had indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.~~ (3-23-22)

~~**07. Notice of Transaction.** The issuer shall file with the Administrator a notice of transaction, consent to service of process (Form U-2), and a copy of its summary business plan within fifteen (15) days after the first sale in this state.~~ (3-23-22)

~~0632.~~ -- 077. (RESERVED)

#### **078. IMPLEMENTATION OF CRD.**

**01. Designation and Use of CRD System.** Pursuant to Section 30-14-406, Idaho Code, the Administrator designates the web-based ~~Central Registration Depository (CRD) operated by FINRA~~ to receive and store filings and collect related fees from broker-dealers, agents and investment adviser representatives on behalf of the Administrator. Forms U-4, U-5, BD, BR, and BDW shall be used to register or terminate agents, investment adviser representatives or broker-dealers, respectively, in the state of Idaho through the CRD system. The CRD system will be utilized to effect FINRA registration as well as registration, termination, and renewal in the state. (3-23-22)( )

~~**02. Registrations Not Automatic.** A filing of Form U-4, BD, or BR with the CRD system does not constitute an automatic registration in Idaho. Broker dealers and investment advisers should not consider agents or investment adviser representatives registered until such approval from the state of Idaho has been received by them through CRD.~~ (3-23-22)

~~**03. Electronic Signature.** When a signature or signatures are required by the particular instructions of any filing to be made through CRD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to CRD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.~~ (3-23-22)

#### **079. IMPLEMENTATION OF IARD.**

**01. Designation and Use of IARD.** Pursuant to Section 30-14-406, Idaho Code, the Administrator designates the web-based ~~Investment Adviser Registration Depository (IARD) operated by FINRA~~ to receive and store filings and collect related fees from investment advisers on behalf of the Administrator. Unless otherwise provided, all investment adviser applications, amendments, reports, notices, related filings and fees required to be filed with the Administrator pursuant to the rules promulgated under the Act, shall be filed electronically with and

~~transmitted to IARD.~~

~~(3-23-22)( )~~

~~**02. Use of IARD.** Unless otherwise provided, all investment adviser applications, amendments, reports, notices, related filings and fees required to be filed with the Administrator pursuant to the rules promulgated under the Act, shall be filed electronically with and transmitted to IARD. The following additional conditions relate to such electronic filings:~~

~~(3-23-22)~~

~~**a. Electronic Signature.** When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.~~

~~(3-23-22)~~

~~**b. When Filed.** Solely for purposes of a filing made through IARD, a document is considered filed with the Administrator when all fees are received and the filing is accepted by IARD on behalf of the state.~~

~~(3-23-22)~~

~~**03. Electronic Filing.** The electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees and thirty (30) days notice is provided by the Administrator. Any documents or fees required to be filed with the Administrator that are not permitted to be filed with or cannot be accepted by IARD shall be filed directly with the Administrator.~~

~~(3-23-22)~~

~~**04. Hardship Exemptions.** ~~Subsection 079.04 of t~~This rule provides two (2) "hardship exemptions" from the requirements to make electronic filings as required by the rules.~~

~~(3-23-22)( )~~

~~**a. Temporary Hardship Exemption.**~~

~~( )~~

~~**i.** Investment advisers registered or required to be registered under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from the requirements to file electronically.~~

~~( )~~

~~**ii.** To request a temporary hardship exemption, the investment adviser ~~must~~ may file Form ADV-H which can be found at 17 CFR 279.3 in paper format with the Administrator where the investment adviser's principal place of business is located, no later than one (1) business day after ~~the an electronic~~ filing ~~(that is the subject of the Form ADV-H)~~ was due; and submit the filing that is the subject of the ~~Form ADV-H~~ hardship request in electronic format to IARD no later than seven (7) business days after the filing was due.~~

~~(3-23-22)( )~~

~~**iii.** Effective Date - Upon Filing. The temporary hardship exemption will be deemed effective upon receipt by the Administrator of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the Administrator.~~

~~( )~~

~~**b. Continuing Hardship Exemption.**~~

~~( )~~

~~**i.** Criteria for Exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome.~~

~~( )~~

~~**ii.** To apply for a continuing hardship exemption, the investment adviser ~~must~~ may file Form ADV-H ~~which can be found at 17 CFR 279.3 in paper format~~ with the Administrator at least twenty (20) business days before a filing is due; and, if a filing is due to more than one (1) securities regulator, the ~~Form ADV-H~~ request must be filed with the Administrator where the investment adviser's principal place of business is located. The Administrator who receives the application will grant or deny the application within ten (10) business days after the filing ~~of Form ADV-H~~ the hardship request.~~

~~(3-23-22)( )~~

~~**iii.** Effective Date - Upon Approval. The exemption is effective upon approval by the Administrator. The time period of the exemption may be no longer than one (1) year after the date on which the ~~Form ADV-H~~ hardship request is filed. If the Administrator approves the application, the investment adviser must, no later than five~~

(5) business days after the exemption approval date, submit filings to IARD in paper format ~~(along with the appropriate processing fees)~~ for the period of time for which the exemption is granted. ~~(3-23-22)~~( )

**080. BROKER-DEALER REGISTRATION -- APPLICATION/RENEWAL.**

**01. Initial Application -- FINRA Member Firms.** Broker-dealers applying for initial registration pursuant to Section 30-14-406, Idaho Code, and who are contemporaneously applying for FINRA membership or who are a FINRA member, shall file with CRD the fee required by the Act and such information as required by the Administrator. ~~(3-23-22)~~( )

- ~~a. With CRD, a completed Form BD, including Schedules A-D;~~ (3-23-22)
- ~~b. With CRD, a filing fee as specified in Section 30-14-410, Idaho Code;~~ (3-23-22)
- ~~c. With CRD, the Form BR.~~ (3-23-22)

**02. Initial Application -- Non-FINRA Member Firms.** Broker-dealers applying for initial registration pursuant to Section 30-14-406, Idaho Code, and who are not contemporaneously applying for FINRA membership or are not a FINRA member, shall file with the Department: ( )

~~a. A completed Form BD, including Schedules A-E~~ Written application as required by the Administrator; ~~(3-23-22)~~( )

- b. The filing fee specified in Section 30-14-410, Idaho Code; ( )
- c. Audited financial statements; ( )
- d. Documentation of compliance with the minimum capital requirements of Section 087 of these rules; ( )
- e. Designation and qualification of a principal officer; ( )
- f. A list of the addresses, telephone numbers and resident agents of all office locations within the state of Idaho, to be provided within sixty (60) days of becoming registered; ( )
- g. A copy of the written supervisory procedures of the broker-dealer; ( )
- h. Any additional documentation, supplemental forms and information as the Administrator may deem necessary. ( )

**03. Incomplete Applications.** After a period of six (6) months from date of receipt, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. ( )

**04. Annual Renewal.** ( )

**a.** A FINRA member shall renew its registration by submitting the renewal fee specified in Section 30-14-410, Idaho Code, to the CRD according to their policies and procedures. A non-FINRA member shall renew its registration by submitting to the Department current information required for initial registration, and the renewal fee specified in Section 30-14-410, Idaho Code. ( )

**b.** It is required that an application for the renewal of the registration of a broker-dealer must be filed with the Department before the registration expires, which is the thirty-first day of December next following such registration, per the provisions of Section 30-14-406(d), Idaho Code. Any registration that is not renewed within that time limit will be deemed to have lapsed, thus requiring the broker-dealer to reapply for registration with the Department in accordance with the requirements of the Act. ( )

**05. Updates and Amendments. ( )**

**a.** A broker-dealer must file with CRD, ~~in accordance with the instructions in Form BD,~~ any amendments to the broker-dealer's ~~Form BD application.~~ All broker-dealers must assure that current and accurate information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the ~~Form BD application~~ or by direct notice to the Department. ~~(3-23-22)( )~~

**b.** An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. ( )

**c.** **Litigation Notice.** Any broker-dealer shall notify the Administrator in writing or through the CRD of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement does not include minor traffic violations or minor civil actions unrelated to the registrant's business as a broker-dealer. ( )

**d.** **Notice of Address.** Every broker-dealer shall provide the Department, with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. ( )

**e.** **Change of Name.** If a registered broker-dealer desires to change its name, notice of such an intent must be submitted to the CRD or this Department for non-FINRA members, either before or within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. ( )

**06. Completion of Filing.** An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all required submissions have been received by the Administrator. ( )

**07. Deferral of Effectiveness.** The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. ( )

**081. WITHDRAWAL OF BROKER -- DEALER AND AGENT REGISTRATION.**

**01. Application Withdrawal.** Withdrawal from registration as a broker-dealer or agent becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the Administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within sixty (60) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Administrator may nevertheless institute a revocation or suspension proceeding under Section 30-14-412, Idaho Code, within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration is effective. ( )

**02. Broker-Dealer.** The application for withdrawal of registration as a broker-dealer shall be completed by ~~following the instructions on Form BDW and~~ filing ~~Form BDW~~ a withdrawal request with CRD. ~~(3-23-22)( )~~

**03. Agents.** The application for withdrawal of registration as an agent shall be completed by ~~following the instructions on Form U 5 and filed upon Form U 5~~ filing a withdrawal request with CRD. ~~(3-23-22)( )~~

**082. WITHDRAWAL OF ~~AGENT OF~~ ISSUER AGENT REGISTRATION.**

**01. Pending Revocation or Suspension.** Withdrawal from registration as an ~~agent of~~ issuer agent becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the Administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within sixty (60)

days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Administrator may nevertheless institute a revocation or suspension proceeding under Section 30-14-412, Idaho Code, within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration is effective. (3-23-22)( )

**02.** ~~Agent of Issuer Agent.~~ The application for withdrawal of registration as an ~~agent of issuer agent~~ shall be completed by ~~following the instructions on Form U-5 and filed upon Form U-5~~ filing a withdrawal request with the Department. (3-23-22)( )

**083. BROKER-DEALER AGENT/ISSUER AGENT REGISTRATION.**

**01. Broker-Dealer Agents.** Agents of broker-dealers applying for initial registration in the state of Idaho pursuant to Section 30-14-406, Idaho Code, shall file the following: ( )

- a. With CRD, a completed Form U-4; ( )
- b. With CRD, the filing fee specified in Section 30-14-410, Idaho Code; ( )
- c. With CRD, proof of successful completion of the applicable examinations specified in Section 103 of these rules; ( )

~~d. With the Department, any additional documentation, supplemental forms and information as the Administrator may deem necessary;~~ (3-23-22)

~~ed.~~ With the Department, Subsections 083.01.a. through 083.01.~~dc.~~ of this rule, for any agent of a non-FINRA member. (3-23-22)( )

**02. Agents of Issuer.** ( )

**a.** Agents of issuers applying for initial registration in the state of Idaho pursuant to Section 30-14-406, Idaho Code, shall file the following with the Department: ( )

- i. A completed Form U-4; ( )
- ii. The fee specified in Section 30-14-410, Idaho Code; ( )
- iii. Proof of successful completion of the applicable examination(s) specified in Section 103 of these rules; ( )

iv. Proof of a bond of a surety company duly authorized to transact business in this state, said bond to be in the sum of ten thousand dollars (\$10,000) and conditioned upon faithful compliance with the provisions of the Act by the agent, such that upon failure to so comply by the agent, the surety company is liable to any and all persons who may suffer loss by reason thereof. Provided, however, that the obligation of the surety bond must be maintained at all times in the amount therein provided; and provided further, that a certificate of deposit issued by any bank in the state of Idaho and assigned to the Administrator in an amount equal to the bond which would otherwise be required may be accepted by the administrator in lieu of a bond, if the certificate of deposit is maintained at all times in the amount and manner herein provided during the term for which the registration is effective and for three (3) years thereafter; ( )

~~v. Any additional documentation, supplemental forms and information as the Administrator may deem necessary.~~ (3-23-22)

~~b. An individual who represents an issuer that effects transactions in a federal covered security under Section 18(b)(3) (transactions relating to “qualified purchasers” as that term may be defined by the SEC), 18(b)(4)(D) (commonly known as Regulation A, Tier 2), or 18(b)(4)(F) (commonly known as Regulation D, Rule 506) of the Securities Act of 1933 is not exempt from the registration requirements of Section 30-14-402(a), Idaho Code, if the~~

~~individual is compensated, directly or indirectly, for participation in the specified securities transactions. (3-23-22)~~

**eb.** Exceptions for officers. If there are not more than two (2) officers of an issuer, such officers may be registered as agents for a particular original offering of the issuer's securities without having to pass such written examination or file an agent's bond as provided by Subsection 083.02.a.iii. and 02.a.iv. of this rule, unless such person has registered under this rule within the prior five (5) years. ( )

**03. Incomplete Applications.** After a period of six (6) months from date of receipt, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. ( )

**04. Annual Renewal.** ( )

**a.** Broker-Dealer Agent. Agents of FINRA members shall renew their registrations by submitting the renewal fee specified in Section 30-14-410, Idaho Code, to the CRD. Agents of non-FINRA members shall renew their registrations by submitting a completed renewal application and a renewal fee as specified in Section 30-14-410, Idaho Code. ( )

**b.** Issuer Agent. Issuer agents shall renew their registrations by submitting a completed renewal application and a renewal fee as specified in Section 30-14-410, Idaho Code. ( )

**05. Updates and Amendments.** ( )

**a.** A broker-dealer agent or ~~agent of~~ issuer **agent** must file with CRD, or with this Department, ~~in accordance with the instructions in Form U-4,~~ any amendments to the broker-dealer agent's or issuer agent's Form U-4. It is the responsibility of each broker-dealer agent or issuer agent to assure that current and accurate information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form U-4 or by direct notice to the Department. ~~(3-23-22)~~( )

**b.** An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. ( )

**c.** Litigation Notice. Any broker-dealer agent or issuer agent shall notify the Administrator in writing or through the CRD of any civil, administrative, ~~or~~ criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as a broker-dealer. ~~(3-23-22)~~( )

**d.** Notice of Address. Every broker-dealer agent and issuer agent shall provide the Department with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. ( )

**e.** Change of Name. If a registered broker-dealer agent or issuer agent changes his or her name, notice of such must be submitted to the CRD or this Department within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. ( )

**06. Completion of Filing.** An application for initial or renewal registration is not considered complete for purposes of Section 30-14-406(c), Idaho Code, until the required fee and all amendments, including submissions requested by the Department, have been received by the Department. ( )

**07. Deferral of Effectiveness.** The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. ( )

**084. CROSS-BORDER LICENSING EXEMPTION.**

By authority delegated to the Administrator in Section 30-14-401(d), Idaho Code, a Canadian broker-dealer meeting all of the following conditions is determined to be exempt from the registration requirement in Section 30-14-401(a), Idaho Code: ( )

**01. Canadian Broker-Dealer.** The broker-dealer is registered in Canada, does not have an office or other physical presence in this state, and is not an office or branch of a broker-dealer domiciled in the United States. ( )

**02. Registered Broker-Dealer.** The broker-dealer is registered with or a member of a Canadian self-regulatory organization, stock exchange, or the Bureau des Services Financiers and maintains that registration or membership in good standing. ( )

**03. Customers.** The broker-dealer and its agents effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by: ( )

**a.** An individual from Canada that temporarily resides or is temporarily present in this state and with whom the broker-dealer had a bona fide broker-dealer-customer relationship before the individual entered the United States; or ( )

**b.** An individual present in this state whose transactions relate to a self-directed, tax advantaged Canadian retirement plan of which the individual is the holder or contributor. ( )

**04. Disclosure.** The broker-dealer prominently discloses in writing to its clients in this state that the broker-dealer and its agents are not subject to the full regulatory requirement of the Act. ( )

**05. Jurisdiction.** Neither the broker-dealer nor its agents disclaim the applicability of Canadian law or jurisdiction to any transaction conducted pursuant to this exemption. ( )

**06. Anti-Fraud Provisions.** The broker-dealer and its agents comply with the antifraud provisions of the Act and of federal securities laws. ( )

**07. Consent to Service.** Prior to or contemporaneously with the first transaction in Idaho, the broker-dealer must file a consent to service of process (~~Form U-2~~) in a manner that effectively appoints the Administrator as agent for service of process. (3-23-22)( )

**08. Provide Requested Information.** Any Canadian broker-dealer or agent relying on this exemption shall, upon written request, furnish the Department any information relative to a transaction covered by Section 084, of these rules, that the Administrator deems relevant. ( )

**085. RELICENSING (FORMERLY TEMPORARY AGENT TRANSFER (TAT) SYSTEM).**

**01. Relicensing Agents.** Transfer of agents from one broker-dealer to another shall be effected pursuant to, and in accordance with, the NASAA/CRD relicense program which allows for an automatic temporary license. ( )

**02. Relicensing Investment Adviser Representatives.** Transfer of investment adviser representatives from one (1) investment adviser to another shall be effected pursuant to, and in accordance with, the NASAA/CRD relicense program which allows for an automatic temporary license. ( )

**03. Temporary License Expiration.** An agent or investment adviser representative may not transact business in Idaho after the expiration of a temporary license unless a permanent license has been issued. In all cases, the Administrator retains the right to deny, suspend, or revoke a temporary license for the causes listed in Section 30-14-412, Idaho Code. ( )

**086. AGENT TERMINATION.**

Termination notice pursuant to the requirements of Section 30-14-408, Idaho Code, shall be given by filing within thirty (30) calendar days of termination, a completed ~~Form U-5~~ withdrawal request. For agents terminating registration with a FINRA member, such notice shall be filed with the CRD. For agents terminating registration with a non-FINRA member, such notice shall be filed with the Department. (3-23-22)( )

**087. NET CAPITAL REQUIREMENTS FOR BROKER-DEALERS.**



Every registered broker-dealer shall have and maintain an adjusted net capital in compliance with 17 CFR 240.15c3-1 under the Securities Exchange Act of 1934, as currently amended. ( )

**088. RECORDS REQUIRED FOR BROKER-DEALERS.**

**01. Required Books and Records.** Unless otherwise provided by order of the SEC, each broker-dealer registered or required to be registered under the Act shall make, maintain and preserve books and records in compliance with the SEC rules 17a-3 (17 CFR 240.17a-3), 17a-4 (17 CFR 240.17a-4), 15g-9 (17 CFR 240.15g-9) and 15c2-11 (17 CFR 240.15c2-11), which are adopted and incorporated by reference. ( )

**02. Compliance.** To the extent that the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended are not subject to enforcement action by the Department for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule. ( )

**089. INVESTMENT ADVISER REGISTRATION -- APPLICATION/RENEWAL.**

**01. Initial Application.** The application for initial registration as an investment adviser, pursuant to Section 30-14-406, Idaho Code, shall be made by completing Form ADV which can be found at 17 CFR 279.1 ~~in accordance with the form instructions and~~ by filing ~~the form~~ with IARD. The application for initial registration shall also include the following: ~~(3-23-22)~~ ( )

**a.** Proof of compliance by the investment adviser with the examination requirements of Section 103 of these rules; ( )

**b.** A bond of a surety company duly authorized to transact business in this state, said bond to be in the sum of twenty-five thousand (\$25,000) and conditioned upon faithful compliance with the provisions of the Act by the investment adviser such that upon failure to so comply by the investment adviser, the surety company shall be liable to any and all persons who may suffer loss by reason thereof. Except that an investment adviser that has its principal place of business in a state other than this state shall be excluded from these bonding requirements provided that such investment adviser is registered as an investment adviser in the state where it maintains its principal place of business and is in compliance with such state's bonding or minimum net worth requirements; ( )

**c.** A copy of the investment advisory contract to be executed by Idaho clients; ( )

**d.** A balance sheet, prepared substantially in accordance with Generally Accepted Accounting Principles, dated as of the investment adviser's prior fiscal year-end; however, if the investment adviser has not been in operation for an entire year, a balance sheet dated within ninety (90) days of filing shall be submitted; ( )

**e.** The fee required by Section 30-14-410, Idaho Code; and; ( )

**f.** Any other information the Department may reasonably require. ( )

**02. Incomplete Applications.** After a period of six (6) months from the date of receipt by the Department, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. ( )

**03. Annual Renewal.** The application for annual renewal registration as an investment adviser shall be filed with IARD according to their policies and procedures. The application for annual renewal registration shall include the fee required by Section 30-14-410, Idaho Code. ( )

**04. Applications Prior to Expiration.** An application for the renewal of the registration of an investment adviser must be filed with the Department before the registration expires, which is the thirty-first day of December next following such registration, per the provisions of Section 30-14-406(d), Idaho Code, unless an order is in effect under Section 30-14-412, Idaho Code. Any registration that is not renewed within that time limit will be deemed to have lapsed, thus requiring the investment adviser to reapply for registration with the Department in accordance with the requirements of the Act. ( )

**05. Updates and Amendments.** ( )

**a.** An investment adviser must file with IARD, ~~in accordance with the instructions in Form ADV,~~ any amendments to the investment adviser's Form ADV. All investment advisers must assure that current and accurate information is on file with the Department at all times. ~~If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form ADV or by direct notice to the Department.~~ An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. (3-23-22)( )

**b.** Within ninety (90) days of the end of the investment adviser's fiscal year, an investment adviser must file a copy of the investment adviser's balance sheet as of the prior fiscal year-end. ( )

**c.** **Litigation Notice.** Any investment adviser shall notify the Administrator in writing or through the IARD of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement does not include minor traffic violations or minor civil actions unrelated to the registrant's business as an investment adviser. ( )

**d.** **Notice of Address.** Every investment adviser shall provide the Department, through IARD, with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. ( )

**06. Completion of Filing.** An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all submissions have been received by the Administrator and until the investment adviser is registered in the jurisdiction where it maintains its principal place of business. ( )

**07. Deferral of Effectiveness.** The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. ( )

**090. INVESTMENT ADVISER REPRESENTATIVE REGISTRATION – APPLICATION/RENEWAL.**

**01. Initial Application.** The application for initial registration as an investment adviser representative pursuant to Section 30-14-406, Idaho Code, shall be made by completing ~~and filing a~~ Form U-4 ~~application in accordance with the form instructions and by filing Form U-4~~ with CRD. The application for initial registration also shall include the following: (3-23-22)( )

**a.** Proof of compliance by the investment adviser representative with the examination requirements of Section 103 of these rules; and ( )

**b.** The fee required by Section 30-14-410, Idaho Code. ( )

**02. Incomplete Applications.** After a period of six (6) months from the date of receipt by the Department, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. ( )

**03. Annual Renewal.** The application for annual renewal registration as an investment adviser representative shall be filed with CRD. The application for annual renewal registration shall include the fee required by Section 30-14-410, Idaho Code. ( )

**04. Updates and Amendments.** ( )

**a.** The investment adviser representative is under a continuing obligation to update information required by Form U-4 as changes occur. All investment adviser representatives must assure that current and accurate information is on file with the Department, through CRD, at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form U-4. ( )

b. An investment adviser representative and the investment adviser must file promptly with CRD any amendments to the representative's Form U-4. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. ( )

c. **Litigation Notice.** Any investment adviser representative shall notify the Administrator in writing, through CRD, of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as an investment adviser representative. ( )

d. **Change of Name.** If a registered investment adviser representative changes his or her name, notice of such must be submitted to the CRD or this Department either before or within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. ( )

e. **Notice of Address.** Every investment adviser representative shall provide the Department, through CRD, with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. ( )

**05. Completion of Filing.** An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all submissions have been received by the Administrator. ( )

**06. Dual Registration Exemption.** A person may transact business in this state as an investment adviser representative if he is registered as an agent pursuant to Section 30-14-402, Idaho Code, and is employed by a broker-dealer registered pursuant to Section 30-14-401, Idaho Code, and ( )

a. The person's investment advisory activities are limited to recommending the investment advisory services of an investment adviser registered under Section 30-14-403, Idaho Code, or a federal covered adviser that has made a notice filing pursuant to Section 30-14-405, Idaho Code, and all such recommendations are made on behalf of the employing broker-dealer; ( )

b. The person is not compensated directly for making such recommendations; and ( )

c. The person provides written notice to the administrator that he is relying on this exemption from the requirement to be registered as an investment adviser representative. ( )

**07. Deferral of Effectiveness.** The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. ( )

## **091. WITHDRAWAL OF INVESTMENT ADVISER AND INVESTMENT ADVISER REPRESENTATIVE REGISTRATION.**

**01. Application Withdrawal.** Withdrawal from registration as an investment adviser or investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the Administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within sixty (60) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Administrator may nevertheless institute a revocation or suspension proceeding under Section 30-14-412, Idaho Code, within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration is effective. ( )

**02. Investment Adviser.** The application for withdrawal of registration as an investment adviser shall be completed by ~~following the instructions on Form ADV-W which can be found at 17 CFR 279.2 and filed upon filing a~~ Form ADV-W withdrawal request with IARD. (3-23-22)( )

**03. Investment Adviser Representative.** The application for withdrawal of registration as an investment adviser representative shall be completed by ~~following the instructions on Form U-5 and filed upon Form U-5 filing a Form U-5 withdrawal request~~ with CRD. (3-23-22)( )

**092. NOTICE FILING REQUIREMENTS FOR FEDERAL COVERED ADVISERS.**

**01. Notice Filing.** The notice filing for a federal covered adviser pursuant to Section 30-14-405, Idaho Code, shall be filed with IARD on an executed Form ADV ~~which can be found at 17 CFR 279.1.~~ A notice filing of a federal covered adviser shall be deemed filed when the fee required by Section 30-14-410, Idaho Code, and the Form ADV are filed with and accepted by IARD on behalf of the state. (3-23-22)( )

~~**02. When Deemed Filed.** The Administrator will deem filed Part 2 of Form ADV if a federal covered adviser provides, within five (5) days of a request, Part 2 of Form ADV to the Administrator. Because the Administrator deems Part 2 of the Form ADV to be filed, a federal covered adviser is not required to submit Part 2 of Form ADV to the Administrator unless requested. (3-23-22)~~

~~**03. Renewal.** The annual renewal of the notice filing for a federal covered adviser pursuant to Section 30-14-405, Idaho Code, shall be filed with IARD. The renewal of the notice filing for a federal covered adviser is deemed filed when the fee required by Section 30-14-410(e), Idaho Code, is filed with and accepted by IARD on behalf of the state. ( )~~

~~**04. Updates and Amendments.** A federal covered adviser must file with IARD, in accordance with the instructions in the Form ADV, any amendments to the federal covered adviser's Form ADV. (3-23-22)~~

**093. RECORDS REQUIRED OF INVESTMENT ADVISERS.**

Pursuant to provisions of the Act, every investment adviser registered or required to be registered under the Act shall make and keep true, accurate and current books and records as listed in 17 CFR 275.204-2 under the Investment Advisers Act of 1940, as currently amended. ( )

**094. CLIENT CONTRACTS – INVESTMENT ADVISERS.**

**01. Contract.** As used in this rule, “investment advisory contract” means any contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account for a person other than an investment company, as defined in the Investment Company Act of 1940, as amended. ( )

**02. Contents of Client Contract.** No investment adviser shall enter into, extend, or renew any investment advisory contract, or in any way perform any investment advisory contract entered into, extended, or renewed, after the effective date of this rule, unless such contract is in writing and contains the following: ( )

**a.** Provides that an investment adviser shall not receive compensation based on a share of capital gains upon or capital appreciation of funds or any portion of the funds of the client, except as exempted in 17 CFR 275.205-3 under the Investment Adviser Act of 1940; ( )

**b.** Provides that no assignment of the contract shall be made by the investment adviser without the written consent of the client; ( )

**c.** Provides that if the investment adviser is a partnership, the investment adviser shall notify the client of any change in the membership of such partnership within a reasonable time after such change; ( )

**d.** Provides the investment adviser's policy regarding termination of the contract, in compliance with 17 CFR 275.204-3(b). ( )

**e.** Detailed description of the services to be provided; ( )

**f.** Terms of the contract; ( )

**g.** Amount of the advisory fee, the formula for computing the fee, and the amount of any prepaid fee to be returned in the event of contract termination or non-performance; ( )

**h.** Discloses whether the contract grants discretionary power to the investment adviser; ( )

**i.** A contract may not contain any provision that limits or purports to limit the liability of the investment adviser for conduct or omission arising from the advisory relationship that does not conform to the Act, applicable federal statutes, or common law fiduciary standard of care; or the remedies available to the client at law or equity or the jurisdiction where any action shall be filed or heard. ( )

**095. INVESTMENT ADVISER BROCHURE RULE.**

An investment adviser registered or required to be registered under the Act shall, in accordance with 17 CFR 275.204-3 under the Investment Advisers Act of 1940, deliver to each advisory client and prospective advisory client with a written disclosure statement that ~~may be either a copy of Part 2 of its Form ADV which~~ complies with 17 CFR 275.204-1(b) of the Investment Advisers Act of 1940, ~~or a written document containing at least the information then so required by Part 2 of Form ADV.~~ (3-23-22)( )

**096. REQUIREMENTS FOR CUSTODY.**

If an investment adviser registered or required to be registered under the Act maintains custody of client funds, it shall be done in accordance with the requirements and standards set forth in 17 CFR 275.206(4)-2 of the Investment Advisers Act of 1940. ( )

**097. INVESTMENT ADVISER AFFILIATION WITH BROKER-DEALERS/ISSUERS/AGENTS.**

If an investment adviser becomes affiliated with a broker-dealer or issuer, he will be under a continuing obligation to make full disclosure of the affiliation to all parties to the affiliation, and must provide written notice to the Administrator of any material changes concerning any affiliation. ~~Compliance with Part 2 of Uniform Form ADV and delivery of Part 2 of that form, or of a separate brochure or document containing substantially the same information that meets the requirements of the federal brochure rule, will be deemed to be in compliance with this rule.~~ (3-23-22)( )

**098. NAMES USED BY BROKER-DEALERS AND INVESTMENT ADVISERS.**

**01. Unregistered Names.** ( )

**a.** Broker-dealers, Broker-dealer Agents. Upon written request, the Administrator, in his discretion, may allow use by a broker-dealer of the name of an entity which is not registered with the Department as a broker-dealer if, in all communications and advertising, a notation is prominently displayed indicating that all securities transactions are made through a named registered broker-dealer. However, any and all payments received must be in the name of the registered broker-dealer. The Administrator may impose any further conditions or restrictions on the use of the nonregistered name that he deems appropriate for the protection of the public. Except as provided in this rule, the use of unregistered names by a broker-dealer is prohibited. ( )

**b.** Investment Advisers, Investment Adviser Representatives. All advising, transactions, communications, and advertising regarding securities and the conducting of business as an investment adviser must be accomplished under the name of the investment adviser that is currently registered with the Department. Upon written request, the Administrator, in his discretion, may allow use by an investment adviser or investment adviser representative of the name which is not registered with the Department. ( )

**02. Change of Name.** If a registered broker-dealer, investment adviser, investment adviser representative or agent desires a name change, notice of such an intent must be submitted through CRD or to the Department within thirty (30) days after the effective date of the change. The name change will not be effective in this state until the notice is received. Any notice of a name change must include a copy of the rider to be attached to the investment adviser's surety bond, if such bond is required, reflecting the name change. ( )

**099. CIRCUMVENTION OF ORDERS PROHIBITED.**

A broker-dealer, investment adviser, agent, or investment adviser representative may not circumvent the imposition of an order denying registration or revoking registration by withdrawing the application through the CRD system

after such order has been issued. Such action will not be recognized by the Administrator, and will have no effect on the outcome of the order. ( )

**100. WAIVER BY ADMINISTRATOR.**

The Administrator may, either upon request or upon his own motion, waive or modify the application of any particular section to a particular agent, broker-dealer or investment adviser when, in his opinion, just and reasonable cause exists for such action and the waiving or modifying of such rule would not be contrary to the provisions of the Act or to the public interest. ( )

**101. NOTIFICATION OF OPENING, CLOSING OR RELOCATION OF BRANCH OFFICES.**

Any broker-dealer or investment adviser, registered as such with the Department, shall notify the Administrator in writing or through CRD, no later than thirty (30) days after the opening, closing or relocation of any branch office. For purposes of this rule, "branch office" is defined by FINRA. ( )

**102. CANCELLATION OF REGISTRATION OR APPLICATION -- GROUNDS.**

If the Administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, salesman or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the Administrator may by order cancel the registration or application. ( )

**103. EXAMINATION REQUIREMENTS.**

**01. Examination Required.** The following examinations are required for the following applicants: ( )

**a.** Broker-dealer agent application. General agents of securities broker-dealers are required to take and pass: ( )

i. The applicable FINRA examinations; and ( )

ii. Either the Series 63 or the Series 66 examination. ( )

**b.** Investment adviser representative and investment adviser qualifying officer application. Applicants for registration as investment adviser representatives or as an investment adviser qualifying officer shall take and pass: ( )

i. The Series 65; or ( )

ii. The Series 66, the Series 7, and the Securities Industry Essentials examinations. ( )

**c.** Specialized agent of a broker-dealer, issuer agent and qualifying officer for non-FINRA broker-dealer application. Specialized agents of broker-dealers, issuer agents and qualifying officers for non-FINRA broker-dealers application are required to take and pass: ( )

i. The applicable FINRA examinations; and ( )

ii. Either the Series 63 or the Series 66 examination. ( )

**d.** Sales of Viaticals. Persons selling viatical investments are required to take and pass the Securities Industry Essentials and Series 7 examinations. ( )

**02. Specialized Examination Authority.** Any registration granted pursuant to a specialized examination will be restricted, and the registrant will be authorized to effect securities transactions only in securities of the type specified by the conditions of the license. ( )

**03. Investment Adviser Representatives - Waiver.** An applicant for investment adviser representative or investment adviser qualifying officer registration may qualify for a waiver of the examination

requirement if the applicant currently holds one (1) of the following designations: ( )

a. Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.; ( )

b. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania; ( )

c. Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts; ( )

d. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants; ( )

e. Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or ( )

f. Such other professional designation as the Administrator may by rule or order recognize. ( )

**04. Waiver.** The Administrator, in his sole discretion, may waive any examination required by this rule upon a sufficient showing of good cause and upon any conditions he may impose. ( )

**104. FRAUDULENT, DISHONEST AND UNETHICAL PRACTICES - BROKER-DEALER, BROKER-DEALER AGENTS, ISSUER AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES.**

**01. Fraudulent, Dishonest and Unethical Practices.** Any broker-dealer, agent, issuer agent, investment adviser or investment adviser representative who engages in one (1) or more of the practices identified in Subsections 104.02 through 104.47 of this rule is deemed to have engaged in one (1) or both of the following: ( )

a. An “act, practice, or course of business that operates or would operate as a fraud or deceit” as used in Section 30-14-501 and Section 30-14-502, Idaho Code; ( )

b. A dishonest and unethical practice as used in Section 30-14-412(d)(13), Idaho Code, and such conduct may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by statute. ( )

c. This rule is not intended to be all-inclusive, and thus, acts or practices not enumerated herein may also be deemed fraudulent, or dishonest and unethical. ( )

**02. Delivery Delays.** Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers. ( )

**03. Churning.** Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account. ( )

**04. Unsuitable Recommendations.** ( )

a. Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer, agent, or issuer agent. ( )

b. Recommending to a customer, to whom investment advice is provided, the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer

on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative. ( )

**05. Unauthorized Transactions.** Executing a transaction on behalf of a customer without authorization to do so. ( )

**06. Discretionary Authority.** Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the executing of orders. ( )

**07. Margin Accounts.** Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement before or promptly after the initial transaction in the account. ( )

**08. Segregation of Client Securities.** Failing to segregate customers' free securities or securities held in safekeeping. ( )

**09. Hypothecating Customer Securities.** Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent before or promptly after the initial transaction, except as permitted by rules of the Securities and Exchange Commission. ( )

**10. Unreasonable Price, Commission.** Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit. ( )

**11. Failure to Supervise.** Failure by a broker-dealer or investment adviser to exercise diligent supervision over the securities activities of all its broker-dealer agents, investment adviser representatives and employees as set forth in Section 105 of these rules. ( )

**12. Unreasonable Fees.** Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business. ( )

**13. Sales at the Market.** Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by such broker-dealer, or by any such person for whom the broker-dealer is acting or with whom the broker-dealer is associated in such distribution, or any person controlled by, controlling, or under common control with such broker-dealer. ( )

**14. Manipulative, Deceptive or Fraudulent Practices.** Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, which may include: ( )

**a.** Effecting any transaction in a security which involves no change in the beneficial ownerships thereof; ( )

**b.** Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. However, nothing in Subsection 104.14, of this rule, prohibits a broker-dealer from entering bona fide agency cross transactions for customers; or ( )

**c.** Effecting, alone or with one (1) or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the



purpose of inducing the purchase or sale of such security by others. ( )

**15. Loss Guarantees.** Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer. ( )

**16. Bona Fide Price Reports.** Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security. ( )

**17. Deceptive or Misleading Advertising.** Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. ( )

**18. Disclosure of Control.** Failing to disclose that the broker-dealer or investment adviser is controlled by, controlling, affiliated with, or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, the existence of such control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction. ( )

**19. Bona Fide Distribution.** Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member by, among other things, transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or parking or withholding securities. ( )

**20. Customer Communication.** Failure or refusal to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint. ( )

**21. Loans from Customers.** Borrowing money or securities from a customer, unless the customer is a broker-dealer, an affiliate, or a financial institution engaged in the business of loaning funds or securities, or immediate family. For purposes of this rule, the term "immediate family" means parents, mother-in-law, father-in-law, husband, wife, brother, sister, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and children. ( )

**22. Loans to Customers.** Loaning money to a customer, other than an immediate family member, unless the broker-dealer or investment adviser is a financial institution engaged in the business of loaning funds or the customer is an affiliate of the broker-dealer or investment adviser. ( )

**23. Unrecorded Transactions.** Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction. ( )

**24. Fictitious Accounts.** Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited. ( )

**25. Profit/Loss Sharing.** Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents. ( )

**26. Splitting Commissions.** Dividing or otherwise splitting the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person not also registered in Idaho as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control. ( )

**27. Unsolicited Transactions.** Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited. ( )

**28. FINRA and NASD Rules Compliance.** Failing to comply with any applicable provision of the ~~NASD Conduct Rules and any other~~ FINRA Rules or any applicable fair practice or ethical standard promulgated by the ~~Securities and Exchange Commission~~EC or by a self-regulatory organization approved by the ~~Securities and Exchange Commission~~EC. (3-23-22)( )

**29. Contradicting Prospectus Information.** Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead. ( )

**30. Inside Information.** In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer, agent, investment adviser or investment adviser representative is in possession of material, non-public information which would impact the value of the security, or communicating to customers or other persons bona fide information not generally available to the public that may be used in the person's decision to buy, sell, or hold a security. ( )

**31. Contradictory Recommendations.** In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstance of each investor. ( )

**32. Prospectus Delivery.** Failure to comply with any prospectus delivery requirement promulgated under federal law. ( )

**33. Penny Stock Sales.** Effect any transaction in, or to induce or attempt to induce the purchase or sale of, any penny stock by any customer except in accordance with the requirements as set forth in the 1934 Securities Exchange Act, Section 15(h) and the rules and regulations prescribed thereunder. ( )

**34. Misrepresentations Concerning Advisory Services.** To misrepresent to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative or any employee of the investment adviser, or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading. ( )

**35. Unreasonable Advisory Fees.** Charging a client an unreasonable advisory fee. ( )

**36. Conflicts of Interest.** Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including: ( )

**a.** Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; ~~and or~~ (3-23-22)( )

**b.** Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees. ( )

**37. Guaranteeing Specific Results.** Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered. ( )

**38. Advertising.** Publishing, circulating, or distributing any advertisement that does not comply with 17 CFR 275.206(4)-1 under the Investment Advisers Act of 1940. ( )

**39. Disclosure of Private Information.** Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client. ( )

**40. Advisory Contract Disclosures.** Entering into, extending, or renewing any investment advisory contract unless such contract is in writing and discloses, in substance the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of

contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the written consent of the other party to the contract. (3-23-22)( )

**41. Protection of Non-Public Information.** Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information, or that are contrary to the provisions of Section 204A, and rules associated with it, of the Investment Advisers Act of 1940. ( )

**42. ~~Advisory Contract to Comply with~~ Waiver of State or Federal Law Prohibited.** To indicate, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of the Act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215, and rules associated with it, of the Investment Advisers Act of 1940. (3-23-22)( )

**43. ~~Waiver of State or Federal Law Prohibited.~~** Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contrary to the provisions and associated rules of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940. (3-23-22)

**44.3. Fraudulent, Deceptive or Manipulative Acts.** Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contrary to the provisions and associated rules of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940. ( )

**45.4. Outside Business Activities - Selling Away.** Any agent or investment adviser representative associated with a broker-dealer or investment adviser registered under the Act shall not engage in business activities, for which he receives compensation either directly or indirectly, outside the scope of his regular employment unless he has provided prior written notice to his employer firm. ( )

**46.5. Third Party Conduct.** Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Act or any rules thereunder, or engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein shall apply to investment advisers and federal covered advisers, to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). ( )

**47.6. Misleading Filings.** For purposes of Section 30-14-505, Idaho Code, the term “proceeding” includes, but is not limited to, any investigation, examination or other inquiry initiated by the Department. ( )

## **105. SUPERVISION OF AGENTS, INVESTMENT ADVISER REPRESENTATIVES AND EMPLOYEES.**

**01. Supervision Required.** Every broker-dealer, investment adviser, and designated supervisor shall exercise diligent supervision over the securities activities of all of his agents, investment adviser representatives and employees. ( )

**02. Broker-Dealer Procedures.** Every agent and employee of the broker-dealer shall be subject to the supervision of a supervisor designated by such broker-dealer. The supervisor may be the broker-dealer in the case of a sole proprietor, or a partner, officer, office manager, or any other qualified person. ( )

**03. Written Compliance Procedure.** Every broker-dealer shall establish, maintain and enforce written procedures and keep a copy in each business office, that set forth the procedures adopted by the broker-dealer to comply with the following duties imposed by this rule, and state at which business office or offices the broker-dealer keeps and maintains the records required by Section 30-14-411, Idaho Code: ( )

**a.** The review and written approval by the designated supervisor of the opening of each new customer account; ( )

**b.** The frequent examination of all customer accounts to detect and prevent irregularities or abuses, including a review for churning and switching of securities in customers' accounts, as well as unsuitable recommendations and sales of unregistered securities; ( )

**c.** The prompt review and written approval by the designated supervisor of all securities transactions and all correspondence pertaining to the solicitation or execution of all securities transactions; ( )

**d.** The review of back office operations, i.e., all systems and procedures, including the currency and accuracy of books and records, the status and causes of "Fails to Receive" and "Fails to Deliver." net capital, credit extensions and financial reports; ( )

**e.** The review of form, content and filing of all correspondence related in any way to the purchase or sale or solicitation for the purchase or sale of securities; ( )

**f.** The review and written approval by the designated supervisor of the delegation by any customer of discretionary authority with respect to his account to a stated agent or associate of the broker-dealer and the prompt written approval of each discretionary order entered on behalf of that account; and ( )

**g.** The prompt review and written approval of the handling of all customer complaints. As used in these rules, "complaint" is considered to be any written statement by a customer or by any person acting for a customer which complains about the activities of the broker-dealer, agent or associate in connection with the solicitation or execution of a transaction or the disposition of funds of that customer. ( )

**04. Investment Adviser Procedures.** Every investment adviser shall establish, maintain and enforce written procedures and keep a copy in each business office, that set forth procedures reasonably designed to prevent violation of the Idaho Uniform Securities Act and Rules and comply with the following duties as applicable to the business of the investment adviser: ( )

**a.** The review and written approval by the designated supervisor of the opening of each new customer account; ( )

**b.** The frequent examination of all customer accounts to detect and prevent irregularities or abuses, including a review for unsuitable recommendations and recommendations of unregistered securities; ( )

**c.** The prompt review and written approval by the designated supervisor of all securities recommendations and all correspondence pertaining to the solicitation or execution of all securities recommendations; ( )

**d.** The review of form, content and filing of all correspondence related in any way to the recommendation of the purchase of any securities; ( )

**e.** The prompt review and written approval of the handling of all customer complaints. As used in these rules, a "complaint" is considered to be any written statement by a customer, or by any person acting for a customer, questioning the activities of the investment adviser or representative in connection with recommendations concerning, or disposition of, funds in the account. ( )

**106. -- 999. (RESERVED)**

## IDAPA 12 – IDAHO DEPARTMENT OF FINANCE

### 12.01.10 – RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

#### DOCKET NO. 12-0110-2301 (ZBR CHAPTER REWRITE)

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 26-31-103, 26-31-204, and 26-31-302, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 260 - 263](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

Does not apply to this rulemaking.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rulemaking will not impact the state General Fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Anthony Polidori at (208)-332-8060.

DATED this 21st of November, 2023.

Anthony Polidori  
Deputy Director  
Idaho Department of Finance  
11341 West Chinden Blvd., Suite A300  
Boise, ID 83714  
Phone: (208) 332-8060

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 26-31-103, 26-31-204, and 26-31-302, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023. The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking was conducted pursuant to the [Executive Order 2020-01](#), “Zero-Based Rulemaking”, for the purpose of engaging in a thorough retrospective review of the cost and benefit of an existing rule. As a result, the proposed changes reduce regulatory burden by removing outdated requirements.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: This rulemaking will not impact the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 2023 Idaho Administrative Bulletin, [Volume 23-8, pages 12 and 13](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Idaho Code § 26-31-102 defines Regulations X and Z, the Real Estate Settlement Procedures Act, and the Truth in Lending Act for incorporation into the Idaho Residential Mortgage Practices Act and Idaho Mortgage Rules pursuant to that Act. This proposed rule promotes consistency in state and federal mortgage-related laws so that Idaho mortgage licensees are not faced with an untenable requirement of complying with conflicting state and federal laws.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Anthony Polidori at (208)-332-8060.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2023.

DATED this 1st day of September, 2023.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 12-0110-2301**

**12.01.10 – RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT**

**000. LEGAL AUTHORITY.**

This chapter is promulgated pursuant to Sections 26-31-103, 26-31-204(5), 26-31-302(1)(a), and 26-31-302(2), Idaho Code. ( )

**001. SCOPE.**

These rules interpret the Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. ( )

**002. -- 004. (RESERVED)**

**005. INCORPORATION BY REFERENCE.**

For the purposes of the Act and these rules the full text of the following are incorporated by reference: ( )

**01. The Real Estate Settlement Procedures Act.** As set forth in 12 U.S.C. 2601, et seq., as amended to and including January 1, 2024. The Real Estate Settlement Procedures Act is available for viewing online at: <https://www.govinfo.gov/content/pkg/USCODE-2021-title12/pdf/USCODE-2021-title12-chap27.pdf>. ( )

**02. Regulation X.** As issued by the federal Bureau of Consumer Financial Protection and codified at 12 CFR 1024, et seq., as amended to and including January 1, 2024. Regulation X is available for viewing online at: <https://www.ecfr.gov/current/title-12/chapter-X/part-1024>. ( )

**03. The Truth in Lending Act.** As set forth in 15 U.S.C. 1601, et seq., as amended to and including January 1, 2024. The Truth in Lending Act is available for viewing online at: <https://www.govinfo.gov/content/pkg/USCODE-2021-title15/pdf/USCODE-2021-title15-chap41-subchapI.pdf>. ( )

**04. Regulation Z.** As issued by the federal Bureau of Consumer Financial Protection and codified at 12 CFR 1026, et seq., as amended to and including January 1, 2024. Regulation Z is available for viewing online at: <https://www.ecfr.gov/current/title-12/chapter-X/part-1026>. ( )

**05. Availability of Documents.** Unless otherwise available, the documents incorporated by reference may be viewed at the central office of the Idaho Department of Finance. ( )

**006. DEFINITIONS.**

In addition to the terms defined in the Idaho Residential Mortgage Practices Act, the following definitions apply: ( )

**01. Advertising.** Advertising means making or permitting to be made any oral, written, graphic or pictorial statements, in any manner, in the course of the solicitation of business authorized under the Act. ( )

**02. Application.** In relation to a “residential mortgage loan” or “loan modification” as defined in the Act, an “application” means a request for a residential mortgage loan or loan modification and any form or document representing such request. The term “application” does not include the processing of such request. ( )

**03. Closing.** The process of executing legally binding documents regarding a lien on property that is subject to a residential mortgage loan and includes the day agreed upon by a borrower and a covered person to complete such process. ( )

**04. Covered Person.** A person who has been issued a license, pursuant to the Act, or a person required to be licensed under the Act. ( )

**007. -- 049. (RESERVED)**

**050. WRITTEN DISCLOSURES.**

**01. Loan Modification Confirmation.** Within three (3) business days, including Saturdays, of receipt of a notice from a creditor or its agent of a loan modification offer, a covered person shall deliver or send by first-class mail to the borrower a written confirmation of the terms of the loan modification offer. Such confirmation shall include information regarding proposed rates, payments, and loan balance. ( )

**051. RESTRICTIONS ON FEES.**

If a covered person imposes fees authorized by Section 26-31-210 of the Act, the following restrictions apply, subject to the Director's authority to set limits on fees and charges pursuant to Section 26-31-204(6) of the Act: ( )

**01. Application Fee.** An application fee shall include only the actual costs incurred by a covered person in connection with the taking of an application and transcribing application information. ( )

**02. Cancellation Fee.** A cancellation fee may only be charged at the time of, or subsequent to, a request or instruction by a borrower to a covered person to cancel a request for services authorized under the Act. Such fee must bear a reasonable relationship to the actual costs incurred by the covered person for services provided to a borrower up to the borrower's request or instruction to cancel the request for services. A cancellation fee must comply with the requirements of Regulation Z, when applicable. ( )

**052. -- 059. (RESERVED)**

**060. PROHIBITED PRACTICES.**

It is a prohibited practice for any covered person in connection with offering or providing services authorized under the Act, to: ( )

**01. Fail to Disburse Funds Timely.** Fail to disburse funds in a timely manner, in accordance with any commitment or agreement with the borrower, either directly or through a mortgage broker: ( )

**a.** Either immediately upon closing of the loan in the case of a purchase/sale transaction; or ( )

**b.** Immediately upon expiration of the three (3) day rescission period in the case of a refinancing, or taking of a junior mortgage on the existing residence of the borrower. ( )

**c.** For the purposes of this Subsection, the term "immediately" represents a period of time no greater than seventy-two (72) hours. ( )

**02. Fail to Provide Reasonable Opportunity for Document Review.** Fail to give the borrower, upon the borrower's verbal or written request, a reasonable opportunity of at least twenty-four (24) hours prior to closing to review every document to be signed or acknowledged by the borrower for the purpose of obtaining a residential mortgage loan, and every document that is required pursuant to these rules, and other applicable laws, rules or regulations. ( )

**03. Require Excessive Insurance.** Require a borrower to obtain or maintain fire insurance or other hazard insurance in an amount that exceeds the replacement value of the improvements to the real estate. ( )

**04. Engage in Deceptive Advertising.** Engage in any deceptive advertising, including: ( )

**a.** Engaging in bait and switch advertising or misrepresenting, directly or indirectly, the terms, conditions or charges incident to services authorized under the Act. Bait and switch advertising, for the purposes of these rules, means advertising services without the intent to provide them but, rather, to lure a person into making an application for services and then switch the person from obtaining the advertised services to other or different services on a basis more advantageous to the covered person. ( )

**b.** Advertising or soliciting in a manner that has the effect of misleading a person to believe that the advertisement or solicitation is from a person's current mortgage holder, a government agency, or that an offer is a limited opportunity, when such is not the case. ( )

**061. -- 999. (RESERVED)**



[Agency redlined courtesy copy]

## 12.01.10 – RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

### 000. LEGAL AUTHORITY.

This chapter is promulgated pursuant to Sections 26-31-103, 26-31-204(5), 26-31-302(1)(a), and 26-31-302(2), Idaho Code. ( )

### 001. SCOPE.

These rules interpret the Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. ( )

### 002. -- 004. (RESERVED)

### 005. INCORPORATION BY REFERENCE.

For the purposes of the Act and these rules the full text of the following are incorporated by reference: ( )

**01. The Real Estate Settlement Procedures Act.** As set forth in 12 U.S.C. 2601, et seq., as amended to and including January 1, ~~2020~~ 2024. The Real Estate Settlement Procedures Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title12/html/USCODE-2016-title12-chap27.htm> <https://www.govinfo.gov/content/pkg/USCODE-2021-title12/pdf/USCODE-2021-title12-chap27.pdf>. (3-31-22)( )

**02. Regulation X.** As issued by the federal Bureau of Consumer Financial Protection and codified at 12 CFR 1024, et seq., as amended to and including January 1, ~~2020~~ 2024. Regulation X is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/CFR-2018-title12-vol8/xml/CFR-2018-title12-vol8-part1024.xml> <https://www.ecfr.gov/current/title-12/chapter-X/part-1024>. (3-31-22)( )

**03. The Truth in Lending Act.** As set forth in 15 U.S.C. 1601, et seq., as amended to and including January 1, ~~2020~~ 2024. The Truth in Lending Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41.htm> <https://www.govinfo.gov/content/pkg/USCODE-2021-title15/pdf/USCODE-2021-title15-chap41-subchapI.pdf>. (3-31-22)( )

**04. Regulation Z.** As issued by the federal Bureau of Consumer Financial Protection and codified at 12 CFR 1026, et seq., as amended to and including January 1, ~~2020~~ 2024. Regulation Z is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/CFR-2018-title12-vol9/xml/CFR-2018-title12-vol9-part1026.xml> <https://www.ecfr.gov/current/title-12/chapter-X/part-1026>. (3-31-22)( )

**05. Availability of Documents.** Unless otherwise available, the documents incorporated by reference may be viewed at the central office of the Idaho Department of Finance. ( )

### 006. DEFINITIONS.

In addition to the terms defined in the Idaho Residential Mortgage Practices Act, the following definitions apply: ( )

**01. ~~Act Advertising.~~ ~~The Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code~~ Advertising means making or permitting to be made any oral, written, graphic or pictorial statements, in any manner, in the course of the solicitation of business authorized under the Act. (3-31-22)( )**

**02. Application.** In relation to a “residential mortgage loan” or “loan modification” as defined in the Act, an “application” means a request for a residential mortgage loan or loan modification and any form or document representing such request. The term “application” does not include the processing of such request. ( )

**03. Closing.** The process of executing legally binding documents regarding a lien on property that is subject to a residential mortgage loan and includes the day agreed upon by a borrower and a covered person to

complete such process. ( )

**04. Covered Person.** A person who has been issued a license, pursuant to the Act, or a person required to be licensed under the Act. ( )

~~007. — 039. (RESERVED)~~

~~040. DECEPTIVE ADVERTISING.~~

~~01. Advertising.~~ Advertising means making or permitting to be made any oral, written, graphic or pictorial statements, in any manner, in the course of the solicitation of business authorized under the Act. Deceptive advertising is defined to include the following practices by a covered person: (3-31-22)

~~a. Advertising without clearly and conspicuously disclosing the business name and unique identifier assigned by the Nationwide Mortgage Licensing System and Registry (NMLSR) to the covered person. (3-31-22)~~

~~b. Engaging in bait and switch advertising or misrepresenting, directly or indirectly, the terms, conditions or charges incident to services authorized under the Act. Bait and switch advertising, for the purposes of these rules, means advertising services without the intent to provide them but, rather, to lure a person into making an application for services and then switch the person from obtaining the advertised services to other or different services on a basis more advantageous to the covered person. (3-31-22)~~

~~e. Using an address in advertising at which the covered person conducts no mortgage brokering, mortgage lending, or mortgage loan origination activities or for which the covered person does not hold a license. (3-31-22)~~

~~d. Advertising or soliciting in a manner that has the effect of misleading a person to believe that the advertisement or solicitation is from a person's current mortgage holder, a government agency, or that an offer is a limited opportunity, when such is not the case. (3-31-22)~~

~~041.07. -- 049. (RESERVED)~~

**050. WRITTEN DISCLOSURES.**

~~01. Receipt of an Application.~~ Upon receipt of an application as defined in Subsection 006.02 of these rules, and before receipt of any moneys from a borrower, a covered person shall make available to each borrower information, in a manner acceptable to the Director, about the services authorized under the Act that he may provide to a borrower. (3-31-22)

**021. Loan Modification Confirmation.** Within three (3) business days, including Saturdays, of receipt of a notice from a creditor or its agent of a loan modification offer, a covered person shall deliver or send by first-class mail to the borrower a written confirmation of the terms of the loan modification offer. Such confirmation shall include information regarding proposed rates, payments, and loan balance. ( )

**051. RESTRICTIONS ON FEES.**

If a covered person imposes fees authorized by Section 26-31-210 of the Act, the following restrictions apply, subject to the Director's authority to set limits on fees and charges pursuant to Section 26-31-204(6) of the Act: ( )

**01. Application Fee.** An application fee shall include only the actual costs incurred by a covered person in connection with the taking of an application and transcribing application information. ( )

**02. Cancellation Fee.** A cancellation fee may only be charged at the time of, or subsequent to, a request or instruction by a borrower to a covered person to cancel a request for services authorized under the Act. Such fee must bear a reasonable relationship to the actual costs incurred by the covered person for services provided to a borrower up to the borrower's request or instruction to cancel the request for services. A cancellation fee must comply with the requirements of Regulation Z, when applicable. ( )

052. -- 059. (RESERVED)

**060. PROHIBITED PRACTICES.**

It is a prohibited practice for any covered person in connection with offering or providing services authorized under the Act, to: ( )

**01. Fail to Disburse Funds Timely.** Fail to disburse funds in a timely manner, in accordance with any commitment or agreement with the borrower, either directly or through a mortgage broker: ( )

**a.** Either immediately upon closing of the loan in the case of a purchase/sale transaction; or ( )

**b.** Immediately upon expiration of the three (3) day rescission period in the case of a refinancing, or taking of a junior mortgage on the existing residence of the borrower. ( )

**c.** For the purposes of this Subsection, the term “immediately” represents a period of time no greater than seventy-two (72) hours. ( )

**02. Fail to Provide Reasonable Opportunity for Document Review.** Fail to give the borrower, upon the borrower’s verbal or written request, a reasonable opportunity of at least twenty-four (24) hours prior to closing to review every document to be signed or acknowledged by the borrower for the purpose of obtaining a residential mortgage loan, and every document that is required pursuant to these rules, and other applicable laws, rules or regulations. ( )

**03. Require Excessive Insurance.** Require a borrower to obtain or maintain fire insurance or other hazard insurance in an amount that exceeds the replacement value of the improvements to the real estate. ( )

**04. Engage in Deceptive Advertising.** Engage in any deceptive advertising ~~as set forth in Section 040 of these rules, including:~~ as set forth in Section 040 (3-31-22)( )

**a.** Engaging in bait and switch advertising or misrepresenting, directly or indirectly, the terms, conditions or charges incident to services authorized under the Act. Bait and switch advertising, for the purposes of these rules, means advertising services without the intent to provide them but, rather, to lure a person into making an application for services and then switch the person from obtaining the advertised services to other or different services on a basis more advantageous to the covered person. ( )

**b.** Advertising or soliciting in a manner that has the effect of misleading a person to believe that the advertisement or solicitation is from a person’s current mortgage holder, a government agency, or that an offer is a limited opportunity, when such is not the case. ( )

~~061. -- 089.~~ (RESERVED)

~~**090. BORROWERS UNABLE TO OBTAIN LOANS.**~~

~~If, for any reason, a covered person fails to obtain a residential mortgage loan for a borrower that is satisfactory to the borrower, and the borrower has paid for an appraisal, the covered person shall provide a copy of the appraisal to the borrower and transmit and assign original appraisal reports, along with any other documents provided by the borrower, to any other person to whom the borrower directs that the documents be transmitted. The covered person shall provide such copies or transmit such documents within three (3) business days after the borrower makes the request in writing.~~ (3-31-22)

~~091.~~ **61.** -- 999. (RESERVED)

**IDAPA 15 – OFFICE OF THE GOVERNOR  
DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION**

**15.04.01 – RULES OF THE DIVISION OF HUMAN RESOURCES  
AND IDAHO PERSONNEL COMMISSION**

**DOCKET NO. 15-0401-2301 (ZBR CHAPTER REWRITE)**

**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the First Regular Session of the Sixty-eighth Idaho Legislature.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 67-5308 and 67-5309, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

Under [Executive Order 2020-01, Zero-Based Regulation](#), the Division of Human Resources is striving to prevent the accumulation of costly, ineffective, and/or outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. The proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter and to use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and Executive Order 2020-01.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10 pages 294-331](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: N/A.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact: Michelle Peugh, Policy Bureau Chief, at (208) 334-2263, [Michelle.Peugh@dhr.idaho.gov](mailto:Michelle.Peugh@dhr.idaho.gov).

DATED this 13th day of November, 2023.

Janelle White  
Interim Administrator  
304 North 8th Street  
P.O. Box 83720  
Boise, Idaho 83720-0066  
[Janelle.White@dhr.idaho.gov](mailto:Janelle.White@dhr.idaho.gov)  
Phone: (208) 334-2263

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-5308 and 67-5309, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Under [Executive Order 2020-01, Zero-Based Regulation](#), the Division of Human Resources is striving to prevent the accumulation of costly, ineffective, and/or outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. The proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter and to use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and Executive Order 2020-01.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 2, 2023 Idaho Administrative Bulletin, [Vol. 23-8, Pages 14-15](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Michelle Peugh, Bureau Chief, 208-854-3073.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2023.

DATED this 31st day of August, 2023.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 15-0401-2301**

15.04.01 – RULES OF THE DIVISION OF HUMAN RESOURCES  
AND IDAHO PERSONNEL COMMISSION

**000. LEGAL AUTHORITY.**

Section 67-5309, Idaho Code. ( )

**001. SCOPE**

These rules establish the policies and procedures of the Idaho Personnel System. ( )

**002. -- 005. (RESERVED)**

**006. WAIVER OF RULES.**

The administrator reserves the right to waive any rule in specific instances when, in his/her opinion, such waivers are legal, warranted and justified in the interests of a more effective and responsive system of personnel administration. ( )

**007. -- 008. (RESERVED)**

**009. DEFINITION.**

Each of the terms defined in these rules have the meaning given herein unless a different meaning is clearly required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. ( )

**01. Administrative Leave.** Temporary paid leave from a job assignment where pay and benefits remain intact. ( )

**02. Appeal.** Any written request for relief from dismissal, demotion, suspension, or other adverse action filed with the Commission by an employee, appointing authority, or applicant. The meaning of appeal includes application, petition, or protest. ( )

**03. Appellant.** An employee, appointing authority, or applicant filing an appeal or a petition for review with the Commission. ( )

**04. Appointment, Limited.** The appointment of a person to a classified position where the work is projected to be of limited duration, for which the person has qualified by examination. ( )

**05. Appointment, Permanent.** The appointment of a person to a classified position who has been certified by the appointing authority to have successfully completed the required probationary period and whose employment is permanent, subject to removal or discipline only under the provisions of Title 67, Chapter 53, Idaho Code, and the rules of the Division and Idaho Personnel Commission. ( )

**06. Appointment, Probationary.** The appointment of a person to a classified position for which the person has qualified by examination but is serving a work trial period as a condition for certification to permanent appointment. ( )

**07. Base Pay.** The rate paid for performing a job, excluding bonuses, shift differentials, overtime or other compensation premiums. ( )

**08. Classified Service.** That body of positions in state agencies subject to Title 67, Chapter 53, Idaho Code, as defined therein and excludes temporary, and nonclassified appointments. ( )

**09. Compensation Plan.** The overall system of salary administration for classified service including Sections 67-5309B and 67-5309C, Idaho Code; the classification and compensation schedules, Division and Idaho Personnel Commission rules and policies, and agency policies governing employee pay. ( )

10. **Compensation Schedule.** The pay grades established by the Division and associated rates of pay. ( )
11. **Consultant.** An independent contractor who provides professional or technical advice, counsel, or service. ( )
12. **Dismissal.** The separation of an employee from classified service with cause assigned by the appointing authority pursuant to Rule 190. ( )
13. **Division.** The Idaho Division of Human Resources. ( )
14. **Due Process.** As related to Idaho's Personnel System for permanent classified employees, the activities required to address an individual's constitutional right to notice and an opportunity to be heard. (Ref. Section 67-5315, Idaho Code) ( )
15. **Employment History.** The information available to the public without the employee's consent in accordance with Section 74-106, Idaho Code, for every agency for which a current or former public official works, including the official reasons for separation from employment but not including accrued leave balances or usage. ( )
16. **Good Cause.** The conduct of a reasonable person in the same or similar circumstances. ( )
17. **Hay Method.** A methodology for establishing the relative value of jobs and used as a dimension of the pay system. ( )
18. **Hiring List.** A hiring list is a subset of a register consisting of the top twenty-five (25) individuals on the register, plus all individuals tied for the twenty-fifth position, certified as eligible for a specific recruitment. Candidates for reinstatement or transfer may be considered and are provided in addition to the top twenty-five (25). ( )
19. **Incumbent.** Any person holding a classified or non-classified position in state service. ( )
20. **Involuntary Transfer.** A significant change in work location, shift and/or organizational unit made as a result of a management decision as opposed to an employee's request or agreement to transfer. ( )
21. **Layoff.** An involuntary reduction in hours of work or separation of an incumbent in the classified service either by reduction in force due to shortage of work or funds, or abolishment of positions. ( )
22. **Light or Limited Duty.** A general term describing a temporary limited assignment in relation to recovery from injury, illness or other limiting condition as approved by the appointing authority. ( )
23. **Merit Increase.** The advancement of an employee's compensation within a pay grade based upon performance in accordance with Section 67-5309B(3) and (4), Idaho Code. ( )
24. **Merit Increase Matrix.** A pay distribution tool used to advance employee pay based on performance and market data. ( )
25. **Minimum Qualification Specialty.** A minimum qualification required for one (1) or more positions in a classification that is in addition to the other minimum qualifications required for all positions in the classification. ( )
26. **On-Call Time.** Time when an employee is required to be available if called upon by their agency during hours that are outside of their normally defined work schedule. ( )
27. **Pay Line Exception.** A temporary assignment of pay grade, pursuant to Section 67-5309D, Idaho Code, in excess of the pay grade allocated pursuant to Section 67-5309B, Idaho Code, as approved by the administrator. ( )

**28. Permanent Employee.** An employee in the classified service who has successfully completed entrance probation. Permanent employees remain subject to separation as set forth in these rules and Section 67-5309(n), Idaho Code. ( )

**29. Promotion.** The advancement through the competitive process of an employee with permanent status from a position which he occupies in one (1) classification to a position in another classification having a higher paygrade. ( )

**30. Reduction in Pay.** A reduction of an employee's salary from one (1) pay rate to a lower rate within the pay grade to which the employee's classification is allocated. ( )

**31. Register.** A list of names of persons or the name of one (1) person who has been determined to be eligible for employment in a classification on the basis of examination and merit factors as established by the administrator. ( )

**32. Resignation.** The voluntary quitting or abandonment of state employment, excluding retirement. ( )

**33. Respondent.** The party whose interests are adverse to those of the appellant. ( )

**34. Salary Equity Increase.** The advancement of an employee's compensation within a pay grade based upon factors such as market demand, compression within the agency or classification, or inequities. ( )

**35. Suspension.** An enforced period of absence, with or without pay, for disciplinary purposes, for felony charges, or pending investigation of charges made against an employee pursuant to Rule 190. ( )

**36. Termination.** The separation of an entrance or voluntary probationary employee from classified service for unsatisfactory service during the probationary period without cause assigned by the appointing authority pursuant to Rule 152. ( )

**37. Transfer.** A change of work location of an employee in which the employee changes from one (1) position to another in the same classification or to another classification in the same pay grade. ( )

**38. Underfill.** Administrator-approved appointment to a position established at a higher classification while being compensated at a lower pay grade during completion of a training plan. ( )

**39. USERRA.** Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. Sections 4301 through 4333. Prohibits employment discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services. ( )

**40. Workweek.** A period of seven (7) consecutive days beginning 12:01 a.m. Sunday. ( )

**010. -- 019. (RESERVED)**

**020. BASIC MERIT AND SALARY REQUIREMENTS OF THE PERSONNEL SYSTEM.**

All appointments, promotions and separations in the classified service shall be based on competence, valid job requirements, and individual performance. ( )

**01. Examinations.** Examinations shall be designed to evaluate factors pertinent to an individual's ability to perform competently the duties of the classification. ( )

**a. Content of Examinations.** Examinations may include any questions, tests or criteria designed to evaluate the suitability of applicants for job openings within a classification. ( )

**b. Job Analysis and Confidentiality.** No information concerning the specific content of the examination will be divulged to unauthorized personnel by the Division or other personnel who have access to the



examinations. ( )

**02. Eligible Candidates.** The appointing authority shall make a selection from a hiring list containing eligible candidates. ( )

**a. Failing Score.** Failure in any part of the examination may disqualify an applicant in the entire examination and from having his name placed on the hiring list. ( )

**03. Authorized Pay Rates.** No employee in the state classified service will be paid at a rate less than the minimum nor greater than the maximum rate of the pay grade assigned to the classification. ( )

**a. Payline Exceptions.** Temporary assignments to a new pay grade may be made by the administrator. Such assignments apply to an entire classification for the purpose of recruitment or retention and will be reviewed annually to determine the need for continuance. ( )

**b. Salary Equity Increases.** An appointing authority may, with approval by the administrator, advance an employee's salary within a pay grade based upon factors such as market demand, to address compression within an agency or classification, or inequities. ( )

**c. Salary Upon Transfer.** A transfer between agencies in the same classification or one of equal pay grade does not require a change in the employee's salary, but a lower or higher rate may be negotiated between the employee and the appointing authority. If the transfer is to a classification of lower pay grade (demotion), the employee's salary is negotiable between the employee and appointing authority within the lower pay grade. ( )

**d. Salary Upon Reinstatement.** Unless related to reemployment after a layoff, the salary of a reinstated employee is negotiable between the employee and appointing authority in the current pay grade for the classification in which the employee has reinstatement privileges. ( )

**e. Salary After Reappointment from Layoff.** Employees appointed by the agency that laid them off will be paid in the current pay grade for the classification to which reappointed or at the same payrate the employee received immediately preceding layoff, whichever is greater, but not to exceed the maximum of the current pay grade. ( )

**f. Salary Upon Return from Military Duty.** An employee who returns to state service from active military duty in accordance with the provisions of Section 65-508, Idaho code, and USERRA will be paid at a comparable rate in the current pay grade for the classification to which they were assigned prior to leaving for military service. ( )

**g. Reduction of Salary.** The salary of an employee receiving more than the lowest rate of the pay grade for his classification may be reduced to a lower rate within the pay grade by the appointing authority for disciplinary reasons enumerated in Rule 190. ( )

**021. BASIC REQUIREMENTS FOR VETERANS AND MILITARY PERSONNEL.**

**01. Application by Military Personnel.** An application will be accepted after the closing date of the announcement from a person who was serving in the armed forces or undergoing service-connected hospitalization of no more than one (1) year following discharge, during any period in which the announcement was open. The application must be submitted within one hundred twenty (120) days of the applicant's separation from the armed forces or hospitalization and prior to the expiration of the register established as a result of an examination. ( )

**02. Return from Military Duty.** An employee returning from military leave without pay who is relieved or discharged from military duty under conditions other than dishonorable will be, upon application, reinstated in his former position, or one of comparable classification, without loss of credited state service, status, or pay as prescribed by Sections 46-216, 65-508, and 65-511, Idaho Code, USERRA, or the Military Selective Service Act, Title 38, Chapter 43, U.S. Code. Application for reemployment must be made in accordance with the provisions of USERRA. ( )

**03. Application by Disabled Veterans.** A disabled veteran may file an application at any time up until a selection for any classification for which the Division maintains a register as a source for future job openings or for which a register is about to be established, provided the veteran has not already been examined twice for the same classification, does not have current eligibility on that register, or is not serving in a competitive position in the same pay grade as the classification for which application is made. ( )

**04. Veterans' Preference Points.** ( )

**a.** Veterans' and disabled veterans' preference points must not be used to achieve a passing score. ( )

**b.** Veterans' and disabled veterans' preference points, when applicable under state law, will be added to the final score achieved in the examinations. Five (5) points will be added to the earned rating of any veteran, as defined in Section 65-203, Idaho Code, and the widow or widower of any veteran, as defined in Section 65-203, Idaho Code, as long as the widow or widower remains unmarried. ( )

**c.** Disabled veterans', Purple Heart recipients, spouses of any eligible disabled veterans who cannot qualify for any public employment because of a service-connected disability, and unmarried widows or widowers of disabled veterans entitled to ten (10) point preference will be placed on the open-competitive register in order of their final score on the examination augmented by preference points. ( )

**d.** Disabled veterans who have a current service-connected disability of thirty percent (30%) or more will be offered an interview when their final score places them on the hiring list. If more than ten (10) disabled veterans with a disability rating of thirty percent (30%) or more place on a hiring list, at least ten (10) will be offered an interview. ( )

**022. NEPOTISM.**

No employee shall work under the immediate supervision of a supervisor who is a spouse, child, parent, brother, sister or the same relation by marriage. ( )

**023. DUAL EMPLOYMENT.**

There will be no conflicting hours of work when a classified employee is employed by more than one (1) state agency. The employee must obtain approval from all appointing authorities concerned prior to beginning dual employment. ( )

**024. -- 059. (RESERVED)**

**060. ANALYSIS OF CLASSIFICATIONS.**

The Division will assist appointing authorities in the analysis of positions in determining proper classification and, at the determination of the administrator, will conduct independent classification reviews of the various agencies. ( )

**061. AMENDMENT OF CLASSIFICATION SCHEDULE.**

**01. Changes To Classifications.** Whenever it is necessary to establish or delete a classified position or to revise a position's responsibilities, the appointing authority will submit proposed changes to the administrator. ( )

**02. Approval.** Each appointing authority, prior to establishing any new position within the agency, will obtain the approval of the administrator for the classification of such positions and their assignment to a pay grade in the compensation schedule. Approval by the administrator of the Division of Financial Management for sufficiency of funds is also required. ( )

**03. Assignment to Pay Grade Required.** No person will be appointed to, employed in, or paid for services in any classified position until the position has been established, classified, and assigned to a pay grade in accordance with these rules. ( )

**062. APPROVAL OF NEW, REVISED AND DELETED CLASSIFICATIONS.**

**01. New and Refactored Classifications.** New classifications of work and revised classifications require approval by both the administrator and the Division of Financial Management administrator when there is a fiscal impact. ( )

**02. Revised and Deleted Classifications.** Revised classifications with no fiscal impact and classifications deleted from the classification schedule require approval only of the administrator. ( )

**063. ABOLISHMENT OF POSITIONS.**

An appointing authority may abolish a position for reasons of administrative efficiency. Employees to be separated as a result shall have layoff and reemployment preference in accordance with Rules 140 through 147. ( )

**064. RECLASSIFICATION OF POSITIONS.**

**01. Procedure.** Positions may be reclassified in the same pay grade, upward, or downward as determined by an analysis by the Division of the duties and responsibilities assigned by appointing authorities to specific positions. An incumbent occupying a reclassified position shall be properly classified by an appointing authority. ( )

**02. Effective Date.** Reclassifications of positions are not effective until they are approved by the administrator, but may be retroactive to the beginning of the pay period during which approval is granted. Reclassification of an employee may not precede the effective date of the reclassification of the position. ( )

**065. (RESERVED)**

**066. COMPENSATION SURVEYS.**

**01. Salary Surveys.** The Division will conduct or approve salary surveys, to determine salary ranges that represent labor market average rates for Hay point factored positions in classified service. ( )

**02. Relevant Labor Markets.** Labor markets used for wage comparison will be based on recruiting markets for specific job classifications. Consultation with various appointing authorities will also contribute to labor market determination. ( )

**067. CALCULATION OF PAY.**

**01. Standard Calculation of Pay.** For other than police, correctional officers, or fire employees, pay is calculated in the following order: ( )

- a. Holiday pay; ( )
- b. All hours worked on a holiday as overtime; ( )
- c. All hours worked over forty (40) in the workweek as overtime, excluding occasional or sporadic work; ( )
- d. Vacation, sick and other paid or unpaid leaves; and ( )
- e. All remaining hours worked at the employee's regular rate of pay. ( )

**02. Shift Differential.** Additional compensation paid to employees (including temporary or part-time employees) who work specific, designated hours. Shift differential is paid in addition to any other compensation. Shift differential may be awarded in amounts up to and including twenty-five percent (25%) of hourly rates, based on local market practice for similar jobs. ( )

**068. -- 079. (RESERVED)**

**080. METHODS OF RECRUITMENT.**

For the purpose of establishing eligibility registers, there are three (3) methods of recruitment: open competitive, agency promotional, or statewide promotional. ( )

**081. -- 118. (RESERVED)**

**119. LIMITED SERVICE APPOINTMENTS.**

**01. Designation.** Classified positions expected to be of limited duration due to funding or nature of the position or project must be identified and designated in advance of announcement. ( )

**02. Permanent Status and Expedited Layoff.** Employees appointed under limited-service appointments have permanent classified status after successful completion of probation. These employees have the same rights and responsibilities as other permanent employees but may be subject to expedited layoff ( )

**03. Limited Service Agreement.** Appointing authorities making limited-service appointments must prepare, no later than the date of appointment, a written agreement for signature of both the employee and appointing authority describing the non-career nature of the appointment, potential for layoff, and the duration the employee may expect to work. Renewals and updated agreements are required every two (2) years. A copy of the agreement must be kept in the employee's personnel file. ( )

**120. SEASONAL APPOINTMENT.**

**01. Employee Rights.** Employees appointed under a seasonal appointment will have all obligations, rights, and privileges of any classified employee except those accorded by Rules 140 through 147, relating to reduction in force. ( )

**121. TEMPORARY APPOINTMENTS (NON-CLASSIFIED).**

**01. Hours Limitation.** Temporary appointments are limited to one thousand three hundred eighty-five (1,385) hours of work in any twelve (12) month period for any one agency. Both calculations begin on the date of the original temporary appointment. ( )

**02. Transition to Classified Service.** Temporary employees who have served at least one thousand forty (1,040) hours of continuous service, may go from temporary status to classified entrance probation status in that same position without further application if the announcement for the temporary position from which the certified register was created indicates that the temporary position has the potential of becoming a permanent classified position. The classified position must be in the same classification and at the same location as announced. ( )

**122. (RESERVED)**

**123. REINSTATEMENTS.**

**01. Eligibility.** A current or former employee will be eligible for reinstatement to a classification in which he held permanent status, or if deleted its successor, or to another classification of equal or lower pay grade under the following conditions. ( )

**a.** Reinstatement is limited to a period equal to the length of the employee's probationary and permanent employment combined. ( )

**b.** The current or former employee must meet the current minimum qualifications of the classification to which reinstatement is desired. ( )

**02. Examination.** A current or former employee may be required to pass an examination for the classification to which reinstatement is desired. ( )

**03. Probationary Period.** An appointing authority may negotiate for a probationary period as a condition of reinstatement except where prohibited.. ( )

**124. TRANSFERS.**

**01. Authority to Transfer.** An appointing authority may transfer an employee at any time from one position to another in the same classification. ( )

**02. Transfer Within Pay Grade.** An appointing authority may transfer an employee from a classification in which he holds permanent status to another classification allocated to the same pay grade for which the employee meets the minimum qualifications. ( )

**03. Probationary Period.** An appointing authority may negotiate with an employee for a probationary period as a condition for a voluntary transfer. ( )

**04. Transfer Between Agencies.** An employee is eligible for transfer between agencies in the same classification in which he holds permanent status or to another classification in the same or lower pay grade for which the employee meets the minimum qualifications. ( )

**125. RESIGNATION.**

**01. Notice.** A classified employee may resign at any time. A resignation is effective at the time designated by the employee, without need for written or advance notice, or acceptance of the resignation by the appointing authority. ( )

**02. Rescission and Reinstatement.** Once an employee has submitted a resignation, reinstatement is in the discretion of the appointing authority as. The appointing authority may but is not required to allow an employee to rescind a resignation prior to its effective date. ( )

**03. Resignation in Lieu of Dismissal.** An employee may resign in lieu of being dismissed for cause. ( )

**126. -- 128. (RESERVED)**

**129. ACTING APPOINTMENT TO A POSITION.**

**01. Conditions for Acting Appointment.** At the discretion of an appointing authority, a classified employee with permanent status may be appointed to a position in a classification of higher pay grade within his own agency in an acting capacity whenever: ( )

**a.** The incumbent of the position in the higher classification is on authorized leave of absence; or ( )

**02. Minimum Qualifications.** To be eligible for an acting appointment, an employee must meet the minimum qualifications of the class. ( )

**130. LIMITATION ON LENGTH OF APPOINTMENT.**

Acting appointments are limited to the period of time necessary to fill the vacancy pursuant to procedures prescribed in these rules but in no case can continue beyond one thousand forty (1,040) hours of credited state service unless specifically extended by the administrator. ( )

**131. SALARY.**

For any credited state service which an employee serves in a classification in an acting capacity, he or she shall receive the salary for the classification as though he or she had actually been promoted. ( )

**132. EXPIRATION OF APPOINTMENT.**

**01. Return of Incumbent.** When the incumbent of the classification returns from leave of absence, or the vacant position is filled, the acting appointment expires. The acting appointee is returned to the class, the pay grade and rate held immediately preceding the acting appointment. ( )

**02. Failure of Incumbent to Return.** Should the employee on leave of absence separate from state service, the employee serving in the acting appointment may continue to serve in that capacity until the vacancy has been filled but in no case exceed the time limits prescribed in Rule 130. ( )

**133. -- 139. (RESERVED)**

**140. REDUCTION IN FORCE.**

**01. Conditions for Layoff.** An appointing authority may lay off an employee whenever necessary due to: shortage of funds or work; reorganization; the end of a limited service appointment; employee's failure to complete interagency promotional probation when demotion options are not available; or abolishment of one (1) or more positions. ( )

**02. Layoff by Position.** Reduction in force must be by classification of position. ( )

**a.** Reduction in force may be limited to or specifically exclude employees appointed under selective certification for bona fide occupational qualifications, or appointed to a classification with minimum qualification specialties. Inclusions or exclusions must include or exclude all incumbents of the classification appointed under similar selective certification, or the same option or minimum qualification specialty and must be approved in advance by the administrator. ( )

**b.** An appointing authority may petition the administrator to exclude an individual from a reduction in force whose retention may be required to meet agency mission critical needs. Requests must provide a documented rationale with exclusions approved in advance by the administrator. ( )

**c.** When a limited service project is completed or funding concluded, the limited service appointee is separated from state service as a layoff. However, limited service appointees have no reemployment preference and will not displace other regular permanent or limited services staff via voluntary demotion in lieu of layoff. ( )

**03. Layoff Unit.** Reduction in force must be agency-wide or by organizational unit designated for layoff purposes. Layoff units are geographic, programmatic, or other identified subdivisions of an agency designated for layoff purposes by the appointing authority. They must be approved by the administrator before the effective date of the layoff. Organizational layoff unit designations must be renewed with a change in appointing authority or administrator. ( )

**04. Reduction of Hours Worked.** An involuntary reduction in the number of hours worked for a selected position constitutes a layoff unless there is an equal reduction of hours worked for all positions in the same classification in the agency or approved layoff unit for a limited period of time, such as a furlough. ( )

**05. Downward Reclass.** A material change in duties of one (1) or more positions resulting in an employee's reclassification to a classification allocated to one (1) pay grade lower does not constitute a layoff. More than one (1) pay grade change downward is considered a layoff, unless the change of duties is disciplinary. ( )

**141. CALCULATION OF RETENTION POINTS.**

There will be an evaluation of all employees in the classification in the agency or organizational unit affected by the reduction in force based on a retention point system. Retention points are derived from experience as described in performance evaluations, classified credited state service, and veterans' preference as described in Rule 141.03. The appointing authority will determine a process for the impartial assessment of evaluations to assign points as follows:

Exemplary Performance	-	.100 points
Solid Sustained Performance	-	.075 points

Achieves Performance Standards	-	.050 points
Does Not Achieve Performance Standards	-	.0 points

( )

**01. No Performance Evaluation on File for a Twelve-Month Period.** All credited state service for which there is no performance evaluation will receive seventy-five thousandths (.075) points per hour. ( )

**02. Calculation of Retention Points Since Last Evaluation.** The most recent performance evaluation should be used to pro-rate retention points when calculating credited state service since that evaluation, unless that evaluation occurred more than two thousand eighty (2,080) hours from the date of calculation. In such cases, points are calculated in conformance with Rule 141.01. ( )

**03. Veterans' Preference.** Veterans as defined in Title 65, Chapter 2, Idaho Code, will receive preference by the addition of retention points equivalent to three (3) years of service at a level that achieves performance standards. ( )

**04. Calculation Date Cutoff.** No points will be calculated for the sixty (60) days prior to the effective date of the layoff. ( )

**05. Audit of Retention Points.** Each employee is entitled to an audit of retention points by an independent auditor designated by the administrator in cases of dispute between the appointing authority and the employee. The request for audit must be filed with the appointing authority within five (5) calendar days of the employee's receipt of layoff notification. The decision of the independent auditor is binding on both parties unless an appeal is filed within thirty-five (35) calendar days from the date of the auditor's notification to the affected parties. ( )

**142. CREDITED STATE SERVICE.**

Eligible credited state service for purposes of Rule 140 is defined as follows: ( )

**01. Service Prior to State Personnel System.** All credited state service prior to the establishment of classified service, Title 67, Chapter 53, Idaho Code. ( )

**143. REDUCTION IN FORCE DETERMINATION AND NOTIFICATION.**

**01. Identification of Classifications.** The appointing authority will identify the classification of positions to be reduced or eliminated. ( )

**02. Calculation of Retention Points.** Retention points will be calculated for all employees assigned to the classification of position including those serving in underfill positions. Retention points need not be calculated where layoff involves a single-incumbent class. ( )

**03. Order of Reduction in Force.** The order of reduction in force will be by type of appointment held by the employee in the affected classification as follows: first to be laid off are the entrance probationary appointees, and then the permanent appointees including those serving a voluntary probation. Employees will be placed on the layoff list beginning with the employee with the highest number of retention points. Employee layoffs will be made from the layoff list in inverse order. When two (2) or more employees have the same combined total of retention points, retention will be determined in the following sequence: ( )

a. The employee with the highest total retention points for the past thirty-six (36) months. ( )

b. Random selection. ( )

**04. Notification to Affected Employees.** Each employee affected will be notified in writing of layoff and the rationale for the decision at least fifteen (15) calendar days prior to the effective date. Notification will include a copy of the agency layoff procedure and a copy of the computation of retention points when required.

( )

**05. Notification to Administrator.** The appointing authority must give written notice of layoff to the administrator at least fifteen (15) calendar days prior to its effective date and must provide a list of persons affected by the layoff with their retention point calculations and must indicate which employees will be laid off. ( )

**144. PLACEMENT ON REGISTER WITH REEMPLOYMENT PREFERENCE.**

A permanent employee laid off from their job or who chooses a voluntary demotion in lieu of a layoff, under these rules shall be placed on their classification's register with reemployment preference. Such placement will be for one (1) year from the effective date of demotion or layoff, or until the employee or former employee declines a total of three (3) separate job offers without good cause, whichever comes first. An employee or former employee may request their name be removed at any time. ( )

**145. USE OF REGISTERS WITH REEMPLOYMENT PREFERENCE.**

**01. Priority for Reemployment by Agency that Conducted the Layoff.** ( )

**a.** The employee who has been laid off will be offered reemployment to a position in the classification from which laid off, before any person outside that agency may be promoted to, transferred to, reinstated or appointed to that classification by an appointing authority of that agency. ( )

**b.** When attempting to fill vacancies for a classification where a lay off occurred, the agency will provide an opportunity to interview and will make their hiring selection from the individuals their agency laid off from the classification, including those separated from state service under Rule 241.02 and those that took a voluntary demotion in lieu of layoff. ( )

**c.** Individuals being returned to the classification from which they were laid off will be reinstated with the same salary, permanent status and their sick leave balance restored. ( )

**02. Consideration for Hire by Other Agencies.** For promotional opportunities individuals who have been laid off must be offered the opportunity to interview. ( )

**03. Employment by Other Agency.** Individuals may be reappointed or reinstated if eligible. The salary of an employee re-hired after a layoff is negotiable between the employee and new appointing authority in the current pay grade for the classification in which the employee is appointed. ( )

**04. Return to Register.** If an individual finds another agency's position unsatisfactory or does not satisfactorily complete a voluntary probation period, he may be placed back on a register for the remainder of their twelve (12) month time frame. Individuals appointed to a position, other than the classification from which laid off, will remain on preference register status for the remainder of the twelve-month (12) period if otherwise eligible. ( )

**146. (RESERVED)**

**147. VOLUNTARY DEMOTION IN LIEU OF LAYOFF.**

Within their layoff unit, an employee with permanent status may choose to accept a voluntary demotion rather than be laid off. Demotion options are limited to a classification in which the employee held permanent status in the agency. Such demotion will not be permitted if it causes the layoff of an employee with greater retention points. ( )

**01. Eligibility.** ( )

**a.** Qualified. Employee must meet the classification's current minimum qualifications and any minimum qualification specialties. ( )

**b.** Exclusion. Limited service appointees are not eligible to take any voluntary demotion that would result in the displacement of other employees. However, voluntary demotions to a vacant position are allowed with the approval of the appointing authority. ( )



**02. Acceptance.** To accept a voluntary demotion rather than a layoff, the employee must notify the appointing authority in writing of their decision no later than three (3) working days after written notification of the layoff and opportunity to demote to a specific position. ( )

**148. -- 149. (RESERVED)**

**150. PROBATIONARY PERIODS.**

**01. Probationary Period Required.** Every appointment and promotion to a classified position is probationary. ( )

**02. Types of Probationary Periods.** The probationary period serves as a working test period to provide the agency an opportunity to evaluate a probationary employee's work performance and suitability for the position. There are three (3) types of probationary periods: ( )

**a.** Entrance probation is the probationary service required of an employee at the time of his original appointment or any subsequent appointment to state classified service excluding reinstatement and transfer, the duration of which is one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who must serve two thousand eighty (2,080) hours. ( )

**b.** Promotional probation is the probationary service required when an employee is promoted, the duration of which is one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who must serve two thousand eighty (2,080) hours. ( )

**c.** Voluntary probation is an agreement between employees and the appointing authority for employment actions such as reinstatement, transfer, or voluntary demotion. The probationary period is negotiable but may not exceed one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who may serve up to two thousand eighty (2,080) hours. ( )

**03. Extension of Probationary Period.** Upon written request demonstrating good cause, the administrator may extend the probationary period of an employee for an additional specified period not to exceed one thousand forty (1,040) hours of credited state service. Extension must occur before an employee has worked one thousand forty (1,040) hours or two thousand eighty (2,080) hours for peace officers. ( )

**04. Interruption of Probationary Period.** The probationary period in any classification must be completed within a single agency uninterrupted by termination or dismissal. An employee who separated during the probationary period must begin a new probationary period upon reappointment or promotion. ( )

**05. Temporary Service Credit.** At the request of the hiring agency, the administrator will allow temporary service time in a given classification to be used toward fulfilling the entrance probationary requirement in that classification as established in Section 67-5309(j), Idaho Code. The temporary duties must be substantially the same as the regular permanent appointment. ( )

**06. Acting Service Credit.** At the request of the hiring agency, the administrator will allow acting appointment service time in a given classification to be used toward fulfilling the promotional probationary requirement in that classification as established in Section 67-5309(j), Idaho Code. The acting appointment duties must be substantially the same as the regular permanent appointment. ( )

**151. SATISFACTORY SERVICE.**

When a probationary employee has satisfactorily served the probationary period hours, the employee will become permanent status. Certification to permanent status is effective one thousand forty (1,040) hours of credited state service after appointment, except that it is effective two thousand eighty (2,080) hours of credited state service after appointment for peace officer classifications unless either period has been extended ( )

**152. SEPARATION DURING PROBATION.**

**01. Notification.** If a probationary employee does not serve satisfactorily, the appointing authority must provide the employee and the Division a performance evaluation indicating unsatisfactory performance. ( )

**02. During Entrance and Voluntary Probation.** ( )

**a.** An employee who does not serve satisfactorily during the entrance or voluntary probation must first be given the opportunity in writing to resign without prejudice; an employee who fails to resign may be terminated without cause assigned and without the right to file for problem-solving or an appeal. ( )

**b.** Notice to the employee of termination for unsatisfactory service must be made at least fifteen (15) calendar days prior to the effective date of termination, unless there are extenuating circumstances. ( )

**153. UNSATISFACTORY PERFORMANCE DURING A PROMOTION PROBATION PERIOD.**

**01. Disciplinary Action.** Regardless of the probation status, when a Rule 190 violation supports demotion, suspension, or dismissal, such action may occur. ( )

**02. During Promotional Probation.** If an employee on promotional probation does not meet performance expectations: ( )

**a.** The employee may voluntarily demote to a vacant position in any classification he or she has held permanent status in state career service. However, the employee must meet the current minimum requirements for that classification. If more than one (1) option exists for demotion, the employee should be placed in the higher paid position, but the specific assignment is up to the appointing authority. ( )

**b.** If no position is available for the voluntary demotion option, the employee may be laid off and may request their name be placed on a register for the classification where they last held permanent status. ( )

**c.** When reinstatement occurs in the classification they promoted from, the employee's name is removed from reemployment required preference status. ( )

**154. FAILURE TO PROVIDE PERFORMANCE EVALUATION.**

If the appointing authority fails to provide a performance evaluation, the employee shall be considered to have satisfactorily completed the probationary period and be certified to permanent status as provided unless the probationary period has been extended by the administrator. ( )

**155. -- 158. (RESERVED)**

**159. STATUS AND TENURE.**

**01. Probationary Promotions.** Employees serving a promotional probationary period have continued permanent status in the classification from which promoted until they are certified as having satisfactorily completed the promotional probationary period in the classification to which promoted. ( )

**160. -- 168. (RESERVED)**

**169. PROMOTIONS.**

**01. Interagency Promotions.** All interagency promotions must be made using statewide promotional registers (Ref. Rule 101.03) ( )

**02. Eligibility for Promotion.** Promotional appointees must have permanent status (Ref. Rule 159) and meet the minimum qualifications of the promotional classification. ( )

**03. Promotion, In-Grade.** To reflect unique agency organization design, an agency may choose to request an internal competitive process to recognize the advancement of an employee with permanent status from a position occupied in one classification to a position in another classification having greater points or a unique

specialty area, but within the same pay grade. With the approval of the administrator, an in-grade promotion will be treated in all regards as a promotion. ( )

**170. -- 178. (RESERVED)**

**179. DEMOTIONS.**

Demotions are reductions of an employee from a position which the employee occupies in one classification to a position in another classification in a lower pay grade. Demotions authorized under these rules apply to both probationary and permanent status employees who meet the minimum qualifications of the classification to which demoted. ( )

**180. (RESERVED)**

**181. -- 189. (RESERVED)**

**190. DISCIPLINARY ACTIONS.**

**01. Cause for Disciplinary Actions or Separation From State Service.** Dismissal, suspension, demotion, or the reduction in pay, of a classified employee, may occur for any of the following causes during the employee's employment: ( )

**a.** Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes, or rules of the agency or the Division and Idaho Personnel Commission. ( )

**b.** Inefficiency, incompetency, or negligence in performing duties, or job performance that fails to meet established performance standards. ( )

**c.** Physical or mental incapability for performing assigned duties, if a reasonable accommodation cannot be made for the disabling condition. ( )

**d.** Refusal to accept a reasonable and proper assignment from an authorized supervisor. ( )

**e.** Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the agency. ( )

**f.** Intoxication or being under the influence of alcohol, or the misuse of medications or controlled substances, while on duty. ( )

**g.** Careless, negligent, or improper use or unlawful conversion of state property, equipment, or funds. ( )

**h.** Use of any influence which violates the principles of the merit system in an attempt to secure a promotion or privileges for individual advantage. ( )

**i.** Conviction of official misconduct in office, or conviction of any felony, or conviction of any other crime involving moral turpitude. ( )

**j.** Acceptance of gifts in exchange for influence or favors given in the employee's official capacity. ( )

**k.** Habitual pattern of failure to report for duty at the assigned time and place. ( )

**l.** Habitual improper use of sick leave. ( )

**m.** Unauthorized disclosure of confidential information from official records. ( )

**n.** Unapproved absence without leave. ( )

- o.** Misstatement or deception in application for employment. ( )
- p.** Failure to obtain or maintain a current license or certificate lawfully required as a condition in performance of duties. ( )
- q.** Prohibited participation in political activities. ( )

**02. Suspension for Investigation.** An appointing authority may place an employee on administrative leave for investigation of disciplinary causes enumerated in Rule 190.01. Each suspension for investigation will be superseded by reinstatement to duty, dismissal, disciplinary demotion, or suspension within thirty (30) calendar days of the suspension for investigation or within an extension of an additional thirty (30) calendar days approved by the administrator. Further extensions may be granted with the approval of the Administrator. ( )

**03. Disciplinary Suspension.** An appointing authority may suspend without pay an employee for discipline for causes enumerated above. Disciplinary suspension of an employee with permanent status is subject to appeal by the employee to the Commission. ( )

**04. Suspension on Felony Charges.** An appointing authority may suspend without pay an employee upon the issuance of a complaint, an information or indictment for felony charges. Such suspensions may remain in effect during the time such charges are pending. Full reinstatement of all benefits and salary that the employee would have otherwise been entitled must be provided by the appointing authority to the employee upon a subsequent finding that charges or information were without grounds or the employee was not found guilty. For the purpose of this rule, a judgment withheld under Rule 33(d) of the Idaho Rules of Criminal Procedure is a conviction. ( )

**05. Notice to Administrator.** Whenever an appointing authority considers it necessary to take disciplinary action against an employee, he must notify the employee and the administrator concurrently in writing; and set forth the specific rules violated and the reasons for the action. Suspensions with pay for investigation may be made without prior notice to the employee; in this case, the appointing authority must notify the administrator as soon as practical. ( )

**191. -- 199. (RESERVED)**

**200. PROBLEM-SOLVING AND DUE PROCESS PROCEDURES.**

**01. Overview of Procedures.** ( )

**a.** The due process procedure deals with the disciplinary matters set forth in Section 67-5315(2), Idaho Code, dismissals, suspensions without pay, and demotions, and with all involuntary transfers. The due process procedure generally requires the employee receive notice and an opportunity to respond before a disciplinary decision or involuntary transfer is made by the agency. Decisions regarding disciplinary dismissals, suspensions without pay, and demotions may be appealed in accordance with Rule 201. ( )

**b.** The problem-solving procedure deals with all matters not specifically reserved for the due process procedure. Problem solving decisions may not be appealed to the Commission except as authorized by Section 67-5316, Idaho Code. ( )

**02. Establishment of Agency Problem-Solving and Due Process Procedures.** Each participating agency must maintain written employee problem-solving and due process procedures, which have been approved by the administrator for conformity to law and Rule 200. ( )

**03. Eligibility and Time for Filing Under Problem-Solving Procedure.** Any classified employee with permanent, or entrance probationary status may file under the problem-solving procedure as defined by Section 67-5315(1), Idaho Code. An employee must file under the problem-solving procedure in writing not later than ten (10) working days after being notified or becoming aware of a nondisciplinary matter which may be handled through the problem-solving procedure; however, if the filing alleges an ongoing pattern of harassment or illegal discrimination, the agency is strongly encouraged to waive any time limits. The time limit for filing will be extended

due to the employee's illness or other approved leave, up to ten (10) days after return to the job. The agency may accept a filing that is or appears to be filed late. Agency policies may provide for waiver of time elements or any intermediate step of the problem-solving procedure upon mutual agreement of the employee and appointing authority. ( )

**04. Elements of the Problem-Solving Procedure.** The procedure must contain a statement from the agency head encouraging employees to use the procedure for any nondisciplinary, job-related matters, and encouraging the employee, supervisors, and upper-level managers and administrators to resolve the matter at the lowest management level possible within the organization. The statement must also provide a means whereby agency representatives can obtain timely authority, if needed, to resolve the matter. The procedure must require the employee to make a reasonable attempt to discuss the issue with the immediate supervisor before filing. After a written filing is received, the procedure must provide for such additional levels of management within the employee's chain of command as are appropriate in the agency. The procedure must also provide for the use of an impartial mediator upon agreement by the employee and agency. Timelines must not exceed five (5) working days between each step unless both the employee and the agency agree, in writing, to a specific number of days to extend the timelines herein, not to exceed thirty (30) days between each step. The procedure must also inform the employee that he is entitled to be represented by a person of the employee's own choosing at each step of the procedure, except the initial informal discussion with the immediate supervisor. Two (2) or more employees may join in a single filing under the problem-solving procedure. Retaliation for filing under the problem-solving procedure, for participating as a witness, or representative is expressly prohibited. This procedure does not apply to unsatisfactory performance during entrance probation. ( )

**05. Filings Alleging Sexual Harassment or Other Illegal Discrimination.** Each agency's problem-solving procedure must provide an optional alternative procedure for an employee to file allegations of sexual harassment or discrimination based on race, color, sex, national origin, religion, age, or disability. The procedure must expressly prohibit sexual harassment and discrimination. Employees must be informed of their right to file complaints with the Idaho Human Rights Commission. The alternative procedure must designate a specific person or persons to receive and investigate such filings, and require that the investigation and resolution of them be conducted with maximum regard for confidentiality. ( )

**06. Elements of Due Process Procedure.** An agency must provide notice and an opportunity to respond before making a decision to impose any disciplinary sanction or involuntary transfer, as set forth in Section 67-5315(2), Idaho Code. With respect to notice, an agency must provide notice of the contemplated action, the basis or reason for the contemplated action, and an explanation of the evidence supporting the contemplated action. The notice must be provided to the employee and administrator concurrently. With respect to the opportunity to respond, the employee must be given the opportunity to respond to the notice and present reasons why the contemplated action should not be taken. The opportunity to respond must not occur later than five (5) working days after the employee has received notice, unless an extension is approved by the appointing authority in writing. After the employee has responded, or after the period to respond has expired or has been waived in writing by the employee, whichever occurs first, the appointing authority, or designee, must make and implement the agency's decision not later than five (5) working days thereafter, excluding days the appointing authority, or designee, is out of the office, or for other extenuating circumstances. The extension will be communicated to the employee in writing. The procedure must inform the employee of his right to be represented by a person of the employee's own choosing during the opportunity to respond. The procedure must also provide for the use of an impartial mediator upon agreement by the employee and agency. The procedure does not apply to unsatisfactory performance during entrance and promotional probation. The due process procedure is complete when the appointing authority, or designee, mails or delivers a decision to the affected employee. The decision must also be sent to the administrator concurrently. ( )

**07. Notification.** A copy of the approved problem-solving and due process procedures must be furnished and explained to each employee with permanent, or entrance probationary status in the agency concerned. ( )

**201. APPEAL PROCEDURE.**

**01. Idaho Rules of Administrative Procedure of the Attorney General.** In addition to the following rules on appeals and petitions for review, the "Idaho Rules of Administrative Procedure of the Attorney General" on contested cases, IDAPA 04.11.01.000 et seq., apply with the following exceptions, which are inconsistent with the

Commission's statute or practice: IDAPA 04.11.01.055, 202, 240, 250, 270.01, 280, 300, 302, 651, 720, 730, 740, 790, 791, 821.02, and 860. Petitions for rulemaking and declaratory rulings are addressed in Rules 270 and 271. ( )

**02. Filing of Appeal and Appearances.** Every appeal filed with the Commission must be written and state the decision that is being appealed and the action requested of the Commission. The Commission must serve a copy of the appeal on the respondent and upon the legal counsel for the Commission. Notices of appearance and notices of substitution of counsel need not be filed by deputy attorneys general or members of law firms already representing a party in an appeal or petition for review. ( )

**03. Time for Appeal.** An appeal from a decision of an appointing authority is deemed to be timely filed if received at the office of the Commission within thirty-five (35) calendar days after completion of the agency due process procedure. Personal delivery or deposit in the United States mail, postage prepaid, of a written notification to the affected employee of the appointing authority's decision constitutes completion of the agency due process procedure. An appeal of a decision or action of the administrator or staff must be filed at the office of the Commission within thirty-five (35) calendar days of personal delivery of notice of the decision or action, deposit of the notice in the United States mail, postage prepaid, or deposit of the notice in Statehouse mail. ( )

**04. Non-Jurisdictional Appeals.** Appeals which are non-jurisdictional may be dismissed without motion by the hearing officer, the chair of the Commission, or his designee. If a hearing officer orders such a dismissal, the dismissal may be appealed to the Commission as a petition for review pursuant to Rule 202.01. If the chair of the Commission orders such a dismissal, it constitutes the final order of the Commission and may be appealed pursuant to Sections 67-5317(3) and 67-5318, Idaho Code. ( )

**05. Setting of Hearing.** Within fifteen (15) days after receiving the appeal from the Commission, the hearing officer must consult with the parties to set a mutually agreeable date for hearing. The hearing officer may thereafter postpone or continue the hearing for good cause. ( )

**06. Filing of Documents.** Once an appeal is referred to the hearing officer, all documents relating thereto must be filed directly with the hearing officer during the pendency of the appeal with copies provided simultaneously to opposing counsel and unrepresented parties. ( )

**07. Burden of Proof.** In disciplinary actions, the appointing authority has the burden of proving cause for the discipline by a preponderance of the evidence. In all other actions, the appellant has the burden of proof by a preponderance of the evidence. ( )

**08. Open Hearing.** Every hearing is public, unless the hearing officer closes the hearing for good cause. Individual parties may represent themselves (pro se) or be represented by an attorney. ( )

**09. Protective Orders.** The hearing officer may issue protective orders limiting access to information obtained in the course of a hearing. ( )

**10. Decision of Hearing Officer.** The hearing officer must issue a decision in the form of a preliminary order explaining the right to file a petition for review under Section 67-5317, Idaho Code. The preliminary order, consisting of such findings of fact, conclusions of law and orders as are necessary, together with the record of the proceedings must be filed at the office of the Commission with a copy sent or delivered to the parties. A motion for reconsideration under Section 67-5243, Idaho Code, is not permitted. ( )

**11. Procedure for Award of Attorney Fees and Costs.** As part of his preliminary order, the hearing officer must make findings as to the entitlement to attorney fees and costs, if any, pursuant to Section 12-117, Idaho Code. If the hearing officer finds a prevailing party is entitled to statutory attorney fees and costs, the prevailing party must file a memorandum of costs, including a supporting affidavit stating the basis and method of computation of the amount claimed. The memorandum must be filed with the hearing officer not later than ten (10) working days after receipt of the hearing officer's decision or no attorney fees and costs may be awarded. Objections to the award of attorney fees and costs must be filed not later than ten (10) working days after receipt of the memorandum of costs and supporting affidavit. The hearing officer must conduct a hearing on the award of attorney fees and costs within ten (10) days of receiving any objections to the award. If no objections are timely filed with the hearing officer, or if

the parties stipulate to have the matter decided on the briefs, no hearing is required. The hearing officer determines the amount of the award and must make written findings as to the basis and reasons for the award within ten (10) days after the hearing on the award of attorney fees and costs. If no hearing is required, the hearing officer must issue his decision on the award of attorney fees and costs no later than thirty (30) days after receipt of the prevailing party's memorandum of costs and supporting affidavit. ( )

**12. Factors Considered in Award of Attorney Fees and Costs.** The following factors are considered in the determination of an award of attorney fees and costs: ( )

- a. The time and labor required; ( )
- b. The experience and ability of the attorney; ( )
- c. The prevailing charges for like work; ( )
- d. The amount involved and the results obtained; ( )
- e. Awards in similar cases; and ( )
- f. Any other factor that appears pertinent to the award. ( )

**202. PETITION FOR REVIEW PROCEDURE.**

**01. Filing of Petition for Review.** A petition for review shall be filed at the office of the Commission within thirty-five (35) days of the hearing officer's decision issued pursuant to Rule 201.10. The petition shall be in writing and specifically cite the alleged errors of fact or law made by the hearing officer. ( )

**02. Stay of Hearing Officer's Decision.** Upon the filing of the petition for review, the jurisdiction of the hearing officer in the matter is ended except for resolving post-hearing motions and awarding attorney fees and costs. The hearing officer's decision and any orders entered pursuant to Rules 201.10 and 201.11 will be automatically stayed. ( )

**03. Nature of Hearing.** The hearing of the Commission on a petition for review will be limited to oral arguments regarding issues of law and fact as may be found in the record established before the hearing officer and any post-hearing orders. Written arguments or briefs and motions regarding the petition for review will be allowed under such terms as the Commission may direct in its notice of hearing, which will be issued at least twenty-eight (28) days prior to the date set for hearing. ( )

**04. Transcript.** If the petition for review involves questions of fact, the appellant shall provide a full transcript of the proceedings before the hearing officer for the Commission to review. The respondent may pay for an additional copy of the transcript for respondent's own use. ( )

**05. Requests for Postponement and Other Motions.** ( )

a. Except in emergencies, a request for postponement shall be filed in writing by a party or representative not later than seven (7) days before the scheduled hearing. The Chair of the Commission, or his or her designee, may determine whether good cause is shown for the postponement and grant or deny the request on behalf of the Commission. ( )

b. Motions to dismiss for lack of jurisdiction shall be decided by the Commission. All other motions shall be considered by the Chair of the Commission or at the Chair's discretion may be referred to one (1) Commissioner, whose decision on the motion may be communicated to the parties by letter or other informal means, by the Chair or by counsel to the Commission. ( )

**06. Decision on Petition for Review.** The decision of the Commission shall include a statement of appeal rights under Section 67-5318, Idaho Code. Motion for reconsideration of Commission decisions pursuant to Section 67-5246, Idaho Code are not permitted. The Commission shall file the original copy of its decision with the

record of the proceedings and mail copies to the parties promptly. ( )

**07. Record of the Proceedings.** A verbatim record of the proceedings at hearings before the Commission shall be maintained either by electrical devices or by stenographic means, as the Commission may direct, but if any party to the action requests a stenographic record of the proceedings, the record shall be done stenographically. The requesting party shall pay the costs of reporting the proceedings. ( )

**08. Attorney Fees and Costs in a Petition for Review.** In its decision on petition for review, the Commission shall make findings as to the entitlement to attorney fees and costs, if any, pursuant to Section 12-117, Idaho Code. If the Commission finds the prevailing party, if any, is entitled to attorney fees and costs, the prevailing party shall file a request for attorney fees and costs, with accompanying memorandum and affidavit in support of the request described in Rule 201.11, with the Commission not later than ten (10) working days after receipt of the Commission's decision. Objections to the award of attorney fees and costs shall be filed not later than ten (10) working days after receipt of the request for attorney fees and costs. The Commission shall determine the amount of the award, if any, taking into account the factors defined in Rule 201.12. ( )

**09. Protective Orders.** The Commission may issue protective orders limiting access to information in the record. ( )

**203. -- 209. (RESERVED)**

**210. PERFORMANCE EVALUATIONS.**

**01. Performance Evaluations.** Each agency shall use the statewide online performance evaluation system. ( )

**02. Use of Evaluations.** Performance evaluations should be used in connection with promotions, transfers, demotions, retentions, separations, and reassignments and used as the affirmative certification for merit increases, bonuses, and salary equity increases and for certifying a probationary employee to permanent status. Other uses of performance evaluations are optional with the appointing authority. ( )

**03. Evaluation Schedule.** All classified employees must be evaluated for their performance during probationary periods for appointments and promotions and for every two thousand eighty (2,080) hours of credited state service thereafter (generally, an annual basis). Part-time employees must be evaluated on an annual basis. ( )

**211. -- 239. (RESERVED)**

**240. WORKERS' COMPENSATION OR DISABILITY.**

**01. Layoff After Twelve Weeks Disability.** If the employee becomes disabled, whether or not due to a workers' compensation injury, and is unable to fully return to work after twelve (12) weeks' absence during any consecutive fifty-two (52) week period the employee's position may be declared vacant unless otherwise prohibited by state or federal law. The twelve (12) weeks' period of absence need not occur consecutively. The employee's name is certified to a reemployment preference register when the administrator has been notified by the physician that the employee is able to return to work. Conditional releases will be considered in accordance with the Americans with Disabilities Act. ( )

**241. SEPARATION UPON FAILURE TO RETURN TO WORK.**

Except for those employees on authorized leave or placed on a register with reemployment preference prescribed by Rule 241.02.a., an employee who has not returned to work within five (5) working days after approved paid or unpaid leave or release by his or her physician shall be considered as having voluntarily separated. Such separation shall be treated as a voluntary resignation, and the employee shall remain eligible for reinstatement. Written notification of his or her separation/resignation shall be mailed to the last known home address. Any objections by the employee to the notice, must be received within five (5) working days of receipt of the notice, or acceptance of the separation/resignation will be presumed. If objections are received within the timeline, a disciplinary separation (dismissal) or other formal disciplinary action may be pursued as provided in Rule 190. ( )



242. -- 249. (RESERVED)

250. ADMINISTRATIVE LEAVE.

**01. Investigation and Due Process Procedure.** Administrative leave may be granted by an appointing authority for employee investigations and due process procedures in accordance with Rule 190.02. ( )

**02. Closure or Inaccessibility.** Administrative leave for closure or inaccessibility of a state office/ facility due to severe weather, emergencies or incidents that could jeopardize agency operations, or the safety of others. ( )

**03. Other Reasons.** Administrative leave for reasons other than those listed above must be approved in advance by the administrator. ( )

251. -- 271. (RESERVED)

272. POLICY MAKING AUTHORITY.

To address the need for all classified employees to be treated fairly, and in situations where the State may be considered as one (1) employer, the Division Administrator may issue guidance to provide consistent interpretation of federal law, state law, executive order or rule. Statewide policies governed by the administrator shall be adopted by appointing authorities. ( )

273. -- 999. (RESERVED)

[Agency redlined courtesy copy]

**15.04.01 – RULES OF THE DIVISION OF HUMAN RESOURCES  
AND IDAHO PERSONNEL COMMISSION**

**000. LEGAL AUTHORITY.**

~~The rules of the Division of Human Resources and Idaho Personnel Commission are adopted pursuant to Section 67-5309, Idaho Code. The Division has authority to determine the policies of the Idaho Personnel System and make such rules as are necessary for the administration of the Personnel System. The administrator of the Division is appointed by the Governor, subject to confirmation by the Senate, and serves at the pleasure of the Governor pursuant to Section 67-5308(2), Idaho Code.~~ (3-31-22)( )

**001. SCOPE**

These rules establish the policies and procedures of the Idaho Personnel System. ( )

002. -- 005. (RESERVED)

**006. WAIVER OF RULES.**

The administrator reserves the right to waive any rule in specific instances when, in his/her opinion, such waivers are legal, warranted and justified in the interests of a more effective and responsive system of personnel administration. ( )

007. -- 008. (RESERVED)

~~**009. DUTIES OF THE ADMINISTRATOR.**~~

~~In addition to other duties as assigned by law, the administrator provides administrative support to the Idaho Personnel Commission, has custody of the books and records of the Division and the Commission, and maintains a~~

~~record of the proceedings before the Commission and its hearing officers.~~

~~(3-31-22)~~

**01009. DEFINITION.**

Each of the terms defined in these rules have the meaning given herein unless a different meaning is clearly required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. ( )

**01. Administrative Leave.** Temporary paid leave from a job assignment where pay and benefits remain intact. ( )

**02. Appeal.** Any written request for relief from dismissal, demotion, suspension, or other adverse action filed with the Commission by an employee, appointing authority, or applicant. The meaning of appeal includes application, petition, or protest. ( )

**03. Appellant.** An employee, appointing authority, or applicant filing an appeal or a petition for review with the Commission. ( )

**04. Appointment, Limited.** The appointment of a person to a classified position where the work is projected to be of limited duration, for which the person has qualified by examination. ( )

**05. Appointment, Permanent.** The appointment of a person to a classified position who has been certified by the appointing authority to have successfully completed the required probationary period and whose employment is permanent, subject to removal or discipline only under the provisions of Title 67, Chapter 53, Idaho Code, and the rules of the Division and Idaho Personnel Commission. ( )

**06. Appointment, Probationary.** The appointment of a person to a classified position for which the person has qualified by examination but is serving a work trial period as a condition for certification to permanent appointment. ( )

**07. Base Pay.** The rate paid for performing a job, excluding bonuses, shift differentials, overtime or other compensation premiums. ( )

**08. Classified Service.** That body of positions in state agencies subject to Title 67, Chapter 53, Idaho Code, as defined therein and excludes temporary, and nonclassified appointments. ( )

**09. Compensation Plan.** The overall system of salary administration for classified service including Sections 67-5309B and 67-5309C, Idaho Code; the classification and compensation schedules, Division and Idaho Personnel Commission rules and policies, and agency policies governing employee pay. ( )

**10. Compensation Schedule.** The pay grades established by the Division and associated rates of pay. ~~(Ref. Section 67-5309B, Idaho Code)~~ (3-31-22)( )

**11. Consultant.** An independent contractor who provides professional or technical advice, counsel, or service. ~~(Ref. Rule 050)~~ (3-31-22)( )

**12. Dismissal.** The separation of an employee from classified service with cause assigned by the appointing authority pursuant to Rule 190. ( )

**13. Division.** The Idaho Division of Human Resources. ( )

**14. Due Process.** As related to Idaho's Personnel System for permanent classified employees, the activities required to address an individual's constitutional right to notice and an opportunity to be heard. (Ref. Section 67-5315, Idaho Code) ( )

**15. Employment History.** The information available to the public without the employee's consent in accordance with Section 74-106, Idaho Code, for every agency for which a current or former public official works, including the official reasons for separation from employment but not including accrued leave balances or usage. ( )

- 16. Good Cause.** The conduct of a reasonable person in the same or similar circumstances. ( )
- 17. Hay Method.** A methodology for establishing the relative value of jobs and used as a dimension of the pay system. ( )
- 18. Hiring List.** A hiring list is a subset of a register consisting of the top twenty-five (25) individuals on the register, plus all individuals tied for the twenty-fifth position, certified as eligible for a specific recruitment. Candidates for reinstatement or transfer may be considered and are provided in addition to the top twenty-five (25). ( )
- 19. Incumbent.** Any person holding a classified or non-classified position in state service. ( )
- ~~**20. Independent Contractor.** Any person, firm, or corporation meeting the Internal Revenue Service's test for an independent contractor or a self-employed person. (Ref. Rule 050) (3-31-22)~~
- 210. Involuntary Transfer.** A significant change in work location, shift and/or organizational unit made as a result of a management decision as opposed to an employee's request or agreement to transfer. ( )
- ~~**221. Layoff.** An involuntary reduction in hours of work or separation of an incumbent in the classified service either by reduction in force due to shortage of work or funds, or abolishment of positions. ( )~~
- ~~**232. Light or Limited Duty.** A general term describing a temporary limited assignment in relation to recovery from injury, illness or other limiting condition as approved by the appointing authority. ( )~~
- 243. Merit Increase.** The advancement of an employee's compensation within a pay grade based upon performance in accordance with Section 67-5309B(3) and (4), Idaho Code. ( )
- 254. Merit Increase Matrix.** A pay distribution tool used to advance employee pay based on performance and market data. ( )
- 265. Minimum Qualification Specialty.** A minimum qualification required for one (1) or more positions in a classification that is in addition to the other minimum qualifications required for all positions in the classification. ( )
- ~~**27. Occasional or Sporadic Work.** Work that is voluntarily performed by an employee in a different capacity from the employee's regular work and is infrequent, irregular or occurring in scattered instances. (3-31-22)~~
- 286. On-Call Time.** Time when an employee is required to be available if called upon by their agency during hours that are outside of their normally defined work schedule. ( )
- 297. Pay Line Exception.** A temporary assignment of pay grade, pursuant to Section 67-5309D, Idaho Code, in excess of the pay grade allocated pursuant to Section 67-5309B, Idaho Code, as approved by the administrator. ( )
- ~~**3028. Permanent Employee.** An employee in the classified service who has successfully completed entrance probation. Permanent employees remain subject to separation as set forth in these rules and Section 67-5309(n), Idaho Code. ( )~~
- ~~**3129. Promotion.** The advancement through the competitive process of an employee with permanent status from a position which he occupies in one (1) classification to a position in another classification having a higher paygrade. ( )~~
- 320. Reduction in Pay.** A reduction of an employee's salary from one (1) pay rate to a lower rate within the pay grade to which the employee's classification is allocated. ( )
- 331. Register.** A list of names of persons or the name of one (1) person who has been determined to be

eligible for employment in a classification on the basis of examination and merit factors as established by the administrator. ( )

**342. Resignation.** The voluntary quitting or abandonment of state employment, excluding retirement. ( )

**353. Respondent.** The party whose interests are adverse to those of the appellant. ( )

**364. Salary Equity Increase.** The advancement of an employee's compensation within a pay grade based upon factors such as market demand, compression within the agency or classification, or inequities, ~~and the employee's performance, in accordance with Section 67-5309B(3), Idaho Code.~~ (3-31-22)( )

**375. Suspension.** An enforced period of absence, with or without pay, for disciplinary purposes, for felony charges, or pending investigation of charges made against an employee pursuant to Rule 190. ( )

**386. Termination.** The separation of an entrance or voluntary probationary employee from classified service for unsatisfactory service during the probationary period without cause assigned by the appointing authority pursuant to Rule 152. ( )

**397. Transfer.** A change of work location of an employee in which the employee changes from one (1) position to another in the same classification or to another classification in the same pay grade. ( )

**4038. Underfill.** Administrator-approved appointment to a position established at a higher classification while being compensated at a lower pay grade during completion of a training plan. ( )

**4439. USERRA.** Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. Sections 4301 through 4333. Prohibits employment discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services. (3-31-22)

**420. Workweek.** A period of seven (7) consecutive days beginning 12:01 a.m. Sunday. (Ref. Rule 073) (3-31-22)( )

**0140. -- 019. (RESERVED)**

**020. BASIC MERIT AND SALARY REQUIREMENTS OF THE PERSONNEL SYSTEM.**

All appointments, promotions and separations in the classified service shall be based on competence, valid job requirements, and individual performance. (3-31-22)

**01. Examinations.** Examinations shall be designed to evaluate factors pertinent to an individual's ability to perform competently the duties of the classification. ( )

**a. Content of Examinations.** Examinations may include any questions, tests or criteria designed to evaluate the suitability of applicants for job openings within a classification. ( )

**b. Job Analysis and Confidentiality.** No information concerning the specific content of the examination will be divulged to unauthorized personnel by the Division or other personnel who have access to the examinations. ( )

**02. Eligible Candidates.** The appointing authority shall make a selection from a hiring list containing eligible candidates. ( )

**a. Failing Score.** Failure in any part of the examination may disqualify an applicant in the entire examination and from having his name placed on the hiring list. ( )

**03. Authorized Pay Rates.** No employee in the state classified service will be paid at a rate less than the minimum nor greater than the maximum rate of the pay grade assigned to the classification. ( )

**a. Payline Exceptions.** Temporary assignments to a new pay grade may be made by the administrator. Such assignments apply to an entire classification for the purpose of recruitment or retention and will be reviewed annually to determine the need for continuance. ( )

**b. Salary Equity Increases.** An appointing authority may, with approval by the administrator, advance an employee's salary within a pay grade based upon factors such as market demand, to address compression within an agency or classification, or inequities. ( )

**c. Salary Upon Transfer.** A transfer between agencies in the same classification or one of equal pay grade does not require a change in the employee's salary, but a lower or higher rate may be negotiated between the employee and the appointing authority. If the transfer is to a classification of lower pay grade (demotion), the employee's salary is negotiable between the employee and appointing authority within the lower pay grade. ( )

**d. Salary Upon Reinstatement.** Unless related to reemployment after a layoff, the salary of a reinstated employee is negotiable between the employee and appointing authority in the current pay grade for the classification in which the employee has reinstatement privileges. ( )

**e. Salary After Reappointment from Layoff.** Employees appointed by the agency that laid them off will be paid in the current pay grade for the classification to which reappointed or at the same payrate the employee received immediately preceding layoff, whichever is greater, but not to exceed the maximum of the current pay grade. ( )

**f. Salary Upon Return from Military Duty.** An employee who returns to state service from active military duty in accordance with the provisions of Section 65-508, Idaho code, and USERRA will be paid at a comparable rate in the current pay grade for the classification to which they were assigned prior to leaving for military service. ( )

**g. Reduction of Salary.** The salary of an employee receiving more than the lowest rate of the pay grade for his classification may be reduced to a lower rate within the pay grade by the appointing authority for disciplinary reasons enumerated in Rule 190. ( )

**021. DISCRIMINATION PROHIBITED.**

No person shall be discriminated against in regards to appointments, promotions, demotions, separations, transfers, compensation, or other terms, conditions, or privileges of employment because of race, national origin, color, sex, age, religion, disability, or veteran status (unless under other than honorable conditions). (3-31-22)

**021. BASIC REQUIREMENTS FOR VETERANS AND MILITARY PERSONNEL.**

**01. Application by Military Personnel.** An application will be accepted after the closing date of the announcement from a person who was serving in the armed forces or undergoing service-connected hospitalization of no more than one (1) year following discharge, during any period in which the announcement was open. The application must be submitted within one hundred twenty (120) days of the applicant's separation from the armed forces or hospitalization and prior to the expiration of the register established as a result of an examination. ( )

**02. Return from Military Duty.** An employee returning from military leave without pay who is relieved or discharged from military duty under conditions other than dishonorable will be, upon application, reinstated in his former position, or one of comparable classification, without loss of credited state service, status, or pay as prescribed by Sections 46-216, 65-508, and 65-511, Idaho Code, USERRA, or the Military Selective Service Act, Title 38, Chapter 43, U.S. Code. Application for reemployment must be made in accordance with the provisions of USERRA. ( )

**03. Application by Disabled Veterans.** A disabled veteran may file an application at any time up until a selection for any classification for which the Division maintains a register as a source for future job openings or for which a register is about to be established, provided the veteran has not already been examined twice for the same classification, does not have current eligibility on that register, or is not serving in a competitive position in the same pay grade as the classification for which application is made. ( )

**04. Veterans' Preference Points.** ( )

**a.** Veterans' and disabled veterans' preference points must not be used to achieve a passing score. ( )

**b.** Veterans' and disabled veterans' preference points, when applicable under state law, will be added to the final score achieved in the examinations. Five (5) points will be added to the earned rating of any veteran, as defined in Section 65-203, Idaho Code, and the widow or widower of any veteran, as defined in Section 65-203, Idaho Code, as long as the widow or widower remains unmarried. ( )

**c.** Disabled veterans', Purple Heart recipients, spouses of any eligible disabled veterans who cannot qualify for any public employment because of a service-connected disability, and unmarried widows or widowers of disabled veterans entitled to ten (10) point preference will be placed on the open-competitive register in order of their final score on the examination augmented by preference points. ( )

**d.** Disabled veterans who have a current service-connected disability of thirty percent (30%) or more will be offered an interview when their final score places them on the hiring list. If more than ten (10) disabled veterans with a disability rating of thirty percent (30%) or more place on a hiring list, at least ten (10) will be offered an interview. ( )

**022. PROHIBITED QUESTIONS.**

~~All questions on applications and examinations shall be based on valid job requirements. Questions that impermissibly discriminate on the basis of race, national origin, color, sex, age, religion, disability, political affiliation, or veteran status are prohibited. Questions regarding veteran status for compliance with veterans' preference are permitted.~~ (3-31-22)

**023. BONA FIDE OCCUPATIONAL QUALIFICATION.**

~~Qualification requirements based on age or gender may be established as necessary for specific positions by the Administrator of the Division.~~ (3-31-22)

**024. CONFLICT OF INTEREST AND PERSONAL CONDUCT.**

~~The maintenance of a high standard of honesty, ethics, impartiality, and conduct by state employees is essential to ensure proper performance of state business and strengthen the faith and confidence of the people of Idaho in the integrity of state government and state employees. All appointing authorities shall establish such policies and standards necessary to prevent conflicts of interest.~~ (3-31-22)

**025. NEPOTISM.**

No employee shall work under the immediate supervision of a supervisor who is a spouse, child, parent, brother, sister or the same relation by marriage. ( )

**026. DUAL EMPLOYMENT.**

There will be no conflicting hours of work when a classified employee is employed by more than one (1) state agency. The employee must obtain approval from all appointing authorities concerned prior to beginning dual employment. ( )

**027. -- 049. (RESERVED)**

**050. CONSULTANTS AND PERSONS EMPLOYED UNDER INDEPENDENT CONTRACT.**

~~Nothing in these rules prohibits the use of independent contractors or consultants for legal, medical, technical, or other professional services, provided that they are not engaged in the performance of administrative duties for any state agency. No position in the state classified service will be filled by a consultant or independent contractor.~~ (3-31-22)

**01. Limited Use Only.** ~~Individuals employed through contracts with temporary services or professional staffing agencies will be utilized only for short-term situations.~~ (3-31-22)

**02. Conflict of Interest/Nepotism.** ~~Agency policies regarding conflict of interest/nepotism should~~

~~address the award of work to consultants and contractors. (See Rules 024 and 025 and Ref. Section 18-1359, Idaho Code. (3-31-22)~~

~~**03. Not to Be Treated as Employees.** Independent contractors, their staff or consultants must not be treated as employees. Appointing authorities must comply with current Internal Revenue Service guidance on independent contractor and employee definitions. (3-31-22)~~

~~**051.—059. (RESERVED)**~~

~~**060. ADOPTION OF CLASSIFICATION SCHEDULE.**~~

~~The Division will develop, adopt, and make effective a classification schedule consisting of classification specifications allocated to various pay grades in the compensation schedule for all positions based on an analysis of the duties and responsibilities of representative positions. (3-31-22)~~

~~**0640. ANALYSIS OF CLASSIFICATIONS.**~~

~~The Division will assist appointing authorities in the analysis of positions in determining proper classification and, at the determination of the administrator, will conduct independent classification reviews of the various agencies. ( )~~

~~**062. AUTHORITY.**~~

~~The administrator has the responsibility and authority to classify positions in the classification schedule. (3-31-22)~~

~~**063. REVIEW OF CLASSIFICATION SCHEDULE.**~~

~~The administrator will ensure the appropriateness and accuracy of classification specifications. (3-31-22)~~

~~**0641. AMENDMENT OF CLASSIFICATION SCHEDULE.**~~

~~**01. Changes To Classifications.** Whenever it is necessary to establish or delete a classified position or to revise a position's responsibilities, the appointing authority will submit proposed changes to the administrator. ( )~~

~~**02. Approval.** Each appointing authority, prior to establishing any new position within the agency, will obtain the approval of the administrator for the classification of such positions and their assignment to a pay grade in the compensation schedule. Approval by the administrator of the Division of Financial Management for sufficiency of funds is also required. ( )~~

~~**03. Assignment to Pay Grade Required.** No person will be appointed to, employed in, or paid for services in any classified position until the position has been established, classified, and assigned to a pay grade in accordance with these rules. ( )~~

~~**0652. APPROVAL OF NEW, REVISED AND DELETED CLASSIFICATIONS.**~~

~~**01. New and Refactored Classifications.** New classifications of work and revised classifications require approval by both the administrator and the Division of Financial Management administrator when there is a fiscal impact. ( )~~

~~**02. Revised and Deleted Classifications.** Revised classifications with no fiscal impact and classifications deleted from the classification schedule require approval only of the administrator. ( )~~

~~**0663. ABOLISHMENT OF POSITIONS.**~~

~~An appointing authority may abolish a position for reasons of administrative efficiency. Employees to be separated as a result shall have layoff and reemployment preference in accordance with Rules 140 through 147. ( )~~

~~**0674. RECLASSIFICATION OF POSITIONS.**~~

~~**01. Procedure.** Positions may be reclassified in the same pay grade, upward, or downward as determined by an analysis by the Division of the duties and responsibilities assigned by appointing authorities to~~

specific positions. An incumbent occupying a reclassified position shall be properly classified by an appointing authority ~~within thirty (30) calendar days of being notified by the administrator that the duties and responsibilities assigned to the position are not properly classified.~~ (3-31-22)(    )

**02. Effective Date.** Reclassifications of positions are not effective until they are approved by the administrator, but may be retroactive to the beginning of the pay period during which approval is granted. Reclassification of an employee may not precede the effective date of the reclassification of the position. ( )

**068. VIOLATIONS.**

~~Accurate position classification is the foundation for providing equal pay for equal work, identification of actual work performed, fair employment and equal opportunity for promotions, and equitable compensation. Upon the administrator's determination that classification rules have been violated, the appointing authority will be informed and provided thirty (30) days to take actions necessary to correct the situation or submit a corrective action plan to the administrator. If these actions do not occur, the administrator will inform the employee, the appointing authority, and the state controller that the employee is being compensated in violation of these rules. (Ref. Sections 67-5308 and 67-5312, Idaho Code)~~ (3-31-22)

**069.5. (RESERVED)**

**070.66. COMPENSATION OF EMPLOYEES SURVEYS.**

~~**01. Assignment to Pay Grade.** As a basis for pay equity, the Division will use a combination of point factoring and market data to determine the relative value of each classification. (Ref. Rule 074.01 and Section 67-5309B, Idaho Code)~~ (3-31-22)

~~**02. Factoring.** The Division will use the Hay method to determine the relative value of each classification, and as a basis for internal pay equity. (Ref. Section 67-5309B, Idaho Code)~~ (3-31-22)

~~**03.1. Salary Surveys.** The Division will conduct or approve salary surveys, to determine salary ranges that represent labor market average rates for Hay point factored positions in classified service.~~ ( )

~~**04.2. Relevant Labor Markets.** Labor markets used for wage comparison will be based on recruiting markets for specific job classifications. Consultation with various appointing authorities will also contribute to labor market determination.~~ ( )

~~**a.** When the competition for employees is the local area market, the comparison will be made from a survey representing public and private employers in the state of Idaho.~~ (3-31-22)

~~**b.** For classifications with a regional recruiting area, the comparator market will be from public and private employers from the neighboring states and Idaho. For those with no private counterparts, the comparator market will be state governments, including, but not limited to, Arizona, Colorado, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.~~ (3-31-22)

~~**e.** Recruitment and retention issues will be used to determine the need for additional special market surveys.~~ (3-31-22)

~~**05. Compensation Schedule.** Significant changes to components of the compensation plan will be presented in a public meeting after notice.~~ (3-31-22)

**071. MERIT INCREASE MATRIX.**

~~Salary increases must be based on a merit increase matrix approved by the Division. Shift and geographic premium pay, bonuses, reinstatements, transfers, promotions, salary equity increases, and recruitment and retention awards are not subject to a matrix.~~ (3-31-22)

**072. OPERATION OF COMPENSATION PLAN.**

~~**01. Authorized Pay Rate.** No employee in the state classified service will be paid at a rate less than~~



~~the minimum nor greater than the maximum rate of the pay grade assigned to the classification. (3-31-22)~~

~~**02. Starting Salary.** The starting salary for a new appointee may be anywhere within the pay grade assigned to the employee's classification and is at the appointing authority's discretion considering available budget, market, and relation to existing staff salaries. (3-31-22)~~

~~**03. Payline Exceptions.** Temporary assignments to a new pay grade may be made by the administrator. Such assignments apply to an entire classification for the purpose of recruitment or retention and will be reviewed annually to determine the need for continuance. (3-31-22)~~

~~**04. Salary Equity Increases.** An appointing authority may, with approval by the administrator, advance an employee's salary within a pay grade based upon factors such as market demand, to address compression within an agency or classification, or inequities. In accordance with Section 67-5309B(3), Idaho Code, the employee's performance must be considered. (3-31-22)~~

~~**05. Salary After Reappointment from Layoff.** Employees appointed by the agency that laid them off (Ref. Rules 101.01 and 146) will be paid in the current pay grade for the classification to which reappointed or at the same payrate the employee received immediately preceding layoff, whichever is greater, but not to exceed the maximum of the current pay grade. (3-31-22)~~

~~**06. Salary Upon Transfer.** (3-31-22)~~

~~**a.** A transfer between agencies (Ref. Rule 125) in the same classification or one of equal pay grade does not require a change in the employee's salary, but a lower or higher rate may be negotiated between the employee and the appointing authority. (3-31-22)~~

~~**b.** If the transfer is to a classification of lower pay grade (demotion), the employee's salary is negotiable between the employee and appointing authority within the lower pay grade. (3-31-22)~~

~~**07. Salary Upon Reinstatement.** Unless related to reemployment after a layoff, the salary of a reinstated employee (Ref. Rule 124) is negotiable between the employee and appointing authority in the current pay grade for the classification in which the employee has reinstatement privileges. (4-6-23)~~

~~**08. Salary Upon Downward Reassignment.** When a classification is reassigned downward the employee's salary will be protected to the maximum within the new pay grade. (3-31-22)~~

~~**09. Salary Upon Return from Military Duty.** An employee who returns to state service from active military duty in accordance with the provisions of Section 65-508, Idaho Code, and USERRA will be paid at the comparable rate in the current pay grade for the classification to which he was assigned prior to leaving for military service. (3-31-22)~~

**07367. CALCULATION OF PAY.**

**01. Standard Calculation of Pay.** For other than police, correctional officers, or fire employees, pay is calculated in the following order: ( )

- a.** Holiday pay; ( )
- b.** All hours worked on a holiday as overtime; ( )
- c.** All hours worked over forty (40) in the workweek as overtime, excluding occasional or sporadic work; ( )
- d.** Vacation, sick and other paid or unpaid leaves; and ( )
- e.** All remaining hours worked at the employee's regular rate of pay. ( )

**02. Shift Differential.** Additional compensation paid to employees (including temporary or part-time employees) who work specific, designated hours. Shift differential is paid in addition to any other compensation. (Ref. Sections 67-5302(20) and 67-5328, Idaho Code; Shift differential may be awarded in amounts up to and including twenty-five percent (25%) of hourly rates, based on local market practice for similar jobs. (Ref. Section 67-5309(u), Idaho Code. (3-31-22)(    )

~~**03. Calculation of Pay for Police, Correctional Officers, and Fire Employees.** Police, correctional officers, and fire employees on a twenty-eight (28) day work schedule will be compensated as described in Rules 073.01 and 073.02, except that overtime will be calculated based on one hundred sixty (160) hours in a twenty-eight (28) day period instead of forty (40) hours in a workweek. (3-31-22)~~

~~**04. Holiday Pay Calculation.** (3-31-22)~~

~~**a:** Paid time off for holidays is a benefit and must be allocated in a substantially similar manner to all employees in the same classification. (3-31-22)~~

~~**b:** A full-time employee will receive holiday pay in accordance with the number of hours the employee works on a regular workday. If the employee's schedule is so irregular that a regular workday cannot be determined, the employee will receive eight (8) hours of holiday pay. An employee must receive some paid leave, wages or salary for the pay period in which the holiday occurs to receive the holiday benefit. (3-31-22)~~

~~**c:** A part-time employee who has a regular work schedule shall be paid for a holiday in the same ratio as eight (8) hours is to a forty (40) hour work week, which for calculation purposes converts to two tenths (.20) x hours normally worked. (3-31-22)~~

~~**d:** To avoid inequities with regard to the Family Medical Leave Act (FMLA) during holiday weeks, if an employee is recording all hours for the week as Family Medical "Leave Without Pay," no hours will be coded on the holiday. Therefore, the holiday will not be counted toward the twelve (12) weeks of family medical leave. (3-31-22)~~

~~**e:** If a part-time employee's hourly schedule is so irregular that a normal workweek cannot be determined, the holiday benefit is in the same proportion that the hours the employee works during a week in which a holiday occurs relate to forty (40). (3-31-22)~~

~~**f:** Schedules resulting in holiday time off in excess of eight (8) hours may be approved by the appointing authority if included in the agency compensation plan. Appointing authorities may also suspend flex schedules during holiday weeks or otherwise adjust work schedules to ensure internal consistency. (3-31-22)~~

~~**05. Reduction of Salary.** The salary of an employee receiving more than the lowest rate of the pay grade for his classification may be reduced to a lower rate within the pay grade by the appointing authority for disciplinary reasons enumerated in Rule 190. (3-31-22)~~

~~**06. Salary Administration.** Each agency must develop a compensation plan designed to consider recruitment and retention and ensure pay equity within the organization. (Ref. Section 67-5309B, Idaho Code) (3-31-22)~~

~~**07. Salaries for Temporary Appointments.** Except as provided for in these rules, salaries for employees hired under temporary appointments will be governed by Section 59-1603, Idaho Code. (4-6-23)~~

**074. ASSIGNMENT OF HAY EVALUATION POINTS.**

~~**01. Assignment to Pay Grade.** Pursuant to Sections 67-5309B and C, Idaho Code, the pay grade to which a classification is assigned shall be determined by the number of Hay evaluation points assigned to each classification. (3-31-22)~~

~~**02. Guide Charts.** The Hay evaluation points assigned to a classification shall be the composite numerical value of points factored from the Hay guide charts. (3-31-22)~~

~~03. Factoring Benchmarks. The established factoring benchmarks shall be used in conjunction with the Hay Guide Charts to determine the number of points assigned to a classification. (3-31-22)~~

~~04. Factoring Process. Hay evaluation points shall be assigned to a classification by review and assignment of the administrator and with notification to the administrator of the Division of Financial Management regarding potential fiscal impacts. These points are final unless appealed in accordance with Section 67-5316, Idaho Code. (4-6-23)~~

~~075. BONUSES.~~

~~01. Performance Bonuses. Up to a total of two thousand dollars (\$2,000) may be awarded each fiscal year, in recognition of exemplary performance. In extraordinary circumstances exceptions to the two thousand dollar (\$2,000) limit may be granted if approved in advance by the State Board of Examiners. Documentation of the exemplary performance and related bonus award must be provided to the employee and placed in the employee's agency personnel file. (Ref. Sections 59-1603(7) and 67-5309D(1), Idaho Code) (3-31-22)~~

~~02. Employee Suggestion Award. Appointing authorities may award up to a total of twenty five percent (25%) of the savings realized from an employee's idea to save taxpayer dollars, not to exceed two thousand dollars (\$2,000). (Ref. Section 67-5309D, Idaho Code) (3-31-22)~~

~~a. Suggestions need to increase productivity, conserve state resources, reduce state costs, or improve the morale of state employees. (3-31-22)~~

~~b. Suggestions that may deserve an award larger than two thousand dollars (\$2,000) and suggestions aimed at saving money outside the employee's state agency should be submitted through the employee's agency first, then submitted to the Division. Awards greater than two thousand dollars (\$2,000) must be approved in advance by the State Board of Examiners. (3-31-22)~~

~~c. Employee suggestion awards may be funded from the expense category (personnel, operating, or capital) from which the savings were realized. (3-31-22)~~

~~076~~~~68~~. -- 079. (RESERVED)

~~080. RECRUITMENT.~~

~~The administrator will cooperate with the appointing authority of each agency in the operation of a coordinated recruiting program. (3-31-22)~~

~~081. PURPOSE OF EXAMINATIONS.~~

~~The administrator shall conduct examinations for the purpose of maintaining eligibility registers. (3-31-22)~~

~~082~~~~0~~. METHODS OF RECRUITMENT.

~~For the purpose of establishing eligibility registers, there are three (3) methods of recruitment: open competitive, agency promotional, or statewide promotional. The scope of advertising and outreach for each approach will vary with agency preference, needs, and labor market strategies. (3-31-22)(    )~~

~~083. MOVING EXPENSE REIMBURSEMENT.~~

~~01. Reimbursement Limitations. The appointing authority may reimburse moving expenses for current or newly hired state employees in an amount less than or equal to ten percent (10%) of the employee's base salary or fifteen thousand dollars (\$15,000), whichever is less. Moving expense reimbursements must comply with the State Board of Examiners' State Moving Policy and Procedures that are in effect at the time the move takes place. (3-31-22)~~

~~02. Exceptions to Reimbursement Limitations. Exceptions to the expense reimbursement limits set forth in Rule 083.01 may be granted if approved in advance by the appointing authority. (3-31-22)~~

**084. ~~ANNOUNCEMENT OF RECRUITMENT.~~**

~~**01. Distribution of Announcements.** The announcement of each open competitive recruitment will be made through an internet application system and posted to other locations determined necessary by the administrator to develop a register of eligibles. If the open competitive recruitment has been requested by the appointing authority in lieu of a promotional recruitment, it will be his responsibility to post or otherwise distribute the announcement so it can be seen by all employees of that agency prior to its expiration date. (Ref. Rule 169) (4-6-23)~~

~~**02. Posting of Promotional Announcements.** The announcement for each promotional recruitment will be supplied to the appointing authority of each affected agency. It will be his responsibility to post, electronically communicate, or otherwise distribute such announcement so it can be seen by all employees in the agency prior to the expiration date. (3-31-22)~~

**085. CONTENT OF ANNOUNCEMENTS.**

~~Each announcement shall contain the title of the classification, characteristic duties and responsibilities, salary, minimum qualifications, nature of examination, qualifying score, closing date, equal opportunity and veterans' preference notice, and other pertinent information. (3-31-22)~~

**086. APPLICATIONS.**

~~**01. Form.** All applications must be filed in the form approved by the administrator. (3-31-22)~~

~~**02. Filing of Applications.** Applications are currently accepted by internet application system. (3-31-22)~~

~~**03. Application by Military Personnel.** An application will be accepted after the closing date of the announcement from a person who was serving in the armed forces, or undergoing service-connected hospitalization of no more than one (1) year following discharge, during any period in which the announcement was open. The application must be submitted within one hundred twenty (120) days of the applicant's separation from the armed forces or hospitalization and prior to the expiration of the register established as a result of an examination. (Ref. Sections 65-503 and 67-5309(f), Idaho Code) (3-31-22)~~

~~**04. Application by Disabled Veterans.** A disabled veteran may file an application at any time up until a selection for any classification for which the Division maintains a register as a source for future job openings or for which a register is about to be established, provided the veteran has not already been examined twice for the same classification, does not have current eligibility on that register, or is not serving in a competitive position in the same pay grade as the classification for which application is made. (Ref. Sections 65-503 and 67-5309(f), Idaho Code) (3-31-22)~~

~~**05. Promotion of Entrance Probationary Employee.** Any classified employee on entrance probation may file an application for a promotional opportunity but is ineligible to be certified to a department or statewide promotional hiring list until permanent status has been attained. (Ref. Rule 169.03-) (3-31-22)~~

~~**06. Disclosure of Information for Hiring Purposes.** By submitting an application, an individual is deemed to authorize disclosure of confidential information to state agencies for purposes of screening, testing, interviewing and hiring. (Ref. Section 74-106, Idaho Code). (3-31-22)~~

**087. DENIAL OF APPLICATIONS.**

~~**01. Basis.** The administrator may choose not to process an application if: (3-31-22)~~

~~**a.** The applicant will not meet the minimum qualifications specified in the announcement at the time set for appointment. (3-31-22)~~

~~**b.** The application was not received on or before the closing date for acceptance of applications. (3-31-22)~~

~~e. A background investigation or examination of an applicant discloses that the applicant committed an act which is cause for dismissal as provided in Rule 190. (3-31-22)~~

~~02. **Further Actions.** When any such finding under Rule 087.01 is made, the administrator may deny the application and may cancel the eligibility of the applicant if he or she has already attained a place on the eligibility register. If the applicant has already received appointment, the administrator may take appropriate action to have the employee removed from the position. (3-31-22)~~

~~088.—089. (RESERVED)~~

~~090. **EXAMINATIONS.**~~

~~Examinations shall be designed to evaluate factors pertinent to an individual's ability to perform competently the duties of the classification. The factors tested shall be job related and may include, but are not limited to, education and experience, knowledge, skills, abilities, aptitude, and physical ability. (3-31-22)~~

~~091. **PROHIBITED FACTORS.**~~

~~No part of any examination may include any question designed to reveal prohibited information including the political or religious affiliation or belief, national origin or race of any candidate. (3-31-22)~~

~~092. **PREPARATION OF EXAMINATIONS.**~~

~~01. **Content of Examinations.** Examinations may include any questions, tests or criteria designed to evaluate the suitability of applicants for job openings within a classification. So far as is practical, promotional examinations will be similar to corresponding open competitive examinations and the same standards will be applied in determining scores. (3-31-22)~~

~~02. **Job Analysis and Confidentiality.** Contents of each examination will be determined by the Division on the basis of appropriate professional techniques and procedures of job analysis and test development. No information concerning the specific content of the examination will be divulged to unauthorized personnel by the Division or other personnel who have access to the examinations. (3-31-22)~~

~~03. **Subject Matter Experts.** The Division may, at its discretion, collaborate with appointing authorities, incumbents, subject matter experts, or other qualified persons in the preparation of examinations. (3-31-22)~~

~~093. **CONDUCT AND RATING OF EXAMINATIONS INCLUDING VETERANS' PREFERENCE POINTS.**~~

~~01. **Designation of Examiners.** The examinations will be conducted and rated by persons designated by the administrator. (3-31-22)~~

~~02. **Scoring of Examinations.** Each examination will be rated for final scores on the basis of one hundred (100) point maximum. The Division will use appropriate statistical and professional techniques and procedures in determining passing points and final scores. (3-31-22)~~

~~03. **Veterans' Preference.** (3-31-22)~~

~~a. Veterans' and disabled veterans' preference points, when applicable under state law, will be added to the final score achieved in the examinations, notwithstanding the fact that the augmented final score may exceed one hundred (100) points. Five (5) percentage points will be added to the earned rating of any veteran, as defined in Section 65-203, Idaho Code, and the widow or widower of any veteran, as defined in Section 65-203, Idaho Code, as long as the widow or widower remains unmarried. Pursuant to Section 65-504, Idaho Code, ten (10) percentage points will be added to the earned rating of any disabled veteran, as defined in Section 65-502, Idaho Code, or to the unmarried widow or widower of the same, or the spouse of any eligible disabled veteran who cannot qualify for any public employment because of a service-connected disability. Employment registers will be established in order of final score except that the names of all five (5) and ten (10) percentage point preference eligibles resulting from the merit system will be placed on the register in accordance with their augmented rating. (Ref. Sections 65-506 and 67-~~

5309(f), Idaho Code)

(3-31-22)

- ~~b. Veterans' and disabled veterans' preference points must not be used to achieve a passing score.~~

(3-31-22)

~~04. **Failing Score.** Failure in any part of the examination may disqualify the applicant in the entire examination and from having his name placed on the register. Final scores will be computed in accordance with weights assigned the individual factors in the total examination.~~

(3-31-22)

~~05. **Examination Upon Reclassification.** An employee occupying a position which is reclassified (Ref. Rule 067.01) may be required at the discretion of the administrator to pass an examination for the classification to which reclassified.~~

(3-31-22)

~~094. **ELIMINATION TESTS.**~~

~~Wherever it is stated in the announcement that an applicant must qualify in a series of different tests or satisfy other requirements to become eligible for appointment, and the applicant fails to meet such requirements, he or she shall not be permitted to take any further tests in the examination, and such tests if previously given need not be rated.~~

(3-31-22)

~~095. **NOTICE AND RECORD OF RESULTS OF EXAMINATION.**~~

~~All competitors shall be notified of their final scores electronically or by mail. The records of scores are held as official records for the life of the resulting eligibility registers.~~

(3-31-22)

~~096. **REVIEW AND APPEAL.**~~

~~01. **Review of Examination Content and Scoring Material.** Any competitor, or his/her representative authorized in writing, shall be permitted to inspect his/her own papers and records, except examination content and scoring material, upon application in person at the office of the Division in Boise during business hours. Alternative arrangements are available for competitors located outside of Boise. Review is limited to the time allowed for appeal of examination scores.~~

(3-31-22)

~~02. **Appeal of Examination Score.** Any competitor, by written request to the administrator, may appeal his or her examination score within thirty-five (35) calendar days after the notice was sent to such competitor. The administrator will review the test, may change the score, and may take any other action necessary to insure the integrity and quality of the testing process. When such review discloses error affecting the scores of other competitors, the review and adjustment includes their scores. The administrator will provide a written explanation to competitors whose scores are affected by the action taken.~~

(3-31-22)

~~097. **ALTERNATIVE EXAMINATION PROCESS FOR PERSONS WITH DISABILITIES.**~~

~~01. **Conditions for Eligibility.** Notwithstanding other provisions in these rules, an agency may appoint an individual directly into entrance or promotional probationary status in a classification if the Division of Vocational Rehabilitation, the Idaho Commission for the Blind, or the Industrial Commission certifies the following:~~

(3-31-22)

~~a. That the individual has a physical or mental impairment that substantially limits one (1) or more major life activities, as further defined under state or federal law;~~

(3-31-22)

~~b. That the individual meets the minimum qualifications of the classification and is qualified to perform the essential functions of a particular classified position with or without reasonable accommodation; and~~

(3-31-22)

~~c. That the individual lacks competitiveness in the examination process due to the disability. (Ref. Section 67-5309(e), Idaho Code.)~~

(3-31-22)

- ~~02. **Concurrence Required.** The certification shall be made with the concurrence of the Division.~~

(3-31-22)

~~03. Probationary Period. The probationary period shall be the sole examination for individuals certified under this alternative examination process. (Ref. Rule 150). (3-31-22)~~

~~098.—100. (RESERVED)~~

~~101. ELIGIBILITY REGISTERS.~~

~~Eligibility registers are established by the Division to provide for fair and impartial selection for entrance into the state classified service and for promotion on the basis of competitive merit examinations. (3-31-22)~~

~~01. Reemployment Preference Registers. Registers with reemployment preference for a given classification will contain the names of classified employees of permanent status who have been laid off except limited service appointments. (Ref. Rules 140 and 144). (3-31-22)~~

~~02. Open Competitive Registers. Open competitive registers for a given classification will contain the names of applicants who successfully passed an open competitive examination for the classification. (3-31-22)~~

~~102. PLACEMENT ON REGISTER.~~

~~01. Score Order. Eligible candidates will be placed on the register for a given classification ranked in descending numerical order based on their final score on the examination for such classification. (3-31-22)~~

~~02. Veterans' Preference. Eligible veterans or surviving spouses entitled to five (5) point preference will be placed on the open competitive register in accordance with their final score on the examination augmented by preference points. (Ref. Rule 093.03 and Section 65-504, Idaho Code) (3-31-22)~~

~~03. Disabled Veterans' Preference. Preference will be awarded to disabled veterans as follows: (3-31-22)~~

~~a. Disabled veterans, Purple Heart recipients, spouses of any eligible disabled veterans who cannot qualify for any public employment because of a service-connected disability, and unmarried widows or widowers of disabled veterans entitled to ten (10) point preference will be placed on the open competitive register in order of their final score on the examination augmented by preference points. (Ref. Rule 093.03 and Sections 65-503 and 65-504, Idaho Code) (3-31-22)~~

~~b. Disabled veterans who have a current service-connected disability of thirty percent (30%) or more will be offered an interview when their final score on the hiring list places them within the top twenty five (25) qualified candidates. If more than ten (10) disabled veterans with a disability rating of thirty percent (30%) or more place in the top twenty five (25) qualified scores of a hiring list, at least ten (10) will be offered an interview. (Ref. Rule 093.03 and Section 65-504, Idaho Code) (3-31-22)~~

~~103. DURATION OF ELIGIBILITY REGISTERS.~~

~~01. Reemployment Preference Registers. Eligible candidates will remain thereon for twelve (12) months from effective date of layoff. (Ref. Rules 101.01 and 144) (3-31-22)~~

~~02. Other Registers. The duration of all other registers will be determined by the administrator based on the frequency of job openings and agency need. (3-31-22)~~

~~104. REMOVAL OF NAMES.~~

~~01. Reasons Specified. Names may be removed from any eligibility register by the administrator because of: (3-31-22)~~

~~a. Appointment of the eligible candidate from the register to the classification or appointment to a classification in a higher pay grade. (3-31-22)~~

~~b. A statement by the eligible candidate that he is not willing to accept appointment under conditions~~

~~previously specified. (3-31-22)~~

~~e. Physical, mental or other disability where it has been demonstrated that the disability will prevent the eligible candidate from satisfactorily performing the essential functions of the position with reasonable accommodation for the disability. (3-31-22)~~

~~d. Failure of an eligible candidate to respond within seven (7) calendar days to documented good faith inquiry concerning availability for employment. (3-31-22)~~

~~e. The eligible candidate's conduct renders him unsuitable for the position or classification for which he applied. (3-31-22)~~

~~f. Written rejection of the eligible candidate for good cause by an appointing authority as approved by the administrator. (3-31-22)~~

~~g. Conviction of an eligible candidate of any felony. (3-31-22)~~

~~h. False statements of material facts given in the eligible candidate's application for employment or any subsequent examinations or interviews. (3-31-22)~~

~~i. Dismissal of an eligible candidate from state service. (3-31-22)~~

~~j. Paying, promising to pay, or giving any money, thing, service or consideration to any person, directly or indirectly, for any service or influence given, used, or promised towards securing appointment. (3-31-22)~~

~~k. Directly or indirectly obtaining information regarding examinations to which, as an applicant, he is not entitled. (3-31-22)~~

~~l. Refusing an interview or refusing to accept a position under the conditions set forth in the recruitment announcement. (3-31-22)~~

~~m. Having been certified for a probationary appointment for three (3) separate positions in the same classification in the same agency and not been accepted for employment for good cause. (3-31-22)~~

~~n. Declining three (3) separate offers of employment or reemployment without good cause. (3-31-22)~~

~~**02. Limitations and Duration of Removal.** The administrator will determine if the candidate will be removed from all registers, registers for a particular classification, or registers for specified agencies. All removals will be for one (1) year unless otherwise authorized by the administrator. (3-31-22)~~

~~**105. TEMPORARY UNAVAILABILITY NOT REASON FOR REMOVAL.**~~

~~Temporary unavailability of an eligible applicant, not to exceed fifteen (15) calendar days, in order that the employee may give his or her employer advance notice of separation is not proper cause for his or her removal from the register. (3-31-22)~~

~~**106. RESTORATION OF NAMES TO ELIGIBILITY REGISTERS.**~~

~~Upon receiving appropriate evidence, the administrator shall restore the name of an eligible candidate to any eligibility register from which it has been removed for causes enumerated in Rule 104. (3-31-22)~~

~~**107. REVISION OF CLASSIFICATION SPECIFICATIONS.**~~

~~Whenever a classification specification is revised, the names of persons on the existing eligibility register who meet the minimum qualifications for the revised classification shall be placed in score order on the eligibility register for the revised classification. (3-31-22)~~

~~**108. (RESERVED)**~~

~~**109. CERTIFICATION AND SELECTION.**~~



~~Whenever a vacancy in a classified position is to be filled by a competitive recruitment process, the appointing authority shall make selection from a hiring list created from eligibility registers certified by the Division. Non-promotional internal or external transfers or reinstatements do not require registers certified by the Division.~~

~~(3-31-22)~~

~~**110. NUMBER OF NAMES ON REGISTER.**~~

~~The Division will certify a hiring list from the eligibility register, in the order of their scores, a sufficient number of names so that the appointing authority is able to select for appointment from among twenty five (25) eligible candidates for each position to be filled. If appointments are to be made to more than one (1) position, one (1) additional name shall be added for each vacancy so that the appointing authority has twenty five (25) names to consider for each vacancy. The names of all eligible candidates with scores identical to the twenty fifth ranking eligible candidate on the register shall be provided to appointing authorities for selection purposes.~~

~~(3-31-22)~~

~~**11081.**~~ -- 118. (RESERVED)

~~**119. APPOINTMENTS, REINSTATEMENTS, TRANSFERS, AND RESIGNATIONS.**~~

~~**01. Reemployment Preference Register.** New appointments to a classification within an agency are not permissible if there is an agency reemployment preference register (Ref. Rule 101.01) for that classification with names of eligibles who are willing to accept employment.~~

~~(3-31-22)~~

~~**02. Probationary Period Required.** All appointments to positions in the state classified service whenever adequate eligibility registers exist for the classification are probationary appointments except as otherwise provided in Rules 040 and 150.~~

~~(3-31-22)~~

~~**12019. LIMITED SERVICE APPOINTMENTS.**~~

~~**01. Designation.** Classified positions expected to be of limited duration due to funding or nature of the position or project must be identified and designated in advance of announcement.~~

~~( )~~

~~**02. Permanent Status and Expedited Layoff.** Employees appointed under limited-service appointments have permanent classified status after successful completion of probation. These employees have the same rights and responsibilities as other permanent employees but may be subject to expedited layoff pursuant to Rule 140.01.e.~~

~~(3-31-22)( )~~

~~**03. Limited Service Agreement.** Appointing authorities making limited-service appointments must prepare, no later than the date of appointment, a written agreement for signature of both the employee and appointing authority describing the non-career nature of the appointment, potential for layoff, and the duration the employee may expect to work. Renewals and updated agreements are required every two (2) years. A copy of the agreement must be kept in the employee's personnel file.~~

~~( )~~

~~**1240. SEASONAL APPOINTMENT.**~~

~~**01. Purpose.** An appointing authority may make a seasonal appointment from a register for work that occurs intermittently during the year. (Ref. Section 67-5302(31), Idaho Code).~~

~~(3-31-22)~~

~~**021. Employee Rights.** Employees appointed under a seasonal appointment will have all obligations, rights, and privileges of any classified employee except those accorded by Rules 140 through 147, relating to reduction in force.~~

~~( )~~

~~**03. Separation.** Employees appointed under a seasonal appointment may be separated from the seasonal appointment and returned as frequently as intermittent workload dictates.~~

~~(3-31-22)~~

~~**04. Duration of Appointment.** If an employee has not been called to work for six thousand two hundred forty (6,240) hours (three (3) years), the seasonal appointment expires; rehire of the employee must be from a register.~~

~~(3-31-22)~~

~~122~~**1.** TEMPORARY APPOINTMENTS (NON-CLASSIFIED).

**01. Hours Limitation.** Temporary appointments are limited to one thousand three hundred eighty-five (1,385) hours of work in any twelve (12) month period for any one agency. Both calculations begin on the date of the original temporary appointment ~~(Ref. Section 67-5302(33), Idaho Code).~~ (3-31-22)( )

**02. Transition to Classified Service.** Temporary employees who have served at least one thousand forty (1,040) hours of continuous service, may go from temporary status to classified entrance probation status in that same position without further ~~examination application~~ if the announcement for the temporary position from which the certified register was created indicates that the temporary position has the potential of becoming a permanent classified position. The classified position must be in the same classification and at the same location as announced. (3-31-22)( )

~~123~~**2.** (RESERVED)

~~124~~**3.** REINSTATEMENTS.

**01. Eligibility.** A current or former employee will be eligible for reinstatement to a classification in which he held permanent status, or if deleted its successor, or to another classification of equal or lower pay grade under the following conditions ~~(salary treatment is covered by Rule 072.06).~~ (4-6-23)( )

**a.** Reinstatement is limited to a period equal to the length of the employee's probationary and permanent employment combined. (3-31-22)

~~**b.** The current or former employee must have separated from the classification for which reinstatement is desired without prejudice. A former employee must also have separated from state classified service without prejudice. (3-31-22)~~

~~**eb.** The current or former employee must meet the current minimum qualifications of the classification to which reinstatement is desired. ( )~~

~~**02. Reinstatement Prohibited.** Reinstatement of a current or former employee is not permissible as long as there is an agency register (Ref. Rule 101.01) for that classification with names of eligibles who have reemployment preference status. (3-31-22)~~

~~**032. Examination.** A current or former employee may be required to pass an examination for the classification to which reinstatement is desired. ( )~~

~~**043. Probationary Period.** An appointing authority may negotiate for a probationary period as a condition of reinstatement except where prohibited. (Ref. Rules 124.05 and 145.01). (3-31-22)( )~~

~~**05. Return from Military Duty.** An employee returning from military leave without pay (Ref. Rule 250.04) who is relieved or discharged from military duty under conditions other than dishonorable will be, upon application, reinstated in his former position, or one of comparable classification, without loss of credited state service, status, or pay as prescribed by Sections 46-216, 65-508, and 65-511, Idaho Code, USERRA, or the Military Selective Service Act, Title 38, Chapter 43, U.S. Code. Application for reemployment must be made in accordance with the provisions of USERRA. Salary treatment is covered by Rule 072.09. (3-31-22)~~

~~125~~**4.** TRANSFERS.

**01. Authority to Transfer.** An appointing authority may transfer an employee at any time from one position to another in the same classification. ( )

**02. Transfer Within Pay Grade.** An appointing authority may transfer an employee from a classification in which he holds permanent status to another classification allocated to the same pay grade for which the employee meets the minimum qualifications. ( )

~~03. Probationary Period.~~ An appointing authority may negotiate with an employee for a probationary period as a condition for a voluntary transfer. ~~Voluntary probation is not allowed for intra-agency transfers. (Ref. Rule 150)~~ (3-31-22)( )

~~04. Limitation.~~ Transfers will not be used to abridge an employee's rights in reduction in force prescribed by Rules 140 through 147. (3-31-22)

~~05. Transfer Between Agencies.~~ An employee is eligible for transfer between agencies in the same classification in which he holds permanent status or to another classification in the same or lower pay grade for which the employee meets the minimum qualifications. ~~Accrued vacation and sick leave will be transferred in accordance with Rules 230.04 and 240.02. Salary treatment is covered by Rule 072.06.~~ (3-31-22)( )

~~06. Restriction.~~ Transfer of an employee between agencies is not permissible as long as there is a agency register with reemployment preference status (Ref. Rule 101.01) for the classification in the agency to which transfer is desired with names of eligibles who are willing to accept reemployment. (3-31-22)

~~07. Examination.~~ An employee transferring between classifications may be required to pass an examination for the classification to which transfer is desired. (4-6-23)

~~08. Involuntary Transfer.~~ Notice and an opportunity to be heard must be given to any employee subject to an involuntary transfer. (3-31-22)

## 1265. RESIGNATION.

~~01. Notice.~~ A classified employee may resign at any time. A resignation is effective at the time designated by the employee, without need for written or advance notice, or acceptance of the resignation by the appointing authority. ( )

~~02. Rescission and Reinstatement.~~ Once an employee has submitted a resignation, reinstatement is in the discretion of the appointing authority as ~~provided in Rule 124.~~ The appointing authority may but is not required to allow an employee to rescind a resignation prior to its effective date. (3-31-22)( )

~~03. Resignation in Lieu of Dismissal.~~ An employee may resign in lieu of being dismissed for cause. ( )

## 1276. -- 128. (RESERVED)

## 129. ACTING APPOINTMENT TO A POSITION.

~~01. Conditions for Acting Appointment.~~ At the discretion of an appointing authority, a classified employee with permanent status may be appointed to a position in a classification of higher pay grade within his own agency in an acting capacity whenever: ( )

~~a.~~ The incumbent of the position in the higher classification is on authorized leave of absence; or ( )

~~b.~~ A vacancy exists and there is no agency register with reemployment preference status (Ref. Rule 101.01) with names of eligibles who are willing to accept reemployment, nor adequate agency register for the classification. (3-31-22)

~~02. Minimum Qualifications.~~ To be eligible for an acting appointment, an employee must meet the minimum qualifications of the class. ( )

~~03. Effective Date.~~ The effective date of each acting appointment may be retroactive to the beginning of the pay period during which approval is granted. (3-31-22)

## 130. LIMITATION ON LENGTH OF APPOINTMENT.

Acting appointments are limited to the period of time necessary to fill the vacancy pursuant to procedures prescribed in these rules but in no case can continue beyond one thousand forty (1,040) hours of credited state service unless specifically extended by the administrator. ( )

**131. SALARY.**

For any credited state service which an employee serves in a classification in an acting capacity, he or she shall receive the salary for the classification as though he or she had actually been promoted. ( )

**132. EXPIRATION OF APPOINTMENT.**

**01. Return of Incumbent.** When the incumbent of the classification returns from leave of absence, or the vacant position is filled, the acting appointment expires. The acting appointee is returned to the class, the pay grade and rate held immediately preceding the acting appointment. ( )

**02. Failure of Incumbent to Return.** Should the employee on leave of absence separate from state service, the employee serving in the acting appointment may continue to serve in that capacity until the vacancy has been filled but in no case exceed the time limits prescribed in Rule 130. ( )

**133. -- 139. (RESERVED)**

**140. REDUCTION IN FORCE.**

**01. Conditions for Layoff.** An appointing authority may lay off an employee whenever necessary due to: shortage of funds or work; reorganization; the end of a limited service appointment; employee's failure to complete interagency promotional probation when demotion options are not available; or abolishment of one (1) or more positions ~~(ref. Rule 066).~~ (3-31-22)( )

~~**02. Layoff Decisions.** Layoff decisions must not be based on race, color, national origin, gender, age, religion, disability, or political affiliation. Layoffs must be accomplished in a systematic manner with equity for the rights of classified employees and not do away with an employee's right to problem solving, or appeal if the layoff is in fact a dismissal.~~ (3-31-22)

~~**03. Assessment for Adverse Impact.** In planning and conducting a reduction in force, the appointing authority must consider the effect layoff units and positions to be abolished may have on the composition of the agency work force. If layoff units or exclusions are established, adverse impact of protected classes must be assessed. The appointing authority must administer the reduction in force consistent with state and federal laws, and rules and guidelines governing adverse impact.~~ (3-31-22)

**042. Layoff by Position.** Reduction in force must be by classification of position. ( )

**a.** Reduction in force may be limited to or specifically exclude employees appointed under selective certification ~~(Ref. Rule 112)~~ for bona fide occupational qualifications, or appointed to a classification with minimum qualification specialties. Inclusions or exclusions must include or exclude all incumbents of the classification appointed under similar selective certification, or the same option or minimum qualification specialty and must be approved in advance by the administrator. (3-31-22)( )

**b.** An appointing authority may petition the administrator to exclude an individual from a reduction in force whose retention may be required to meet agency mission critical needs. Requests must provide a documented rationale with exclusions approved in advance by the administrator. ( )

**c.** ~~Limited service appointments are defined by the project, program, or function for which the appointments were made.~~ When a limited service project is completed or funding concluded, the limited service appointee is separated from state service as a layoff. However, limited service appointees have no reemployment preference and will not displace other regular permanent or limited services staff via voluntary demotion in lieu of layoff. (3-31-22)( )

**053. Layoff Unit.** Reduction in force must be agency-wide or by organizational unit designated for

layoff purposes. Layoff units are geographic, programmatic, or other identified subdivisions of an agency designated for layoff purposes by the appointing authority. They must be approved by the administrator before the effective date of the layoff. Organizational layoff unit designations must be renewed with a change in appointing authority or administrator. ( )

**064. Reduction of Hours Worked.** An involuntary reduction in the number of hours worked for a selected position constitutes a layoff unless there is an equal reduction of hours worked for all positions in the same classification in the agency or approved layoff unit for a limited period of time, such as a furlough. ( )

**075. Downward Reclass.** A material change in duties of one (1) or more positions resulting in an employee's reclassification to a classification allocated to one (1) pay grade lower does not constitute a layoff. ~~(Ref. Rule 067).~~ More than one (1) pay grade change downward is considered a layoff, unless the change of duties is disciplinary. ~~(Ref. Section 190).~~ (3-31-22)( )

**141. CALCULATION OF RETENTION POINTS.**

There will be an evaluation of all employees in the classification in the agency or organizational unit affected by the reduction in force based on a retention point system. Retention points are derived from experience as described in performance evaluations, classified credited state service, and veterans' preference as described in Rule 141.03. The appointing authority will determine a process for the impartial assessment of evaluations to assign points as follows:

Exemplary Performance	-	.100 points
Solid Sustained Performance	-	.075 points
Achieves Performance Standards	-	.050 points
Does Not Achieve Performance Standards	-	.0 points

( )

**01. No Performance Evaluation on File for a Twelve-Month Period.** All credited state service for which there is no performance evaluation will receive seventy-five thousandths (.075) points per hour. ~~A supervisor's failure to document performance in a timely manner cannot be used to disadvantage an employee during retention point calculation.~~ (3-31-22)( )

~~a. Completing annual evaluation. The evaluation may be written to cover the prior two thousand eighty (2,080) hours or extended to also cover the time frame up to the date of the evaluation.~~ (4-6-23)

~~b. Changes in prior periods not allowed. Once an evaluation has been signed by the supervisor, employee, manager, and other applicable reviewers, the document may not be changed, unless the change is a result of a problem solving dispute resolution.~~ (3-31-22)

**02. Calculation of Retention Points Since Last Evaluation.** The most recent performance evaluation should be used to pro-rate retention points when calculating credited state service since that evaluation, unless that evaluation occurred more than two thousand eighty (2,080) hours from the date of calculation. In such cases, points are calculated in conformance with Rule 141.01. ( )

**03. Veterans' Preference.** Veterans as defined in Title 65, Chapter 2, Idaho Code, will receive preference by the addition of retention points equivalent to three (3) years of service at a level that achieves performance standards. ~~(Ref. Section 65-501, Idaho Code)~~ (3-31-22)( )

**04. Calculation Date Cutoff.** No points will be calculated for the sixty (60) days prior to the effective date of the layoff. ( )

**05. Audit of Retention Points.** Each employee is entitled to an audit of retention points by an independent auditor designated by the administrator in cases of dispute between the appointing authority and the employee. The request for audit must be filed with the appointing authority within five (5) calendar days of the employee's receipt of layoff notification. The decision of the independent auditor is binding on both parties unless an

appeal is filed within thirty-five (35) calendar days from the date of the auditor's notification to the affected parties. ( )

**142. CREDITED STATE SERVICE.**  
Eligible credited state service for purposes of Rule 140 is defined as follows: ( )

**01. Service Prior to State Personnel System.** All credited state service prior to the establishment of classified service, Title 67, Chapter 53, Idaho Code. ~~(Ref. Sections 67-5332 and 59-1604, Idaho Code, for definitions of credited state service)~~ (3-31-22)( )

~~**02. Classified Service.** All classified credited state service since the establishment of classified service.~~ (3-31-22)

~~**03. Nonclassified Service.** All credited state service in a position exempt from classified service if that position is subsequently transferred to classified service pursuant to Rule 040.~~ (3-31-22)

**143. REDUCTION IN FORCE DETERMINATION AND NOTIFICATION.**

**01. Identification of Classifications.** The appointing authority will identify the classification of positions to be reduced or eliminated. ( )

**02. Calculation of Retention Points.** Retention points will be calculated for all employees assigned to the classification of position including those serving in underfill positions. Retention points need not be calculated where layoff involves a single-incumbent class. ( )

**03. Order of Reduction in Force.** The order of reduction in force will be by type of appointment held by the employee in the affected classification as follows: first to be laid off are the entrance probationary appointees, and then the permanent appointees including those serving a voluntary probation. Employees will be placed on the layoff list beginning with the employee with the highest number of retention points. Employee layoffs will be made from the layoff list in inverse order. When two (2) or more employees have the same combined total of retention points, retention will be determined in the following sequence: ~~(Ref. Rule 150.02.e.)~~ (3-31-22)( )

a. The employee with the highest total retention points for the past thirty-six (36) months. ( )

b. Random selection. ( )

**04. Notification to Affected Employees.** Each employee affected will be notified in writing of layoff and the rationale for the decision at least fifteen (15) calendar days prior to the effective date. Notification will include a copy of the agency layoff procedure and a copy of the computation of retention points when required ~~(Ref. Rule 143.02).~~ (3-31-22)( )

**05. Notification to Administrator.** The appointing authority must give written notice of layoff to the administrator at least fifteen (15) calendar days prior to its effective date and must provide a list of persons affected by the layoff with their retention point calculations and must indicate which employees will be laid off. ( )

**144. PLACEMENT ON REGISTER WITH REEMPLOYMENT PREFERENCE.**

A permanent employee laid off from their job or who chooses a voluntary demotion in lieu of a layoff, under these rules shall be placed on their classification's register with reemployment preference ~~in unranked order.~~ Such placement will be for one (1) year from the effective date of demotion or layoff, or until the employee or former employee declines a total of three (3) separate job offers without good cause, whichever comes first. ~~(Rule 104.01.n.)~~ An employee or former employee may request their name be removed at any time. (3-31-22)( )

**145. USE OF REGISTERS WITH REEMPLOYMENT PREFERENCE.**

**01. Priority for Reemployment by Agency that Conducted the Layoff.** ( )

a. The employee who has been laid off will be offered reemployment to a position in the classification

from which laid off, before any person outside that agency may be promoted to, transferred to, reinstated or appointed to that classification by an appointing authority of that agency. ~~Appointing authorities may reassign or transfer individuals who are in the same classification within their agency but may not demote, promote, reclassify, or make acting appointments to that classification. If that agency determines a need to fill that classification, the employee who was laid off has first priority for that position. (Ref. Rules 125.04 and 125.08) Extenuating circumstances due to short term budget, workload, location, or other complexities may be used by the appointing authority to request a temporary waiver of this rule by the administrator.~~ (3-31-22)( )

**b.** When attempting to fill vacancies for a classification where a lay off occurred, the agency will provide an opportunity to interview and will make their hiring selection from the individuals their agency laid off from the classification, including those separated from state service under Rule 241.02 and those that took a voluntary demotion in lieu of layoff. ( )

**c.** Individuals being returned to the classification from which they were laid off will be reinstated with the same salary, permanent status and their sick leave balance restored. ~~If the pay minimum has increased, see Rule 072-03.~~ (3-31-22)( )

**02. Consideration for Hire by Other Agencies.** For promotional opportunities, ~~internal agency candidates are normally considered before outside recruitment occurs, including other agencies' laid off candidates. However,~~ individuals who have been laid off must be offered the opportunity to interview ~~before other agencies consider candidates from statewide promotional or open-competitive recruitments.~~ (3-31-22)( )

**03. Employment by Other Agency.** Individuals may be reappointed or reinstated if eligible. The salary of an employee re-hired after a layoff is negotiable between the employee and new appointing authority in the current pay grade for the classification in which the employee is appointed. ( )

**04. Return to Register.** If an individual finds another agency's position unsatisfactory or does not satisfactorily complete a voluntary probation period, he may be placed back on a register for the remainder of their twelve (12) month time frame. Individuals appointed to a position, other than the classification from which laid off, will remain on preference register status for the remainder of the twelve-month (12) period if otherwise eligible. ( )

**146. (RESERVED)**

**147. VOLUNTARY DEMOTION IN LIEU OF LAYOFF.**

Within their layoff unit, an employee with permanent status may choose to accept a voluntary demotion rather than be laid off. Demotion options are limited to a classification ~~or if deleted, its successor,~~ in which the employee held permanent status in the agency. Such demotion will not be permitted if it causes the layoff of an employee with greater retention points. (3-31-22)( )

**01. Eligibility.** ( )

**a.** Qualified. Employee must meet the classification's current minimum qualifications and any minimum qualification specialties. ( )

**b.** Exclusion. Limited service appointees are not eligible to take any voluntary demotion that would result in the displacement of other employees. However, voluntary demotions to a vacant position are allowed with the approval of the appointing authority. ( )

**02. Acceptance.** To accept a voluntary demotion rather than a layoff, the employee must notify the appointing authority in writing of their decision no later than three (3) working days after written notification of the layoff and opportunity to demote to a specific position. ( )

**148. -- 149. (RESERVED)**

**150. PROBATIONARY PERIODS.**

**01. Probationary Period Required.** ~~Except as provided in Rule 040, e~~ Every appointment and promotion to a classified position is probationary. (3-31-22)( )

**02. Types of Probationary Periods.** The probationary period serves as a working test period to provide the agency an opportunity to evaluate a probationary employee's work performance and suitability for the position. There are three (3) types of probationary periods: ( )

**a.** Entrance probation is the probationary service required of an employee at the time of his original appointment or any subsequent appointment to state classified service excluding reinstatement and transfer, the duration of which is one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who must serve two thousand eighty (2,080) hours. ( )

**b.** Promotional probation is the probationary service required when an employee is promoted, the duration of which is one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who must serve two thousand eighty (2,080) hours. ( )

**c.** Voluntary probation is an agreement between employees and the appointing authority for interagency employment actions such as reinstatement, transfer, or voluntary demotion. ~~A voluntary probation is not to be used for employment actions within the agency.~~ The probationary period is negotiable but may not exceed one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who may serve up to two thousand eighty (2,080) hours. (3-31-22)( )

**03. Extension of Probationary Period.** Upon written request demonstrating good cause, the administrator may extend the probationary period of an employee for an additional specified period not to exceed one thousand forty (1,040) hours of credited state service. Extension must occur before an employee has worked one thousand forty (1,040) hours or two thousand eighty (2,080) hours for peace officers. ~~(Ref. Section 67-5309(j), Idaho Code)~~ (3-31-22)( )

**04. Interruption of Probationary Period.** The probationary period in any classification must be completed within a single agency uninterrupted by termination ~~(Ref. Rule 152.02)~~ or dismissal ~~(Ref. Rule 190)~~. An employee who separated during the probationary period must begin a new probationary period upon reappointment or promotion. (3-31-22)( )

**05. Temporary Service Credit.** At the request of the hiring agency, the administrator will allow temporary service time in a given classification to be used toward fulfilling the entrance probationary requirement in that classification as established in Section 67-5309(j), Idaho Code. The temporary duties must be substantially the same as the regular permanent appointment. ~~(Ref. Section 67-5309(y), Idaho Code, and Rules 122 and 150.01)~~ (4-6-23)( )

**06. Acting Service Credit.** At the request of the hiring agency, the administrator will allow acting appointment service time in a given classification to be used toward fulfilling the promotional probationary requirement in that classification as established in Section 67-5309(j), Idaho Code. The acting appointment duties must be substantially the same as the regular permanent appointment. ~~(Ref. Section 67-5309(y), Idaho Code, and Rules 129 and 150.01)~~ (3-31-22)( )

**151. SATISFACTORY SERVICE.**

When a probationary employee has satisfactorily served the probationary period hours, the employee will become permanent status. ~~The appointing authority shall no later than thirty (30) calendar days after the expiration of the probationary period provide the employee and the Division a performance evaluation.~~ Certification to permanent status is effective one thousand forty (1,040) hours of credited state service after appointment, except that it is effective two thousand eighty (2,080) hours of credited state service after appointment for peace officer classifications unless either period has been extended ~~pursuant to Rule 150.03.~~ ~~(Ref. Section 67-5309(j), Idaho Code, and Rule 210.04)~~ (3-31-22)( )

**152. SEPARATION DURING PROBATION.**

**01. Notification.** If a probationary employee does not serve satisfactorily, the appointing authority



must provide the employee and the Division a performance evaluation indicating unsatisfactory performance ~~in order to process the failure to complete probation separation within thirty (30) days after the expiration of the probationary period.~~ (Ref. Section 67-5309(j), Idaho Code, and Rule 210.04). (3-31-22)( )

**02. During Entrance and Voluntary Probation.** ( )

**a.** An employee who does not serve satisfactorily during the entrance or voluntary probation must first be given the opportunity in writing to resign without prejudice; an employee who fails to resign may be terminated without cause assigned and without the right to file for problem-solving or an appeal. ~~(Ref. Section 67-5309(j), Idaho Code, and Rule 210.04)~~ (3-31-22)( )

**b.** Notice to the employee of termination for unsatisfactory service must be made at least fifteen (15) calendar days prior to the effective date of termination, unless there are extenuating circumstances. ( )

**153. UNSATISFACTORY PERFORMANCE DURING A PROMOTION PROBATION PERIOD.**

**01. Disciplinary Action.** Regardless of the probation status, when a Rule 190 violation supports demotion, suspension, or dismissal, such action may occur. ( )

**02. During Promotional Probation.** If an employee on promotional probation does not meet performance expectations: ( )

**a.** The employee may voluntarily demote to a vacant position in any classification he or she has held permanent status in state career service. However, the employee must meet the current minimum requirements for that classification. If more than one (1) option exists for demotion, the employee should be placed in the higher paid position, but the specific assignment is up to the appointing authority. ( )

**b.** If no position is available for the voluntary demotion option, the employee may be laid off ~~(Ref. Rules 145 and 147)~~ and may request their name be placed on a register for the classification where they last held permanent status. (4-6-23)( )

**c.** When reinstatement occurs in the classification they promoted from, the employee's name is removed from reemployment required preference status. ( )

**154. FAILURE TO PROVIDE PERFORMANCE EVALUATION.**

If the appointing authority fails to provide a performance evaluation ~~as required in Rule 151~~, the employee shall be considered to have satisfactorily completed the probationary period and be certified to permanent status as provided ~~by Rule 151~~, unless the probationary period has been extended by the administrator. ~~(Ref. Rule 150.03)~~ (3-31-22)( )

**155. -- 158. (RESERVED)**

**159. STATUS AND TENURE.**

**01. Probationary Promotions.** Employees serving a promotional probationary period have continued permanent status in the classification from which promoted until they are certified as having satisfactorily completed the promotional probationary period in the classification to which promoted. ~~(Ref. Rules 151, 152, and 153)~~ (3-31-22)( )

~~**02. Tenure of Employment.** All employment in the state classified service is without definite term except where the term may be specified by law, or under conditions of a limited service appointment. (Ref. Rule 120)~~ (3-31-22)

**160. -- 168. (RESERVED)**

**169. PROMOTIONS.**

~~01. Use of Promotional Registers. (3-31-22)~~

~~a. Preference for Promotion. Whenever practical, a vacancy in a classified position must be filled by the promotion of an employee in the agency in which the vacancy occurs. (Ref. Section 67-5309(g), Idaho Code) (3-31-22)~~

~~b. Exception. An appointing authority may request that a position be filled from a statewide promotional register (Ref. Rule 101.03) or an open competitive register (Ref. Rule 101.04) whenever he determines that such an appointment will best serve the interests of the agency. (3-31-22)~~

~~c. Agency Registers with Reemployment Preference Status. Promotions to a classification are not permissible as long as there is an agency register with reemployment preference status (Ref. Rule 101.01) for the classification with names of eligible candidates who are willing to accept reemployment. (3-31-22)~~

**021. Interagency Promotions.** All interagency promotions must be made using statewide promotional registers (Ref. Rule 101.03) ( )

**032. Eligibility for Promotion.** Promotional appointees must have permanent status (Ref. Rule 159) and meet the minimum qualifications of the promotional classification. ( )

**043. Promotion, In-Grade.** To reflect unique agency organization design, an agency may choose to request an internal competitive process to recognize the advancement of an employee with permanent status from a position occupied in one classification to a position in another classification having greater points or a unique specialty area, but within the same pay grade. With the approval of the administrator, an in-grade promotion will be treated in all regards as a promotion. ( )

170. -- 178. (RESERVED)

**179. DEMOTIONS.**

Demotions are reductions of an employee from a position which the employee occupies in one classification to a position in another classification in a lower pay grade. Demotions authorized under these rules apply to both probationary and permanent status employees who meet the minimum qualifications of the classification to which demoted. ( )

180. (RESERVED)

~~181. NONDISCIPLINARY DEMOTION OPTIONAL.~~

~~An appointing authority may allow a voluntary demotion when requested or accepted by an employee and approved by the appointing authority. (3-31-22)~~

~~182. DISCIPLINARY DEMOTION.~~

~~An appointing authority may make a disciplinary demotion for causes enumerated in Rule 190 that are not sufficiently severe to warrant dismissal. (3-31-22)~~

1831. -- 189. (RESERVED)

**190. DISCIPLINARY ACTIONS.**

**01. Cause for Disciplinary Actions or Separation From State Service.** Dismissal, suspension, demotion, or the reduction in pay, of a classified employee, may occur for any of the following causes during the employee's employment: ( )

**a.** Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes, or rules of the agency or the Division and Idaho Personnel Commission. ( )

**b.** Inefficiency, incompetency, or negligence in performing duties, or job performance that fails to meet established performance standards. ( )

- c. Physical or mental incapability for performing assigned duties, if a reasonable accommodation cannot be made for the disabling condition. ( )
- d. Refusal to accept a reasonable and proper assignment from an authorized supervisor. ( )
- e. Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the agency. ( )
- f. Intoxication or being under the influence of alcohol, or the misuse of medications or controlled substances, while on duty. ( )
- g. Careless, negligent, or improper use or unlawful conversion of state property, equipment, or funds. ( )
- h. Use of any influence which violates the principles of the merit system in an attempt to secure a promotion or privileges for individual advantage. ( )
- i. Conviction of official misconduct in office, or conviction of any felony, or conviction of any other crime involving moral turpitude. ( )
- j. Acceptance of gifts in exchange for influence or favors given in the employee's official capacity. ( )
- k. Habitual pattern of failure to report for duty at the assigned time and place. ( )
- l. Habitual improper use of sick leave. ( )
- m. Unauthorized disclosure of confidential information from official records. ( )
- n. ~~Unapproved~~ ~~A~~ absence without leave. (3-31-22)( )
- o. Misstatement or deception in application for employment. ( )
- p. Failure to obtain or maintain a current license or certificate lawfully required as a condition in performance of duties. ( )
- q. Prohibited participation in political activities. ~~(Ref. Section 67-5311, Idaho Code)~~ (3-31-22)( )

**02. Suspension for Investigation.** An appointing authority may place an employee on administrative leave for investigation of disciplinary causes enumerated in Rule 190.01. Each suspension for investigation will be superseded by reinstatement to duty, dismissal, disciplinary demotion, or suspension within thirty (30) calendar days of the suspension for investigation or within an extension of an additional thirty (30) calendar days approved by the administrator. Further extensions may be granted with the approval of the Administrator. ( )

**03. Disciplinary Suspension.** An appointing authority may suspend without pay an employee for discipline for causes enumerated above. Disciplinary suspension of an employee with permanent status is subject to appeal by the employee to the Commission. ( )

**04. Suspension on Felony Charges.** An appointing authority may suspend without pay an employee upon the issuance of a complaint, an information or indictment for felony charges. Such suspensions may remain in effect during the time such charges are pending. Full reinstatement of all benefits and salary that the employee would have otherwise been entitled must be provided by the appointing authority to the employee upon a subsequent finding that charges or information were without grounds or the employee was not found guilty. For the purpose of this rule, a judgment withheld under Rule 33(d) of the Idaho Rules of Criminal Procedure is a conviction. ( )

**05. Notice to Administrator.** Whenever an appointing authority considers it necessary to take

disciplinary action against an employee, he must notify the employee and the administrator concurrently in writing; and set forth the specific rules violated and the reasons for the action. Suspensions with pay for investigation (~~Ref. Rule 190.02~~) may be made without prior notice to the employee; in this case, the appointing authority must notify the administrator as soon as practical. (3-31-22)( )

**191. -- 199. (RESERVED)**

**200. PROBLEM-SOLVING AND DUE PROCESS PROCEDURES.**

**01. Overview of Procedures. ( )**

**a.** The due process procedure deals with the disciplinary matters set forth in Section 67-5315(2), Idaho Code, dismissals, suspensions without pay, and demotions, and with all involuntary transfers. The due process procedure generally requires the employee receive notice and an opportunity to respond before a disciplinary decision or involuntary transfer is made by the agency. Decisions regarding disciplinary dismissals, suspensions without pay, and demotions may be appealed in accordance with Rule 201. ( )

**b.** The problem-solving procedure deals with all matters not specifically reserved for the due process procedure. Problem solving decisions may not be appealed to the Commission except as authorized by Section 67-5316, Idaho Code. ( )

**02. Establishment of Agency Problem-Solving and Due Process Procedures.** Each participating agency must maintain written employee problem-solving and due process procedures, which have been approved by the administrator for conformity to law and Rule 200. ( )

**03. Eligibility and Time for Filing Under Problem-Solving Procedure.** Any classified employee with permanent, or entrance probationary status may file under the problem-solving procedure as defined by Section 67-5315(1), Idaho Code. An employee must file under the problem-solving procedure in writing not later than ten (10) working days after being notified or becoming aware of a nondisciplinary matter which may be handled through the problem-solving procedure; however, if the filing alleges an ongoing pattern of harassment or illegal discrimination, the agency is strongly encouraged to waive any time limits. The time limit for filing will be extended due to the employee's illness or other approved leave, up to ten (10) days after return to the job. The agency may accept a filing that is or appears to be filed late. Agency policies may provide for waiver of time elements or any intermediate step of the problem-solving procedure upon mutual agreement of the employee and appointing authority. ( )

**04. Elements of the Problem-Solving Procedure.** The procedure must contain a statement from the agency head encouraging employees to use the procedure for any nondisciplinary, job-related matters, and encouraging the employee, supervisors, and upper-level managers and administrators to resolve the matter at the lowest management level possible within the organization. The statement must also provide a means whereby agency representatives can obtain timely authority, if needed, to resolve the matter. The procedure must require the employee to make a reasonable attempt to discuss the issue with the immediate supervisor before filing. After a written filing is received, the procedure must provide for such additional levels of management within the employee's chain of command as are appropriate in the agency. The procedure must also provide for the use of an impartial mediator upon agreement by the employee and agency. Timelines must not exceed five (5) working days between each step unless both the employee and the agency agree, in writing, to a specific number of days to extend the timelines herein, not to exceed thirty (30) days between each step. The procedure must also inform the employee that he is entitled to be represented by a person of the employee's own choosing at each step of the procedure, except the initial informal discussion with the immediate supervisor. Two (2) or more employees may join in a single filing under the problem-solving procedure. Retaliation for filing under the problem-solving procedure, for participating as a witness, or representative is expressly prohibited. This procedure does not apply to unsatisfactory performance during entrance probation (~~Ref. Sections 67-5309(j), 67-5315(1)(4), Idaho Code, and Rule 152~~). (3-31-22)( )

**05. Filings Alleging Sexual Harassment or Other Illegal Discrimination.** Each agency's problem-solving procedure must provide an optional alternative procedure for an employee to file allegations of sexual harassment or discrimination based on race, color, sex, national origin, religion, age, or disability. The procedure must expressly prohibit sexual harassment and discrimination. Employees must be informed of their right to file

complaints with the Idaho Human Rights Commission. The alternative procedure must designate a specific person or persons to receive and investigate such filings, and require that the investigation and resolution of them be conducted with maximum regard for confidentiality. ( )

**06. Elements of Due Process Procedure.** An agency must provide notice and an opportunity to respond before making a decision to impose any disciplinary sanction or involuntary transfer, as set forth in Section 67-5315(2), Idaho Code. With respect to notice, an agency must provide notice of the contemplated action, the basis or reason for the contemplated action, and an explanation of the evidence supporting the contemplated action. The notice must be provided to the employee and administrator concurrently. With respect to the opportunity to respond, the employee must be given the opportunity to respond to the notice and present reasons why the contemplated action should not be taken. The opportunity to respond must not occur later than five (5) working days after the employee has received notice, unless an extension is approved by the appointing authority in writing. After the employee has responded, or after the period to respond has expired or has been waived in writing by the employee, whichever occurs first, the appointing authority, or designee, must make and implement the agency's decision not later than five (5) working days thereafter, excluding days the appointing authority, or designee, is out of the office, or for other extenuating circumstances. The extension will be communicated to the employee in writing. The procedure must inform the employee of his right to be represented by a person of the employee's own choosing during the opportunity to respond. The procedure must also provide for the use of an impartial mediator upon agreement by the employee and agency. The procedure does not apply to unsatisfactory performance during entrance and promotional probation ~~(Ref. Sections 67-5309(j), 67-5315(2), Idaho Code, and; Rules 150 through 153).~~ The due process procedure is complete when the appointing authority, or designee, mails or delivers a decision to the affected employee. The decision must also be sent to the administrator concurrently. (4-6-23)( )

**07. Notification.** A copy of the approved problem-solving and due process procedures must be furnished and explained to each employee with permanent, or entrance probationary status in the agency concerned. ( )

**201. APPEAL PROCEDURE.**

**01. Idaho Rules of Administrative Procedure of the Attorney General.** In addition to the following rules on appeals and petitions for review, the "Idaho Rules of Administrative Procedure of the Attorney General" on contested cases, IDAPA 04.11.01.000 et seq., apply with the following exceptions, which are inconsistent with the Commission's statute or practice: IDAPA 04.11.01.055, 202, 240, 250, 270.01, 280, 300, 302, 651, 720, 730, 740, 790, 791, 821.02, and 860. Petitions for rulemaking and declaratory rulings are addressed in Rules 270 and 271. ( )

**02. Filing of Appeal and Appearances.** Every appeal filed with the Commission must be written and state the decision that is being appealed and the action requested of the Commission. The Commission must serve a copy of the appeal on the respondent and upon the legal counsel for the Commission. Notices of appearance and notices of substitution of counsel need not be filed by deputy attorneys general or members of law firms already representing a party in an appeal or petition for review. ( )

**03. Time for Appeal.** An appeal from a decision of an appointing authority is deemed to be timely filed if received at the office of the Commission within thirty-five (35) calendar days after completion of the agency due process procedure. Personal delivery or deposit in the United States mail, postage prepaid, of a written notification to the affected employee of the appointing authority's decision constitutes completion of the agency due process procedure. An appeal of a decision or action of the administrator or staff must be filed at the office of the Commission within thirty-five (35) calendar days of personal delivery of notice of the decision or action, deposit of the notice in the United States mail, postage prepaid, or deposit of the notice in Statehouse mail. ( )

**04. Non-Jurisdictional Appeals.** Appeals which are non-jurisdictional may be dismissed without motion by the hearing officer, the chair of the Commission, or his designee. If a hearing officer orders such a dismissal, the dismissal may be appealed to the Commission as a petition for review pursuant to Rule 202.01. If the chair of the Commission orders such a dismissal, it constitutes the final order of the Commission and may be appealed pursuant to Sections 67-5317(3) and 67-5318, Idaho Code. ( )

**05. Setting of Hearing.** Within fifteen (15) days after receiving the appeal from the Commission, the

hearing officer must consult with the parties to set a mutually agreeable date for hearing. The hearing officer may thereafter postpone or continue the hearing for good cause. ( )

**06. Filing of Documents.** Once an appeal is referred to the hearing officer, all documents relating thereto must be filed directly with the hearing officer during the pendency of the appeal with copies provided simultaneously to opposing counsel and unrepresented parties. ( )

**07. Burden of Proof.** In disciplinary actions, the appointing authority has the burden of proving cause for the discipline by a preponderance of the evidence. In all other actions, the appellant has the burden of proof by a preponderance of the evidence. ( )

**08. Open Hearing.** Every hearing is public, unless the hearing officer closes the hearing for good cause. Individual parties may represent themselves (pro se) or be represented by an attorney. ( )

**09. Protective Orders.** The hearing officer may issue protective orders limiting access to information obtained in the course of a hearing. ( )

**10. Decision of Hearing Officer.** The hearing officer must issue a decision in the form of a preliminary order explaining the right to file a petition for review under Section 67-5317, Idaho Code. The preliminary order, consisting of such findings of fact, conclusions of law and orders as are necessary, together with the record of the proceedings must be filed at the office of the Commission with a copy sent or delivered to the parties. A motion for reconsideration under Section 67-5243, Idaho Code, is not permitted. ( )

**11. Procedure for Award of Attorney Fees and Costs.** As part of his preliminary order, the hearing officer must make findings as to the entitlement to attorney fees and costs, if any, pursuant to Section 12-117, Idaho Code. If the hearing officer finds a prevailing party is entitled to statutory attorney fees and costs, the prevailing party must file a memorandum of costs, including a supporting affidavit stating the basis and method of computation of the amount claimed. The memorandum must be filed with the hearing officer not later than ten (10) working days after receipt of the hearing officer's decision or no attorney fees and costs may be awarded. Objections to the award of attorney fees and costs must be filed not later than ten (10) working days after receipt of the memorandum of costs and supporting affidavit. The hearing officer must conduct a hearing on the award of attorney fees and costs within ten (10) days of receiving any objections to the award. If no objections are timely filed with the hearing officer, or if the parties stipulate to have the matter decided on the briefs, no hearing is required. The hearing officer determines the amount of the award and must make written findings as to the basis and reasons for the award within ten (10) days after the hearing on the award of attorney fees and costs. If no hearing is required, the hearing officer must issue his decision on the award of attorney fees and costs no later than thirty (30) days after receipt of the prevailing party's memorandum of costs and supporting affidavit. ( )

**12. Factors Considered in Award of Attorney Fees and Costs.** The following factors are considered in the determination of an award of attorney fees and costs: the time and labor required; ( )

- b. The experience and ability of the attorney; ( )
- c. The prevailing charges for like work; ( )
- d. The amount involved and the results obtained; ( )
- e. Awards in similar cases; and ( )
- f. Any other factor that appears pertinent to the award. ( )

**202. PETITION FOR REVIEW PROCEDURE.**

**01. Filing of Petition for Review.** A petition for review shall be filed at the office of the Commission within thirty-five (35) days of the hearing officer's decision issued pursuant to Rule 201.10. The petition shall be in writing and specifically cite the alleged errors of fact or law made by the hearing officer. ( )

**02. Stay of Hearing Officer's Decision.** Upon the filing of the petition for review, the jurisdiction of the hearing officer in the matter is ended except for resolving post-hearing motions and awarding attorney fees and costs. The hearing officer's decision and any orders entered pursuant to Rules 201.10 and 201.11 will be automatically stayed. ( )

**03. Nature of Hearing.** The hearing of the Commission on a petition for review will be limited to oral arguments regarding issues of law and fact as may be found in the record established before the hearing officer and any post-hearing orders. Written arguments or briefs and motions regarding the petition for review will be allowed under such terms as the Commission may direct in its notice of hearing, which will be issued at least twenty-eight (28) days prior to the date set for hearing. ( )

**04. Transcript.** If the petition for review involves questions of fact, the appellant shall provide a full transcript of the proceedings before the hearing officer for the Commission to review. The respondent may pay for an additional copy of the transcript for respondent's own use. ( )

**05. Requests for Postponement and Other Motions.** ( )

**a.** Except in emergencies, a request for postponement shall be filed in writing by a party or representative not later than seven (7) days before the scheduled hearing. The Chair of the Commission, or his or her designee, may determine whether good cause is shown for the postponement and grant or deny the request on behalf of the Commission. ( )

**b.** Motions to dismiss for lack of jurisdiction shall be decided by the Commission. All other motions shall be considered by the Chair of the Commission or at the Chair's discretion may be referred to one (1) Commissioner, whose decision on the motion may be communicated to the parties by letter or other informal means, by the Chair or by counsel to the Commission. ( )

**06. Decision on Petition for Review.** The decision of the Commission shall include a statement of appeal rights under Section 67-5318, Idaho Code. Motion for reconsideration of Commission decisions pursuant to Section 67-5246, Idaho Code are not permitted. The Commission shall file the original copy of its decision with the record of the proceedings and mail copies to the parties promptly. ( )

**07. Record of the Proceedings.** A verbatim record of the proceedings at hearings before the Commission shall be maintained either by electrical devices or by stenographic means, as the Commission may direct, but if any party to the action requests a stenographic record of the proceedings, the record shall be done stenographically. The requesting party shall pay the costs of reporting the proceedings. ( )

**08. Attorney Fees and Costs in a Petition for Review.** In its decision on petition for review, the Commission shall make findings as to the entitlement to attorney fees and costs, if any, pursuant to Section 12-117, Idaho Code. If the Commission finds the prevailing party, if any, is entitled to attorney fees and costs, the prevailing party shall file a request for attorney fees and costs, with accompanying memorandum and affidavit in support of the request described in Rule 201.11, with the Commission not later than ten (10) working days after receipt of the Commission's decision. Objections to the award of attorney fees and costs shall be filed not later than ten (10) working days after receipt of the request for attorney fees and costs. The Commission shall determine the amount of the award, if any, taking into account the factors defined in Rule 201.12. ( )

**09. Protective Orders.** The Commission may issue protective orders limiting access to information in the record. ( )

~~**203. REFERRALS FROM FEDERAL AGENCIES ON DISCRIMINATION COMPLAINTS.** When the Division receives a complaint from a federal agency alleging violation of employment laws, the administrator must take prompt action to investigate. If the complaint is agency specific, the appointing authority will take necessary actions to ensure the investigation is thorough, staff are fully cooperative, and submit findings and any corrective action plan to the administrator and other proper authorities. (3-31-22)~~

~~**204**~~ -- 209. (RESERVED)

**210. PERFORMANCE EVALUATIONS.**

~~01. **Performance Evaluations.** Each agency shall use the statewide online performance evaluation system; however, another system may be used, provided it meets the basic objectives of the state's online performance evaluation system as approved in advance by the administrator. Agency records and supporting documentation are subject to review by the Division and the employee's overall performance rating must be transmitted to the administrator. (3-31-22)(    )~~

~~02. **Approval of Form.** The Division will make available a standard format for purpose of the statewide online performance evaluation system. An appointing authority may utilize another form provided it meets the basic performance criteria and ratings and is approved in advance by the administrator. (3-31-22)~~

~~03. **Purpose.** The purpose of performance evaluation is to provide an objective evaluation by the immediate supervisor of an employee's performance in comparison with established expectations for the position; and to identify an employee's strengths and weaknesses and where improvement is necessary. All performance evaluations must be discussed with affected employee who will be allowed opportunity to submit written comments regarding the evaluation contents. (3-31-22)~~

~~04. **Use of Evaluations.** Performance evaluations should be used in connection with promotions, transfers, demotions, retentions, separations, and reassignments (Ref. Section 67-5309(h), Idaho Code); and used as the affirmative certification for merit increases, bonuses, and salary equity increases (Ref. Section 67-5309B, Idaho Code); and for certifying a probationary employee to permanent status (Ref. Rule 151). Other uses of performance evaluations are optional with the appointing authority. (3-31-22)(    )~~

~~05. **Evaluation Schedule.** All classified employees must be evaluated for their performance during probationary periods for appointments and promotions and for every two thousand eighty (2,080) hours of credited state service thereafter (generally, an annual basis). (Ref. Sections 67-5309(h) and (j), 67-5309B(6), Idaho Code.) Part-time employees must be evaluated on an annual basis. (3-31-22)(    )~~

~~06. **Retention of Evaluation.** A copy of the performance evaluation must be retained in agency records with a copy furnished to the employee. (3-31-22)~~

~~07. **Supervisors' Requirements.** Supervisors are required to manage performance on a consistent basis including completion of performance evaluations on all employees under their direct supervision. (Ref. Section 67-5309B(6), Idaho Code) (3-31-22)~~

**211. -- 219. (RESERVED)**

**220. RECORDS:**

~~01. **Employee Service Records.** (3-31-22)~~

~~a. For each employee in classified service, the Division maintains an electronic service record which must include all personnel transactions pertinent to the employee's employment history. (Ref. Section 67-5309(e), Idaho Code) (3-31-22)~~

~~b. Any employee may at all reasonable times during business hours review his service record maintained in the Division or maintained in any agency. Except for material used to screen and test for employment, all information maintained in an employee's service record must be made available to the employee or designated representative upon request. File contents may be corrected if found in error according to the procedure contained in Title 74, Chapter 1, Idaho Code. (3-31-22)~~

~~02. **Administrative Records.** The administrator must permanently maintain a record of the proceedings of the Commission and a record of all hearings of appeals. (3-31-22)~~

~~03. **Employee Personnel Action Documents.** The appointing authority must furnish each employee with notice of every personnel action affecting the employee's status, pay, tenure, or other terms and conditions of~~



employment, including a copy of their performance evaluations. (3-31-22)

**04. Transfers, Reemployment and Promotions Between Agencies.** (3-31-22)

**a.** When an employee seeks a transfer, reemployment, or promotion between agencies, the appointing authority of the hiring agency, or designee, is entitled to examine the employee's service record and performance information before the hiring decision is made. (Ref. Section 67-5309(o), Idaho Code) (3-31-22)

**b.** All performance evaluation documents must be provided by the former agency and forwarded to the new agency when an interagency promotion, demotion, or transfer occurs. (3-31-22)

~~221.~~ ~~229.~~ (RESERVED)

**230. VACATION LEAVE.**

**01. Eligibility.** All classified employees, regardless of status or whether full-time or part-time, earn vacation leave and are eligible to take and be paid for unused vacation leave in accordance with Sections 67-5334, Idaho Code. (3-31-22)

**02. Rate of Accrual.** All credited state service (ref. Sections 67-5332 and 59-1604, Idaho Code, for definitions) are counted in determining leave accrual rate. (3-31-22)

**03. Mutual Agreement.** Vacation leave requested by the employee may be used only when approved by the agency. The employee and the agency must mutually agree upon such time or times when vacation leave least interferes with the efficient operation of the agency taking into consideration the vacation preference of the employee. (3-31-22)

**04. Interagency Transfer.** An employee who is transferred from one state agency to another agency will be credited with accrued vacation leave by the receiving agency at the time of transfer. (3-31-22)

~~231~~~~20.~~ -- 239. (RESERVED)

**240. SICK LEAVE.**

**01. Eligibility.** Sick leave is earned in accordance with Section 67-5333, Idaho Code. (3-31-22)

**02. Interagency Transfer.** An employee who is transferred from one state agency to another will be credited by the receiving agency with the amount of sick leave accrued at the time of transfer. (3-31-22)

**03. Reasons for Use.** Sick leave must only be used in cases of actual illness or disability or other medical and health reasons necessitating the employee's absence from work, or in situations where the employee's personal attendance is required or desired because of serious illness, disability, or death and funeral in the family. For purposes of this rule, family means a spouse, child, foster child, parent, brother, sister, grandparent, grandchild, or the same relation by marriage, or legal guardian. (3-31-22)

**04. Serious Medical Conditions.** Sick leave may be used in conjunction with Family and Medical Leave. (Ref. Rule 242) (3-31-22)

**05. Notification.** It is the responsibility of the employee to notify his supervisor as soon as possible in the event of sickness or injury which prevents the employee from reporting for duty. (3-31-22)

**06. Donated Leave.** Vacation and sick leave may be transferred to another employee for the purposes of sick leave in accordance with Section 67-5334, Idaho Code. Such transfers are to be made from employee to employee. Vacation and sick leave is retained by the donating party until it is converted to sick leave in the receiving employee's account. (3-31-22)

**07. Sick Leave Abuse.** A predictable and reliable level of attendance is an essential function of almost

~~all positions. Consistent with the provisions of the Americans with Disabilities Act and the Family Medical Leave Act, a supervisor may investigate suspected sick leave abuse including a pattern of unscheduled absences which have a negative impact on the requirements of the job and take appropriate action. When an employee is absent due to illness or injury in excess of three (3) days, a doctor's certificate of justifiable cause for the absence may be required of the employee at the discretion of the immediate supervisor. A doctor's certification of illness or injury may be required of an employee for periods of less than three (3) consecutive working days whenever the immediate supervisor or manager believes special investigation of the absence should be made. (Ref. Rule 190 and Section 67-5333, Idaho Code)~~ (3-31-22)

~~241.0. WORKERS' COMPENSATION OR DISABILITY.~~

~~01. Use of Leave in a Workers' Compensation Claim. In the event of a disability incurred on the job covered by workers' compensation, the employee will be given the choice of either:~~ (3-31-22)

~~a. Leave of absence without pay while receiving workers' compensation; or~~ (3-31-22)

~~b. Utilizing a portion of accrued sick or other paid leave to supplement workers' compensation to maintain his regular salary; however, no appointing authority may require an employee to accept sick leave, vacation leave, or compensatory time off for overtime in lieu of workers' compensation provided by law. Additionally, an employee may not waive his rights to workers' compensation and cannot accept earned leave or other benefits in lieu thereof.~~ (3-31-22)

~~02. Layoff After Twelve Weeks Disability. If the employee becomes disabled, whether or not due to a workers' compensation injury, and is unable to fully return to work after twelve (12) weeks' absence during any consecutive fifty-two (52) week period or when accrued sick leave has been exhausted, whichever is longer, the employee's position may be declared vacant unless otherwise prohibited by state or federal law. The twelve (12) weeks' period of absence need not occur consecutively. The employee's name is certified to a reemployment preference register when the administrator has been notified by the physician that the employee is able to return to work. (Ref. Rule 101.01) Conditional releases will be considered in accordance with the Americans with Disabilities Act.~~ (3-31-22)( )

~~242. FAMILY AND MEDICAL LEAVE.~~

~~01. Applicability. The provisions of the federal Family and Medical Leave Act (FMLA) apply without regard to the exclusion for worksites employing less than fifty (50) employees in a seventy five (75) mile area, and without the limitation on reinstatement of the highest paid employees. (Ref. 29 U.S.C. 2601 et seq.) The State is one (1) employer for the purposes of FMLA. For consistency, the administrator shall publish statewide guidance on FMLA policies.~~ (3-31-22)

~~02. Return to Work Release. An appointing authority may request a return to work release if, due to the nature of the health condition and the job:~~ (3-31-22)

~~a. Light or limited duty work or other accommodation is requested; or~~ (3-31-22)

~~b. The agency, having a reasonable basis in fact to do so, requires assurance that returning to work would not create a significant risk of substantial harm to the employee or others.~~ (3-31-22)

~~243. MATERNITY AND PATERNITY LEAVE.~~

~~01. Use Of Sick Leave. Pregnancy, childbirth or related medical conditions generally are considered temporary disabilities and are treated as such for sick leave purposes. Maternity and paternity leave are granted under the same conditions and requirements as other compensable and non-compensable leave under these rules, including the Family and Medical Leave Act.~~ (4-6-23)

~~02. Determination of Disability Period. The employee's physician is considered the primary authority in determining the disability period insofar as compensable sick leave is concerned.~~ (3-31-22)

~~03. **Additional Time Off.** Maternity and paternity leave preceding and following the time that the person is disabled is leave without pay unless the employee elects to use accrued vacation leave or compensatory time off for overtime. (3-31-22)~~

~~04. **Discrimination Prohibited.** Pregnancy discrimination is prohibited. The employee may continue to work as long as she is physically capable of performing the duties of her position and may return to work as soon as she is physically able as determined by her physician. (3-31-22)~~

~~05. **Adoption and Foster Care.** Leave will be granted for adoption and foster care as set forth in the Family and Medical Leave Act. (Ref. Rule 242) (3-31-22)~~

**2441. SEPARATION UPON FAILURE TO RETURN TO WORK.**

Except for those employees on authorized leave or placed on a register with reemployment preference prescribed by Rule 241.02.a., an employee who has not returned to work within five (5) working days after approved paid or unpaid leave or release by his or her physician shall be considered as having voluntarily separated. Such separation shall be treated as a voluntary resignation, and the employee shall remain eligible for reinstatement ~~as provided under Rule 124.~~ Written notification of his or her separation/resignation shall be mailed to the last known home address. Any objections by the employee to the notice, must be received within five (5) working days of receipt of the notice, or acceptance of the separation/resignation will be presumed. If objections are received within the timeline, a disciplinary separation (dismissal) or other formal disciplinary action may be pursued as provided in Rule 190. (3-31-22)( )

~~2452. -- 249. (RESERVED)~~

~~250. **SPECIAL LEAVES.**~~

~~01. **Leave of Absence Without Pay.** (3-31-22)~~

~~a. **Approval.** In addition to workers' compensation, family medical leave, disability, or other statewide leave policies, the appointing authority may grant an employee leave without pay for a specified length of time when such leave would not have an adverse effect upon the agency. The request for leave must be in writing and establish reasonable justification for approval. (3-31-22)~~

~~b. **Reemployment.** The appointing authority approving the leave of absence assumes full responsibility for returning the employee to the same position or to another position in a classification allocated to the same pay grade for which the employee meets minimum qualifications. (3-31-22)~~

~~e. **Exhaustion of Accrued Leave.** Unless prohibited by workers' compensation, family medical leave, disability, or other statewide leave policies, the appointing authority has discretion on whether the employee is required to exhaust accrued vacation leave or compensatory time off for overtime before commencing leave without pay. (Ref. Rule 240) (3-31-22)~~

~~d. **Resignation.** If vacation leave and compensatory time off for overtime are not exhausted and the employee resigns from state service while on leave, he will be paid for such accruals in accordance with Sections 67-5334 and 67-5328, Idaho Code. (3-31-22)~~

~~02. **Leave Defaults.** When an employee does not have accrued sick leave to cover an entire absence the following leave types will be used to the extent necessary to avoid leave without pay: accrued compensatory time and vacation. If abuse of sick leave is suspected see Rule 240.07. (3-31-22)~~

~~03. **Military Leave With Pay.** Employees who are members of the National Guard or reservists in the armed forces of the United States engaged in military duty ordered or authorized under the provisions of law, are entitled each calendar year to one hundred twenty (120) hours of military leave of absence from their respective duties without loss of pay, credited state service or evaluation of performance. Such leave is separate from vacation, sick leave, holiday, or compensatory time off for overtime. (Ref. Section 46-216, Idaho Code). (3-31-22)~~

~~04. **Military Leave Without Pay.** An employee whose employment is reasonably expected to continue~~

~~indefinitely, and who leaves his position either voluntarily or involuntarily in order to perform active military duty, has reemployment rights as defined in Rule 124.05. The employee will either be separated from state service or placed in “inactive” status, at the option of the appointing authority. (3-31-22)~~

~~**05. Leave of Absence With Pay.** A period of absence from duty with the approval of the appointing authority, or as required or allowed by law or these rules, during which time the employee is compensated. Leaves of absence with pay have no adverse effect on the status of the employee and include the following: vacation leave; sick leave; special leave situations; compensatory time off for overtime worked; and administrative leave. (3-31-22)~~

~~**06. Court and Jury Services and Problem Solving and Due Process Leave.** (3-31-22)~~

~~**a.** Connected with Official State Duty.~~ When an employee is subpoenaed or required to appear as a witness in any judicial or administrative proceeding in any capacity connected with official state duty, he is not considered absent from duty. The employee is not entitled to receive compensation from the court. Expenses (mileage, lodging, meals, and miscellaneous expenses) incurred by the employee must be reimbursed by his respective agency in accordance with agency travel regulations. (3-31-22)

~~**b.** Private Proceedings.~~ When an employee is required to appear as a witness or a party in any proceeding not connected with official state duty, the employee must be permitted to attend. The employee may use accrued leave or leave without pay. (3-31-22)

~~**c.** Jury Service.~~ When an employee is summoned by proper judicial authority to serve on a jury, he will be granted a leave of absence with pay for the time which otherwise the employee would have worked. The employee is entitled to keep fees and mileage reimbursement paid by the court in addition to salary. Expenses in connection with this duty are not subject to reimbursement by the state. (3-31-22)

~~**d.** Problem-solving and due process procedures.~~ Any employee who has been requested to serve as a mediator as provided by an agency problem-solving or due process procedure or to appear as a witness or representative during such a proceeding will be granted leave with pay, without charge to vacation leave or compensatory time off for overtime, to perform those duties. (3-31-22)

~~**e.** Notification.~~ An employee summoned for court and jury service or requested to serve as a witness or representative must notify his supervisor as soon as possible to obtain authorization for leave of absence. (3-31-22)

~~**07. Religious Leave.** Appointing authorities will make reasonable accommodations to an employee's need for leave for religious observances. Such leave is charged to the employee's accrued vacation leave or compensatory time off for overtime. (3-31-22)~~

~~**08. Leave During Facility Closure or Inaccessibility.** (3-31-22)~~

~~**a.** Authorization.~~ When a state office/facility is closed or declared inaccessible by the Governor or Governor's designee because of severe weather, civil disturbances, loss of utilities or other disruptions, affected employees who are unable to work remotely or be reassigned may be authorized administrative leave by the administrator to cover all or a portion of their scheduled hours of work during the closure or inaccessibility or subject to a mandatory furlough or a reduction in force. If an employee was not scheduled to work on the day when an office/facility is declared closed, the employee is not eligible for administrative leave. (3-31-22)

~~**b.** In the interest of employee safety, appointing authorities may approve employee early release, delayed start time, or absence from work due to weather or other emergency conditions. Those affected employees will use their leave balances or leave without pay. Administrative leave or leave without pay may be granted to affected employees scheduled to work on a day the Governor or Governor's designee declares a state office/facility closed or inaccessible in accordance with Rule 250.08.a. (3-31-22)~~

~~**c.** Nothing in this rule prevents an employee who is authorized to code paid administrative leave from choosing to code accrued leave balances or leave without pay. (3-31-22)~~

~~09. Red Cross Disaster Services Leave.~~ Employees who have been certified by the American Red Cross as disaster service volunteers will be granted up to one hundred twenty (120) hours of paid leave in any twelve (12) month period to participate in relief services pursuant to Section 67-5338, Idaho Code. (3-31-22)

~~10. Employee Assistance Program Leave.~~ Employees may use sick leave or any paid or unpaid leave as approved to attend appointments through the Employee Assistance Program (EAP) during normal working hours. (3-31-22)

~~11. Bone Marrow and Organ Donor Leave With Pay.~~ (3-31-22)

~~a. Approval.~~ Upon request, a full time employee will be granted five (5) work days' leave with pay to serve as a bone marrow donor or thirty (30) work days' leave with pay to serve as an organ donor. The employee must provide the appointing authority with written verification that the employee is the person serving as the donor. Paid leave, as provided in these rules, is limited to one time bone marrow and one time organ donor leave per employee. (Ref. Section 67-5343, Idaho Code) (3-31-22)

~~b. Use.~~ An employee who is granted such leave of absence will receive compensation without interruption during the leave period. For purposes of determining credited state service, pay advancement, performance awards, or any benefit affected by a leave of absence, the service of the employee is considered uninterrupted by the paid leave of absence. (Ref. Section 67-5343, Idaho Code) (3-31-22)

~~251.0. ADMINISTRATIVE LEAVE.~~

~~01. Investigation and Due Process Procedure.~~ Administrative leave may be granted by an appointing authority for employee investigations and due process procedures in accordance with Rule 190.02. ( )

~~02. Closure or Inaccessibility.~~ Administrative leave for closure or inaccessibility of a state office/facility due to severe weather, emergencies or incidents that could jeopardize agency operations, or the safety of others ~~must be granted in accordance with Rule 250.08.~~ (3-31-22)( )

~~03. Other Reasons.~~ Administrative leave for reasons other than those listed above must be approved in advance by the administrator. ( )

~~252.1. -- 259.71. (RESERVED)~~

~~260. COMPENSABLE HOURS.~~

~~01. Biweekly Employees.~~ With the exception of holiday leave, no leave may be used if it results in pay in excess of the employee's regularly scheduled work week. (3-31-22)

~~02. Ineligible Employees.~~ Employees who are "executive" as defined by Section 67-5302(12), Idaho Code, are ineligible to earn or receive payment for hours worked or accrued beyond their regularly scheduled work week. (3-31-22)

~~261. HOURS WORKED.~~

~~01. Hours in Performance of Job.~~ Those hours actually spent in the performance of the employee's job, excluding holidays, vacation, sick leave other approved leaves of absence, and excluding on-call time. (3-31-22)

~~02. Travel Time.~~ Travel time is compensated pursuant to policy set forth by the Board of Examiners. (3-31-22)

~~03. Hours Outside of Regular Working Hours.~~ Attendance at lectures, meetings, training programs, and similar activities outside of the employee's regular working hours when attendance has been directed by the appointing authority or designee. (3-31-22)

~~262. OVERTIME.~~

~~01. **Employing Agencies.** The state is considered as one (1) employer for determining the number of hours an employee works. If an employee works for more than one (1) agency, the agency employing the employee when the overtime occurs is liable for compensatory time off or cash compensation as provided by law. (3-31-22)~~

~~02. **Compensation for Overtime.** Overtime accrual and compensation for classified employees is covered by Sections 67-5328 and 59-1607, Idaho Code, for nonclassified employees. Overtime is defined in Section 67-5302(20), Idaho Code. Overtime does not include any time, such as occasional or sporadic work, which is excluded from the overtime calculation by federal law. (3-31-22)~~

~~03. **Modification of Workweek or Schedule.** No agency will alter a previously established work week for the purpose of avoiding overtime compensation. An agency may modify the employee's regular schedule of work to avoid or minimize overtime. (3-31-22)~~

~~263. -- 271. (RESERVED)~~

**272. POLICY MAKING AUTHORITY.**

To address the need for all classified employees to be treated fairly, and in situations where the State may be considered as one (1) employer, the Division Administrator may issue guidance to provide consistent interpretation of federal law, state law, executive order or rule. Statewide policies governed by the administrator shall be adopted by appointing authorities. (3-31-22)( )

**273. -- 999. (RESERVED)**

## IDAPA 17 – IDAHO INDUSTRIAL COMMISSION

### 17.10.01 – ADMINISTRATIVE RULES UNDER THE CRIME VICTIMS COMPENSATION ACT

#### DOCKET NO. 17-1001-2301 (ZBR CHAPTER REWRITE)

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature that must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 72-1004 and 72-1013, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 6, 2023 Idaho Administrative Bulletin, [Vol. 23-9, pages 207-217](#).

**FEE SUMMARY:** The following is a description of the fee or charge imposed or increased in this rulemaking: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rulemaking is not anticipated to have any fiscal impact on general funds, state funds, or any other known funds.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kamerron Slay, (208) 334-6017 or [kamerron.slay@iic.idaho.gov](mailto:kamerron.slay@iic.idaho.gov).

DATED this 28th day of September, 2023.

George Gutierrez, Director  
Industrial Commission  
11321 W. Chinden Blvd.  
Boise, Idaho 83714  
P.O. Box 83720  
Boise, Idaho 83720-0041  
Phone: 208-334-6000  
Fax: 208-334-2321

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-1004 and 72-1013, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Two public hearings concerning this rulemaking will be held as follows:

<b>Thursday, September 7, 2023, from 1:00 p.m. to 2:00 p.m. MT</b>
<b>Coral Room, Chinden Campus</b> <b>11321 W. Chinden Blvd., Boise, ID 83714</b>

<b>Wednesday, September 20, 2023, from 1:30 p.m. to 2:30 p.m. MT</b>
<b>Sawtooth Hearing Room, Chinden Campus</b> <b>11321 W. Chinden Blvd., Boise, ID 83714</b>

Information on virtual attendance will be made available on the Commission's website: <https://crimevictimcomp.idaho.gov/>.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In accordance with [Executive Order 2020-01: Zero-Based Regulation](#), the Industrial Commission is striving to prevent the accumulation of costly, ineffective, outdated regulations, and reduce regulatory burden to achieve a more efficient operation of government. This rulemaking is being made by the agency, in collaboration with stakeholders, to increase transparency and streamline access to the Crime Victims Compensation Program. Changes include removal of the requirement to obtain Commission approval prior to changing physicians, removal of medical fee schedule from the chapter, and extending the time to submit bills for treatment from two years to three years.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There are no fee changes associated with this proposed rulemaking.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: This rulemaking is not anticipated to have any fiscal impact on general funds, state funds, or any other known funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, pages 161-162](#) and the June 7, 2023 Idaho Administrative Bulletin, [Vol. 23-6, pages 54-55](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: There are no incorporation by reference in this chapter.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kamerron Slay, (208) 334-6017 or [kamerron.slay@iic.idaho.gov](mailto:kamerron.slay@iic.idaho.gov).



Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 2nd day of August, 2023.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 17-1001-2301**

**17.10.01 – ADMINISTRATIVE RULES UNDER THE CRIME VICTIMS COMPENSATION ACT**

**000. LEGAL AUTHORITY.**

Sections 72-1004 and 72-1013, Idaho Code. ( )

**001. SCOPE.**

This chapter includes the Industrial Commission's procedures for administering the Crime Victim's Compensation Act. ( )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Crime Victim's Compensation Program ("CVCP").** The program administered by the Crime Victim's Division of the Idaho Industrial Commission pursuant to the Crime Victim's Compensation Act. ( )

**02. Employer.** The employer at the time of the criminally injurious conduct. ( )

**03. Good Cause.** "Good cause" as that term is found in the Crime Victim's Compensation Act will be determined at the Commission's discretion on a case-by-case basis. ( )

**04. Medical Services.** For purposes of the fee schedule adopted by the Commission as authorized by Section 72-1026, Idaho Code, the following terms apply: ( )

**a.** "Allowable payment" means the lower of the charge for medical services calculated in accordance with this rule or as billed by the provider. ( )

**b.** "Ambulatory Surgery Center (ASC)" means a facility providing surgical services on an outpatient basis only. ( )

**c.** "Hospital" is any acute care facility providing medical or rehabilitation services on an inpatient and outpatient basis. ( )

**i.** Large Hospital means any hospital with more than one hundred (100) acute care beds. ( )

**ii.** Small Hospital means any hospital with one hundred (100) acute care beds or less. ( )

**d.** "Provider" means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of medical service related to the treatment of a claimant for benefits under the Idaho Crime Victims Compensation Act. ( )

**e.** "Medical Service" means medical, surgical, dental, mental health, or other attendance or treatment,

nurse and hospital service, medicine, apparatus, appliance, prostheses and related service, facility, equipment and supply. ( )

**f.** "Reasonable" means a charge does not exceed the Provider's "usual" charge and does not exceed the "customary" charge, as defined below. ( )

**g.** "Usual" means the most frequent charge made by an individual Provider for a given medical service. ( )

**h.** "Customary" means a charge that has an upper limit no higher than the 90th percentile, as determined by the Commission, of usual charges made by Idaho Providers for a given medical service. ( )

#### **011. CLAIMS FOR COMPENSATION.**

**01. Claim for Benefits.** A claim for benefits is initiated by filing an Application in the form available on the agency's website. An Application for Compensation is deemed filed when the claimant has provided the required information and the signed application is received at the Commission's office in Boise. ( )

##### **02. Proceedings to Secure Benefits.** ( )

**a.** Initial Determination by CVCP Division. After sufficient information has been gathered, the CVCP Division may make an initial determination granting, partially granting, or denying benefits. An initial determination of the CVCP Division shall be final and conclusive as to all matters adjudicated in the determination ( )

**b.** Request for Reconsideration. Within twenty (20) days from the date that the initial determination is issued, the claimant may file a request with the CVCP Division that the division reconsider its decision, or the CVCP Division may reconsider the matter on its own motion. The decision of the CVCP Division on reconsideration shall be final and conclusive as to all matters adjudicated in the decision. ( )

#### **012. HEARING PROCEDURES.**

**01. Request for Hearing Before Commission.** Within forty-five (45) days from any final and conclusive initial determination of the CVCP Division, a claimant who disagrees with the determination may request a de novo hearing on the compensability of the subject claim before the Commission. Such a request must be received by the Commission within forty-five (45) days following the initial determination or order on reconsideration of the initial determination. The Commission may conduct the hearing or it may assign the matter to a Commissioner or Referee. If the matter is assigned to a Commissioner or a Referee, the Commissioner or Referee shall submit recommended findings and decision to the Commission for its review. ( )

**02. Recommendation.** If the Commission does not approve the recommendations of a Commissioner or Referee, the Commission may review the record and enter its own findings and decision. ( )

**03. Notice of Hearing.** The Commission shall give the claimant at least ten (10) days' advance written notice of the time and place of hearing and of the issues to be heard, either by personal service, certified mail, or electronically to the email address provided by the claimant. Service by mail shall be deemed complete when a copy of such notice is deposited in the United States post office, with postage prepaid, addressed to a party at their last known address as shown in the records and files of the Commission. Evidence of service by certificate or affidavit of the person making the same shall be filed with the Commission. Service by electronic means is deemed complete upon receipt by the intended party. ( )

**04. Transcript of Hearing.** All hearings shall be recorded. ( )

**05. Subpoenas.** Subpoenas shall be served in the manner provided by the Idaho Rules of Civil Procedure. Witness fees and mileage shall be in the amounts provided by the Idaho Rules of Civil Procedure and the claimant shall pay the fees of any witness who is subpoenaed to testify on their behalf. ( )

**06. Record.** At the hearing the Application for Compensation filed by the claimant and any other

documents in the Commission's file that contain information relevant to the issues in the case shall be admitted into the record. Such documents shall be marked for identification and the record shall specify that those documents are admitted. The Commission, Commissioner, or Referee conducting the hearing shall give those documents the weight that is appropriate under the circumstances of the particular case. ( )

**07. Evidence.** At the hearing the claimant may present such testimonial or other evidence that the claimant would have the Commission consider in support of the claim for benefits. Such evidence may include evidence previously considered by the CVCP Division in connection with the initial determination, or new evidence. The Commission shall allow a representative of the CVCP Division to present testimonial or other evidence in support of the CVCP Division's initial determination. ( )

**08. Finality of Decision.** After a hearing, the decision of the Commission shall be final and conclusive as to all matters adjudicated. Within twenty (20) days from the date that such decision is issued, the claimant may file a Motion for Reconsideration or the Commission may reconsider the matter on its own motion. ( )

**09. Modification of Final Order.** At the request of the claimant or on its own motion the Commission may review and amend any final order or decision, within three (3) years of the date of issue of such order or decision: ( )

- a.** If there is a change in circumstances that affects the claimant's entitlement to benefits; ( )
- b.** To correct a manifest injustice; ( )
- c.** If the order or award is based upon facts which were misrepresented or that were not fully disclosed; or ( )
- d.** To correct payments made erroneously. ( )

**013. COMPENSATION.**

**01. Disbursements of Compensation.** Eligible payments shall be made directly to the provider of the service unless the claimant has already paid the provider. If the claimant has already paid the provider, payment shall be made to the claimant. ( )

**02. Allowable Payments for Medical Services.** Pursuant to Section 72-1026, Idaho Code, the Commission adopts a medical fee schedule that is posted on the agency's website and will pay providers for medical services in accordance with said schedule. The conversion factors set out in the medical fee schedule may be adjusted once a year in conjunction with the annual adjustment of the Resource-Based Relative Value Scale (RBRVS), published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services. ( )

**03. Wage Loss Benefits.** "Wages received at the time of the criminally injurious conduct" shall be the claimant's gross weekly wage; which shall be determined under Section 72-419(1)-(3), Idaho Code, if applicable, and if not, as follows: ( )

**a.** If the Wages were fixed by the hour, and the claimant worked or was scheduled to work the same number of hours each week, the weekly wage shall be the hourly rate times the number of hours that the claimant worked or was scheduled to work each week. ( )

**b.** If the Wages were fixed by the hour and the claimant did not work the same number of hours each week, or if the claimant was paid on a piecework or commission basis, the weekly wage shall be computed by averaging the amounts that the claimant was paid during his last four completed pay periods prior to the criminally injurious conduct and converting that amount to a weekly basis using a method consistent with 72-419(1)-(3); provided that, if the claimant was employed for less than four (4) pay periods before the criminally injurious conduct, the average shall be computed based upon the time period that they worked. ( )

**c.** If none of the above methods are applicable, the weekly wage shall be computed in a manner

consistent with the above methods. ( )

**04. Weekly Compensation Benefits If Claimant Employable But Not Employed.** If a claimant qualifies under Section 72-1019(7)(a), Idaho Code, the following provisions apply: ( )

**a.** If at the time of the criminally injurious conduct the claimant was receiving unemployment benefits and as a result of that conduct the claimant becomes ineligible for those benefits, the claimant's weekly benefits under the Crime Victim's Compensation Act shall be the lesser of one hundred fifty dollars (\$150) or their weekly benefit amount under the Employment Security Law. ( )

**b.** If at the time of the criminally injurious conduct the claimant was unemployed, but scheduled to begin employment on a date certain and if they were unable to work for one (1) week as a result of that conduct, weekly benefits under the Crime Victim's Compensation Act shall be the lesser of one hundred fifty dollars (\$150) or two-thirds (2/3) of the amount that they would have earned at their scheduled employment, and those benefits shall be payable beginning on the date that their employment was scheduled to begin. ( )

**c.** If prior to the criminally injurious conduct the claimant was performing necessary household duties which they are disabled from performing as a result of that conduct and it is necessary to employ a person who does not reside in the claimant's house to perform those duties, the claimant shall receive weekly benefits under the Crime Victim's Compensation Act equal to the amount paid to the person so employed, but not exceeding one hundred fifty dollars (\$150) per week. ( )

**d.** In other circumstances, the Commission may award an amount it deems appropriate. ( )

**05. Treating Physician.** A claimant may choose their own treating physician. ( )

**06. Overpayment.** The Commission may reduce future payments by an amount equal to the overpayment or request a refund when overpayments are made to either the claimant or the provider. ( )

**07. Reimbursement for Transportation Expenses.** If the claimant utilizes a private vehicle, reimbursement shall be at the mileage rate allowed by the State Board of Examiners for state employees. Reimbursement is limited to one (1) round trip per day. The claimant shall not be reimbursed for the first fifteen (15) miles of any round trip, nor for traveling any round trip of fifteen (15) miles or less. Such distance shall be calculated by the shortest practical route of travel. The mileage reimbursement amount shall be credited to the medical benefit. ( )

**08. Payment of Bills.** ( )

**a.** Bills for treatment and sexual assault forensic examinations must be submitted within three (3) years from the date of treatment or the date of eligibility, whichever is later, to be compensable. The time for submission may be extended upon Commission approval. ( )

**b.** For the purpose of dispersing payment, the claimant may be required to provide certain documentation, including a W-9 form. ( )

**09. Right to Recover.** ( )

**a.** The Commission's right to recover its full economic loss under a restitution order as a victim under Section 19-5304, Idaho Code, is independent from any other legal remedy it may have, including its statutory right to subrogation under Section 72-1023, Idaho Code, and is not barred by civil settlements entered into by other victims. ( )

**b.** The Commission may reduce or waive its subrogated interest in a settlement or civil action. ( )

**014. -- 999. (RESERVED)**

[Agency redlined courtesy copy]

**17.10.01 – ADMINISTRATIVE RULES UNDER THE CRIME VICTIMS COMPENSATION ACT**

**000. LEGAL AUTHORITY.**

~~This chapter is adopted under the legal authority of~~ Sections 72-1004 and 72-1013, Idaho Code. (3-31-22)( )

**001. SCOPE.**

This chapter includes the Industrial Commission's procedures for administering the Crime Victim's Compensation Act. ( )

~~**002. ADMINISTRATIVE APPEALS.**~~

~~Chapter 1, Section 11, Subsection 5, provides for appeals to the Commission from decisions of the Crime Victims Compensation Bureau.~~ (3-31-22)

~~**003. -- 009. (RESERVED)**~~

**010. DEFINITIONS.**

~~**01. Commission.** The Idaho Industrial Commission.~~ (3-31-22)

**021. Crime Victim's Compensation Program ("CVCP").** The program administered by the Crime Victim's ~~Bureau~~ Division of the Idaho Industrial Commission ~~under pursuant to~~ the Crime Victim's Compensation Act. (3-31-22)( )

**032. Employer.** The employer at the time of the criminally injurious conduct ~~on which the Application for Compensation is based.~~ (3-31-22)( )

**03. Good Cause.** "Good cause" as that term is found in the Crime Victim's Compensation Act will be determined at the Commission's discretion on a case-by-case basis. ( )

**04. Medical Services.** ~~Words and terms used for determining the allowable payment for medical services under these rules are defined in Subsections 010.04.a. through 010.04.h.~~ For purposes of the fee schedule adopted by the Commission as authorized by Section 72-1026, Idaho Code, the following terms apply: (3-31-22)( )

**a.** "Allowable payment" means the lower of the charge for medical services calculated in accordance with this rule or as billed by the provider. ( )

**b.** "Ambulatory Surgery Center (ASC)" means a facility providing surgical services on an outpatient basis only. ( )

**c.** "Hospital" is any acute care facility providing medical or rehabilitation services on an inpatient and outpatient basis. ( )

**i.** Large Hospital means any hospital with more than one hundred (100) acute care beds. ( )

**ii.** Small Hospital means any hospital with one hundred (100) acute care beds or less. ( )

**d.** "Provider" means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of medical service related to the treatment of a claimant for benefits under the Idaho Crime Victims Compensation Act. ( )

e. "Medical Service" means medical, surgical, dental, mental health, or other attendance or treatment, nurse and hospital service, medicine, apparatus, appliance, prostheses and related service, facility, equipment and supply. ( )

f. "Reasonable" means a charge does not exceed the Provider's "usual" charge and does not exceed the "customary" charge, as defined ~~in Paragraph 010.04.h below.~~ (3-31-22)( )

g. "Usual" means the most frequent charge made by an individual Provider for a given medical service ~~to non-industrially injured patients.~~ (3-31-22)( )

h. "Customary" means a charge that has an upper limit no higher than the 90th percentile, as determined by the Commission, of usual charges made by Idaho Providers for a given medical service. ( )

~~05. **Wages.** Means the wages at the time of the criminally injurious conduct on which the Application for Compensation is based and includes non-cash remuneration such as lodging and meals provided by the Employer and gratuities such as tips, which are not paid by the employer, but that are received by the victim in the normal course of his employment.~~ (3-31-22)

**011. APPLICATIONS CLAIMS FOR COMPENSATION.**

~~01. **Claim for Benefits.** To claim benefits under the Crime Victims Compensation Act, the claimant shall file an Application for Compensation with the Crime Victim's Compensation Bureau of the Commission. Applications for Compensation shall be made using the form approved by the Commission. A claim for benefits is initiated by filing an Application in the form available on the agency's website. An Application for Compensation is deemed filed when it the claimant has provided the required information and the signed application is received at the Commission's office in Boise.~~ (3-31-22)( )

~~02. **Providing Information.** Before paying benefits to any claimant, the Commission shall gather sufficient information to establish that the claimant is eligible for benefits. The Commission may require the claimant to assist the Commission in obtaining that information.~~ (3-31-22)

~~02. **Proceedings to Secure Benefits.**~~ ( )

~~a. **Initial Determination by CVCP Division.** After sufficient information has been gathered, the CVCP Division may make an initial determination granting, partially granting, or denying benefits. An initial determination of the CVCP Division shall be final and conclusive as to all matters adjudicated in the determination~~ ( )

~~b. **Request for Reconsideration.** Within twenty (20) days from the date that the initial determination is issued, the claimant may file a request with the CVCP Division that the division reconsider its decision, or the CVCP Division may reconsider the matter on its own motion. The decision of the CVCP Division on reconsideration shall be final and conclusive as to all matters adjudicated in the decision.~~ ( )

~~03. **Employment Verification.** To verify information concerning a victim's employment, the Commission may require the victim's Employer or Employers to complete an Employment Verification form or the Commission may obtain such information from an Employer by telephone.~~ (3-31-22)

~~04. **Order.** After sufficient information has been gathered pursuant to Subsection 011.02 of this rule, the Commission may enter an award granting or partially granting benefits or an order denying benefits. The Commission may also enter orders necessary to further the purposes of the Act.~~ (3-31-22)

~~05. **Finality of Order.** An award or order issued by the Commission shall be final and conclusive as to all matters considered in the award or order; provided that within twenty (20) days from the date that such an award or order is issued, the claimant may file a request that the Crime Victim's Compensation Program reconsider the order, or the Crime Victim's Compensation Program may reconsider the matter on its own motion, and the order of the Crime Victim's Compensation Program shall be final upon issuance of the order on reconsideration; and provided further that, within forty five (45) days from the date that any order is issued by the Crime Victim's Compensation~~

~~Program, a claimant may file a Request for Hearing before the Commission. The Hearing shall be held in accordance with the procedures set out in Section 012 of these rules. Requests for Hearing before the Commission and requests that the Crime Victim's Compensation Program reconsider an order is deemed filed when received at the Commission's office in Boise. (3-31-22)~~

~~**06. Recipients of Payments for Medical Services.** If, pursuant to any order of the Commission or the Crime Victims Bureau, it is determined that a claimant is entitled to payment of medical expenses as provided in Section 72-1019(2), Idaho Code, or funeral or burial expenses as provided in Section 72-1019(4), Idaho Code, payment shall be made directly to the medical provider or the provider of funeral or burial services unless the claimant has already paid the provider; if the claimant has already paid the provider, payment shall be made to the claimant. (3-31-22)~~

~~**07. Allowable Payments for Medical Services.** The Commission shall pay providers the allowable payment for medical services under these rules adopted in accordance with Section 72-1026, Idaho Code. (3-31-22)~~

~~**a. Adoption of Standard.** The Commission hereby adopts the Resource-Based Relative Value Scale (RBRVS), published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services, as amended, as the standard to be used for determining the allowable payment under the Crime Victims Compensation Act for medical services provided by providers other than hospitals and ASCs. The standard for determining the allowable payment for hospitals and ASCs shall be: (3-31-22)~~

- ~~i. For large hospitals: Eighty-five percent (85%) of the reasonable inpatient charge. (3-31-22)~~
- ~~ii. For small hospitals: Ninety percent (90%) of the reasonable inpatient charge. (3-31-22)~~
- ~~iii. For ambulatory surgery centers (ASCs) and hospital outpatient charges: Eighty percent (80%) of the reasonable charge. (3-31-22)~~
- ~~iv. Surgically implanted hardware shall be reimbursed at the rate of actual cost plus fifty percent (50%). (3-31-22)~~
- ~~v. Paragraph 011.07.e. of this rule, does not apply to hospitals or ASCs. The Commission shall determine the allowable payment for hospital and ASC services based on all relevant evidence. (3-31-22)~~

~~**b. Conversion Factors.** The following conversion factors shall be applied to the fully implemented facility or non-facility Relative Value Unit (RVU) as determined by place of service found in the latest RBRVS, as amended, that was published before December 31 of the previous calendar year for a medical service identified by a code assigned to that service in the latest edition of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, as amended:~~

<b>MEDICAL FEE SCHEDULE</b>			
<b>DESCRIPTION</b>	<b>CODE RANGE(S)</b>		<b>CONVERSION FACTOR</b>
Anesthesia	00000-09999		\$60.05
Surgery— Group One	22000-22999	Spine	\$144.48
	23000-24999	Shoulder, Upper Arm, & Elbow	
	25000-27299	Forearm, Wrist, Hand, Pelvis & Hip	
	27300-27999	Leg, Knee, & Ankle	
	29800-29999	Endoscopy & Arthroscopy	
	61000-61999	Skull, Meninges & Brain	
	62000-62259	Repair, Neuroendoscopy & Shunts	
	63000-63999	Spine & Spinal Cord	

<b>MEDICAL FEE SCHEDULE</b>			
<b>DESCRIPTION</b>	<b>CODE RANGE(S)</b>		<b>CONVERSION FACTOR</b>
Surgery— Group Two	28000—28999 64550—64999	Foot & Toes Nerves & Nervous System	\$129.00
Surgery— Group Three	13000—19999 20650—21999	Integumentary System Musculoskeletal System	\$113.52
Surgery— Group Four	20000—20615 30000—39999 40000—49999 50000—59999 60000—60999 62260—62999 64000—64549 65000—69999	Musculoskeletal System Respiratory & Cardiovascular Digestive System Urinary System Endocrine System Spine & Spinal Cord Nerves & Nervous System Eye & Ear	\$87.72
Surgery— Group Five	10000—12999 29000—29799	Integumentary System Casts & Strapping	\$69.14
Radiology	70000—79999	Radiology	\$87.72
Pathology & Laboratory	80000—89999	Pathology & Laboratory	To Be Determined
Medicine— Group One	90000—90749 94000—94999 97000—97799 97800—98999	Immunization, Injections, & Infusions Pulmonary / Pulse Oximetry Physical Medicine & Rehabilitation Acupuncture, Osteopathy, & Chiropractic	\$46.44
Medicine— Group Two	90750—92999 96040—96999 99000—99607	Psychiatry & Medicine Assessments & Special Procedures E / M & Miscellaneous Services	\$66.56
Medicine— Group Three	93000—93999 95000—96020	Cardiography, Catheterization, & Vascular Studies Allergy / Neuromuscular Procedures	\$72.24

(3-31-22)

**e.** The Conversion Factor for the Anesthesiology CPT Codes shall be multiplied by the Anesthesia Base Units assigned to that CPT Code by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services as of December 31 of the previous calendar year, plus the allowable time units reported for the procedure. Time units are computed by dividing reported time by fifteen (15) minutes. Time units will not be used for CPT Code 01996. (3-31-22)

**d.** Adjustment of Conversion Factors. The conversion factors set out in this rule may be adjusted each fiscal year (FY), starting with FY 2012, as determined by the Commission. (3-31-22)

**e.** Services Without a CPT Code, RVU or Conversion Factor. The allowable payment for medical services that do not have a current CPT code, a currently assigned RVU, or a conversion factor will be the reasonable charge for that service, based upon the usual and customary charge and other relevant evidence, as determined by the Commission. Where a service with a CPT Code, RVU, and conversion factor is, nonetheless, claimed to be exceptional or unusual, the Commission may, notwithstanding the conversion factor for that service set out in Subsection 011.07.b. of this rule, determine the allowable payment for that service, based on all relevant evidence.



(3-31-22)

~~f. Coding. The Commission will generally follow the coding guidelines published by the Centers for Medicare and Medicaid Services and by the American Medical Association, including the use of modifiers. The procedure with the largest RVU will be the primary procedure and will be listed first on the claim form. Modifiers will be reimbursed as follows:~~ (3-31-22)

~~i. Modifier 50: Additional fifty percent (50%) for bilateral procedure. (3-31-22)~~

~~ii. Modifier 51: Fifty percent (50%) of secondary procedure. This modifier will be applied to each medical or surgical procedure rendered during the same session as the primary procedure. (3-31-22)~~

~~iii. Modifier 80: Twenty-five percent (25%) of coded procedure. (3-31-22)~~

~~iv. Modifier 81: Fifteen percent (15%) of coded procedure. This modifier applies to MD and non-MD assistants. (3-31-22)~~

~~08. Wage Loss Benefits. For the purpose of determining compensation benefits under Sections 72-1019(1) and 72-1019(3), Idaho Code, "wages received at the time of the criminally injurious conduct" shall be the victim's gross weekly wage; which shall be determined under Section 72-419(1) (3), Idaho Code, if applicable, and if not, as follows: (3-31-22)~~

~~a. If the Wages were fixed by the hour, and the victim worked or was scheduled to work the same number of hours each week, the weekly wage shall be the hourly rate times the number of hours that the victim worked or was scheduled to work each week, plus one-half (1/2) the hourly wage times the number of hours worked or scheduled each week in excess of forty (40) hours if the victim was paid time and a half for work in excess of forty (40) hours per week. (3-31-22)~~

~~b. If the Wages were fixed by the hour and the victim did not work the same number of hours each week, or if the victim was paid on a piecework or commission basis, the weekly wage shall be computed by averaging the amounts that the victim was paid during his last four completed pay periods prior to the criminally injurious conduct and converting that amount to a weekly basis using a method consistent with 72-419(1) (3); provided that, if the victim was employed for less than four (4) pay periods before the criminally injurious conduct, the average shall be computed based upon the time period that he worked. (3-31-22)~~

~~e. If none of the above methods are applicable, the weekly wage shall be computed in a manner consistent with the above methods. (3-31-22)~~

~~09. Treating Physician. A victim may choose his own treating physician. If, after filing an Application for Compensation, a victim changes physicians without prior approval of the Commission, or if, without prior approval of the Commission, he seeks treatment or examination by a physician to whom he was referred by his treating physician, the Commission may deny payment for such treatment or examination. (3-31-22)~~

~~10. Overpayment. If the Commission erroneously makes payments, the Commission may reduce future payments by an amount equal to the overpayment or request a refund when overpayments are made to either the claimant or the provider. (3-31-22)~~

~~11. Weekly Compensation Benefits If Victim Employable But Not Employed. If a victim is qualified under Section 72-1019(7)(a), Idaho Code, the following provisions apply: (3-31-22)~~

~~a. If at the time of the injurious conduct the victim was receiving unemployment benefits and as a result of that conduct the victim becomes ineligible for those benefits, the claimant's weekly benefits under the Crime Victims Compensation Act shall be the lesser of one hundred fifty dollars (\$150) or his weekly benefit amount under the Employment Security Law. (3-31-22)~~

~~b. If at the time of the criminally injurious conduct the victim was unemployed, but scheduled to begin employment on a date certain and if he was unable to work for one (1) week as a result of that conduct, weekly~~

~~benefits under the Crime Victims Compensation Act shall be the lesser of one hundred fifty dollars (\$150) or two-thirds (2/3) of the amount that he would have earned at his scheduled employment, and those benefits shall be payable beginning on the date that his employment was scheduled to begin. (3-31-22)~~

~~e. If prior to the criminally injurious conduct the victim was performing necessary household duties which he is disabled from performing as a result of that conduct and it is necessary to employ a person who does not reside in the victim's house to perform those duties, the victim shall receive weekly benefits under the Crime Victims Compensation Act equal to the amount paid to the person so employed, but not exceeding one hundred fifty dollars (\$150) per week. (3-31-22)~~

~~d. In other circumstances, the Commission may award an amount it deems appropriate. (3-31-22)~~

~~12. **Reimbursement for Transportation Expenses.** If the claimant utilizes a private vehicle, reimbursement shall be at the mileage rate allowed by the State Board of Examiners for state employees. Reimbursement shall be provided only if services are not available in the local area and is limited to one (1) round trip per day. The claimant shall not be reimbursed for the first fifteen (15) miles of any round trip, nor for traveling any round trip of fifteen (15) miles or less. Such distance shall be calculated by the shortest practical route of travel. The mileage reimbursement amount shall be credited to the medical benefit. (3-31-22)~~

~~13. **Payment of Bills.** Bills for treatment and sexual assault forensic examinations must be submitted within two (2) years from the date of treatment or the date of eligibility, whichever is later, to be compensable. (3-31-22)~~

#### **012. HEARING PROCEDURES.**

~~01. **Request for Hearing.** If a Request for Hearing is filed, an informal hearing shall be held. The Commission may conduct the hearing or it may assign the matter to a Commissioner or Referee. If the matter is assigned to a Commissioner or a Referee, the Commissioner or Referee shall submit recommended findings and decision to the Commission for its review. (3-31-22)~~

~~02. **Recommendations.** If the Commission does not approve the recommendations of a member or Referee, the Commission may:~~

~~a. Review the record and enter its own findings and decision; (3-31-22)~~

~~b. Conduct another informal hearing and issue a decision based upon the record of both hearings; or (3-31-22)~~

~~e. Assign the matter to another member or Referee to conduct another informal hearing and make recommendations pursuant to Subsection 012.01 above based upon the record of both hearings. (3-31-22)~~

~~03. **Notice of Hearing.** The Commission shall give the claimant at least ten (10) days' advance written notice of the time and place of hearing and of the issues to be heard, either by personal service or certified mail. Service by mail shall be deemed complete when a copy of such notice is deposited in the United States post office, with postage prepaid, addressed to a party at his last known address as shown in the records and files of the Commission. Evidence of service by certificate or affidavit of the person making the same shall be filed with the Commission. (3-31-22)~~

~~04. **Transcript of Hearing.** All hearings shall be tape recorded. In addition, the Commission may arrange for a stenographic or machine transcription of any hearing. (3-31-22)~~

~~05. **Record.** At the hearing the Application for Compensation filed by the claimant and any other documents in the Commission's file that contain information relevant to the issues in the case shall be admitted into the record. Such documents shall be marked for identification and the record shall specify that those documents are admitted. The Commission, member, or Referee conducting the hearing shall give those documents the weight that is appropriate under the circumstances of the particular case. (3-31-22)~~

~~06. **Evidence.** At the hearing, after the claimant has presented his evidence, the Commission, or the Commissioner or Referee conducting the hearing shall allow an employee of the Commission to present evidence. After the presentation of evidence by an employee of the Commission, the Commission, or the Commissioner or Referee conducting the hearing may, in its or his discretion, allow any other person to testify. (3-31-22)~~

~~07. **Finality of Decision.** After a hearing, the decision of the Commission shall be final and conclusive as to all matters adjudicated. Within twenty (20) days from the date that such decision is issued, the claimant may file a Motion for Reconsideration or the Commission may reconsider the matter on its own motion. (3-31-22)~~

~~08. **Crime Victim's Compensation Program Review.** At the request of the claimant or on its own motion the Crime Victim's Compensation Program may review and amend any final order or award, within three (3) years of the date of issue of such order or award: (3-31-22)~~

~~a. If there is a change in circumstances that affects the claimant's entitlement to benefits; (3-31-22)~~

~~b. To correct a manifest injustice; (3-31-22)~~

~~c. If the order or award is based upon facts which were misrepresented or that were not fully disclosed; or (3-31-22)~~

~~d. To comply with the annual review requirements of Section 72-1021, Idaho Code. (3-31-22)~~

~~09. **Subpoenas.** Subpoenas shall be served in the manner provided by the Idaho Rules of Civil Procedure. Witness fees and mileage shall be in the amounts provided by the Idaho Rules of Civil Procedure and the Claimant shall pay the fees of any witness who is subpoenaed to testify in his behalf. (3-31-22)~~

**012. HEARING PROCEDURES.**

01. **Request for Hearing Before Commission.** Within forty-five (45) days from any final and conclusive initial determination of the CVCP Division, a claimant who disagrees with the determination may request a de novo hearing on the compensability of the subject claim before the Commission. Such a request must be received by the Commission within forty-five (45) days following the initial determination or order on reconsideration of the initial determination. The Commission may conduct the hearing or it may assign the matter to a Commissioner or Referee. If the matter is assigned to a Commissioner or a Referee, the Commissioner or Referee shall submit recommended findings and decision to the Commission for its review. ( )

02. **Recommendation.** If the Commission does not approve the recommendations of a Commissioner or Referee, the Commission may review the record and enter its own findings and decision. ( )

03. **Notice of Hearing.** The Commission shall give the claimant at least ten (10) days' advance written notice of the time and place of hearing and of the issues to be heard, either by personal service, certified mail, or electronically to the email address provided by the claimant. Service by mail shall be deemed complete when a copy of such notice is deposited in the United States post office, with postage prepaid, addressed to a party at their last known address as shown in the records and files of the Commission. Evidence of service by certificate or affidavit of the person making the same shall be filed with the Commission. Service by electronic means is deemed complete upon receipt by the intended party. ( )

04. **Transcript of Hearing.** All hearings shall be recorded. ( )

05. **Subpoenas.** Subpoenas shall be served in the manner provided by the Idaho Rules of Civil Procedure. Witness fees and mileage shall be in the amounts provided by the Idaho Rules of Civil Procedure and the claimant shall pay the fees of any witness who is subpoenaed to testify on their behalf. ( )

06. **Record.** At the hearing the Application for Compensation filed by the claimant and any other documents in the Commission's file that contain information relevant to the issues in the case shall be admitted into the record. Such documents shall be marked for identification and the record shall specify that those documents are admitted. The Commission, Commissioner, or Referee conducting the hearing shall give those documents the weight

that is appropriate under the circumstances of the particular case. ( )

**07. Evidence.** At the hearing the claimant may present such testimonial or other evidence that the claimant would have the Commission consider in support of the claim for benefits. Such evidence may include evidence previously considered by the CVCP Division in connection with the initial determination, or new evidence. The Commission shall allow a representative of the CVCP Division to present testimonial or other evidence in support of the CVCP Division's initial determination. ( )

**08. Finality of Decision.** After a hearing, the decision of the Commission shall be final and conclusive as to all matters adjudicated. Within twenty (20) days from the date that such decision is issued, the claimant may file a Motion for Reconsideration or the Commission may reconsider the matter on its own motion. ( )

**09. Modification of Final Order.** At the request of the claimant or on its own motion the Commission may review and amend any final order or decision, within three (3) years of the date of issue of such order or decision: ( )

- a.** If there is a change in circumstances that affects the claimant's entitlement to benefits; ( )
- b.** To correct a manifest injustice; ( )
- c.** If the order or award is based upon facts which were misrepresented or that were not fully disclosed; or ( )
- d.** To correct payments made erroneously. ( )

**013. COMPENSATION.**

**01. Disbursements of Compensation.** Eligible payments shall be made directly to the provider of the service unless the claimant has already paid the provider. If the claimant has already paid the provider, payment shall be made to the claimant. ( )

**02. Allowable Payments for Medical Services.** Pursuant to Section 72-1026, Idaho Code, the Commission adopts a medical fee schedule that is posted on the agency's website and will pay providers for medical services in accordance with said schedule. The conversion factors set out in the medical fee schedule may be adjusted once a year in conjunction with the annual adjustment of the Resource-Based Relative Value Scale (RBRVS), published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services. ( )

**03. Wage Loss Benefits.** "Wages received at the time of the criminally injurious conduct" shall be the claimant's gross weekly wage; which shall be determined under Section 72-419(1)-(3), Idaho Code, if applicable, and if not, as follows: ( )

**a.** If the Wages were fixed by the hour, and the claimant worked or was scheduled to work the same number of hours each week, the weekly wage shall be the hourly rate times the number of hours that the claimant worked or was scheduled to work each week. ( )

**b.** If the Wages were fixed by the hour and the claimant did not work the same number of hours each week, or if the claimant was paid on a piecework or commission basis, the weekly wage shall be computed by averaging the amounts that the claimant was paid during his last four completed pay periods prior to the criminally injurious conduct and converting that amount to a weekly basis using a method consistent with 72-419(1)-(3); provided that, if the claimant was employed for less than four (4) pay periods before the criminally injurious conduct, the average shall be computed based upon the time period that they worked. ( )

**c.** If none of the above methods are applicable, the weekly wage shall be computed in a manner consistent with the above methods. ( )

**04. Weekly Compensation Benefits If Claimant Employable But Not Employed.** If a claimant

qualifies under Section 72-1019(7)(a), Idaho Code, the following provisions apply: ( )

**a.** If at the time of the criminally injurious conduct the claimant was receiving unemployment benefits and as a result of that conduct the claimant becomes ineligible for those benefits, the claimant's weekly benefits under the Crime Victim's Compensation Act shall be the lesser of one hundred fifty dollars (\$150) or their weekly benefit amount under the Employment Security Law. ( )

**b.** If at the time of the criminally injurious conduct the claimant was unemployed, but scheduled to begin employment on a date certain and if they were unable to work for one (1) week as a result of that conduct, weekly benefits under the Crime Victim's Compensation Act shall be the lesser of one hundred fifty dollars (\$150) or two-thirds (2/3) of the amount that they would have earned at their scheduled employment, and those benefits shall be payable beginning on the date that their employment was scheduled to begin. ( )

**c.** If prior to the criminally injurious conduct the claimant was performing necessary household duties which they are disabled from performing as a result of that conduct and it is necessary to employ a person who does not reside in the claimant's house to perform those duties, the claimant shall receive weekly benefits under the Crime Victim's Compensation Act equal to the amount paid to the person so employed, but not exceeding one hundred fifty dollars (\$150) per week. ( )

**d.** In other circumstances, the Commission may award an amount it deems appropriate. ( )

**05. Treating Physician.** A claimant may choose their own treating physician. ( )

**06. Overpayment.** The Commission may reduce future payments by an amount equal to the overpayment or request a refund when overpayments are made to either the claimant or the provider. ( )

**07. Reimbursement for Transportation Expenses.** If the claimant utilizes a private vehicle, reimbursement shall be at the mileage rate allowed by the State Board of Examiners for state employees. Reimbursement is limited to one (1) round trip per day. The claimant shall not be reimbursed for the first fifteen (15) miles of any round trip, nor for traveling any round trip of fifteen (15) miles or less. Such distance shall be calculated by the shortest practical route of travel. The mileage reimbursement amount shall be credited to the medical benefit. ( )

**08. Payment of Bills.** ( )

**a.** Bills for treatment and sexual assault forensic examinations must be submitted within three (3) years from the date of treatment or the date of eligibility, whichever is later, to be compensable. The time for submission may be extended upon Commission approval. ( )

**b.** For the purpose of dispersing payment, the claimant may be required to provide certain documentation, including a W-9 form. ( )

**09. Right to Recover.** ( )

**a.** The Commission's right to recover its full economic loss under a restitution order as a victim under Section 19-5304, Idaho Code, is independent from any other legal remedy it may have, including its statutory right to subrogation under Section 72-1023, Idaho Code, and is not barred by civil settlements entered into by other victims. ( )

**b.** The Commission may reduce or waive its subrogated interest in a settlement or civil action. ( )

**0134.** -- 999. (RESERVED)

## IDAPA 18 – DEPARTMENT OF INSURANCE

### 18.01.02 – SCHEDULE OF FEES, LICENSES, AND MISCELLANEOUS CHARGES

#### DOCKET NO. 18-0102-2301 (ZBR CHAPTER REWRITE, FEE RULE)

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, sine die, of the second Regular Session of the Sixty-seventh Idaho Legislature after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 41-211 and 41-401, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

18.01.02.030.04.k establishes the \$300 application fee for pharmacy benefit managers which was inadvertently missing in the proposed rule. 18.01.02.030.03 corrects a typographical error on the word “Fingerprinting.” 18.01.02.030.04, subsections g. and h. correct inadvertent increases to those renewal fees.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 6, 2023, Idaho Administrative Bulletin, [Vol. 23-9, pages 218-224](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

As authorized in Sections 41-211 and 41-401, Idaho Code, this rule provides amounts to be collected for insurance fees, licenses, and miscellaneous charges.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Weston Trexler, (208) 334-4214, [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov).

DATED this 6th day of November, 2023.

Dean L. Cameron, Director  
Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID, 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 41-211 and 41-401, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

<b>Wednesday, September 27, 2023</b> <b>3:00 p.m. to 4:30 p.m. (MT)</b>
<i>In-person participation is available at:</i> <b>Department of Insurance</b> <b>700 W. State St. 3rd Floor</b> <b>Boise, ID 83702</b>
<i>Web meeting link:</i> <a href="https://www.microsoft.com/microsoft-teams/join-a-meeting">https://www.microsoft.com/microsoft-teams/join-a-meeting</a> <i>Meeting ID: 297 636 144 490</i> <i>Meeting Password: 345BQf</i> <i>or by phone: +1 208-985-2810,,826046050#</i>

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this rule provides amounts to be collected for insurance fees, licenses, and miscellaneous charges. This rulemaking is consistent with the Governor's [Executive Order 2020-01: Zero-Based Regulation](#). The substantive change is to reduce one registration fee and to add a registration fee for Pharmacy Benefit Managers, which started registering with the Department in 2021. Other proposed changes are to simplify, clarify, and reduce.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: One existing registration fee is reduced from \$100 to \$40, and one registration fee of \$300 is added for Pharmacy Benefit Managers, which started registering with the Department in 2021.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023 Idaho Administrative Bulletin, [Vol. 23-06, pages 56-57](#), under Docket No. 18-ZBRR-2301.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Weston Trexler, (208) 334-4214, [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 3rd day of August, 2023.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 18-0102-2301**

**18.01.02 – SCHEDULE OF FEES, LICENSES, AND MISCELLANEOUS CHARGES**

**000. LEGAL AUTHORITY.**

Sections 41-211 and 41-401, Idaho Code. ( )

**001. SCOPE.**

This rule provides for the amounts to be collected for fees, licenses and miscellaneous charges. ( )

**002. -- 019. (RESERVED)**

**020. INSURER OR OTHER ENTITY ANNUAL CONTINUATION FEES.**

**01. Annual Continuation Fee.** No later than March 1 each year, each insurer or other entity listed under Section 022, licensed, listed, or approved to do business in Idaho will pay an annual continuation fee (“ACF”). The ACF covers March through the following February. ( )

**a.** The ACF is charged at the time the insurer or other entity applies for admission. ( )

**b.** The ACF is the reinstatement fee referenced in Section 41-324(3), Idaho Code. ( )

**c.** The ACF provides for but is not limited to: renewal of the certificate of authority or license, or annual registration; all filings required of insurers or other entities not expressly subject to a fee; agent appointment and renewals; arson, fire, and fraud investigation costs or examination expenses, notwithstanding Subsection 020.01.d. ( )

**d.** The ACF does not provide for, or will not exempt the insurer or entity from: fees listed under Sections 030 and 040; penalties or fines levied by or payable to the Department; any express authority in Idaho Code that allows charges or expenses may be paid or reimbursed to the Department, such as for investigation, examination, engaging experts and consultants, or Attorney’s costs incurred by the Department. ( )

**02. Failure to Pay Fee.** Failure to pay the ACF by March 1 each year will result in the expiration of the insurer’s or other entity’s authority to do business in Idaho pursuant to Section 41-324, Idaho Code. ( )

**021. INSURER FEE.**

An insurer with a certificate of authority will pay the ACF as follows: ( )

**01. Surplus is Less Than 10 Million Dollars (\$10,000,000).** If policy holders’ surplus at the preceding December 31 is less than ten million dollars (\$10,000,000) - One thousand dollars (\$1,000). ( )



**02. Surplus is 10 Million Dollars (\$10,000,000) or More.** If policy holders' surplus at the preceding December 31 is ten million (\$10,000,000) or more, but less than one hundred million (\$100,000,000) -- Two thousand five hundred dollars (\$2,500). ( )

**03. Surplus is One Hundred Million Dollars (\$100,000,000) or More.** If policy holders' surplus at the preceding December 31 is one hundred million (\$100,000,000) or greater - Four thousand five hundred dollars (\$4,500). ( )

**022. OTHER ENTITY FEE.**

The following entities will be assessed an ACF of: ( )

**01.** Five hundred dollars (\$500). ( )

**a.** All reinsurers, under Section 41-515, Idaho Code. ( )

**b.** Authorized surplus line insurers. ( )

**c.** County mutual insurers. ( )

**d.** Fraternal benefit societies. ( )

**e.** Hospital and/or professional service corporations. ( )

**f.** Self-funded health care plans. ( )

**g.** Domestic Risk retention groups. ( )

**h.** Petroleum clean water trusts. ( )

**i.** Rating organizations. ( )

**j.** Advisory organizations. ( )

**02.** **Forty dollars (\$40): Purchasing groups.** ( )

**023. -- 029. (RESERVED)**

**030. PRODUCER LICENSE AND RELATED FEES.**

**01. Original Application.** The following fee is due at the time of original application for the following license types: ( )

**a.** Third party Administrators -- three hundred dollars (\$300). ( )

**b.** Producers, including limited line producers -- eighty dollars (\$80). ( )

**c.** Managing general agent -- eighty dollars (\$80). ( )

**d.** Adjusters, independent or public -- eighty dollars (\$80). ( )

**e.** Reinsurance intermediary -- eighty dollars (\$80). ( )

**f.** Surplus line brokers -- eighty dollars (\$80). ( )

**g.** Life settlement providers -- five hundred dollars (\$500). ( )

- h.** Life settlement brokers -- three hundred dollars (\$300). ( )
- i.** Independent review organization -- five hundred dollars (\$500). ( )
- j.** Vendor of portable electronics insurance, a separate type of limited lines producer: ( )

  - i.** More than ten (10) locations in the state of Idaho -- one thousand dollars (\$1,000). ( )
  - ii.** Ten (10) or fewer locations in the state of Idaho -- one hundred dollars (\$100). ( )
- k.** Pharmacy Benefit Managers -- three hundred dollars (\$300). ( )
- 02. Examination Fee.** Each time a producer or adjuster licensing examination is taken per Title 41, Chapters 10 and 11, Idaho Code, the applicant may pay a fee to a third-party testing vendor in the amount established by contract between the Department and the vendor. ( )
- 03. Fingerprinting.** Fingerprinting (as applicable) -- not to exceed eighty dollars (\$80). ( )
- 04. License Renewal.** The following renewal fees are owed either annually or biannually and due as indicated in the Department's renewal form for each of the following license types: ( )

  - a.** Third Party Administrators (biennial) -- eighty dollars (\$80). ( )
  - b.** Producers, including limited lines producers (biennial) -- eighty dollars (\$80), or sixty dollars (\$60) if renewed electronically. ( )
  - c.** Managing general agent (annual) -- eighty dollars (\$80). ( )
  - d.** Adjusters, independent or public (biennial) -- eighty dollars (\$80), or sixty dollars (\$60) if renewed electronically. ( )
  - e.** Surplus line brokers (biennial) -- eighty dollars (\$80), or sixty dollars (\$60) if renewed electronically. ( )
  - f.** Life settlement providers (biennial) -- three hundred dollars (\$300). ( )
  - g.** Life settlement brokers (biennial) -- eighty dollars (\$80). ( )
  - h.** Independent review organization (biennial) -- three hundred dollars (\$300). ( )
  - i.** Vendor of portable electronics insurance, a separate type of limited lines producer with (biennial): ( )

    - i.** More than ten (10) locations in the state of Idaho -- five hundred dollars (\$500). ( )
    - ii.** Ten (10) or fewer locations in the state of Idaho -- one hundred dollars (\$100). ( )
- 031. -- 039. (RESERVED)**
- 040. MISCELLANEOUS CHARGES.**

  - 01. Certified Copy.** Certified copy of certificate of authority, license or registration - Fifty dollars (\$50). ( )
  - 02. Certificate Under Seal.** Director's certificate under seal Twenty dollars (\$20). ( )
  - 03. Insurer Service of Process.** For receiving and forwarding copy a of summons or other process

served upon the director as process agent of an insurer -- Thirty dollars (\$30). ( )

**04. Agent Service of Process.** For receiving and forwarding a copy of summons or other process served upon the director as process agent of a nonresident producer or other person for which the director is authorized to serve as statutory agent for service of process -- Thirty dollars (\$30). ( )

**05. Continuing Education.** Filing continuing education applications for approval and certification of subjects of courses (each application) -- Twenty-five dollars (\$25). ( )

**041. -- 049. (RESERVED)**

**050. REFUNDS.**  
All fees and miscellaneous charges are non-refundable except as noted. ( )

**051. OVERPAYMENTS.**  
Overpayments of published fees will be returned only when such overpayments exceed twenty dollars (\$20), or upon request of the payor. ( )

**052. -- 999. (RESERVED)**

[Agency redlined courtesy copy]

*Italicized text indicates amendments to the proposed text as adopted in the pending rule.*

## **18.01.02 – SCHEDULE OF FEES, LICENSES, AND MISCELLANEOUS CHARGES**

**000. LEGAL AUTHORITY.**  
~~Title 41, Chapters 2 and 4, Idaho Code, Idaho Code~~ Sections 41-211 and 41-401, Idaho Code. (3-23-22)( )

**001. SCOPE.**  
~~The purpose of this rule is to provide~~s for the amounts to be collected for fees, licenses and miscellaneous charges. (3-23-22)( )

~~002. -- 010. (RESERVED)~~

~~011. FEES PAYABLE IN ADVANCE.~~  
~~The director will collect in advance fees, licenses, and miscellaneous charges as outlined in this rule.~~ (3-23-22)

~~012. -- 019. (RESERVED)~~

**020. INSURER OR OTHER ENTITY ANNUAL CONTINUATION FEES.**

**01. Annual Continuation Fee.** No later than March 1 each year, All each insurers and or other entities listed under (set forth in Section 020) 2, licensed, listed, or approved to do business in the state of Idaho will pay an annual continuation fee ("ACF"). The ACF covers March through the following February. (3-23-22)( )

~~a. The annual continuation fee is due on March 1st each year and is payment of the insurer's fees due through the following February.~~ (3-23-22)

**a.** The annual continuation fee ACF is charged at the time the insurer or other entity applies for admission to do business in the state of Idaho. If the application is approved, the fee paid will cover the insurer's fees through the following February. (3-23-22)( )

**b.** The ACF is the reinstatement fee referenced in Section 41-324(3), Idaho Code. ( )

**c.** The ACF provides for but is not limited to: renewal of the certificate of authority or license, or annual registration; all filings required of insurers or other entities not expressly subject to a fee; agent appointment and renewals; arson, fire, and fraud investigation costs or examination expenses, notwithstanding Subsection 020.01.d. ( )

**d.** The ACF does not provide for, or will not exempt the insurer or entity from: fees listed under Sections 030 and 040; penalties or fines levied by or payable to the Department; any express authority in Idaho Code that allows charges or expenses may be paid or reimbursed to the Department, such as for investigation, examination, engaging experts and consultants, or Attorney's costs incurred by the Department. ( )

**02.** **Failure to Pay Fee.** Failure to pay the ACF by March 1 each year will result in the expiration of the insurer's or other entity's authority to do business in Idaho pursuant to Section 41-324, Idaho Code. ( )

**021. INSURER FEE.**

**02.** **Fee for Insurers.** For all insurance companies receiving An insurer with a certificate of authority pursuant to Title 41, Chapter 3, Idaho Code, ~~the will pay the annual continuation fee ACF is~~ as follows: (3-23-22)( )

**#01.** **Surplus is Less Than 10 Million Dollars (\$10,000,000).** If ~~insurer's~~ policy holders' surplus at the preceding December 31 is less than ten million dollars (\$10,000,000) - One thousand dollars (\$1,000). (3-23-22)( )

**#02.** **Surplus is 10 Million Dollars (\$10,000,000) or More.** If ~~insurer's~~ policy holders' surplus at the preceding December 31 is ten million (\$10,000,000) or more, but less than one hundred million (\$100,000,000) -- Two thousand five hundred dollars (\$2,500). (3-23-22)( )

**#03.** **Surplus is One Hundred Million Dollars (\$100,000,000) or More.** If ~~insurer's~~ policy holders' surplus at the preceding December 31 is one hundred million (\$100,000,000) or greater - Four thousand five hundred dollars (\$4,500). (3-23-22)( )

**022. OTHER ENTITY FEE.**

**03.** **Fees of Other Entities.** The following entities will be assessed an ~~annual continuation fee ACF of:~~ (3-23-22)( )

**#01.** Five hundred dollars (\$500); (3-23-22)( )

**ia.** All reinsurers, ~~listed pursuant to~~ under Section 41-515, Idaho Code. (3-23-22)( )

**ib.** Authorized surplus line insurers. ( )

**ic.** County mutual insurers. ( )

**id.** Fraternal benefit societies. ( )

**ie.** Hospital and/or professional service corporations. ( )

**if.** Self-funded health care plans. ( )

**ig.** Domestic Risk retention groups. ( )

**ih.** Petroleum clean water trusts. ( )

- ~~ix~~i. Rating organizations. ( )
- ~~x~~j. Advisory organizations. ( )
- ~~b02~~. ~~One hundred~~ ~~Forty~~ dollars (~~\$100~~40): Purchasing groups. (3-23-22)( )
- ~~04~~. ~~Fees Provide~~. The annual continuation fee includes, but is not limited to, the following: (3-23-22)
- ~~a~~. Certificate of authority renewal, license renewal, and annual registration. (3-23-22)
- ~~b~~. Arson, fire and fraud investigation costs. (3-23-22)
- ~~e~~. Annual statement filing. (3-23-22)
- ~~d~~. Agent appointment and renewal of appointment. (3-23-22)
- ~~e~~. Filings under Title 41, Chapter 38, Idaho Code, Acquisitions of Control and Insurance Holding Company Systems. (3-23-22)
- ~~f~~. Filing of amendments to Articles of Incorporation. (3-23-22)
- ~~g~~. Filing of amendments to Bylaws. (3-23-22)
- ~~h~~. Amendments to Certificate of Authority. (3-23-22)
- ~~i~~. Filing of notice of significant transactions pursuant to Section 41-345, Idaho Code. (3-23-22)
- ~~j~~. Quarterly statement filing. (3-23-22)
- ~~k~~. Examination expenses. (3-23-22)
- ~~05~~. ~~Not Provided in Fees~~. Payment of the annual continuation fee will not exempt the insurer or entity from the following: (3-23-22)
- ~~a~~. Fees for application for producer license. (3-23-22)
- ~~b~~. Costs incurred by the Department for investigation of an applicant for producer license. (3-23-22)
- ~~e~~. Attorney's fees and costs incurred by the Department when allowed pursuant to Idaho Code. (3-23-22)
- ~~d~~. Costs incurred for experts and consultants when allowed by Idaho Code. (3-23-22)
- ~~e~~. Penalties or fines levied by or payable to the Department of Insurance. (3-23-22)
- ~~f~~. All fees set forth under Section 040. (3-23-22)
- ~~06~~. ~~Failure to Pay Fee~~. Failure to pay the annual continuation fee on or before March 1st each year will result in the expiration of the insurer's or entity's authority to do business in the state of Idaho pursuant to Section 41-324, Idaho Code. (3-23-22)
- ~~07~~. ~~Reinstatement Fee~~. The reinstatement fee referenced in Section 41-324(3), Idaho Code, is the amount referenced above for the insurer or entity continuation fee. (3-23-22)
- ~~024~~3. -- 029. (RESERVED)
030. PRODUCER ~~LICENSE AND MISCELLANEOUS LICENSING FEES~~ ~~RELATED FEES~~.

01. **Original License Application.** The following fees ~~are~~ is due at the time of original ~~and need to be paid with the filing~~ application for the following original license types: (3-23-22)( )

- a. Third party Administrators -- three hundred dollars (\$300). (3-23-22)( )
- b. Producers, including limited line producers -- eighty dollars (\$80). (3-23-22)( )
- c. ~~Designation as a m~~Managing general agent -- eighty dollars (\$80). (3-23-22)( )
- d. Adjusters, independent and or public ~~adjusters~~ -- eighty dollars (\$80). (3-23-22)( )
- e. Reinsurance intermediary -- eighty dollars (\$80). ( )
- f. Surplus line brokers -- eighty dollars (\$80). ( )
- g. Life settlement providers -- five hundred dollars (\$500). ( )
- h. Life settlement brokers -- three hundred dollars (\$300). ( )
- i. Independent review organization -- five hundred dollars (\$500). ( )
- j. Vendor of portable electronics insurance, a separate type of limited lines producer: (3-23-22)( )
  - i. ~~A vendor of portable electronic insurance who is engaged in portable electronic transactions at~~ More than ten (10) locations in the state of Idaho -- one thousand dollars (\$1,000). (3-23-22)( )
  - ii. ~~A vendor of portable electronic insurance who is engaged in portable electronic transactions at~~ Ten (10) or fewer locations in the state of Idaho -- one hundred dollars (\$100). (3-23-22)( )
- k. Pharmacy Benefit Managers -- three hundred dollars (\$300). ( )

02. **Examination Fees.** Each time a producer or adjuster's licensing examination is taken ~~for licensing~~ under per Title 41, Chapters 10 and 11, Idaho Code, the applicant may pay a fee to a third-party testing vendor in the amount established by contract between the ~~d~~Department and the vendor. (3-23-22)( )

03. **Fingerprinting-Processing.** ~~Processing f~~Fingerprintings (as applicable) -- not to exceed eighty dollars (\$80). (3-23-22)( )

04. **License Renewal.** The following renewal fees are due owed either annually or biannually and due as indicated in the Department's renewal form ~~and need to be paid for each license to renew or continue~~ for each of the following license types: (3-23-22)( )

- a. Third Party Administrators (biennial) -- eighty dollars (\$80). ( )
- b. Producers, including limited lines producers (biennial) -- eighty dollars (\$80), or sixty dollars (\$60) if renewed electronically. ( )
- c. Managing general agent (annual) -- eighty dollars (\$80). ( )
- d. Adjusters, independent or public (biennial) -- eighty dollars (\$80), or sixty dollars (\$60) if renewed electronically. ( )
- e. Surplus line brokers (biennial) -- eighty dollars (\$80), or sixty dollars (\$60) if renewed electronically. ( )

- f.** Life settlement providers (biennial) -- three hundred dollars (\$300). ( )
- g.** Life settlement brokers (biennial) -- eighty dollars (\$80). ( )
- h.** Independent review organization (biennial) -- three hundred dollars (\$300). ( )
- i.** Vendor of portable electronics insurance, a separate type of limited lines producer with (biennial): ( )
- i.** More than ten (10) locations in the state of Idaho -- five hundred dollars (\$500). ( )
- ii.** Ten (10) or fewer locations in the state of Idaho -- one hundred dollars (\$100). ( )
- a.** Adjusters, public adjusters, and producers (biennial) — eighty dollars (\$80), or sixty dollars (\$60) if renewed electronically. (3-23-22)
- i.** A vendor of portable electronic insurance who is engaged in portable electronic transactions at more than ten (10) locations in the state of Idaho — five hundred dollars (\$500). (3-23-22)
- ii.** A vendor of portable electronic insurance who is engaged in portable electronic transactions at ten (10) or fewer locations in the state of Idaho — one hundred dollars (\$100). (3-23-22)
- b.** Redesignation as managing general agent (annual) — eighty dollars (\$80). (3-23-22)
- e.** Administrators (biennial) — eighty dollars (\$80). (3-23-22)
- i.** Renewal form is filed on or before December 31. (3-23-22)
- ii.** Any renewal form postmarked after December 31 includes a penalty in an amount equal to the renewal fee. (3-23-22)
- iii.** A renewal form postmarked after January 31 needs to be submitted as a new application with supporting documents and the full application fee. (3-23-22)
- d.** Surplus line brokers (biennial) — eighty dollars (\$80), or sixty dollars (\$60) if renewed electronically. (3-23-22)
- e.** Life settlement providers (biennial) — three hundred dollars (\$300). (3-23-22)
- f.** Life settlement brokers (biennial) — eighty dollars (\$80). (3-23-22)
- g.** Independent review organization (biennial) — three hundred dollars (\$300). (3-23-22)

**031. -- 039. (RESERVED)**

**040. MISCELLANEOUS ~~FEES~~ CHARGES.**

- 01. Certified Copy.** Certified copy of certificate of authority, license or registration - Fifty dollars (\$50). ( )
- 02. Certificate Under Seal.** Director's certificate under seal ~~(except for those under Subsection 040.01 of this rule)~~ Twenty dollars (\$20). (3-23-22) ( )
- 03. Documents Filed.** For each copy of a document filed in the DOI, a reasonable cost as fixed by the director. For rate and form filings not submitted electronically through the national System for Electronic Rate and Form Filing (SERFF) — Twenty dollars (\$20) for each rate or form filed in excess of ten (10) per calendar year. (3-23-22)

**043. Insurer Service of Process.** For receiving and forwarding copy a of summons or other process served upon the director as process agent of an insurer -- Thirty dollars (\$30). ~~(3-23-22)~~( )

**054. Agent Service of Process.** For receiving and forwarding a copy of summons or other process served upon the director as process agent of a nonresident producer or other person for which the director is authorized to serve as statutory agent for service of process -- Thirty dollars (\$30). ~~(3-23-22)~~( )

**065. Continuing Education.** Filing continuing education applications for approval and certification of subjects of courses (each application) -- Twenty-five dollars (\$25). ( )

**041. -- 049. (RESERVED)**

**050. REFUNDS.**

All fees, ~~licenses~~, and miscellaneous charges are non-refundable except as noted. ~~(3-23-22)~~( )

**051. OVERPAYMENTS.**

Overpayments of published fees will be returned only when such overpayments exceed twenty dollars (\$20), or upon request of the payor. ( )

**052. -- 999. (RESERVED)**



**IDAPA 18 – DEPARTMENT OF INSURANCE**  
**18.04.04 – THE MANAGED CARE REFORM ACT RULE**  
**DOCKET NO. 18-0404-2301 (ZBR CHAPTER REWRITE)**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the second Regular Session of the Sixty-seventh Idaho Legislature after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Title 41, Chapters 2 and 39, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The rule implements the Managed Reform Act by defining and establishing operating procedures. This rulemaking is consistent with the Governor's [Executive Order 2020-01: Zero Based Regulation](#). The proposed changes are to simplify, clarify, and reduce.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 6, 2023, Idaho Administrative Bulletin, [Vol. 23-09 pages 225-229](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: Not Applicable.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Weston Trexler, (208)334-4214, [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov).

DATED this 6th day of November, 2023.

Dean L. Cameron, Director  
Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID, 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 41, Chapters 2 and 39, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

<p><b>Wednesday, September 27, 2023</b> <b>3:00 p.m. to 4:30 p.m. (MT)</b></p>
<p><i>In-person participation is available at:</i> <b>Department of Insurance</b> <b>700 W. State St. 3rd Floor</b> <b>Boise, ID 83702</b></p> <p><i>Web meeting link:</i> <a href="https://www.microsoft.com/microsoft-teams/join-a-meeting">https://www.microsoft.com/microsoft-teams/join-a-meeting</a> <i>Meeting ID: 297 636 144 490</i> <i>Meeting Password: 345BQf</i> <b>or by phone: +1 208-985-2810,,826046050#</b></p>

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this rule implements the Managed Care Reform Act by defining and establishing operating procedures. This rulemaking is consistent with the Governor's [Executive Order 2020-01: Zero-Based Regulation](#). The proposed changes are to simplify, clarify, and reduce.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023 Idaho Administrative Bulletin, [Vol. 23-06, pages 56-57](#), under Docket No. 18-ZBRR-2301.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Weston Trexler, (208) 334-4214, [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 3rd day of August, 2023.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 18-0404-2301**

**18.04.04 – THE MANAGED CARE REFORM ACT RULE**

**000. LEGAL AUTHORITY.**

Title 41, Chapters 2 and 39, Idaho Code. ( )

**001. SCOPE.**

This rule defines procedures to be followed in establishing and operating a Managed Care Organization. ( )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Balance Billing.** The practice whereby a provider bills an individual covered under the benefit plan for the difference between the amount the provider normally charges for a service and the amount the plan, policy, or contract recognizes as the allowable charge or negotiated price for the service delivered. ( )

**02. MCO.** Managed Care Organizations is abbreviated to MCO in this rule. ( )

**03. MCO Provider.** MCO provider means any provider owned, managed, employed by, or under contract with an MCO to provide health care services to MCO members. An MCO provider includes a physician, hospital, or other person licensed or authorized to furnish health care services. ( )

**011. CAPITAL SURPLUS AND DEPOSIT REQUIREMENTS.**

**01. Amount.** The following minimum capital fund apply, as per Section 41-3905(8), Idaho Code:

<b>Enrolled Members</b>	<b>Capital Funds</b>
0-100	\$200,000
101-300	\$300,000
301-500	\$400,000
501-700	\$500,000
701-1,000	\$1,000,000
1,001-2,000	\$1,500,000
2,001-3,000	\$2,000,000

( )

**02. Time.** Within the following time periods after the organization becomes subject to the Act, in no event will the organization's capital funds be less than:

One year	\$1,000,000
Two years	\$1,500,000
Three years	\$2,000,000

( )

**03. Adjustments.** Immediately upon becoming subject to the Act, the MCO’s minimum statutory deposit is calculated as fifty percent (50%) of the amount of the organization’s capital funds as calculated above, but not less than two hundred thousand dollars (\$200,000). The minimum deposit so held is adjusted based on the organization’s December 31 and June 30 financial statement filings each year. In no event will the minimum prescribed statutory deposit be reduced. Upon filing a financial statement indicating an increase in the deposit amount, the organization will have no more than thirty (30) days to come into compliance with the prescribed amount. Failure to increase the deposit as prescribed may subject the organization to suspension or revocation of its certificate of authority pursuant to Section 41-326, Idaho Code. ( )

**012. SOLICITATION PRIOR TO ISSUANCE OF CERTIFICATE OF AUTHORITY.**

Before contacting potential enrollees or subscribers, the proposed MCO will submit in writing for approval, copies of brochures, advertising or solicitation materials, sales talks or any other procedures or methods to be used. ( )

**013. ANNUAL STATEMENT.**

The MCO will file an annual statement in accordance with Section 41-335, Idaho Code. ( )

**014. AUDIT REPORT.**

The MCO will file its annual audited financial report described in Section 41-3910, Idaho Code, in accordance with IDAPA 18.07.04, “Annual Audited Financial Reports.” It will include the annual disclosure material described in Section 41-3914, Idaho Code, and the grievance report described in Section 41-3918, Idaho Code. ( )

**015. PERSONNEL AND FACILITIES LISTING.**

**01. Current Listing.** The MCO will always keep a current list of all personnel, providers and facilities employed, retained or under contract to furnish health care services to enrollees. This list is to be made available to the Director upon request. ( )

**02. Allowable Expense -- No Balance Billing.** No MCO provider or other provider accepting a referral from an MCO, who treats or provides services to an individual covered by the MCO, may charge to or collect from any member or other beneficiary any amount in excess of that amount of compensation determined or allowed for a particular service by the MCO or by the administrator for the MCO. Nothing in this section prevents the collection of any copayments, coinsurance, or deductibles allowed for in the plan design. ( )

**03. Procedures for Basic Care and Referrals.** The MCO will provide basic health care to enrollees through an organized system of health care providers. In plans in which referrals to specialty physicians and ancillary services are prescribed, the MCO provider or the MCO will initiate the referrals. The MCO will inform its providers of their responsibility to provide written referrals and any specific procedures that need to be followed in providing referrals, including prohibition of balance billing. ( )

**04. Health Care Services to Be Accessible.** The MCO, either directly or through its organized system of health care providers, will arrange for covered health care services, including referrals to providers within the organized system of health care providers and noncontracting providers, to be accessible to enrollees on a timely basis in accordance with medically appropriate guidelines consistent with generally accepted practice parameters. ( )

**05. Out of Network Services.** In the case of provider care which is delivered outside of the organized system of health care providers or defined referral system, the MCO will alert those covered under health benefit plans to the fact that providers which are not MCO providers, or have not accepted written referrals, may balance bill the customer for amounts above the MCO’s maximum allowance. Consumers should be encouraged to discuss the

issue with their providers ( )  
016. -- 999. (RESERVED)

[Agency redlined courtesy copy]

#### 18.04.04 – THE MANAGED CARE REFORM ACT RULE

000. LEGAL AUTHORITY.  
Title 41, Chapters 2 and 39, Idaho Code. (3-31-22)( )

001. ~~TITLE AND SCOPE.~~  
This rule defines procedures to be followed in establishing and operating a Managed Care Organization. ( )

01. ~~Title.~~ IDAPA 18.04.04, “The Managed Care Reform Act Rule.” (3-31-22)

02. ~~Scope.~~ The Act and this chapter define procedures to be followed in establishing and operating a Managed Care Organization. (3-31-22)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Balance Billing.** The practice whereby a provider bills an individual covered under the benefit plan for the difference between the amount the provider normally charges for a service and the amount the plan, policy, or contract recognizes as the allowable charge or negotiated price for the service delivered. ( )

02. **MCO.** Managed Care Organizations is abbreviated to MCO in this rule. ( )

03. **MCO Provider.** MCO provider means any provider owned, managed, employed by, or under contract with an MCO to provide health care services to MCO members. An MCO provider includes a physician, hospital, or other person licensed or authorized to furnish health care services. ( )

011. ~~APPLICATION FOR CERTIFICATE OF AUTHORITY~~ CAPITAL SURPLUS AND DEPOSIT REQUIREMENTS.

01. ~~Certificate of Authority.~~ Any person offering a managed care plan on a predetermined and prepaid basis is transacting the business of insurance and needs to be authorized under a Certificate of Authority issued by the Director of Insurance. (3-31-22)

02. ~~Application Requirements.~~ The application for a Certificate of Authority will include the affidavits, statements, and other information as enumerated in Idaho Code, Sections 41-319, 41-3904, 41-3905, and 41-3906. After receiving these completed documents, the Director has the authority to request any supplemental information before final approval or disapproval is given. (3-31-22)

03. ~~Capital Surplus and Deposit Requirements.~~ (3-31-22)

01. **Amount.** The Director has established the following minimum capital fund requirements apply, as per Section 41-3905(8), Idaho Code, based on the number of enrolled members:

Enrolled Members	Capital Funds
------------------	---------------

0-100	\$200,000
101-300	\$300,000
301-500	\$400,000
501-700	\$500,000
701-1,000	\$1,000,000
1,001-2,000	\$1,500,000
2,001-3,000	\$2,000,000

(3-31-22)( )

**b02. Time.** Within the following time periods after the organization becomes subject to the Act, in no event will the organization’s capital funds be less than the following:

One year after the organization becomes subject to the Act	\$1,000,000
Two years after the date the organization becomes subject to the Act	\$1,500,000
Three years after the date the organization becomes subject to the Act	\$2,000,000

(3-31-22)( )

**e03. Adjustments.** Immediately upon becoming subject to the Act, the MCO’s minimum statutory deposit requirements is calculated as fifty percent (50%) of the amount of the organization’s capital funds as calculated above up to a maximum of one million dollars (\$1,000,000), but not less than two hundred thousand dollars (\$200,000). The amount of the minimum deposit so held by the Department is adjusted based on the organization’s December 31<sup>st</sup> and June 30<sup>th</sup> financial statement filings each year. In no event will the minimum prescribed statutory deposit amount be reduced. Upon notification by the Department of the necessary filing a financial statement indicating an increase in the deposit amount, the organization will have no more than thirty (30) days to come into compliance with the prescribed amount. Failure to increase the deposit as prescribed will may subject the organization to suspension or revocation of its certificate of authority pursuant to Section 41-326, Idaho Code. (3-31-22)( )

**012. SOLICITATION PRIOR TO ISSUANCE OF CERTIFICATE OF AUTHORITY.**

**01. Permission for Solicitation Requisite.** In accordance with Section 41-3904, Idaho Code, a proposed MCO, after filing its application for a Certificate of Authority, may request permission from the Director to inform potential enrollees concerning its proposed managed care services. (3-31-22)

**02. Solicitation Materials.** Before contacting potential enrollees or subscribers, the proposed MCO will submit its request for permission to the Director in writing for approval, with copies of brochures, advertising or solicitation materials, sales talks or any other procedures or methods to be used. (3-31-22)( )

**03. Methods of Solicitation.** Advertising and solicitation materials used by a proposed MCO need to meet the following minimum requirements: (3-31-22)

- a.** The prospective enrollee will clearly be advised that: (3-31-22)
  - i.** The proposed MCO is not as yet authorized to offer health care services in this state; (3-31-22)
  - ii.** Coverage for health care services is not being provided at the time of the solicitation; (3-31-22)
  - iii.** The solicitation is not a guarantee that any services will be provided at a future date. (3-31-22)

**b.** The format and content of any material offered will conform with the MCO Act. Such material will contain but not be limited to the following information: (3-31-22)

- i. Complete description of the proposed MCO services and other benefits to which the enrollee would be entitled; (3-31-22)
- ii. The location of all facilities, the hours of operation, and the services which would be provided in each facility; (3-31-22)
- iii. The predetermined periodic rate of payment for the proposed services; (3-31-22)
- iv. All exclusions and limitations on the proposed services, including any copayment feature, and all restrictions relating to pre-existing conditions. (3-31-22)
- e. No person will solicit enrollment or inform prospective enrollees concerning proposed MCO services unless compensated solely as a salaried employee of the proposed MCO. (3-31-22)

**013. ANNUAL DISCLOSURE, FILING WITH DIRECTOR STATEMENT.**

The annual disclosure material prescribed to be filed with the Director pursuant to Section 41-3914, Idaho Code, is filed with the reports to the Director on or before March 1 each year. The MCO will file an annual statement in accordance with Section 41-335, Idaho Code. (3-31-22)( )

**014. ANNUAL AUDIT REPORT TO THE DIRECTOR.**

In accordance with Sections 41-3910 and 41-335, Idaho Code, every managed care organization will annually on or before the first day of March, file with the Director a full and true statement of its financial condition, transactions and affairs as of the preceding December 31. Unless otherwise prescribed by the Director, the statement is to be prepared in accordance with the annual statement instructions and the accounting practices and procedures manual adopted by the National Association of Insurance Commissioners (NAIC) and is to be submitted on the NAIC annual convention blank form. The managed care organization The MCO will also file its annual audited financial report described in Section 41-3910, Idaho Code, in accordance with IDAPA 18.07.04, "Annual Audited Financial Reports." It will include the annual disclosure material described in Section 41-3914, Idaho Code, and the grievance report described in Section 41-3918, Idaho Code. (3-31-22)( )

**015. PERSONNEL AND FACILITIES LISTING.**

**01. Current Listing.** The MCO will ~~at all times~~ always keep a current list of all personnel, providers and facilities employed, retained or under contract to furnish health care services to enrollees. This list is to be made available to the Director upon request. (3-31-22)( )

**02. Allowable Expense -- No Balance Billing.** No MCO provider or other provider accepting a referral from an MCO, who treats or provides services to an individual covered by the MCO, may charge to or collect from any member or other beneficiary any amount in excess of that amount of compensation determined or allowed for a particular service by the MCO or by the administrator for the MCO. Nothing in this section prevents the collection of any copayments, coinsurance, or deductibles allowed for in the plan design. ( )

**03. Procedures for Basic Care and Referrals.** The MCO will provide basic health care to enrollees through an organized system of health care providers. In plans in which referrals to specialty physicians and ancillary services are prescribed, the MCO provider or the MCO will initiate the referrals. The MCO will inform its providers of their responsibility to provide written referrals and any specific procedures that need to be followed in providing referrals, including prohibition of balance billing. ( )

**04. Health Care Services to Be Accessible.** The MCO, either directly or through its organized system of health care providers, will arrange for covered health care services, including referrals to providers within the organized system of health care providers and noncontracting providers, to be accessible to enrollees on a timely basis in accordance with medically appropriate guidelines consistent with generally accepted practice parameters. ( )

**05. Out of Network Services.** In the case of provider care which is delivered outside of the organized system of health care providers or defined referral system, the MCO will alert those covered under health benefit

plans to the fact that providers which are not MCO providers, or have not accepted written referrals, may balance bill the customer for amounts above the MCO's maximum allowance. Consumers should be encouraged to discuss the issue with their providers ( )

**016. -- 999. (RESERVED)**



## IDAPA 18 – DEPARTMENT OF INSURANCE

### 18.04.08 – INDIVIDUAL AND GROUP SUPPLEMENTARY DISABILITY INSURANCE MINIMUM STANDARDS RULE

DOCKET NO. 18-0408-2301 (ZBR CHAPTER REWRITE)

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the second Regular Session of the Sixty-seventh Idaho Legislature after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Title 41, Chapters 2 and 42, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The purpose of this chapter is to implement Title 41, Chapters 21, 22, 34, and 42, Idaho Code, to standardize and simplify the terms and coverages of individual and group supplementary disability insurance. Changes since the proposed rule are in response to comments received from interested parties.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September Idaho Administrative Bulletin, [Vol. 23-09, pages 230-249](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: Not Applicable.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Weston Trexler, (208)334-4214, [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov).

DATED this 6th day of November, 2023.

Dean L. Cameron, Director  
Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID, 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 41, Chapters 2 and 42, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

<p><b>Wednesday, September 27, 2023</b> <b>3:00 p.m. to 4:30 p.m. (MT)</b></p>
<p><i>In-person participation is available at:</i> <b>Department of Insurance</b> <b>700 W. State St. 3rd Floor</b> <b>Boise, ID 83702</b></p> <p><i>Web meeting link:</i> <a href="https://www.microsoft.com/microsoft-teams/join-a-meeting">https://www.microsoft.com/microsoft-teams/join-a-meeting</a> <i>Meeting ID: 297 636 144 490</i> <i>Meeting Password: 345BQf</i> <i>or by phone: +1 208-985-2810,,826046050#</i></p>

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this chapter is to implement Title 41, Chapters 21, 22, 34, and 42, Idaho Code, to standardize and simplify the terms and coverages of individual and group supplementary disability insurance. This rulemaking is consistent with the Governor's [Executive Order 2020-01: Zero-Based Regulation](#). The proposed changes are primarily to simplify, clarify, and reduce. Additional changes update language and broaden the allowable benefit period for disability insurance protection coverage.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023 Idaho Administrative Bulletin, [Vol. 23-06, pages 56-57](#), under Docket No. 18-ZBRR-2301.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: This rule incorporates by reference the Outlines of Coverage and notices from the April 1999 version of the National Association of Insurance Commissioners (NAIC) Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Act. Copies of the standards and materials can be found at <https://content.naic.org/sites/default/files/MO171.pdf>. Due

to the length of these materials, the Department finds it is more expedient to incorporate the materials by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Weston Trexler, (208) 334-4214, [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 3rd day of August, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 18-0408-2301

**18.04.08 – INDIVIDUAL AND GROUP SUPPLEMENTARY DISABILITY INSURANCE  
MINIMUM STANDARDS RULE**

**000. LEGAL AUTHORITY.**

Title 41, Chapters 2 and 42, Idaho Code. ( )

**001. SCOPE.**

This chapter applies to all individual and group policies and certificates providing hospital confinement indemnity, disability income protection, accident only, specified disease, specified accident, or limited benefit health coverage, referred to collectively in this chapter as “supplementary disability insurance,” offered, delivered, issued for delivery, or renewed in this state or to a resident of this state, unless specifically exempted. It applies to dental plans and vision plans only as specified, and it applies to group supplementary plans whether issued to supplement a group health benefit plan, or as a supplementary plan that pays benefits regardless of other coverage. ( )

**002. INCORPORATION BY REFERENCE.**

The following Outlines of Coverage and notices are incorporated by reference from the April 1999 version of the NAIC Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Act available on the NAIC website <https://content.naic.org/sites/default/files/MO171.pdf>: ( )

- 01. Hospital Confinement Indemnity Coverage. ( )**
- 02. Disability Income Protection Coverage. ( )**
- 03. Accident Only Coverage. ( )**
- 04. Specified Disease. ( )**
- 05. Specified Accident. ( )**
- 06. Limited Benefit Health Coverage. ( )**
- 07. Dental Plans. ( )**
- 08. Vision Plans. ( )**
- 09. Notice to Applicant Regarding Replacement of Accident and Sickness Insurance (direct**

sales). ( )

**10. Notice to Applicant Regarding Placement of Accident and Sickness Insurance (other than direct sales).** ( )

**003. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Accident Only Coverage.** “Accident Only Coverage” means a policy or certificate that provides coverage, singly or in combination, for death, dismemberment, disability or hospital and medical care caused by an accident, and does not provide coverage for non-accidents. ( )

**02. Dental Coverage.** “Dental Coverage” means a policy or certificate that primarily provides benefits for dental expenses. ( )

**03. Disability Income Protection Coverage.** “Disability Income Protection Coverage” means a policy or certificate that provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from either sickness or injury or a combination of both. ( )

**04. Hospital Confinement Indemnity Coverage.** “Hospital Confinement Indemnity Coverage” means a policy or certificate of accident and sickness insurance that provides daily benefits for hospital confinement on an indemnity basis, meaning the benefit is a fixed dollar amount per day of confinement, regardless of the expenses incurred. ( )

**05. Limited Benefit Health Coverage.** “Limited Benefit Health Coverage” means a policy or certificate that provides benefits that are less than the minimum standards under Sections 035 through 039 of this chapter. ( )

**06. Major Medical Expense Coverage.** “Major Medical Expense Coverage” means a policy of accident and sickness insurance that provides hospital, medical and surgical expense coverage. ( )

**07. Specified Accident Coverage.** “Specified Accident Coverage” means a policy or certificate that provides coverage for a specifically identified kind of accident (or accidents) for each person insured under the coverage for accidental death or accidental death and dismemberment combined. ( )

**08. Specified Disease Coverage.** “Specified Disease Coverage” means a policy or certificate that pays benefits only after the diagnosis of a specifically named disease or diseases. ( )

**09. Vision Coverage.** “Vision Coverage” means a policy or certificate that primarily provides benefits for vision expenses. ( )

**011. POLICY DEFINITIONS AND TERMS.**

Except as provided in this chapter, an insurance policy or certificate to which this chapter applies will not include definitions more restrictive than the following: ( )

**01. Accident.** “Accident,” “accidental injury,” and “accidental” is to employ “result” language and does not include words that establish an accidental means test or use words such as “external, violent, visible wounds” or similar words of description or characterization. ( )

**a.** “Injury” or “injuries” means accidental bodily injury, independent of disease which occurs while the coverage is in force. ( )

**b.** It may exclude injuries for which benefits are provided under workers’ compensation, employers’ liability or similar law; or under a motor vehicle no-fault plan, unless not allowed by law; or injuries occurring while the insured person is engaged in any activity pertaining to a trade, business, employment or occupation for wage or profit. ( )

**02. Convalescent Nursing Home.** “Convalescent nursing home,” “extended care facility,” “assisted living facility”, or “skilled nursing facility” is to be defined in relation to its status, facility and available services. ( )

a. Such home or facility is to: ( )

i. Be operated pursuant to law; ( )

ii. Be qualified to receive approval for payment of Medicare or medicaid benefits, if so requested; ( )

iii. Provide, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician; ( )

iv. Provide continuous twenty-four (24) hours per day nursing service by or under the supervision of a registered nurse; and ( )

v. Maintain a daily medical record of each patient. ( )

b. The definition of the home or facility may exclude a home, facility or part of a home or facility used primarily: for rest, for the aged, for individuals with a substance use disorder or a mental disease or disorder, or for custodial or educational care. ( )

**03. Home Health Care Agency.** “Home health care agency” means an agency approved under Medicare, or that is licensed to provide home health care under applicable state law, or that: ( )

a. Is primarily engaged in providing home health care services; ( )

b. Has policies established by a group of professional personnel (including at least one (1) physician and one (1) registered nurse); ( )

c. Has a physician or a registered nurse supervising the home health care services; ( )

d. Maintains clinical records on all patients; and ( )

e. Has a full-time administrator. ( )

**04. Hospice.** “Hospice” means a facility licensed, certified or registered in accordance with state law that provides a formal program of care that is: ( )

a. For terminally ill patients whose life expectancy is less than six (6) months; ( )

b. Provided on an inpatient or outpatient basis; and ( )

c. Directed by a physician. ( )

**05. Hospital.** “Hospital” is to be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission. ( )

a. The hospital may: ( )

i. Be an institution licensed to operate as a hospital pursuant to law; ( )

ii. Be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of licensed physicians, medical, diagnostic and major surgical facilities for the medical care and treatment of sick or injured persons on an

in-patient basis for which a charge is made; and ( )

iii. Provide twenty-four (24) hour nursing service by or under the supervision of registered nurses. ( )

b. The term may exclude: ( )

i. Convalescent homes or, convalescent, rest, or nursing facilities; ( )

ii. Facilities affording primarily custodial, educational, or rehabilitative care; ( )

iii. Facilities for the aged, or individuals with a substance use disorder; or ( )

iv. A military or veterans' hospital, a soldiers' home or a hospital contracted for or operated by any national government or government agency for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis where a legal liability for the patient exists for charges made to the individual for the services. ( )

**06. Mental Disorders or Nervous Disorders.** "Mental disorders" or "nervous disorders" means any condition or disorder defined by categories listed in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) or its successor. ( )

**07. Nurse.** "Nurse" may be restricted to a type of nurse, such as registered nurse. If the word "nurse," is used without specific instruction, then the use necessitates the insurer recognize the services of any individual who qualifies under the terminology in accordance with the applicable statutes or administrative rules of the licensing or registry board of the state. ( )

**08. One Period of Confinement.** "One (1) period of confinement" means consecutive days of in-hospital service received as an in-patient, or successive confinements when discharge from and readmission to the hospital occurs within a period of time not more than ninety (90) days or three (3) times the maximum number of days of in-hospital coverage provided by the policy to a maximum of one hundred eighty (180) days. ( )

**09. Partial Disability.** "Partial disability" is in relation to the individual's inability to perform one or more but not all of the "major," "important" or "essential" duties of employment or occupation, or may be related to a percentage of time worked or to a specified number of hours or to compensation. ( )

**10. Preexisting Condition.** "Preexisting condition" is a condition for which medical advice or treatment was recommended by a provider or that would have caused an ordinarily prudent person to seek medical advice or treatment during the six (6) months immediately preceding the effective date of coverage. ( )

**11. Provider.** "Provider" means a person or entity that, as necessary, is licensed to provide health care or related services. ( )

**12. Residual Disability.** "Residual disability" is in relation to the individual's reduction in earnings and may be related either to the inability to perform some part of the "major," "important," or "essential duties" of employment or occupation, or to the inability to perform all usual business duties for as long as is usually necessary. A policy that provides for residual disability benefits may impose a qualification period, during which the insured needs to be continuously totally disabled before residual disability benefits are payable. The qualification period for residual benefits may be longer than the elimination period for total disability. In lieu of the term "residual disability," the insurer may use "proportionate disability" or other term of similar import that in the opinion of the Director adequately and fairly describes the benefit. ( )

**13. Sickness or Illness.** "Sickness or illness" means sickness or disease of an insured person that presents itself after the effective date of insurance and while the insurance is in force. It may exclude sickness or disease for which benefits are provided under a worker's compensation, occupational disease, employers' liability or similar law." ( )

**14. Total Disability.** “Total disability” is in accordance with the following limitations: ( )

**a.** The individual who is totally disabled not be engaged in any employment or occupation for which he or she is or becomes qualified by reason of education, training or experience, and is not in fact engaged in any employment or occupation for wage or profit. ( )

**b.** Total disability may be defined in relation to the inability of the person to perform duties but is not to be based solely upon an individual’s inability to: ( )

**i.** Perform “any occupation whatsoever,” “any occupational duty,” or “any and every duty of his occupation”; or ( )

**ii.** Engage in a training or rehabilitation program. ( )

**c.** An insurer may stipulate the complete inability of the person to perform all of the substantial and material duties of his or her regular occupation or words of similar import. An insurer may stipulate care by a physician other than the insured or a member of the insured’s immediate family. ( )

**012. -- 019. (RESERVED)**

**020. BANNED POLICY PROVISIONS.**

**01. Probationary or Waiting Period.** Except as provided in Subsection 011.10 pertaining to the definition of a preexisting condition or Paragraph 038.02.e. of this chapter regarding specified disease coverage, a policy or certificate will not contain provisions establishing a probationary or waiting period during which no coverage is provided under the policy or certificate. Accident policies will not contain probationary or waiting periods. ( )

**02. Return of Premium or Cash Value Benefit.** A policy may contain a “return of premium” or “cash value benefit” so long as the return of premium or cash value benefit is not reduced by an amount greater than the aggregate of claims paid under the policy, and the insurer demonstrates that the reserve basis for the policies is adequate. A policy may return unearned premium upon termination or suspension of coverage, retroactive waiver of premium paid during disability, payment of dividends on participating policies, or experience rating refunds. ( )

**03. Exclusions.** A policy or certificate will not limit or exclude coverage by type of illness, accident, treatment or medical condition, except that a policy or certificate may include one (1) or more of the following limitations or exclusions: ( )

**a.** Preexisting conditions or diseases; ( )

**b.** Mental or emotional disorders, alcoholism and drug addiction; ( )

**c.** Pregnancy, except for complications of pregnancy; ( )

**d.** Illness, treatment or medical condition arising out of: ( )

**i.** War or act of war (whether declared or undeclared); participation in a felony, riot or insurrections; service in the armed forces or units auxiliary to it; ( )

**ii.** Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; ( )

**iii.** Professional aviation; and ( )

**iv.** With respect to disability income protection policies, incarceration. ( )

**e.** Cosmetic surgery, except that “cosmetic surgery” will not include reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part;

reconstructive surgery because of congenital disease or anomaly of a covered dependent child; or involuntary complications or complications related to a cosmetic procedure; ( )

**f.** Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet; ( )

**g.** Care in connection with the detection and correction by manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effects of it, where the interference is the result of or related to distortion, misalignment or subluxation of, or in the vertebral column; ( )

**h.** Benefits in excess of Medicare eligible expense, if enrolled in Medicare or other governmental program (except Medicaid), or benefits provided under a state or federal worker's compensation law, employers liability or occupational disease law, or motor vehicle no-fault law unless the motor vehicle no-fault plan provides for coordination of benefits; services performed by a member of the covered person's immediate family; and services for which no charge is normally made in the absence of insurance; ( )

**i.** Dental care or treatment; ( )

**j.** Eye glasses and the examination for the prescription, or fitting of them; ( )

**k.** Rest cures, custodial care, transportation, and routine physical examinations; ( )

**l.** Territorial limitations; ( )

**04. Preexisting Conditions.** ( )

**a.** Except as provided in this subsection, a policy will not deny, exclude or limit benefits for covered expenses incurred more than twelve (12) months following the effective date of the coverage due to a preexisting condition. ( )

**b.** For hospital confinement indemnity and accident only policies, a carrier will not modify a policy with respect to an individual or dependent through riders, endorsements, or otherwise, to restrict or exclude coverage for specifically named preexisting diseases or conditions otherwise covered by the policy. ( )

**021. -- 029. (RESERVED)**

**030. MINIMUM STANDARDS FOR BENEFITS.**

**01. Minimum Standards.** An insurance policy or certificate subject to this chapter will meet the applicable minimum standards noted in Sections 030 through 040 of this chapter. ( )

**02. Renewability.** A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" policy or certificate will not provide for termination of coverage of the spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than nonpayment of premium. In addition, the policy will provide that in the event of the insured's death, the spouse of the insured, if covered under the policy, will become the insured. ( )

**a.** The terms "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" will not be used without further explanatory language in accordance with the disclosure requirements of Section 101 of this chapter. ( )

**b.** The terms "noncancellable" or "noncancellable and guaranteed renewable" may be used only in a policy that the insured has the right to continue in force by the timely payment of premiums set forth in the policy, during which period the insurer has no right to make unilaterally any change in any provision of the policy while the policy is in force. ( )



**c.** An individual accident and sickness or individual accident-only policy that provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from accident or sickness may provide that the insured has the right to continue the policy only to age sixty (60) if, at age sixty (60), the insured has the right to continue the policy in force at least to age sixty-five (65) while actively and regularly employed. ( )

**d.** Except as provided in Subsection 030.02 of this chapter, (the term “guaranteed renewable” may be used only in a policy that the insured has the right to continue in force by the timely payment of premiums and, until the age of sixty-five (65) or until eligibility for Medicare and to the extent not in conflict with the federal Health Insurance Portability and Accountability Act (HIPAA), during which period the insurer has no right to make unilaterally any change in any provision of the policy while the policy is in force, except where the insurer is able to show good cause for changing the policy provisions and obtains prior written approval from the Director. The insurer may make changes in premium rates by classes. ( )

**03. Age and Durational Requirements.** In a policy covering both husband and wife, the age of the younger spouse will be used as the basis for meeting the age and durational requirements of the definitions of “noncancellable” or “guaranteed renewable.” However, this provision will not mandate termination of coverage of the older spouse upon attainment of the stated age so long as the policy may be continued in force as to the younger spouse as the insured to the age or for the durational period as specified in the policy. ( )

**04. Accidental Death and Dismemberment Coverage.** When accidental death and dismemberment coverage is part of the policy coverage offered under the contract, the insured will have the option to include all insureds under the coverage. ( )

**05. Military Service Limitations.** If a policy contains a status-type military service exclusion or a provision that suspends coverage during military service, the policy will provide, upon receipt of written request, for refund of premiums as applicable to the person on a pro rata basis. ( )

**06. Pregnancy Benefit Extension.** In the event the insurer cancels or refuses to renew, policies providing pregnancy benefits will provide for an extension of benefits as to pregnancy commencing while the policy is in force and for which benefits would have been payable had the policy remained in force. ( )

**07. Convalescent or Extended Care Benefits.** Policies providing convalescent or extended care benefits following hospitalization will not condition the benefits upon admission to the convalescent or extended care facility within a period of less than fourteen (14) days after discharge from the hospital. ( )

**08. Coverage of Dependents.** A policy’s coverage will continue for a dependent child who is incapable of self-sustaining employment due to intellectual disability or physical disability on the date that the child’s coverage would otherwise terminate under the policy due to the attainment of a specified age and who is chiefly dependent on the insured for support and maintenance. The policy may stipulate that the company receives due proof of the incapacity within thirty-one (31) days of the date in order for the insured to elect to continue the policy in force with respect to the child, or that a separate converted policy be issued at the option of the insured or policyholder. Provisions relating to coverage of dependents with intellectual disabilities or physical disabilities need meet the requirements of Sections 41-2139 and 41-2203, Idaho Code. ( )

**09. Expenses of Live Donor.** A policy providing coverage for the recipient in a transplant operation will also provide reimbursement of any medical expenses of a live donor to the extent that benefits remain and are available under the recipient’s policy or certificate, after benefits for the recipient’s own expenses have been paid. ( )

**10. Recurrent Disabilities.** A policy may contain a provision relating to recurrent disabilities, but a provision relating to recurrent disabilities will not specify that a recurrent disability be separated by a period greater than six (6) months. ( )

**11. Accidental Death and Dismemberment.** Accidental death and dismemberment benefits will be payable if the loss occurs within ninety (90) days from the date of the accident, irrespective of total disability. ( )

**12. Specific Dismemberment Benefits.** Specific dismemberment benefits will not be in lieu of other benefits unless the specific benefit equals or exceeds the other benefits. ( )

**13. Extension of Benefits.** Termination of the policy will be without prejudice to a continuous loss that commenced while the policy or certificate was in force. Such extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. ( )

**14. Unfair Exclusions.** A policy providing coverage for certain illnesses and injuries will not define covered illnesses and injuries in a way that is misleading or includes unfair exclusions, such as providing benefits only for “full or complete” fractures or dislocations. ( )

**031. -- 034. (RESERVED)**

**035. HOSPITAL CONFINEMENT INDEMNITY COVERAGE.**

**01. Minimum Standards for Benefits.** The following minimum standards apply: ( )

**a.** Provides daily benefits for hospital confinement on an indemnity basis in an amount not less than forty dollars (\$40) per day; and ( )

**b.** Provides benefits for not less than thirty-one (31) days during each period of confinement for each person insured under the policy. ( )

**c.** Benefits will be paid regardless of other coverage. ( )

**02. Banned Policy or Certificate Provisions.** ( )

**a.** Policies providing hospital confinement indemnity coverage will not contain provisions excluding coverage because of confinement in a hospital operated by the federal government. ( )

**b.** Policies or certificates which include additional indemnity coverage on a basis other than per day of confinement will not be considered hospital confinement coverage. ( )

**03. Disclosure Provisions.** ( )

**a.** All hospital confinement indemnity policies and certificates will prominently state on the first page, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections: “Notice to Buyer: This is a hospital confinement indemnity (policy) (certificate). This (policy) (certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses.” ( )

**b.** Outlines of coverage delivered in connection with “Hospital Confinement Indemnity Coverage” to persons eligible for Medicare by reason of age will state in boldface type on the first page: “THIS IS NOT A MEDICARE SUPPLEMENT POLICY. If you are eligible for Medicare, review the ‘Guide to Health Insurance for People with Medicare’ available from the company.” ( )

**c.** An insurer will deliver to persons eligible for Medicare any notice prescribed under IDAPA 18.04.10, “Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act.” ( )

**036. DISABILITY INCOME PROTECTION COVERAGE.**

**01. Minimum Standards for Benefits.** The minimum standards for disability income protection coverage are: ( )

**a.** Provides that any periodic payments are not reduced based on age, except when such reductions do not exceed fifty percent (50%) and do not take place until the individual has reached full retirement age for Social Security benefits; ( )

b. Contains an elimination period no greater than one-fourth (1/4) of the maximum payable benefit period, and not exceeding one (1) year; ( )

c. Has a maximum payable benefit period of at least three (3) months. ( )

**02. Banned Policy Provisions.** ( )

a. Where a policy provides total disability and partial disability benefits, only one (1) elimination period may applied. ( )

b. Disability income protection benefits will not require the loss to commence less than thirty (30) days after the date of accident, nor will any policy that the insurer cancels or refuses to renew require that it be in force at the time disability commences if the accident occurred while the coverage was in force. ( )

c. No reduction in benefits will be put into effect because of an increase in Social Security or similar benefits during a benefit period. ( )

d. No policy or certificate may use activities of daily living to define partial or total disability. ( )

**03. Disclosure Provisions.** All disability income protection policies will prominently state on the first page, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections: "Notice to Buyer: This is a disability income protection policy." ( )

**037. ACCIDENT ONLY COVERAGE.**

**01. Minimum Standards for Benefits.** The following minimum standards apply to accident only coverage: ( )

a. Accidental death and double dismemberment amounts under the policy or certificate are at least one thousand dollars (\$1,000); ( )

b. A single dismemberment amount is at least five hundred dollars (\$500); and ( )

c. Benefits for disability, hospital or medical care will be as defined in the policy or certificate. ( )

**02. Banned Policy Provisions.** Accident only policies or certificates will not contain probationary or waiting periods. ( )

**03. Disclosure Provisions.** ( )

a. All accident-only policies and certificates will prominently state on the first page, in either contrasting color or in boldface type at least equal to the size of type used for headings or captions of sections: "Notice to Buyer: This is an accident-only (policy) (certificate) and it does not pay benefits for loss from sickness. Review your (policy) (certificate) carefully." ( )

b. An accident-only policy or certificate providing benefits that vary according to the type of accidental cause will prominently state in the outline of coverage the circumstances under which benefits are payable that are less than the maximum amount payable under the policy or certificate. ( )

c. Accident-only policies or certificates that provide coverage for hospital or medical care will state in addition to the Notice to Buyer: "This (policy) (certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses." ( )

**038. SPECIFIED DISEASE COVERAGE.**

- 01. Minimum Standards for Benefits.** The minimum standards for specified disease coverage are: ( )
- a.** Coverage for cancer only or cancer in conjunction with other conditions or diseases needs to meet the standards of Paragraphs 01.e., 01.f., or 01.g. of this section. ( )
- b.** Coverage for specified diseases other than cancer meets the standards of Paragraphs 01.c., 01.d., or 01.g. of this section. ( )
- c. Non-cancer Coverages with Deductible.** Coverage for each insured person for a specifically named disease (or diseases) with a deductible amount not in excess of two hundred fifty dollars (\$250) and an overall aggregate benefit limit of not less than ten thousand dollars (\$10,000) and a benefit period of not less than two (2) years for at least the following incurred expenses: ( )
- i. Hospital room and board and any other hospital furnished medical services or supplies; ( )
  - ii. Treatment by a legally qualified physician or surgeon; ( )
  - iii. Private duty services of a registered nurse; ( )
  - iv. Medical services and supplies used in diagnosis and treatment; ( )
  - v. Professional ambulance for local service to or from a local hospital; ( )
  - vi. Blood transfusions, including expense incurred for blood donors; ( )
  - vii. Drugs and medicines prescribed by a physician; ( )
  - viii. The rental of an iron lung or similar mechanical apparatus; ( )
  - ix. Durable medical equipment deemed necessary by the attending physician for the treatment of the disease; ( )
  - x. Emergency transportation if in the opinion of the attending physician it is necessary to transport the insured to another locality for treatment of the disease; and ( )
  - xi. May include coverage of any other expenses necessarily incurred in the treatment of the disease. ( )
- d. Non-cancer Coverages without Deductible.** Coverage for each insured person for a specifically named disease (or diseases) with no deductible amount, and an overall aggregate benefit limit of not less than twenty-five thousand dollars (\$25,000) payable at the rate of not less than fifty dollars (\$50) a day while confined in a hospital and a benefit period of not less than five hundred (500) days. ( )
- e. Cancer-only or Combination Expense Policies.** Coverage for each insured person for cancer-only coverage or in combination with one (1) or more other specified diseases on an expense incurred basis for services, supplies, care, and treatment of cancer, in amounts not in excess of the usual and customary charges, with a deductible amount not in excess of two hundred fifty dollars (\$250), and an overall aggregate benefit limit of not less than ten thousand dollars (\$10,000) and a benefit period of not less than three (3) years for at least the following minimum provisions: ( )
- i. Treatment by, or under the direction of, a legally qualified physician or surgeon; ( )
  - ii. Medical services and supplies used in diagnosis and treatment; ( )
  - iii. Hospital room and board and any other hospital furnished medical services or supplies; ( )

- iv. Blood transfusions and their administration, including expense incurred for blood donors; ( )
- v. Drugs and medicines prescribed by a physician; ( )
- vi. Professional ambulance for local service to or from a local hospital; ( )
- vii. Private duty services of a registered nurse provided in a hospital; ( )
- viii. Durable medical equipment deemed necessary by the attending physician for the treatment of the disease; ( )
- ix. Emergency transportation if in the opinion of the attending physician it is necessary to transport the insured to another locality for treatment of the disease; and ( )
- x. Home health care that is necessary care and treatment provided at the insured person's residence by a home health care agency or by others under arrangements made with a home health care agency. The program of treatment will be prescribed in writing by the insured person's attending physician, who will approve the program prior to its start. ( )
- xi. Therapy, including physical, speech, hearing, and occupational therapy; ( )
- xii. Special equipment including hospital bed, toilette, pulleys, wheelchairs, aspirator, Chux, oxygen, surgical dressings, rubber shields, colostomy, and ileostomy appliances; ( )
- xiii. Prosthetic devices including wigs and artificial breasts; ( )
- xiv. Nursing home care for non-custodial services; and ( )
- xv. Reconstructive surgery when deemed necessary by the attending physician. ( )
- f.** Per Diem Cancer Coverages. Cancer coverages on a per diem indemnity basis includes: ( )
  - i. A fixed-sum payment of at least one hundred dollars (\$100) for each day of hospital confinement for at least three hundred sixty-five (365) days; ( )
  - ii. A fixed-sum payment equal to one-half (1/2) the hospital inpatient benefit for each day of hospital or nonhospital outpatient surgery, chemotherapy and radiation therapy, for at least three hundred sixty-five (365) days of treatment; and ( )
  - iii. A fixed-sum payment of at least fifty dollars (\$50) per day for blood and plasma, which includes their administration whether received as an inpatient or outpatient for at least three hundred sixty-five (365) days of treatment. ( )
- g.** Lump Sum Indemnity Coverage. Lump sum indemnity coverage for any specified disease will be payable as a fixed, one-time payment made within thirty (30) days of submission to the insurer of proof of diagnosis of the specified disease. ( )
  - i. Dollar benefits may only be in increments of one thousand dollars (\$1,000). ( )
  - ii. Where coverage is advertised or otherwise represented to offer generic coverage of a disease or diseases, the same dollar amounts will be payable regardless of the particular subtype of the disease with one exception. In the case of clearly identifiable subtypes with significantly lower treatments costs, lesser amounts may be payable so long as the policy or certificate clearly differentiates that subtype and its benefits. ( )
- h.** Hospice Care. Hospice care is optional and does not cover non-terminally ill patients. If offered, it will provide: ( )

- i. Eligibility for payment of benefits when the attending physician of the insured provides a written statement that the insured person has a life expectancy of six (6) months or less; ( )
  - ii. A fixed-sum payment of at least fifty dollars (\$50) per day; and ( )
  - iii. A lifetime maximum benefit limit of at least ten thousand dollars (\$10,000). ( )
- i.** Nursing Home Care. Benefits for skilled nursing home confinement or the receipt of home health care are optional. If offered, it will provide: ( )
- i. A fixed-sum payment equal to one-fourth (1/4) the hospital in-patient benefit for each day of skilled nursing home confinement for at least one hundred (100) days, but no more restrictive than under Medicare; ( )
  - ii. A fixed-sum payment equal to one-fourth (1/4) the hospital in-patient benefit for each day of home health care for at least one hundred (100) days, but no more restrictive than under Medicare; and ( )
  - iii. Benefit payments begin with the first day of care or confinement after the effective date of coverage if the care or confinement is for a covered disease even though the diagnosis of a covered disease is made at some later date (but not retroactive more than thirty (30) days from the date of diagnosis) if the initial care or confinement was for diagnosis or treatment of the covered disease. ( )
- 02. Banned Policy or Certificate Provisions.** Except for cancer coverage provided on an expense-incurred basis, either as cancer-only coverage or in combination with one or more other specified diseases, the following rules apply to specified disease coverages in addition to all other requirements imposed by this chapter. In cases of conflict the following govern: ( )
- a.** Policies covering a single specified disease or combination of specified diseases are not to be sold or offered for sale other than as specified disease coverage under this Section. ( )
  - b.** Any policy issued pursuant to this Section that conditions payment upon pathological diagnosis of a covered disease will also provide that if the pathological diagnosis is medically inappropriate, a clinical diagnosis will be accepted instead. ( )
  - c.** Notwithstanding any other provision of this chapter, specified disease policies will provide benefits to any covered person not only for the specified diseases but also for any other conditions or diseases, directly caused or aggravated by the specified diseases or the treatment of the specified disease. ( )
  - d.** Individual accident and sickness policies containing specified disease coverage will be guaranteed renewable. ( )
  - e.** No policy issued pursuant to this Section contains a waiting or probationary period greater than thirty (30) days. A specified disease policy may contain a waiting or probationary period following the issue or reinstatement date of the policy or certificate in respect to a particular covered person before the coverage becomes effective as to that covered person. ( )
  - f.** Except for lump sum indemnity coverage, payments may be conditioned upon an insured person's receiving medically necessary care, given in a medically appropriate location, under a medically accepted course of diagnosis or treatment. ( )
  - g.** Benefits will be paid regardless of other coverage. ( )
  - h.** After the effective date of the coverage (or applicable waiting period, if any) benefits begins with the first day of care or confinement if the care or confinement is for a covered disease even though the diagnosis is made at some later date. The retroactive application of the coverage is not to be less than ninety (90) days prior to the diagnosis. ( )

**i.** Policies providing expense benefits will not use the term “actual” when the policy only pays up to a limited amount of expenses. Instead, the term “charge” or substantially similar language should be used that does not have the misleading or deceptive effect of the phrase “actual charges.” ( )

**j.** Preexisting condition will not be defined to be more restrictive than: “Preexisting condition means a condition for which medical advice, diagnosis, care or treatment was recommended or received from a physician within the six (6) month period preceding the effective date of coverage of an insured person.” ( )

**k.** Coverage for specified diseases will not be excluded due to a preexisting condition for a period greater than twelve (12) months following the effective date of coverage of an insured person unless the preexisting condition is specifically excluded. ( )

**03. Disclosure Provisions.** ( )

**a.** An application or enrollment form for specified disease coverage will state above the signature of the applicant or enrollee that a person to be covered for specified disease is not also covered by any Title XIX program (Medicaid, or any similar name). The statement may be combined with any other statement for which the insurer may request the applicant’s or enrollee’s signature. ( )

**b.** All specified disease policies and certificates will prominently state on the first page in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections: “Notice to Buyer: This is a specified disease (policy) (certificate). This (policy) (certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses. Read your (policy) (certificate) carefully with the outline of coverage.” ( )

**c.** Outlines of coverage delivered in connection with “Specified Disease” to persons eligible for Medicare by reason of age will state in boldface type on the first page: “THIS IS NOT A MEDICARE SUPPLEMENT POLICY. If you are eligible for Medicare, review the ‘Guide to Health Insurance for People with Medicare’ available from the company.” ( )

**d.** An insurer will deliver to persons eligible for Medicare any notice prescribed under IDAPA 18.04.10, “Medicare Supplement Insurance Standards.” ( )

**039. SPECIFIED ACCIDENT COVERAGE.**

**01. Minimum Standards for Benefits.** The minimum standards for specified accident coverage are: ( )

**a.** A benefit amount not less than one thousand dollars (\$1,000) for accidental death; ( )

**b.** A benefit amount not less than one thousand dollars (\$1,000) for double dismemberment; and ( )

**c.** A benefit amount not less than five hundred dollars (\$500) for single dismemberment. ( )

**02. Banned Policy or Certificate Provisions.** Specified accident policies will not contain probationary or waiting periods. ( )

**03. Disclosure Provisions.** ( )

**a.** Specified accident policies or certificates that provide coverage for hospital or medical care will prominently state in addition to the Notice to Buyer: “This (policy) (certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses.” ( )

**b.** All specified accident policies and certificates will prominently state on the first page, in either contrasting color or in boldface type at least equal to the size of type used for headings or captions of sections: “Notice to Buyer: This is an accident-only (policy) (certificate) and it does not pay benefits for loss from sickness.”

Review your (policy) (certificate) carefully.” ( )

**040. LIMITED BENEFIT HEALTH COVERAGE.**

**01. Minimum Standards.** ( )

**a.** Limited Benefit Health Coverage will not be offered, delivered, issued for delivery, or renewed in this state or to a resident of this state unless approved by the Director prior to use. ( )

**b.** A policy covering a single specified disease or combination of diseases will not be offered for sale as “limited benefit” coverage. ( )

**c.** Section 040 does not apply to policies designed to provide coverage for long-term care or to Medicare supplement insurance, as defined in Title 41, Chapter 46, Idaho Code, “Long-Term Care Insurance” and Title 41, Chapter 44, Idaho Code, “Medicare Supplement Insurance Minimum Standards.” ( )

**02. Disclosure Provisions.** ( )

**a.** All limited benefit health policies and certificates will prominently state on the first page, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections: “Notice to Buyer: This is a limited benefit health (policy) (certificate). This (policy) (certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses.” ( )

**b.** An insurer will deliver to persons eligible for Medicare any notice prescribed under IDAPA 18.04.10, “Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act.” ( )

**041. DENTAL COVERAGE.**

**01. Disclosure Provisions.** ( )

**a.** All dental coverage applications will prominently state in either contrasting color or in boldface type at least equal to the size type used for the headings or captions of sections and in close conjunction with the applicant’s signature block: “The (policy) (certificate) provides dental benefits only. Review your (policy) (certificate) carefully.” ( )

**b.** All dental coverage policies and certificates will prominently state on the first page, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections: “Notice to Buyer: This (policy) (certificate) provides dental benefits only.” ( )

**042. VISION COVERAGE.**

**01. Disclosure Provisions.** ( )

**a.** All vision coverage applications will prominently state in either contrasting color or in boldface type at least equal to the size type used for the headings or captions of sections and in close conjunction with the applicant’s signature block: “The (policy) (certificate) provides vision benefits only. Review your (policy) (certificate) carefully.” ( )

**b.** All vision coverage policies and certificates will prominently state on the first page in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections: “Notice to Buyer: This (policy) (certificate) provides vision benefits only.” ( )

**043. -- 100. (RESERVED)**

**101. DISCLOSURE PROVISIONS.**

**01. General Rules for Disclosure Provisions.** ( )



**a.** All applications for coverages specified in Sections 035 through 040 will prominently state in either contrasting color or in boldface type at least equal to the size type used for the headings or captions of sections and in close conjunction with the applicant's signature block: "The (policy) (certificate) provides limited benefits. Review your (policy) (certificate) carefully." ( )

**b.** The first page of each policy or certificate subject to this chapter will include a renewal, continuation or nonrenewal provision consistent with the type of contract to be issued. The provision will be appropriately captioned and will clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed. ( )

**c.** Except for riders or endorsements by which the insurer effectuates a request made in writing by the policyholder or exercises a specifically reserved right under the policy, all riders or endorsements added to a policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy will necessitate signed acceptance by the policyholder. After date of policy issue, any rider or endorsement that increases benefits or coverage with a commensurable increase in premium during the policy term is to be agreed to in writing signed by the policyholder, except if the increased benefits or coverage is prescribed by law. The signature requirements in this paragraph apply to group supplemental health insurance certificates only where the certificate holder also pays the insurance premium. ( )

**d.** Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge will be set forth in the policy or certificate. ( )

**e.** A policy or certificate that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import will include a definition of the terms and an explanation of the terms in its accompanying outline of coverage. ( )

**f.** If a policy or certificate contains any limitations with respect to preexisting conditions, the limitations will appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations." ( )

**g.** All policies and certificates, will prominently state on the first page of the policy or certificate in substance that the policyholder or certificate holder will have the right to return the policy or certificate within ten (10) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the policyholder or certificate holder is not satisfied for any reason. ( )

**h.** If age is to be used as a determining factor for reducing the maximum aggregate benefits made available in the policy or certificate as originally issued, that fact will be prominently stated in the outline of coverage. ( )

**i.** If a policy or certificate contains a conversion privilege, it will substantively comply with: ( )

**i.** The provision's caption will be "Conversion Privilege". ( )

**ii.** The provision will indicate the persons eligible for conversion, the circumstances applicable to the conversion privilege, including any limitations on the conversion, and the person by whom the conversion privilege may be exercised; and ( )

**iii.** The provision will specify the benefits to be provided on conversion or may state that the converted coverage will be as provided on a policy form then being used by the insurer for that purpose. ( )

**02. Outline of Coverage Requirements.** ( )

**a.** An insurer will deliver an outline of coverage to an applicant or enrollee in the sale of individual accident and sickness insurance, group supplemental health insurance, dental plans and vision plans as prescribed by Section 41-4205, Idaho Code. If an application is made by electronic means, an insurer will deliver an outline of coverage on the next working day the completed application is received, and delivery may be made by the following

methods regardless of the form of application: ( )

i. E-mail; ( )

ii. Website link; ( )

iii. Facsimile; ( )

iv. First class mail; or ( )

v. Any other method permitted by the Director. ( )

**b.** If an outline of coverage was delivered at the time of application or enrollment and the policy or certificate is issued on a basis which would necessitate revision of the outline, a substitute outline of coverage properly describing the policy or certificate will accompany the delivered policy or certificate and will state in no less than twelve (12) boldface point type, immediately above the company name: **“NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon (application) (enrollment), and the coverage originally applied for has not been issued.”** ( )

**c.** In any case where the prescribed outline of coverage is inappropriate for the coverage provided by the policy or certificate, an alternate outline of coverage will be filed with the Director. ( )

**102. -- 200. (RESERVED)**

**201. REQUIREMENTS FOR REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS INSURANCE.**

**01. Application Form.** An application form will include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other accident and sickness insurance presently in force. ( )

**02. Prescribed Notice.** Notices prescribed under this chapter will conform to the model outlines of coverage incorporated herein in Section 002 of this chapter, and set forth at the Idaho Department of Insurance website. Upon determining that a sale will involve replacement, an insurer, or its agent will furnish the applicant, prior to issuance or delivery of the policy, the “Notice To Applicant Regarding Replacement Of Accident And Sickness Insurance,” taking into consideration the requirement for direct response or other than direct response. A direct response insurer will deliver to the applicant upon issuance of the policy, the notice described in this section. ( )

**202. -- 999. (RESERVED)**

[Agency redlined courtesy copy]

*Italicized text indicates amendments to the proposed text as adopted in the pending rule.*

**18.04.08 – INDIVIDUAL AND GROUP SUPPLEMENTARY DISABILITY INSURANCE  
MINIMUM STANDARDS RULE**

**000. LEGAL AUTHORITY.**  
Title 41, Chapters 2 and 42, Idaho Code. ( )

**001. ~~TITLE AND SCOPE.~~**

~~01. Title. IDAPA 18.04.08, "Individual and Group Supplementary Disability Insurance Minimum Standards Rule." (3-31-22)~~

~~02. Purpose. The purpose of this chapter is to implement Title 41, Chapters 21, 22, 34, and 42, Idaho Code, to standardize and simplify the terms and coverages of individual and group supplementary disability insurance, to facilitate public understanding and comparison of coverage, to eliminate provisions that may be misleading or confusing in connection with the purchase of the coverages or with the settlement of claims, and to provide for full disclosure in the marketing and sale of such insurance. (3-31-22)~~

~~03. Applicability and Scope. This chapter applies to all individual and group policies and certificates providing hospital confinement indemnity, disability income protection, accident only, specified disease, specified accident, or limited benefit health coverage, referred to collectively in this chapter as "supplementary disability insurance," offered, delivered, issued for delivery, or renewed in this state or to a resident of this state, unless specifically exempted. It (3-31-22)~~

~~a. This chapter applies to dental plans and vision plans only as specified, and it applies. (3-31-22)~~

~~b. This chapter applies to group supplementary plans whether issued to supplement a group health benefit plan, or as a supplementary plan that pays benefits regardless of other coverage. (3-31-22)( )~~

~~c. This chapter does not apply to: (3-31-22)~~

~~i. Individual policies or contracts issued pursuant to a conversion privilege under a group policy or certificate. (3-31-22)~~

~~ii. Policies issued to employees or members as additions to franchise plans. (3-31-22)~~

~~iii. Medicare supplement policies subject to Title 41, Chapter 44, Idaho Code, Medicare Supplement Insurance Minimum Standards. (3-31-22)~~

~~iv. Long term care insurance policies subject to Title 41, Chapter 46, Idaho Code, Long Term Care Insurance. (3-31-22)~~

~~v. Civilian Health and Medical Program of the Uniformed Services, Title 10, Chapter 55, of the United States Code, (CHAMPUS) supplement insurance policies. (3-31-22)~~

~~vi. Individual or group major medical expense coverage, including short term coverage. (3-31-22)~~

## 002. INCORPORATION BY REFERENCE.

~~01. Copies. May be obtained from the Idaho Department of Insurance. (3-31-22)~~

~~02. Documents Incorporated by Reference. The following Outlines of Coverage and notices are incorporated by reference from the April 1999 version of the NAIC Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Act [available on the NAIC website https://content.naic.org/sites/default/files/MO171.pdf](https://content.naic.org/sites/default/files/MO171.pdf): (3-31-22)( )~~

~~a01. Hospital Confinement Indemnity Coverage. ( )~~

~~b02. Disability Income Protection Coverage. ( )~~

~~e03. Accident Only Coverage. ( )~~

~~d04. Specified Disease. ( )~~

~~e05. Specified Accident. ( )~~

- ~~f~~06. Limited Benefit Health Coverage. ( )
- ~~g~~07. Dental Plans. ( )
- ~~h~~08. Vision Plans. ( )
- ~~i~~09. Notice to Applicant Regarding Replacement of Accident and Sickness Insurance (direct sales). ( )
- ~~j~~10. Notice to Applicant Regarding Placement of Accident and Sickness Insurance (other than direct sales). ( )

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Accident Only Coverage.** “Accident Only Coverage” means a policy or certificate that provides coverage, singly or in combination, for death, dismemberment, disability or hospital and medical care caused by an accident, and does not provide coverage for non-accidents. ( )

02. **Dental Coverage.** “Dental Coverage” means a policy or certificate that primarily provides benefits for dental expenses. ( )

03. **Disability Income Protection Coverage.** “Disability Income Protection Coverage” means a policy or certificate that provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from either sickness or injury or a combination of both. ( )

04. **Hospital Confinement Indemnity Coverage.** “Hospital Confinement Indemnity Coverage” means a policy or certificate of accident and sickness insurance that provides daily benefits for hospital confinement on an indemnity basis, meaning the benefit is a fixed dollar amount per day of confinement, regardless of the expenses incurred. ( )

05. **Limited Benefit Health Coverage.** “Limited Benefit Health Coverage” means a policy or certificate that provides benefits that are less than the minimum standards under Sections 035 through 039 of this chapter. ( )

06. **Major Medical Expense Coverage.** “Major Medical Expense Coverage” means a policy of accident and sickness insurance that provides hospital, medical and surgical expense coverage. ( )

07. **Specified Accident Coverage.** “Specified Accident Coverage” means a policy or certificate that provides coverage for a specifically identified kind of accident (or accidents) for each person insured under the coverage for accidental death or accidental death and dismemberment combined. ( )

08. **Specified Disease Coverage.** “Specified Disease Coverage” means a policy or certificate that pays benefits only after the diagnosis of a specifically named disease or diseases. ( )

09. **Vision Coverage.** “Vision Coverage” means a policy or certificate that primarily provides benefits for vision expenses. ( )

011. POLICY DEFINITIONS AND TERMS.

Except as provided in this chapter, an insurance policy or certificate to which this chapter applies will not include definitions more restrictive than the following: ( )

01. **Accident.** “Accident,” “accidental injury,” and “accidental” is to employ “result” language and does not include words that establish an accidental means test or use words such as “external, violent, visible wounds” or similar words of description or characterization. ( )

a. "Injury" or "injuries" means accidental bodily injury ~~sustained by the insured person that is the direct cause of the condition for which benefits are provided~~, independent of disease or bodily infirmity or any other cause, and that which occurs while the insurance coverage is in force. (3-31-22)( )

b. It may exclude injuries for which benefits are provided: under workers' compensation, employers' liability or similar law; or under a motor vehicle no-fault plan, unless not allowed by law; or injuries occurring while the insured person is engaged in any activity pertaining to a trade, business, employment or occupation for wage or profit. (3-31-22)( )

- i. ~~Under workers' compensation, employers' liability, or similar law; or~~ (3-31-22)
- ii. ~~Under a motor vehicle no-fault plan, unless the motor vehicle no-fault plan provides for coordination of benefits; or~~ (3-31-22)
- iii. ~~For injuries occurring while the insured person is engaged in any activity pertaining to a trade, business, employment or occupation for wage or profit.~~ (3-31-22)

**02. Convalescent Nursing Home.** "Convalescent nursing home," "extended care facility," "assisted living facility," or "skilled nursing facility" is to be defined in relation to its status, facility and available services. (3-31-22)( )

- a. Such home or facility is to: ( )
  - i. Be operated pursuant to law; ( )
  - ii. ~~Be approved for payment of Medicare benefits or be~~ qualified to receive approval for payment of Medicare or medicaid benefits, if so requested; (3-31-22)( )
  - iii. ~~Be primarily engaged in providing~~Provide, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician; (3-31-22)( )
  - iv. Provide continuous twenty-four (24) hours per day nursing service by or under the supervision of a registered nurse; and ( )
  - v. Maintain a daily medical record of each patient. ( )

b. The definition of the home or facility may ~~provide that the term will not be inclusive of; exclude a home, facility or part of a home or facility used primarily: for rest, for the aged, for individuals with a substance use disorder or a mental disease or disorder, or for custodial or educational care.~~ (3-31-22)( )

- i. ~~A home, facility or part of a home or facility used primarily for rest;~~ (3-31-22)
- ii. ~~A home or facility for the aged or for the care of drug addicts or alcoholics; or~~ (3-31-22)
- iii. ~~A home or facility primarily used for the care and treatment of mental diseases or disorders, or for custodial or educational care.~~ (3-31-22)

**03. Home Health Care Agency.** "Home health care agency" means an agency approved under Medicare, or that is licensed to provide home health care under applicable state law, or that ~~meets all of the following requirements:~~ (3-31-22)( )

- a. ~~It is~~ primarily engaged in providing home health care services; (3-31-22)( )
- b. ~~Its Has~~ policies ~~are~~ established by a group of professional personnel (including at least one (1) physician and one (1) registered nurse); (3-31-22)( )

- c. ~~A~~Has a physician or a registered nurse ~~provides supervision of~~ supervising the home health care services; (3-31-22)( )
- d. ~~H~~Maintains clinical records on all patients; and (3-31-22)( )
- e. ~~H~~Has a full-time administrator. (3-31-22)( )
- 04. Hospice.** “Hospice” means a facility licensed, certified or registered in accordance with state law that provides a formal program of care that is: ( )
- a. For terminally ill patients whose life expectancy is less than six (6) months; ( )
- b. Provided on an inpatient or outpatient basis; and ( )
- c. Directed by a physician. ( )
- 05. Hospital.** “Hospital” is to be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission ~~on Accreditation of Healthcare Organizations, Accreditation of Rehabilitation Facilities or by Medicare.~~ (3-31-22)( )
- a. The hospital may: ( )
- i. Be an institution licensed to operate as a hospital pursuant to law; ( )
- ii. Be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of licensed physicians, medical, diagnostic and major surgical facilities for the medical care and treatment of sick or injured persons on an in-patient basis for which a charge is made; and ( )
- iii. Provide twenty-four (24) hour nursing service by or under the supervision of registered nurses. ( )
- b. The term ~~will not be inclusive of the following, unless the facility otherwise meets the qualifications set forth at Paragraph 011.05.a. of this Section~~ may exclude: (3-31-22)( )
- i. Convalescent homes or, convalescent, rest, or nursing facilities; ( )
- ii. Facilities affording primarily custodial, educational, or rehabilitary care; ( )
- iii. Facilities for the aged, ~~drug addicts, or alcoholics~~ or individuals with a substance use disorder; or (3-31-22)( )
- iv. A military or veterans’ hospital, a soldiers’ home or a hospital contracted for or operated by any national government or government agency for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis where a legal liability for the patient exists for charges made to the individual for the services. ( )
- 06. Mental Disorders or Nervous Disorders.** “Mental disorders” or “nervous disorders” ~~includes neurosis, psychoneurosis, psychosis, or mental or emotional disease or disorder of any kind~~ means any condition or disorder defined by categories listed in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) or its successor. (3-31-22)( )
- 07. Nurse.** “Nurse” may be restricted to a type of nurse, such as registered nurse, ~~a licensed practical nurse, or a licensed vocational nurse.~~ If the words “nurse,” ~~“trained nurse” or “registered nurse”~~ are ~~is~~ used without specific instruction, then the use ~~of these terms~~ necessitates the insurer ~~to~~ recognize the services of any individual who qualifies under the terminology in accordance with the applicable statutes or administrative rules of the licensing or registry board of the state ~~of Idaho.~~ (3-31-22)( )

**08. One Period of Confinement.** “One (1) period of confinement” means consecutive days of in-hospital service received as an in-patient, or successive confinements when discharge from and readmission to the hospital occurs within a period of time not more than ninety (90) days or three (3) times the maximum number of days of in-hospital coverage provided by the policy to a maximum of one hundred eighty (180) days. ( )

**09. Partial Disability.** “Partial disability” is in relation to the individual’s inability to perform one or more but not all of the “major,” “important” or “essential” duties of employment or occupation, or may be related to a percentage of time worked or to a specified number of hours or to compensation. ( )

**10. Preexisting Condition.** “Preexisting condition” is: (3-31-22)

~~a. A condition that would have caused an ordinarily prudent person to seek medical advice, diagnosis, care or treatment during the six (6) months immediately preceding the effective date of coverage; (3-31-22)~~

~~b. A condition for which medical advice, diagnosis, care or treatment was recommended or received by a provider or that would have caused an ordinarily prudent person to seek medical advice or treatment during the six (6) months immediately preceding the effective date of coverage; or (3-31-22)~~

~~e. A pregnancy existing on the effective date of coverage. (3-31-22)( )~~

**11. Provider.** “Provider” means a person or entity that, as necessary, is licensed to provide health care or related services. ( )

**12. Residual Disability.** “Residual disability” is in relation to the individual’s reduction in earnings and may be related either to the inability to perform some part of the “major,” “important,” or “essential duties” of employment or occupation, or to the inability to perform all usual business duties for as long as is usually necessary. A policy that provides for residual disability benefits may impose a qualification period, during which the insured needs to be continuously totally disabled before residual disability benefits are payable. The qualification period for residual benefits may be longer than the elimination period for total disability. In lieu of the term “residual disability,” the insurer may use “proportionate disability” or other term of similar import that in the opinion of the Director adequately and fairly describes the benefit. ( )

**13. Sickness or Illness.** “Sickness or illness” means sickness or disease of an insured person that presents itself after the effective date of insurance and while the insurance is in force. It may exclude sickness or disease for which benefits are provided under a worker’s compensation, occupational disease, employers’ liability or similar law.” ( )

**14. Total Disability.** “Total disability” is in accordance with the following limitations: ( )

**a.** The individual who is totally disabled not be engaged in any employment or occupation for which he or she is or becomes qualified by reason of education, training or experience, and is not in fact engaged in any employment or occupation for wage or profit. ( )

**b.** Total disability may be defined in relation to the inability of the person to perform duties but is not to be based solely upon an individual’s inability to: ( )

**i.** Perform “any occupation whatsoever,” “any occupational duty,” or “any and every duty of his occupation”; or ( )

**ii.** Engage in a training or rehabilitation program. ( )

**c.** An insurer may stipulate the complete inability of the person to perform all of the substantial and material duties of his or her regular occupation or words of similar import. An insurer may stipulate care by a physician other than the insured or a member of the insured’s immediate family. ( )

**012. -- 019. (RESERVED)**

**020. BANNED POLICY PROVISIONS.**

**01. Probationary or Waiting Period.** Except as provided in Subsection 011.10 pertaining to the definition of a preexisting condition or Paragraph 038.02.e. of this chapter regarding specified disease coverage, a policy or certificate will not contain provisions establishing a probationary or waiting period during which no coverage is provided under the policy or certificate. Accident policies will not contain probationary or waiting periods. ( )

~~**02. Additional Coverage as Dividend.** A policy or rider for additional coverage will not be issued as a dividend unless an equivalent cash payment is offered as an alternative to the dividend policy or rider. A dividend policy or rider for additional coverage will not be issued for an initial term of less than six (6) months. (3-31-22) ( )~~

~~**a.** The initial renewal subsequent to the issuance of a policy or rider as a dividend will clearly disclose that the policyholder is renewing the coverage that was provided as a dividend for the previous term and that the renewal is optional. (3-31-22) ( )~~

~~**032. Return of Premium or Cash Value Benefit.** A disability income policy, accident only policy, limited benefit policy, specified disease policy or hospital confinement indemnity policy may contain a “return of premium” or “cash value benefit” so long as the return of premium or cash value benefit is not reduced by an amount greater than the aggregate of claims paid under the policy, and the insurer demonstrates that the reserve basis for the policies is adequate. No other policy subject to this chapter is to provide a return of premium or cash value benefit, except A policy may return of unearned premium upon termination or suspension of coverage, retroactive waiver of premium paid during disability, payment of dividends on participating policies, or experience rating refunds. (3-31-22) ( )~~

**043. Exclusions.** A policy or certificate will not limit or exclude coverage by type of illness, accident, treatment or medical condition, except that a policy or certificate may include one (1) or more of the following limitations or exclusions: ( )

- a. Preexisting conditions or diseases, ~~except for congenital anomalies of a covered dependent child;~~ (3-31-22) ( )
- b. Mental or emotional disorders, alcoholism and drug addiction; ( )
- c. Pregnancy, except for complications of pregnancy; ( )
- d. Illness, treatment or medical condition arising out of: ( )
  - i. War or act of war (whether declared or undeclared); participation in a felony, riot or insurrections; service in the armed forces or units auxiliary to it; ( )
  - ii. Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; ( )
  - iii. Professional aviation ~~for wage or profit;~~ and (3-31-22) ( )
  - iv. With respect to disability income protection policies, incarceration. ( )
- e. Cosmetic surgery, except that “cosmetic surgery” will not include reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part; reconstructive surgery because of congenital disease or anomaly of a covered dependent child; or involuntary complications or complications related to a cosmetic procedure; ( )
- f. Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet; ( )
- g. Care in connection with the detection and correction by manual or mechanical means of structural



imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effects of it, where the interference is the result of or related to distortion, misalignment or subluxation of, or in the vertebral column; ( )

**h.** Benefits in excess of Medicare eligible expense, if enrolled in Medicare or other governmental program (except Medicaid), or benefits provided under a state or federal worker's compensation law, employers liability or occupational disease law, or motor vehicle no-fault law unless the motor vehicle no-fault plan provides for coordination of benefits; services performed by a member of the covered person's immediate family; and services for which no charge is normally made in the absence of insurance; ( )

**i.** Dental care or treatment; ( )

**j.** Eye glasses and the examination for the prescription, or fitting of them; ( )

**k.** Rest cures, custodial care, transportation, and routine physical examinations; ( )

**l.** Territorial limitations; ( )

~~**m.** Hearing aids, auditory osseointegrated (bone conduction) devices, cochlear implants and examination for or fitting of them, except for congenital or acquired hearing loss that without intervention may result in cognitive or speech development deficits of a covered dependent child, covering not less than one (1) device every thirty-six (36) months per ear with loss and not less than forty-five (45) language/speech therapy visits during the first twelve (12) months after delivery of the covered device. (3-31-22)~~

~~**n.** Missed or canceled appointments; completion of claim forms or records copying; failure to vacate a room on or before the facility's established discharge hour; educational and training services except as provided by the policy or certificate; over the counter medical supplies, consumable or disposable supplies, including but not limited to elastic stockings, ace bandages, gauze, alcohol swabs or dressings; (3-31-22)~~

~~**o.** Treatment, services or supplies not prescribed by or upon the direction of a licensed provider, acting within the scope of his or her license; (3-31-22)~~

~~**p.** Services rendered prior to the effective date of coverage or after termination of coverage, except as provided by an extension of benefits provision, and; (3-31-22)~~

~~**q.** The reversal of an elective sterilization procedure, including but not limited to vasovasostomies or salpingoplasties. (3-31-22)~~

**054. Preexisting Conditions.** ( )

**a.** Except as provided in this subsection, a policy will not deny, exclude or limit benefits for covered expenses incurred more than twelve (12) months following the effective date of the coverage due to a preexisting condition. ( )

**b.** For hospital confinement indemnity and accident only policies ~~other than disability income or specified disease~~, an individual carrier will not modify a policy with respect to an individual or dependent through riders, endorsements, or otherwise, to restrict or exclude coverage for specifically named preexisting diseases or conditions otherwise covered by the policy. (3-31-22)( )

021. -- 029. (RESERVED)

030. MINIMUM STANDARDS FOR BENEFITS.

**01. Minimum Standards.** ~~The following~~ An insurance policy or certificate subject to this chapter will meet the applicable minimum standards ~~for benefits are prescribed for the categories of coverage~~ noted in Sections ~~035~~ 030 through 040 of this chapter. ~~Such an insurance policy or certificate will not be offered, delivered, issued for delivery, or renewed in this state or to a resident of this state unless it meets the minimum standards for the specified~~

~~categories or the Director finds that the policies or contracts are allowable as limited benefit health insurance, and the outline of coverage complies with the applicable model outline of coverage for each category of coverage. An insurer will deliver an outline of coverage to an applicant or enrollee with the sale. (3-31-22)( )~~

**02. Renewability.** A “noncancellable,” “guaranteed renewable,” or “noncancellable and guaranteed renewable” policy or certificate will not provide for termination of coverage of the spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than nonpayment of premium. In addition, the policy will provide that in the event of the insured’s death, the spouse of the insured, if covered under the policy, will become the insured. ( )

**a.** The terms “noncancellable,” “guaranteed renewable,” or “noncancellable and guaranteed renewable” will not be used without further explanatory language in accordance with the disclosure requirements of Section 101 of this chapter. ( )

**b.** The terms “noncancellable” or “noncancellable and guaranteed renewable” may be used only in a policy that the insured has the right to continue in force by the timely payment of premiums set forth in the policy, during which period the insurer has no right to make unilaterally any change in any provision of the policy while the policy is in force. ( )

**c.** An individual accident and sickness or individual accident-only policy that provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from accident or sickness may provide that the insured has the right to continue the policy only to age sixty (60) if, at age sixty (60), the insured has the right to continue the policy in force at least to age sixty-five (65) while actively and regularly employed. ( )

**d.** Except as provided in Subsection 030.02 of this chapter, (the term “guaranteed renewable” may be used only in a policy that the insured has the right to continue in force by the timely payment of premiums and, until the age of sixty-five (65) or until eligibility for Medicare and to the extent not in conflict with the federal Health Insurance Portability and Accountability Act (HIPAA), during which period the insurer has no right to make unilaterally any change in any provision of the policy while the policy is in force, except where the insurer is able to show good cause for changing the policy provisions and obtains prior written approval from the Director. The insurer may make changes in premium rates by classes. ( )

**03. Age and Durational Requirements.** In a policy covering both husband and wife, the age of the younger spouse will be used as the basis for meeting the age and durational requirements of the definitions of “noncancellable” or “guaranteed renewable.” However, this provision will not mandate termination of coverage of the older spouse upon attainment of the stated age so long as the policy may be continued in force as to the younger spouse as the insured to the age or for the durational period as specified in the policy. ( )

**04. Accidental Death and Dismemberment Coverage.** When accidental death and dismemberment coverage is part of the policy coverage offered under the contract, the insured will have the option to include all insureds under the coverage. ( )

**05. Military Service Limitations.** If a policy contains a status-type military service exclusion or a provision that suspends coverage during military service, the policy will provide, upon receipt of written request, for refund of premiums as applicable to the person on a pro rata basis. ( )

**06. Pregnancy Benefit Extension.** In the event the insurer cancels or refuses to renew, policies providing pregnancy benefits will provide for an extension of benefits as to pregnancy commencing while the policy is in force and for which benefits would have been payable had the policy remained in force. ( )

**07. Convalescent or Extended Care Benefits.** Policies providing convalescent or extended care benefits following hospitalization will not condition the benefits upon admission to the convalescent or extended care facility within a period of less than fourteen (14) days after discharge from the hospital. ( )

**08. Coverage of Dependents.** A policy’s coverage will continue for a dependent child who is incapable of self-sustaining employment due to intellectual disability or physical disability on the date that the child’s

coverage would otherwise terminate under the policy due to the attainment of a specified age ~~for children~~ and who is chiefly dependent on the insured for support and maintenance. The policy may stipulate that the company receives due proof of the incapacity within thirty-one (31) days of the date in order for the insured to elect to continue the policy in force with respect to the child, or that a separate converted policy be issued at the option of the insured or policyholder. Provisions relating to coverage of dependents with intellectual disabilities or physical disabilities need meet the requirements of Sections 41-2139 and 41-2203, Idaho Code. (3-31-22)( )

**09. Expenses of Live Donor.** A policy providing coverage for the recipient in a transplant operation will also provide reimbursement of any medical expenses of a live donor to the extent that benefits remain and are available under the recipient's policy or certificate, after benefits for the recipient's own expenses have been paid. ( )

**10. Recurrent Disabilities.** A policy may contain a provision relating to recurrent disabilities, but a provision relating to recurrent disabilities will not specify that a recurrent disability be separated by a period greater than six (6) months. ( )

**11. Accidental Death and Dismemberment.** Accidental death and dismemberment benefits will be payable if the loss occurs within ninety (90) days from the date of the accident, irrespective of total disability. ~~Disability income benefits, if provided, will not require the loss to commence less than thirty (30) days after the date of accident, nor will any policy that the insurer cancels or refuses to renew require that it be in force at the time disability commences if the accident occurred while the coverage was in force.~~ (3-31-22)( )

**12. Specific Dismemberment Benefits.** Specific dismemberment benefits will not be in lieu of other benefits unless the specific benefit equals or exceeds the other benefits. ( )

**13. Extension of Benefits.** Termination of the policy will be without prejudice to a continuous loss that commenced while the policy or certificate was in force. Such extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. ( )

**14. ~~Fractures or Dislocations~~Unfair Exclusions.** A policy providing coverage for ~~fractures or dislocations will not~~ certain illnesses and injuries will not define covered illnesses and injuries in a way that is misleading or includes unfair exclusions, such as providing benefits only for "full or complete" fractures or dislocations. (3-31-22)( )

**031. -- 034. (RESERVED)**

**035. HOSPITAL CONFINEMENT INDEMNITY COVERAGE.**

**01. Minimum Standards for Benefits.** The following minimum standards apply: ( )

**a.** Provides daily benefits for hospital confinement on an indemnity basis in an amount not less than forty dollars (\$40) per day; and ( )

**b.** Provides benefits for not less than thirty-one (31) days during each period of confinement for each person insured under the policy. ( )

**c.** Benefits will be paid regardless of other coverage. ( )

**02. Banned Policy or Certificate Provisions.** ( )

~~**a.** Policies may contain a "return of premium" or "cash value benefit" so long as the return of premium or cash value benefit is not reduced by an amount greater than the aggregate of claims paid under the policy or certificate, and the insurer demonstrates that the reserve basis for the policies is adequate.~~ (3-31-22)

**ba.** Policies providing hospital confinement indemnity coverage will not contain provisions excluding coverage because of confinement in a hospital operated by the federal government. ( )

**eb.** Policies or certificates which include additional indemnity coverage on a basis other than per day of confinement will not be considered hospital confinement coverage. ( )

**03. Disclosure Provisions.** ( )

**a.** All hospital confinement indemnity policies and certificates will ~~display~~ prominently state on the first page ~~of the policy or certificate~~, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections ~~in the policy or certificate the following~~: “Notice to Buyer: This is a hospital confinement indemnity (policy) (certificate). This (policy) (certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses.” (3-31-22)( )

**b.** Outlines of coverage delivered in connection with “Hospital Confinement Indemnity Coverage” to persons eligible for Medicare by reason of age will ~~contain the following language~~ state in boldface type on the first page ~~of the outline of coverage~~: “THIS IS NOT A MEDICARE SUPPLEMENT POLICY. If you are eligible for Medicare, review the ‘Guide to Health Insurance for People with Medicare’ available from the company.” (3-31-22)( )

**c.** An insurer will deliver to persons eligible for Medicare any notice prescribed under IDAPA 18.04.10, “Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act.” ( )

**036. DISABILITY INCOME PROTECTION COVERAGE.**

**01. Minimum Standards for Benefits.** The ~~following~~ minimum standards ~~apply to for~~ disability income protection coverage are: (3-31-22)( )

**a.** Provides that any periodic payments ~~that are payable at ages after sixty-two (62) and reduced solely on the basis of age are at least fifty percent (50%) of amounts payable immediately prior to sixty-two (62) are not reduced based on age, except when such reductions do not exceed fifty percent (50%) and do not take place until the individual has reached full retirement age for Social Security benefits;~~ (3-31-22)( )

**b.** Contains an elimination period no greater than: one-fourth (1/4) of the maximum payable benefit period, and not exceeding one (1) year; (3-31-22)( )

**i.** ~~Ninety (90) days in the case of a coverage providing a benefit of one year (1) or less;~~ (3-31-22)

**ii.** ~~One hundred and eighty (180) days in the case of coverage providing a benefit of more than one (1) year but not greater than two (2) years; or~~ (3-31-22)

**iii.** ~~Three hundred sixty-five (365) days in all other cases during the continuance of disability resulting from sickness or injury;~~ (3-31-22)

**c.** Has a maximum payable benefit period ~~of time for which it is payable during disability~~ of at least ~~six (6) three (3) months. No reduction in benefits is put into effect because of an increase in Social Security or similar benefits during a benefit period.~~ (3-31-22)( )

**02. Banned Policy Provisions.** ( )

**a.** Where a policy provides total disability ~~benefits~~ and partial disability benefits, only one (1) elimination period may ~~be applied~~ applied. (3-31-22)( )

**b.** ~~A disability income policy may contain a “return of premium” or “cash value benefit” so long as the return of premium or cash value benefit is not reduced by an amount greater than the aggregate of claims paid under the policy, and the insurer demonstrates that the reserve basis for the policies is adequate.~~ (3-31-22)

**eb.** Disability income protection benefits will not require the loss to commence less than thirty (30) days after the date of accident, nor will any policy that the insurer cancels or refuses to renew require that it be in

force at the time disability commences if the accident occurred while the coverage was in force. (3-31-22)( )

**dc.** No reduction in benefits will be put into effect because of an increase in Social Security or similar benefits during a benefit period. ( )

**ed.** No policy or certificate may use activities of daily living to define partial or total disability. ( )

**03. Disclosure Provisions.** All disability income protection policies will ~~display~~ prominently state on the first page ~~of the policy~~, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections ~~in the policy the following~~: “Notice to Buyer: This is a disability income protection policy.” (3-31-22)( )

### 037. ACCIDENT ONLY COVERAGE.

**01. Minimum Standards for Benefits.** The following minimum standards apply to accident only coverage: ( )

**a.** Accidental death and double dismemberment amounts under the policy or certificate are at least one thousand dollars (\$1,000); ( )

**b.** A single dismemberment amount is at least five hundred dollars (\$500); and ( )

**c.** Benefits for disability, hospital or medical care will be as defined in the policy or certificate. ( )

**02. Banned Policy Provisions.** Accident only policies or certificates will not contain probationary or waiting periods. ( )

**03. Disclosure Provisions.** ( )

**a.** All accident-only policies and certificates will ~~contain a prominent~~ ly statement on the first page ~~of the policy or certificate~~, in either contrasting color or in boldface type at least equal to the size of type used for headings or captions of sections ~~in the policy or certificate, a prominent statement as follows~~: “Notice to Buyer: This is an accident-only (policy) (certificate) and it does not pay benefits for loss from sickness. Review your (policy) (certificate) carefully.” (3-31-22)( )

**b.** An accident-only policy or certificate providing benefits that vary according to the type of accidental cause will prominently ~~set forth~~ state in the outline of coverage the circumstances under which benefits are payable that are less than the maximum amount payable under the policy or certificate. (3-31-22)( )

**c.** Accident-only policies or certificates that provide coverage for hospital or medical care will ~~contain the following statement~~ state in addition to the Notice to Buyer: “This (policy) (certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses.” (3-31-22)( )

### 038. SPECIFIED DISEASE COVERAGE.

**01. Minimum Standards for Benefits.** The ~~following~~ minimum standards ~~apply to~~ for specified disease coverage are: (3-31-22)( )

**a.** Coverage for cancer only or cancer in conjunction with other conditions or diseases needs to meet the standards of Paragraphs 01.e., 01.f., or 01.g. of this section. ( )

**b.** Coverage for specified diseases other than cancer meets the standards of Paragraphs 01.c., 01.d., or 01.g. of this section. ( )

**c.** Non-cancer Coverages with Deductible. Coverage for each insured person for a specifically named disease (or diseases) with a deductible amount not in excess of two hundred fifty dollars (\$250) and an overall

aggregate benefit limit of not less than ten thousand dollars (\$10,000) and a benefit period of not less than two (2) years for at least the following incurred expenses: ( )

- i. Hospital room and board and any other hospital furnished medical services or supplies; ( )
- ii. Treatment by a legally qualified physician or surgeon; ( )
- iii. Private duty services of a registered nurse (~~R.N.~~); (3-31-22)( )
- iv. ~~X-ray, radium and other therapy procedures~~ Medical services and supplies used in diagnosis and treatment; (3-31-22)( )
- v. Professional ambulance for local service to or from a local hospital; ( )
- vi. Blood transfusions, including expense incurred for blood donors; ( )
- vii. Drugs and medicines prescribed by a physician; ( )
- viii. The rental of an iron lung or similar mechanical apparatus; ( )
- ix. ~~Braees, crutches, and wheel chairs~~ Durable medical equipment deemed necessary by the attending physician for the treatment of the disease; (3-31-22)( )
- x. Emergency transportation if in the opinion of the attending physician it is necessary to transport the insured to another locality for treatment of the disease; and ( )
- xi. May include coverage of any other expenses necessarily incurred in the treatment of the disease. ( )

**d.** Non-cancer Coverages without Deductible. Coverage for each insured person for a specifically named disease (or diseases) with no deductible amount, and an overall aggregate benefit limit of not less than twenty-five thousand dollars (\$25,000) payable at the rate of not less than fifty dollars (\$50) a day while confined in a hospital and a benefit period of not less than five hundred (500) days. (3-31-22)( )

**e.** Cancer-only or Combination Expense Policies. Coverage for each insured person for cancer-only coverage or in combination with one (1) or more other specified diseases on an expense incurred basis for services, supplies, care, and treatment of cancer, in amounts not in excess of the usual and customary charges, with a deductible amount not in excess of two hundred fifty dollars (\$250), and an overall aggregate benefit limit of not less than ten thousand dollars (\$10,000) and a benefit period of not less than three (3) years for at least the following minimum provisions: ( )

- i. Treatment by, or under the direction of, a legally qualified physician or surgeon; ( )
- ii. ~~X-ray, radium, chemotherapy and other therapy procedures~~ Medical services and supplies used in diagnosis and treatment; (3-31-22)( )
- iii. Hospital room and board and any other hospital furnished medical services or supplies; ( )
- iv. Blood transfusions and their administration, including expense incurred for blood donors; ( )
- v. Drugs and medicines prescribed by a physician; ( )
- vi. Professional ambulance for local service to or from a local hospital; ( )
- vii. Private duty services of a registered nurse provided in a hospital; ( )

- viii. ~~Braees, crutches, and wheelchairs~~ Durable medical equipment deemed necessary by the attending physician for the treatment of the disease; (3-31-22) ( )
- ix. Emergency transportation if in the opinion of the attending physician it is necessary to transport the insured to another locality for treatment of the disease; and ( )
- x. Home health care that is necessary care and treatment provided at the insured person's residence by a home health care agency or by others under arrangements made with a home health care agency. The program of treatment will be prescribed in writing by the insured person's attending physician, who will approve the program prior to its start. ~~The physician certifies that hospital confinement would be otherwise necessary. Home health care includes, but is not limited to:~~ (3-31-22)
- (1) ~~Part-time or intermittent skilled nursing services provided by a registered nurse or a licensed practical nurse;~~ (3-31-22)
- (2) ~~Part-time or intermittent home health aide services that provide supportive services in the home under the supervision of a registered nurse or a physical, speech, or hearing occupational therapists;~~ (3-31-22)
- (3) ~~Physical, occupational, or speech and hearing therapy;~~ (3-31-22)
- (4) ~~Medical supplies, drugs, and medicines prescribed by a physician and related pharmaceutical services, and laboratory services to the extent the charges or costs would have been covered if the insured person had remained in the hospital;~~ (3-31-22)
- xi. Therapy, including physical, speech, hearing, and occupational therapy; ( )
- xii. Special equipment including hospital bed, toilette, pulleys, wheelchairs, aspirator, chux, oxygen, surgical dressings, rubber shields, colostomy, and ileostomy appliances; ( )
- xiii. Prosthetic devices including wigs and artificial breasts; ( )
- xiv. Nursing home care for non-custodial services; and ( )
- xv. Reconstructive surgery when deemed necessary by the attending physician. ( )
- f. Per Diem Cancer Coverages. Cancer coverages on a per diem indemnity basis includes: ( )
- i. A fixed-sum payment of at least one hundred dollars (\$100) for each day of hospital confinement for at least three hundred sixty-five (365) days; ( )
- ii. A fixed-sum payment equal to one-half (1/2) the hospital inpatient benefit for each day of hospital or nonhospital outpatient surgery, chemotherapy and radiation therapy, for at least three hundred sixty-five (365) days of treatment; and ( )
- iii. A fixed-sum payment of at least fifty dollars (\$50) per day for blood and plasma, which includes their administration whether received as an inpatient or outpatient for at least three hundred sixty-five (365) days of treatment. ( )
- g. Lump Sum Indemnity Coverage. Lump sum indemnity coverage for any specified disease will be payable as a fixed, one-time payment made within thirty (30) days of submission to the insurer of proof of diagnosis of the specified disease. ( )
- i. Dollar benefits may only be in increments of one thousand dollars (\$1,000). ( )
- ii. Where coverage is advertised or otherwise represented to offer generic coverage of a disease or diseases, the same dollar amounts will be payable regardless of the particular subtype of the disease with one exception. In the case of clearly identifiable subtypes with significantly lower treatments costs, lesser amounts may

be payable so long as the policy or certificate clearly differentiates that subtype and its benefits. ( )

**h.** Hospice Care. Hospice care is optional and does not cover non-terminally ill patients. If offered, it will provide: ( )

**i.** Eligibility for payment of benefits when the attending physician of the insured provides a written statement that the insured person has a life expectancy of six (6) months or less; ( )

**ii.** A fixed-sum payment of at least fifty dollars (\$50) per day; and ( )

**iii.** A lifetime maximum benefit limit of at least ten thousand dollars (\$10,000). ( )

**i.** Nursing Home Care. Benefits for skilled nursing home confinement or the receipt of home health care are optional. If offered, it will provide: ( )

**i.** A fixed-sum payment equal to one-fourth (1/4) the hospital in-patient benefit for each day of skilled nursing home confinement for at least one hundred (100) days, but no more restrictive than under Medicare; ( )

**ii.** A fixed-sum payment equal to one-fourth (1/4) the hospital in-patient benefit for each day of home health care for at least one hundred (100) days, but no more restrictive than under Medicare; and ( )

**iii.** Benefit payments begin with the first day of care or confinement after the effective date of coverage if the care or confinement is for a covered disease even though the diagnosis of a covered disease is made at some later date (but not retroactive more than thirty (30) days from the date of diagnosis) if the initial care or confinement was for diagnosis or treatment of the covered disease. ( )

**02. Banned Policy or Certificate Provisions.** Except for cancer coverage provided on an expense-incurred basis, either as cancer-only coverage or in combination with one or more other specified diseases, the following rules apply to specified disease coverages in addition to all other requirements imposed by this chapter. In cases of conflict the following govern: ( )

**a.** Policies covering a single specified disease or combination of specified diseases are not to be sold or offered for sale other than as specified disease coverage under this Section. ( )

**b.** Any policy issued pursuant to this Section that conditions payment upon pathological diagnosis of a covered disease will also provide that if the pathological diagnosis is medically inappropriate, a clinical diagnosis will be accepted instead. ( )

**c.** Notwithstanding any other provision of this chapter, specified disease policies will provide benefits to any covered person not only for the specified diseases but also for any other conditions or diseases, directly caused or aggravated by the specified diseases or the treatment of the specified disease. ( )

**d.** Individual accident and sickness policies containing specified disease coverage will be guaranteed renewable. ( )

**e.** No policy issued pursuant to this Section contains a waiting or probationary period greater than thirty (30) days. A specified disease policy may contain a waiting or probationary period following the issue or reinstatement date of the policy or certificate in respect to a particular covered person before the coverage becomes effective as to that covered person. ( )

**f.** Except for lump sum indemnity coverage, payments may be conditioned upon an insured person's receiving medically necessary care, given in a medically appropriate location, under a medically accepted course of diagnosis or treatment. ( )

**g.** Benefits will be paid regardless of other coverage. ( )



**h.** After the effective date of the coverage (or applicable waiting period, if any) benefits begins with the first day of care or confinement if the care or confinement is for a covered disease even though the diagnosis is made at some later date. The retroactive application of the coverage is not to be less than ninety (90) days prior to the diagnosis. ( )

**i.** Policies providing expense benefits will not use the term “actual” when the policy only pays up to a limited amount of expenses. Instead, the term “charge” or substantially similar language should be used that does not have the misleading or deceptive effect of the phrase “actual charges.” ( )

**j.** Preexisting condition will not be defined to be more restrictive than ~~the following~~: “Preexisting condition means a condition for which medical advice, diagnosis, care or treatment was recommended or received from a physician within the six (6) month period preceding the effective date of coverage of an insured person.” (3-31-22)( )

**k.** Coverage for specified diseases will not be excluded due to a preexisting condition for a period greater than twelve (12) months following the effective date of coverage of an insured person unless the preexisting condition is specifically excluded. ( )

**03. Disclosure Provisions.** ( )

**a.** An application or enrollment form for specified disease coverage will ~~contain a statement~~ above the signature of the applicant or enrollee that a person to be covered for specified disease is not also covered by any Title XIX program (Medicaid, or any similar name). The statement may be combined with any other statement for which the insurer may request the applicant’s or enrollee’s signature. (3-31-22)( )

**b.** All specified disease policies and certificates will ~~contain~~ prominently state on the first page in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections ~~in the policy or certificate a prominent statement as follows~~: “Notice to Buyer: This is a specified disease (policy) (certificate). This (policy) (certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses. Read your (policy) (certificate) carefully with the outline of coverage.” (3-31-22)( )

**c.** Outlines of coverage delivered in connection with “Specified Disease” to persons eligible for Medicare by reason of age will ~~contain the following language~~ state in boldface type on the first page ~~of the outline of coverage~~: “THIS IS NOT A MEDICARE SUPPLEMENT POLICY. If you are eligible for Medicare, review the ‘Guide to Health Insurance for People with Medicare’ available from the company.” (3-31-22)( )

**d.** An insurer will deliver to persons eligible for Medicare any notice prescribed under IDAPA 18.04.10, “~~Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act~~ Medicare Supplement Insurance Standards.” (3-31-22)( )

**039. SPECIFIED ACCIDENT COVERAGE.**

**01. Minimum Standards for Benefits.** The ~~following~~ minimum standards ~~apply to~~ for specified accident coverage are: (3-31-22)( )

**a.** A benefit amount not less than one thousand dollars (\$1,000) for accidental death; ( )

**b.** A benefit amount not less than one thousand dollars (\$1,000) for double dismemberment; and ( )

**c.** A benefit amount not less than five hundred dollars (\$500) for single dismemberment. ( )

**02. Banned Policy or Certificate Provisions.** Specified accident policies will not contain probationary or waiting periods. ( )

**03. Disclosure Provisions.** ( )

a. Specified accident policies or certificates that provide coverage for hospital or medical care will ~~contain the following~~ prominently ~~statement~~ in addition to the Notice to Buyer: “This (policy) (certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses.” (3-31-22)( )

b. All specified accident policies and certificates will ~~contain a~~ prominently ~~statement~~ on the first page ~~of the policy or certificate~~, in either contrasting color or in boldface type at least equal to the size of type used for headings or captions of sections ~~in the policy or certificate, a prominent statement as follows~~: “Notice to Buyer: This is an accident-only (policy) (certificate) and it does not pay benefits for loss from sickness. Review your (policy) (certificate) carefully.” (3-31-22)( )

#### **040. LIMITED BENEFIT HEALTH COVERAGE.**

##### **01. Minimum Standards. ( )**

a. Limited Benefit Health Coverage will not be offered, delivered, issued for delivery, or renewed in this state or to a resident of this state unless approved by the Director prior to use. ( )

b. A policy covering a single specified disease or combination of diseases will not be offered for sale as “limited benefit” coverage. ( )

c. Section 040 does not apply to policies designed to provide coverage for long-term care or to Medicare supplement insurance, as defined in Title 41, Chapter 46, Idaho Code, “Long-Term Care Insurance” and Title 41, Chapter 44, Idaho Code, “Medicare Supplement Insurance Minimum Standards.” ( )

##### **02. Disclosure Provisions. ( )**

a. All limited benefit health policies and certificates will ~~display~~ prominently state on the first page ~~of the policy or certificate~~, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections ~~in the policy or certificate the following~~: “Notice to Buyer: This is a limited benefit health (policy) (certificate). This (policy) (certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses.” (3-31-22)( )

b. An insurer will deliver to persons eligible for Medicare any notice prescribed under IDAPA 18.04.10, “Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act.” ( )

#### **041. DENTAL COVERAGE.**

##### **01. Disclosure Provisions. ~~Dental coverage will include the following disclosures;~~ (3-31-22)( )**

a. All dental coverage applications will ~~contain a~~ prominently ~~statement~~ in either contrasting color or in boldface type at least equal to the size type used for the headings or captions of sections ~~of the application~~ and in close conjunction with the applicant’s signature block ~~on the application as follows~~: “The (policy) (certificate) provides dental benefits only. Review your (policy) (certificate) carefully.” (3-31-22)( )

b. All dental plan coverage policies and certificates will ~~display~~ prominently state on the first page ~~of the policy or certificate~~, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections ~~in the policy or certificate the following~~: “Notice to Buyer: This (policy) (certificate) provides dental benefits only.” (3-31-22)( )

#### **042. VISION COVERAGE.**

##### **01. Disclosure Provisions. ~~Vision coverage will include the following disclosures;~~ (3-31-22)( )**

a. All vision coverage applications will ~~contain a~~ prominently ~~statement~~ in either contrasting color or in boldface type at least equal to the size type used for the headings or captions of sections ~~of the application~~ and in

close conjunction with the applicant's signature block ~~on the application as follows~~: "The (policy) (certificate) provides vision benefits only. Review your (policy) (certificate) carefully." (3-31-22)( )

b. All vision ~~plan coverage~~ policies and certificates will ~~display~~ prominently ~~state~~ on the first page ~~of the policy or certificate~~ in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections ~~in the policy or certificate the following~~: "Notice to Buyer: This (policy) (certificate) provides vision benefits only." (3-31-22)( )

**043. -- 100. (RESERVED)**

**101. DISCLOSURE PROVISIONS.**

**01. General Rules for Disclosure Provisions. ( )**

a. All applications for coverages specified in Sections 035 through 040 will ~~contain a~~ prominently ~~statement~~ in either contrasting color or in boldface type at least equal to the size type used for the headings or captions of sections ~~of the application~~ and in close conjunction with the applicant's signature block ~~on the application as follows~~: "The (policy) (certificate) provides limited benefits. Review your (policy) (certificate) carefully." (3-31-22)( )

b. ~~The first page of E~~each policy or certificate subject to this chapter will include a renewal, continuation or nonrenewal provision. ~~The language or specification of the provision needs to be~~ consistent with the type of contract to be issued. The provision will be appropriately captioned, ~~will appear on the first page of the policy or certificate~~, and will clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed. (3-31-22)( )

c. Except for riders or endorsements by which the insurer effectuates a request made in writing by the policyholder or exercises a specifically reserved right under the policy, all riders or endorsements added to a policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy will necessitate signed acceptance by the policyholder. After date of policy issue, any rider or endorsement that increases benefits or coverage with a commensurable increase in premium during the policy term is to be agreed to in writing signed by the policyholder, except if the increased benefits or coverage is prescribed by law. The signature requirements in this paragraph apply to group supplemental health insurance certificates only where the certificate holder also pays the insurance premium. ( )

d. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge will be set forth in the policy or certificate. ( )

e. A policy or certificate that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import will include a definition of the terms and an explanation of the terms in its accompanying outline of coverage. ( )

f. If a policy or certificate contains any limitations with respect to preexisting conditions, the limitations will appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations." ( )

g. All policies and certificates, will ~~have a notice~~ prominently ~~printed~~ ~~state~~ on the first page of the policy or certificate ~~stating~~ in substance that the policyholder or certificate holder will have the right to return the policy or certificate within ten (10) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the policyholder or certificate holder is not satisfied for any reason. (3-31-22)( )

h. If age is to be used as a determining factor for reducing the maximum aggregate benefits made available in the policy or certificate as originally issued, that fact will be prominently ~~set forth~~ ~~stated~~ in the outline of coverage. (3-31-22)( )

i. If a policy or certificate contains a conversion privilege, it will ~~comply, in substance,~~ ~~substantively~~ ~~comply~~ with ~~the following~~: (3-31-22)( )

- i. The ~~provision's caption of the provision~~ will be "Conversion Privilege" ~~or words of similar import.~~ (3-31-22)( )
- ii. The provision will indicate the persons eligible for conversion, the circumstances applicable to the conversion privilege, including any limitations on the conversion, and the person by whom the conversion privilege may be exercised; and ( )
- iii. The provision will specify the benefits to be provided on conversion or may state that the converted coverage will be as provided on a policy form then being used by the insurer for that purpose. ( )

**02. Outline of Coverage Requirements.** ~~Outlines of coverage prescribed under this chapter will conform to the model outlines of coverage incorporated herein in Section 002 of this chapter, and set forth at the Idaho Department of Insurance website.~~ (3-31-22)( )

a. An insurer will deliver an outline of coverage to an applicant or enrollee in the sale of individual accident and sickness insurance, group supplemental health insurance, dental plans and vision plans as prescribed by Section 41-4205, Idaho Code. If an application is made by electronic means, an insurer will deliver an outline of coverage on the next working day the completed application is received, and delivery may be made by the following methods regardless of the form of application: ( )

- i. E-mail; ( )
- ii. Website link; ( )
- iii. Facsimile; ( )
- iv. First class mail; or ( )
- v. Any other method permitted by the Director. ( )

b. If an outline of coverage was delivered at the time of application or enrollment and the policy or certificate is issued on a basis which would necessitate revision of the outline, a substitute outline of coverage properly describing the policy or certificate will accompany the ~~delivered~~ policy or certificate ~~when it is delivered and contain the following will~~ statement in no less than twelve (12) boldface point type, immediately above the company name: "NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon (application) (enrollment), and the coverage originally applied for has not been issued." (3-31-22)( )

c. In any case where the prescribed outline of coverage is inappropriate for the coverage provided by the policy or certificate, an alternate outline of coverage will be filed with the Director. ( )

**102. -- 200. (RESERVED)**

**201. REQUIREMENTS FOR REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS INSURANCE.**

**01. Application Form.** An application form will include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other accident and sickness insurance presently in force. ~~A supplementary application or other form to be signed by the applicant containing the question may be used.~~ (3-31-22)( )

**02. Prescribed Notice.** Notices prescribed under this chapter will conform to the model outlines of coverage incorporated herein in Section 002 of this chapter, and set forth at the Idaho Department of Insurance website. Upon determining that a sale will involve replacement, an insurer, or its agent will furnish the applicant, prior to issuance or delivery of the policy, the "Notice To Applicant Regarding Replacement Of Accident And Sickness Insurance," taking into consideration the requirement for direct response or other than direct response. A

direct response insurer will deliver to the applicant upon issuance of the policy, the notice described in this section.

( )

202. -- 999. (RESERVED)

**IDAPA 18 – DEPARTMENT OF INSURANCE**  
**18.06.01 – RULES PERTAINING TO BAIL AGENTS**  
**DOCKET NO. 18-0601-2301 (ZBR CHAPTER REWRITE)**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, sine die, of the second Regular Session of the Sixty-seventh Idaho Legislature after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 41-211 and 41-1037 through 41-1045, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

This rule sets requirements and procedures relating to bail agents and is supplementary to other rules and laws in Title 41, Idaho Code, regulating insurance producers which also apply to bail agents. This rulemaking is consistent with the Governor’s [Executive Order 2020-01: Zero-Based Regulation](#). The proposed changes are to simplify, clarify, and reduce. Changes since the proposed rule are in response to comments received from interested parties.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September Idaho Administrative Bulletin, [Vol. 23-09, pages 250-253](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: Not Applicable.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Weston Trexler, (208)334-4214, [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov).

DATED this 6th day of November, 2023.

Dean L. Cameron, Director  
Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID, 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 41-211 and 41-1037 through 41-1045, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

<p><b>Wednesday, September 27, 2023</b> <b>3:00 p.m. to 4:30 p.m. (MT)</b></p>
<p><i>In-person participation is available at:</i> <b>Department of Insurance</b> <b>700 W. State St. 3rd Floor</b> <b>Boise, ID 83702</b></p> <p><i>Web meeting link:</i> <a href="https://www.microsoft.com/microsoft-teams/join-a-meeting">https://www.microsoft.com/microsoft-teams/join-a-meeting</a> <i>Meeting ID: 297 636 144 490</i> <i>Meeting Password: 345BQf</i> <i>or by phone: +1 208-985-2810,,826046050#</i></p>

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this rule sets requirements and procedures relating to bail agents and is supplementary to other rules and laws in Title 41, Idaho Code, regulating insurance producers which also apply to bail agents. This rulemaking is consistent with the Governor's [Executive Order 2020-01: Zero-Based Regulation](#). The proposed changes are to simplify, clarify, and reduce.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023 Idaho Administrative Bulletin, [Vol. 23-06, pages 56-57](#), under Docket No. 18-ZBRR-2301.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Weston Trexler, (208) 334-4214, [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 3rd day of August, 2023.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 18-0601-2301**

**18.06.01 – RULES PERTAINING TO BAIL AGENTS**

**000. LEGAL AUTHORITY.**

Sections 41-211 and 41-1037 through 41-1045, Idaho Code. ( )

**001. SCOPE.**

The provisions of this rule apply to all bail agents, as defined by Section 41-1038, Idaho Code. This rule is supplementary to other rules and laws regulating insurance producers, and all other rules of the Department and provisions of Title 41, Idaho Code, applicable to insurance producers apply to bail agents. ( )

**002. -- 011. (RESERVED).**

**012. NOTIFICATION REQUIREMENTS.**

**01. Notice of Changes.** A bail agent licensed pursuant to Section 41-1039, Idaho Code, will immediately notify the Department in writing of any the following: ( )

**a.** Change of bail agent's name, current business address, or current business phone number or business e-mail address; ( )

**b.** Change of name or address of any surety insurance company for which the bail agent has an active appointment; ( )

**c.** Cancellation by a surety insurance company of a bail agent's authority to write bonds for that company; ( )

**d.** Any new affiliation with a bail bond agency; ( )

**e.** Cancellation of a bail agent's affiliation with a bail agency; ( )

**02. Notice of Legal Proceedings or Judgements.** ( )

**a.** A bail agent will provide immediate written notice to the Department of the filing of any criminal charges or judgements against the bail agent, and of any material change in circumstances that would require a different answer than previously provided by the bail agent on the background information section of the Uniform Application for Individual Insurance Producer License/Registration. ( )

**b.** For the purpose of determining whether grounds for immediate suspension of a bail agent's license exist under Section 41-1039(4), Idaho Code, a withheld judgment or a plea of nolo contendere is considered the same as a conviction or guilty plea. ( )



**013. BACKGROUND CHECKS.**

All licensed bail agents will be subject to a criminal background check in connection with the renewal of a bail agent's license and will bear all costs associated with the background check. ( )

**014. STACKING OF BONDS.**

A bail agent may submit only one (1) power of attorney with each bail bond submitted to any Idaho court. The face value or face amount of the power of attorney will be equal to or greater than the amount of the bond. ( )

**015. NOTIFICATION TO SURETY OF FORFEITURE.**

A bail agent will notify the surety insurance company of any forfeiture, as defined in Section 19-2905, Idaho Code, within ten (10) days of receiving the notice from the court. ( )

**016. (RESERVED)**

**017. BAIL AGENT FINANCING OF BAIL BOND PREMIUMS.**

**01. Written Agreement.** No credit may be extended by any bail agent or surety insurance company for the payment of any bail bond premium without entering into a written agreement. The written agreement for the extension of credit to finance premium need to contain at a minimum the following: ( )

- a. The name, signatures, and dates of signatures of all parties to the credit agreement; ( )
- b. The amount of premium financed; ( )
- c. The per annum rate of interest; and ( )
- d. The scheduled premium payment dates. ( )

**02. Interest.** A bail agent or surety insurance company that extends credit for premium payments at zero percent (0%) interest for more than ninety (90) days is in violation of Section 41-1314(4), Idaho Code. ( )

**03. Collateral for Credit Agreement.** In any collateralized credit agreement the collateral will be separate and apart from any collateral used in the bail bond transaction, will be described in the credit agreement or in an attachment to the agreement, and will be handled in accordance with Section 41-1043, Idaho Code. ( )

**018. PAYMENT OF FORFEITURE.**

Failure to pay a claim for forfeiture by a surety is a violation of Section 41-1329(6), Idaho Code Liability for payment upon forfeiture is considered reasonably clear when payment is due pursuant to Section 19-2918, Idaho Code. ( )

**019. -- 999. (RESERVED)**

[Agency redlined courtesy copy]

*Italicized text indicates amendments to the proposed text as adopted in the pending rule.*

**18.06.01 – RULES PERTAINING TO BAIL AGENTS**

**000. LEGAL AUTHORITY.**

~~Title 41~~, Sections 41-211 and 41-1037 through 41-1045, Idaho Code.

~~(3-31-22)~~( )

**001. ~~TITLE AND SCOPE.~~**

~~01. Title. IDAPA 18.06.01, "Rules Pertaining to Bail Agents." (3-31-22)~~

~~02. Scope.~~ The provisions of this rule apply to all bail agents, as defined by Section 41-1038, Idaho Code. This rule is supplementary to other rules and laws regulating insurance producers, and all other rules of the Department and provisions of Title 41, Idaho Code, applicable to insurance producers apply to bail agents. ( )

002. -- 011. (RESERVED).

012. NOTIFICATION REQUIREMENTS.

01. **Notice of Changes.** A bail agent licensed pursuant to Section 41-1039, Idaho Code, will immediately notify the Department in writing of any the following: ( )

a. Change of bail agent's name, current business address, or current business phone number or business e-mail address, ~~if any;~~ (3-31-22)( )

b. Change of name or address of any surety insurance company for which the bail agent has an active appointment; ( )

c. Cancellation by a surety insurance company of a bail agent's authority to write bonds for that company; ( )

d. Any new affiliation with a bail bond agency; ( )

e. Cancellation of a bail agent's affiliation with a bail agency; ( )

02. **Notice of Legal Proceedings or Judgements.** ( )

a. A bail agent will provide immediate written notice to the Department of the filing of any criminal charges or judgements against the bail agent. ~~A bail agent will also provide immediate written notice to the Department, and~~ of any material change in circumstances that would require a different answer than previously provided by the bail agent on the background information section of the Uniform Application for Individual Insurance Producer License/Registration. (3-31-22)( )

b. For the purpose of determining whether grounds for immediate suspension of a bail agent's license exist under Section 41-1039(4), Idaho Code, a withheld judgment or a plea of nolo contendere is considered the same as a conviction or guilty plea. ( )

013. ~~CRIMINAL HISTORY~~ BACKGROUND CHECKS.

~~01. Criminal History Check Requisite.~~ All licensed bail agents will ~~obtain~~ be subject to a criminal ~~history records~~ background check in connection with the renewal of a bail agent's license and will bear all costs associated with the ~~records check~~ background check. (3-31-22)( )

~~02. Grounds for Immediate Suspension.~~ ~~For the purpose of determining whether grounds for immediate suspension of a bail agent's license exist under Section 41-1039(4), Idaho Code, a withheld judgment or a plea of nolo contendere is considered the same as a conviction or guilty plea.~~ (3-31-22)

014. STACKING OF BONDS.

A bail agent may submit only one (1) power of attorney with each bail bond submitted to any Idaho court. The face value or face amount of the power ~~is~~ of attorney will be equal to or greater than the amount of the ~~bail or bond set by the court in the case for which the bond and power are being submitted.~~ (3-31-22)( )

015. NOTIFICATION TO SURETY OF FORFEITURE.

A bail agent will notify the surety insurance company of any forfeiture, as defined in Section 19-2905, Idaho Code, within ten (10) days of receiving the notice from the court. ( )

016. (RESERVED)

017. BAIL AGENT FINANCING OF BAIL BOND PREMIUMS.

01. **Written Agreement.** No credit may be extended by any bail agent or surety insurance company for the payment of any bail bond premium without entering into a written agreement. The written agreement for the extension of credit to finance premium need to contain at a minimum the following: ( )

- a. The name, signatures, and dates of signatures of all parties to the credit agreement; ( )
- b. The amount of premium financed; ( )
- c. The per annum rate of interest; and ( )
- d. The scheduled premium payment dates. ( )

~~02. **Early Surrender for Failure to Pay.** If failure to pay premiums due under a credit arrangement may result in the early surrender of the defendant, that fact needs to be clearly set forth in the written credit agreement. Early surrender for failure to make premium or interest payments when due is to be handled in accordance with Section 41-1044, Idaho Code, and neither the bail agent nor the surety is entitled to seek recovery of any amounts unpaid as of the date of surrender. (3-31-22)~~

~~02. **Interest.** A bail agent or surety insurance company that extends credit for premium payments at zero percent (0%) interest for more than ninety (90) days is in violation of Section 41-1314(4), Idaho Code. ( )~~

~~03. **Collateral for Credit Agreement.** If the credit agreement is to be collateralized, the collateral will not be excessive in relation to the amount of premium financed. In any collateralized credit agreement the collateral will be separate and apart from any collateral used in the bail bond transaction, will be described in the credit agreement or in an attachment to the agreement, and will be handled in accordance with Section 41-1043, Idaho Code. (3-31-22)( )~~

018. PAYMENT OF FORFEITURE.

~~It is a **Failure to pay a claim for forfeiture by a surety is a** violation of Section 41-1329(6), Idaho Code, ~~for a bail surety to fail to pay a claim for forfeiture after liability for payment has become reasonably clear.~~ Liability for payment upon forfeiture is **considered** reasonably clear when ~~a defendant has not appeared or has not been brought before the court within one hundred eighty 180 days after the entry of the order of forfeiture, or a motion to set aside the forfeiture, in whole or in part, has not been filed with the court within five (5) business days after the expiration of the one hundred eighty (180) day period following the order of forfeiture~~ **payment is due** pursuant to the Idaho Bail Act **Section 19-2918, Idaho Code.** (3-31-22)( )~~

019. -- 999. (RESERVED)

**IDAPA 18 – DEPARTMENT OF INSURANCE**  
**18.06.02 – PRODUCERS HANDLING OF FIDUCIARY FUNDS**  
**DOCKET NO. 18-0602-2301 (ZBR CHAPTER REWRITE)**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the second Regular Session of the Sixty-seventh Idaho Legislature after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Title 41, Chapters 2 and 10, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

This rule sets allowable fiduciary fund accounts and types, deposits of other funds, account designation, interest, and disbursement of funds. This rulemaking is consistent with the Governor's [Executive Order 2020-01: Zero-Based Regulation](#). The proposed changes are to simplify, clarify, and reduce.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 6, 2023, Idaho Administrative Bulletin, [Vol. 23-9 pages 254-259](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: Not Applicable.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Weston Trexler, (208)334-4214, [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov).

DATED this 6th day of November, 2023.

Dean L. Cameron, Director  
Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID, 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 41, Chapters 2 and 10, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

<p><b>Wednesday, September 27, 2023</b> <b>3:00 p.m. to 4:30 p.m. (MT)</b></p>
<p><i>In-person participation is available at:</i> <b>Department of Insurance</b> <b>700 W. State St. 3rd Floor</b> <b>Boise, ID 83702</b></p> <p><i>Web meeting link:</i> <a href="https://www.microsoft.com/microsoft-teams/join-a-meeting">https://www.microsoft.com/microsoft-teams/join-a-meeting</a> <i>Meeting ID: 297 636 144 490</i> <i>Meeting Password: 345BQf</i> <b>or by phone: +1 208-985-2810,,826046050#</b></p>

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this rule sets allowable fiduciary fund accounts and types, deposits of other funds, account designation, interest, and disbursement of funds. This rulemaking is consistent with the Governor's [Executive Order 2020-01: Zero-Based Regulation](#). The proposed changes are to simplify, clarify, and reduce.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023 Idaho Administrative Bulletin, [Vol. 23-06, pages 56-57](#), under Docket No. 18-ZBRR-2301.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Weston Trexler, (208) 334-4214, [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 3rd day of August, 2023.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 18-0602-2301**

**18.06.02 – PRODUCERS HANDLING OF FIDUCIARY FUNDS**

**000. LEGAL AUTHORITY.**

Sections 41-211, 41-1024, 41-1025, 41-1042, and 41-1043, Idaho Code. ( )

**001. SCOPE.**

This rule applies to “producers,” including bail agents, who handle fiduciary funds. ( )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Fiduciary Fund Account.** A financial account established to hold fiduciary funds as provided in Section 016. ( )

**02. Fiduciary Funds.** All premiums, return premiums, premium taxes, funds as collateral, and fees received by a producer. Fiduciary funds include: ( )

**a.** All funds paid to a producer for selling, soliciting or negotiating policies of insurance except for those fees recognized by statute as earned by the producer upon receipt which are payable to the producer and not the insurance company, pursuant to Section 41-1030, Idaho Code. ( )

**b.** All funds received by a producer from or on behalf of a client or premium finance company that are to be paid to an insurance company, its agents, or to the producer’s employer. ( )

**c.** All funds provided to a producer by an insurance company or its agents that are to be paid to a policyholder or claimant pursuant to a contract of insurance. ( )

**d.** All checks or other negotiable instruments collected by the producer and made payable to the insurer. ( )

**e.** Cash collateral pursuant to Section 41-1043, Idaho Code. ( )

**03. Receive.** To collect or take possession of fiduciary funds. If fiduciary funds are in the form of a credit or offset on an account or other liability for the benefit of the consumer, without the producer actually taking possession of the funds, then constructive receipt is presumed to have occurred. ( )

**011. -- 013. (RESERVED)**

**014. DEPOSIT AND REMITTANCE TIMING.**

**01. Payable to an Insurer.** Fiduciary funds that are in the form of a check or another negotiable

instrument, made payable to an insurer, are to be remitted to the insurer within the time period specified in the producers contract, or if not specified, then within fourteen (14) days of receipt. ( )

**02. Payable to a Policyholder.** Fiduciary funds that are in the form of a check or another negotiable instrument made payable to a policyholder or claimant are to be remitted to that person within fourteen (14) days of receipt or as specified by the terms insurance policy language, the insurer, or applicable law. ( )

**03. All Other.** All other fiduciary funds received by the producer, except as described under Subsections 014.01 and 014.02 are to be deposited into a fiduciary fund account as follows: ( )

**a.** Cash: within seven (7) days of receipt, except when the amount exceeds two thousand dollars (\$2,000), then such funds will be deposited within three (3) business days. ( )

**b.** Checks, money orders, other negotiable instruments, debit or credit card payments, or other electronic funds transfer: within seven (7) days of receipt. ( )

**04. Documentation of Fiduciary Funds.** A producer will document the receipt of funds by recording date received, the payee, and the amount received. For cash, including cash collateral, the producer will give the payor a detailed receipt at the time of payment indicating cash was received, date received, amount received, payor's name, payee's name, purpose of payment, and any other information important to the transaction. The producer will maintain the receipt for at least five (5) years. ( )

**015. DEPOSITING OTHER FUNDS IN FIDUCIARY ACCOUNT-VOLUNTARY DEPOSITS.**  
A producer may deposit other additional funds for the sole purpose of: ( )

**01. Reserves.** Establishing reserves for payment of return premiums. ( )

**02. Bank Charges.** Advancing funds sufficient to pay bank charges. ( )

**03. Contingencies.** For any contingencies that may arise in the business of receiving, transmitting or returning premium funds or cash collateral. ( )

**016. TYPES OF PERMITTED ACCOUNTS.**

**01. Federally Insured.** A producer will maintain fiduciary funds only in federally insured accounts. ( )

**02. Investments.** If funds held exceed the federally insured limits, then only the excess funds may be deposited into: ( )

**a.** An investment account that invests only in United States government bonds, United States Treasury certificates or in federally guaranteed obligations; or ( )

**b.** Money market mutual funds registered with the SEC which are rated AAA by Moody's S&P. ( )

**03. Designation.** A fiduciary fund account is so designated on the records of the financial institution. The account has a separate account number, a separate check register and its own checks displaying "Trust Fund Account" or similar designation on the face of each check. ( )

**04. Interest.** The producer will maintain records of any interest accrued. ( )

**05. Affiliated Fiduciary Fund Account.** A producer may maintain fiduciary funds in the fiduciary fund account of an affiliated producer. Each producer retains responsibility for compliance. ( )

**017. -- 018. (RESERVED)**

**019. PERMISSIBLE DISTRIBUTION.**

Distributions from a fiduciary fund account are to only be made for the following purposes, and manner: ( )

**01. Remit Premiums.** Remit premiums to an insurer or an insurer's designee pursuant to a contract of insurance; ( )

**02. Return Premiums.** Return premiums to an insured or other person or entity entitled to the premiums; ( )

**03. Remit Surplus Lines Taxes and Stamping Fees.** Remit surplus lines taxes and stamping fees collected to the appropriate state; ( )

**04. Reimburse Voluntary Deposits.** Reimburse voluntary deposits made by the producer to the extent that the funds in the fiduciary account exceed the amount necessary to meet all fiduciary obligations. The reimbursement will be matched to a previous voluntary deposit. ( )

**05. Transfer or Withdraw Accrued Interest.** Transfer or withdraw accrued interest to the extent that fiduciary fund account funds exceed the amount necessary to meet all fiduciary obligations. The reimbursement will be matched to a previous interest deposit by the financial institution. ( )

**06. Transfer or Withdraw Commissions.** Transfer or withdraw commissions and those earned fees earned by the producer, upon receipt, which are payable to the producer, only if the commissions and fees can be matched with funds previously deposited in the fiduciary account. ( )

**07. Pay Charges Imposed.** Pay charges imposed by the financial institution that directly relate to the operation and maintenance of the fiduciary fund account. ( )

**08. Transfer Funds.** Transfer funds from one (1) fiduciary fund account to another fiduciary fund account. ( )

**09. Return Cash Collateral.** Return cash collateral to the person who deposited the cash collateral with the producer within fourteen (14) days of the date notice is received that the obligation, the satisfaction of which was secured by the cash collateral, has been discharged. ( )

**10. Convert Cash Collateral.** Convert cash collateral where the defendant or other responsible party fails to satisfy the obligation of the bail bond and the bail or obligation was not exonerated by the court but instead executed by the court, provided such conversion is compliant with the contract between the producer and the person who deposited the cash collateral. ( )

**020. -- 021. (RESERVED)**

**022. TIMELY DISBURSEMENT OF FIDUCIARY FUNDS.**

In addition to the requirements of Section 014, after receiving fiduciary funds, a producer: ( )

**01. Remits Premiums.** Remits premiums directly to an insurer or an insurer's designee within the time period set forth in the producer's contract, or if not specified, within fourteen (14) days of receipt; ( )

**02. Returns Money Received.** Returns to the payer the money received as a premium deposit which is retained by the producer or returned to the producer by the insurer to the payer by the earlier of: ( )

**a.** Fourteen (14) days from the date the premium is received by the producer or ( )

**b.** Fourteen (14) days from the date the insurer notifies the insurance applicant that coverage has been denied if the producer retained the premium deposit. ( )

**03. Refund Received from the Insurer.** Issues a refund received from the insurer within fourteen (14) days by disbursing money to the insured or other party entitled thereto. If the producer is applying the refund to an



outstanding amount owed by the insured, the producer obtains the insured's permission and provides the insured a detailed description of the amount owed to which the refund is being applied. ( )

**04. Dispute of Entitlement of Funds.** If there is a dispute as to entitlement of funds under Subsections 022.01 or 022.03, a producer notifies the parties of the dispute, seeks to resolve it, and documents the steps taken to resolve it. ( )

**05. Funds Held for More Than Ninety Days.** If funds within the scope of Subsections 022.01 or 022.03 are held for more than ninety (90) days, the producer investigates to determine the entitlement to fiduciary funds and pays those fiduciary funds when due to the appropriate person in accordance with this section. ( )

**06. Return Cash Collateral.** Returns cash collateral to the depositor within fourteen (14) after the obligation is discharged. ( )

**023. - 999. (RESERVED)**

[Agency redlined courtesy copy]

## **18.06.02 – PRODUCERS HANDLING OF FIDUCIARY FUNDS**

### **000. LEGAL AUTHORITY.**

~~Title 41, Chapter 2 and 10,~~ Sections 41-211, 41-1024, ~~and~~ 41-1025, 41-1042, and 41-1043, Idaho Code. (3-31-22)( )

### **001. ~~TITLE AND SCOPE.~~**

**01. ~~Title.~~** IDAPA 18.06.02, "~~Producers Handling of Fiduciary Funds.~~" (3-31-22)

**02. ~~Scope.~~** This rule ~~will affect~~ applies to "producers," including bail agents, who handle fiduciary funds ~~held in a fiduciary capacity.~~ (3-31-22)( )

**002. -- 009. (RESERVED)**

### **010. DEFINITIONS.**

**01. ~~Cash Collateral.~~** ~~All funds received as collateral by a producer in connection with a bail bond transaction in the form of cash, check, money order, other negotiable instrument, debit or credit card payment, or other electronic funds transfer, given as security to obtain a bail bond, as referenced in Section 41-1043, Idaho Code.~~ (3-31-22)

**021. Fiduciary Fund Account.** A financial account established to hold fiduciary funds as provided in Section 016. ( )

**032. Fiduciary Funds.** All premiums, return premiums, premium taxes, funds as collateral, and fees received by a producer. Fiduciary funds include: ( )

**a.** All funds paid to a producer for selling, soliciting or negotiating policies of insurance except for those fees recognized by statute as earned by the producer upon receipt which are payable to the producer and not the insurance company, pursuant to Section 41-1030, Idaho Code. ( )

**b.** All funds received by a producer from or on behalf of a client or premium finance company that are to be paid to an insurance company, its agents, or to the producer's employer. ( )

c. All funds provided to a producer by an insurance company or its agents that are to be paid to a policyholder or claimant pursuant to a contract of insurance. ( )

d. All checks or other negotiable instruments collected by the producer and made payable to the insurer. ( )

e. Cash collateral pursuant to Section 41-1043, Idaho Code. (3-31-22)( )

**043. Receive.** To collect or take ~~actual or constructive~~ possession of fiduciary funds. ~~Receiving, includes but is not limited to, taking possession of money, checks, or other negotiable instruments.~~ If fiduciary funds are in the form of a credit or offset on an account or other liability for the benefit of the consumer, without the producer actually taking possession of the funds, then constructive receipt is presumed to have occurred ~~on the due date to the insurer.~~ (3-31-22)( )

011. -- 013. (RESERVED)

**014. ~~FIDUCIARY FUND ACCOUNT~~ DEPOSIT AND REMITTANCE TIMING.**

**01. Payable to an Insurer.** Fiduciary funds that are in the form of a check or another negotiable instrument ~~that is,~~ made payable to an insurer, ~~as described in Subsection 010.03~~ are to be remitted to the insurer within the time period ~~set forth specified~~ in the ~~insurer's terms and conditions~~ producers contract, or if not specified, then within ~~twenty one~~ fourteen (2+14) days of receipt. (3-31-22)

**02. Payable to a Policyholder.** Fiduciary funds that are in the form of a check or another negotiable instrument made payable to a policyholder or claimant ~~as described in Subsection 010.02.e.~~ are to be remitted to ~~the policyholder or claimant that person~~ within fourteen (14) days of receipt or as specified by the terms ~~of the policy of~~ insurance policy language, the insurer, or applicable law. (3-31-22)( )

**03. All Other ~~Fiduciary Funds~~.** All other fiduciary funds received by the producer, except as described under Subsections 014.01 and 014.02 are to be deposited into a fiduciary fund account ~~according to the following schedule as follows:~~ (3-31-22)( )

a. ~~If in the form of cash,~~ Cash; within seven (7) days of receipt, except ~~that,~~ when ~~a producer holds fiduciary funds in the form of cash that~~ the amount exceeds two thousand dollars (\$2,000), then such funds will be deposited within three (3) business days. (3-31-22)( )

b. ~~If in the form of e~~Checks, money orders, other negotiable instruments, debit or credit card payments, or other electronic funds transfer; ~~received or collected by the producer,~~ within seven (7) days of receipt; ~~except that the producer may remit such funds to the following:~~ (3-31-22)

i. ~~Another licensed producer or licensed business entity, subject to Subsection 014.03.b.; or~~ (3-31-22)

ii. ~~A person designated by the insurer who has the obligation to remit the fiduciary funds to the insurer subject to Subsection 014.03.b.~~ (3-31-22)

**04. ~~Documentation~~ the Receipt of Fiduciary Funds.** A producer ~~who receives fiduciary funds~~ will document the receipt of ~~those funds in sufficient detail to determine, at a minimum, the~~ by recording date received, the ~~name of the~~ payee, and the amount received. ~~If the producer receives~~ For cash, including cash collateral, the producer will give the payee or a detailed receipt at the time of payment. ~~The receipt needs to indicate~~ ing that cash was received, ~~the date received, the amount received, the payee's name, the payee's name, the purpose of payment, and any other information important to the transaction. The producer will maintain the receipt for a period of at least five~~ (5) years. (3-31-22)( )

**015. ~~DEPOSITING OF~~ OTHER FUNDS IN FIDUCIARY ACCOUNT VOLUNTARY DEPOSITS.**  
A producer may deposit other additional funds for the sole purpose of: (3-31-22)

01. ~~Reserves for Return Premiums~~. Establishing reserves for payment of return premiums. (3-31-22)( )
02. ~~Funds to Pay Bank Charges~~. Advancing funds sufficient to pay bank charges. (3-31-22)( )
03. ~~Contingencies~~. For any contingencies that may arise in the business of receiving ~~and~~ transmitting premium or returning premium funds or cash collateral ~~(any such deposit is hereinafter referred to as "voluntary deposit")~~. (3-31-22)( )

016. TYPES OF PERMITTED ACCOUNTS ~~PERMITTED~~.

01. ~~Accounts in Federally Insured Financial Institutions~~ Federally Insured. A producer will maintain ~~the~~ fiduciary funds only in ~~checking accounts, demand accounts, savings accounts or other~~ federally insured accounts ~~in a federally insured financial institution~~. (3-31-22)( )
02. ~~Exceed the Federally Insured Limits~~ Investments. If ~~such~~ funds held exceed the federally insured limits, then ~~in addition to Subsection 016.01, only those~~ the excess funds ~~that exceed the federally insured limits~~ may be deposited into ~~the following~~: (3-31-22)( )
- a. An investment account that invests ~~monies~~ only in United States government bonds, United States Treasury certificates or in federally guaranteed obligations; or (3-31-22)( )
- b. Money market mutual funds registered with the SEC which are rated AAA by Moody's ~~or AAA by~~ S&P. (3-31-22)( )
03. ~~Separate Fiduciary Funds Account~~. Nothing in this rule obligates a producer to maintain and hold fiduciary funds in his, her, or its, own separate fiduciary funds account. Each producer is responsible for compliance with the provisions of this rule even if fiduciary funds are maintained in a fiduciary funds account established by another affiliated producer. (3-31-22)

017. ACCOUNT DESIGNATION.

01. ~~Designation of a Fiduciary Fund~~. A fiduciary fund account is so designated on the records of the financial institution. The account has a separate account number, a separate check register and its own checks displaying "Trust Fund Account" or similar designation on the face of each check. (3-31-22)( )
02. ~~Trust Fund Account~~. The phrase, "Trust Fund Account" is ~~displayed on the face of each check drawn on a fiduciary fund account or other similar designation as permitted by the financial institution to identify the checks as being from a fiduciary fund account~~. (3-31-22)

018. INTEREST EARNINGS.

~~A fiduciary fund account may be interest bearing or an investment account in accordance with Section 016.~~

04. Interest. The producer will maintain records ~~establishing the existence and amount~~ of any interest accrued. (3-31-22)( )
05. Affiliated Fiduciary Fund Account. A producer may maintain fiduciary funds in the fiduciary fund account of an affiliated producer. Each producer retains responsibility for compliance. ( )

017. -- 018. (RESERVED)

019. PERMISSIBLE DISTRIBUTION OF FIDUCIARY FUNDS.

Distributions from a fiduciary fund account are to only be made for the following purposes, and ~~in the manner stated~~: (3-31-22)( )

01. Remit Premiums. ~~To~~ Remit premiums to an insurer or an insurer's designee pursuant to a contract

of insurance; (3-31-22)( )

02. **Return Premiums.** ~~To r~~Return premiums to an insured or other person or entity entitled to the premiums; (3-31-22)( )

03. **Remit Surplus Lines Taxes and Stamping Fees.** ~~To r~~Remit surplus lines taxes and stamping fees collected to the appropriate state; (3-31-22)( )

04. **Reimburse Voluntary Deposits.** ~~To r~~Reimburse voluntary deposits made by the producer to the extent that the funds in the fiduciary account exceed the amount necessary to meet all fiduciary obligations; ~~only if t~~ The reimbursement ~~can will~~ be matched ~~and identified with the to a~~ previous voluntary deposit. (3-31-22)( )

05. **Transfer or Withdraw Accrued Interest.** ~~To t~~Transfer or withdraw accrued interest to the extent that fiduciary fund account funds exceed the amount necessary to meet all fiduciary obligations; ~~only if t~~ The reimbursement ~~can will~~ be matched ~~and identified with the to a~~ previous interest deposit by the financial institution. (3-31-22)( )

06. **Transfer or Withdraw Actual Commissions.** ~~To t~~Transfer or withdraw ~~actual~~ commissions and those earned fees ~~recognized as~~ earned by the producer, upon receipt, which are payable to the producer, only if the commissions and fees can be matched ~~and identified~~ with funds previously deposited in the fiduciary account. (3-31-22)( )

07. **Pay Charges Imposed.** ~~To p~~Pay charges imposed by the financial institution that directly relate to the operation and maintenance of the fiduciary funds account. (3-31-22)( )

08. **Transfer Funds.** ~~To t~~Transfer funds from one (1) fiduciary fund account to another fiduciary fund account. (3-31-22)( )

09. **Return Cash Collateral.** ~~To r~~Return cash collateral to the person who deposited the cash collateral with the producer within fourteen (14) days of the date notice is received that the obligation, the satisfaction of which was secured by the cash collateral, has been discharged. (3-31-22)( )

10. **Convert Cash Collateral.** ~~To e~~Convert cash collateral where the defendant or other responsible party fails to satisfy the obligation of the bail bond and the bail or obligation was not exonerated by the court but instead executed by the court, provided such conversion is compliant with the contract between the producer and the person who deposited the cash collateral. (3-31-22)( )

020. -- 021. (RESERVED)

022. **TIMELY DISBURSEMENT OF FIDUCIARY FUNDS.**

In addition to the requirements of Section 014, after receiving fiduciary funds, a producer: ( )

01. **Remits Premiums.** Remits premiums directly to an insurer or an insurer's designee within the time period set forth in the ~~insurer's terms and conditions~~ producer's contract, or if not specified, within fourteen (14) days of receipt; (3-31-22)( )

02. **Returns Money Received.** Returns to the payer the money received as a premium deposit which is retained by the producer or returned to the producer by the insurer to the payer by the earlier of: ( )

a. Fourteen (14) days from the date the premium is received by the producer ~~from the insurer~~, or (3-31-22)( )

b. Fourteen (14) days from the date the insurer notifies the insurance applicant that coverage has been denied if the producer retained the premium deposit. ( )

03. **Refund Received from the Insurer.** Issues a refund received from the insurer within fourteen (14) days by disbursing money to the insured or other party entitled thereto ~~by notifying the insured that the refund is~~

~~being applied to an outstanding amount owed or to be owed by the insured.~~ If the producer is applying the refund to an outstanding amount owed by the insured, the producer obtains the insured's permission and provides the insured a detailed description of the amount owed to which the refund is being applied. (3-31-22)( )

**04. Dispute of Entitlement of Funds.** If there is a dispute as to entitlement of funds under Subsections 022.01 or 022.03, a producer notifies the parties of the dispute, seeks to resolve it, and documents the steps taken to resolve it. ( )

**05. Funds Held for More Than Ninety Days.** If ~~fiduciary~~ funds within the scope of Subsections 022.01 or 022.03 are held for more than ninety (90) days, the producer investigates to determine the entitlement to fiduciary funds and pays those fiduciary funds when due to the appropriate person in accordance with this section. (3-31-22)( )

**06. Return Cash Collateral.** Returns cash collateral ~~to the person who deposited the cash collateral with the producer~~ to the depositor within fourteen (14) ~~days of the date notice is received that the~~ after the obligation; ~~the satisfaction of which was secured by the cash collateral,~~ is discharged. (3-31-22)( )

**023. - 999. (RESERVED)**

## IDAPA 18 – DEPARTMENT OF INSURANCE

### 18.06.03 – RULES GOVERNING DISCLOSURE REQUIREMENTS FOR INSURANCE PRODUCERS WHEN CHARGING FEES

DOCKET NO. 18-0603-2301 (ZBR CHAPTER REPEAL)

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the second Regular Session of the Sixty-seventh Idaho Legislature after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 41-211 and 41-1037 through 41-1045, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

This rule provides disclosure requirements when charging a fee to consumers. The Department is proposing to repeal this rule in its entirety. The proposed chapter repeal was published in the September 6, 2023, Idaho Administrative Bulletin, [Vol. 23-9 pages 260-261](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: Not Applicable.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Weston Trexler, (208)334-4214, [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov).

DATED this 6th day of November, 2023.

Dean L. Cameron, Director  
Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID, 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 41-211 and 41-1030, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

<b>Wednesday, September 27, 2023</b> <b>3:00 p.m. to 4:30 p.m. (MT)</b>
<i>In-person participation is available at:</i> <b>Department of Insurance</b> <b>700 W. State St. 3rd Floor</b> <b>Boise, ID 83702</b>
<i>Web meeting link:</i> <a href="https://www.microsoft.com/microsoft-teams/join-a-meeting">https://www.microsoft.com/microsoft-teams/join-a-meeting</a> <i>Meeting ID: 297 636 144 490</i> <i>Meeting Password: 345BQf</i> <b>or by phone: +1 208-985-2810,,826046050#</b>

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this rule provides disclosure requirements when charging a fee to consumers. The Department is proposing to revoke this rule in its entirety.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023 Idaho Administrative Bulletin, Vol. 23-06, pages 56-57, under Docket No. 18-ZBRR-2301.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Weston Trexler, (208) 334-4214, [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 3rd day of August, 2023.

**IDAPA 18.06.03 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 18 – DEPARTMENT OF INSURANCE

### 18.07.06 – RULES GOVERNING LIFE AND HEALTH REINSURANCE AGREEMENTS

#### DOCKET NO. 18-0706-2301 (ZBR CHAPTER REWRITE)

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the second Regular Session of the Sixty-seventh Idaho Legislature after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 41-211, 41-335, 41-510, 41-511, 41-512, and 41-514, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

This rule sets standards for reinsurance agreements involving life insurance, annuities, or accident and sickness (disability) insurance in order that financial statements properly reflect business of the insurer. This rule is subject to Accreditation review. This rulemaking is consistent with the Governor's [Executive Order 2020-01: Zero-Based Regulation](#). The proposed changes are to simplify, clarify, and reduce.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 6, 2023, Idaho Administrative Bulletin, [Vol. 23-9 pages 262-268](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: Not Applicable.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Weston Trexler, (208)334-4214, [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov).

DATED this 6th day of November, 2023.

Dean L. Cameron, Director  
Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID, 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398



**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 41-211, 41-335, 41-510, 41-511, 41-512 and 41-514, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

<p><b>Wednesday, September 27, 2023</b> <b>3:00 p.m. to 4:30 p.m. (MT)</b></p> <p><i>In-person participation is available at:</i> <b>Department of Insurance</b> <b>700 W. State St. 3rd Floor</b> <b>Boise, ID 83702</b></p> <p><i>Web meeting link:</i> <a href="https://www.microsoft.com/microsoft-teams/join-a-meeting">https://www.microsoft.com/microsoft-teams/join-a-meeting</a> <i>Meeting ID: 297 636 144 490</i> <i>Meeting Password: 345BQf</i> <b>or by phone: +1 208-985-2810,,826046050#</b></p>
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The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this rule sets standards for reinsurance agreements involving life insurance, annuities, or accident and sickness (disability) insurance in order that financial statements properly reflect business of the insurer. This rule is subject to Accreditation review. This rulemaking is consistent with the Governor's [Executive Order 2020-01: Zero-Based Regulation](#). The proposed changes are to simplify, clarify, and reduce.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023 Idaho Administrative Bulletin, [Vol. 23-06, pages 56-57](#), under Docket No. 18-ZBRR-2301.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Weston Trexler, (208) 334-4214, [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 3rd day of August, 2023.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 18-0706-2301**

**18.07.06 – LIFE AND HEALTH REINSURANCE AGREEMENTS**

**000. LEGAL AUTHORITY.**

Sections 41-211, 41-335, 41-510, 41-511, 41-512 and 41-514, Idaho Code. ( )

**001. SCOPE.**

This rule applies to all domestic life and accident and health insurers and to all other licensed life and accident and health insurers not subject to substantially similar rules in their domiciliary state. Similarly, it applies to licensed property and casualty insurers with respect to their accident and health business. This rule does not apply to assumption reinsurance or yearly renewable term reinsurance. ( )

**002. PURPOSE.**

Insurers routinely enter into reinsurance agreements that yield legitimate surplus relief to the ceding insurer. However, it is improper for a ceding insurer to enter into reinsurance agreements for the principal purpose of producing significant surplus aid, typically on a temporary basis, while not transferring all the significant risks inherent in the business being reinsured. In substance or effect, the expected potential liability to the ceding insurer remains basically unchanged by the reinsurance transaction, notwithstanding certain risk elements in the reinsurance agreement, such as catastrophic mortality or extraordinary survival. The terms of such agreements referred to herein and described in Section 011 of this rule violate Sections 41-1306, 41-515, 41-308(3), 41-327, and 41-3309, Idaho Code. ( )

**003. -- 010. (RESERVED)**

**011. ACCOUNTING REQUIREMENTS.**

**01. Credits on Financial Statements.** No insurer will, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the Department if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist: ( )

**a.** Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period, are not sufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall (using assumptions equal to the applicable statutory reserve basis on the business reinsured). Those expenses include commissions, premium taxes and direct expenses including, but not limited to, billing, valuation, claims and maintenance expected by the company at the time the business is reinsured; ( )

**b.** The ceding insurer can be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, will not be considered to be such a deprivation of surplus or assets; ( )

**c.** The ceding insurer needs to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years' losses under the agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the agreement upon voluntary termination of in force reinsurance by the ceding insurer will be considered such a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to excessive levels forcing the ceding company to prematurely terminate the reinsurance treaty; ( )

**d.** The ceding insurer needs to, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded; ( )

**e.** The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income realized from the insured policies. For example, it is improper for a ceding company to pay reinsurance premiums, or other fees or charges to a reinsurer which are greater than the direct premiums collected by the ceding company; ( )

**f.** The treaty does not transfer all of the significant risk inherent in the business being reinsured. The following table identified for a representative sampling of products or type of business, the risks which are considered to be significant. For products not specifically included, the risks determined to be significant will be consistent with this table. Risk categories: ( )

i. Morbidity. ( )

ii. Mortality. ( )

iii. Lapse. The risk that a policy voluntarily terminates prior to the recoupment of a statutory surplus strain experienced at issue of the policy. ( )

iv. Credit Quality (C1). The risk that invested assets supporting the reinsured business decrease in value. The main hazards are that assets default or there will be a decrease in earning power. It excludes market value declines due to changes in interest rate. ( )

v. Reinvestment (C3). The risk that interest rates fall and funds reinvested (coupon payments or monies received upon asset maturity or call) will therefore earn less than expected. If asset durations are less than liability durations, the mismatch will increase. ( )

vi. Disintermediation (C3). The risk that interest rates rise and policy loans and surrenders increase or maturing contracts do not renew at anticipated rates. If asset durations are greater than the liability durations, the mismatch will increase. Policyholders will move their funds into new products offering higher rates. The company may have to sell assets at a loss to provide for these withdrawals.

**Risk Category**

Key: + - Significant  
 0 - Insignificant

	<b>i.</b>	<b>ii.</b>	<b>iii.</b>	<b>iv.</b>	<b>v.</b>	<b>vi.</b>
Health Insurance - other than LTC/LTD*	+	0	+	0	0	0
Health Insurance - LTC/LTD*	+	0	+	+	+	0
Immediate Annuities	0	+	0	+	+	0
Single Premium Deferred Annuities	0	0	+	+	+	+
Flexible Premium Deferred Annuities	0	0	+	+	+	+

	<b>i.</b>	<b>ii.</b>	<b>iii.</b>	<b>iv.</b>	<b>v.</b>	<b>vi.</b>
Guaranteed Interest Contracts	0	0	0	+	+	+
Other Annuity Deposit Business	0	0	+	+	+	+
Single Premium Whole Life	0	+	+	+	+	+
Traditional Non-Par Permanent	0	+	+	+	+	+
Traditional Non-Par Term	0	+	+	0	0	0
Traditional Par Permanent	0	+	+	+	+	+
Traditional Par Term	0	+	+	0	0	0
Adjustable Premium Permanent	0	+	+	+	+	+
Indeterminate Premium Permanent	0	+	+	+	+	+
Universal Life Flexible Premium	0	+	+	+	+	+
Universal Life Fixed Premium	0	+	+	+	+	+
Universal Life Fixed Premium dump-in premiums allowed	0	+	+	+	+	+

\*LTC = Long Term Care Insurance

\*LTD = Long Term Disability Insurance

( )

**g. Significant Risk.**

( )

i. The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than those excepted in Subsection 011.01.g.ii.) either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the Director which legally segregates, by contract or contract provision, the underlying assets. ( )

ii. Notwithstanding the requirements of Subsection 011.01.g.i., the assets supporting the reserves for the following classes of business and any classes of business which do not have a significant credit quality, reinvestment or disintermediation risk may be held by the ceding company without segregation of such assets:

- Health Insurance - LTC/LTD
- Traditional Non-Par Permanent
- Traditional Par Permanent
- Adjustable Premium Permanent
- Indeterminate Premium Permanent
- Universal Life Fixed Premium (no dump-in premiums allowed)

The associated formula for determining the reserve interest rate adjustment needs to use a formula that reflects the ceding company's investment earnings and incorporates all realized and unrealized gains and losses reflected in the statutory statement. The following is an acceptable formula:

$$\text{Rate} = \frac{2(I + CG)}{X + Y - I - CG}$$

Where: "I" is the net investment income as reported in Annual Statement

“CG” is capital gains less capital losses as reported in Annual Statement

“X” is the current year cash and invested assets plus investment income due and accrued less borrowed money as reported in Annual Statement

“Y” is the same as X but for the prior year ( )

**h.** Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within ninety (90) days of the settlement date. ( )

**i.** The ceding insurer needs to make representations or warranties not reasonably related to the business being reinsured. ( )

**j.** The ceding insurer needs to make representations or warranties about future performance of the business being reinsured. ( )

**k.** Reinsurance agreements entered for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged. ( )

**02. Director's Approval.** An insurer may, with the prior Director approval, take such reserve credit or establish such asset as the Director deems consistent with Insurancelaw, including actuarial interpretations or standards adopted by the Department. ( )

**03. Filing Agreements.** ( )

**a.** Agreements entered into after the effective date of this rule which involve the reinsurance of business issued prior to the effective date of the agreements, along with any subsequent amendments thereto, will be filed by the ceding company with the Director within thirty (30) days from its date of execution. Each filing will include data detailing the financial impact of the transaction. The ceding insurer’s actuary who signs the financial statement actuarial opinion with respect to valuation of reserves will consider this rule and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with this Department. The actuary should maintain adequate documentation and be prepared upon request to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that such work conforms to this rule. ( )

**b.** Any increase in surplus net of federal income tax resulting from arrangements described in Subsection 011.03.a. will be identified separately on the insurer’s statutory financial statement as a surplus item (aggregate write-ins for gains and losses in surplus in the Capital and Surplus Account line of the Annual Statement) and recognition of the surplus increase as income will be reflected on a net of tax basis in the “Reinsurance ceded” line of the annual statement as earnings emerge from the business reinsured. ( )

**012. WRITTEN AGREEMENTS.**

**01. Execution Date.** No reinsurance agreement or amendment there to may be used to reduce any liability or to establish any asset in any financial statement filed with the Department, unless the agreement, amendment or a binding letter of intent has been duly executed by both parties no later than the “as of date” of the financial statement. ( )

**02. Letter of Intent.** In the case of a letter of intent, a reinsurance agreement or an amendment there to needs to be executed within a reasonable period of time, not exceeding ninety (90) days from the execution date of the letter of intent, for credit to be granted for the reinsurance ceded. ( )

**03. Requisite Provisions.** The reinsurance agreement will contain provisions that provide: ( )

**a.** The agreement constitutes the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the

agreement; and ( )

b. Any change or modification to the agreement will be null and void unless made by amendment to the agreement and signed by both parties. ( )

**013. EXISTING AGREEMENTS.**

Insurers will not recognize any reserve credits or assets established with respect to reinsurance agreements entered into prior to the effective date of this rule which, under the provisions of this rule would not be entitled to recognition of the reserve credits or assets; provided, however, that the reinsurance agreements will have been in compliance with laws or rules in existence immediately preceding the effective date of this rule. ( )

**014. -- 999. (RESERVED)**

[Agency redlined courtesy copy]

**18.07.06 – ~~RULES GOVERNING~~ LIFE AND HEALTH REINSURANCE AGREEMENTS**

**000. LEGAL AUTHORITY.**

~~Title 41, Chapters 2, 3, and 5, Sections 41-211, 41-335, 41-510, 41-511, 41-512 and 41-514, Idaho Code.~~ (3-31-22)( )

**001. ~~TITLE, PURPOSE AND SCOPE.~~**

**01. ~~Title.~~** IDAPA 18.07.06, “Rules Governing Life and Health Reinsurance Agreements.” (3-31-22)

**02. ~~Purpose.~~** To set forth standards for Reinsurance Agreements involving life insurance, annuities, or accident and sickness insurance (disability) in order that the financial statements of the life and health and property and casualty insurers writing health business and utilizing such agreements properly reflect the financial condition of the ceding and assuming insurer. (3-31-22)

**a. ~~The Department recognizes that licensed insurers routinely enter into reinsurance agreements that yield legitimate relief to the ceding insurer from strain to surplus.~~** (3-31-22)

**b. ~~However, it is improper for a licensed insurer, in the capacity of ceding insurer, to enter into reinsurance agreements for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business being reinsured. In substance or effect, the expected potential liability to the ceding insurer remains basically unchanged by the reinsurance transaction, notwithstanding certain risk elements in the reinsurance agreement, such as catastrophic mortality or extraordinary survival. The terms of such agreements referred to herein and described in Section 011 violate Idaho Code Sections 41-1306, 41-515, 41-308(3), 41-327 and 41-3309.~~** (3-31-22)

**03. ~~Applicability.~~** This rule applies to all domestic life and accident and health insurers and to all other licensed life and accident and health insurers ~~that are~~ not subject to ~~a~~ substantially similar rules in their domiciliary state. ~~This rule also s~~Similarly, it applies to licensed property and casualty insurers with respect to their accident and health business. This rule does not apply to assumption reinsurance or yearly renewable term reinsurance. (3-31-22)( )

**002. PURPOSE.**

Insurers routinely enter into reinsurance agreements that yield legitimate surplus relief to the ceding insurer. However, it is improper for a ceding insurer to enter into reinsurance agreements for the principal purpose of producing significant surplus aid, typically on a temporary basis, while not transferring all the significant risks inherent in the business being reinsured. In substance or effect, the expected potential liability to the ceding insurer

remains basically unchanged by the reinsurance transaction, notwithstanding certain risk elements in the reinsurance agreement, such as catastrophic mortality or extraordinary survival. The terms of such agreements referred to herein and described in Section 011 of this rule violate Sections 41-1306, 41-515, 41-308(3), 41-327, and 41-3309, Idaho Code. ( )

~~0023~~. -- 010. (RESERVED)

**011. ACCOUNTING REQUIREMENTS.**

**01. ~~Standards for Credits on Financial Statements.~~** No insurer ~~subject to this rule~~ will, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the Department if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist: (3-31-22)( )

**a.** Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period, are not sufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall (using assumptions equal to the applicable statutory reserve basis on the business reinsured). Those expenses include commissions, premium taxes and direct expenses including, but not limited to, billing, valuation, claims and maintenance expected by the company at the time the business is reinsured; ( )

**b.** The ceding insurer can be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, will not be considered to be such a deprivation of surplus or assets; ( )

**c.** The ceding insurer needs to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years' losses under the agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the agreement upon voluntary termination of in force reinsurance by the ceding insurer will be considered such a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to excessive levels forcing the ceding company to prematurely terminate the reinsurance treaty; ( )

**d.** The ceding insurer needs to, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded; ( )

**e.** The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income realized from the insured policies. For example, it is improper for a ceding company to pay reinsurance premiums, or other fees or charges to a reinsurer which are greater than the direct premiums collected by the ceding company; ( )

**f.** The treaty does not transfer all of the significant risk inherent in the business being reinsured. The following table identified for a representative sampling of products or type of business, the risks which are considered to be significant. For products not specifically included, the risks determined to be significant will be consistent with this table. (3-31-22)

- ~~i.~~ Risk categories: (3-31-22)( )
- ~~(+)i.~~ Morbidity. ( )
- ~~(-)ii.~~ Mortality. ( )
- iii. Lapse. ~~This is t~~The risk that a policy ~~will~~ voluntarily terminates prior to the recoupment of a

statutory surplus strain experienced at issue of the policy.

(3-31-22)( )

iii. Credit Quality (C1). ~~This is t~~The risk that invested assets supporting the reinsured business ~~will~~ decrease in value. The main hazards are that assets ~~will~~ default or ~~that~~ there will be a decrease in earning power. It excludes market value declines due to changes in interest rate. (3-31-22)( )

iv. Reinvestment (C3). ~~This is t~~The risk that interest rates ~~will~~ fall and funds reinvested (coupon payments or monies received upon asset maturity or call) will therefore earn less than expected. If asset durations are less than liability durations, the mismatch will increase. (3-31-22)( )

vi. Disintermediation (C3). ~~This is t~~The risk that interest rates rise and policy loans and surrenders increase or maturing contracts do not renew at anticipated rates ~~of renewal~~. If asset durations are greater than the liability durations, the mismatch will increase. Policyholders will move their funds into new products offering higher rates. The company may have to sell assets at a loss to provide for these withdrawals.

**Risk Category**

Key: + - Significant  
 0 - Insignificant

	i.	ii.	iii.	iv.	v.	vi.
Health Insurance - other than LTC/LTD*	+	0	+	0	0	0
Health Insurance - LTC/LTD*	+	0	+	+	+	0
Immediate Annuities	0	+	0	+	+	0
Single Premium Deferred Annuities	0	0	+	+	+	+
Flexible Premium Deferred Annuities	0	0	+	+	+	+
Guaranteed Interest Contracts	0	0	0	+	+	+
Other Annuity Deposit Business	0	0	+	+	+	+
Single Premium Whole Life	0	+	+	+	+	+
Traditional Non-Par Permanent	0	+	+	+	+	+
Traditional Non-Par Term	0	+	+	0	0	0
Traditional Par Permanent	0	+	+	+	+	+
Traditional Par Term	0	+	+	0	0	0
Adjustable Premium Permanent	0	+	+	+	+	+
Indeterminate Premium Permanent	0	+	+	+	+	+
Universal Life Flexible Premium	0	+	+	+	+	+
Universal Life Fixed Premium	0	+	+	+	+	+
Universal Life Fixed Premium dump-in premiums allowed	0	+	+	+	+	+

\*LTC = Long Term Care Insurance

\*LTD = Long Term Disability Insurance

(3-31-22)( )

g. Significant Risk. ( )

i. The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than ~~for the classes of business~~ those excepted in ~~IDAPA~~)



~~18.07.06.Subsection~~ 011.01.g.ii.) either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the Director which legally segregates, by contract or contract provision, the underlying assets. (3-31-22)( )

ii. Notwithstanding the requirements of ~~IDAPA 18.07.06.Subsection~~ 011.01.g.i., the assets supporting the reserves for the following classes of business and any classes of business which do not have a significant credit quality, reinvestment or disintermediation risk may be held by the ceding company without segregation of such assets:

- Health Insurance - LTC/LTD
- Traditional Non-Par Permanent
- Traditional Par Permanent
- Adjustable Premium Permanent
- Indeterminate Premium Permanent
- Universal Life Fixed Premium (no dump-in premiums allowed)

The associated formula for determining the reserve interest rate adjustment needs to use a formula that reflects the ceding company's investment earnings and incorporates all realized and unrealized gains and losses reflected in the statutory statement. The following is an acceptable formula:

$$\text{Rate} = \frac{2(I + CG)}{X + Y - I - CG}$$

Where: "I" is the net investment income as reported in Annual Statement

"CG" is capital gains less capital losses as reported in Annual Statement

"X" is the current year cash and invested assets plus investment income due and accrued less borrowed money as reported in Annual Statement

"Y" is the same as X but for the prior year ( )

h. Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within ninety (90) days of the settlement date. ( )

i. The ceding insurer needs to make representations or warranties not reasonably related to the business being reinsured. ( )

j. The ceding insurer needs to make representations or warranties about future performance of the business being reinsured. ( )

k. ~~The r~~Reinsurance agreements ~~is~~ entered ~~into~~ for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all ~~of~~ the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged. (3-31-22)( )

**02. Director's Approval.** An insurer ~~subject to this Rule~~ may, with the prior ~~Director~~ approval ~~of the Director~~, take such reserve credit or establish such asset as the Director ~~may~~ deems consistent with ~~the~~ Insurance Code and Rules ~~law~~, including actuarial interpretations or standards adopted by the Department. (3-31-22)( )

**03. Filing ~~of Reinsurance~~ Agreements.** (3-31-22)( )

a. Agreements entered into after the effective date of this ~~R~~rule which involve the reinsurance of business issued prior to the effective date of the agreements, along with any subsequent amendments thereto, will be filed by the ceding company with the Director within thirty (30) days from its date of execution. Each filing will include data detailing the financial impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves will consider ~~this R~~rule and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with this Department. The actuary should maintain adequate documentation and be prepared upon request to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that such work conforms to this ~~R~~rule.

~~(3-31-22)~~( )

b. Any increase in surplus net of federal income tax resulting from arrangements described in Subsection 011.03.a. will be identified separately on the insurer's statutory financial statement as a surplus item (aggregate write-ins for gains and losses in surplus in the Capital and Surplus Account line of the Annual Statement) and recognition of the surplus increase as income will be reflected on a net of tax basis in the "Reinsurance ceded" line of the annual statement as earnings emerge from the business reinsured. ( )

~~i. For example: On the last day of calendar year N, company XYZ pays a twenty (\$20) million initial commission and expense allowance to company ABC for reinsuring an existing block of business. Assuming a thirty-four percent (34%) tax rate, the net increase in surplus at inception is thirteen point two (\$13.2) million (twenty (\$20) million minus six point eight (\$6.8) million) which is reported on the "Aggregate write-ins for gains and losses in surplus" line in the Capital and Surplus account. Six point eight (\$6.8) million (thirty-four (34%) of twenty (\$20) million) is reported as income on the "Commissions and expense allowances on reinsurance ceded" line of the Summary of Operations.~~

~~(3-31-22)~~

~~ii. At the end of year N+1 the business has earned four (\$4) million. ABC has paid point five (\$.5) million in profit and risk charges in arrears for the year and has received a one million (\$1) million experience refund. Company ABC's annual statement would report one point six five (\$1.65) million (sixty-six percent (66%) of four (\$4) million minus one (\$1) million minus point five (\$.5) million) up to a maximum of thirteen point two (\$13.2) million) on the "Commissions and expense allowance on reinsurance ceded" line of the Summary of Operations, and one point sixty five (\$1.65) million on the "Aggregate write-ins for gains and losses in surplus" line of the Capital and Surplus account. The experience refund would be reported separately as a miscellaneous income item in the Summary of Operations.~~

~~(3-31-22)~~

## 012. WRITTEN AGREEMENTS.

01. **Execution Date.** No reinsurance agreement or amendment ~~there~~ to ~~any agreement~~ may be used to reduce any liability or to establish any asset in any financial statement filed with the Department, unless the agreement, amendment or a binding letter of intent has been duly executed by both parties no later than the "as of date" of the financial statement. ~~(3-31-22)~~( )

02. **Letter of Intent.** In the case of a letter of intent, a reinsurance agreement or an amendment ~~there~~ to ~~a reinsurance agreement~~ needs to be executed within a reasonable period of time, not exceeding ninety (90) days from the execution date of the letter of intent, ~~in order~~ for credit to be granted for the reinsurance ceded. ~~(3-31-22)~~( )

03. **Requisite Provisions.** The reinsurance agreement will contain provisions that provide ~~that~~: ~~(3-31-22)~~( )

a. The agreement ~~will~~ constitutes the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement; and ~~(3-31-22)~~( )

b. Any change or modification to the agreement will be null and void unless made by amendment to the agreement and signed by both parties. ( )

## 013. EXISTING AGREEMENTS.

Insurers ~~subject to this rule~~ will not ~~be allowed to~~ recognize any reserve credits or assets established with respect to reinsurance agreements entered into prior to the effective date of this rule which, under the provisions of this rule

would not be entitled to recognition of the reserve credits or assets; provided, however, that the reinsurance agreements will have been in compliance with laws or rules in existence immediately preceding the effective date of this rule. [\(3-31-22\)](#)(    )

**014. -- 999. (RESERVED)**

**IDAPA 18 – DEPARTMENT OF INSURANCE**  
**18.07.10 – CORPORATE GOVERNANCE ANNUAL DISCLOSURE**  
**DOCKET NO. 18-0710-2301 (ZBR CHAPTER REWRITE)**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the second Regular Session of the Sixty-seventh Idaho Legislature after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Title 41, Chapters 2 and 64, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

This rule sets procedures for filing and required content of the Corporate Governance Annual Disclosure (CGAD), necessary to carry out the provisions of Title 41, Chapter 64, Idaho Code. This rule is subject to Accreditation review. This rulemaking is consistent with the Governor's [Executive Order 2020-01: Zero-Based Regulation](#). The proposed changes are to simplify, clarify, and reduce.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 6, 2023, Idaho Administrative Bulletin, [Vol. 23-9 pages 269-273](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: Not Applicable.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Weston Trexler, (208)334-4214, [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov).

DATED this 6th day of November, 2023.

Dean L. Cameron, Director  
Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID, 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 41, Chapters 2 and 64, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

<p><b>Wednesday, September 27, 2023</b> <b>3:00 p.m. to 4:30 p.m. (MT)</b></p>
<p><i>In-person participation is available at:</i> <b>Department of Insurance</b> <b>700 W. State St. 3rd Floor</b> <b>Boise, ID 83702</b></p> <p><i>Web meeting link:</i> <a href="https://www.microsoft.com/microsoft-teams/join-a-meeting">https://www.microsoft.com/microsoft-teams/join-a-meeting</a> <i>Meeting ID: 297 636 144 490</i> <i>Meeting Password: 345BQf</i> <b>or by phone: +1 208-985-2810,,826046050#</b></p>

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this rule sets procedures for filing and required content of the Corporate Governance Annual Disclosure (CGAD), necessary to carry out the provisions of Title 41, Chapter 64, Idaho Code. This rule is subject to Accreditation review. This rulemaking is consistent with the Governor's [Executive Order 2020-01: Zero-Based Regulation](#). The proposed changes are to simplify, clarify, and reduce.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023 Idaho Administrative Bulletin, [Vol. 23-06, pages 56-57](#), under Docket No. 18-ZBRR-2301.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Weston Trexler, (208) 334-4214, [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this August 3, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 18-0710-2301

18.07.10 – CORPORATE GOVERNANCE ANNUAL DISCLOSURE

**000. LEGAL AUTHORITY.**

Sections 41-211 and 41-6404(2), Idaho Code.

( )

**001. SCOPE.**

This rule establishes procedures for filing the contents of the Corporate Governance Annual Disclosure (CGAD) per Title 41, Chapter 64, Idaho Code.

( )

**002. – 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Senior Management.** Any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators, including, without limitation, all chief level executives.

( )

**011. FILING PROCEDURES.**

**01. Format.** The insurer or insurance group has discretion to appropriately format the CGAD and may customize the CGAD to provide the most relevant information necessary for the director to understand the corporate governance structure, policies and practices they utilize.

( )

**02. Completion on Insurance Group Level.** Per Section 41-6403(1), Idaho Code, if Idaho is not the lead state and the CGAD is filed with the lead state for the group, a copy of the CGAD will also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request.

( )

**03. Referencing.** An insurer or insurance group may comply with this section by referencing other existing documents if the documents provide information that is comparable to the contents described in Section 012. The insurer or insurance group will clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed or available to the director.

( )

**012. CONTENTS OF CORPORATE GOVERNANCE ANNUAL DISCLOSURE.**

The CGAD content will:

( )

**01. Detail.** Be as descriptive as possible in completing the CGAD, with inclusion of attachments or example documents that are used in the governance process that may demonstrate the strengths of their governance framework and practices.

( )

**02. CGAD Considerations.** Describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following:

( )

**a.** The board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occurs (e.g., ultimate control level, intermediate holding company, legal entity, etc.). The insurer or insurance group will describe and discuss the rationale for the current board size and structure; and

( )

**b.** The duties of the board and each of its significant committees and how they are governed (e.g., bylaws, charters, informal mandates, etc.), as well as how the board's leadership is structured, including a discussion of the roles of CEO and chairman of the board within the organization. ( )

**03. Factors.** Describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors: ( )

**a.** How the qualifications, expertise and experience of each board member meet the needs of the insurer or insurance group. ( )

**b.** How an appropriate amount of independence is maintained on the board and its significant committees. ( )

**c.** The number of meetings held by the board and its significant committees over the past year including information on board member attendance. ( )

**d.** How the insurer or insurance group identifies, nominates and elects members to the board and its committees. The discussion should include: ( )

i. Whether a nomination committee identifies and select individuals for consideration. ( )

ii. Whether term limits are placed on board members. ( )

iii. How the election and re-election processes function. ( )

iv. Whether a board diversity policy is in place and if so, how it functions. ( )

**e.** The processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance (including any board or committee training programs that have been put in place). ( )

**04. Additional Factors.** Describe the policies and practices for directing senior management, including the following factors: ( )

**a.** Any processes or practices (i.e., suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including: ( )

i. Identification of the specific positions for which suitability standards have been developed and a description of the standards employed. ( )

ii. Any changes in an officer's or key person's suitability as outlined by the insurer 's or insurance group's standards and procedures to monitor and evaluate such changes. ( )

**b.** The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers: ( )

i. Compliance with laws, rules, and regulations; and ( )

ii. Proactive reporting of any illegal or unethical behavior. ( )

**c.** The insurer's or insurance group's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description will include sufficient detail to allow the director to understand how the organization ensures that compensation programs do not encourage and/or reward excessive risk taking. This may include: ( )

- i. The board's role in overseeing management compensation programs and practices. ( )
  - ii. The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid; ( )
  - iii. How compensation programs are related to both company and individual performance over time; ( )
  - iv. Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels; ( )
  - v. Any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted; ( )
  - vi. Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees. ( )
- d.** The insurer's or insurance group's plans for CEO and senior management succession. ( )
- 05. Oversight.** Describe the processes by which the board, its committees and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of: ( )
- a.** How oversight and management responsibilities are delegated between the board, its committees and senior management; ( )
  - b.** How the board is kept informed of the insurer's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks; ( )
  - c.** How reporting responsibilities are organized for each critical risk area. The description should allow the director to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. This description may include the following critical risk areas of the insurer: ( )
    - i. Risk management processes (An ORSA summary report, if filed under Title 41, Chapter 63, Idaho Code, may be referenced per Subsection 011.01 of these rules); ( )
    - ii. Actuarial function; ( )
    - iii. Investment decision-making processes; ( )
    - iv. Reinsurance decision-making processes; ( )
    - v. Business strategy/finance decision-making processes; ( )
    - vi. Compliance function; ( )
    - vii. Financial reporting/internal auditing; and ( )
    - viii. Market conduct decision-making processes. ( )

**013. – 999. (RESERVED)**



[Agency redlined courtesy copy]

## 18.07.10 – CORPORATE GOVERNANCE ANNUAL DISCLOSURE

### 000. LEGAL AUTHORITY.

~~Title 41, Chapters 2 and 64, Sections 41-211 and 41-6404(2),~~ Idaho Code. (3-31-22)(    )

### 001. ~~TITLE AND SCOPE.~~

~~01. Title.~~ This rule is titled IDAPA 18.07.10, “Corporate Governance Annual Disclosure.” (3-31-22)

~~02. Scope.~~ This rule ~~sets forth~~ establishes procedures for filing ~~and the necessary~~ contents of the Corporate Governance Annual Disclosure (CGAD) ~~to carry out the provisions of per~~ Title 41, Chapter 64, Idaho Code. (3-31-22)(    )

### ~~002. INCORPORATION BY REFERENCE.~~

~~The most recent National Association of Insurance Commissioners (NAIC) Financial Analysis Handbook (2016 Annual / 2017 Quarterly edition) is incorporated by reference into IDAPA 18.07.10.~~ (3-31-22)

### 003. – 009. (RESERVED)

### 010. DEFINITIONS.

~~01. Senior Management.~~ Any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators ~~and will, includeing, for example and~~ without limitation, ~~the chief executive officer (CEO), chief financial officer (CFO), chief operations officer (COO), chief procurement officer (CPO), chief legal officer (CLO), chief information officer (CIO), chief technology officer (CTO), chief revenue officer (CRO), chief visionary officer (CVO), or any other~~ all chief or “C” level executives. (3-31-22)(    )

### 011. FILING PROCEDURES.

~~01. Filing Deadline.~~ An insurer, or the insurance group of which the insurer is a member, needs to file a CGAD by Title 41, Chapter 64, Idaho Code, no later than June 1 of each calendar year, submit to the director a CGAD that contains the information described in Section 012 of this rule. (3-31-22)

~~02. Signature.~~ The CGAD needs to include a signature of the insurer’s or insurance group’s chief executive officer or corporate secretary attesting to the best of that individual’s belief and knowledge that the insurer or insurance group has implemented the corporate governance practices and that a copy of the CGAD has been provided to the insurer’s or insurance group’s board of directors (board) or the appropriate committee thereof. (3-31-22)

~~03.1. Format.~~ The insurer or insurance group ~~will have~~ has discretion ~~regarding the to~~ appropriately format ~~for providing~~ the ~~information prescribed by this rule~~ CGAD and ~~is permitted to~~ may customize the CGAD to provide the most relevant information necessary ~~to permit for~~ the director to ~~gain an~~ understanding of the corporate governance structure, policies and practices ~~they~~ utilized by the insurer or insurance group. (3-31-22)(    )

~~04. Providing Information.~~ For purposes of completing the CGAD, the insurer or insurance group may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which the insurer’s or insurance group’s risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the

~~supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it will indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.~~ (3-31-22)

~~052. Completion on Insurance Group Level. Notwithstanding Subsection 011.01, and as outlined in Per Section 41-6403(1), Idaho Code, if Idaho is not the lead state and the CGAD is completed at the insurance group level, then it needs to be filed with the lead state of for the group as determined by the procedures outlined in the most recent financial analysis handbook adopted by the NAIC. In these instances, a copy of the CGAD needs to will also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request.~~ (3-31-22)( )

~~063. Referencing. An insurer or insurance group may comply with this section by referencing other existing documents (e.g., Own Risk Solvency Assessment (ORSA) summary report, holding company form B or F filings, Securities and Exchange Commission (SEC) proxy statements, foreign regulatory reporting requirements, etc.) if the documents provide information that is comparable to the information contents described in Section 012. The insurer or insurance group will clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed or available to the regulator director.~~ (3-31-22)( )

~~07. Filing of Amended Versions. Each year following the initial filing of the CGAD, the insurer or insurance group will file an amended version of the previously filed CGAD indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state.~~ (3-31-22)

## 012. CONTENTS OF CORPORATE GOVERNANCE ANNUAL DISCLOSURE.

The CGAD content will: ( )

~~01. Detail. The insurer or insurance group will b~~Be as descriptive as possible in completing the CGAD, with inclusion of attachments or example documents that are used in the governance process, ~~since these that~~ may provide a means to demonstrate the strengths of their governance framework and practices. (3-31-22)( )

~~02. CGAD Considerations. The CGAD will d~~Describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following: (3-31-22)( )

~~a.~~ The board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occurs (e.g., ultimate control level, intermediate holding company, legal entity, etc.). The insurer or insurance group will describe and discuss the rationale for the current board size and structure; and (3-31-22)

~~b.~~ The duties of the board and each of its significant committees and how they are governed (e.g., bylaws, charters, informal mandates, etc.), as well as how the board's leadership is structured, including a discussion of the roles of ~~chief executive officer~~ (CEO) and chairman of the board within the organization. (3-31-22)( )

~~03. Factors. The insurer or insurance group will d~~Describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors: (3-31-22)( )

~~a.~~ How the qualifications, expertise and experience of each board member meet the needs of the insurer or insurance group. ( )

~~b.~~ How an appropriate amount of independence is maintained on the board and its significant committees. ( )

~~c.~~ The number of meetings held by the board and its significant committees over the past year ~~as well as including~~ information on ~~director~~ board member attendance. (3-31-22)( )

~~d.~~ How the insurer or insurance group identifies, nominates and elects members to the board and its committees. The discussion should include, ~~for example:~~ (3-31-22)( )

- i. Whether a nomination committee ~~is in place to~~ identify ~~ies~~ and select individuals for consideration. (3-31-22)( )
  - ii. Whether term limits are placed on ~~directors~~ board members. (3-31-22)( )
  - iii. How the election and re-election processes function. ( )
  - iv. Whether a board diversity policy is in place and if so, how it functions. ( )
  - e. The processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance (including any board or committee training programs that have been put in place). ( )
- 04. Additional Factors.** ~~The insurer or insurance group will d~~ Describe the policies and practices for directing senior management, including ~~a description of~~ the following factors: (3-31-22)( )
- a. Any processes or practices (i.e., suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:
    - i. Identification of the specific positions for which suitability standards have been developed and a description of the standards employed. ( )
    - ii. Any changes in an officer's or key person's suitability as outlined by the insurer 's or insurance group's standards and procedures to monitor and evaluate such changes. ( )
  - b. The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, ~~for example~~: (3-31-22)( )
    - i. Compliance with laws, rules, and regulations; and ( )
    - ii. Proactive reporting of any illegal or unethical behavior. ( )
  - c. The insurer's or insurance group's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description will include sufficient detail to allow the director to understand how the organization ensures that compensation programs do not encourage and/or reward excessive risk taking. ~~Elements to be discussed~~ This may include, ~~for example~~: (3-31-22)( )
    - i. The board's role in overseeing management compensation programs and practices. ( )
    - ii. The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid; ( )
    - iii. How compensation programs are related to both company and individual performance over time; ( )
    - iv. Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels; ( )
    - v. Any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted; ( )
    - vi. Any other factors relevant in understanding how the insurer or insurance group monitors its

compensation policies to determine whether its risk management objectives are met by incentivizing its employees. ( )

d. The insurer's or insurance group's plans for CEO and senior management succession. ( )

**05. Oversight.** ~~The insurer or insurance group will d~~Describe the processes by which the board, its committees and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of: (3-31-22)( )

a. How oversight and management responsibilities are delegated between the board, its committees and senior management; ( )

b. How the board is kept informed of the insurer's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks; ( )

c. How reporting responsibilities are organized for each critical risk area. The description should allow the director to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. This description may include, ~~for example,~~ the following critical risk areas of the insurer: (3-31-22)( )

i. Risk management processes (An ORSA summary report ~~filer may refer to its ORSA summary report pursuant to, if filed under~~ Title 41, Chapter 63, Idaho Code, may be referenced per Subsection 011.01 of these rules); (3-31-22)( )

ii. Actuarial function; ( )

iii. Investment decision-making processes; ( )

iv. Reinsurance decision-making processes; ( )

v. Business strategy/finance decision-making processes; ( )

vi. Compliance function; ( )

vii. Financial reporting/internal auditing; and ( )

viii. Market conduct decision-making processes. ( )

**013. – 999. (RESERVED)**

**IDAPA 18 – DEPARTMENT OF INSURANCE**  
**18.08.01 – ADOPTION OF THE INTERNATIONAL FIRE CODE**  
**DOCKET NO. 18-0801-2301 (ZBR CHAPTER REWRITE)**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the second Regular Session of the Sixty-seventh Idaho Legislature after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 41-211 and 41-253, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

This rule adopts the International Fire Code and edits by the State Fire Marshal, such as the minimum standard for the protection of life and property from fire and explosion in the state of Idaho. This rulemaking is consistent with the Governor's [Executive Order 2020-01: Zero-Based Regulation](#). The proposed changes are to simplify, clarify, and reduce.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 6, 2023, Idaho Administrative Bulletin, [Vol. 23-9, pages 274-279](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: Not Applicable.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Weston Trexler, (208)334-4214, [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov).

DATED this 6th day of November, 2023.

Dean L. Cameron, Director  
Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID, 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 41-211 and 41-253, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

<p><b>Wednesday, September 27, 2023</b> <b>3:00 p.m. to 4:30 p.m. (MT)</b></p>
<p><i>In-person participation is available at:</i> <b>Department of Insurance</b> <b>700 W. State St. 3rd Floor</b> <b>Boise, ID 83702</b></p> <p><i>Web meeting link:</i> <a href="https://www.microsoft.com/microsoft-teams/join-a-meeting">https://www.microsoft.com/microsoft-teams/join-a-meeting</a> <i>Meeting ID: 297 636 144 490</i> <i>Meeting Password: 345BQf</i> <b>or by phone: +1 208-985-2810,,826046050#</b></p>

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this rule adopts the International Fire Code and edits by the State Fire Marshal, such as the minimum standard for the protection of life and property from fire and explosion in the State of Idaho. This rulemaking is consistent with the Governor's [Executive Order 2020-01: Zero-Based Regulation](#). The proposed changes are to simplify, clarify, and reduce.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023 Idaho Administrative Bulletin, [Vol. 23-06, pages 56-57](#), under Docket No. 18-ZBRR-2301.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Weston Trexler, (208) 334-4214, [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 3rd day of August, 2023.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 18-0801-2301**

**18.08.01 – ADOPTION OF THE INTERNATIONAL FIRE CODE**

**000. LEGAL AUTHORITY.**

Title 41, Chapter 2, Idaho Code. ( )

**001. SCOPE.**

This rule specifies the minimum standards for the protection of life and property from fire and explosion in Idaho. Pursuant to the authority provided by Section 41-253, Idaho Code, the State Fire Marshal adopts the International Fire Code (IFC) as the minimum standard for the protection of life and property from fire and explosion in the state of Idaho. All such editions and appendices will be adopted in accordance with Section 67-5229, Idaho Code. Copies of the IFC are available for public inspection at the State Fire Marshal's Office, or for purchase from the International Code Council by emailing [customersuccess@iccsafe.org](mailto:customersuccess@iccsafe.org) or calling 1-800-786-4452. ( )

**002. -- 009. (RESERVED)**

**010. CONSTRUCTION AND DESIGN PROVISIONS, IFC SECTION 102.1.**

Delete Item No. 3 from Section 102.1. ( )

**011. DEPARTMENT OF FIRE PREVENTION, IFC SECTION 103.2 -- APPOINTMENTS.**

Delete from Section 103.2.: “ and the fire code official shall not be removed from office except for cause and after full opportunity to be heard on specific and relevant charges by and before the appointing authority.” ( )

**012. GENERAL AUTHORITY AND RESPONSIBILITIES, IFC SECTION 104.1.**

Add to Section 104.1, General: ( )

**01. Fire Chief's Authority.** The fire chief is authorized to administer and enforce this code. Under the chief's direction, the fire department is authorized to enforce all ordinances of the jurisdiction about: ( )

- a. Preventing fires; ( )
- b. Suppressing or extinguishing dangerous or hazardous fires; ( )
- c. Storage, use and handling of hazardous materials; ( )
- d. Installing and maintaining automatic, manual and other private fire alarm systems and fire-extinguishing equipment; ( )
- e. Maintaining and regulating fire escapes; ( )
- f. Maintaining fire protection and eliminating fire hazards on land and in buildings, and other property, including those under construction; ( )

- g. Maintaining means of egress; and ( )
- h. Investigating the cause, origin and circumstances of fire and unauthorized releases of hazardous materials. For authority on controlling and investigating emergency scenes, see Section 104.11. ( )
- 013. -- 015. (RESERVED)**
- 016. PERMITS REQUIRED, IFC SECTION 105.1.1.**  
Replace “the required permit” in Section 105.1.1, with “a permit if needed by the authority having jurisdiction.” ( )
- 017. VIOLATION PENALTIES, IFC SECTION 110.4.**  
In Section 110.4, replace “[SPECIFY OFFENCE], punishable by a fine of not more than [AMOUNT] dollars, or by imprisonment not exceeding [NUMBER OF DAYS], or both such fine and imprisonment” with “misdemeanor”. ( )
- 018. FAILURE TO COMPLY, IFC SECTION 112.4.**  
Delete Section 112.4. ( )
- 019. IFC SECTION 202.**  
Regarding Section 202, IFC: ( )
01. **Fire Code Official.** Add “or as appropriate the Idaho State Fire Marshal” to FIRE CODE OFFICIAL. ( )
02. **Driveway.** Add “DRIVEWAY. A vehicular ingress and egress route that serves no more than five (5) single family dwellings, not including accessory structures.” ( )
03. **Fire Station.** Add “FIRE STATION, A building, or part of a building that provides, at a minimum, all weather protection for fire apparatus. Temperatures inside the building used for this purpose need to be maintained at above thirty-two (32) degrees Fahrenheit.” ( )
- 020. SKY LANTERNS, IFC SECTION 308.1.6.3.**  
Replace Section 308.1.6.3 with: “A person cannot release or cause to be released a sky lantern, tethered or untethered without obtaining a permit, if required by the fire code or jurisdiction. When, in the opinion of the fire code official, the release of sky lanterns, tethered or untethered, constitutes a danger to persons or property, based on the current weather conditions, knowledge of topography, vegetation, or any other reasonable factor, is authorized to require additional safeguards prior to the release of sky lanterns. The fire code official may suspend, revoke, postpone, or prohibit the release of any sky lantern at any time.” ( )
- 021. MOBILE FOOD PREPARATION VEHICLES, IFC SECTION 319.**
01. **Permit Required.** Replace Section 319.2 with: “IF REQUIRED BY A LOCAL JURISDICTION, permits may be required as set forth in Section 105.6.” ( )
02. **Fuel Gas Systems.** To Section 319.10.3, add at beginning: “IF REQUIRED BY THE LOCAL JURISDICTION,” and at end: “OR PROVIDE DOCUMENTATION OF INSPECTION UPON REQUEST OF THE LOCAL JURISDICTION.” ( )
- 022. IFC CHAPTER 5 FIRE SERVICE FEATURES.**  
Regarding Chapter 5; ( )
01. **Section 501.** ( )
- a. Section 501.3, after “Construction documents for proposed,” add “driveways.” ( )



- b.** Section 501.4, “When fire apparatus access roads,” add “driveways.” ( )
- 02.** **Section 502.** Section 502, add “DRIVEWAY” and FIRE STATION.” ( )
- 03.** **Section 503.** ( )
- a.** To Section 503 heading, add “AND DRIVEWAYS”. ( )
- b.** To Section 503.1.1, add “Driveways need to be provided and maintained in accordance with Sections 503.1.1 through 503.1.3.” ( )
- c.** To Section 503.6, delete “The installation of security gates across a fire apparatus access road shall be approved by the fire code official.” ( )
- d.** Add “503.7 Driveways. Need be provided when any part of an exterior wall of the first story of a building is more than 150 feet (45720mm) from a fire apparatus access road. Driveways will provide a minimum unobstructed width of 12 feet (3658mm) and a minimum unobstructed height of 13 feet 6 inches (4115mm). Driveways over 150 feet (45720mm) will have turnarounds. Driveways over 200 feet (60960mm) long and less than 20 feet (6096mm) wide may need turnouts in addition to turnarounds.” ( )
- e.** Add “503.7.1 Limits. A driveway cannot serve more than five single family dwellings.” ( )
- f.** Add “503.7.2 Turnarounds. Driveway turnarounds will have at least a 30 feet (9144mm) inside turning radius and at least a 45 feet (13716mm) outside turning radius. Driveways that connect with an access road or roads at more than one point may be deemed to have a turnaround if all directional changes meet the radius requirements for driveway turnarounds.” ( )
- g.** Add “503.7.3 Turnouts. Where a man-made or natural feature obstructs the line of sight along a driveway, turnouts will be located as may be needed by the fire code official for safe passage of vehicles. Driveway turnouts will be of an all-weather road surface at least 10 feet (3048mm) wide and 30 feet (9144mm) long.” ( )
- h.** Add “503.7.4 Bridge Load Limits. Vehicle load limits will be posted at both entrances to bridges on driveways and private roads. The fire code official will set design loads for bridges.” ( )
- i.** Add “503.7.5 Address markers. All of a building’s driveway entrances will have a permanently posted address that is visible from both directions of travel along the road. The address will always be posted at the beginning of construction and maintained thereafter. The address need be visible and legible from the road on which the address is located. Address signs along one-way roads will be visible from both the intended direction of travel and the opposite direction. Where a single driveway has multiple addresses, they need to be mounted on a single post, with additional signs to posted at locations where driveways divide.” ( )
- j.** Add “503.7.6 Grade. Driveway gradients may not exceed 10% unless approved by the fire code official.” ( )
- k.** Add “503.7.7 Security Gates. Where security gates are installed, they will have an approved means of emergency operation. The security gates will be operational at all times.” ( )
- l.** Add “503.7.8 Surface. Driveways will be designed and maintained to support the imposed loads of local responding fire apparatus and be surfaced to allow all weather driving.” ( )
- 04.** **Section 507.** Replace Section 507.2 with: “A water supply will consist of water delivered by fire apparatus, reservoirs, pressure tanks, elevated tanks, water mains or other sources approved by the fire code official capable of providing the needed fire flow. Exception. The water supply prescribed by this code needs to apply to structures served by a municipal fire department or a fire protection district and within ten miles (16093m) of a responding fire station.” ( )
- 023. -- 026. (RESERVED)**

**027. ALTERNATIVE AUTOMATIC FIRE-EXTINGUISHING SYSTEMS, IFC SECTION 904.1.1.**  
Add to the start of Section 904.1.1, : “If prescribed by the authority having jurisdiction,”. ( )

**028. PORTABLE FIRE EXTINGUISHERS, IFC SECTION 906.2.1.**  
Add to the start of Section 906.2.1, : “If prescribed by the authority having jurisdiction,”. ( )

**029. FIRE ALARM AND DETECTION SYSTEMS, IFC SECTION 907.1.**  
Add to Section 907-1: “Notification Devices. When fire alarm systems not needed by the International Fire Code are installed, the notification devices need to meet the minimum design and installation requirements for systems that are prescribed by this code. Intent: (Non-prescribed fire alarm systems will provide the same level of occupant notification that prescribed systems provide).” ( )

**030. CONSTRUCTION REQUIREMENTS FOR EXISTING BUILDINGS, IFC SECTION 1101.1.**  
Add toSection 1101.1, : “only, if in the opinion of the fire code official, they constitute a distinct hazard to life or property.” ( )

**031. EXPLOSIVES AND FIREWORKS, IFC CHAPTER 56.**  
Delete Sections 5601.1.3, 5601.2.2, 5601.2.3, 5601.2.4.1, 5601.2.4.2, and Sections 5608.2, 5608.2.1, and 5608.3. ( )

**032. -- 045. (RESERVED)**

**046. UNDERGROUND TANKS OUT OF SERVICE FOR ONE YEAR, IFC SECTION 5704.2.13.1.3.**  
Add to Section 5704.2.13.1.3: “Upon approval of the Chief underground tanks that comply with the performance standards for new or upgraded underground tanks set forth in Title 40 Section 280.20 or 280.21 of the Code of Federal Regulations may remain out of service indefinitely so long as they remain in compliance with the operation, maintenance and release detection requirements of the federal rule.” ( )

**047. -- 055. (RESERVED)**

**056. REFERENCES TO APPENDIX, INTERNATIONAL FIRE CODE.**  
The following appendixes of the International Fire Code are hereby adopted: ( )

**01. Appendix B, Fire Flow Requirements for Buildings.** ( )

**02. Appendix C, Fire Hydrant Location and Distribution.** ( )

**03. Appendix D, Fire Apparatus Access Roads.** ( )

**a.** To Section D101.1, add “Driveways as described in section 503.7 through 503.7.8 are not subject to the requirements of this appendix.” ( )

**b.** To Section D102.1, after the phrase “by way of an approved fire apparatus access road,” add “designed and maintained to support the imposed loads of the responding fire apparatus and will be surfaced so as to provide all-weather driving capabilities,” and delete the remainder of the section. ( )

**c.** Replace Section D103.2 with “The gradient of the fire apparatus access road needs to be within the limits established by the fire code official based on the capabilities of the responding fire departments apparatus.” ( )

**04. Appendix E, Hazard Categories.** ( )

**05. Appendix F, Hazard Rankings.** ( )

**057. -- 999. (RESERVED)**

[Agency redlined courtesy copy]

18.08.01 – ADOPTION OF THE INTERNATIONAL FIRE CODE

000. LEGAL AUTHORITY.

Title 41, Chapter 2, Idaho Code.

( )

001. ~~TITLE AND SCOPE.~~

~~01. Title. IDAPA 18.08.01, “Adoption of the International Fire Code.”~~

~~(3-31-22)~~

~~02. Scope. This rule specifies the minimum standards for the protection of life and property from fire and explosion in Idaho.~~ Pursuant to the authority provided by Section 41-253, Idaho Code, the State Fire Marshal adopts the International Fire Code (IFC) as the minimum standard for the protection of life and property from fire and explosion in the state of Idaho. All such editions and appendices will be adopted in accordance with Section 67-5229, Idaho Code. Copies of the IFC are available for public inspection at the State Fire Marshal’s Office, or for purchase from the International Code Council by emailing customersuccess@iccsafe.org or calling 1-800-786-4452.

~~(3-31-22)~~( )

002. -- 009. (RESERVED)

010. CONSTRUCTION AND DESIGN PROVISIONS, IFC SECTION 102.1, ~~INTERNATIONAL FIRE CODE.~~

Delete Item No. 3 ~~of from~~ Section 102.1, ~~International Fire Code.~~

~~(3-31-22)~~( )

011. DEPARTMENT OF FIRE PREVENTION, IFC SECTION 103.2 -- ~~APPOINTMENTS, INTERNATIONAL FIRE CODE.~~

Delete ~~the following language in from s~~Section 103.2 ~~of the International Fire Code:~~ “~~...~~ and the fire code official shall not be removed from office except for cause and after full opportunity to be heard on specific and relevant charges by and before the appointing authority.”

~~(3-31-22)~~( )

012. GENERAL AUTHORITY AND RESPONSIBILITIES, IFC SECTION 104.1, ~~INTERNATIONAL FIRE CODE.~~

Add ~~the following second paragraph~~ to Section 104.1, General, ~~International Fire Code:~~

~~(3-31-22)~~( )

01. **Fire Chief’s Authority.** The fire chief is authorized to administer and enforce this code. Under the chief’s direction, the fire department is authorized to enforce all ordinances of the jurisdiction ~~pertaining to about:~~

~~(3-31-22)~~( )

a. ~~The prevention of~~Preventing fires;

~~(3-31-22)~~( )

b. ~~The suppression or extinguishment of~~Suppressing or extinguishing dangerous or hazardous fires;

~~(3-31-22)~~( )

c. ~~The s~~Storage, use and handling of hazardous materials;

~~(3-31-22)~~( )

d. ~~The installation and maintenance of~~Installing and maintaining automatic, manual and other private fire alarm systems and fire- extinguishing equipment;

~~(3-31-22)~~( )

e. ~~The maintenance and regulation of~~Maintaining and regulating fire escapes;

~~(3-31-22)~~( )

f. ~~The maintenance of~~Maintaining fire protection and ~~the elimination of~~ eliminating fire hazards on land and in buildings, and other property, including those under construction;

~~(3-31-22)~~( )

- g. ~~The maintenance of~~Maintaining means of egress; and (3-31-22)( )
- h. ~~The investigation of~~Investigating the cause, origin and circumstances of fire and unauthorized releases of hazardous materials; ~~For authority related to control and investigation of~~ on controlling and investigating emergency scenes, see Section 104.11. (3-31-22)( )

013. -- 015. (RESERVED)

016. ~~PERMITS REQUIRED, IFC SECTION 105.1.1, INTERNATIONAL FIRE CODE.~~  
~~Delete~~Replace “the required permit” ~~from the last sentence of in~~ Section 105.1.1 ~~of the International Fire Code and~~  
add, with “a permit if needed by the authority having jurisdiction.” (3-31-22)( )

017. ~~VIOLATION PENALTIES, IFC SECTION 110.4, INTERNATIONAL FIRE CODE.~~  
~~In the first sentence of~~ Section 110.4 ~~of the International Fire Code, delete, replace~~ “[SPECIFY OFFENCE],  
punishable by a fine of not more than [AMOUNT] dollars, or by imprisonment not exceeding [NUMBER OF  
DAYS], or both such fine and imprisonment” ~~and add the word with~~ “misdemeanor”. (3-31-22)( )

018. ~~FAILURE TO COMPLY, IFC SECTION 112.4, INTERNATIONAL FIRE CODE.~~  
~~In Delete~~ Section 112.4, ~~International Fire Code, delete this entire section.~~ (3-31-22)( )

019. ~~IFC SECTION 202, INTERNATIONAL FIRE CODE.~~  
Regarding Section 202, IFC: ( )

01. ~~Fire Code Official.~~ Add “or as appropriate the Idaho State Fire Marshal” ~~to the end of the~~  
~~definition for~~ FIRE CODE OFFICIAL ~~in Section 202 of the International Fire Code.~~ (3-31-22)( )

02. ~~Driveway.~~ Add “DRIVEWAY. A vehicular ingress and egress route that serves no more than five  
(5) single family dwellings, not including accessory structures.” ( )

03. ~~Fire Station.~~ Add “FIRE STATION, A building, or ~~portion part~~ of a building that provides, at a  
minimum, all weather protection for fire apparatus. Temperatures inside the building used for this purpose need to be  
maintained at above thirty-two (32) degrees Fahrenheit.” (3-31-22)( )

020. ~~SKY LANTERNS, IFC SECTION 308.1.6.3, INTERNATIONAL FIRE CODE.~~

~~01. ~~Untethered Sky lanterns.~~ To section 308.1.6.3 delete the sentence: “A person cannot release or~~  
~~cause to be released an untethered sky lantern.”~~ (3-31-22)

~~02. ~~Sky lantern permit.~~ To ~~Replace s~~Section 308.1.6.3 ~~add the following with:~~ “A person cannot~~  
~~release or cause to be released a sky lantern, tethered or untethered without obtaining a permit, if required by the fire~~  
~~code or jurisdiction. When, in the opinion of the fire code official, the release of sky lanterns, tethered or untethered,~~  
~~constitutes a danger to persons or property, based on the current weather conditions, knowledge of topography,~~  
~~vegetation, or any other reasonable factor, is authorized to require additional safeguards prior to the release of sky~~  
~~lanterns. The fire code official may suspend, revoke, postpone, or prohibit the release of any sky lantern at any time.”~~  
(3-31-22)( )

021. ~~MOBILE FOOD PREPARATION VEHICLES, IFC SECTION 319, INTERNATIONAL FIRE~~  
~~CODE.~~

01. ~~Permit Required.~~ ~~To Replace~~ Section 319.2, ~~International Fire Code, add permissive language~~  
with: “IF REQUIRED BY A LOCAL JURISDICTION, permits may be required as set forth in Section 105.6.”  
(3-31-22)( )

02. ~~Fuel Gas Systems.~~ To Section 319.10.3, ~~International Fire Code, add permissive language at~~  
beginning: “IF REQUIRED BY THE LOCAL JURISDICTION,” and at end: ~~LP gas containers installed on the~~  
~~vehicle and fuel gas piping systems may be inspected annually by an approved inspection agency or a company that~~

~~is registered with the U.S. Department of Transportation to requalify LP gas cylinders, ... Upon satisfactory inspection, the approved inspection agency shall affix a tag on the fuel gas system or within the vehicle indicating the name of the inspection agency and the date of satisfactory inspection; "OR PROVIDE DOCUMENTATION OF INSPECTION UPON REQUEST OF THE LOCAL JURISDICTION."~~ (3-31-22)( )

**022. IFC CHAPTER 5 FIRE SERVICE FEATURES.**

~~Make the following changes within~~ **Regarding** Chapter 5 ~~of the International Fire Code;~~ (3-31-22)( )

**01. Section 501.** ( )

**a.** ~~To s~~Section 501.3, ~~after the phrase, "Construction documents for proposed," add the word~~ "driveways." (3-31-22)( )

**b.** ~~To s~~Section 501.4, ~~after the phrase, "When fire apparatus access roads," add the word "driveways."~~ (3-31-22)( )

**02. Section 502.** (3-31-22)

~~a.~~ ~~To s~~Section 502, add ~~the following word "DRIVEWAY;" and FIRE STATION."~~ (3-31-22)( )

~~b.~~ ~~To section 502, add the words "FIRE STATION."~~ (3-31-22)

**03. Section 503.** ( )

**a.** To ~~s~~Section 503 ~~heading,~~ add ~~the words, "AND DRIVEWAYS" to the section heading.~~ (3-31-22)( )

**b.** To ~~s~~Section 503.1.1, add ~~the following sentence,~~ "Driveways need to be provided and maintained in accordance with Sections 503.1.1 through 503.1.3." (3-31-22)( )

**c.** To ~~s~~Section 503.6, ~~delete the sentence,~~ "The installation of security gates across a fire apparatus access road shall be approved by the fire ~~chief code official."~~ (3-31-22)( )

**d.** Add ~~the following section,~~ "503.7 Driveways. Need be provided when any ~~portion part~~ of an exterior wall of the first story of a building is ~~located~~ more than 150 feet (45720mm) from a fire apparatus access road. Driveways will provide a minimum unobstructed width of 12 feet (3658mm) and a minimum unobstructed height of 13 feet 6 inches (4115mm). Driveways ~~in excess of over~~ 150 feet (45720mm) ~~in length need to be provided with will have~~ turnarounds. Driveways ~~in excess of over~~ 200 feet (60960mm) ~~in length long~~ and less than 20 feet (6096mm) ~~in width wide~~ may ~~require need~~ turnouts in addition to turnarounds." (3-31-22)( )

**e.** Add ~~the following section,~~ "503.7.1 Limits. A driveway cannot serve ~~in excess of more than~~ five single family dwellings." (3-31-22)( )

**f.** Add ~~the following section,~~ "503.7.2 Turnarounds. Driveway turnarounds ~~need to will~~ have ~~an inside turning radius of not less than at least a~~ 30 feet (9144mm) ~~inside turning radius~~ and ~~an outside turning radius of not less than at least a~~ 45 feet (13716mm) ~~outside turning radius~~. Driveways that connect with an access road or roads at more than one point may be ~~considered as having deemed to have~~ a turnaround if all ~~directional~~ changes ~~of direction~~ meet the radius requirements for driveway turnarounds." (3-31-22)( )

**g.** Add ~~the following section,~~ "503.7.3 Turnouts. Where ~~a man-made or natural feature obstructs the~~ line of sight along a driveway ~~is obstructed by a man-made or natural feature,~~ turnouts ~~need to will~~ be located as may be needed by the fire code official ~~to provide~~ for safe passage of vehicles. Driveway turnouts will be of an all-weather road surface at least 10 feet (3048mm) wide and 30 feet (9144mm) long." (3-31-22)( )

**h.** Add ~~the following section,~~ "503.7.4 Bridge Load Limits. Vehicle load limits will be posted at both entrances to bridges on driveways and private roads. ~~The fire code official will set. D~~ design loads for bridges ~~will be established by the fire code official."~~ (3-31-22)( )

i. Add ~~the following section,~~ “503.7.5 Address markers. All ~~buildings need to~~ of a building’s driveway entrances will have a permanently posted address, ~~which will be placed at each driveway entrance and be that is~~ visible from both directions of travel along the road. ~~In all cases, t~~The address ~~needs to will always~~ be posted at the beginning of construction and maintained thereafter. The address need be visible and legible from ~~the road on which~~ the road on which the address is located. Address signs along one-way roads will be visible from both the intended direction of travel and the opposite direction. Where ~~multiple address’s are required at~~ a single driveway has multiple addresses, they need to be mounted on a single post, and with additional signs ~~will be to~~ posted at locations where driveways divide.” (3-31-22)(    )

j. Add ~~the following section,~~ “503.7.6 Grade. ~~The gradient for driveways cannot~~ Driveway gradients may not exceed 10% ~~percent~~ unless approved by the fire code official.” (3-31-22)(    )

k. Add ~~the following section,~~ “503.7.7 Security Gates. Where security gates are installed, they ~~need to will~~ have an approved means of emergency operation. The security gates ~~and emergency operation~~ will be ~~maintained~~ operational at all times.” (3-31-22)(    )

l. Add ~~the following section,~~ “503.7.8 Surface. Driveways ~~need to will~~ be designed and maintained to support the imposed loads of local responding fire apparatus and ~~will~~ be surfaced ~~as to provide allow~~ all weather driving ~~capabilities.~~” (3-31-22)(    )

04. **Section 507. ~~To Replace s~~Section 507.2 ~~Type of water supply, delete the existing language and add the following, with:~~** “A water supply will consist of water delivered by fire apparatus, reservoirs, pressure tanks, elevated tanks, water mains or other sources approved by the fire code official capable of providing the needed fire flow. Exception. The water supply prescribed by this code needs to apply to structures served by a municipal fire department or a fire protection district and within ten miles (16093m) of a responding fire station.” (3-31-22)(    )

023. -- 026. (RESERVED)

027. **ALTERNATIVE AUTOMATIC FIRE-EXTINGUISHING SYSTEMS, IFC SECTION 904.1.1, ~~INTERNATIONAL FIRE CODE.~~**

Add ~~the following language to the beginning start of s~~Section 904.1.1, ~~of the International Fire Code,:~~ “If prescribed by the authority having jurisdiction,”. (3-31-22)(    )

028. **PORTABLE FIRE EXTINGUISHERS, IFC SECTION 906.2.1, ~~INTERNATIONAL FIRE CODE.~~**

Add ~~the following language to the beginning start of s~~Section 906.2.1, ~~of the International Fire Code,:~~ “If prescribed by the authority having jurisdiction,”. (3-31-22)(    )

029. **FIRE ALARM AND DETECTION SYSTEMS, IFC SECTION 907.1, ~~INTERNATIONAL FIRE CODE.~~**

Add to Section 907-1: “Notification Devices. When fire alarm systems not needed by the International Fire Code are installed, the notification devices need to meet the minimum design and installation requirements for systems that are prescribed by this code. Intent: (Non-prescribed fire alarm systems will provide the same level of occupant notification that prescribed systems provide).” (3-31-22)(    )

030. **CONSTRUCTION REQUIREMENTS FOR EXISTING BUILDINGS, IFC SECTION 1101.1, ~~INTERNATIONAL FIRE CODE.~~**

Add ~~the following language to the end of s~~Section 1101.1, ~~of the International Fire Code,:~~ “only, if in the opinion of the fire code official, they constitute a distinct hazard to life or property.” (3-31-22)(    )

031. **EXPLOSIVES AND FIREWORKS, IFC CHAPTER 56, ~~INTERNATIONAL FIRE CODE.~~**

Delete Sections 5601.1.3, 5601.2.2, 5601.2.3, 5601.2.4.1, 5601.2.4.2, and ~~s~~Sections 5608.2, 5608.2.1, and 5608.3 ~~of the International Fire Code.~~ (3-31-22)(    )

032. -- 045. (RESERVED)

**046. UNDERGROUND TANKS OUT OF SERVICE FOR ONE YEAR, IFC SECTION 5704.2.13.1.3 INTERNATIONAL FIRE CODE.**

Add to Section 5704.2.13.1.3, ~~International Fire Code, the following paragraph:~~ “Upon approval of the Chief underground tanks that comply with the performance standards for new or upgraded underground tanks set forth in Title 40 Section 280.20 or 280.21 of the Code of Federal Regulations may remain out of service indefinitely so long as they remain in compliance with the operation, maintenance and release detection requirements of the federal rule.”  
(3-31-22)( )

**047. -- 055. (RESERVED)**

**056. REFERENCES TO APPENDIX, INTERNATIONAL FIRE CODE.**

The following appendixes of the International Fire Code are hereby adopted: ( )

**01. Appendix B, Fire Flow Requirements for Buildings. ( )**

**02. Appendix C, Fire Hydrant Location and Distribution. ( )**

**03. Appendix D, Fire Apparatus Access Roads. ( )**

**a.** To ~~s~~Section D101.1 ~~Scope~~, add ~~the following sentence~~, “Driveways as described in section 503.7 through 503.7.8 are not subject to the requirements of this appendix.” (3-31-22)( )

**b.** To ~~s~~Section D102.1, after the phrase, “by way of an approved fire apparatus access road,” add ~~the following~~ “designed and maintained to support the imposed loads of the responding fire apparatus and will be surfaced so as to provide all-weather driving capabilities.” ~~And delete the remainder of the section.~~ (3-31-22)( )

**c.** ~~To~~ ~~Replace s~~Section D103.2 ~~Grade. Add the following. with~~ “The gradient of the fire apparatus access road needs to be within the limits established by the fire code official based on the capabilities of the responding fire departments apparatus.” ~~Delete the remainder of the section and the exception.~~ (3-31-22)( )

**04. Appendix E, Hazard Categories. ( )**

**05. Appendix F, Hazard Rankings. ( )**

**057. -- 999. (RESERVED)**

## IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

### 24.01.01 – RULES OF THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS

#### DOCKET NO. 24-0101-2301 (ZBR CHAPTER REWRITE)

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective, July 1, 2024, after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-3003, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted under [Executive Order 2020-01, Zero Based Regulation](#). Text amended since these rules were published as proposed are purely grammatical and typographical in nature. No substantive changes are made. The grammatical changes are found in:

- 100.01.b. – reworded to improve readability and reduce restrictive work count;
- 100.01.c. – adds the phrase “to the general public” to clarify the terms “health, safety, and welfare”; and
- 100.02.a. and b. – reworded to improve readability and reduce restrictive word count. The acronym of a national accrediting board is added for clarity.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the August 2, 2023, Idaho Administrative Bulletin, [Vol. 23-8, pages 177-189](#).

**FEE SUMMARY:** The following is a description of the fee or charge imposed or increased in this rulemaking as authorized in Sections 54-5822 and 67-2614, Idaho Code. Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature.

The fees for applications, licenses, registrations and reinstatement as designated in Rule 400 of these pending rules are authorized in Sections 54-5822 and 67-2614, Idaho Code. None of these fees are being changed as a result of this rulemaking or since being previously reviewed by the Idaho Legislature.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rulemaking is not anticipated to have any negative fiscal impact on the State General Fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Katie Stuart at 208-577-2489.

DATED this 1st day of November, 2023.

Katie Stuart, Bureau Chief  
11341 W. Chinden Blvd., Bldg. #4  
Boise, ID 83714  
Phone: (208) 577-2489  
Email: [katie.stuart@dopl.idaho.gov](mailto:katie.stuart@dopl.idaho.gov)



**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-2604, Idaho Code, and Sections 54-306, 54-308, 54-313, 54-3003, 67-2614, 67-9406, and 67-9409, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

**Wednesday, August 23, 2023 -- 11:00 a.m. (MT)**

**Division of Occupational and Professional Licenses**  
**Chinden Campus Building 4**  
**11341 W. Chinden Blvd., Bldg. #4**  
**Boise, ID 83714**

**Telephone and web conferencing information will be posted on:**  
<https://dopl.idaho.gov/calendar/> and <https://townhall.idaho.gov/>

The hearing site will be accessible to persons with disabilities, if needed. Requests for accommodation must be made not later than five (5) days prior to the meeting to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Under [Executive Order 2020-01](#), Zero-Based Regulation, the Board of Architects and Landscape Architects is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. In conjunction with stakeholders, the proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter and to use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and Executive Order 2020-01.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

The fees for applications, licenses, and reinstatement as designated in Rule 400 of these proposed rules are authorized in Section 54-313, Idaho Code. None of these fees are being changed as a result of this rulemaking or since being previously reviewed by the Idaho legislature.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the State General Fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

This rulemaking is not anticipated to have any negative fiscal impact on the State General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted under Docket No. 24-ZBRR-2301. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 5, 2023 Idaho Administrative Bulletin, [Vol. 23-4, pp. 42-46](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Michael Hyde, Bureau Chief, at (208) 332-7133.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2023.

DATED this July 6, 2023.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 24-0101-2301**

**24.01.01 – RULES OF THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS**

**000. LEGAL AUTHORITY.**

These rules are promulgated pursuant to Sections 54-306, 54-308, 54-313, 54-3003, 67-2614, 67-9406, and 67-9409, Idaho Code. ( )

**001. SCOPE.**

These rules govern the practice of architecture and landscape architecture in Idaho. ( )

**002. -- 099. (RESERVED)**

**100. LICENSURE.**

**01. Architect Requirements.** ( )

**a.** Approved Architectural Experience Program. The National Council of Architectural Registration Boards' (NCARB) Architectural Experience Program (AXP). ( )

**b.** Satisfactory Experience In Lieu Of Education. Eight (8) years consisting of at least six (6) years of experience under the direct supervision of a licensed architect and the remaining two (2) years may be under the direct supervision of a licensed engineer who practices in the field of building construction as approved by the board. ( )

**c.** Continuing Education. Beginning the second year of licensure, to renew, a licensed architect must complete, during the prior licensure period, and retain proof of completion of twelve (12) hours of approved continuing education germane to the practice of architecture as it relates to the health, safety, and welfare of the general public. Approved courses are those offered by providers approved by NCARB, the National Architectural Accreditation Board (NAAB), or the American Institute of Architects (AIA). A licensee may submit a request for Board approval of other courses. ( )

**i.** A licensee may carryover a maximum of six (6) hours of continuing education to meet the next year's continuing education requirement. ( )

**02. Landscape Architect Requirements.** ( )

**a.** Approved Education. A landscape architecture program accredited by the Landscape Architectural Accreditation Board (LAAB). ( )

**b.** Satisfactory Experience in Lieu of Education. Eight (8) years consisting of at least four (4) years of experience under the supervision of a licensed landscape architect, with the remainder being directly related to landscape architecture. ( )

**c.** Required Examination. Passage of the Landscape Architect Registration Examination administered by the Council of Landscape Architects Registration Boards (CLARB). ( )

**101. – 199. (RESERVED)**

**200. PRACTICE STANDARDS.**

**01. Architectural Intern.** Only individuals who fall within the Section 54-303(2), Idaho Code, definition of “architectural intern” may represent themselves as an “architectural intern”. ( )

**02. Architecture Firm Name.** The firm name may only incorporate the names of individuals who are licensed architects, with the exception that a firm may continue to utilize the name of a retired or deceased formerly-licensed architect if the unlicensed status is clearly disclosed. ( )

**201. -- 399. (RESERVED)**

**400. FEES.**

**01. Architects.**

TYPE	AMOUNT (Not to Exceed)
Application	\$25
License	\$50 annually
Reinstatement	\$35

( )

**02. Landscape Architects.**

TYPE	AMOUNT (Not to Exceed)
Application	\$75
License	\$125 annually
Reinstatement	\$35

( )

**401. -- 999. (RESERVED)**

[Agency redlined courtesy copy]

*Italicized text indicates changes between the text of the proposed rule as adopted in the pending rule.*

**24.01.01 – RULES OF THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS**  
~~ARCHITECTURAL EXAMINERS~~

**000. LEGAL AUTHORITY.**

These rules are promulgated pursuant to Sections 54-306, 54-308, 54-313, 67-2614, 67-9406, and 67-9409, Idaho Code. ( )

**001. SCOPE.**

These rules govern the practice of architecture in Idaho.( )

~~002. INCORPORATION BY REFERENCE.~~

~~The document titled NCARB Rules of Conduct as published by the National Council of Architectural Registration Boards, dated July 2014, is hereby incorporated by reference.~~

~~003.—009.(RESERVED)~~

**010. DEFINITIONS.**

~~01. AXP. Architectural Experience Program.(—)~~

~~02. Direct Supervision. Direct supervision of an unlicensed individual in the practice of architecture means the exercise of management, control, authority, responsibility, oversight and guidance over the unlicensed individual's work, activities and conduct.(—)~~

~~03. NAAB. National Architectural Accrediting Board.(—)~~

~~04. NCARB. National Council of Architectural Registration Board.(—)~~

~~011.—174.(RESERVED)~~

~~175. APPLICANT PAST CRIME REVIEW.~~

~~01. Review Authority. In reviewing an Applicant for licensure who has been convicted of a felony or misdemeanor as set forth in section 54-314(1)(d) Idaho Code, the Board may utilize the follow process and factors to determine the applicant's suitability for licensure:(—)~~

~~02. Exemption Review. The exemption review consists of a review of any documents relating to the crime and any supplemental information provided by the applicant bearing upon his suitability for registration. The Board may, at its discretion, grant an interview of the applicant and consider the factors set forth in Section 67-9411, Idaho Code. The applicant bears the burden of establishing their current suitability for licensure.(—)~~

~~176.—199.(RESERVED)~~

**4200. FEES FOR EXAMINATIONS AND LICENSURE.**

Fees are non-refundable.

**01.Architects.**

FEE-TYPE	AMOUNT (Not to Exceed)
Examination	Established by NCARB
Application	\$25.00
Annual renewal License	\$50.00 annually
Endorsement license	\$50.00
Temporary license	\$50.00
Reinstatement	\$35 As provided in Section 67-2614, Idaho Code

( )

~~201.—249.(RESERVED)~~

~~250. QUALIFICATIONS OF APPLICANTS FOR EXAMINATION.~~  
**100. LICENSURE**

~~01. Accredited Degree Applicants.~~  
**01. Architect Requirements.**

~~a. Approved Architectural Experience Program. All applicants for the Architectural Registration Examination (ARE) will possess a professional degree in architecture from a program that is accredited by the The National Council of Architectural Registration Boards (NCARB) Accrediting Board (NAAB) or that is approved by the Board. All applicants for the ARE must have started or completed the Architectural Experience Program (AXP) requirements.(—)~~

~~02.b. Satisfactory Experience in Lieu of Education. Degree Applicants. The Board may allow an applicant without an architecture degree to sit for the architecture examination upon determining that such applicant has attained the knowledge and skill approximating that attained by graduation from an accredited architecture curriculum including the submission of a record of The eight (8) years must consist of at least six (6) years of experience under the direct supervision of a licensed architect and the remaining two (2) years may be under the direct supervision of a licensed engineer who practices in the field of building construction as approved by the Board, or more of experience in architecture work of a character deemed satisfactory by the Board. Said experience may include that necessary for completion of the AXP. Two (2) years of eight (8) or more years of experience may be accepted if determined that such experience is directly related to architecture under the direct supervision of a registered engineer (practicing as a structural, civil, mechanical or electrical engineer in the field of building construction) or a registered landscape architect. At least six (6) years of such experience must be obtained while working under the direct supervision of a licensed architect. A person is qualified for the examination once they have met the experience requirement and started the AXP.(—)~~

**PENDING TEXT 100.01.b.**

~~b. Satisfactory Experience In Lieu Of Education. The eight (8) years must consist of Eight (8) years consisting of at least four six (46) years of experience under the direct supervision of a licensed landscape architect, with the remainder being directly related to landscape architecture and the remaining two (2) years may be under the direct supervision of a licensed engineer who practices in the field of building construction as approved by the board. (—)~~

~~251.—299.(Reserved)~~

300. Application:

~~01. Licensure by Examination. (—)~~

~~a. Application for licensure by examination is made on the uniform application form adopted by the Board. (—)~~

~~b. Applicants must furnish all information required by the uniform application form and will include the following: (—)~~

~~i. If applying based upon an accredited degree: Furnish certification of graduation and a certified transcript of all subjects and grades received for all college courses taken. (—)~~

~~ii. If applying based upon experience in lieu of an accredited degree: Furnish statement or statements, of all actual architectural or other applicable experience signed by the person under whose supervision the work was performed, giving kind and type of work done, together with dates of employment. (—)~~

~~e. Application will not be reviewed by the Board until all required information is furnished and the required fee is paid. (—)~~

~~d. Applications received less than seven (7) days prior to a Board meeting may be held over to the next meeting. (—)~~

~~02. Licensure by Endorsement — Blue Cover. General requirements: Application includes a current blue cover dossier compiled by the NCARB certifying that the applicant has satisfactorily passed the standard NCARB examinations, or NCARB authorized equivalent and includes letters, transcripts, and other documents substantiating all statements relative to education and experience made in said application as required by the Board. (—)~~

~~03. Licensure by Endorsement — Equivalency. (—)~~

~~a. Applicants for licensure by endorsement must submit a complete application, verified under oath, to the Board at its official address. The application must be on the forms approved by the Board and submitted together with the appropriate fee(s) and supporting documentation including but not limited to: (—)~~

~~b. Proof of holding a current and valid license issued by another state, a licensing authority recognized by the Board. (—)~~

~~e. Proof of satisfactorily passing the NCARB examinations or NCARB authorized equivalent examination, as determined by the Board. (—)~~

301.—349. (Reserved)

350. Registration Examination:

The Board, having found that the content and methodology of the ARE prepared by NCARB is the most practicable and effective examination to test an applicant's qualifications for registration, adopts the ARE as the single, written and/or electronic examination for registration of architects in this state, and further adopts the following rules with respect thereto: (—)

~~01. When Taken. The Board will cause the ARE, prepared by NCARB, to be administered to all applicants eligible, in accordance with the requirements of the Board, by their training and education to be examined for registration on dates scheduled by the NCARB. The Board will cause repeat divisions of the ARE to be administered to qualified candidates on such dates as are scheduled by the NCARB. The ARE examination is a multiple part examination prepared by NCARB. Content of the examination in all of its sections is available from the Board or NCARB. (—)~~

~~02. Grading. The ARE is graded in accordance with the methods and procedures recommended by the NCARB. Grades from the individual division are not averaged. Applicants will have unlimited opportunities to retake division which they fail except as set forth in these rules. The Board accepts passing grades of computer administered divisions of the ARE as satisfying the requirements for said division(s) when such examinations are administered as prescribed by the NCARB.(—)~~

~~03. Passing (ARE). To pass the ARE, an applicant must achieve a passing grade on each division. Subject to certain conditions, a passing grade for any division of the ARE is valid for five (5) years, after which time the division must be retaken unless all divisions have been passed. The Board may allow a reasonable extension of such period in circumstances where completion of all divisions is prevented by a medical condition, active duty in military service, or other like causes. Approval to take the ARE will terminate unless the applicant has passed or failed a division of the ARE within a period of five (5) years. Any applicant whose approval has so terminated must reapply for approval to take the ARE.(—)~~

~~351.—374.(Reserved)~~

~~375. Architectural Intern.~~

~~An individual may represent themselves as an architectural intern only under the following conditions:(—)~~

~~200.02 Architectural Intern. Only individuals who fall within the Section 54-303(2), Idaho Code, definition of "architectural intern" may represent themselves as an architectural intern.~~

~~01. Supervision. Each architectural intern is employed by and work under the direct supervision of an Idaho licensed architect.(—)~~

~~02. AXP Enrollment. Each architectural intern must be enrolled in NCARB's AXP and maintain a record in good standing.(—)~~

~~03. Record. Each architectural intern possesses either:(—)~~

~~a. A record with the NCARB establishing that AXP training has been started; or(—)~~

~~b. A record establishing completion of all AXP training regulations as specified by NCARB.(—)~~

~~04. Prohibitions. An architectural intern may not sign or seal any architectural plan, specification, or other document. An architectural intern may only engage in the practice of architecture under the direct supervision of an Idaho licensed architect.(—)~~

~~376.—399.(Reserved)~~

~~400. Firm Name.~~

## ~~200. PRACTICE STANDARDS. (—)~~

~~01. Architectural Intern. Only individuals who fall within the Section 54-303(2), Idaho Code, definition of "architectural intern" may represent themselves as an "architectural intern".(—)~~

~~0201. Architecture Firm Names. Firm names incorporating the use of names of unlicensed individuals are considered in violation of Section 54-315, Idaho Code. AThe firm name may only incorporate the names of individuals who are licensed architects, with the exception that a firm may continue to utilize the name of a retired or deceased formerly licensed architect so long as their if the unlicensed status is clearly disclosed.( )~~

~~401.—409.(RESERVED)~~

~~410. USE OF AN ARCHITECT'S SEAL.~~

~~An architect's seal may be placed on all technical submissions prepared personally by the architect or prepared under~~

~~the architect's responsible control or as otherwise allowed under the provisions of Section 54-304, Idaho Code. Nothing in this rule limits an architect's responsibility to the owner for the work of other licensed professionals to the extent established by contract between the owner and architect.(—)~~

~~411.—449.(RESERVED)~~

~~450.— CONTINUING EDUCATION:~~

~~In order to protect the public health and safety and promote the public welfare, the Board has adopted the following rules for continuing education.(—)~~

~~**100.01.c.** Continuing Education. **Requirement.** Each Idaho Beginning the second year of licensure, to renew, a licensed architect must successfully complete, during the prior licensure period, and retain proof of completion, a minimum of twelve (12) hours of approved continuing education in germane to architectural the health, safety, and welfare in the practice of architecture. Approved courses are those offered by providers approved by NCARB, the National Architectural Accreditation Board (NAAB), or the American Institute of Architects (AIA). A licensee may submit a request for Board approval of other courses. calendar year prior to license renewal.( )~~

**PENDING TEXT 100.01.c.**

**c.** Continuing Education. Beginning the second year of licensure, to renew, a licensed architect must complete, during the prior licensure period, and retain proof of completion of twelve (12) hours of approved continuing education germane to the ~~health, safety, and welfare in the~~ practice of architecture as it relates to the health, safety, and welfare of the general public. Approved courses are those offered by providers approved by NCARB, the National Architectural Accreditation Board (NAAB), or the American Institute of Architects (AIA). A licensee may submit a request for Board approval of other courses.(—)

~~**a.** Each licensee will submit to the Board their annual renewal application form and required fees, and will certify that they have complied with annual CE requirements for the previous calendar year. Each licensee will provide to the Board together with their application for reinstatement of an expired license form and required fees, proof of compliance with annual CE requirements for each year that their license was expired. A license that has been canceled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code.(—)~~

~~**b.** A licensee is considered to have satisfied their CE requirements for the first renewal of their initial license. Licensees who have failed to meet the annual continuing education requirement may petition the Board for additional time to complete their continuing education requirements.(—)~~

~~**e.i.** A licensee may carryover a maximum of six (6) hours of continuing education to meet the next year's continuing education requirement.(—)~~

~~**d.** One (1) continuing education hour is equal to one (1) learning unit, as determined by the American Institute of Architects, or one (1) clock hour of education, as determined by the Board.(—)~~

~~**02.— Architectural Health, Safety and Welfare Requirement.** To qualify for continuing education, a course must involve architectural health, safety and welfare, which generally relates to the structural integrity or unimpairedness of a building or building sites and be germane to the practice of architecture. Courses may include the following subject areas:(—)~~

~~**a.** Legal, which includes laws, codes, zoning, regulations, standards, life safety, accessibility, ethics, insurance to protect owners and public.(—)~~

~~**b.** Building systems, which includes structural, mechanical, electrical, plumbing, communications, security, and fire protection.(—)~~

~~**e.** Environmental, which includes energy efficiency, sustainability, natural resources, natural hazards,~~



~~hazardous materials, weatherproofing, and insulation.(—)~~

- ~~d. Occupant comfort, which includes air quality, lighting, acoustics, ergonomics.(—)~~
- ~~e. Materials and methods, which includes construction systems, products, finishes, furnishings, and equipment.(—)~~
- ~~f. Preservation, which includes historical, reuse, and adaptation.(—)~~
- ~~g. Pre-Design, which includes land use analysis, programming, site selection, site and soils analysis, and surveying.(—)~~
- ~~h. Design, which includes urban planning, master planning, building design, site design, interiors, safety and security measures.(—)~~
- ~~i. Construction documents, which includes drawings, specifications, and delivery methods.(—)~~
- ~~j. Construction contract administration, which includes contracts, bidding, contract negotiations.(—)~~

~~**03. Approved Credit.** Continuing education courses must be presented by:(—)~~

- ~~a. Providers approved by the National Architectural Accreditation Board (NAAB) schools of architecture; or (—)~~
- ~~b. Providers approved by the National Council of Architectural Registration Board (NCARB); or (—)~~
- ~~e. Providers approved by the American Institute of Architects (AIA); or(—)~~
- ~~d. Providers as otherwise approved by the Board. All requests for approval or pre-approval of continuing education credits must be made to the Board in writing and must be accompanied by a statement that includes the name of the instructor or instructors, his or her qualifications, the date, time and location of the course, the specific agenda for the course, the number of continuing education hours requested, and a statement of how the course is believed to be in the nature of architectural health, safety and welfare.(—)~~

~~**04. Verification of Attendance.** It shall be necessary for each licensee to maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any and all hours attended by the licensee. This verification shall be maintained by the licensee for a period of five (5) years and provided to the Board upon request of the Board or its agent.(—)~~

~~**05. Failure to Fulfill the Continuing Education Requirements.** The license will not be renewed for those licensees who fail to certify or otherwise provide acceptable documentation of meeting the CE requirements. Licensees who make a false attestation regarding compliance with the CE requirements shall be subject to disciplinary action by the Board.(—)~~

~~**06. Exemptions.** A licensed architect shall be deemed to have complied with the CE requirements if the licensee attests in the required affidavit that for not less than ten (10) months of the preceding one (1) year period of licensure, the architect has met one (1) of the following criteria:(—)~~

- ~~a. Meets the military exemption set forth in Section 67-2602A, Idaho Code.(—)~~
- ~~b. Is a government employee working as an architect and assigned to duty outside the United States.(—)~~
- ~~e. Special Exemption. The Board shall have authority to make exceptions for reasons of individual~~

~~hardship, including health (certified by a medical doctor) or other good cause. The architect must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board.(—)~~

~~451.—749.(RESERVED)~~

~~750.— CODE OF ETHICS.~~

~~01.— Rules of Conduct. The NCARB Rules of Conduct are hereby adopted as the Code of Ethics for all Idaho licensed architects.(—)~~

~~751.—999.(RESERVED)~~

[Agency redlined courtesy copy]

*Italicized text indicates changes between the text of the proposed rule as adopted in the pending rule.*

## **24.07.01 – RULES OF THE IDAHO STATE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS**

### **000. LEGAL AUTHORITY.**

These rules are promulgated pursuant to Section 54-3003, 67-2614, 67-9406, and 67-9409, Idaho Code.( )

### **001. SCOPE.**

These rules govern the practice of landscape architecture in Idaho.( )

### ~~002.— INCORPORATION BY REFERENCE.~~

~~THE DOCUMENT TITLED THE COUNCIL OF LANDSCAPE ARCHITECTURAL REGISTRATION BOARDS (CLARB) MODEL RULES OF PROFESSIONAL CONDUCT AS AMENDED FEBRUARY 2007, REFERENCED IN SUBSECTION 425, IS HEREIN INCORPORATED BY REFERENCE.(—)~~

~~003.—100.(RESERVED)~~

### **401. 100.02. Landscape Architect Requirements.**

#### **Aa. Approved Education.**

~~An approved college or school of landscape architecture shall have A landscape architecture program accredited by the Landscape Architectural Accreditation Board. (LAAB), or shall substantially meet the accrediting standards of the LAAB as may be determined by the Board.( )~~

### ~~102.— B. PRACTICAL SATISFACTORY~~

#### **Bb. Satisfactory Experience In Lieu Of Education.**

~~An applicant shall document at least The eight (8) years must consist of at least four (4) years of experience under the supervision of a licensed landscape architect, with the remainder being directly related to landscape architecture. of actual practical experience in landscape architecture in lieu of graduation from an approved college or school of landscape architecture. Such experience shall establish the applicant's education in those subjects and areas contained in the curriculum of an approved college or school of landscape architecture. No less than fifty percent (50%) of such practical experience shall be under the supervision of a licensed landscape architect.( )~~

### **PENDING TEXT 100.02.a. and b.**

a. Approved Education. A landscape architecture program accredited by the Landscape Architectural

Accreditation Board (LAAB).( )

b. Satisfactory Experience in Lieu of Education. ~~The eight (8) years must consist of~~ Eight (8) years consisting of at least four (4) years of experience under the supervision of a licensed landscape architect, with the remainder being directly related to landscape architecture. ( )

~~103.—199.(RESERVED)~~

~~200. APPLICATION.~~

~~EACH APPLICANT FOR LICENSURE SHALL SUBMIT A COMPLETE APPLICATION TOGETHER WITH THE REQUIRED FEES TO THE BOARD. AN APPLICATION SHALL BE MADE ON THE UNIFORM APPLICATION FORM ADOPTED BY THE BOARD AND FURNISHED TO THE APPLICANT BY THE DIVISION. AN APPLICATION SHALL NOT BE REVIEWED BY THE BOARD UNTIL ALL REQUIRED INFORMATION IS FURNISHED AND THE REQUIRED FEES PAID.( )~~

~~201. APPLICATION FORM.~~

~~01. Materials Submitted to Board.~~ All required applications, statements, fees and other documentation must be submitted to the Board in care of the Division of Occupational and Professional Licenses, and shall include: ( )

~~a.~~ Either certification of graduation from an approved college or school of landscape architecture; or ( )

~~b.~~ Documentation of all actual landscape architectural or other applicable experience signed by the person under whose supervision the work was performed, giving kind and type of work done, together with dates of employment; and ( )

~~c.~~ Proof of successful passage of an examination approved by the Board.( )

~~202.—249.(RESERVED)~~

~~250. LANDSCAPE ARCHITECT IN TRAINING.~~

~~An individual may represent themselves as a landscape architect in training only under the following conditions:~~ ( )

~~01. Qualifications.~~ Any person who is at least eighteen (18) years of age and has graduated from an approved college or school of landscape architecture, or who documents at least eight (8) years of actual practical experience in landscape architecture approved by the Board.( )

~~02. Supervision.~~ Each landscape architect in training shall be employed by and work under the direct supervision of an Idaho licensed landscape architect. Any change in supervision shall require a new application and registration. ( )

~~03. Prohibitions.~~ A landscape architect in training shall not sign or seal any plan, specification, or other document, and shall not engage in the practice of landscape architecture except under the direct supervision of an Idaho licensed landscape architect.( )

~~04. Registration.~~ Each landscape architect in training shall register with the Board on forms provided by the Division of Occupational and Professional Licenses that shall include the application fee and the names and addresses of their employer, and supervisor.( )

~~05. Termination.~~ A registration for a landscape architect in training shall not exceed a total of six (6) years. ( )

~~251.—299.(RESERVED)~~

~~300. EXAMINATIONS.~~

~~100.02.Cc.Required Examination. Passage of the Landscape Architect Registration Examination administered by the Council of Landscape Architects Registration Boards (CLARB). The examination prepared by the Council of Landscape Architectural Registration Boards is an approved examination. The Board may approve other examinations it deems appropriate.(—)~~

~~01. Minimum Passing Score. The minimum passing score for each section of the examination shall be the score as determined by the examination provider.(—)~~

~~02. Failing a Section of Exam. An applicant failing any section of the examination will be required to retake only that section failed.(—)~~

~~301. (Reserved)~~

~~302. Endorsement.~~

~~The Board may approve the registration and licensure of an applicant who holds a current license in another state and who has successfully passed the Landscape Architect Registration Examination as required by Section 300 or holds a current Council of Landscape Architectural Registration Boards certificate.(—)~~

~~303.—399.(Reserved)~~

**400. FEES.**

Fees are not refundable.

**02. Landscape Architects.**

<b>FEETYPE</b>	<b>AMOUNT (Not to Exceed)</b>
Application	\$75
Landscape Architect in-training Application	\$25
Examination	As established by CLARB
Original License and Annual Renewal	\$125 annually
Reinstatement	\$ 35 As provided in Section 67-2614, Idaho Code

(—)

~~401.—424.(RESERVED)~~

~~425. RULES OF PROFESSIONAL RESPONSIBILITY.~~

~~01. Rules of Professional Responsibility. The CLARB model rules of professional conduct, as incorporated, are the Rules of Professional Responsibility for all Idaho licensed landscape architects.(—)~~

~~02. Violation of the Rules of Professional Responsibility. The Board will take action against a licensee under Section 54-3004(5), Idaho Code, who is found in violation of the Rules of Professional Responsibility.(—)~~

~~426.—449.(RESERVED)~~

~~450.~~ **DISCIPLINE.**

~~01.~~ **Civil Fine.** The Board may impose a civil fine not to exceed one thousand dollars (\$1,000) upon a licensed landscape architect for each violation of Section 54-3004, Idaho Code. (—)

~~02.~~ **Costs and Fees.** The Board may order a licensed landscape architect to pay the costs and fees incurred by the Board in the investigation or prosecution of the licensee for violation of Section 54-3004, Idaho Code. (—)

~~451. — 999.~~ **(RESERVED)**

## IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

### 24.07.01 – RULES OF THE IDAHO STATE BOARD OF LANDSCAPE ARCHITECTS

#### DOCKET NO. 24-0701-2301 (ZBR CHAPTER REPEAL)

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective July 1, 2024, after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-2604, Idaho Code, and Sections 54-3003, 54-3003, 67-2614, 67-9406, and 67-9409, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This chapter of administrative rules is being repealed due to consolidation within the administrative rules chapter for the Board of Architectural Examiners, IDAPA 24.01.01. The result will be a combined rule chapter for the Board of Landscape Architects and the Board of Architectural Examiners under companion ZBR docket 24-0101-2301.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 6, 2023, Idaho Administrative Bulletin, [Vol. 23-9, pages 321 and 322](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

Does not apply to this rulemaking.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Katie Stuart Bureau Chief- Administration, (208)-577-2489.

DATED this 6th day of December, 2023.

Katie Stuart  
Bureau Chief- Administration  
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**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-2604, Idaho Code, and Sections 54-3003, 54-3003, 67-2614, 67-9406, and 67-9409, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This chapter of administrative rules is being repealed due to consolidation within the administrative rules chapter for the Board of Architectural Examiners, IDAPA 24.02.01. The result will be a combined rule chapter for the Board of Landscape Architects and the Board of Architectural Examiners.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

The fees for applications, licenses, and reinstatement as designated in Rule 400 of IDAPA 24.02.01 are authorized in Section 54-3003, Idaho Code. None of these fees are being changed as a result of this rulemaking or since being previously reviewed by the Idaho legislature.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

This rulemaking is not anticipated to have any negative fiscal impact on the State General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The (Second) Omnibus Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023, Idaho Administrative Bulletin, [Vol. 23-6, p. 73](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Katie Stuart, Bureau Chief, at 577-2489. Materials pertaining to the proposed rulemaking, including any available preliminary rule drafts, can be found on the following DOPL website: <https://dopl.idaho.gov/rulemaking/>.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 4th day of August, 2023.

**IDAPA 24.07.01 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

### 24.18.01 – RULES OF THE REAL ESTATE APPRAISER BOARD

#### DOCKET NO. 24-1801-2301 (ZBR CHAPTER REWRITE, FEE RULE)

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo, Incorporation By Reference Synopsis \(IBRS\), & Cost/Benefit Analysis \(CBA\)](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. This rulemaking action is authorized pursuant to Section 67-2604, Idaho Code, and Sections 54-4106, 67-2614, 67-9406, and 67-9409, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The proposed rule chapter adopted the practical application of real estate appraising (PAREA) for the experience requirement of various licensure types. The pending rule(s) adds additional clarifying language regarding the application of PAREA in response to comments received during the negotiated rulemaking process.

- Rule 100.06.b.ii. Clarifies PAREA experience requirement for Licensed Residential Real Estate Appraisers.
- Rule 100.07.e.ii., and iii. Clarifies PAREA experience requirement for State Certified Residential Real Estate Appraiser.
- Rule 100.08.a.i. Removes redundant language regarding classroom hour requirements.
- Rule 100.08.c.ii. Clarifies PAREA experience requirement for State Certified General Real Estate Appraiser.
- Rule 100.09.a.vi. Changes the total number of continuing education credits allowable for attending a state regulatory board meeting from two (2) to seven (7) because comments received from stakeholders indicated that two (2) hours is more restrictive than other jurisdictions and that seven (7) hours total was the standard number.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 4, 2023, Edition of the Idaho Administrative Bulletin, [Vol. 29-10, pages 520-543](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

The fees for applications, licenses, certificates, and reinstatement as designated in Rule 400 of these pending rules are authorized in Section 54-4106, Idaho Code. None of these fees are being changed as a result of this rulemaking or since being previously reviewed by the Idaho legislature.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rulemaking is not anticipated to have any impact on the State General Fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Katie Stuart Bureau Chief- Administration, (208)-577-2489.



DATED this 6th day of December, 2023.

Katie Stuart  
Bureau Chief- Administration  
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Boise, ID 83714  
Phone: (208) 577-2489  
Email: [katie.stuart@dopl.idaho.gov](mailto:katie.stuart@dopl.idaho.gov)

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This rulemaking action is authorized pursuant to Section 67-2604, Idaho Code, and Sections 54-4106, 67-2614, 67-9406, and 67-9409, Idaho Code.

**PUBLIC HEARING SCHEDULE:** The public hearing concerning this rulemaking will be held as follows:

**Friday, October 20, 2023, 9:00 a.m. MT**

**Division of Occupational and Professional Licenses  
Chinden Campus Building 4  
11341 W. Chinden Blvd., Bldg. #4  
Boise, ID 83714**

**Telephone and web conferencing information will be posted on:  
<https://dopl.idaho.gov/calendar/> and <https://townhall.idaho.gov/>**

The hearing site will be accessible to persons with disabilities, if needed. Requests for accommodation must be made not later than five (5) days prior to the meeting to the agency address below.

**DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Under [Executive Order 2020-01, Zero-Based Regulation](#), the Real Estate Appraisers Board is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. In conjunction with stakeholders, the proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter and to use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and Executive Order 2020-01.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

The fees for applications, licenses, and reinstatement as designated in Rule 400 of these proposed rules are authorized in Section 54-4106, Idaho Code. None of these fees are being changed as a result of this rulemaking or since being previously reviewed by the Idaho legislature.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

This rulemaking is not anticipated to have any negative fiscal impact on the State General Fund

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted under Docket No. 24-ZBRR-2301. The (Second) Omnibus Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023 Idaho Administrative Bulletin, Vol. 23-6, p. 74.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: The current and updated document titled “Uniform Standards of Professional Appraisal Practice (USPAP),” 2024 Edition, excluding standards 7, 8, 9, and 10, published by the Appraisal Foundation and effective January 1, 2024.

The materials cited are incorporated by reference because they would be unduly cumbersome, expensive, or otherwise inexpedient to republish all or in part. The materials cited are codes, standards, or rules adopted by a nationally recognized organization or association.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this proposed rule, contact Katie Stuart, Bureau Chief, at (208) 577-2489. Materials pertaining to the proposed rulemaking, including any available preliminary rule drafts, can be found on the following DOPL website: <https://dopl.idaho.gov/rulemaking/>.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2023.

DATED this 1st day of September, 2023.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 24-1801-2301**

**24.18.01 – RULES OF THE REAL ESTATE APPRAISER BOARD**

**000. LEGAL AUTHORITY.**

These rules are adopted under Sections 54-4106, 67-2604, 67-2614, 67-9409, and 67-9406 Idaho Code. ( )

**001. SCOPE.**

These rules govern the practice of real estate appraisal in Idaho. ( )

**002. (RESERVED)**

**003. INCORPORATION BY REFERENCE.**

The current and updated document titled “Uniform Standards of Professional Appraisal Practice (USPAP),” 2024 Edition, excluding standards 7, 8, 9, and 10, published by the Appraisal Foundation and effective January 1, 2024, is herein adopted and incorporated by reference and is available on the Appraisal Foundation website: <https://www.appraisalfoundation.org/>. ( )

**004. DEFINITIONS.**

**01. Accredited.** Accredited by the Commission on Colleges, a regional or national accreditation

association, or by an accrediting agency that is recognized by the U.S. Secretary of Education. ( )

**02. Appraiser Qualifications Board.** Appraiser Qualifications Board (AQB) of the Appraisal Foundation establishes the qualifications criteria for licensing, certification and recertification of appraisers. ( )

**03. Appraisal Standards Board.** The Appraisal Standards Board of the Appraisal Foundation develops, publishes, interprets and amends the Uniform Standards of Professional Appraisal Practice (USPAP) on behalf of appraisers and users of appraisal services. ( )

**04. Classroom Hour.** A classroom hour is defined as sixty (60) minutes with at least fifty (50) minutes of instruction. ( )

**05. Field Real Estate Appraisal Experience.** Personal inspections of real property, assembly and analysis of relevant facts, and by the use of reason and the exercise of judgment, formation of objective opinions as to the market or other value of such properties or interests therein and preparation of written appraisal reports or other memoranda showing data, reasoning, and conclusion. Professional responsibility for the valuation function is essential. ( )

**06. Practical Applications of Real Estate Appraisal (PAREA).** An AQB-approved training programs which provide another pathway for applicants to fulfill their experience requirements through practical experience in a virtual environment combining appraisal theory and methodology in real-world simulations. This experience can be provided through a wide range of online and virtual reality technologies. ( )

**07. Real Estate.** In addition to the previous definition in Section 54-4104(12), Idaho Code, will also mean an identified parcel or tract of land, including improvements, if any. ( )

**08. Real Property.** In addition to the previous definition in Section 54-4104(12), Idaho Code, will also mean one or more defined interests, benefits, or rights inherent in the ownership of real estate. ( )

**09. Residential Unit.** Real estate with a current highest and best use of a residential nature. A residential unit includes a kitchen and a bathroom. ( )

**005. -- 099. (RESERVED)**

**100. LICENSURE.**

All applicants for licensure must comply with the following requirements: ( )

**01. Education.** Classroom hours will be credited only for the Required Core Curriculum as outlined by the AQB. ( )

**a.** Credit toward the classroom hour requirement may only be granted where: ( )

**i.** The length of the educational offering is at least fifteen (15) hours, and the individual successfully completes a closed-book examination, or; ( )

**ii.** A Trainee Appraiser successfully completes a course which meets the AQB content requirements of the Valuation Bias and Fair Housing Laws and Regulations Outline. ( )

**iii.** Distance education courses intended for use as qualifying education must include a written, proctored closed-book final examination - proctored by an official approved by the college or university or by the sponsoring organization. Biometric proctoring is acceptable. The testing must be in compliance with the examination requirements of this section. ( )

**b.** Credit for the classroom hour requirement may be obtained: from Colleges or Universities; Community or Junior Colleges, the Appraisal Foundation or its boards; State or Federal Agencies or commissions; or other providers approved by the Board. ( )

**c.** Only those courses completed preceding the date of application will be accepted for meeting educational requirements. ( )

**d.** Course credits that are obtained from the course provider by challenge examination without attending the course will not be accepted. ( )

**e.** Credit toward education requirements may be obtained through completion of a degree in Real Estate from an accredited degree-granting college or university approved by the Association to Advance Collegiate Schools of Business, or a regional or national accreditation agency recognized by the US Secretary of Education whose curriculum has been reviewed and approved by the AQB. ( )

**f.** Applicants with a college degree from a foreign country may have their education evaluated for equivalency by one (1) of the following: ( )

i. An accredited, degree-granting domestic college or university; ( )

ii. The American Association of Collegiate Registrars and Admissions Officers (AACRAO); ( )

iii. A foreign degree credential evaluation services company that is a member of the National Association of Credential Evaluation Services (NACES); or ( )

iv. A foreign degree credential evaluation service company that provides equivalency evaluation. ( )

**02. Experience.** ( )

**a.** The work product claimed must be in conformity with USPAP. All appraisal experience must be obtained as a registered trainee, licensed or certified appraiser, or participant in an AQB approved PAREA program. For Registered Trainees, only experience gained during the five (5) years immediately preceding application will be considered. Each applicant must verify completion of the required experience on a Board approved form. An appraisal log that contains the following must be submitted: ( )

i. Type of property; ( )

ii. Address of the property; ( )

iii. Report date; ( )

iv. Description of work performed by the trainee/applicant and scope of the review and supervision of the Supervisory Appraiser; ( )

v. Number of work hours by the trainee/applicant on the assignment; ( )

vi. Signature and certification number of the Supervisory Appraiser. ( )

**b.** Ad valorem tax appraisers must demonstrate the use of techniques to value properties similar to those used by appraisers and effectively use the process as defined in Subsection 004.05, Field Real Estate Appraisal Experience. ( )

**c.** PAREA programs approved by the AQB may serve as an alternative pathway to the experience requirements, subject to the following rules: ( )

i. Applicants may not receive partial credit for PAREA training; ( )

ii. Applicants may not receive a certificate of completion until all required components of PAREA training have been successfully completed and approved by a program mentor; ( )

iii. Certificates of completion must be signed by an individual from the training entity qualified to verify an applicant's successful completion and; ( )

iv. Certificates of completion must not contain an expiration date or other constraints that either limit or restrict the applicant's ability to receive appropriate credit. ( )

**03. Examination.** A passing grade on an examination approved by the Board pursuant to the guidelines of the AQB. ( )

**04. Registered Real Estate Appraiser Trainee.** ( )

a. Qualifications. An applicant must have completed seventy-five (75) hours of qualifying education as specified in the Required Core Curriculum within the last five (5) years, consisting of not less than thirty (30) hours of Basic Appraisal Principles, including: fifteen (15) hour National USPAP course or AQB approved equivalent. ( )

b. Appraisers holding a Licensed Residential Real Property Appraiser credential satisfy the educational requirements for the Trainee Appraiser credential. ( )

i. Each trainee applicant shall pass the end of course examinations in each of the prerequisite courses in order to earn credit. ( )

ii. Prior to registration as an Appraiser Trainee, each applicant must complete a trainee appraiser course that complies with the requirements established by the AQB. ( )

iii. An Appraiser Trainee shall not be involved in the appraisal of any property that exceeds the scope of practice of the Supervisory Appraiser, and is subject to USPAP. ( )

iv. Each Appraiser Trainee is permitted to have more than one (1) Supervisory Appraiser. An appraisal log shall be maintained jointly. ( )

c. Prior to the second and subsequent renewals, an appraiser trainee shall be required to obtain the equivalent of twenty-eight (28) classroom hours of instruction in approved courses or seminars. Once every twenty-four (24) months, registered appraiser trainees will be required to attend an approved seven-hour USPAP Continuing Education Course or the equivalent. The course must cover the most recent USPAP edition. ( )

i. If the licensee completes two (2) or more courses having substantially the same content during any one (1) continuing education cycle, the licensee only will receive continuing education credit for one (1) of the courses. ( )

ii. Continuing education credit may be granted for participation in appraisal educational processes and programs, including: teaching, program development, authorship of textbooks, or similar activities that are determined to be equivalent to obtaining continuing education, up to one-half (1/2) of total credits for renewal period. ( )

d. An individual may only be registered as an appraiser trainee for a maximum period of five (5) years, unless approved by the Board. ( )

**05. Supervisory Appraiser.** ( )

a. Qualifications. Hold a license in good standing with no disciplinary history in any jurisdiction that affected the Supervisory Appraiser's eligibility to engage in appraisal practice for at least three (3) years immediately prior to providing supervision; and; ( )

i. Completion of a course that complies with requirements established by the AQB focused on the responsibilities of a Supervisory Appraiser. ( )

- ii. Not supervise more than three (3) Appraiser Trainees at one time; ( )
  - iii. Be responsible for the training and direct supervision of the Appraiser Trainee; and ( )
  - iv. Accept responsibility for all Trainee Appraiser appraisal reports by signing and certifying that the report is in compliance with USPAP; and ( )
  - v. Review and sign all appraiser trainee appraisal report(s); and ( )
  - vi. Personally inspect each appraised property with the appraiser trainee until the Supervisory Appraiser determines the Appraiser Trainee is competent in accordance with the Competency Rule of USPAP for the property type. ( )
- b.** An accurate, current and complete appraisal experience log shall be maintained by the Supervisory Appraiser and the Appraiser Trainee. ( )
- c.** A Supervisory Appraiser may not continue to supervise if: ( )
- i. The appraiser ceases to meet supervisor requirements; or has ( )
  - ii. Discipline that affects the Supervisory Appraiser's ability to engage in appraisal practice. ( )

**06. Licensed Residential Real Estate Appraiser.** Applies to the appraisal of residential real property consisting of one (1) to four (4) non-complex residential units having a transaction value less than one million dollars (\$1,000,000) and complex one (1) to four (4) residential units having a transaction value less than four hundred thousand dollars (\$400,000). Requirements: ( )

- a.** Education. An applicant may either complete one hundred and fifty (150) qualified class hours as specified in the Required Core Curriculum, including the 15-Hour National USPAP course or, register as an Appraiser Trainee and complete seventy-five (75) classroom hours in: Residential Market Analysis and Highest and Best Use –fifteen (15) hours; Residential Appraiser Site Valuation and Cost Approach –fifteen (15) hours; Residential Sales Comparison and Income Approaches –thirty (30) hours; and Residential Report Writing and Case Studies –fifteen (15) hours. ( )
- b.** Experience. Either: ( )
- i. One thousand (1,000) hours of experience in no less than six (6) months; or ( )
  - ii. Successful completion of a Licensed Residential or Certified Residential PAREA program in accordance with Subsections 100.02.a. and c. of this rule. ( )
- c.** Examination. Successful completion of the AQB-approved Licensed Residential or the successful completion of the Certified Residential or Certified General examination. ( )

**07. State Certified Residential Real Estate Appraiser.** Applies to the appraisal of residential properties of four (4) or less units without regard to value or complexity. Requirements: ( )

- a.** Education. ( )
- i. Bachelor's degree in any field of study from an accredited degree-granting college or university, or meet one of the following options: ( )
  - ii. Associate's degree in a field of study related to business administration, accounting, finance, economics or real estate; or ( )
  - iii. Completion of thirty (30) semester hours of college-level courses that cover each of the following specific topic areas and hours: English composition (three (3) semester hours), microeconomics (three (3) semester

hours), macroeconomics (three (3) semester hours), finance (three (3) semester hours), algebra, geometry or higher mathematics (three (3) semester hours), statistics (three (3) semester hours), computer science (three (3) semester hours), business or real estate law (three (3) semester hours), and two (2) elective courses in any of the topics listed above or in accounting, geography, agricultural economics, business management, or real estate (three (3) semester hours each); or ( )

iv. Completion of at least thirty (30) semester hours of College Level Examination Program® (CLEP®) examinations from each of the following subject matter areas: college algebra (three (3) semester hours), college composition (six (6) semester hours), college composition modular (three (3) semester hours), college mathematics (six (6) semester hours), principles of macroeconomics (three (3) semester hours), principles of microeconomics (three (3) semester hours), introductory business law (three (3) semester hours), and information systems (three (3) semester hours), or ( )

v. Any combination of the above. ( )

b. As an alternative to the requirements above, individuals who have held a Licensed Residential credential for a minimum of five (5) years may qualify if they do not have a record of any disciplinary action affecting their legal eligibility to engage in appraisal practice within the five (5) years immediately preceding the date of application. ( )

c. Registration as an Appraiser Trainee and completion of the education required for licensure as a Licensed Residential Real Estate Appraiser, or hold a current license as a Licensed Residential Real Estate Appraiser; and; ( )

d. Document the successful completion of not less than fifty (50) classroom hours of courses in subjects related to real estate appraisal as follows: ( )

i. Statistics, Modeling and Finance: not less than fifteen (15) hours; ( )

ii. Advanced Residential Applications and Case Studies: not less than fifteen (15) hours; and ( )

iii. Appraisal Subject Matter Electives: not less than twenty (20) hours. ( )

e. Experience. Either: ( )

i. One thousand five hundred (1,500) hours of appraisal experience in no less than twelve (12) months, with at least one thousand two hundred (1,200) hours of the experience from residential field appraisal experience; or ( )

ii. Successful completion of a Certified Residential PAREA program in accordance with Subsections 100.02.a. and c. of this rule; or ( )

iii. Successful completion of a Licensed Residential PAREA program in accordance with Subsections 100.02.a. and c. of this rule and an additional five hundred (500) hours of appraisal experience. ( )

f. Examination. Successful completion of the Certified Residential Appraiser examination approved by the Board pursuant to the guidelines of the AQB. ( )

**08. State Certified General Real Estate Appraiser.** Applicants must meet the following: ( )

a. Education ( )

i. Bachelor's degree or higher from an accredited degree-granting college or university; and ( )

ii. Document registration as an Appraiser Trainee and successful completion of not less than two hundred twenty-five (225) classroom hours of courses in: ( )

- iii. Statistics, Modeling and Finance: not less than fifteen (15) hours, specifically including Statistics; Valuation Models (AVM's and Mass Appraisal), and Real Estate Finance; ( )
- iv. General Appraiser Market Analysis and Highest and Best Use: not less than thirty (30) hours; ( )
- v. General Appraiser Sales Comparison Approach: not less than thirty (30) hours, including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; ( )
- vi. General Appraiser Site Valuation and Cost Approach: not less than thirty (30) hours; ( )
- vii. General Appraiser Income Approach: not less than sixty (60) hours, specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; ( )
- viii. General Appraiser Report Writing and Case Studies: not less than thirty (30) hours, specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and ( )
- ix. Appraisal Subject Matter Electives: not less than thirty (30) hours; or ( )
- b. Completion of not less than one hundred fifty (150) classroom hours of courses in: ( )
  - i. Statistics, Modeling and Finance: not less than fifteen (15) hours, specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and ( )
  - ii. General Appraiser Market Analysis and Highest and Best Use: not less than fifteen (15) hours; and ( )
  - iii. General Appraiser Sales Comparison Approach: not less than fifteen (15) hours, specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and ( )
  - iv. General Appraiser Site Valuation and Cost Approach: not less than fifteen (15) hours; and ( )
  - v. General Appraiser Income Approach: not less than forty-five (45) hours, specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and ( )
  - vi. General Appraiser Report Writing and Case Studies: not less than fifteen (15) hours, specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and ( )
  - vii. Appraisal Subject Matter Electives: not less than thirty (30) hours, or completion of one hundred five (105) classroom hours of courses in: General Appraiser Market Analysis and Highest and Best Use: not less than fifteen (15) hours; and General Appraiser Sales Comparison Approach: not less than fifteen (15) hours, including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and General Appraiser Site Valuation and Cost Approach: not less than fifteen (15) hours; and General Appraiser Income Approach: not less than forty-five (45) hours, including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and General Appraiser Report Writing and Case Studies: not less than fifteen (15) hours, including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies. ( )



- c. Experience. Either: ( )
- i. Three thousand (3,000) hours of appraisal experience in no less than eighteen (18) months. One thousand five hundred (1,500) hours of the experience must be non-residential appraisal experience. The balance of one thousand five hundred (1,500) hours may be solely residential experience or can include up to five hundred (500) hours of non-field experience; or ( )
  - ii. Successful completion of a Certified Residential PAREA program in accordance with Subsections 100.02.a. and c. of this rule and an additional two thousand (2,000) hours of non-residential appraisal experience. ( )
- d. Examination. Successful completion of the Certified General Appraiser examination approved by the Board pursuant to the guidelines of the AQB. ( )
- 09. Continuing Education.** All certified/licensed appraisers must comply with the following requirements: ( )
- a. Twenty-eight (28) classroom hours of instruction in courses or seminars during the twenty-four (24) months prior to renewal. If the licensee completes two (2) or more courses having substantially the same content during anyone (1) continuing education cycle, the licensee only will receive continuing education credit for one (1) of the courses. ( )
    - i. If the educational offering is taken in a virtual classroom, the course must include successful completion of prescribed course mechanisms required to demonstrate knowledge of the subject matter. ( )
    - ii. Credit toward the classroom hour requirement may be granted only where the length of the educational offering is at least two (2) hours. ( )
    - iii. Credit for the classroom hour requirement may be obtained by accredited courses which have been approved by the AQB and by courses approved by Real Estate Appraiser Boards of states with reciprocity with Idaho. All other courses must have approval of the Board. Courses shall be approved for a period of four (4) years. ( )
    - iv. Every twenty-four (24) months, Idaho State Certified/Licensed Real Estate Appraisers and registered trainees will be required to attend an approved seven (7) hour USPAP Continuing Education course covering the most recent edition, or the AQB approved equivalent. ( )
    - v. Continuing education credit may be granted for participation, other than as a student, in appraisal educational processes and programs. Continuing education shall not exceed one-half (1/2) of the total continuing education credits required for a renewal period. ( )
    - vi. Credit may be awarded for a single state appraisal regulatory meeting per continuing education cycle. The must be open to the public and must be a minimum of two (2) hours in length. The total credit cannot exceed seven (7) hours. ( )
    - vii. Continuing education will be granted for successful completion of a course which meets the AQB content requirements of the Valuation Bias and Fair Housing Laws and Regulations Outline. ( )
    - viii. For each year in which a license is inactive, fourteen (14) hours of continuing education must be completed prior to reinstatement. For a license inactive for less than two (2) years, the hours must include the most recent seven (7) hour USPAP Continuing Education course. For a license inactive more than two (2) years but less than five (5) years, the hours must include the most recent fifteen (15) hour National USPAP course. ( )
- 10. Temporary License.** An individual may receive a permit to temporarily practice on a per appraisal assignment basis for not more than six (6) months. The applicant must be listed on the National Registry, maintained by the Appraisal Subcommittee, as current and in good standing and comply with Section 54-4115(3), Idaho Code. ( )

101. -- 299. (RESERVED)

**300. DISCIPLINE.**

The Uniform Standards of Professional Practice, excluding standards 7, 8, 9, and 10, are hereby adopted as the rules of conduct and code of ethics for all Real Estate Appraisers. ( )

**01. Appraisals in Litigation.** Licensed or certified appraisers providing opinions of value shall comply with USPAP Standard 1 including maintaining a work file in support of the opinion of value in litigation. ( )

301. -- 399. (RESERVED)

**400. FEES.**

TYPE	AMOUNT	RENEWAL (PER YEAR)
Application	\$200	
License	\$100	\$275
AMC Registration	\$1,000	\$900
Application for Reciprocity	\$200	
Original license via Reciprocity	\$100	
Temporary Permit	\$75	
Trainee Registration	\$50	
Continuing Education Provider Application	\$100	

( )

401. -- 999. (RESERVED)

[Agency redlined courtesy copy]

*Italicized text indicates changes between the text of the proposed rule as adopted in the pending rule.*

**24.18.01 – RULES OF THE REAL ESTATE APPRAISER BOARD**

**000. LEGAL AUTHORITY.**

These rules are adopted under Section 54-4106, ~~67-2604, 67-2614, 67-9409, and 67-9406,~~ Idaho Code.( )

**001. SCOPE.**

These rules govern the practice of real estate appraisal in Idaho.( )

~~002. 003.(RESERVED)~~

**004~~3~~. INCORPORATION BY REFERENCE.**

The document titled “Uniform Standards of Professional Appraisal Practice (USPAP),” ~~2024~~ ~~2020-2021~~ Edition, excluding standards 7, 8, 9, and 10, published by the Appraisal Foundation and effective January 1, 2024~~0~~, is herein adopted and incorporated by reference and is available on the Appraisal Foundation Website: [https://](https://www.appraisalfoundation.com/)

[www.appraisalfoundation.org/](http://www.appraisalfoundation.org/), or review at the Board's office and may be purchased from the Appraisal Foundation, Distribution Center, P. O. Box 381, Annapolis Junction, MD 20701-0381.( )

~~005. — 009. (RESERVED)~~

**00410. DEFINITIONS.**

**01. Accredited.** Accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education.( )

~~02. **Advisory Committee.** A committee of state certified or licensed real estate appraisers appointed by the board to provide technical assistance relating to real estate appraisal standards and real estate appraiser experience, education and examination requirements that are appropriate for each classification of state certified or licensed real estate appraiser.( )~~

**023. Appraiser Qualifications Board.** Appraiser Qualifications Board (**AQB**) of the Appraisal Foundation establishes the qualifications criteria for licensing, certification and recertification of appraisers.( )

**034. Appraisal Standards Board.** The Appraisal Standards Board of the Appraisal Foundation develops, publishes, interprets and amends the Uniform Standards of Professional Appraisal Practice (USPAP) on behalf of appraisers and users of appraisal services.( )

**045. Classroom Hour.** Fifty (50) minutes out of each sixty (60) minute hour in a setting which may include a classroom, conference/seminar, on-line or a virtual classroom.( )

**056. Field Real Estate Appraisal Experience.** Personal inspections of real property, assembly and analysis of relevant facts, and by the use of reason and the exercise of judgment, formation of objective opinions as to the market or other value of such properties or interests therein and preparation of written appraisal reports or other memoranda showing data, reasoning, and conclusion. Professional responsibility for the valuation function is essential. ( )

**06. Practical Applications of Real Estate Appraisal (PAREA).** An AQB-approved training programs which provide another pathway for applicants to fulfill their experience requirements through practical experience in a virtual environment combining appraisal theory and methodology in real-world simulations. This experience can be provided through a wide range of online and virtual reality technologies.

~~07. **FIRREA.** Title XI, Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended, was designed to ensure that more reliable appraisals are rendered in connection with federally related transactions. ( )~~

**078. Real Estate.** In addition to the previous definition in Section 54-4104(12), Idaho Code, will also mean an identified parcel or tract of land, including improvements, if any.( )

**089. Real Property.** In addition to the previous definition in Section 54-4104(12), Idaho Code, will also mean one or more defined interests, benefits, or rights inherent in the ownership of real estate.( )

**09.10. Residential Unit.** Real estate with a current highest and best use of a residential nature. A residential unit includes a kitchen and a bathroom.( )

~~11. **Uniform Standards of Professional Appraisal Practice or USPAP.** Those uniform standards adopted by the Appraisal Foundation's Appraisal Standards Board. These standards may be altered, amended, interpreted, supplemented, or repealed by the Appraisal Standards Board (ASB) from time to time.( )~~

~~12. **USPAP Course.** For the purposes of licensure and license renewal, any reference to the approved USPAP course means the National USPAP Course provided by Appraisal Qualifications Board Certified USPAP Instructors and Educational Providers.( )~~

~~13. **Appraisal Management Company or AMC.** Appraisal Management Company or AMC means a natural person or organization that meets the definition in Section 54-4122, Idaho Code, and is registered under the Idaho Appraisal Management Company Registration and Regulation Act. (—)~~

~~011. — 149. (RESERVED)~~

~~400. 150. FEES.~~

~~Fees are non-refundable and established in accordance with Sections 54-4113, 54-4124, and 54-4134, Idaho Code, as follows:~~

<b>FEE-TYPE</b>	<b>AMOUNT (Not to Exceed)</b>	<b>RENEWAL (Per Year) Not to Exceed</b>
Application	\$200	
License	\$100*	\$275*
AMC Registration	\$1,000**	\$900**
Reinstatement	As provided in Section 67-2614, Idaho Code	
Application for Reciprocity	\$200	
Original license via Reciprocity	\$100*	
Temporary Permit	\$75	
Trainee Registration	\$50	
Continuing Education Provider Application	\$100	
Examination and Reexamination	As charged by the provider	

( )

~~01. **Fees Followed by One Asterisk (\*) Means.** Proposed fees for these categories marked with an asterisk (\*) include forty dollars (\$40) to be submitted by the state to the federal government. Title XI, Section 1109 of the FIRREA as amended requires each state to submit a roster listing of state licensed appraisers to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council “no less than annually.” The state is also required to collect from such individuals who perform appraisals in federally related transactions an annual registry fee of “not more than eighty five dollars (\$85),” such fees to be transmitted by the state to the federal government on an annual basis. This fee is subject to change by the Appraisal Subcommittee. (—)~~

~~02. **Fees Followed by Two Asterisks (\*\*)** Means. The fees for the categories marked with two (2) asterisks (\*\*) do not include additional fees assessed pursuant to Title XI, Section 1109 of the FIRREA, as amended, including, but not limited to, an AMC registry fee, such fees to be collected from AMCs by the state and transmitted to the federal government on an annual basis. (—)~~

~~151. — 199. (RESERVED)~~

~~200. **APPLICATION.**~~

~~01. **Appraiser License Application.** Any person desiring to apply for licensure must submit a completed application with required supporting documents and appropriate fees to the Division at its official address.~~

~~After the qualifications have been reviewed, verified and approved by the Board, the applicant will receive the pre-approved examination card and must submit the appropriate fees to the examining entity.(—)~~

~~**02. Eligibility for Examination.** The qualified applicant will be sent notification on how to register for the examination subsequent to the determination of eligibility based on documentation that the applicant has met the required education and experience requirements.(—)~~

~~**03. Trainee Registration Application.** Any person desiring registration as a trainee must submit a completed application with required supporting documents and appropriate fees to the Division at its official address.(—)~~

~~**04. AMC Registration Application.** Any person or organization desiring registration as an AMC must submit a completed application with required supporting documents and appropriate fees to the Division at its official address.(—)~~

~~**201.—249.(RESERVED)**~~

**250. REQUIREMENTS FOR LICENSURE.**

All applicants for licensure must comply with the following requirements: ~~in any real estate appraiser classification must comply with the following education, experience and examination requirements in addition to meeting those requirements set forth in Sections 275, 300, 350, and 400 below.(—)~~

**01. Education.** Classroom hours will be credited only for ~~courses with content that follows the~~ Required Core Curriculum as outlined by the AQB. Appraisal Qualification Board.( )

**a.** Credit toward the classroom hour requirement may only be granted where:

**i.** The length of the educational offering is at least fifteen (15) hours, and the individual successfully completes a closed-book examination; ~~or pertinent to the educational offering. In addition,~~

**ii.** A Trainee Appraiser successfully completes a course which meets the AQB content requirements of the Valuation Bias and Fair Housing Laws and Regulations Outline.

**iii.** Distance education courses intended for use as qualifying education must include a written, closed-book final examination - proctored by an official approved by the college or university or by the sponsoring organization. Biometric proctoring is acceptable. The term “written” as used herein refers to an exam that might be written on paper or administered electronically on a computer workstation or other device. Oral exams are not acceptable. ~~The testing must be in compliance with the examination requirements of this section.( )~~

**b.** Credit for the classroom hour requirement may be obtained from from Colleges or Universities; Community or Junior Colleges, the Appraisal Foundation or its boards; State or Federal Agencies or commissions; or other providers approved by the Board.~~the following:(—)~~

**i.** ~~Colleges or Universities.(—)~~

**ii.** ~~Community or Junior Colleges.(—)~~

**iii.** ~~Courses approved by the Appraisal Qualifications Board.(—)~~

**iv.** ~~State or Federal Agencies or Commissions.(—)~~

**v.** ~~Other providers approved by the Board.(—)~~

**c.** Only those courses completed preceding the date of application will be accepted for meeting educational requirements.( )

**d.** Course credits that are obtained from the course provider by challenge examination without

attending the course will not be accepted.( )

**e.** Credit toward education requirements may be obtained through completion of a degree in Real Estate from: an accredited degree-granting college or university approved by the Association to Advance Collegiate Schools of Business, or a regional or national accreditation agency recognized by the US Secretary of Education whose curriculum has been reviewed and approved by the AQB. ( )

~~i. An accredited degree-granting college or university that has been approved by the Association to Advance Collegiate Schools of Business; or( )~~

~~ii. A regional or national accreditation agency that is recognized by the U.S. Secretary of Education and whose curriculum has been reviewed and approved by the Appraiser Qualifications Board.( )~~

**f.** Applicants with a college degree from a foreign country may have their education evaluated for equivalency by one (1) of the following:( )

i. An accredited, degree-granting domestic college or university;( )

ii. The American Association of Collegiate Registrars and Admissions Officers (AACRAO);( )

iii. A foreign degree credential evaluation services company that is a member of the National Association of Credential Evaluation Services (NACES); or( )

~~iv. A foreign degree credential evaluation service company that provides equivalency evaluation, reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline.( )~~

**02. Experience.( )**

**a.** The work product claimed for experience credit must be in conformity with USPAP. All appraisal experience must be obtained as a registered trainee, licensed or certified appraiser, or participant in an AQB approved PAREA program. For Registered Trainees, only experience gained during the five (5) years immediately preceding application will be considered. Each applicant must verify completion of the required experience on a Board approved form. An appraisal log that contains the following must be submitted:( )

~~**b.** All appraisal experience must be obtained as a registered trainee or as a licensed appraiser. At least five hundred (500) hours in no less than three (3) months must be obtained in Idaho pursuant to these rules. The Board will only consider experience from other jurisdictions with substantially equal requirements.( )~~

~~**c.** Only experience gained during the five (5) years immediately preceding application will be considered for evaluation.( )~~

~~**d.** Acceptable non-field appraisal experience includes, but is not limited to the following: Fee and Staff appraisal analysis, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, review appraisal, real estate counseling, highest and best use analysis, and feasibility analysis/study.( )~~

~~**e.** Each applicant applying for licensure must verify completion of the required experience via affidavit, under oath subject to penalty of perjury, and notarized on a form provided by the Board.( )~~

~~i. The Board requires submission of a log that details hours claimed for experience credit. The log must include the following:( )~~

~~**i.**(1) Type of property;( )~~

~~**ii.**(2) Address of the property;( )~~

~~**iii.**(3) Report date;( )~~

~~iv. (4)~~ Description of work performed by the trainee/applicant and scope of the review and supervision of the Supervisory Appraiser;( )

~~v. (5)~~ Number of work hours by the trainee/applicant on the assignment;( )

~~(6)~~ Complexity;( )

~~(7)~~ Approaches to value;( )

~~(8)~~ Appraised value;( )

~~(9)~~ Scope of supervising appraiser's review; and( )

~~vi. (10)~~ Signature and license number of the supervising appraiser.( )

~~ii.~~ The Board reserves the right to contact an employer for confirmation of length and extent of experience claimed. This may require an employer to submit appraisal reports and/or an affidavit.( )

~~iii.~~ The Board may request submission of written reports or file memoranda that substantiate an applicant's claim for experience credit.( )

~~b. f.~~ Ad valorem tax appraisers must demonstrate the use of techniques to value properties similar to those used by appraisers and effectively use the process as defined in Subsection 010.056, Field Real Estate Appraisal Experience, in order to receive experience credit.( )

~~03. Examination.~~ Successful completion of an examination appropriate to the license classification being applied for and approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board. A passing grade on an examination approved by the Board pursuant to the guidelines of the AQB.( )

~~251. 274.(RESERVED)~~

~~275. REGISTERED TRAINEE REAL ESTATE APPRAISER.~~

~~041. Registered Real Estate Appraiser Trainee.~~

~~a. Qualifications.~~ Each applicant for registration as an appraiser trainee must meet the following requirements: An applicant must have completed seventy-five (75) hours of qualifying education as specified in the Required Core Curriculum within the last five (5) years, consisting of not less than thirty (30) hours of Basic Appraisal Principles, including: not less than thirty (30) hours of Basis Appraisal Principles; fifteen (15) hour National USPAP course or AQB approved equivalent.( )

~~a.~~ Education. Within the five year period preceding application, all applicants for registration as a trainee must document completion of at least seventy five (75) classroom hours of courses in subjects related to real estate appraisal as follows:( )

~~i.~~ Basic Appraisal Principles—not less than thirty (30) hours specifically including Real Property Concepts and Characteristics, Legal Considerations, Influences on Real Estate Values, Types of Value, Economic Principles, Overview of Real Estate Markets and Analysis, and Ethics and How They Apply in Appraisal Theory and Practice; and ( )

~~ii.~~ Basic Appraisal Procedures—not less than thirty (30) hours specifically including Overview of Approaches to Value, Valuation Procedures, Property Description, and Residential Applications; and( )

~~iii.~~ National USPAP Course—not less than fifteen (15) hours:( )

~~b.~~ Appraisers holding a Licensed Residential Real Property Appraiser credential satisfy the

**educational requirements for the Trainee Appraiser credential. ( )**

Experience. All applicants for registration as a trainee must retain and identify at least one (1) qualified supervisor as required by law and rule. ( )

**i.e.** Examination. Each trainee applicant shall pass the end of course document successful passage of examinations in each of the prerequisite courses in order to earn credit. required for registration as a trainee. ( )

**ii.d.** Prior to registration as an appraiser trainee, each applicant trainee applicant must complete a trainee appraiser course that complies with the content requirements established by the AQB. Appraisal Qualifications Board. This course is in addition to the education requirements set forth in Section 275. ( )

**iii. 02. Scope and Practice.** An Appraiser Trainee shall not be involved in the appraisal of any property that exceeds the lawful scope of practice of the Ssupervisorying A appraiser, and is subject to USPAP. The appraiser trainee shall be subject to USPAP. ( )

**iv.a.** Each appraiser trainee is permitted to have more than one (1) Ssupervisory Appraiser. An appraisal log shall be maintained jointly. ing appraiser provided a supervising appraiser is not registered to more than three (3) trainees at any one (1) time. ( )

**b.** An appraisal log shall be maintained for each supervising appraiser by the appraiser trainee and shall include no less than the requirements outlined in Subsection 250.02.e.i. for each appraisal. ( )

**e.** An appraiser trainee shall be entitled to obtain copies of all appraisal reports prepared by the trainee. ( )

**c. 03. Continuing Education.** Prior to the second and subsequent renewals an appraiser trainee shall be required to obtain he equivalent of twenty-eight (28) classroom hours of instruction in approved courses or seminars.. Once every twenty-four (24) months, registered appraiser trainees will be required to attend an approved seven-hour USPAP Continuing Education Course or the equivalent. The course must cover the most recent USPAP edition. renewal and for each continuing education cycle thereafter as provided in Section 275 of this rule, an appraiser trainee shall be required to obtain: ( )

**a.** The equivalent of thirty (30) classroom hours of instruction in approved courses or seminars during the twenty four (24) month period preceding the renewal. Once every twenty four (24) months, registered appraiser trainees will be required to attend an approved seven-hour USPAP update course or the equivalent. The course must cover the most recent USPAP edition. ( )

**b.** All continuing education shall be in compliance with Subsections 401.01 through 401.05.

**i.** If the licensee completes two (2) or more courses having substantially the same content during any one (1) continuing education cycle, the licensee only will receive continuing education credit for one (1) of the courses. ( )

**ii.e.** Continuing education credit may be granted for participation in appraisal educational processes and programs, including: teaching, program development, authorship of textbooks, or similar activities that are determined to be equivalent to obtaining continuing education, up to one-half (1/2) of total credits for renewal period.

also be granted for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities that are determined to be equivalent to obtaining continuing education. Credit for educational processes and programs continuing education shall not exceed one half (1/2) of the total continuing education credits required for a renewal period. ( )

**d.** The purpose of continuing education is to ensure that the appraiser trainee participates in a program that maintains and increases skill, knowledge and competence in real estate appraising. ( )

**04. Renewal and Reinstatement.** An appraiser trainee shall renew their registration annually as set forth in Section 67-2614, Idaho Code, and may reinstate after expiration as provided in Section 67-2614, Idaho Code.



~~Beginning July 1, 2017, an individual may only be registered as an appraiser trainee for a maximum period of five (5) years, unless approved by the Board for good cause.~~

~~**d.** An individual may only be registered as an appraiser trainee for a maximum period of five (5) years, unless approved by the Board. ( )~~

**276. REGISTERED TRAINEE SUPERVISORS.**

~~**054. Supervisory Appraiser. Registered Trainee Supervisor Requirements.** ( )~~

~~**a.** **Qualifications.** Hold a license in good standing with no disciplinary history in any jurisdiction that affected the Supervisory Appraiser's eligibility to engage in appraisal practice for at least three (3) years immediately prior to providing supervision; and;  
A supervising appraiser shall: ( )~~

~~**i.** Hold a current Idaho license as a Certified Residential Appraiser or as a Certified General Appraiser when supervising a trainee registered in Idaho. ( )~~

~~**ii.** Have held a current and unrestricted license as a Certified Residential Appraiser or a Certified General Appraiser for at least three (3) years prior to providing supervision; and; ( )~~

~~**iii.** Submit evidence of **C**ompletion of a **course that complies with requirements established by the AOB focused on the responsibilities of a Supervisory Appraiser.** ~~n~~ approved four-hour (4) continuing education course regarding the role of a supervising appraiser. ( )~~

~~**iv.** Not have been disciplined by the Board or any other state or jurisdiction within the previous four (4) years; and ( )~~

~~**ii. v.** Not supervise more than three (3) **A**ppraiser **T**rainees at one time; and ( )~~

~~**iii. vi.** Be responsible for the training and direct supervision of the **A**ppraiser **T**rainee; and ( )~~

~~**iv. vii.** Accept responsibility for all appraiser trainee appraisal reports by signing and certifying that the report is in compliance with USPAP; and ( )~~

~~**v. viii.** Review and sign all **A**ppraiser **T**rainee appraisal report(s); and ( )~~

~~**vi. ix.** Personally inspect each appraised property with the **A**ppraiser **t**rainee until the supervising appraiser determines the appraiser trainee is competent in accordance with the Competency Provision of USPAP for the property type. ( )~~

~~**b.** An accurate, current and complete appraisal experience log shall be maintained jointly by the **S**upervising **A**ppraiser and the **A**ppraiser **t**rainee as outlined in Subsection 250.02.e.i. ( )~~

~~**c.** A **S**upervising **A**ppraiser may not continue to supervise if: ( )~~

~~**i.** The appraiser ceases to meet supervisor requirements; or **has** ( )~~

~~**ii.** ~~The appraiser is disciplined, unless the board grants a waiver and a waiver may be subject to conditions set by the board.~~ **Discipline that affects the Supervisory Appraiser's ability to engage in appraisal practice.** ( )~~

~~**277. 299. (RESERVED)**~~

~~**300. LICENSED RESIDENTIAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA.**~~

~~The state licensed residential real estate appraiser classification applies to the appraisal of residential real property consisting of one (1) to four (4) non-complex residential units having a transaction value less than one million dollars~~

~~(\$1,000,000) and complex one (1) to four (4) residential units having a transaction value less than two hundred fifty thousand dollars (\$250,000). Applicants must meet the following education, experience and examination requirements in addition to complying with Section 250. Subsequent to being licensed, every licensee must annually meet the continuing education requirement.(—)~~

**06. Licensed Residential Real Estate Appraiser.** ~~Applies to the appraisal of residential real property consisting of one (1) to four (4) non-complex residential units having a transaction value less than one million dollars (\$1,000,000) and complex one (1) to four (4) residential units having a transaction value less than four hundred thousand dollars (\$400,000). Requirements:~~

~~**a01. Education.** An applicant may either complete one hundred and fifty (150) qualified class hours as specified in the Required Core Curriculum, including the 15-Hour National USPAP course or, register as an Appraiser Trainee and complete seventy-five (75) classroom hours in: Residential Market Analysis and Highest and Best Use –fifteen (15) hours; Residential Appraiser Site Valuation and Cost Approach –fifteen (15) hours; Residential Sales Comparison and Income Approaches –thirty (30) hours; and Residential Report Writing and Case Studies –fifteen (15) hours.(—)~~

~~As a prerequisite to taking the examination for licensure as an Idaho Licensed Residential Real Estate Appraiser, each applicant shall:(—)~~

- ~~**a.** Document registration as an Appraiser Trainee; and(—)~~
- ~~**b.** Document the successful completion of not less than seventy five (75) classroom hours of courses in subjects related to real estate appraisal as follows:(—)~~
  - ~~**i.** Residential Market Analysis and Highest and Best Use —not less than fifteen (15) hours; and (—)~~
  - ~~**ii.** Residential Appraiser Site Valuation and Cost Approach —not less than fifteen (15) hours; and (—)~~
  - ~~**iii.** Residential Sales Comparison and Income Approaches —not less than thirty (30) hours specifically including: Valuation Principles and Procedures —Sales Comparison Approach; Valuation Principles and Procedures —Income Approach; Finance and Cash Equivalency; Financial Calculator Introduction; Identification, Derivation and Measurement of Adjustments; Gross Rent Multipliers; Partial Interests; Reconciliation; and Case Studies; and(—)~~
  - ~~**iv.** Residential Report Writing and Case Studies —not less than fifteen (15) hours specifically including: Writing and Reasoning Skills; Common Writing Problems; Form Reports; Report Options and USPAP Compliance; Case Studies.(—)~~

~~**02. Experience.** One thousand (1,000) hours of experience in no less than six (6) months. Prerequisite to sit for the examination:(—)~~

~~**a.** Document one thousand (1,000) hours of supervised appraisal experience as a registered Appraiser Trainee in no less than six (6) months. Experience documentation in the form of reports or file memoranda should be available to support the claim for experience.(—)~~

~~**b.** Of the required one thousand (1,000) hours, the applicant must accumulate a minimum of seven hundred fifty (750) hours from field real estate appraisal experience. The balance of two hundred fifty (250) hours may include non field experience, refer to Subsection 250.02.d.(—)~~

**PENDING TEXT 100.06.b. through 100.06.b.ii.**

- ~~**b.** Experience. *Either:* (—)~~
- ~~**i.** One thousand (1,000) hours of experience in no less than six (6) months: *or* (—)~~

*ii. Successful completion of a Licensed Residential or Certified Residential PAREA program in accordance with Subsections 100.02.a. and c. of these rules.( )*

**03. Examination.** Successful completion of the AQB-approved Licensed Residential Appraiser examination the successful completion of the Certified Residential or Certified General examination approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board.( )

~~301. 349.(RESERVED)~~

~~**350. CERTIFIED RESIDENTIAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA.**~~

~~The~~

~~**06. State Certified Residential Real Estate Appraiser.** classification A applies to the appraisal of residential properties of four (4) or less units without regard to transaction value or complexity. Applicants must meet the following education, experience and examination requirements in addition to complying with Section 250. Subsequent to being certified every licensee must annually meet the continuing education requirement.( )~~

~~**a.01. Education.** As a prerequisite to taking the examination for licensure as an Idaho Certified Residential Real Estate Appraiser, each applicant shall:( )~~

~~**ia.** Hold a Bachelor's degree in any field of study from an accredited degree-granting college or university, or meet one of the following options:( )~~

~~**ii.** Possession of an Associate's degree in a field of study related to business administration, accounting, finance, economics or real estate; or( )~~

~~**iii.** Successful Completion of thirty (30) semester hours of college-level courses that cover each of the following specific topic areas and hours: English composition (three (3) semester hours), microeconomics (three (3) semester hours), macroeconomics (three (3) semester hours), finance (three (3) semester hours), algebra, geometry or higher mathematics (three (3) semester hours), statistics (three (3) semester hours), computer science (three (3) semester hours), business or real estate law (three (3) semester hours), and two (2) elective courses in any of the topics listed above or in accounting, geography, agricultural economics, business management, or real estate (three (3) semester hours each); or( )~~

~~**iv. iii.** Successful Completion of at least thirty (30) semester hours of College Level Examination Program® (CLEP®) examinations from each of the following subject matter areas: college algebra (three (3) semester hours), college composition (six (6) semester hours), college composition modular (three (3) semester hours), college mathematics (six (6) semester hours), principles of macroeconomics (three (3) semester hours), principles of microeconomics (three (3) semester hours), introductory business law (three (3) semester hours), and information systems (three (3) semester hours), or( )~~

~~**iv.** Any combination of the above criteria (within Subsections 350.01.a.ii. and 350.01.a.iii. of these rules) that ensures coverage of all topics and hours identified in Subsection 350.01.a.ii.( )~~

~~**b.** As an alternative to the requirements in Subsection 350.01.a., above, individuals who have held a Licensed Residential credential for a minimum of five (5) years may qualify if they do not have a record of any disciplinary action affecting their legal eligibility to engage in appraisal practice within the five (5) years immediately preceding the date of application. as meeting the requirements of Subsection 350.01.a., if it is established that there is no record of any adverse, final, and non-appealable disciplinary action affecting the Licensed Residential appraiser's legal eligibility to engage in appraisal practice within the five (5) years immediately preceding the date of application for a Certified Residential license.( )~~

~~**c.** Document rRegistration as an Appraiser Trainee and completion of the education required for licensure as a Licensed Residential Real Estate Appraiser, or hold a current license as a Licensed Residential Real~~

Estate Appraiser; and( )

**d.** Document the successful completion of not less than fifty (50) classroom hours ~~of courses~~ in subjects related to real estate appraisal as follows:( )

i. Statistics, Modeling and Finance: not less than fifteen (15) hours, ~~specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and~~( )

ii. Advanced Residential Applications and Case Studies: not less than fifteen (15) hours, ~~specifically including Complex Property, Ownership and Market Conditions; Deriving and Supporting Adjustments; Residential Market Analysis; and Advanced Case Studies; and~~( )

iii. Appraisal Subject Matter Electives: not less than twenty (20) hours, ~~and may include hours over the minimum shown in Subsection 350.01.d. of these rules.~~( )

~~02.~~ **Experience.** One thousand five hundred (1,500) hours of appraisal experience in no less than twelve (12) months, with at least one thousand two hundred (1,200) hours of the experience from residential field appraisal experience. Experience is a prerequisite to sit for the licensure examination:(~~—~~)

~~a.~~ Document one thousand five hundred (1,500) hours of appraisal experience in no less than twelve (12) months (see Subsection 250.02). Experience documentation in the form of reports or file memoranda should be available to support the claim for experience.(~~—~~)

~~b.~~ One thousand two hundred (1,200) hours of the experience shall be from residential field appraisal experience. The balance of three hundred (300) hours may include non-field experience, refer to Subsection 250.02.d. ( )

**PENDING TEXT 100.07.e. through 100.07.e.iii.**

**e.** Experience. Either: ( )

i. One thousand five hundred (1,500) hours of appraisal experience in no less than twelve (12) months, with at least one thousand two hundred (1,200) hours of the experience from residential field appraisal experience: or ( )

ii. Successful completion of a Certified Residential PAREA program in accordance with Subsections 100.02.a. and c. of these rules; or( )

iii. Successful completion of a Licensed Residential PAREA program in accordance with Subsections 100.02.a. and c. of these rules and an additional five hundred (500) hours of appraisal experience.( )

**fe.** **Examination.** Successful completion of the Certified Residential Appraiser examination approved by the Board pursuant to the guidelines of the ~~AQB. Appraisal Qualifications Board.~~( )

~~351. — 399. (RESERVED)~~

~~400. **CERTIFIED GENERAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA.**~~

~~The State Certified General Real Estate Appraiser classification applies to the appraisal of all types of real property. Applicants must meet the following examination, education, and experience requirements in addition to complying with Section 250. Subsequent to being certified, an individual must meet the continuing education requirement.~~

~~( )~~

**074. State Certified General Real Estate Appraiser. Applicants must meet the following:**

~~a. Education. As a prerequisite to taking the examination for licensure as an Idaho Certified General Real Estate Appraiser, each applicant shall:( )~~

~~ia. Hold a Bachelor's degree or higher from an accredited degree-granting college or university and document two hundred twenty-five (225) in ; and( )~~

**PENDING TEXT 100.08.a.i.**

i. Bachelor's degree or higher from an accredited degree-granting college or university; and ~~document two hundred and twenty-five (225) classroom hours or( )~~

~~ii.b.~~ Document registration as an Appraiser Trainee and document the successful completion of not less than two hundred twenty-five (225) classroom hours of courses in subjects related to real estate appraisal as follows:  
( )

~~iii. i.~~ Statistics, Modeling and Finance: not less than fifteen (15) hours, specifically including Statistics; Valuation Models (AVM's and Mass Appraisal), and Real Estate Finance;( )

~~iv. ii.~~ General Appraiser Market Analysis and Highest and Best Use: not less than thirty (30) hours;  
( )

~~v. iii.~~ General Appraiser Sales Comparison Approach: not less than thirty (30) hours, specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies;  
( )

~~vi. iv.~~ General Appraiser Site Valuation and Cost Approach: not less than thirty (30) hours;( )

~~vii. v.~~ General Appraiser Income Approach: not less than sixty (60) hours, specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies;( )

~~viii. vi.~~ General Appraiser Report Writing and Case Studies: not less than thirty (30) hours, specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and( )

~~ix. vii.~~ Appraisal Subject Matter Electives: not less than thirty (30) hours, ~~and may include hours over the minimum shown in Subsection 400.01.b. of these rules;~~ or( )

~~b.e.~~ ~~Document licensure as a Licensed Residential Real Estate Appraiser and the successful~~ Completion of not less than one hundred fifty (150) classroom hours of courses in subjects related to real estate appraisal as follows:( )

i. Statistics, Modeling and Finance: not less than fifteen (15) hours, specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and( )

ii. General Appraiser Market Analysis and Highest and Best Use: not less than fifteen (15) hours; and  
( )

iii. General Appraiser Sales Comparison Approach: not less than fifteen (15) hours, specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and  
( )

iv. General Appraiser Site Valuation and Cost Approach: not less than fifteen (15) hours; and( )

v. General Appraiser Income Approach: not less than forty-five (45) hours, specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and ( )

vi. General Appraiser Report Writing and Case Studies: not less than fifteen (15) hours, specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and ( )

vii. Appraisal Subject Matter Electives: not less than thirty (30) hours, or completion of one hundred five (105) classroom hours of courses in: General Appraiser Market Analysis and Highest and Best Use: not less than fifteen (15) hours; and General Appraiser Sales Comparison Approach: not less than fifteen (15) hours, including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and General Appraiser Site Valuation and Cost Approach: not less than fifteen (15) hours; and General Appraiser Income Approach: not less than forty-five (45) hours, including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and General Appraiser Report Writing and Case Studies: not less than fifteen (15) hours, including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and may include hours over the minimum shown in Subsection 400.01.c.; or( )

~~d. Document licensure as a Certified Residential Real Estate Appraiser and the successful completion of not less than one hundred five (105) classroom hours of courses in subjects related to real estate appraisal as follows: ( )~~

~~i. General Appraiser Market Analysis and Highest and Best Use: not less than fifteen (15) hours; and ( )~~

~~ii. General Appraiser Sales Comparison Approach: not less than fifteen (15) hours, specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and ( )~~

~~iii. General Appraiser Site Valuation and Cost Approach: not less than fifteen (15) hours; and ( )~~

~~iv. General Appraiser Income Approach: not less than forty five (45) hours, specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and ( )~~

~~v. General Appraiser Report Writing and Case Studies: not less than fifteen (15) hours, specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies. ( )~~

**c 02. Experience.** Three thousand (3,000) hours of appraisal experience in no less than eighteen (18) months. One thousand five hundred (1,500) hours of the experience must be non-residential appraisal experience. The balance of one thousand five hundred (1,500) hours may be solely residential experience or can include up to five hundred (500) hours of non-field experience.. ~~xperience is a prerequisite to sit for the licensure examination:( )~~

~~a. Document three thousand (3,000) hours of appraisal experience in no less than eighteen (18) months (See Subsection 250.02). Experience documentation in the form of reports or file memoranda should be available to support the claim for experience.( )~~

~~b. One thousand five hundred (1,500) hours of the experience must be non-residential appraisal experience. The balance of one thousand five hundred (1,500) hours may be solely residential experience or can include up to five hundred (500) hours of non-field experience as outlined in Subsection 250.02.d.(—)~~

**PENDING TEXT 100.08.c. through 100.08.c.ii.**

c. Experience. *Either:* ( )

*i.* Three thousand (3,000) hours of appraisal experience in no less than eighteen (18) months. One thousand five hundred (1,500) hours of the experience must be non-residential appraisal experience. The balance of one thousand five hundred (1,500) hours may be solely residential experience or can include up to five hundred (500) hours of non-field experience. *or* ( )

*ii.* Successful completion of a Certified Residential PAREA program in accordance with Subsections 100.02.a. and c. of these rules and an additional two thousand (2,000) hours of non-residential appraisal experience. ( )

*de.* **Examination.** Successful completion of the Certified General Appraiser examination approved by the Board pursuant to the guidelines of the AQB. Appraisal Qualifications Board. ( )

~~401. CONTINUING EDUCATION.~~

~~All certified/licensed appraisers must comply with the following continuing education requirements:(—)~~

~~08. Continuing Education.~~

~~1. Purpose of Continuing Education. The purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases his skill, knowledge and competency in real estate appraising.( )~~

~~a.02. Hours Required. The equivalent of thirty (30) Twenty-eight (28) classroom hours of instruction in courses or seminars during the twenty-four (24) months prior to renewal is required. If the licensee completes two (2) or more courses having substantially the same content during any one (1) continuing education cycle, the licensee only will receive continuing education credit for one (1) of the courses.( )~~

~~ia.~~ If the educational offering is taken on-line or in a virtual classroom, the course must include successful completion of prescribed course mechanisms required to demonstrate knowledge of the subject matter. ( )

~~ii.b.~~ Credit toward the classroom hour requirement may be granted only where the length of the educational offering is at least two (2) hours.( )

~~iiie.~~ Credit for the classroom hour requirement may be obtained by accredited courses which have been approved by the AQB and by courses approved by Real Estate Appraiser Boards of states with reciprocity with Idaho. All other courses must have approval of the Board. Courses shall be approved for a period of four (4) years. Appraisal Qualifications Board and by courses approved by Real Estate Appraiser Boards of states with reciprocity with Idaho. All other courses must have approval of the Board, which shall require the continuing education provider to submit the educational course approval application and application fee as set forth in these rules along with the documentation including the instructors and their qualifications, course content, length of course, and its location. Courses shall be approved for a period of four (4) years.( )

~~ivd.~~ Once eEvery twenty-four (24) months, Idaho State Certified/Licensed Real Estate Appraisers and registered trainees will be required to attend an approved seven (7) hour USPAP Continuing Education course covering the most recent edition, or the AQB approved equivalent. ~~update course or the equivalent. The course must cover the most recent USPAP edition.~~( )

~~y03. Credit for Appraisal Educational Processes and Programs.~~ Continuing education credit may also be granted for participation, other than as a student, in appraisal educational processes and programs. ~~Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities which are determined to be equivalent to obtaining continuing education. Credit for educational processes and programs.~~ Continuing education shall not exceed one-half (1/2) of the total continuing education credits required for a renewal period.( )

~~vi. Credit may be awarded for a single state appraisal regulatory meeting per continuing education cycle. The must be open to the public and must be a minimum of two (2) hours in length. The total credit cannot exceed two (2) hours.( )~~

**PENDING TEXT 100.09.a.vi.**

vi. Credit may be awarded for a single state appraisal regulatory meeting per continuing education cycle. The must be open to the public and must be a minimum of two (2) hours in length. The total credit cannot exceed ~~two~~ seven (27) hours.( )

~~vii. Continuing education will be granted for successful completion of a course which meets the AQB content requirements of the Valuation Bias and Fair Housing Laws and Regulations Outline.~~

~~viii. For each year in which a license is inactive, fourteen (14) hours of continuing education must be completed prior to reinstatement. For a license inactive for less than two (2) years, the hours must include the most recent seven (7) hour USPAP Continuing Education course. For a license inactive more than two (2) years but less than five (5) years, the hours must include the most recent fifteen (15) hour National USPAP course.~~

~~09. Temporary License. An individual may receive a permit to temporarily practice on a per appraisal assignment basis for not more than six (6) months. The applicant must be listed on the National Registry, maintained by the Appraisal Subcommittee, as current and in good standing and comply with Section 54-4115(3), Idaho Code.( )~~

~~04. Credit for Attending the Licensure Board Meetings. Continuing education credit may be granted for a maximum of two (2) hours each continuing education cycle for time spent attending one (1) Board meeting. Members of the board shall not be entitled to continuing education credit for board service.( )~~

~~05. Requirement When a Certificate/License Is Canceled. For each year (less than five (5)) in which a license is lapsed, canceled, or otherwise non-renewed, fifteen (15) hours of continuing education must be documented, including a seven (7) hour USPAP update course, prior to reinstatement. The course must cover the most recent USPAP edition.( )~~

~~402. 449.(RESERVED)~~

~~450. RECIPROCITY. Applicant must comply with Section 54-4115, Idaho Code, and Submit current notarized statement verifying certification/licensure in good standing in another state( )~~

~~451. 499.(RESERVED)~~

**500. TEMPORARY PRACTICE.**

~~01. Requirements for Issuance. A permit to temporarily practice may be issued to individuals coming to Idaho who are certified/licensed in another state and are either transferring to Idaho or have a temporary assignment in Idaho.( )~~

~~02. Proof of Current Certification or Licensure. The applicant must be listed on the National Registry, maintained by the Appraisal Subcommittee, as current and in good standing and comply with Section 54-~~



4115(3), Idaho Code, regarding irrevocable consent.(—)

~~03. Assignments and Length of Time Permit Will Be Issued.~~ Permit to temporarily practice will be issued on a per appraisal assignment basis for a period not to exceed six (6) months. A temporary permit may be extended one (1) time only.(—)

~~501.—524.(RESERVED)~~

**300.525. DISCIPLINE.**

The Board may impose a civil fine not to exceed one thousand dollars (\$1,000) upon a licensed or certified real estate appraiser for each violation of Section 54 4107(1), Idaho Code.(—)

The Uniform Standards of Professional Practice, excluding standards 7, 8, 9, and 10, are hereby adopted as the rules of conduct and code of ethics for all Real Estate Appraisers. (—)

01. Appraisals in Litigation. Licensed or certified appraisers providing opinions of value shall comply with USPAP Standard 1 including maintaining a work file in support of the opinion of value in litigation.

~~526.—539.(RESERVED)~~

**540. APPRAISALS IN LITIGATION.**

Licensed or certified appraisers providing opinions of value in litigation shall comply with USPAP Standard 1 including maintaining a work file in support of the opinion of value in litigation.(—)

~~541.—699.(RESERVED)~~

**700. UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE/CODE OF ETHICS.**

The Uniform Standards of Professional Practice, excluding standards 7, 8, 9, and 10, as published by the Appraisal Foundation and referenced in Section 004, are hereby adopted as the rules of conduct and code of ethics for all Real Estate Appraisers licensed under Title 54, Chapter 41, Idaho Code, and these rules.(—)

~~701.—999.(RESERVED)~~

**400. FEES**

<u>TYPE</u>	<u>AMOUNT</u>	<u>RENEWAL (PER YEAR)</u>
<u>APPLICATION</u>	<u>\$200</u>	
<u>LICENSE</u>	<u>\$100</u>	<u>\$275</u>
<u>AMC REGISTRATION</u>	<u>\$1,000</u>	<u>\$900</u>
<u>APPLICATION FOR RECIPROCITY</u>	<u>\$200</u>	
<u>ORIGINAL LICENSE VIA RECIPROCITY</u>	<u>\$100</u>	
<u>TEMPORARY PERMIT</u>	<u>\$75</u>	
<u>TRAINEE REGISTRATION</u>	<u>\$50</u>	
<u>CONTINUING EDUCATION PROVIDER APPLICATION</u>	<u>\$100</u>	

( )

## IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

### 24.28.01 – RULES OF THE BARBER AND COSMETOLOGY SERVICES LICENSING BOARD

#### DOCKET NO. 24-2801-2301 (ZBR CHAPTER REWRITE, FEE RULE)

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective, July 1, 2024, after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-5807, 54-5810, 54-5815, and 54-5818, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted under [Executive Order 2020-01, Zero Based Regulation](#). Text amended since these rules were published as proposed are as follows:

- Rules 100.02.e.i. through vi. are being reintroduced after being inadvertently omitted in the proposed rules;
- Rule 100.03 is adding the words “or otherwise approved by the board” to ensure flexibility with emerging technologies;
- Rule 125 is being reintroduced after staff realized deletion of its predecessor (prior rule 326.05) would create additional financial burden;
- Rule 150.01.c.ii. is being deleted as it is an unnecessary barrier to licensure;
- Rule 150.01.c.iii. is removing the word “haircutter” as it is a vestigial word from an old practice act;
- Rule 150.01.c.iv. is changed to be a more objective standard, but with the same underlying intent;
- Rule 150.02.c. is removing the first sentence which is duplicative of other rules; and
- Rule 150.02.e. is removing subsections i and ii as they are arbitrary barriers to licensure.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the April 5, 2023, Idaho Administrative Bulletin, [Vol. 23-8, pages 295-326](#).

**FEE SUMMARY:** The following is a description of the fee or charge imposed or increased in this rulemaking as authorized in Sections 54-5801 et. seq., and 67-2614, Idaho Code. Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature.

The fees for applications, licenses, registrations and reinstatement as designated in Rule 400 of these pending rules are authorized in Sections 54-5801 et. seq., and 67-2614, Idaho Code. None of these fees are being changed as a result of this rulemaking or since being previously reviewed by the Idaho Legislature.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rulemaking is not anticipated to have any negative fiscal impact on the State General Fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Katie Stuart at 208-577-2489.

DATED this 1st day of November, 2023.

Katie Stuart  
Bureau Chief  
11341 W. Chinden Blvd., Bldg. #4  
Boise, ID 83714  
Phone: (208) 577-2489  
Email: [katie.stuart@dopl.idaho.gov](mailto:katie.stuart@dopl.idaho.gov)

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-2604, Idaho Code and Sections 54-5807, 54-5811, 54-5818, and 54-5822, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

<p><b>Tuesday, August 15, 2023 – 9:00 a.m. (MT)</b></p> <p><b>Division of Occupational and Professional Licenses</b> <b>Chinden Campus Building 4</b> <b>11341 W. Chinden Blvd., Bldg. #4</b> <b>Boise, ID 83714</b></p> <p><b>Telephone and web conferencing information will be posted on:</b> <b><a href="https://dopl.idaho.gov/calendar/">https://dopl.idaho.gov/calendar/</a> and <a href="https://townhall.idaho.gov/">https://townhall.idaho.gov/</a></b></p>
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The hearing site will be accessible to persons with disabilities, if needed. Requests for accommodation must be made not later than five (5) days prior to the meeting to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Under **Executive Order 2020-01**, Zero-Based Regulation, the Barber and Cosmetology Services Licensing Board is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. In conjunction with stakeholders, the proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter and to use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and Executive Order 2020-01.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

The fees for applications, licenses, registrations and reinstatement as designated in Rule 400 of these proposed rules are authorized in Sections 54-5822 and 67-2614, Idaho Code. None of these fees are being changed as a result of this rulemaking or since being previously reviewed by the Idaho Legislature.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the State General Fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

This rulemaking is not anticipated to have any negative fiscal impact on the State General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted under Docket No. 24-ZBRR-2301. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 5, 2023 Idaho Administrative Bulletin [Vol. 23-4, pp. 42-46](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Michael Hyde, Bureau Chief, at (208) 332-7133.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2023.

DATED this July 6, 2023.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 24-2801-2301**

**24.28.01 – RULES OF THE BARBER AND COSMETOLOGY SERVICES LICENSING BOARD**

**000. LEGAL AUTHORITY.**

These rules are promulgated pursuant to Sections 54-5807, 54-5811, 54-5818, and 54-5822, Idaho Code. ( )

**001. SCOPE.**

These rules regulate the professions of barbering and cosmetology. ( )

**002. DEFINITIONS.**

**01. Clean.** Removal of debris, washing with soap and water, detergent or chemical “cleaner.” Cleaning prepares non-porous items for disinfection, but cleaning does not make multi-use items safe for use. ( )

**02. Disinfect.** The process of making a non-porous item safe for use. Disinfecting requires the use of a chemical intended to kill or denature a bacteria, virus or fungus. Items to be disinfected must be cleaned prior to disinfection. Ultraviolet (UV) light is not acceptable for disinfection. ( )

**03. Disinfectant.** Disinfectant registered by the United States Environmental Protection Agency (EPA) and is bactericidal, virucidal and fungicidal with effectiveness against staphylococcus aureus (including methicillin-resistant staphylococcus aureus (MRSA)), human immunodeficiency virus (HIV) and hepatitis B (HEPB). This includes EPA registered Sodium Hypochlorite 5.25% or higher (household bleach) with instructions for disinfection, diluted as instructed on the label and observing the contact time listed on the manufacturer’s label. Bleach must be active (not expired) with a manufacture date of less than six (6) months prior to use. ( )

**04. First-Aid Kit.** A packaged and identifiable assortment of medical supplies, including adhesive bandages, skin antiseptic, disposable gloves, and gauze. ( )

**05. Single-Use.** Any non-electrical item that cannot be properly cleaned and disinfected. ( )

**06. Sterilize.** The eradication of all microbial life through the use of heat, steam or chemical sterilants. Items to be sterilized must be cleaned prior to sterilization. ( )

**07. Sterilant.** Autoclaves or dry heat sterilizers approved by and used in accordance with the United States Food and Drug Administration. ( )

**003. -- 099. (RESERVED)**

**100. LICENSURE.**

**01. Approved Examination.** The National Interstate Council of State Boards of Cosmetology's written and practical examinations. ( )

**02. Additional Licensure Educational Requirements.** ( )

**a. Barber License.** A currently licensed cosmetologist must complete one hundred (100) hours of barber-related instruction, to include barber theory, haircuts, and shaving. ( )

**b. Barber-Stylist License.** A currently licensed cosmetologist must complete one hundred (100) hours of barber-stylist instruction, to include barber theory, haircuts, and shaving. ( )

**c. Cosmetologist License.** ( )

**i.** A currently licensed barber-stylist must complete three hundred (300) hours of cosmetology instruction, to include nail technology, esthetics, cosmetology theory, and hairstyling. ( )

**ii.** A currently licensed barber must complete seven hundred (700) hours of cosmetology instruction, to include working on the hair with chemicals, nail technology, esthetics, cosmetology theory, and hairstyling. ( )

**iii.** A currently licensed esthetician or nail technician must complete one thousand four hundred (1,400) hours of cosmetology instruction or two thousand eight hundred (2,800) hours as a cosmetology apprentice. ( )

**iv.** A currently certificated makeup artist must complete one thousand five hundred fifty (1,500) hours of cosmetology instruction or three thousand one hundred (3,100) hours as a cosmetology apprentice. ( )

**d. Esthetician License.** A currently certified makeup artist must complete five hundred fifty (550) hours of esthetics instruction or one thousand one hundred (1,100) hours as an esthetician apprentice.. ( )

**e. Out of State Licensure.** A current licensee in another state, territory, possession or country, and who does not meet the qualifications for licensure through endorsement may be credited hours of instruction for practical work experience: ( )

**i.** Barber: One Hundred (100) hours as a student or two hundred (200) hours as an apprentice for every six (6) months of practical experience in barbering; ( )

**ii.** Barber-Stylist: Two hundred (200) hours as a student or four hundred (400) hours as an apprentice for every six (6) months of practical experience in barber-styling; ( )

**iii.** Cosmetologist: Two hundred (200) hours as a student or four hundred (400) hours as apprentice for every six (6) months of practical experience in cosmetology: ( )

**iv.** Electrologist: Forty (40) hours as a student or eighty (80) hours as an apprentice for every six (6) months of practical experience in electrology; ( )

**v.** Esthetician: Sixty (60) hours as a student or one hundred twenty (120) hours as an apprentice for every six (6) months of practical experience in esthetics; ( )

vi. Nail Technician: Forty (40) hours as a student or eighty (80) hours as an apprentice for every six (6) months in practical experience in nail technology. ( )

**03. Makeup Artist Certificate Approved Instruction.** Classroom instruction, training, practical experience, or a combination received from a cosmetology school, a cosmetology or esthetics instructor, or a retail cosmetics dealer licensed in this state or another state, territory, possession, or country, or otherwise approved by the board. If an applicant does not have a documented record of sufficient training in makeup artistry, including safety and infection control, the Board may require additional training or other demonstration of competency in that area. ( )

**04. Establishment.** An establishment may be licensed as primary or contiguous. ( )

a. An applicant for primary establishment licensure must provide proof of compliance with Rule 200.01.a. A primary establishment license will not be issued if it includes or overlaps any portion of an existing establishment license. ( )

b. An applicant for contiguous establishment licensure must certify that it is associated with and operates within a currently licensed primary establishment and the primary establishment license holder must certify that the primary establishment is equipped to meet all safety and disinfection requirements. ( )

c. Establishment licenses cannot be transferred. A change of location or a full change in ownership requires a new license application. In a multiple ownership establishment, an owner may be removed upon written statement by all owners, including the withdrawing owner. ( )

**101. -- 124. (RESERVED)**

**125. OUT OF BUSINESS.**

**01. Submittal.** Whenever any establishment or facility ceases operation at the licensed location, the owner(s) or authorized agent of the establishment or facility shall notify the Board by submitting: ( )

a. A signed letter by the owner(s) or authorized agent advising that the establishment or facility is out of business; or ( )

b. The establishment or facility license bearing the signature of the owner(s) or authorized agent and marked out of business; or ( )

c. In the event that the Board has not been notified about the cessation of operations pursuant to this rule and documentation or evidence has been obtained that an establishment or facility has ceased operation at the licensed or registered location, the Board may cancel the license or facility registration upon a thirty (30) day written notice to the owner(s) or authorized agent of the establishment or facility. ( )

**126. -- 149. (RESERVED)**

**150. EDUCATION.**

**01. Licensed Schools.** A licensed barber or cosmetology school must comply with the following: ( )

a. The premises will provide adequate space, ventilation, lighting, facilities to safely accommodate all students, instructors, and customers and provide a restroom with a sink with hot and cold running water and drainage system. ( )

b. Instructors are permitted to teach subject matters only within the instructor's licensed scope of practice. A cosmetology school teaching electrology will employ one (1) licensed electrologist instructor for every six (6) students being trained and require instructors to directly supervise the training. ( )

**c.** Curriculum. To obtain approval to teach a subject, a school must submit a curriculum and course catalog which complies with Section 54-5815, Idaho Code. Any proposed changes to a curriculum or catalog must be submitted to the Board for approval. ( )

i. A school may teach no more than fifty percent (50%) of its curriculum through distance education. ( )

ii. For an esthetician, barber, barber stylist, or nail technician student, a licensed cosmetology school may credit eighty percent (80%) of accumulated hours, but no more than two hundred (200) hours, toward the required instructional hours for a cosmetology course. ( )

iii. A licensed cosmetology school may credit two hundred (200) hours toward the required instructional hours for a nail technology course or esthetics course for a cosmetology student. ( )

iv. Clinical work will be performed under the supervision of a licensed instructor. ( )

v. A student may receive up to thirty (30) hours of credit toward the required hours of instruction for instructor-approved activities occurring outside the school. ( )

**d.** A school will maintain a record of instruction for each student showing the classroom hours, the clinical hours, operations, and approved outside school activities completed each month in which the student is enrolled. The record of instruction will be provided to the student and maintained by the school for five (5) years from completion or termination. In the event of cessation of school operations, records of instruction will be provided to each enrolled student at or before the cessation of operations. ( )

**e.** Licenses may not be transferred; any change in ownership or location requires a new license application. ( )

**02. Apprenticeships.** ( )

**a.** An apprenticeship must be completed within the following period: ( )

i. Barber: fifty-seven (57) weeks; ( )

ii. Barber-Stylist: ninety-four (94) weeks; ( )

iii. Cosmetologist: one hundred four (104) weeks; ( )

iv. Estheticians/Electrologist: thirty-eight (38) weeks; ( )

v. Nail Technicians: twenty-five (25) weeks. ( )

**b.** Prior to beginning instruction, the instructor must submit and obtain Board approval of a curriculum which complies with Section 54-5815(1)(g), Idaho Code and Rule 150.02.a. ( )

**c.** An electrology apprentice may only work under the direct personal supervision of a licensed electrologist instructor. Instructors and supervisor licensees may teach or supervise work only within their licensed scope of practice. An apprentice cannot be permitted to render clinical services to patrons prior to completion of five percent (5%) of the required hours of instruction. ( )

**d.** An establishment or instructor under ongoing discipline may not supervise an apprentice. ( )

**e.** Recordkeeping. The establishment must maintain the daily work records for a period of five (5) years following the apprentice's completion or termination. The apprentice must be provided access to the daily work records and be provided monthly progress reports. ( )

**f.** An apprentice who has discontinued an apprenticeship must apply for and receive a new

registration prior to resuming instruction. ( )

**g.** Out of State Apprenticeship. An applicant who received instruction as an apprentice in another state must submit a summary or record of the out of state apprenticeship, including detailed information regarding operations and hours of instruction, which is certified by the relevant licensing agency or instructor(s). ( )

**151. -- 199. (RESERVED)**

**200. PRACTICE STANDARDS.**

**01. Premises. ( )**

**a.** A primary establishment must have: (1) a clearly defined and designated working floor space that allows the safe and sanitary practice of cosmetology and/or barber-styling for all stations that may be in operation and provides safe access to restrooms and access areas; (2) a hot and cold running water source and drainage system that are within the perimeters of the primary establishment, separate from restroom facilities, and available to any contiguous establishment or facility that may exist; and (3) restrooms that are accessible from the building in which the primary establishment is located and from any contiguous establishments or facility that may exist and which contain hot and cold running water and drainage separate from the work area facilities. The license holder is responsible for complying with the safety and disinfection requirements and all other applicable statutes and rules for the designated licensed area of the primary establishment, including “common areas.” ( )

**b.** A contiguous establishment must operate only in the contiguous establishment designated areas within the associated primary establishment. The contiguous establishment license holder is responsible for complying with the safety and disinfection requirements and all other applicable statutes and rules for the contiguous designated area where it operates. ( )

**c.** Retail cosmetic dealers must have access to hot and cold running water; access to restroom facilities; disinfectants; single-use samples, wipes, spatulas or other dispensing techniques designed to prevent contamination of the cosmetic product; and a first-aid kit. ( )

**02. Practice Outside of Licensed Establishment.** Pursuant to Section 54-5804(2)(c), Idaho Code, a licensee or certificant can provide the following services outside of a licensed establishment: ( )

**a.** Hair Styling. Arranging, styling, and dressing of the hair. Trimming may be performed when incidental to the arranging, styling, or dressing, including facial hair such as beards, mustaches, and eyebrows. ( )

**b.** Coloring. Wash out topical color, tinted powder, spray or chalk to temporarily camouflage hair. ( )

**c.** Temporary Hair Removal. Tweezing of hairs on the face and neck. ( )

**d.** Cleansing. Cleansing the face for the limited purpose of removing makeup or debris and cosmetic preparations for the application of makeup. ( )

**e.** Nail Services. Application of nail polish by painting without the use of a lamp or light, removal of polish incidental to the painting of the nail, and shaping the nail with a single-use emery board. ( )

**f.** Makeup Application. Application of makeup. ( )

**03. Safety And Disinfection for Establishments and Schools. ( )**

**a.** Establishments and schools must be separated from living areas by substantial walls and/or closable doors. Floors, walls, ceilings, furniture, fixtures, and restrooms must be kept clean and in good repair at all times. A clearly identifiable first-aid kit must be readily accessible. ( )



**b.** All instruments and items used by operators must be thoroughly cleaned after each use and then disinfected with a disinfectant or sterilized with a sterilant after cleaning and prior to use on each patron. A disinfectant must be mixed and changed according to the manufacturer's instructions. Disinfection methods of immersion, sprays, and wipes may be used. Contact time listed on the disinfectant's label must be adhered to in all circumstances. Items or surfaces must remain completely immersed in disinfectant or visibly wet, if using sprays or wipes, for the full amount of contact time. ( )

**c.** Porous or single use instruments and items must be immediately disposed of in a trash container after each use on a patron or given to the patron to take home for personal use, provided that the instruments may not be brought back to the establishment for future use. Skin cutting instruments, including razor-type callus shavers, credo blades, or other rasps or graters which cut below the skin surface are not permitted in the establishment. ( )

**d.** Paraffins, waxes and other multi-patron use products must be covered and maintained free of any foreign contaminants. Only disinfected or unused single-use items may be placed into a container that holds multi-patron use products. These products must be portioned out for each patron in a container or dispensed in a manner that prevents contamination of the unused supply. All portions used on a patron must be disposed of immediately following use. ( )

**e.** Pedicure bowls, basins, tubs, drill bits, internal piping, and pumps must be cleaned and disinfected prior to each use as directed by the manufacturer. ( )

**f.** Operators and students must wash their hands with running water, soap and a single-use towel prior to providing service to any patron. When hand washing is not practicable, hand sanitizer of at least seventy percent (70%) alcohol may be used. ( )

**g.** No animals are allowed in shops or schools except service dogs, as defined by the U.S. Department of Justice Regulations, trained to do work or perform tasks for persons with disabilities. ( )

**h.** A current establishment and/or school license, valid operator license(s), a copy of these safety and disinfection rules, and a valid classification card must be conspicuously displayed in the work area of each establishment or school. ( )

**04. Safety and Disinfection for Retail Cosmetics Dealer Facilities and Makeover or Glamour Photography Businesses.** ( )

**a.** Makeup that comes in a cake, loose, or liquid form must be transferred to a palette with a disinfected or single-use spatula for use with a single patron and in a manner to prevent any contamination. Excess make-up on the palette must be disposed of immediately following use. ( )

**b.** Make-up pencils that require a sharpener must be sharpened prior to each use. Sharpeners must be cleaned and disinfected in accordance with Rule 200.03.b. Eyeliner that does not require a sharpener must have a portion transferred to a palette with a disinfected or single-use spatula for use on a single customer. ( )

**c.** Single-use applicators must be used in the application of mascara. ( )

**d.** Implements and applicators, including brushes, used on customers or made available for use by customers must be stored, cleaned, and disinfected or discarded in accordance with Rule 200.03.b. and c. ( )

**e.** Make-up displays should be covered when not in use. When accessible for use by patrons, single-use applicators must be readily available. ( )

**f.** A clearly identifiable first-aid kit must be readily accessible on the premises. ( )

**g.** A current license/registration, a copy of these safety and disinfection rules, and a valid classification card must be conspicuously displayed in the work area of each facility. ( )

**05. Inspections.** A facility, school, or establishment must make improvements within thirty (30) days of an unacceptable “C” classification inspection result. The Board may allow an establishment, school, or facility to continue to operate during that period. The Board may take action prior to any reinspection when the circumstances represent an immediate danger to the public health, safety, or welfare. ( )

**06. Unprofessional Conduct.** The following practices constitute unprofessional conduct. ( )

**a.** Use of Methyl Methacrylate acid (MMA). ( )

**b.** Use of skin cutting instruments, including razor-type callus shavers, credo blades, or other rasps or graters which cut below the skin surface. The presence of such instruments creates a presumption of the instrument's use. ( )

**c.** Use of ultraviolet (UV) sterilizers for disinfection. This does not prohibit the use of ultraviolet dryers or lamps used to dry or cure nail products. ( )

**d.** Use of roll-on wax, except that single-use roll-on wax cartridges are acceptable when they are limited to a single client service and disposed of immediately after use. ( )

**e.** Placing an item or instrument that has been used on a person or placing a person’s body part into a container that holds powder, wax, a compound, solution, or other cosmetic preparation that will be used for more than one (1) patron. ( )

**f.** Use of single-use or porous items on more than one (1) patron. The presence of used single-use or porous items, which have not been disposed of in a trash container, creates a presumption of the item’s use or intended use on more than one patron. ( )

**g.** Failure to adequately supervise, instruct, or train an apprentice. ( )

**h.** Interference with an inspection or investigation conducted by or on behalf of the Board. ( )

**i.** Performing a service on a patron who has an open sore or a known contagious disease of a nature that may be transmitted by performing the procedure. ( )

**k.** Performing services or using machines or devices outside the licensee’s area of training, expertise, competence, or scope of practice for the license held. ( )

**201. -- 399. (RESERVED)**

**400. FEES.**

All fees are non-refundable.

<b>FEE TYPE</b>	<b>AMOUNT (Not to Exceed)</b>	<b>RENEWAL (Not to Exceed)</b>
<b>Individual Original License or Certificate</b>	<b>\$25</b>	<b>\$25</b>
<b>Application</b>	<b>\$25</b>	
<b>Instructor License</b>	<b>\$30</b>	<b>\$30</b>
<b>Establishment, Dealer, Facility License/ Registration</b>	<b>\$20</b>	<b>\$20</b>
<b>School License</b>	<b>\$300</b>	<b>\$85</b>
<b>Apprentice Registration</b>	<b>\$25</b>	
<b>Endorsement License</b>	<b>\$35</b>	

FEE TYPE	AMOUNT (Not to Exceed)	RENEWAL (Not to Exceed)
Reinstatement	\$35	

( )

401. -- 999. (RESERVED)

[Agency redlined courtesy copy]

*Italicized text indicates changes between the text of the proposed rule as adopted in the pending rule.*

**24.28.01 – RULES OF THE BARBER AND COSMETOLOGY SERVICES LICENSING BOARD**

**000. LEGAL AUTHORITY.**

These rules are promulgated pursuant to Sections 54-5807, 54-5811, 54-5818, and 54-5822, Idaho Code.( )

**001. SCOPE.**

These rules regulate the professions of barbering and cosmetology.( )

~~002. -- 009. (RESERVED)~~

**00210. DEFINITIONS.**

**01. Clean.** Removal of ~~visible or surface~~ debris, washing with soap and water, detergent or chemical “cleaner.” Cleaning prepares non-porous items for disinfection, but cleaning does not make multi-use items safe for use. ( )

~~**02. Clinical Services or Clinical Work.** Performing hands on acts or techniques within the scope of practice of a profession regulated by the Board.( )~~

**03. Disinfect.** The process of making a non-porous item safe for use. Disinfecting requires the use of a chemical intended to kill or denature a bacteria, virus or fungus. Items to be disinfected must be cleaned prior to disinfection. Ultraviolet (UV) light is not acceptable for disinfection.( )

**04. Disinfectant.** Disinfectant registered by the United States Environmental Protection Agency (EPA) and is bactericidal, virucidal and fungicidal with effectiveness against staphylococcus aureus (including methicillin-resistant staphylococcus aureus (MRSA)), human immunodeficiency virus (HIV) and hepatitis B (HEPB). This includes EPA registered Sodium Hypochlorite 5.25% or higher (household bleach) with instructions for disinfection, diluted as instructed on the label and observing the contact time listed on the manufacturer’s label. Bleach must be active (not expired) with a manufacture date of less than six (6) months prior to use.( )

~~**05. Facility.** A retail cosmetics dealer, a retail thermal styling equipment dealer, or a makeover or glamour photography business.( )~~

**06. First-Aid Kit.** ~~First aid kit means a~~ packaged and identifiable assortment of medical supplies, including adhesive bandages, skin antiseptic, disposable gloves, and gauze.( )

~~**07. Patron.** Patron means any person who receives the services of anyone licensed, certificated or otherwise regulated by the provisions of Chapter 58, Title 54, Idaho Code.( )~~

~~**08. Record of Instruction.** The final documentation of total hours and operations completed by a~~

~~student that is maintained by a school or, in the case of an apprentice, by the instructor.( )~~

**09. Single-Use.** Any non-electrical item that cannot be properly cleaned and disinfected ~~is considered single use. This includes, but is not limited to, pumice stones, buffing blocks, wooden cuticle pushers, cotton balls, pads or swabs, toe separators and flip flops, and all nail files or emery boards that are not made entirely of metal, glass, or crystal.~~ ( )

**10. Sterilize.** The eradication of all microbial life through the use of heat, steam or chemical sterilants. Items to be sterilized must be cleaned prior to sterilization.( )

**11. Sterilant.** Autoclaves or dry heat sterilizers approved by and used in accordance with the United States Food and Drug Administration, ~~and spore tested through an independent lab at least once every thirty (30) days. Sterilants must be used only as instructed by the manufacturer. Spore testing results and maintenance records for the most recent twelve (12) months must be kept onsite at the establishment.~~( )

~~011-00123.~~ -- ~~249-099.~~ (RESERVED)

**~~250-400.~~ FEES.**

All fees are non-refundable.( )

FEE TYPE	AMOUNT (Not to Exceed)	RENEWAL (Not to Exceed)
<del>Individual Original License or Certificate for Individual Licenses</del>	\$25	\$25
Application	\$25	
Instructor License	\$30	\$30
<del>Original License for Establishments, Dealer, Facility License/Registration</del>	\$20	\$20
<del>Original License for Schools License</del>	\$300	\$85
<del>Original License or Registration for Facilities</del>	<del>\$20</del>	<del>\$20</del>
<del>Registration for Apprentice Registration</del>	\$25	
<del>Certificate for Makeup Artist</del>	<del>\$25</del>	<del>\$25</del>
<del>License by Endorsement License</del>	\$35	
Reinstatement	\$35	
<del>Examination</del>	<del>As set by the Administrator</del>	

( )

**251. -- 299.(RESERVED)**

**~~300. QUALIFICATIONS FOR ALL LICENSES OR CERTIFICATES FOR INDIVIDUALS.~~**

~~In addition to other qualifications set forth in these rules, each applicant for licensure or certification must meet the following general qualifications:( )~~

**~~01. Education.~~** ~~Successful completion of at least two (2) years of high school or have attained an equivalent education as determined by the Board as evidenced by:( )~~

~~a. High school transcripts, a copy of a high school diploma, or a letter written on high school~~

~~stationery, signed by an officer of the high school, indicating that the applicant has satisfactorily completed the tenth grade and is eligible to commence the eleventh grade; or(——)~~

~~b. Documents establishing admission to or graduation from an associates, bachelors, or graduate degree program from an accredited college or university; or(——)~~

~~c. Successful passage of the General Educational Development (G.E.D.) Test; or(——)~~

~~d. Any test approved by the Department of Education to establish education equivalency shall be approved by the Board when an applicant receives a score approved by the Department of Education as meeting the equivalency requirement; or(——)~~

~~e. Other proof of satisfactory completion of the tenth grade with eligibility to commence the eleventh grade.(——)~~

~~**03. Criminal and Disciplinary History.(——)**~~

~~a. An applicant must certify they have not engaged in conduct that would constitute grounds for discipline and have not had an application for licensure denied by another state, territory, or country.(——)~~

~~b. An applicant who or whose license has a conviction, finding of guilt, withheld judgment, or suspended sentence for a felony, or has been subject to discipline in another state, territory or country must submit with their application a written statement and any supplemental information establishing their current suitability for licensure or certification.(——)~~

~~e. In addition to other factors, the Board must consider:(——)~~

~~i. The number or pattern of crimes or discipline or other similar incidents; and(——)~~

~~ii. The circumstances surrounding the crime or discipline that would help determine the risk of repetition.(——)~~

~~d. The Board may, at its discretion, interview the applicant.(——)~~

~~e. The applicant bears the burden of establishing their current suitability for licensure or certification.(——)~~

**301.100. QUALIFICATIONS FOR ~~ADDITIONAL LICENSE~~ LICENSURE.**

~~The Board may grant a license to an applicant for licensure who meets the requirements set forth in Section Pursuant to section 54-5810, Idaho Code, pays the required fee, meets the requirements prescribed in Section 300 of these rules, and the following education or apprenticeship, experience, and examination qualifications are required:( )~~

~~**021. Additional Licensure Educational Requirements. Original Barber License.( )**~~

~~a. Education- Barber License. For a A currently licensed cosmetologist, a licensed barber school must credit eight hundred (800) hours toward the required nine hundred (900) hours for a barber course. The school must submit for the Board's approval a written explanation of how the credited hours and the remaining hours of instruction will be allotted among the subjects in the barber course curriculum, provided that the remaining must complete one hundred (100) hours of barber-related instruction, to include must at a minimum include:(——)~~

~~i. B barber theory, including male haircuts, and(——)~~

~~ii. Shaving.( )~~

~~b. For a currently licensed barber in another state, territory, possession or country, and who does not meet the qualifications for licensure by endorsement, fifty (50) hours of instruction may be credited for each three (3) months of practical experience in barbering.(——)~~

**02. Original Barber Stylist License. ( )**

**a.b.** Barber-Stylist License. For a A currently licensed cosmetologist, a licensed barber school must credit one thousand four hundred (1,400) hours toward the required one thousand five hundred (1,500) hours for a barber stylist course. The school must submit for the Board's approval a written explanation of how the credited hours and the remaining hours of instruction will be allotted among the subjects in the barber stylist course curriculum, provided that the remaining must complete one hundred (100) hours of barber-stylist instruction, to must at a minimum include the following: ( )

- i. B barber theory, including male haircuts, and ( )
- ii. Sshaving. ( )

**b.** For a currently licensed barber stylist in another state, territory, possession or country, fifty (50) hours of instruction may be credited for each three (3) months of practical experience in barber styling. ( )

**03. Original Cosmetologist License. ( )**

**a.c.** Education. Cosmetologist License.  
**i.** For a A currently licensed barber-stylist, a licensed cosmetology school must credit one thousand three hundred (1,300) hours toward the required one thousand six hundred (1,600) hours for a cosmetology course. The school must submit for the Board's approval a written explanation of how the credited hours and the remaining hours of instruction will be allotted among the subjects in the cosmetology course curriculum, provided that the remaining must complete three hundred (300) hours of cosmetology instruction, to must at a minimum include the following: ( )

- i. Nnail technology, ( )
- ii. Esthetics, ( ) and ( )
- iii. Cosmetology theory, including female and hairstyling. ( )

**b.ii.** For a A currently licensed barber, a licensed cosmetology school must credit nine hundred (900) hours toward the required one thousand six hundred (1,600) hours for a cosmetology course. The school must submit for the Board's approval a written explanation of how the credited hours and the remaining must complete seven hundred (700) hours of cosmetology instruction, to will be allotted among the subjects in the cosmetology course curriculum, provided that the remaining hours of instruction must at a minimum include the following: ( )

- i. Working on the hair with chemicals, ( )
- ii. Nnail technology, ( )
- iii. Esthetics, ( ) and ( )
- iv. Cosmetology theory, and including female hairstyling. ( )

**c.iii.** A currently licensed esthetician, haircutter, or nail technician must be given credit of two hundred (200) hours toward the required complete one thousand six four hundred (1,460) hours of hours for a cosmetology course instruction or four hundred (400) hours toward the required three two thousand two eight hundred (2,280) hours as a cosmetology apprentice. ( )

**d.iv.** For a A currently certificated makeup artist in this state, a licensed cosmetology school may credit up to fifty (50) hours toward the required instructional hours for a cosmetology course, or a licensed instructor may credit up to one hundred (100) hours toward the required apprenticeship hours. Must complete one thousand five hundred fifty (1,500) hours of cosmetology instruction or three thousand one hundred (3,100) hours as a cosmetology apprentice. ( )

~~e.~~ For an ~~esthetician, haircutter~~~~barber, barber stylist,~~ or nail technician student, a licensed cosmetology school may credit eighty percent (80%) of accumulated hours, but no more than two hundred (200) hours, toward the required instructional hours for a cosmetology course.(~~---~~)

~~f.~~ For a currently licensed cosmetologist in another state, territory, possession or country, one hundred (100) hours of instruction or two hundred (200) hours as an apprentice may be credited for each six-month period of practical experience in cosmetology.(~~---~~)

~~04. Original Electrologist License.~~ Education. For a currently licensed electrologist in another state, territory, possession or country, forty (40) hours of instruction or eighty (80) hours as an apprentice may be credited for each six-month period of practical experience in electrology.(~~---~~)

~~05.d. Original~~ Esthetician License.(~~---~~)

~~a.~~ Education. For a ~~currently certificated~~ certified makeup artist ~~in this state,~~ a licensed cosmetology school may credit up to fifty (50) hours toward the required must complete five hundred fifty (550) hours of esthetics instructional hours for an esthetics course or, a licensed instructor may credit up to one hundred (100) hours toward the required apprenticeship hours one thousand one hundred (1,100) hours as an esthetician apprentice.(~~---~~)

~~b.~~ A licensed cosmetology school may credit one-seventh (1/7) of accumulated hours toward the required instructional hours for an esthetics course for a cosmetology student.(~~---~~)

~~b.e.~~ For a currently licensed esthetician in another state, territory, possession or country, sixty ~~five~~ fifty (~~65~~50) hours of instruction or one ~~hundred twenty~~ (~~120~~100) hours as an apprentice may be given for each six-month period of practical experience in esthetics.(~~---~~)

**PENDING TEXT [New] 100.02.e. through 100.02.e.vi.**

e. Out of State Licensure. A current licensee in another state, territory, possession or country, and who does not meet the qualifications for licensure through endorsement may be credited hours of instruction for practical work experience:(~~---~~)

i. Barber: One Hundred (100) hours as a student or two hundred (200) hours as an apprentice for every six (6) months of practical experience in barbering:(~~---~~)

ii. Barber-Stylist: Two hundred (200) hours as a student or four hundred (400) hours as an apprentice for every six (6) months of practical experience in barber-styling:(~~---~~)

iii. Cosmetologist: Two hundred (200) hours as a student or four hundred (400) hours as apprentice for every six (6) months of practical experience in cosmetology:(~~---~~)

iv. Electrologist: Forty (40) hours as a student or eighty (80) hours as an apprentice for every six (6) months of practical experience in electrology:(~~---~~)

v. Esthetician: Sixty (60) hours as a student or one hundred twenty (120) hours as an apprentice for every six (6) months of practical experience in esthetics:(~~---~~)

vi. Nail Technician: Forty (40) hours as a student or eighty (80) hours as an apprentice for every six (6) months in practical experience in nail technology.(~~---~~)

~~06. Original Nail Technician License.~~(~~---~~)

~~a. **02.Education.** Successful completion and graduation from a program of nail technology consisting of not less than four hundred (400) hours of instruction in a cosmetology school approved by the Board or completed at least eight hundred (800) hours in an apprenticeship that meets the requirements of Section 550, or the following equivalent instruction: A licensed cosmetology school may credit one seventh (1/7) of accumulated hours toward the required instructional hours for a nail technology course for a cosmetology student.(—)~~

~~b. For a currently licensed nail technician in another state, territory, possession or country, forty (40) hours of instruction or eighty (80) hours as an apprentice may be credited for each six month period of practical experience in nail technology.(—)~~

~~**037. Makeup Artist Certificate **Approved Instruction.** (—)**~~

~~a. Education/Training. Successful completion of instruction of not less than one hundred (100) hours in makeup artistry, which must include instruction and practical experience in safety and infection control. Hours may be eClassroom instruction, training, practical experience, or a combination. Instruction may be received from one (one) or more of the following sources:(—)~~

~~i. A a cosmetology school, a cosmetology or esthetics instructor, or a retail cosmetics dealer licensed in this state or another state, territory, possession, or country.;~~  
(—)

~~ii. A cosmetology or esthetics instructor licensed in this state or another state, territory or possession;~~  
(—)

~~iii. A retail cosmetics dealer licensed in this state or another state, territory or possession; or(—)~~

~~iv. Other source of instruction that includes:(—)~~

~~(1). Knowledgeable and experienced instructor with a record of safe practices;(—)~~

~~(2). Instruction in client safety and safe product selection; and(—)~~

~~(3). Hands-on practice and training in infection control.(—)~~

~~v. Any combination of the sources listed in Subsections 301.07.a.i. through a.iv. of this rule.(—)~~

~~b. Documentation of Education/Training. An applicant may present proof of education/training in makeup artistry in the following ways:(—)~~

~~i. A current cosmetology or esthetician license from another state, territory, possession or country.~~  
(—)

~~ii. Transcripts or records of instruction.(—)~~

~~iii. Documentation of work history and training as an employee for a retail cosmetics dealer licensed in this state or another state, territory or possession of the United States.(—)~~

~~iv. Membership in the International Alliance of Theatrical Stage Employees Make-Up Artists and Hair Stylists Guild or other similar organization whose membership requirements meet or exceed the requirements of these rules.~~  
(—)

~~v. Documentation of other training/experience must include:(—)~~

~~(1). Identity and qualifications of the person delivering the instruction/training;(—)~~

~~(2). Method of instruction/training and amount of hands-on training provided; and(—)~~



rules: (3). Subject matters covered, particularly pertaining to topics listed in Subsection 301.07.a.iv of these rules: (—)

~~b.~~ Additional Education/Training. The Board may require if an applicant who does not have a documented record of sufficient training in makeup artistry, including safety and infection control, the Board may to obtain require additional training or other demonstration of competency in that area. ( )

**PENDING TEXT 100.03**

**03. Makeup Artist Certificate Approved Instruction.** Classroom instruction, training, practical experience, or a combination received from a cosmetology school, a cosmetology or esthetics instructor, or a retail cosmetics dealer licensed in this state or another state, territory, possession, or country, or otherwise approved by the board. If an applicant does not have a documented record of sufficient training in makeup artistry, including safety and infection control, the Board may require additional training or other demonstration of competency in that area. ( )

~~302.—308.(RESERVED)~~

**309. QUALIFICATIONS FOR Instructor License.**

~~The holder of a license issued by the Board who is subsequently issued an instructor license is permitted to maintain a single license to practice. The Board may grant a license to an applicant for licensure as an instructor who does not meet the requirements set forth in Section 54-5810(3), Idaho Code, and meets the following education requirements: if they can show. (—)~~

~~01. Course of Instruction.~~ Have satisfactorily completed the corresponding teacher's course of instruction: (—)

~~a.~~ A minimum three (3) month course of barber instructing, barber stylist instructing, or cosmetology instructing as a student in a licensed school, if the applicant has at least two (2) years of experience as a licensed barber, barber stylist, or cosmetologist, provided that the course consist of no less than five hundred (500) hours; or ( )

~~b.~~ A minimum six (6) month course of barber instructing, barber stylist instructing, or cosmetology instructing as a student, depending upon which license applying for, provided that the course consist of no less than nine hundred (900) hours. (—)

~~02. Credit Hours.~~ Earned twelve (12) college credit hours or the equivalent. Credit hours must be obtained from the Education Department, Speech Communications Department or from the Psychology/Sociology Department and other credit at the discretion of the Board. Equivalency is determined as: (—)

~~a.~~ Completion of teaching seminars focusing on barbering, barber styling, cosmetology, nail technology, esthetics, or electrolysis approved by the Board. Fourteen (14) clock hours is equivalent to one (1) semester college credit hour in an approved seminar. Verification of satisfactory completion must be submitted to the Board for its approval; or (—)

~~b.~~ Verified verified satisfactory teaching as a qualified instructor from another state for one (1) of the previous three (3) years immediately prior to application. (—)

~~310. Single License Required To Practice And Instruct.~~  
~~The holder of a license issued by the Board who is subsequently issued an instructor license is permitted to maintain a single license to practice. (—)~~

~~01. Scope.~~ An instructor license issued by the Board permits the holder to both practice and instruct only within the scope of the license(s) held. (—)

~~02. Barber Stylist Instructor.~~ The holder of a cosmetologist license who is subsequently issued a barber-stylist instructor license may not practice or instruct elements of barbering or barber styling that are outside the definition of cosmetology unless the licensee also has been issued a license as a barber or barber stylist by the Board. (—)

~~100.01311.~~ **Approved Examinations.**

~~Applicants shall pass~~ approved examinations shall be ~~the~~ The National Interstate Council of State Boards of Cosmetology's written and practical examinations, ~~provided approved by the board.~~ National Interstate Council of State Boards of Cosmetology (NIC) for the discipline for which licensure is sought. A passing score must be obtained on both the written and practical examination. A passing score will be determined by NIC.(—)

~~312.~~ (RESERVED)

~~313.~~ **REQUIREMENTS FOR LICENSURE BY ENDORSEMENT.**

~~01. Licensure.~~ The Board may grant a license to an applicant for licensure by endorsement who: (—)

~~a.~~ Meets the education requirements set forth in Subsection 300.01 of these rules.(—)

~~b.~~ Holds an unrestricted license free from discipline.(—)

~~02. Hold a Current License and Have Experience.~~ The applicant must be the holder of a current active license or certificate of qualification in the profession and at the level for which a license is being sought, issued by the authorized regulatory entity in another state, territory, possession, or foreign country. The certification of licensure must be received by the Board from the issuing agency; and(—)

~~a.~~ Must show that the state, territory, possession, or foreign country has licensing requirements substantially equivalent to or higher than those required for new applicants in Idaho; or(—)

~~b.~~ Document at least one (1) year of actual practice under certification or licensure in the three (3) years immediately prior to application in the profession for which a license is being sought.(—)

~~314312.~~ ~~324.~~(RESERVED)

~~325~~ ~~100.04.~~ **Licensure And Operation Of Primary And Contiguous Establishments License.**

~~Except as otherwise provided in statute and these rules, a licensed individual must practice within a licensed establishment. An establishment may be licensed as a primary establishment or a contiguous establishment that operates within a primary establishment. A primary establishment license must be issued prior to the opening or operation of any barber or cosmetology establishment. An applicant for primary establishment licensure must provide proof of compliance with Rule 200.01.a. A primary establishment will not be issued if it includes or overlaps any portion of an existing establishment license. An applicant for contiguous establishment licensure must certify that it is associated with and operates within a currently licensed primary establishment and the primary establishment license holder must certify that the primary establishment is equipped to meet all safety and disinfection requirements.~~( )

~~200.01.~~ **Premises**

~~a.~~ ~~Primary Establishment License.~~ A primary establishment license may be issued and annually renewed only under the following conditions: must have: (—)

~~a.~~ There is (1) a clearly defined and designated working floor space of adequate dimension to that allows the safe and sanitary practice of any one (1) or combination of defined practices of cosmetology and/or barber-styling for all individual stations that may be in operation in addition to and provides safe access to any restrooms and access areas; and(—)

~~b.~~ There is (2) an approved hot and cold running water source and drainage system that are within the perimeters of the primary establishment, separate from restroom facilities, and that is available to any contiguous

establishment ~~or other establishment~~ or facility that may exist; ~~and must be within the perimeters of the licensed establishment and separate from the toilet facilities; and~~ (—)

~~c.~~ There are ~~(3)~~ restrooms facilities conveniently located and ~~that are~~ accessible from within the building in which the primary establishment is located and ~~which shall be accessible from the primary area and to all areas designated for the operation of any~~ contiguous establishments ~~or facility that may exist; and which~~ Restroom facilities shall contain an approved hot and cold running water source and approved drainage system. The water source shall be in addition to the ~~separate from the~~ work area facilities; ~~and~~ (—)

~~d.~~ The license holder of the primary establishment license is responsible for complying with the safety and disinfection requirements and all other applicable statutes and rules for the designated licensed area of the primary establishment, including areas that are cooperatively or jointly used as “common areas,” such as shampoo bowls, restrooms, entrance or reception areas. ( )

~~02.~~ Contiguous Establishment License. A contiguous establishment license may be issued and annually renewed only under the following conditions: (—)

~~a.~~ A license must be issued prior to the opening or operation of any barber or cosmetology contiguous establishment; and (—)

~~b.~~ The contiguous establishment is associated with a currently licensed primary establishment and a holder of the primary establishment license provides proof that the primary shop is equipped to meet the safety and disinfection requirements and rules of the Board; and (—)

~~b.e.~~ The ~~A~~ contiguous establishment ~~must shall only~~ operate only in the contiguous establishment designated areas within the associated primary establishment. (—)

~~db.~~ The ~~holder of the~~ contiguous establishment license ~~holder will be~~ is responsible for complying with the safety and disinfection requirements and all other applicable statutes and rules for the contiguous designated area where it operates.

~~03.~~ **Conditions for Issuance.** No primary establishment license may be issued which includes or overlaps all or any portion of an existing establishment license. (—)

~~0304.~~ **Businesses Other Than a Licensed Establishment or Facility.** Businesses other than one licensed under Chapter 58, Title 54, Idaho Code, and living quarters shall be separate and apart. Home establishments must provide a separate outside entrance directly into the establishment and substantial partitions or walls shall extend from the floor to not less than seven (7) feet high, separating the establishment from adjoining rooms used for business or domestic purposes. All doors to an establishment from adjacent rooms shall be closed.  
(—)

~~04.~~ **Conditions for Issuance.** No primary establishment license may be issued which includes or overlaps all or any portion of an existing establishment license. (—)

326. **Establishment And Facility Changes In Ownership Or Location.** Whenever a change of ownership or fixed location of an establishment or facility occurs, an original license fee must be paid and compliance with all rules concerning a new establishment or facility must be met before a new license or registration will be issued. Establishment and facility licenses or registration are not transferable. (—)

~~100.04.c.01.~~ Establishment licenses ~~may cannot be transferred.~~ Any change in ownership or location or a full change in ownership requires ~~original~~ a new license application.

~~01.~~ **Board Must Be Informed of All Changes.** The Board must be informed in writing of any and all changes of ownership and location of establishments or facilities. (—)

~~02.~~ **Deletion of an Owner.** ~~In a multiple ownership establishment, an owner may be deleted removed from the establishment license by delivering to the Board upon written statement.~~ Deletion of an owner in a multiple ownership may be affected by filing a written statement ~~delivered~~ to the Board signed by all owners, including the

~~person withdrawing owner and the remaining owner(s). ( )~~

~~**03.** In the event the board is notified that an establishment or contingent establishment has gone out of business, the Board shall investigate the claim and may cancel the establishment license upon a thirty (30) day written notice to the owner(s) or authorized agent of the establishment facility.~~

~~**03. Transfer of Ownership.** If the transfer involves change of corporate structure or deleting one (1) or more owners, a written notarized statement signed by all former owners as registered with the Board shall be accepted. ( )~~

~~**04. Addition of an Owner.** Addition of an owner to a multiple ownership constitutes a change in ownership and the requirements for a new establishment or facility apply. ( )~~

~~**05. Out of Business.** Whenever any establishment or facility ceases operation at the licensed or registered location, the owner(s) or authorized agent of the establishment or facility shall notify the Board by submitting: ( )~~

~~**a.** A signed letter by the owner(s) or authorized agent advising that the establishment or facility is out of business; or ( )~~

~~**b.** The establishment or facility license or registration bearing the signature of the owner(s) or authorized agent and marked out of business; or ( )~~

~~**e.** For a contiguous establishment license, a signed statement by the associated primary establishment advising that the contiguous establishment is out of business. ( )~~

~~**d.** In the event that the Board has not been notified about the cessation of operations pursuant to this rule and documentation or evidence has been obtained that an establishment or facility has ceased operation at the licensed or registered location, the Board may cancel the establishment license or facility registration upon a thirty (30) day written notice to the owner(s) or authorized agent of the establishment or facility. ( )~~

~~**0604.a License Status.** A new primary establishment license will not be issued for any location that is currently licensed as a primary establishment at the time of application. ( )~~

**PENDING TEXT [New] 125**

**101. -- 124.(RESERVED)**

**125. OUT OF BUSINESS.**

~~**01. Submittal.** *Whenever any establishment or facility ceases operation at the licensed location, the owner(s) or authorized agent of the establishment or facility shall notify the Board by submitting:( )*~~

~~**a.** *A signed letter by the owner(s) or authorized agent advising that the establishment or facility is out of business; or( )*~~

~~**b.** *The establishment or facility license bearing the signature of the owner(s) or authorized agent and marked out of business; or( )*~~

~~**c.** *In the event that the Board has not been notified about the cessation of operations pursuant to this rule and documentation or evidence has been obtained that an establishment or facility has ceased operation at the licensed or registered location, the Board may cancel the license or facility registration upon a thirty (30) day written notice to the owner(s) or authorized agent of the establishment or facility.( )*~~

~~104~~**26.** -- 149.(RESERVED)

**327. RETAIL COSMETICS DEALER LICENSE.**

The Board may grant a retail cosmetic dealer license to allow the application of cosmetic products to customers' faces in connection with the sale of the products.(—)

**200.01.c.01.Requirements.** All ~~R~~retail cosmetic dealers ~~must~~ shall provide an area within the business premises for disinfection and storage of equipment and supplies necessary to perform any cosmetic application services provided. The business premises must have: (—)

- ~~a.~~ **a.** ~~A~~access to hot and cold running water;(—)
- ~~b.~~ **b.** ~~A~~e. ~~access~~ to restroom facilities;(—)
- ~~c.~~ **c.** ~~d~~Disinfectants, as defined in these rules;(—)
- ~~d.~~ **d.** Single-use samples, wipes, spatulas or other dispensing techniques designed to prevent contamination of the cosmetic product;(—) ~~and~~ **a.**(—)
- ~~e.~~ **e.** ~~f~~First-aid kit.(—)

**328. Retail Thermal Styling Equipment Dealer Registration.**

The Board may grant a registration as a retail thermal styling equipment dealer to an applicant who meets the following requirements:(—)

**01. Training.** The dealer is responsible to train all employees on the proper and safe use of the thermal styling equipment and all disinfection related to the demonstration of the equipment prior to permitting an employee's use of the equipment on customers.(—)

**02. Requirements.** All retail thermal styling equipment dealers shall provide the equipment and supplies necessary to perform any demonstration of the thermal styling equipment. The area where the demonstration is being performed must have:(—)

- a.** Disinfectants, as defined in these rules; and(—)
- b.** First aid kit.(—)

~~329~~**328.** -- 499.(RESERVED)

**500150. BARBER AND COSMETOLOGY SCHOOL REQUIREMENTS EDUCATION.**

The Board may grant a license to an applicant for licensure to operate a

1. **Licensed Schools.** A **licensed** barber or cosmetology school ~~who must comply with~~meets the following requirements:( )

- 01.a Premises.** The premises ~~of a barber or cosmetology school must will~~;(—)
  - ~~a.~~ **a.** Possess sufficient apparatus and equipment for the proper and full teaching of all subjects or its curriculum. (—)
  - ~~b.~~ **b.** Provide adequate space, ventilation, lighting, ~~and~~ facilities to safely accommodate all students, instructors, and customers; ~~and~~;(—)
  - ~~c.~~ **c.** Provide a restroom with a sink with hot and cold running water and ~~approved~~ drainage system. (—)

**02. Faculty or Instructors.**(~~—~~)

~~a. A school must be under the direct, personal supervision at all times of a licensed cosmetology instructor if a cosmetology school or a licensed barber or barber stylist instructor if a barber school and must employ and maintain a licensed instructor for every twenty (20) students or fraction thereof, with an instructor trainee counting as an instructor for the purposes of the student instructor ratio.(~~—~~)~~

~~b. Instructors are only permitted to teach subject matters within the instructor's licensed scope of practice. A cosmetology school that teaches electrology must be under the direct, personal supervision at all times of will employ one (1) licensed electrologist instructor for every six (6) students or portion thereof being trained therein and require instructors to directly supervise the training. (~~—~~)~~

~~b03e. An instructor shall teach only those subject areas for which the instructor has been issued a license by the Board to practice.(~~—~~)~~

~~d. Instructors must devote their time during school or class hours to instructing students rather than engaging in occupational practice.( )~~

**03. Operations.** A barber or cosmetology school must:(~~—~~)

~~a. Maintain regular class and instruction hours, establish grades and hold monthly examinations. This information will be transferred to the record of instruction;(~~—~~)~~

~~b. Prescribe a school term for training in all aspects of the practice being taught; and(~~—~~)~~

~~04c. Curriculum. Any proposed changes to a curriculum or catalog must be approved by the Board. The submission must identify what specific changes are being made to the curriculum.(~~—~~)~~

~~a. To obtain approval to teach a subject. A school must submit a curriculum and course catalog that covers the subjects, as set forth in in which complies with Section 54-5815, Idaho Code, relating to the profession for which the school is seeking approval to teach. Any proposed changes to a curriculum or catalog must be submitted to the Board for approval.( )~~

~~b. A cosmetology school that teaches electrology must submit a curriculum and course catalog that covers the subjects relating to electrology as set forth in Section 54-5815(1), Idaho Code.(~~—~~)~~

~~e. i. A school may teach no more than fifty percent (50%) of its curriculum through distance education. (~~—~~)~~

~~ii. A licensed cosmetology school offering an additional license curriculum to a currently licensed barber must submit for approval a written explanation of the seven hundred (700) hour course of cosmetology instruction, such instruction to include working on the hair with chemicals, nail technology, esthetics, cosmetology theory, and hairstyling. ( )~~

**PENDING TEXT [Deleted] 150.01.a.ii.**

~~ii. A licensed cosmetology school offering an additional license curriculum to a currently licensed barber must submit for approval a written explanation of the seven hundred (700) hour course of cosmetology instruction, such instruction to include working on the hair with chemicals, nail technology, esthetics, cosmetology theory, and hairstyling.(~~—~~)~~

~~iii. For an esthetician, haircutter barber, barber stylist, or nail technician student, a licensed cosmetology school may credit eighty percent (80%) of accumulated hours, but no more than two hundred (200) hours, toward the required instructional hours for a cosmetology course. ( )~~

~~vi.~~ ii. A licensed cosmetology school may credit one-seventh (1/7) of accumulated hours toward the required instructional hours for a nail technology course for a cosmetology student. ( )

**PENDING TEXT 150.01.a.iii.**

iii. A licensed cosmetology school may credit ~~one-seventh (1/7) of accumulated~~ two hundred (200) hours toward the required instructional hours for a nail technology course or esthetics course for a cosmetology student. ( )

~~05.~~ **Clinical Work.** Each school shall advertise to the public that it is a school and that all work is done by students. The clinic area shall not have connecting entrances to establishments or businesses other than barber or cosmetology schools. ( )

~~a.~~ Students shall not be permitted to render any clinical service to patrons until students have completed at least five percent (5%) of the required hours of instruction. ( )

~~b.~~ iv. All ~~e~~ clinical work shall will be performed under the supervision of a licensed instructor. ( )

~~e.~~ Clinical work shall be recorded on the record of instruction for each month. ( )

~~vi.~~ 06. **Outside School Activities.** Schools ~~A student~~ may receive credit ~~a student with a maximum of up to thirty (30) hours~~ of credit toward the required hours of instruction ~~for a course of instruction for~~ instructor-approved activities ~~that take place~~ occurring outside the school. ~~These hours must be approved by the instructor.~~ ( )

~~07.~~ d. **Student Records To be Maintained by the School.** A school ~~must~~ will maintain the following records for each enrolled student: ( )

~~a.~~ Proof of age showing student is no less than sixteen and one-half (16 ½) years of age; ( )

~~b.~~ Proof of showing student has satisfactorily completed two (2) years of high school (tenth grade) or having equivalent education as evidenced in a manner identified in Subsection 300.02 of these rules; ( )

~~a.~~ e. ~~a~~ Record of instruction for each student showing the classroom hours, the clinical hours, and operations, and approved outside school activities done for ~~completed~~ each month in which the student is enrolled; and ( )

~~b.~~ d. When a student's course of instruction has been completed or terminated, the completed operations, and number of hours of instruction are to be recorded by the school on the ~~The~~ record of instruction form, ~~which is.~~ This form is to will be provided to the student and maintained by the school for five (5) years from completion or termination.

~~e.~~ e. In the event of cessation of school operations, student records of instruction must ~~will~~ be provided to each enrolled student at or before the cessation of operations. ( )

~~08.~~ **Change in Ownership or Location.** ( )

~~a.~~ e. ~~Licenses may not be transferred; Any change in ownership or location requires an original new license application.~~ Licenses are not transferable. ( )

~~b.~~ A new application must be submitted to the Board and a license issued for a new or additional location or a change of ownership of an existing school. ( )

~~09.~~ **Cessation of School.** When a school ceases to operate as a school, the school must provide each enrolled student their records of instruction at or before the cessation of operations. ( )

~~10. Rules for Cosmetology Schools Approved to Teach Electrology. (—)~~

~~a. Schools will provide a minimum of three hundred (300) square feet of designated floor space per six (6) students. (—)~~

~~b. Each school shall have the following equipment, which is considered the minimum equipment necessary for the proper instruction of students. This amount of equipment is based on six (6) students. (—)~~

~~i. Work stations equal to seventy-five percent (75%) of total enrollment. (—)~~

~~ii. Two (2) brands of machines, one (1) of which has three (3) method capability: Galvanic, Thermolysis, and Blend. (—)~~

~~iii. Two (2) treatment tables and adjustable technician chairs. (—)~~

~~iv. Two (2) swing arm lamps with magnifying lens. (—)~~

~~v. Two (2) magnifying glasses. (—)~~

~~vi. Tweezers. (—)~~

~~vii. One (1) basin with approved water source. (—)~~

~~viii. Necessary sanitation equipment for implements; and (—)~~

~~ix. Closed storage cabinet. (—)~~

~~e. Student Supplies. Each student is to be issued a basic kit containing two (2) tweezers, disposable probes, eye shields, disposable gloves, before treatment solution, after treatment lotion, hair pins or clips, and one (1) sharps container. (—)~~

**501. (RESERVED)**

~~502. EDUCATIONAL PROGRAM STANDARDS FOR COURSES OF INSTRUCTION.~~

~~A LICENSED SCHOOL MUST MAINTAIN THE FOLLOWING EDUCATIONAL PROGRAM STANDARDS FOR EACH COURSE OF INSTRUCTION FOR WHICH IT IS APPROVED TO TEACH. ( )~~

~~01. BARBER. COURSEWORK MUST INCLUDE COURSES IN THE FOLLOWING CONTENT AREAS: (—)~~

~~A. HAIRCUT. (—)~~

~~B. BLOW DRY (DOES NOT INCLUDE HAIRCUT). (—)~~

~~C. SHAMPOO. (—)~~

~~D. SHAVE AND BEARD TRIM. (—)~~

~~E. FACIAL. (—)~~

~~F. HAIR AND SCALP TREATMENT. (—)~~

~~G. CURLING IRON; AND (—)~~



~~H. HYGIENE AND DISINFECTION SHALL BE TAUGHT ON A CONTINUING BASIS AND INDICATED ON THE RECORD OF INSTRUCTION.(—)~~

~~02. BARBER-STYLIST. COURSEWORK MUST INCLUDE COURSES IN THE FOLLOWING CONTENT AREAS:(—)~~

- ~~A. HAIRCUT;(—)~~
- ~~B. STYLE/BLOW DRY (DOES NOT INCLUDE HAIRCUT);(—)~~
- ~~C. SHAMPOO;(—)~~
- ~~D. PERMANENT WAVE;(—)~~
- ~~E. SHAVE AND BEARD TRIM;(—)~~
- ~~F. FACIAL;(—)~~
- ~~G. COLOR/BLEACH/RINSE;(—)~~
- ~~H. HAIR AND SCALP TREATMENT;(—)~~
- ~~I. CURLING IRON; AND(—)~~

~~J. HYGIENE AND DISINFECTION SHALL BE TAUGHT ON A CONTINUING BASIS AND INDICATED ON THE RECORD OF INSTRUCTION.(—)~~

~~03. COSMETOLOGY. A RECORD OF THE OPERATIONS COMPLETED BY EACH STUDENT SHALL BE MAINTAINED AND INCLUDE THE FOLLOWING:(—)~~

- ~~A. CREATIVE HAIR STYLING WHICH SHALL INCLUDE HAIR STYLES, WET SETS/ STYLING, THERMAL STYLES, FINGERWAVING, BRAIDING/FREE STYLING;(—)~~
- ~~B. SCALP TREATMENTS;(—)~~
- ~~C. PERMANENT WAVES (ALL METHODS);(—)~~
- ~~D. HAIRCUTTING/SHAPING WHICH SHALL INCLUDE SCISSOR AND RAZOR/ CLIPPER;(—)~~
- ~~E. BLEACHING;(—)~~
- ~~F. TINTING;(—)~~
- ~~G. SEMI PERMANENT/TEMPORARY COLOR;(—)~~
- ~~H. FROSTING/HIGHLIGHTS;(—)~~
- ~~I. FACIALS;(—)~~
- ~~J. MAKEUP APPLICATION;(—)~~
- ~~K. WAXING;(—)~~
- ~~L. MANICURES WHICH SHALL INCLUDE PLAIN AND OIL;(—)~~
- ~~M. PEDICURES(—)~~

- N. ~~ARTIFICIAL NAILS; AND (—)~~
- O. ~~HYGIENE AND DISINFECTION SHALL BE TAUGHT ON A CONTINUING BASIS AND INDICATED ON THE RECORD OF INSTRUCTION.(—)~~
04. ~~ESTHETICS. THE RECORDED OPERATIONS COMPLETED BY EACH STUDENT SHALL BE MAINTAINED AND INCLUDE THE FOLLOWING:(—)~~
- A. ~~MASSAGE AND MANIPULATION APPLICATION OF LOTIONS, CREAMS, TONICS, SOLUTIONS, SKIN CARE MASKS, AND SIMILAR COSMETIC PREPARATIONS AND THEIR EFFECTS ON THE SKIN AND BODY;(—)~~
- B. ~~CLEANSING, STEAMING, EXFOLIATION, AND EXTRACTION PROCEDURES;(—)~~
- C. ~~COSMETICS AND MAKEUP APPLICATION;(—)~~
- D. ~~MACHINE APPLICATION: USE OF MECHANICAL OR ELECTRICAL EQUIPMENT;( )~~
- E. ~~BACTERIOLOGY, DISINFECTION AND STERILIZATION, AND SAFETY PRECAUTIONS;(—)~~
- F. ~~HUMAN ANATOMY, PHYSIOLOGY AND HISTOLOGY OF SKIN CARE;(—)~~
- G. ~~FOLLICLE GROWTH CYCLE AND HAIR REMOVAL PROCEDURES;(—)~~
- H. ~~SKIN ANALYSIS, CONDITIONS, DISORDERS, AND DISEASES; AND (—)~~
- I. ~~HYGIENE AND DISINFECTION SHALL BE TAUGHT ON A CONTINUING BASIS AND INDICATED ON THE RECORD OF INSTRUCTION.(—)~~
05. ~~NAIL TECHNOLOGY. THE RECORDED OPERATIONS COMPLETED BY EACH STUDENT SHALL BE MAINTAINED AND INCLUDE THE FOLLOWING:(—)~~
- A. ~~FORM NAILS;(—)~~
- B. ~~FINISHED TIPS;(—)~~
- C. ~~WRAPS AND MENDS;(—)~~
- D. ~~BASIC MANICURES AND PEDICURES; AND(—)~~
- E. ~~HYGIENE AND DISINFECTION SHALL BE TAUGHT ON A CONTINUING BASIS AND INDICATED ON THE RECORD OF INSTRUCTION.(—)~~
06. ~~ELECTROLOGY. THE RECORDED OPERATIONS COMPLETED BY EACH STUDENT SHALL BE MAINTAINED AND INCLUDE THE FOLLOWING:(—)~~
- A. ~~BACTERIOLOGY, DISINFECTION AND STERILIZATION, SAFETY PRECAUTIONS, ANATOMY, AND PHYSIOLOGY;(—)~~
- B. ~~ELECTRICITY WHICH SHALL INCLUDE THE NATURE OF ELECTRICAL CURRENT, PRINCIPLES OF OPERATING ELECTRICAL DEVICES AND THE VARIOUS SAFETY PRECAUTIONS USED WHEN OPERATING ELECTRICAL EQUIPMENT;(—)~~

- ~~C. ELECTROLYSIS WHICH SHALL INCLUDE THE USE AND STUDY OF GALVANIC CURRENT;(—)~~
- ~~D. THERMOLYSIS, INCLUDING THE USE AND STUDY OF HIGH FREQUENCY CURRENT, AUTOMATIC AND MANUAL;(—)~~
- ~~E. A COMBINATION OF HIGH FREQUENCY AND GALVANIC CURRENTS;(—)~~
- ~~F. THE STUDY AND CAUSE OF HYPERTRICHOSIS; AND(—)~~
- ~~G. HYGIENE AND DISINFECTION SHALL BE TAUGHT ON A CONTINUING BASIS AND INDICATED ON THE RECORD OF INSTRUCTION.(—)~~
- ~~08. INSTRUCTOR, THE RECORDED OPERATIONS COMPLETED BY EACH STUDENT SHALL BE MAINTAINED AND INCLUDE THE FOLLOWING:(—)~~
  - ~~A. LESSON PLANNING;(—)~~
  - ~~B. AUDIO VISUAL AID PREPARATION;(—)~~
  - ~~C. THEORY CLASS;(—)~~
  - ~~D. PRACTICAL DEMONSTRATIONS;(—)~~
  - ~~E. TESTING AND EVALUATION THEORY;(—)~~
  - ~~F. TESTING AND EVALUATION; AND(—)~~
  - ~~G. CLINIC FLOOR SUPERVISION;(—)~~

**503.-- 549.(RESERVED)**

**5150.02 APPRENTICE REGISTRATION AND Apprenticeships.**

The Board may issue a registration as an apprentice to allow a person to engage in any of the practices licensed under Section 54-5815, Idaho Code, while completing the required instructional hours for a license or certificate. An apprentice may only practice under direct supervision as provided below. (—)

- ~~01. Application and Qualifications.~~ An applicant must submit a completed application on a form approved by the Board, pay the required fee, and meet the following qualifications:(—)
  - ~~a.~~ Be at least sixteen and one half (16 ½) years of age;(—)
  - ~~b.~~ Have successfully completed at least two (2) years of high school or have attained an equivalent education as determined by the Board as evidenced in a manner identified in Subsection 300.01 of these rules; (—)
  - ~~ca.~~ Have certification from the establishment that the applicant is enrolled as an apprentice in the establishment; (—)
  - ~~cb.~~ Identify the names and license numbers of the licensed cosmetologists, electrologists, estheticians, and nail technicians employed in the establishment in which the who will supervise the applicant will serve as an apprentice; and (—)
  - ~~ce.~~ Identify the name(s) and license number(s) of the licensed instructor(s) who will instruct the applicant during the apprenticeship.(—)
- ~~b.02. Instruction: Prior to beginning instruction, T~~the instructor for any apprenticeship must submit to

~~the and obtain Board approval of a curriculum for the entire course of apprenticeship instructions set forth in which complies with Section 54-5815(1)(g), Idaho Code and Rule 150.02.a]. The Board must approve the curriculum prior to the beginning of instruction. The curriculum must cover the subjects relating to the profession for which the apprentice is pursuing licensure as set forth in Section 54-5815(1)(g), Idaho Code.( )~~

~~**03. Supervision.** There must be at least one (1) licensed instructor and one (1) separate supervising licensee for each apprentice in the establishment at all times when an apprentice is being trained, except that an electrology apprentice may be supervised solely by the electrology instructor.( )~~

~~**a.c.** Apprentices must work under the immediate personal supervision of the licensed instructor or other qualified supervisor licensee, except that an electrology apprentice may only work under the direct personal supervision of a licensed electrologist instructor. The instructors and supervisor licensees must be licensed to teach the profession for which the registrant is pursuing licensure and the supervising licensee must be licensed to practice the profession for which the apprentice is pursuing licensure may only teach or supervise work within their licensed scope of practice.( )~~

**PENDING TEXT 150.02.c.**

~~**c.** Apprentices must work under the immediate personal supervision of the licensed instructor or other qualified supervisor licensee, except that an An electrology apprentice may only work only under the direct personal supervision of a licensed electrologist instructor. Instructors and supervisor licensees may teach or supervise work only within their licensed scope of practice. An apprentice cannot be permitted to render clinical services to patrons prior to completion of five percent (5%) of the required hours of instruction.( )~~

~~**b.** An instructor may not train more than three (3) currently registered apprentices, except that an electrology instructor may not train more than one (1) currently registered electrology apprentice.( )~~

~~**e.** An establishment may not have more than six (6) currently registered apprentices, unless otherwise approved by the Board.( )~~

~~**ded.** An establishment or an instructor under current ongoing discipline may not supervise an apprentice.( )~~

~~**edc.** An apprentice shall cannot be permitted to render any clinical services to patrons until the apprentice has prior to completion of ed at least five percent (5%) of the required hours of instruction.( )~~

~~**04. Recordkeeping.** Establishments employing an apprentice shall keep a daily work record of the attendance of the apprentice and a record of the types of instruction given and the work performed by the apprentice as set forth below.( )~~

~~**a.e.** Recordkeeping. An apprentice must be given monthly progress records, and the monthly record shall be signed and dated by the apprentice and the instructor. The establishment shall must maintain the daily records for a period of five (5) years following the apprentice's completion or termination of the apprentice instruction. The apprentice must be provided access to the daily work records and be provided monthly progress reports. ( )~~

~~**bi.** When certifying completion of an apprenticeship under Section 54-5817, Idaho Code, an apprentice's course of instruction has been completed or terminated, the completed operations and number of hours of instruction are to be recorded by the establishment on the Record of Instruction Form. The instructor The establishment must complete and submit the a Record of Instruction certifying completion to the Board within fourteen (14) days of the completion of the apprenticeship. The establishment must maintain a copy of the Record of Instruction for a period of five (5) years from completion or termination date.( )~~

~~**e.** Attendance, instruction, and work records must be kept in the establishment in which the apprentice is employed.( )~~

~~d. Apprenticeship records and are subject to inspection by the Board at any time.(—)~~

~~05. **Termination of Registration.** A registration as an apprentice is valid from the date of issuance until the apprentice is no longer enrolled as an apprentice in the establishment identified on the apprentice's application. (—)~~

~~ii. When an apprentice discontinues a course of study the apprenticeship or an establishment ceases operation, the establishment must complete and submit a Record of Instruction Form with the total number of hours worked and the types of instruction given to the apprentice. The Record of Instruction Form must be submitted to the apprentice(s) and the Board within thirty (30) days of the discontinuance of the apprenticeship. If an apprentice discontinues a course of instruction and does not transfer to another salon establishment within sixty (60) days, the apprentice registration is automatically canceled and is to be submitted to the Board along with the Record of Instruction. ( )~~

**PENDING TEXT [Deleted] 150.02.e.i. and ii.**

~~i. The establishment must complete and submit a Record of Instruction certifying completion to the Board within fourteen (14) days of the apprenticeship completion.(—)~~

~~ii. When an apprentice discontinues the apprenticeship or an establishment ceases operation, the establishment must complete and submit a Record of Instruction Form to the apprentice(s) and Board within thirty (30) days. (—)~~

~~b. When an establishment where apprentices are being trained ceases operation as an establishment, the establishment must submit the records of instruction for each apprentice to the Board within thirty (30) days. (—)~~

~~ef. An apprentice who has discontinued a course of study must apply for and be granted receive a new registration under Subsection 550.01 of these rules, prior to resuming instruction.( )~~

~~06g. Out of State Apprenticeship. An applicant who has received instruction as an apprentice in another state must file with the Board submit a copy of the record of instruction from the summary or record of the out of state apprenticeship. For purposes of this section, the record of instruction will be a statement which gives including detailed information regarding operations and hours of instruction, and which is to be verified certified by the relevant licensing agency or instructor(s) in the state in which the instruction was obtained.( )~~

~~07a. **Apprenticeship Length.** An apprenticeship registration must not exceed the following lengths of time be completed within the following period:(—)~~

~~ai. Barber: fifty-seven (57) weeks;( )~~

~~bii. Barber-Stylist: ninety-four (94) weeks;( )~~

~~ciii. Cosmetologist: one hundred four (104) weeks;( )~~

~~dii. Estheticians/Electrologist: thirty-eight (38) weeks;( )~~

~~ey. Nail Technicians: twenty-five (25) weeks.( )~~

**551. -- 709.(RESERVED)**

**710. PRACTICE OUTSIDE OF A LICENSED ESTABLISHMENT.**

~~All licensees and certificants must practice in a place or establishment that is licensed for such practice, except as provided for in Section 54-5804, Idaho Code, or when the sServices provided by the Pursuant to Section 54-~~

~~5804(2)(c), Idaho Code, a licensee or certificant outside of a licensed establishment pursuant to Section 54-5804(2)(c), Idaho Code, are limited to~~ can provide the following services outside of a licensed establishment: (—)

**01.** Hair Styling. Arranging, styling, ~~and~~ dressing of the hair. Trimming ~~of the hair~~ may be performed when ~~it is~~ incidental to the arranging, styling, or dressing ~~of the hair~~, including facial hair such as beards, mustaches, and eyebrows. ( )

**02.** Coloring. Wash out topical color, tinted powder, spray or chalk to temporarily camouflage ~~the~~ hair. ( )

~~**03.** Extensions. Application of extensions with non permanent adhesive or thread, such as clip in hair, halos, wig and toupees.(—)~~

~~**0403.** Temporary Hair Removal. Tweezing of hairs on the face and neck.( )~~

~~**0504.** Cleansing. Cleansing of the face for the limited purpose of removing makeup and or debris and cosmetic preparations for the application of makeup.( )~~

~~**0605.** Nail Services. Application of nail polish by painting without the use of a lamp or light, removal of polish that is incidental to the painting of the nail, and shaping of the nail with a single-use emery board.( )~~

~~**0706.** Makeup Application. Application of makeup, except for the certified makeup artists.( )~~

~~**0807.** Safety and Disinfection. All licensees and certifiants must comply with the safety and disinfection rules applicable to the services being performed, regardless of the location where the services are performed.(—)~~

~~711.—799.(Reserved)~~

~~**800. UNPROFESSIONAL CONDUCT** **GROUNDS FOR DISCIPLINE.**~~

~~A licensee shall not engage in unprofessional the following conduct in the course of their practice. Unprofessional conduct is conduct which has endangered or is likely to endanger the health, welfare, or safety of the public and includes, but is not limited to, the following:( )~~

~~**200. 06. Unprofessional Conduct. The following practices constitute unprofessional conduct.(—)**~~

~~**01a.** Use of MMA. Use of Methyl Methacrylate acid (MMA);( )~~

~~**02b.** Use of Skin Cutting Instruments. Use of skin cutting instruments, including razor-type callus shavers, credo blades, microplane, or other rasps or graters designed to remove corns or calluses by cutting which cut below the skin surface. The presence of such instruments creates a presumption of the instrument's use;( )~~

~~**03c.** Use of UV Sterilizers. Use of ultraviolet (UV) sterilizers for disinfection. This does not prohibit the use of ultraviolet dryers or lamps used to dry or cure nail products;( )~~

~~**04d.** Use of Roll on Wax. Use of roll-on wax, except that single-use roll-on wax cartridges are acceptable when they are limited to a single client service and disposed of immediately after use;( )~~

~~**05e.** Double Dipping. Placing an item or instrument that has been used on a person or placing a person's body part into a wax pot or other container that holds powder, wax, a compound, solution, or other cosmetic preparation that will be used for more than one (1) than patron. This prohibited practice is commonly referred to as double dipping;( )~~

~~**06f.** Reuse of Single Use or Porous Items. Use of single-use or porous items on more than one (1) patron. The presence of used single-use or porous items, which have not been disposed of in a general trash container, creates a presumption of the item's use or intended use on more than one patron.( )~~

~~**07g.** Apprentices. Failure to adequately supervise, instruct, or train an apprentice;( )~~

~~08h. Inspections and Investigations.~~ Interference with an inspection or investigation conducted by or on behalf of the Board;( )

~~09i. Disease Transmission Prevention.~~ Performing a service on a patron who has an open sore or a known contagious disease of a nature that may be transmitted by performing the procedure; ~~unless the licensee takes medically approved measures to prevent transmission of the disease; or.~~ ( )

~~10k. Practice Outside Scope of Training.~~ Performing services or using machines or devices outside the licensee's area of training, expertise, competence, or scope of practice for the license held.( )

**801. -- 849.(RESERVED)**

**850. REINSPECTION OF ESTABLISHMENTS, SCHOOLS AND FACILITIES.**

~~All establishments, schools, and facilities shall be subject to inspection by the Board or its agents during business hours without notice to ensure the safe operation of each establishment, school, or facility and to ensure continued compliance with Chapter 58, Title 54, Idaho Code, and these rules.( )~~

~~01. Form.~~ The Board may adopt a form which identifies those general items that will be inspected and a level of compliance necessary for issuance or renewal of a license and for which a failure to meet that level is grounds for discipline.( )

~~02. Classification Card.~~ Following an inspection, each establishment, school, and facility, except for retail thermal styling equipment dealers, will receive classification as follows: 100% - 90% = "A"; 89% - 80% = "B"; 79% and below = "C." The "C" classification denotes an unacceptable level of compliance and a reinspection is required. ( )

~~200.05 03. Reinspection- Inspections.~~ A facility, school, or establishment ~~not found to be at an acceptable level of compliance~~ must make improvements within thirty (30) days. ~~A "C" classification denotes an unacceptable level of compliance and a reinspection is required.~~ of an unacceptable "C" classification inspection result The Board may allow an establishment, school, or facility to continue to operate during that period. The Board may take action prior to any reinspection when the circumstances represent an immediate danger to the public health, safety, or welfare. ( )

~~851.200.03~~ **Safety And Disinfection fFor Establishments aAnd Schools.**

~~All establishments and schools must take every precaution to prevent the transfer of disease-causing pathogens between people and must meet annual renewal requirements and the following requirements:( )~~

~~01a. Premises.~~ Establishments and schools must be separated from living areas by substantial walls and/ or closable doors. ~~All establishments and schools must be maintained in an orderly manner, so as to be safe and comfortable to the operators and patrons.~~ Floors, walls, ceilings, furniture, and all other fixtures, and restrooms shall ~~must~~ be kept clean and in good repair at all times. ~~Clearly identifiable first-aid kit must be readily accessible on the premises~~ ( )

~~02b. Instrument Cleaning.~~ All instruments and items used by operators shall be thoroughly cleaned after each use and ~~prior to disinfection.~~( )

~~03. Instrument Disinfection or Sterilization.~~ All instruments and items used by operators shall ~~be then~~ disinfected ~~with a disinfectant~~ or sterilized ~~with a sterilant~~ after cleaning and prior to use on each patron, ~~with a disinfectant or sterilant as defined in these rules.~~ All disinfectant must be mixed and changed according to the manufacturer's instructions. Disinfection methods ~~such as of~~ immersion, sprays, and wipes may be used. Contact time listed on the disinfectant's label must be adhered to in all circumstances. Items or surfaces must remain completely immersed in disinfectant, or visibly wet, if using sprays or wipes, for the full amount of contact time.( )

~~04c. Single Use, and Porous, and Prohibited Instruments.~~ ~~Porous or single use~~ Instruments and items ~~that are intended for single use or that are porous shall~~ ~~must~~ be immediately disposed of in a ~~waste trash~~

container after each use on a patron or given to the patron to take home for personal use, provided that the instruments may not be brought back to the establishment for future use. Skin cutting instruments, including razor-type callus shavers, credo blades, or other rasps or graters which cut below the skin surface are not permitted in the establishment. (—)

~~05d. Waxes and Waxing Services.~~ Paraffins, waxes and ~~all other multi-patron use solutions or compounds~~ products shall must be covered and maintained free of any foreign contaminants. Only disinfected or unused, single-use items may be placed into a container that holds ~~products for multi-patron use products.~~ wax or paraffins. ~~Waxes and paraffins must be dispensed for use on a patron in the following manner: Waxes, paraffin, and These products must be portioned out for each patron in a container, or dispensed in a manner that prevents contamination of the unused supply. All portions used on a patron must be disposed of immediately following use.~~ (—)

~~a. Wax may be removed from a multi use wax pot for use on a patron by one of the following methods:~~ (—)

- ~~i. Single use spatula disposed of after a single dip/application;~~(—)
- ~~ii. Disinfected plastic spatulas with one disinfected spatula used for each dip into the wax pot; or~~ (—)
- ~~iii. Placement of all wax needed for entire service in a single use, disposable cup or a container that can be properly cleaned and disinfected, such as a stainless steel bowl. The cup, any remaining wax, and all single use applicators must be immediately disposed of at the conclusion of the service. This is the only instance in which a single applicator may be used for an entire service.~~(—)

~~b. Paraffin wax must be portioned out for each patron in a bag or other container, or dispensed in a manner that prevents contamination of the unused supply. All portions used on a patron must be disposed of immediately following use.~~(—)

~~06. Makeup Services.~~ All makeup and makeup services must follow the requirements in Section 852 of these rules. (—)

~~07. Nail Services.~~ A licensee must comply with the following disinfection procedures between every patron: (—)

~~c.a. Nail Services.~~ All ~~p~~Pedicure bowls, basins, or tubs, drill bits, internal piping, and pumps must be cleaned and disinfected prior to each use as directed by the manufacturer. follows:(—)

- ~~i. Empty pedicure bowl.~~(—)
- ~~iii. Remove all removable parts, including screens, foot plates, impellers and fans.~~(—)
- ~~iiii. Clean removable parts with soap or detergent and water, rinse, and immerse parts in disinfectant following manufacturer's directions for proper contact time.~~(—)
- ~~iiiv. Scrub bowl with soap or detergent and rinse with clean water.~~(—)
- ~~v. Replace removable cleaned and disinfected parts.~~(—)
- ~~ivvi. Fill bowl and add disinfectant to achieve proper concentration.~~(—)
- ~~yvii. Allow disinfectant solution to sit, or run through system for bowls with circulating water for the manufacturer's recommended contact time.~~(—)
- ~~viii. Drain the tub, rinse and air dry or wipe dry with clean paper towel.~~(—)



~~b.~~ Metal drill bits may be soaked in acetone to remove nail product. When removed from the acetone, they must be cleaned using soap, water, and a brush, and then rinsed prior to immersion in disinfectant. Drill bits must remain in disinfectant for the full contact time.( )

~~f.08.~~ **Water Supply and Hand Washing.** Water supplies shall be from an approved source. Sufficient basins with hot and cold running water, approved drainage systems, soap and single-use towels shall be conveniently located within the work area. Operators and students shall ~~must~~ wash their hands with running water, ~~and soap and a single-use towel~~ prior to providing service to any patron. When hand washing is not practicable, hand sanitizer of at least seventy percent (70%) alcohol may be used.( )

~~09.~~ **Restroom Facilities.** Clean, adequate and convenient restroom facilities, located and accessible from within the building where the shop or school is located, ~~and~~ shall be available for use by operators and patrons. All operators and students must wash their hands with running water and soap and then dry their hands with a single-use towel after using the restroom.( )

~~10g.~~ **Safety. Animals.** Clearly identifiable first-aid kit must be readily accessible on the premises. No animals are allowed in shops or schools except service dogs, ~~as defined by the U.S. Department of Justice Regulations,~~ trained to do work or perform tasks for persons with disabilities. ~~The definition of service animals and disabilities shall be as set forth in U.S. Department of Justice Regulations at 28 C.F. R. Section 36.104 effective August 11, 2016.~~ ( )

~~11h.~~ **Licenses and Classification Cards.** All establishments and schools must be licensed prior to their operation and must be under the direct supervision of a licensed operator. A current establishment and/or school license, valid operator license(s), a copy of these safety and disinfection rules, and a valid classification card shall ~~must~~ be conspicuously displayed in the work area of each establishment or school ~~for the information of operators, Board agents, and the public.~~( )

~~04,852.~~ **Safety ~~A~~ and Disinfection ~~f~~ For Retail Cosmetics Dealer Facilities ~~a~~ And Makeover ~~o~~ Or Glamour Photography Businesses.**

All retail cosmetic dealers and makeover or glamour photography businesses must take ~~use~~ every precaution to prevent the transfer of disease-causing pathogens between people and must comply with Chapter 58, Title 54, Idaho Code. At a minimum the dealer or business must meet the following requirements:( )

~~01a.~~ **Cake, Loose, or Liquid Makeup.** All ~~m~~Makeup that comes in a cake, loose, or liquid form, must be transferred to a palette with a disinfected or single-use spatula for use with a single ~~customer~~ patron and in a manner to prevent any contamination. ~~Any e~~Excess make-up ~~on the palette~~ must be disposed of immediately following use ~~on or by a customer.~~( )

~~02b.~~ **Makeup Pencils.** Make-up pencils that require a sharpener must be sharpened prior to each use. Sharpeners must be cleaned and disinfected in accordance with ~~Subsections 851.02 and 851.03 of these rules~~ **Rule 200.03.b.** Eyeliner that does not require a sharpener must have a portion transferred to a palette with a disinfected or single-use spatula for use on a single customer.( )

~~03c.~~ **Mascara.** Single-use applicators must be used in the application of mascara.( )

~~04d.~~ **Brushes and Implements.** All ~~i~~Implements and applicators, including brushes, ~~that are~~ used on customers or made available ~~to be used for use~~ by customers must be stored, cleaned, and disinfected or ~~discarded~~ disposed of in accordance with ~~Rule 200.03.b. and c. Section 851 of these rules.~~( )

~~05e.~~ **Displays.** All ~~m~~Make-up ~~displays~~ should be covered when not in use. When ~~make up displays are~~ accessible ~~to for use by the public~~ patrons, single-use applicators ~~for all make up~~ must be readily available.( )

~~06.~~ **Water Supply and Restroom Facilities.** The facility or business must meet the requirements in ~~Subsections 851.08 and 851.09, and Section 853 of these rules.~~( )

~~1067.~~ **First aid Kit.** The facility or business must have a ~~e~~Clearly identifiable first-aid kit ~~must be~~ readily accessible on the premises.( )

~~g078. Licenses and Classification Card. All retail cosmetics dealers and glamour or makeover photography businesses must be licensed prior to their operation. A current license, a copy of these safety and disinfection rules, and a valid classification card shall must be conspicuously displayed in the work area of each facility for the information of employees, Board agents, and the public.( )~~

~~**853. SAFETY AND DISINFECTION FOR RETAIL THERMAL STYLING DEALER FACILITIES.**~~

~~All retail thermal styling equipment dealers must take every precaution to prevent the transfer of disease causing pathogens between people and must comply with Chapter 58, Title 54, Idaho Code. At a minimum the dealer must meet the following requirements:(—)~~

~~**01. Cleaning, Disinfection, and Storage.** All implements and electrical equipment used on a customer must be cleaned, disinfected, and stored in accordance with Subsections 851.02, 851.03, and 851.04, of these rules.( )~~

~~**02. First aid Kit.** The facility or business must have a clearly identifiable first aid kit readily accessible on the premises.(—)~~

~~**03. Registration and Classification Card.** All retail thermal styling equipment dealers must be registered prior to their operation. A current registration, a copy of these safety and disinfection rules, and a valid classification card shall be conspicuously displayed in the work area of each facility for the information of employees, Board agents, and the public.(—)~~

**854. -- 999.(RESERVED)**

# IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

## 24.39.10 – RULES OF THE IDAHO ELECTRICAL BOARD

### DOCKET NO. 24-3910-2302

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo, Incorporation By Reference Synopsis \(IBRS\), & Cost/Benefit Analysis \(CBA\)](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. This rulemaking action is authorized pursuant to Sections 54-1001, 54-1005, 54-1006, 54-1007, 54-1009, 54-1018, 67-2604, 67-2614, 67-9406, and 67-9409, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

- Rule 600.01.e. Under Rule 600, Idaho Electrical Code, an exception was added for Article 210.8.d of the 2023 Edition of the NEC for clothes dryers in laundry areas and dishwashers in dwelling units to align the wording with portions of the NEC elsewhere in Rule 600.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 4, 2023, Edition of the Idaho Administrative Bulletin, [Vol. 23-10, pages 547-557](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

The fees for permits and inspections as designated in Rule 500 of these pending rules are authorized in Section 54-1005, Idaho Code. None of these fees are being changed as a result of this rulemaking or since being previously reviewed by the Idaho legislature.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rulemaking is not anticipated to have any impact to the State General Fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Katie Stuart, Bureau Chief- Administration, 208-577-2489.

DATED this 6th day of December, 2023.

Katie Stuart  
Bureau Chief- Administration  
11341 W. Chinden Blvd., Bldg. #4  
Boise, ID 83714  
Phone: (208) 577-2489  
Email: [katie.stuart@dopl.idaho.gov](mailto:katie.stuart@dopl.idaho.gov)

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This rulemaking action is authorized pursuant to Sections 54-1001, 54-1005, 54-1006, 54-1007, 54-1009, 54-1018, 67-2604, 67-2614, 67-9406 and 67-9409, Idaho Code.

**PUBLIC HEARING SCHEDULE:** The public hearing concerning this rulemaking will be held as follows:

**Wednesday, October 25, 2023, 9:00 a.m. MT**

**Division of Occupational and Professional Licenses  
Chinden Campus Building 4  
11341 W. Chinden Blvd., Bldg. #4  
Boise, ID 83714**

**Telephone and web conferencing information will be posted on:  
<https://dopl.idaho.gov/calendar/> and <https://townhall.idaho.gov/>**

The hearing site will be accessible to persons with disabilities, if needed. Requests for accommodation must be made not later than five (5) days prior to the meeting to the agency address below.

**DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Under [Executive Order 2020-01, Zero-Based Regulation](#), the Idaho Electrical Board is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. In conjunction with stakeholders, the proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter and to use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and Executive Order 2020-01.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

The fees for applications, licenses, and reinstatement as designated in Rule 400 of these proposed rules are authorized in Section 54-1005, Idaho Code. None of these fees are being changed as a result of this rulemaking or since being previously reviewed by the Idaho legislature.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

This rulemaking is not anticipated to have any negative fiscal impact on the State General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted under Docket No. 24-ZBRR-2301. The (Second) Omnibus Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023 Idaho Administrative Bulletin, [Vol. 23-6, p. 69](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: National Electrical Code, 2023

Edition.

The materials cited are incorporated by reference because they would be unduly cumbersome, expensive, or otherwise inexpedient to republish all or in part. The materials cited are codes, standards, or rules adopted by a nationally recognized organization or association.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this proposed rule, contact Katie Stuart, Bureau Chief, at (208) 577-2489. Materials pertaining to the proposed rulemaking, including any available preliminary rule drafts, can be found on the following DOPL website: <https://dopl.idaho.gov/rulemaking/>.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2023.

DATED this 1st day of September, 2023.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-3910-2302**

*Italicized text indicates changes between the text of the proposed rule as adopted in the pending rule.*

**100. LICENSURE AND REGISTRATION.**

**01. Journeyman.** An applicant must pass an examination designated by the Board and either (a) submit evidence of a minimum of eight thousand (8,000) hours of work experience as an apprentice making electrical installations in accordance with the requirements of the jurisdiction in which the applicant obtained the experience and satisfactory completion of a four-year sequence of instruction approved by the Idaho Division of Career-Technical Education, or (b) submit proof of sixteen thousand (16,000) hours of electrical experience in accordance with the requirements of the jurisdiction in which the applicant obtained the experience. (3-28-23)

**a.** Examination. An applicant may sit for the exam after showing proof of completion of either the approved 4-year sequence of instruction or 16,000 hours of electrical experience. (3-28-23)

**b.** Provisional Journeyman License. A provisional journeyman license can be issued to an applicant who has completed the 16,000 hours of electrical experience but has not yet passed the examination. (3-28-23)

**c.** Work experience in appliance repair, motor winding, or communications will not count towards the requirements to take the journeyman examination or obtain a provisional journeyman or journeyman license. (3-28-23)

**d.** No more than two thousand (2,000) hours of work experience gained while engaged in the practice of a limited electrical installer or trainee may be counted toward the satisfaction of the experience requirements for journeyman licensure. (3-28-23)

**02. Master.** A master electrician does not need to also hold a journeyman license. (3-28-23)

**03. Limited Electrical Installer.** An applicant must submit evidence of a minimum of four thousand (4,000) hours of work experience in the same limited category in accordance with the requirements of the jurisdiction in which the applicant obtained the experience. (3-28-23)

**04. Electrical Contractor and Limited Electrical Contractor.** Applicant or its entity designee must

pass an examination designated by the Board and submit an application signed by the applicant or an official representative of the entity making the application and countersigned by the supervising electrician. (3-28-23)

a. An entity applicant (such as, corporation, partnership, company, firm, or association) must designate in writing an individual to represent it for examination purposes. Any such designee shall be a supervisory employee and may not represent any other applicant for a contractor's license. (3-28-23)

b. In the event the working relationship between a contractor and its designee terminates, the contractor will notify the Division in writing within ten (10) days of the date of termination. The contractor may not purchase permits or make electrical installations unless another duly qualified designee passes the contractor's examination on behalf of the contractor. (3-28-23)

**05. Continuing Education.** To renew, journeymen and master electricians must provide proof of completion, during the prior three-year license cycle, ~~of twenty four (24) hours of continuing education instruction~~ consisting of ~~eight sixteen (816)~~ eighteen (18) hours of Idaho Electrical eCode update training covering changes included in the latest edition of the National Electrical Code and ~~sixteen eight (168)~~ eighteen (18) hours of any combination of National Electrical Code code-update training, code-related training, or industry-related training, or independent study. (3-28-23)(    )

**101. – 199. (RESERVED)**

**200. PRACTICE STANDARDS.**

**01. Electrical Contracting Work.** Contracting work includes electrical maintenance or repair work, in addition to new electrical installations, unless such work is expressly exempted by Section 54-1016, Idaho Code. (3-28-23)

**02. Contractor Scope.** A contractor's allowable scope of work is the same as the scope of its licensed employee. (3-28-23)

**03. Supervision.** (3-28-23)

a. The master, journeyman, residential electrician, or limited electrical installer shall be designated the supervising electrician; must be available during working hours to carry out the duties of supervising, as set forth herein; and will be responsible for supervision of electrical installations made by said contractor as provided by Section 54-1010, Idaho Code. (3-28-23)(    )

i. A master electrician, journeyman, residential electrician, or limited electrical installer is not qualified for one (1) year as the supervising electrician if his contractor license was revoked. (3-28-23)(    )

ii. An individual contractor may act as his own supervising master, journeyman, residential electrician, or limited electrical installer upon the condition that he holds an active master, journeyman, residential electrician, or limited electrical installer license. (3-28-23)(    )

b. The employing contractor or limited electrical contractor must ensure each apprentice, trainee, and provisional journeyman performs electrical work only under the constant on-the-job supervision and training of a master, journeyman, residential electrician, or installer. (3-28-23)(    )

c. A journeyman who is an employee of a company, corporation, firm, or association with a facility account may sign as supervising electrician for that facility account in addition to signing as supervising journeyman for his own contractor's license so long as the journeyman is listed as the owner. (3-28-23)

**04. Connecting and Energizing Prior to Inspections.** At the request of a licensed electrical contractor and upon receipt of a copy of an electrical permit, a power supply company may connect and energize an electrical service, to the line side of the service disconnect, prior to a passed inspection in the following situations: to preserve life or property or to provide temporary service for construction. Any contractor energizing an electrical installation prior to an inspection assumes full responsibility for the installation. (3-28-23)

**05. Limited Electrical Installations.** A limited electrical installer must be employed by an electrical contractor or limited electrical contractor in the same restricted category and may only countersign a limited electrical contractor's license application as supervising limited electrical installer for work within the same restricted category. Limited electrical installations must comply with the National Electrical Code, as amended herein. The following categories of electrical installations constitute limited electrical installations, the practice of which shall require an electrical contractor or limited electrical contractor license and supervision by a journeyman, master electrician, or limited electrical installer: (3-28-23)

**a.** Elevator, Dumbwaiter, Escalator, or Moving-Walk Electrical. An elevator electrical limited licensee is only authorized to install, maintain, repair, and replace equipment, controls, and wiring beyond the disconnect switch in the machine room of the elevator and pertaining directly to the operation and control thereof when located in the elevator shaft and machine room. (3-28-23)

**b.** Sign Electrical. A sign electrical limited licensee is only authorized to install, maintain, repair, and replace equipment, controls, and wiring on the secondary side of sign disconnecting means; provided the disconnecting means is located on the sign or within sight therefrom. (3-28-23)

**c.** Manufacturing or Assembling Equipment. A licensed limited electrical manufacturing or assembling equipment installer is only authorized to install, maintain, repair, and replace equipment, controls, and accessory wiring, integral to the specific equipment, on the load side of the equipment disconnecting means. Electrical service and feeder are to be installed by others. The licensee may also install circuitry in modules or fabricated enclosures for the purpose of connecting the necessary components which individually bear a label from a nationally recognized testing laboratory when such equipment is designed and manufactured for a specific job installation. (3-28-23)

**i.** This subsection does not apply to a limited electrical manufacturing or assembling equipment installer installing electrical wiring, equipment, and apparatus in modular buildings as that phrase is defined in Section 39-4105, Idaho Code. Only journeyman electricians and electrical apprentices, employed by an electrical contractor, may perform such installations. (3-28-23)

**d.** Limited Energy Electrical. Limited energy systems are defined as fire and security alarm systems, class 2 and class 3 signaling circuits, key card operators, nurse call systems, motor and electrical apparatus controls and other limited energy applications covered by the NEC. Unless exempted by Section 54-1016, Idaho Code, any person who installs, maintains, replaces or repairs electrical wiring and equipment for limited energy systems in facilities other than one (1) or two (2) family dwellings shall be required to have a valid limited energy limited electrical license. (3-28-23)

**i.** Limited energy systems do not include, and no license of any type is required for, the installation of landscape sprinkler controls or communication circuits, wires and apparatus that include telephone systems, telegraph facilities, outside wiring for fire and security alarm systems which are used for communication purposes, and central station systems of a similar nature, PBX systems, audio-visual and sound systems, public address and intercom systems, data communication systems, radio and television systems, antenna systems and other similar systems. (3-28-23)

**e.** Irrigation Sprinkler Electrical. An irrigation system electrical limited licensee is only authorized to install, maintain, repair and replace equipment, controls and wiring beyond the disconnect switch supplying power to the electric irrigation machine. The irrigation machine is considered to include the hardware, motors and controls of the irrigation machine and underground conductors connecting the control centers on the irrigation machine to the load side of the disconnecting device. Disconnect device to be installed by others. (3-28-23)

**f.** Well Driller and Water Pump Installer. A license holder in this category is only authorized to perform the following types of installations: (3-28-23)

**i.** Single or three (3) phase water pumps: install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (3-28-23)

ii. Domestic water pumps, one hundred twenty/two hundred forty (120/240) volt, single phase, sixty (60) amps or less: install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to and including the disconnecting device. (3-28-23)

iii. Temporarily connect into a power source to test the installations, provided that all test wiring is removed before the installer leaves the site. (3-28-23)

iv. Individual residential wastewater pumping units. Install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to and including the disconnecting device for systems that serve one-family, two-family, or three-family residential installations. (3-28-23)

**g.** Refrigeration, Heating, and Air-Conditioning Electrical Installer. A license holder in this category is only authorized to perform the following types of installations, which installations shall be limited to factory-assembled, packaged units: (3-28-23)

i. Heating Units (single phase): install, repair, and maintain all electrical equipment, wires, and accessories from the unit up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (3-28-23)

ii. Refrigeration, Air-Conditioning Equipment and Heat Pumps (single phase): install, repair, and maintain all electrical equipment, wires, and accessories from the unit up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (3-28-23)

iii. Refrigeration, Air-Conditioning and Heating Systems (three (3) phase): install, maintain, and repair all electrical equipment and accessories up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (3-28-23)

**h.** Outside Wireman. Applicants for this license category shall provide documentation of having completed an electrical lineman apprenticeship program or similar program approved by the U.S. Department of Labor, Office of Apprenticeship. Any person currently licensed in this category is only authorized to perform the following types of installation (3-28-23)

i. Overhead distribution and transmission lines in excess of six hundred (600) volts (3-28-23)

ii. Underground distribution and transmission lines in excess of six hundred (600) volts. (3-28-23)

iii. Substation and switchyard construction in excess of six hundred (600) volts. (3-28-23)

**i.** Solar Photovoltaic. Applicants for this license category shall provide proof of photovoltaic installer certification by the North American Board of Certified Energy Practitioners (NABCEP) or equivalent. Any person licensed in this category is only authorized to perform the following types of installations: (3-28-23)

i. Solar Photovoltaic DC Systems: Install, maintain, repair, and replace all electrical equipment, wires, and accessories up to and including the inverter. (3-28-23)

ii. Solar Photovoltaic micro-inverter/AC Systems: Install, maintain, repair, and replace all electrical equipment, wires, and accessories up to and including the AC combiner box. (3-28-23)

**06. Certification and Approval of Electrical Products and Materials.** All materials, devices, fittings, equipment, apparatus, luminaires, and appliances installed or to be used in installations that are supplied with electric energy must be approved as provided in one (1) of the following methods: (3-28-23)

**a.** Testing Laboratory. Be tested, examined, and certified (Listed) by a Nationally Recognized Testing Laboratory (NRTL). (3-28-23)

**b.** Field Evaluation. Non-listed electrical equipment may be approved for use through a field



evaluation process performed in accordance with recognized practices and procedures such as those contained in the 2012 edition of NFPA 791 - Recommended Practice and Procedures for Unlabeled Electrical Equipment Evaluation published by the National Fire Protection Association (NFPA). Such evaluations shall be conducted by: (3-28-23)

i. A field evaluation body approved by the authority having jurisdiction. The field evaluation body shall meet minimum recognized standards for competency, such as NFPA 790 - Standard for Competency of Third-Party Field Evaluation Bodies, 2012 edition, published by the National Fire Protection Association (NFPA); or (3-28-23)

ii. In the case of industrial machinery only, as defined by NFPA 79 - Electrical Standard for Industrial Machinery, 2012 edition, a field evaluation may be performed by a professional engineer currently licensed to practice electrical engineering by the state of Idaho and who is not involved in the design of the equipment being evaluated or the facility in which the equipment is to be installed. (3-28-23)

c. Availability of NFPA Standards. The most recent edition of NFPA 790 - Standard for Competency of Third-Party Field Evaluation Bodies and NFPA 791 - Recommended Practice and Procedures for Unlabeled Electrical Equipment Evaluation published by the National Fire Protection Association (NFPA) are available at the Division. (3-28-23)

**(BREAK IN CONTINUITY OF SECTIONS)**

**600. IDAHO ELECTRICAL CODE.**

**01. Documents.** Under the provisions of Section 54-1001, Idaho Code, the National Electrical Code, 2017~~23~~ Edition, (herein NEC) is hereby adopted ~~and incorporated by reference for the state of Idaho and are in full force and effect on and after July 1, 2017,~~ with the following amendments: (3-28-23)T( )

~~a. Article 110.3(A) and 110.3(B) shall not apply to submersible well pumps installed in swimming and marine areas; provided however, such articles shall apply to all other equipment required in the installation of a submersible well pump in such areas except for the actual submersible well pump itself. (3-28-23)T~~

~~b. Article 210.8(A)(7) Sinks. Delete article 210.8(A)(7) and replace with the following: Sinks located in areas other than kitchens where receptacles are installed within one and eight tenths (1.8) meters (six (6) feet) of the outside edge of the sink. (3-28-23)T~~

~~c. Article 210.8(A)(10). Delete article 210.8(A)(10). (3-28-23)T~~

~~d. Article 210.8(D). Delete article 210.8(D). (3-28-23)T~~

~~e. Article 210.52(E)(3). Delete article 210.52(E)(3) and replace with the following: Balconies, Decks, and Porches. Balconies, decks, and porches having an overall area of twenty (20) square feet or more that are accessible from inside the dwelling unit shall have at least one (1) receptacle outlet installed within the perimeter of the balcony, deck, or porch. The receptacle shall not be located more than two (2.0) meters (six and one half (6½) feet) above the balcony, deck, or porch surface. (3-28-23)T~~

~~f. Add a new Article 225.30(F) — One (1) or Two (2) Family Dwelling Unit(s). For a one (1) or two (2) family dwelling unit(s) with multiple feeders with conductors one aught (1/0) or larger, it shall be permissible to install not more than six (6) disconnects grouped at one (1) location where the feeders enter the building, provided that the feeder conductors originate at the same switchboard, panelboard, or overcurrent protective device location. (3-28-23)T~~

~~g. Where the height of a crawl space does not exceed one and four tenths (1.4) meters or four and one half (4.5) feet it shall be permissible to secure NM cables, that run at angles with joist, to the bottom edge of joist. NM cables that run within two and one tenth (2.1) meters or seven (7) feet of crawl space access shall comply with Article 320.23. (3-28-23)T~~

~~h.~~ Article 334.10(3). Delete Article 334.10(3) and replace with the following: Other structures permitted to be of Types III, IV, and V construction. Cables shall be concealed within walls, floors, or ceilings that provide a thermal barrier of material that has at least a fifteen (15) minute fire rating as identified in listings of fire-rated assemblies. For the purpose of this section, cables located in attics and underfloor areas that are not designed to be occupied shall be considered concealed. (3-28-23)T

~~i.~~ Article 675.8(B). Compliance with Article 675.8(B) will include the additional requirement that a disconnecting means always be provided at the point of service from the utility no matter where the disconnecting means for the machine is located. (3-28-23)T

~~j.~~ Article 682.10 shall not apply to submersible well pumps installed in swimming and marine areas; provided however, such articles shall apply to all other equipment required in the installation of a submersible well pump in such areas except for the actual submersible well pump itself. (3-28-23)T

~~k.~~ Article 682.11. Add the following exception to Article 682.11: This article shall not apply to service equipment that is located on or at the dwelling unit and which is not susceptible to flooding. (3-28-23)T

~~l.~~ Article 682.13. Add the following exceptions to Article 682.13: (3-28-23)T

~~i.~~ Exception No. 1. Wiring methods such as HDPE schedule eighty (80) electrical conduit or its equivalent or greater, and clearly marked at a minimum "Caution Electrical" to indicate that it contains electrical conductors shall be approved. It shall be buried whenever practical, and in accordance with the requirements of the authority having jurisdiction. The use of gray HDPE water pipe rated at two hundred (200) PSI (e.g. SIDR 7 or DR-9) is suitable for use as a chase only when the following conditions are met: (3-28-23)T

(1) When internal conductors are jacketed submersible pump cable. (3-28-23)T

(2) When used in continuous lengths, directly buried, or secured on a shoreline above and below the water line. (3-28-23)T

(3) When submersible pump wiring terminations in the body of water according to 682.13 Exception No. 2 are met. (3-28-23)T

~~ii.~~ Exception No. 2. Any listed and approved splices required to be made at the submersible well pump itself, outside of a recognized submersed pump sleeve or housing, when wires are too large to be housed inside such sleeve, shall be covered with a non-metallic, impact resistant material, no less than one quarter (.25) inches thick, such as heavy duty heat shrink or other equivalent method approved by the authority having jurisdiction. (Eg. install a heat shrink over the sleeve or housing that the submersible well pump is installed in, and then recover (apply heat) the heat shrink over both the HDPE and the water line). At least six (6) inches shall be over the sleeve and at least twelve (12) inches over the HDPE and water line. (3-28-23)T

~~iii.~~ Exception No. 3. Pipe, conduit, PVC well casing, or other electrically unlisted tubing may be used as a chase, but not as a raceway, to protect conductors or cables from physical damage. Conductors or cables within a chase shall be rated for the location. (3-28-23)T

~~m.~~ Article 682.14. Add the following additional exception to Article 682.14: For installations of submersible well pumps installed in public swimming and marine areas, submersible well pumps shall be considered directly connected and shall be anchored in place. Ballast is an acceptable form of anchoring. (3-28-23)T

~~n.~~ Article 682.14(A). Add the following exception to Article 682.14(A): For installations of submersible well pumps installed in public swimming and marine areas, motor controller circuits such as remotely located stop pushbutton/s, disconnect/s, relay/s or switches shall be permitted as a required disconnecting means. Such circuits shall be identified at a minimum as "Emergency Pump Stop", or "Emergency Stop" with other obvious indications on the visible side of the enclosure, that it controls a submersible pump in the body of water. (3-28-23)T

~~o.~~ Article 682.15. Add the following exceptions to Article 682.15: (3-28-23)T

~~i. Exception No. 1. Submersible pumps, and their motor leads, located in bodies of water, and that are rated sixty (60) amperes maximum, two hundred fifty (250) volts maximum of any phase, shall have GFCI or Ground Fault Equipment Protection designed to trip at a maximum of thirty (30) milliamps or less, protected by means selected by a licensed installer, meeting listing or labeling requirements, and inspected by the AHJ prior to submersion in bodies of water. (3-28-23)T~~

~~ii. Exception No. 2. Installations or repair and replacement of submersible pumps located in bodies of water, that are rated over sixty (60) amperes, and rated at any voltage, shall be evaluated by a qualified designer or experienced licensed contractor, or involve engineering or be engineered, for each specific application, with the goal of public safety. Whenever possible, GFCI or Ground Fault Equipment Protection designed to trip at a maximum of thirty (30) milliamps or less, meeting listing or labeling requirements, shall be installed, and inspected by the AHJ prior to submersion in bodies of water. (3-28-23)T~~

~~p. Article 550.32(B). Compliance with Article 550.32(B) shall limit installation of a service on a manufactured home to those homes manufactured after January 1, 1992. (3-28-23)T~~

~~q. Poles used as lighting standards that are forty (40) feet or less in nominal height and that support no more than four (4) luminaires operating at a nominal voltage of three hundred (300) volts or less, shall not be considered to constitute a structure as that term is defined by the National Electrical Code (NEC). The disconnecting means shall not be mounted to the pole. The disconnecting means may be permitted elsewhere in accordance with NEC, Article 225.32, exception 3. SEC special purpose fusable connectors (model SEC 1791 DF or model SEC 1791 SF) or equivalent shall be installed in a listed handhole (underground) enclosure. The enclosure shall be appropriately grounded and bonded per the requirements of the NEC applicable to Article 230 Services. Overcurrent protection shall be provided by a (fast acting—minimum—100K RMS Amps 600 VAC) rated fuse. Wiring within the pole for the luminaires shall be protected by supplementary overcurrent device (time delay—minimum—10K RMS Amps 600 VAC) in break-a-way fuse holder accessible from the hand hole. Any poles supporting or incorporating utilization equipment or exceeding the prescribed number of luminaires, or in excess of forty (40) feet, shall be considered structures, and an appropriate service disconnecting means shall be required per the NEC. All luminaire-supporting poles shall be appropriately grounded and bonded per the NEC. (3-28-23)T~~

~~r. Article 210.12(A). Delete. (3-28-23)T~~

a. Article 110.3(A) and 110.3(B). Shall not apply to submersible well pumps installed in swimming and marine areas; provided however, such articles shall apply to all other equipment required in the installation of a submersible well pump in such areas except for the actual submersible well pump itself. ( )

b. Article 210.8 (A). Delete reference to 250-volt receptacles. ( )

c. Article 210.8(A)(7) Sinks. Delete article 210.8(A)(7) and replace with the following: Sinks - located in areas other than kitchens where receptacles are installed within one and eight tenths (1.8) meters (six (6) feet) of the outside edge of the sink. ( )

d. Article 210.8(A)(11). Delete article 210.8(A)(11) Laundry Areas. ( )

e. Article 210.8(D). Shall apply in full. Exception: In one- and two-family dwelling units, GFCI protection is not required for dishwashers or clothes dryers. ( )

f. Article 210.12(B). Shall apply in full. Exception: In one- and two-family dwelling units, Arc-Fault Circuit-Interrupter Protection shall only apply to all branch circuits and outlets supplying bedrooms. All other locations in such units are exempt from the requirements of Article 210.12(B). ( )

g. Article 210.52(E)(3). Delete and replace with the following: Balconies, Decks, and Porches. Balconies, decks, and porches having an overall area of twenty (20) square feet or more that are accessible from inside the dwelling unit shall have at least one (1) receptacle outlet installed within the perimeter of the balcony, deck, or porch. The receptacle shall not be located more than two (2.0) meters (six and one half (6½) feet) above the balcony, deck, or porch surface. ( )

- h.* Article 230.67 Surge Protection. Delete NEC Article 230.67. ( )
- i.* Article 230.85 Emergency Disconnects. Delete Article 230.85. ( )
- j.* Article 314.27(C) Boxes at Ceiling-Suspended (Paddle) Fan Outlets. Delete second paragraph. ( )
- k.* Article 334.10(3). Delete and replace with the following: Other structures permitted to be of Types III, IV, and V construction. Cables shall be concealed within walls, floors, or ceilings that provide a thermal barrier of material that has at least a fifteen (15)-minute finish rating as identified in listings of fire-rated assemblies. For the purpose of this section, cables located in attics and underfloor areas that are not designed to be occupied shall be considered concealed. ( )
- l.* Article 334.15(C). Where the height of a crawl space does not exceed one and four tenths (1.4) meters or four and one half (4.5) feet, it shall be permissible to secure NM cables, that run at angles with joist, to the bottom edge of joist. NM cables that run within two and one tenth (2.1) meters or seven (7) feet of crawl space access shall comply with Article 320.23. ( )
- m.* Pole Lighting. Poles used as lighting standards along roadways only (parking areas are not roadways) that are forty (40) feet or less in nominal height and that support no more than four (4) luminaires operating at a nominal voltage of three hundred (300) volts or less to ground, shall not be considered a structure as it is defined as equipment by the NEC. The disconnecting means may be mounted to the pole or elsewhere in accordance with NEC, Article 225.32, exception 3. Special purpose fuseable connectors (model SEC 1791-DF or model SEC 1791-SF) or equivalent shall be installed in a listed handhole (underground) enclosure. The enclosure shall be appropriately grounded and bonded per the requirements of the NEC applicable to Article 230- Services. Overcurrent protection shall be provided by a (fast-acting – minimum - 100K RMS Amps 600 VAC) rated fuse. Wiring within the pole for the luminaires shall be protected by supplementary overcurrent device (time-delay – minimum - 10K RMS Amps 600 VAC) in break-a-away fuse holder accessible from the hand hole. Any poles supporting or incorporating utilization equipment or exceeding the prescribed number of luminaires, or in excess of forty (40) feet, may be considered structures, and an appropriate service disconnecting means shall be required per the NEC. All luminaire- supporting poles shall be appropriately grounded and bonded per the NEC. A service may not need a Watt Hour Meter. ( )
- n.* Article 422.5 (A)(7). Delete Article 422.5 (A)(7) GFCI protection for dwelling unit dishwashers. ( )
- o.* Article 480.7(B) Battery Emergency Disconnect. Delete. ( )
- p.* Article 675.8(B). Compliance with Article 675.8(B) will include the additional requirement that a disconnecting means always be provided at the point of service from the utility no matter where the disconnecting means for the machine is located. ( )
- q.* Article 682.10. Shall not apply to submersible well pumps installed in swimming and marine areas; provided however, such articles shall apply to all other equipment required in the installation of a submersible well pump in such areas except for the actual submersible well pump itself. ( )
- r.* Article 682.11. Add the following exception: This article shall not apply to service equipment that is located on or at the dwelling unit and which is not susceptible to flooding. ( )
- s.* Article 682.13. Add the following exceptions: ( )
- t.* Exception No 1. Wiring methods such as HDPE schedule eighty (80) electrical conduit or its equivalent or greater and clearly marked at a minimum “Caution Electrical” to indicate that it contains electrical conductors shall be approved. It shall be buried whenever practical, and in accordance with the requirements of the authority having jurisdiction. The use of gray HDPE water pipe rated at two hundred (200) PSI (e.g. SIDR-7 or DR-9) is suitable for use as a chase only when the following conditions are met: when internal conductors are jacketed

submersible pump cable; when used in continuous lengths, directly buried, or secured on a shoreline above and below the water line; when submersible pump wiring terminations in the body of water according to 682.13 Exception No. 2 are met. ( )

i. Exception No. 2. Any listed and approved splices required to be made at the submersible well pump itself, outside of a recognized submersed pump sleeve or housing, when wires are too large to be housed inside such sleeve, shall be covered with a non-metallic, impact resistant material, no less than one quarter (.25) inches thick, such as heavy-duty heat shrink or other equivalent method approved by the authority having jurisdiction. (e.g. install a heat shrink over the sleeve or housing that the submersible well pump is installed in, and then recover (apply heat) the heat shrink over both the HDPE and the water line). At least six (6) inches shall be over the sleeve and at least twelve (12) inches over the HDPE and water line. ( )

ii. Exception No. 3. Pipe, conduit, PVC well casing, or other electrically unlisted tubing may be used as a chase, but not as a raceway, to protect conductors or cables from physical damage. Conductors or cables within a chase shall be rated for the location. ( )

iii. Article 682.14. Add the following additional exception: For installations of submersible well pumps installed in public swimming and marine areas, submersible well pumps shall be considered directly connected and shall be anchored in place. Ballast is an acceptable form of anchoring. ( )

v. Article 682.14(A). Add the following exception: For installations of submersible well pumps installed in public swimming and marine areas, motor controller circuits such as remotely located stop pushbutton/s, disconnect/s, relay/s or switches shall be permitted as a required disconnecting means. Such circuits shall be identified at a minimum as “Emergency Pump Stop”, or “Emergency Stop” with other obvious indications on the visible side of the enclosure, that it controls a submersible pump in the body of water. ( )

iv. Article 682.15. Add the following exceptions: ( )

i. Exception No. 1. Submersible pumps, and their motor leads, located in bodies of water, and that are rated sixty (60) amperes maximum, two hundred fifty (250) volts maximum of any phase, shall have GFCI or Ground Fault Equipment Protection designed to trip at a maximum of thirty (30) milliamps or less, protected by means selected by a licensed installer, meeting listing or labeling requirements, and inspected by the AHJ prior to submersion in bodies of water. ( )

ii. Exception No. 2. Installations or repair and replacement of submersible pumps located in bodies of water, that are rated over sixty (60) amperes, and rated at any voltage, shall be evaluated by a qualified designer or experienced licensed contractor, or involve engineering or be engineered, for each specific application, with the goal of public safety. Whenever possible, GFCI or Ground Fault Equipment Protection designed to trip at a maximum of thirty (30) milliamps or less, meeting listing or labeling requirements, shall be installed, and inspected by the AHJ prior to submersion in bodies of water. ( )

x. Article 690.12 Rapid Shut Down. Add following Exemptions: ( )

i. Detached structures whose sole purpose is to house PV system equipment shall not be considered buildings and thus may have roof mounted PV systems without rapid shutdown equipment according to this exception. ( )

ii. PV system circuits installed on or in buildings without the presence of a utility supplied power source shall not be required to comply with Article 690.12 where all of the following apply: the minimum distance to bring electric utility power lines or service conductors to the building is 1000 feet or greater; the building has a minimum setback distance of 100 feet from any building or structure located on adjacent properties; A lockable service entrance rated AC disconnect is installed outside at a readily accessible location; and the AC disconnect has a permanent placard or label with the following words or equivalent: ( )

**WARNING**  
**SOLAR PV SYSTEM IS NOT EQUIPPED WITH RAPID SHUTDOWN**

The warning placard or label shall comply with Article 110.21(B). ( )

y. Article 690.12(A) Exception. PV system circuits originating within or from arrays not attached to buildings that terminate on the exterior of buildings or inside nearest the point of entrance, and PV system circuits installed in accordance with Article 230.6 shall not be considered controlled conductors for the purposes of this section. ( )

z. Article 706.5: Listing. Energy storage systems shall be listed. This shall not apply to lead-acid batteries. ( )

aa. Article 706.15(B) Off Grid Systems. Add the following Exception: For one-family and two-family dwellings, a disconnecting means or its remote control shall be located at a readily accessible location. ( )

**02. Availability.** A copy of the 2023 National Electrical Code is available at the offices of the Division.  
(~~3-28-23~~) ( )

## IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

### 24.39.30 – RULES OF BUILDING SAFETY (BUILDING CODE RULES)

#### DOCKET NO. 24-3930-2302 (ZBR CHAPTER REWRITE, FEE RULE)

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**LINK: [LSO Rules Analysis Memo, Incorporation By Reference Synopsis \(IBRS\), & Cost/Benefit Analysis \(CBA\)](#)**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-2604, Idaho Code, and Sections 33-356, 39-4107, 39-4109, 39-4112, 39-4113, 39-9701, 67-2614, 67-9406, and 67-9409, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The pending rule chapter was reviewed and agreed to be consistent with the substance and purpose of the rulemaking. There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 6, 2023, Edition of the Idaho Administrative Bulletin, [Vol. 23-9, pages 403-429](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

The fees for applications, licenses, and reinstatement as designated in Rule 400 of these pending rules are authorized in Section 39-4017, Idaho Code. None of these fees are being changed as a result of this rulemaking or since being previously reviewed by the Idaho legislature.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rulemaking is not anticipated to have any impact on the State General Fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Katie Stuart, Bureau Chief- Administration, 208-577-2489.

DATED this 6th day of December, 2023.

Katie Stuart  
Bureau Chief- Administration  
11341 W. Chinden Blvd., Bldg. #4  
Boise, ID 83714  
Phone: (208) 577-2489  
Email: [katie.stuart@dopl.idaho.gov](mailto:katie.stuart@dopl.idaho.gov)

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This rulemaking action is authorized pursuant to Section 67-2604, Idaho Code, and Sections 33-356, 39-4107, 39-4109, 39-4112, 39-4113, 39-9701, 67-2614, 67-9406, and 67-9409, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Two public hearings concerning this rulemaking will be held as follows:

<b>Thursday, September 7, 2023, 9:00 a.m. MT</b> <b>&amp;</b> <b>Tuesday, November 7, 2023, 9:00 a.m. MT</b>
<b>Division of Occupational and Professional Licenses</b> <b>Chinden Campus Building 4</b> <b>11341 W. Chinden Blvd., Bldg. #4</b> <b>Boise, ID 83714</b>
<b>Telephone and web conferencing information will be posted on:</b> <a href="https://dopl.idaho.gov/calendar/">https://dopl.idaho.gov/calendar/</a> and <a href="https://townhall.idaho.gov/">https://townhall.idaho.gov/</a>

The hearing site will be accessible to persons with disabilities, if needed. Requests for accommodation must be made not later than five (5) days prior to the meeting to the agency address below.

**DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Under [Executive Order 2020-01, Zero-Based Regulation](#), the Building Code Board is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. In conjunction with stakeholders, the proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter and to use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and Executive Order 2020-01.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

The fees for applications, licenses, and reinstatement as designated in Rule 400 of these proposed rules are authorized in Section 39-4017, Idaho Code. None of these fees are being changed as a result of this rulemaking or since being previously reviewed by the Idaho legislature.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

This rulemaking is not anticipated to have any negative fiscal impact on the State General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted under Docket No. 24-ZBRR-2301. The (Second) Omnibus Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023 Idaho Administrative Bulletin, [Vol. 23-6, pp. 75-76](#).



**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

- International Building Code. The 2018 Edition, and 2021 Edition Relating to Mass Timber.
- International Residential Code. Parts I, II, III, and IX of the 2018 Edition for one (1)- and two (2)- family dwellings.
- International Existing Building Code. 2018 Edition.
- International Energy Conservation Code – Commercial Provisions. The 2018 Edition.
- International Energy Conservation Code – Residential Provisions. The 2018 Edition.

The materials cited are incorporated by reference because they would be unduly cumbersome, expensive, or otherwise inexpedient to republish all or in part. The materials cited are codes, standards, or rules adopted by a nationally recognized organization or association.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this proposed rule, contact Katie Stuart, Bureau Chief, at (208) 577-2489. Materials pertaining to the proposed rulemaking, including any available preliminary rule drafts, can be found on the following DOPL website: <https://dopl.idaho.gov/rulemaking/>.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 7, 2023.

DATED this 4th day of August, 2023.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 24-3930-2302**

**24.39.30 – RULES OF BUILDING SAFETY (BUILDING CODE RULES)**

**000. LEGAL AUTHORITY.**

The rules are promulgated pursuant to Sections 33-356, 39-4107, 39-4109, 39-4112, 39-4113, 39-9701, Idaho Code. ( )

**001. SCOPE.**

The rules prescribe the criteria for enforcement and administration of the Idaho Building Code Act by the Idaho Building Code Board and the Division of Occupational and Professional Licenses and the integrated design and fundamental commissioning of public school facilities. ( )

**002. DEFINITIONS.**

**01. Listing Agency.** A person, firm, association, partnership or corporation which is in the business of listing or labeling and which maintains a periodic inspection program on current production of listed materials, and which makes available, not less frequently than annually, a published report of such listing in which specific information is included that the product has been tested to nationally approved standards and found safe for use in a specified manner. ( )

**02. Minor Alteration.** The following definition is used for the purpose of administering annual permits. ( )

- a.** Minor alterations shall include, but are not limited to, the following: partition walls constructed

within a defined room; relocation of or existing openings or installation of new doors and windows in non-load bearing walls and not in construction meant to compartmentalize fire; window replacement in unaltered existing openings; roof repairs involving installation of less than one hundred (100) square feet of new roof covering; and new suspended ceilings that are not part of a required fire resistive assembly. ( )

**b.** Minor alterations shall not include: work that alters the fire resistive characteristics of the building or fire suppression systems; work that creates new openings in construction meant to compartmentalize fire such as fire walls, fire barriers, fire partitions, smoke barriers, smoke partitions, horizontal assemblies, shaft enclosures, stair enclosures; work that increases the floor area or height of the building; work that changes the structural load path of the building for gravity or horizontal loads; work that reduces the thermal resistant capacity of the building envelope; changes in the occupancy classification of the building or space; increases in the floor loads. ( )

**003. -- 199. (RESERVED)**

**200. INTEGRATED DESIGN AND FUNDAMENTAL COMMISSIONING OF PUBLIC SCHOOL FACILITIES.**

**01. Technical and Educational Information.** Technical and educational information related to integrated design and fundamental commissioning in the form of the American Institute of Architects Integrated Project Delivery Guide; Portland Energy Conservation, Inc. (PECI) Commissioning Guides; ASHRAE Guideline 0-2005-The Commissioning Process; and the Northwest Energy Efficiency Alliance Integrated Design Special Focus on Energy Performance Guide is available on the Division's. A building commissioned under the prescriptive approaches defined by any of the above-named national organizations is deemed to have completed the Fundamental Commissioning process. ( )

**02. Commissioning Agents.** The Division has compiled and made available for public examination a list of all known third party building commissioning agents in Idaho and its contiguous states. The Division has ensured that all such commissioning agents appearing on this list have been certified by the Building Commissioning Association (BCA) or other similar certifying entity. ( )

**03. Annual Optimization Review.** ( )

**a.** The third-party commissioning agent who performed the initial fundamental commissioning for a public school building must provide the school district with a written report identifying the systems which will be subject to the Idaho Code Section 33-356 annual optimization review and identifying the system requirements and/or other relevant measuring criteria. The written report shall, at a minimum include the following: ( )

**i.** Verification that the heating, ventilation, and air conditioning (HVAC) systems, controls, dampers, valves, sensors and other equipment used to control the system are functioning as they were at the commissioning of the building; ( )

**ii.** Verification that the lighting controls are functioning as they were at the commissioning of the building; and ( )

**iii.** The requirement that any changes made to any of the controls contained on the agent's list after the initial commissioning be re-set back to the commissioned settings unless it can be demonstrated that the new settings result in greater energy efficiency. ( )

**b.** The annual optimization review shall be performed by persons qualified to make the required determinations and adjustments. ( )

**c.** Following the annual optimization review, the school district shall submit to the Division written verification indicating (1) the systems identified by the commissioning agent, including those identified in this Section are functioning as they were at the initial commissioning; and (2) identifying the persons performing the optimization and their qualifications. ( )

**04. Commissioning Anniversary Date.** The date upon which the commissioning agent provides the

school district with the required written report described in Paragraph 038.04.b. of these rules shall be the commissioning anniversary date for purposes of this Section. If a school district seeks to qualify a building for the building replacement value calculation, the annual optimization review shall be performed within thirty (30) days of the annual commissioning anniversary date following the first year the building is in operation. The written verification required by Paragraph 038.03.e. of these rules is due to the Division not later than sixty (60) days after the annual commissioning anniversary date. ( )

**05. Fundamental Building Commissioning Requirements. ( )**

**a.** School districts seeking to qualify a building for the building replacement value calculation shall engage a building commissioning agent. ( )

**b.** The commissioning agent must document the owner's requirements for each commissioned system in the facility. All HVAC and controls systems, duct work and piping, renewable and alternative technologies, lighting controls and day lighting, waste heat recovery, and any other advanced technologies incorporated in the building must be commissioned. Building envelope systems must also be verified. The owner's requirements for these systems may include efficiency targets and other performance criteria such as temperature and lighting levels that will define the performance criteria for the functional performance testing that occurs prior to acceptance. ( )

**c.** The commissioning agent shall include commissioning requirements in the project construction documents. This includes the scope of commissioning for the project, the systems to be commissioned, and the various requirements related to schedule, submittal reviews, testing, training, O & M manuals, and warranty reviews. ( )

**d.** The commissioning agent shall develop and utilize a commissioning plan. This plan must include an overview of the commissioning process for the project, a list of commissioned systems, primary commissioning participants and their roles, a communication and management plan, an outline of the scope of commissioning tasks, a list of work products, a schedule, and a description of any commissioning testing activities. ( )

**e.** The commissioning agent must submit a report to the owner once the commissioning plan has been executed. ( )

**201. -- 499. (RESERVED)**

**500. PERMITS AND PLAN REVIEW.**

**01. Annual Permit.** In lieu of an individual permit for each minor alteration to an already approved building, the Division may issue an annual permit upon application therefor to any state agency or state governmental organization regularly employing one (1) or more qualified trade persons in the building, structure or on the premises or campus owned or operated by the applicant for the permit. The agency to whom an annual permit is issued shall keep a detailed record of alterations made under such annual permit. The Division shall be allowed access to such records upon request or such records shall be filed with the Division as designated. The permit holder shall request inspections and make the work accessible for inspection as required by the adopted codes and herein. ( )

**02. Plans Not Required.** Plans are not required for group U occupancies of Type V conventional light-frame wood construction. ( )

**03. Fees. ( )**

**a.** Technical Service Fee. One hundred dollars (\$100) per hour. ( )

**b.** Building Permit Fees. The determination of value or valuation will be made by the administrator and includes the total value of all construction work for which a permit is issued.

<b>TABLE 1-A - BUILDING PERMIT FEES</b>	
<b>Total Valuation</b>	<b>Fee</b>
\$1 to \$500	= \$23.50
\$501 to \$2,000	= \$23.50 for the first \$500 plus \$3.05 for each additional \$100, or fraction thereof, to and including \$2,000
\$2,001 to \$25,000	= \$69.25 for the first \$2,000 plus \$14 for each additional \$1,000, or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	= \$391.75 for the first \$25,000 plus \$10.10 for each additional \$1,000, or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	= \$643.75 for the first \$50,000 plus \$7 for each additional \$1,000, or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	= \$993.75 for the first \$100,000 plus \$5.60 for each additional \$1,000, or fraction thereof, to and including \$500,000
\$500,001 to \$1,000,000	= \$3,233.75 for the first \$500,000 plus \$4.75 for each additional \$1,000, or fraction thereof, to and including \$1,000,000
\$1,000,001 to \$5,000,000	= \$5,608.75 for the first \$1,000,000 plus \$3.65 for each additional \$1,000, or fraction thereof, to and including \$5,000,000
\$5,000,001 to \$10,000,000	= \$20,208.75 for the first \$5,000,000 plus \$2.75 for each additional \$1,000, or fraction thereof, to and including \$10,000,000
\$10,000,001 and up	= \$33,958.75 for the first \$10,000,000 plus \$2 for each additional \$1,000, or fraction thereof

( )

**c.** Fees for Annual Permits. A fee for inspections performed on annual permits shall be charged at the rate of one hundred dollars (\$100) per inspection. The Division shall bill the applicant for annual permits and failure of the applicant to pay the fee within sixty (60) days may result in cancellation of the annual permit. ( )

**d.** Plan Review Fees. Plan review fees shall be charged at an hourly rate of one hundred dollars (\$100) per hour up to a maximum of sixty-five percent (65%) of the calculated building permit fee with a minimum required fee of forty percent (40%) of the calculated building permit fee. All requests for plan review services shall be accompanied by a payment in the amount of at least forty percent (40%) of the calculated building permit fee. Upon completion of the plan review, any additional fees, above the minimum required, are due to the Division by the requesting party. ( )

**501. -- 599. (RESERVED)**

**600. IDAHO BUILDING CODES.**

Pursuant to Sections 39-4109 and 39-4109A, Idaho Code, the Board adopts the following international codes with identified amendments: ( )

**01. International Building Code.** The 2018 Edition, including appendices pertaining to building accessibility, with the following amendments: ( )

**a.** Delete Section 305.2.3 and replace with the following: 305.2.3 Twelve (12) or fewer children in a dwelling unit. A facility such as the above within a dwelling unit and having twelve (12) or fewer children receiving such day care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code. ( )

i. Delete Section 308.2.4 and replace with the following: 308.2.4 Five (5) or fewer persons receiving custodial care. A facility with five (5) or fewer persons receiving custodial care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code. ( )

ii. Delete Section 308.3.2 and replace with the following: 308.3.2 Five (5) or fewer persons receiving medical care. A facility with five (5) or fewer persons receiving medical care shall be classified as a Group R-3 occupancy. ( )

iii. Delete Section 308.5.4 and replace with the following: 308.5.4 Persons receiving care in a dwelling unit. A facility such as the above within a dwelling unit and having twelve (12) or fewer children receiving day care or having five (5) or fewer persons receiving custodial care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code. ( )

b. Section 310.4: Add the following: “Dwelling units providing day care for twelve (12) or fewer children”. ( )

c. Section 310.4.1. Delete and replace with the following: 310.4.1 Care facilities within a dwelling. Care facilities for twelve (12) or fewer children receiving day care or for five (5) or fewer persons receiving personal care or custodial care that are within a one- or two-family dwelling are permitted to comply with the International Residential Code. ( )

d. Add new Section 602.1.2: 602.1.2 Alternative provisions. As an alternative to the construction types defined in Sections 602.2 through 602.5, buildings and structures erected or to be erected, altered, or extended in height or area may be classified as construction type IV-A, IV-B, or IV-C in accordance with the provisions adopted in Paragraph 004.01.b of these rules. Buildings and structures classified as construction type IV-A, IV-B, or IV-C shall comply with the provisions adopted in Paragraph 004.01.h of these rules and all other applicable provisions of this code. ( )

e. Table 2902.1 Minimum Number of Required Plumbing Fixtures. Delete footnote e and replace with the following: e For business occupancies, excluding restaurants, and mercantile occupancies with an occupant load of thirty (30) or fewer, service sinks shall not be required. ( )

f. Table 2902.1 Minimum Number of Required Plumbing Fixtures. Delete footnote f and replace with the following: f Drinking fountains are not required for an occupant load of thirty (30) or fewer. ( )

g. Section 3113 Relocatable Buildings. Delete. ( )

**02. International Building Code, 2021 Edition.** The following provisions of the 2021 Edition related to mass timber construction: ( )

a. In Section 202, the definitions of the terms MASS TIMBER; NONCOMBUSTIBLE PROTECTION (FOR MASS TIMBER); SECONDARY STRUCTURAL MEMBERS; and WALL, LOAD BEARING; ( )

b. Sections 403.3.2, 508.4.4.1, 509.4.1.1, 602.4 through 602.4.3.6, 703.6, 703.7, 704.4, 722.7 through 722.7.2.2, 1705.5.3, 1705.20, 2304.10.1, 3313.1 through 3313.3.3, 3313.5, and 3314.1; ( )

c. Tables 504.3, 504.4, 506.2, 601, 705.5, 722.7.1(1), 722.7.1(2), and 1705.5.3, including any note following each table adopted in this subparagraph; and ( )

d. In Chapter 35, the referenced standards ANSI/APA PRG 320—2019: Standard for Performance-rated Cross-laminated Timber, referenced in Sections 602.4 and 2303.1.4, and ASTM D3498—03(2011): Standard Specification for Adhesives for Field-Gluing Plywood to Lumber Framing for Floor Systems, referenced in Section 703.7. ( )

**03. International Residential Code, 2018 Edition.** Parts I, II, III, and IX of the 2018 Edition for one

(1)- and two (2)- family dwellings, with the following amendments: ( )

**a.** Section R101.2 Scope. Delete the exception and replace with the following: Exception: The following shall also be permitted to be constructed in accordance with this code: 1. Owner-occupied lodging houses with five (5) or fewer guestrooms and ten (10) or fewer total occupants. 2. A care facility with five (5) or fewer persons receiving custodial care within a dwelling unit or single-family dwelling. 3. A care facility for five (5) or fewer persons receiving personal care that are within a dwelling unit or single-family dwelling. 4. A care facility with twelve (12) or fewer children receiving day care within a dwelling unit or single-family dwelling. ( )

**b.** Section R105.2. Amend Item number 7 under the “Building” subheading Replace the words “24 inches (610 mm)” with “four (4) feet (1219 mm)” ( )

**c.** Section R105.2. Add the following exemption under the “Building” subheading: 11. Flag poles. ( )

**d.** Section R301.2.1.2 Protection of Openings. Delete. ( )

**e.** Table R302.1(1). Delete and replace with the following:

**TABLE R302.1(1) - EXTERIOR WALLS**

EXTERIOR WALL ELEMENT		MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
Walls	Fire-resistance rated	1 hour-tested in accordance with ASTM E 119, UL263, or Section 703.3 of the International Building Code with exposure from both sides	< 3 feet
	Not fire-resistance rated	0 hours	≥ 3 feet
Projections	Fire-resistance rated	1 hour on the underside, or heavy timber, or fire retardant-treated wood <sup>a,b</sup>	≥ 2 feet to < 3 feet
	Not fire-resistance rated	0 hours	≥ 3 feet
Openings in Walls	Not allowed	N/A	< 3 feet
	25% maximum of wall area	0 hours	≥ 3 feet to < 5 feet
	Unlimited	0 hours	5 feet
Penetrations	All	Comply with Section R302.4	< 3 feet
		None required	≥ 3 feet

For SI: 1 foot = 304.8 mm.

N/A = Not Applicable

<sup>a</sup>The fire-resistance rating shall be permitted to be reduced to zero (0) hours on the underside of the eave overhang if fireblocking is provided from the wall top plate to the underside of the roof sheathing.

<sup>b</sup>The fire-resistance rating shall be permitted to be reduced to zero (0) hours on the underside of the rake overhang where gable vent openings are not installed. ( )

**f.** Delete Table R302.6 Dwelling-Garage Separation and replace with the following table:

Separation	Material
From the residence, attics, and habitable rooms above the garage	Not less than 5/8-inch Type X gypsum board or equivalent applied to the garage side
Structure(s) supporting floor/ceiling assemblies used for separation required by this section	
Garages located less than 3 feet from a dwelling unit on the same lot	Not less than 5/8-inch Type X gypsum board or equivalent applied to the interior side of exterior walls that are within this area

- ( )
- g.** Section R302.13 Fire protection of floors. Delete. ( )
- h.** Section R303.4. Delete and replace with the following: Mechanical Ventilation. Dwelling units shall be provided with whole-house mechanical ventilation in accordance with Section M1505.4. ( )
- i.** Section R313.1 Townhouse automatic fire sprinkler systems. Delete the exception and replace with the following: Exception: Automatic residential fire sprinkler systems shall not be required in townhouses where either two (2) one (1)-hour fire-resistance-rated walls or a common two (2)-hour fire-resistance rated wall, as specified in item number 2 of Section R302.2.2 is installed between dwelling units or when additions or alterations are made to existing townhouses that do not have an automatic residential fire sprinkler system installed. ( )
- j.** Section R313.2 One- and two-family dwellings automatic fire sprinkler systems. Delete. ( )
- k.** Section R314.2.2 Alterations, repairs and additions Exception Item #2. Delete. ( )
- l.** Section R315.2.2 Alterations, repairs and additions Exception Item #2. Delete. ( )
- m.** Section R322.1.10 As-built elevation documentation. Delete. ( )
- n.** Tables R403 Minimum Depth (D) and Width (W) of Crushed Stone Footings (inches), R403.1(1) Minimum Width and Thickness for Concrete Footings for Light-Frame Construction (inches), R403.1(2) Minimum Width and Thickness for Concrete Footings for Light-Frame Construction and Brick Veneer (inches), and R403.1(3) Minimum Width and Thickness for Concrete Footings with Cast-In-Place or Fully Grouted Masonry Wall Construction (inches). Delete. ( )
- o.** Add the following as Table R403.1: ( )

**TABLE R403.1**  
**MINIMUM WIDTH OF CONCRETE, PRECAST, OR MASONRY FOOTINGS (inches)<sup>a</sup>**

	LOAD-BEARING VALUE OF SOIL (psf)			
	1,500	2,000	3,000	≥ 4,000
<b>Conventional light-frame construction</b>				
1-Story	12	12	12	12
2-Story	15	12	12	12
3-Story	23	17	12	12
<b>4-inch brick veneer over light frame or 8-inch hollow concrete masonry</b>				

	LOAD-BEARING VALUE OF SOIL (psf)			
	1,500	2,000	3,000	≥ 4,000
1-Story	12	12	12	12
2-Story	21	16	12	12
3-Story	32	24	16	12
<b>8-inch solid or fully grouted masonry</b>				
1-Story	16	12	12	12
2-Story	29	21	14	12
3-Story	42	32	21	16

For SI: 1 inch = 25.4 mm, 1 pound per square foot = 0.0479 kPa.

<sup>a</sup>Where minimum footing width is twelve (12) inches, use of a single wythe of solid or fully grouted twelve (12)-inch nominal concrete masonry units is permitted. ( )

**p.** Section R403.1.1. Delete and replace with the following: R403.1.1 Minimum size. Minimum sizes for concrete and masonry footings shall be as set forth in Table R403.1 and Figure R403.1(1). The footing width (W) shall be based on the load bearing value of the soil in accordance with Table R401.4.1. Spread footings shall be at least six (6) inches in thickness (T). Footing projections (P) shall be at least two (2) inches and shall not exceed the thickness of the footing. The size of footings supporting piers and columns shall be based on the tributary load and allowable soil pressure in accordance with Table R401.4.1. Footings for wood foundations shall be in accordance with the details set forth in Section R403.2 and Figures R403.1(2) and R403.1(3). ( )

**q.** Section R602.10. Delete and replace with the following: Buildings shall be braced in accordance with this Section or, when applicable Section R602.12, or the most current edition of APA System Report SR-102 as an alternate method. Where a building, or portion thereof, does not comply with one (1) or more of the bracing requirements in this Section, those portions shall be designed and constructed in accordance with Section R301.1. ( )

**04. International Existing Building Code.** 2018 Edition. ( )

**05. International Energy Conservation Code – Commercial Provisions.** The 2018 Edition with the following amendments: ( )

**a.** Add new Section C101.5.2: C101.5.2 Industrial, electronic, and manufacturing equipment. Buildings or portions thereof that are heated or cooled exclusively to maintain the required operating temperature of industrial, electronic, or manufacturing equipment shall be exempt from the provisions of this code. Such buildings or portions thereof shall be separated from connected conditioned space by building thermal envelope assemblies complying with this code. ( )

**b.** Add the following Exemptions to section C402.1.1: ( )

**i.** Exemption 4. Accessory utility and storage buildings and sports practice buildings accessory to A, B, and E occupancies where buildings maintain no heating or cooling or where intermittent heating and cooling systems are installed. ( )

**ii.** Exemption 5. Buildings for domestic water wells, irrigation wells, sewer pump facilities, and sewer lift station buildings where equipment produces internal heat loads and where intermittent heating or cooling is provided to prevent freezing or overheating of equipment. ( )

**c.** Add the following as exception number 7 under Section C403.5 Economizers (Prescriptive): 7. Unusual outdoor air contaminate conditions – Systems where special outside air filtration and treatment for the



reduction and treatment of unusual outdoor contaminants, makes an air economizer infeasible. ( )

**06. International Energy Conservation Code – Residential Provisions.** The 2018 Edition with the following amendments: ( )

**a.** R202 General Definitions. Add the following to the definition of “Conditioned Space”: This definition shall not apply to garage spaces or other similar spaces where heating or cooling is installed for frost protection or intermittent use. ( )

**b.** Table R402.1.2 Insulation and Fenestration Requirements by Component. Delete the rows in climate zones “5 and Marine 4” and “6” and replace with the following:

<b>TABLE R402.1.2 INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT <sup>a</sup></b>										
<b>Climate Zone</b>	<b>Fenestration U-Factor<sup>b</sup></b>	<b>Skylight U-factor<sup>b</sup></b>	<b>Glazed Fenestration SHGC<sup>b, c</sup></b>	<b>Ceiling R-Value</b>	<b>Wood Frame Wall R-Value</b>	<b>Mass Wall R-Value<sup>i</sup></b>	<b>Floor R-Value</b>	<b>Basement<sup>c</sup> Wall R-Value</b>	<b>Slab<sup>d</sup> R-Value &amp; Depth</b>	<b>Crawlspace<sup>c</sup> Wall R-Value</b>
5	0.32	0.55	NR	38	20 or 13+5 <sup>h</sup>	13/17	30 <sup>g</sup>	15/19	10, 2 ft	15/19
6	0.30	0.55	NR	49	22 or 13+5 <sup>h</sup>	15/20	30 <sup>g</sup>	15/19	10, 4 ft	15/19

( )

**c.** Table R402.1.2 - Insulation and Fenestration Requirements by Component. Add the following as footnote k to the Table title: k. For residential log home building thermal envelope construction requirements see Section R402.6. ( )

**d.** Table R402.1.4 Equivalent U-Factors. Delete the rows in climate zones “5 and Marine 4” and “6” and replace with the following:

<b>TABLE R402.1.4 EQUIVALENT U-FACTORS <sup>a</sup></b>								
<b>Climate Zone</b>	<b>Fenestration U-factor</b>	<b>Skylight U-factor</b>	<b>Ceiling U-factor</b>	<b>Frame Wall U-factor</b>	<b>Mass Wall U-factor<sup>b</sup></b>	<b>Floor U-factor</b>	<b>Basement Wall U-factor</b>	<b>Crawlspace Wall U-factor</b>
5	0.32	0.55	0.030	0.060	0.082	0.033	0.050	0.055
6	0.30	0.55	0.026	0.057	0.060	0.033	0.050	0.055

( )

**e.** Section R402.4.1.2. Add the following exception: Visual Inspection. The Permit Holder will determine at the time of permit application the method of determining building envelope tightness. A visual inspection shall be considered acceptable in lieu of testing when the items listed in Table R402.4.1.1, applicable to the method of construction, are field verified. ( )

**f.** Add new Section R402.6: R402.6 Residential log home thermal envelope. Residential log home construction shall comply with Section R401 (General), Section R402.4 (Air leakage), Section R402.5 (Maximum fenestration U-factor and SHGC), Section R403.1 (Controls), the mandatory sections of Sections R403.3 through

R403.9, Section R404 (Electrical Power and Lighting Systems), and either 1., 2., or 3. as follows: 1. Sections R402.2 through R402.3, Section R403.3.1 (Insulation), Section R404.1 (Lightning equipment), and Table R402.6 (Log Home Prescriptive Thermal Envelope Requirements by Component). 2. Section R405 (Simulated Performance Alternative). 3. REScheck (U.S. Department of Energy Building Codes Program). ( )

**g.** Add new Table R402.6:

<b>TABLE R402.6</b>									
<b>LOG HOME PRESCRIPTIVE THERMAL ENVELOPE REQUIREMENTS BY COMPONENT</b>									
For SI: 1 foot = 304.8 mm.									
Climate Zone	Fenestration U-factor <sup>a</sup>	Skylight U-factor	Glazed Fenestration SHGC	Ceiling R-value	Min. Average Log Size In Inches	Floor R-value	Basement Wall R-value <sup>d</sup>	Slab R-value & Depth <sup>b</sup>	Crawl Space Wall R-value <sup>d</sup>
5, 6 - High efficiency equipment path <sup>c</sup>	0.32	0.60	NR	49	5	30	15/19	10, 4 ft.	10/13
5	0.32	0.60	NR	49	8	30	10/13	10, 2 ft.	10/13
6	0.30	0.60	NR	49	8	30	15/19	10, 4 ft.	10/13

<sup>a</sup>The fenestration U-factor column excludes skylights. The SHGC column applies to all glazed fenestration.

<sup>b</sup>R-5 shall be added to the required slab edge R-values for heated slabs.

<sup>c</sup>90% AFUE natural gas or propane, 84% AFUE oil, or 15 SEER heat pump heating equipment (zonal electric resistance heating equipment such as electric base board electric resistance heating equipment as the sole source for heating is considered compliant with the high efficiency equipment path).

<sup>d</sup>“15/19” means R-15 continuous insulated sheathing on the interior or exterior of the home or R-19 cavity insulation at the interior of the basement wall. “15/19” shall be permitted to be met with R-13 cavity insulation on the interior of the basement wall plus R-5 continuous insulated sheathing on the interior or exterior of the home. “10/13” means R-10 continuous insulated sheathing on the interior or exterior of the home or R-13 cavity insulation at the interior of the basement wall.

( )

**601. -- 999. (RESERVED)**

[Agency redlined courtesy copy]

**24.39.30 – RULES OF BUILDING SAFETY (BUILDING CODE RULES)**

**000. LEGAL AUTHORITY.**

The rules are promulgated pursuant to Sections [33-356](#), 39-4107, [39-4109](#), [39-4112](#), [39-4113](#), [39-9701](#), Idaho Code. (4-6-23)T

**001. SCOPE.**

The rules prescribe the criteria for enforcement and administration of the Idaho Building Code Act by the Idaho Building Code Board and the Division of Occupational and Professional Licenses and the integrated design and fundamental commissioning of public school facilities.(4-6-23)T

~~002. 003.(RESERVED)~~

~~004.600. ADOPTION AND INCORPORATION BY REFERENCE~~ **IDAHO BUILDING CODES.**

~~Under the provisions of Sections 39-4109 and 39-4109A, Idaho Code, the codes enumerated in this section are hereby adopted and incorporated by reference into these rules.~~ Pursuant to Sections 39-4109 and 39-4109A, Idaho Code, the Board adopts the following international codes with identified amendments: (4-6-23)T

**01. International Building Code. The 2018 Edition, including appendices pertaining to building accessibility, with the following amendments:**(4-6-23)T

~~a.~~ 2018 Edition with the following amendments:(4-6-23)T

~~i.a.~~ Delete Section 305.2.3 and replace with the following: 305.2.3 Twelve (12) or fewer children in a dwelling unit. A facility such as the above within a dwelling unit and having twelve (12) or fewer children receiving such day care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code. (4-6-23)T

ii. Delete Section 308.2.4 and replace with the following: 308.2.4 Five (5) or fewer persons receiving custodial care. A facility with five (5) or fewer persons receiving custodial care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code.(4-6-23)T

iii. Delete Section 308.3.2 and replace with the following: 308.3.2 Five (5) or fewer persons receiving medical care. A facility with five (5) or fewer persons receiving medical care shall be classified as a Group R-3 occupancy. (4-6-23)T

iv. Delete Section 308.5.4 and replace with the following: 308.5.4 Persons receiving care in a dwelling unit. A facility such as the above within a dwelling unit and having twelve (12) or fewer children receiving day care or having five (5) or fewer persons receiving custodial care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code.(4-6-23)T

~~v.b.~~ Delete Section 310.4: Add the following: "Dwelling units providing day care for twelve (12) or fewer children". and replace with the following: 310.4 Residential Group R-3. Residential Group R-3 occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4, E or I, including: 1. Buildings that do not contain more than two (2) dwelling units. 2. Care facilities that provide accommodations for five (5) or fewer persons receiving personal care, custodial care or medical care. 3. Congregate living facilities (nontransient) with sixteen (16) or fewer occupants, including boarding houses (nontransient), convents, dormitories, fraternities and sororities, and monasteries. 4. Congregate living facilities (transient) with ten (10) or fewer occupants, including boarding houses (transient). 5. Dwelling units providing day care for twelve (12) or fewer children. 6. Lodging houses (transient) with five (5) or fewer guest rooms and ten (10) or fewer occupants. (4-6-23)T

~~v.c.~~ Delete Section 310.4.1. Delete and replace with the following: 310.4.1 Care facilities within a dwelling. Care facilities for twelve (12) or fewer children receiving day care or for five (5) or fewer persons receiving personal care or custodial care that are within a one- or two-family dwelling are permitted to comply with the International Residential Code.(4-6-23)T

~~vii.d.~~ Add the following as Add new Section 602.1.2: 602.1.2 Alternative provisions. As an alternative to the construction types defined in Sections 602.2 through 602.5, buildings and structures erected or to be erected, altered, or extended in height or area may be classified as construction type IV-A, IV-B, or IV-C in accordance with the provisions adopted in Paragraph 004.01.b of these rules. Buildings and structures classified as construction type

IV-A, IV-B, or IV-C shall comply with the provisions adopted in Paragraph 004.01.~~bh~~ of these rules and all other applicable provisions of this code.(4-6-23)T

~~viii.e.~~ ~~Delete footnote<sup>e</sup> under Table 2902.1 Minimum Number of Required Plumbing Fixtures.~~ ~~Delete footnote<sup>e</sup> and replace with the following:~~ <sup>e</sup> For business occupancies, excluding restaurants, and mercantile occupancies with an occupant load of thirty (30) or fewer, service sinks shall not be required.(4-6-23)T

~~ix.f.~~ ~~Delete footnote<sup>f</sup> from Table 2902.1 Minimum Number of Required Plumbing Fixtures.~~ ~~add footnote<sup>f</sup> in the header row of the column in Table 2902.1 labeled “Drinking Fountains.” and d~~ ~~Delete footnote<sup>f</sup> under Table 2902.1 and replace with the following:~~ <sup>f</sup> Drinking fountains are not required for an occupant load of thirty (30) or fewer.(4-6-23)T

~~x.g.~~ ~~Delete Section 3113.1 Relocatable Buildings. Delete. And replace with the following:~~ 3113.1 General. The provisions of this Section shall apply to relocatable buildings. Relocatable buildings manufactured after the effective date of this code shall comply with the applicable provisions of this code; title 39, chapter 43, Idaho Code; and IDAPA 24.39.31. Exception: This Section shall not apply to manufactured housing used as dwellings.(4-6-23)T

**02. International Building Code. The following provisions of the 2021 Edition related to mass timber construction:( )**

~~b.~~ ~~The provisions of the 2021 Edition relating to mass timber construction, including, but not limited to:~~ (4-6-23)T

~~ia.~~ In Section 202, the definitions of the terms MASS TIMBER; NONCOMBUSTIBLE PROTECTION (FOR MASS TIMBER); SECONDARY STRUCTURAL MEMBERS; and WALL, LOAD BEARING; (4-6-23)T

~~ib.~~ Sections 403.3.2, 508.4.4.1, 509.4.1.1, 602.4 through 602.4.3.6, 703.6, 703.7, 704.4, 722.7 through 722.7.2.2, 1705.5.3, 1705.20, 2304.10.1, 3313.1 through 3313.3.3, 3313.5, and 3314.1;(4-6-23)T

~~ic.~~ Tables 504.3, 504.4, 506.2, 601, 705.5, 722.7.1(1), 722.7.1(2), and 1705.5.3, including any note following each table adopted in this subparagraph; and(4-6-23)T

~~id.~~ In Chapter 35, the referenced standards ANSI/APA PRG 320—2019: Standard for Performance-rated Cross-laminated Timber, referenced in Sections 602.4 and 2303.1.4, and ASTM D3498—03(2011): Standard Specification for Adhesives for Field-Gluing Plywood to Lumber Framing for Floor Systems, referenced in Section 703.7. (4-6-23)T

**023. International Residential Code. 2018 Edition with the following amendments Parts I, II, III, and IX of the 2018 Edition for one (1)- and two (2)- family dwellings, with the following amendments:(4-6-23)T**

~~a.~~ ~~Section R101.2 Scope.~~ Delete the exception ~~under Section R101.2 Scope,~~ and replace with the following: Exception: The following shall also be permitted to be constructed in accordance with this code: 1. Owner-occupied lodging houses with five (5) or fewer guestrooms and ten (10) or fewer total occupants. 2. A care facility with five (5) or fewer persons receiving custodial care within a dwelling unit or single-family dwelling. 3. A care facility for five (5) or fewer persons receiving personal care that are within a dwelling unit or single-family dwelling. 4. A care facility with twelve (12) or fewer children receiving day care within a dwelling unit or single-family dwelling. (4-6-23)T

~~b.~~ ~~Delete Section R104.10.1 Flood hazard areas.(4-6-23)T~~

~~eb.~~ ~~Section R105.2. Delete Amend i~~ ~~Item number 7 under the “Building” subheading of Section R105.2 Work exempt from permit, and replace with the following:~~ 7. Prefabricated swimming pools that are not greater than ~~Replace the words “24 inches (610 mm)” with “four (4) feet (one thousand, two hundred nineteen (1219) mm)” deep.~~ (4-6-23)T

**dc.** ~~Section R105.2.~~ Add the following ~~as exemption item number 11~~ under the “Building” subheading of Section R105.2 ~~Work exempt from permit:~~ 11. Flag poles.(4-6-23)T

**e.** ~~Delete Section R109.1.3 and replace with the following: R109.1.3 Floodplain inspections. For construction in areas prone to flooding as established by Table R301.2(1), upon placement of the lowest floor, including basement, the building official is authorized to require submission of documentation of the elevation of the lowest floor, including basement, required in Section R322.(4-6-23)T~~

**fd.** ~~Delete~~ Section R301.2.1.2 Protection of Openings. ~~Delete.~~(4-6-23)T

**ge.** ~~Delete~~ Table R302.1(1). ~~Delete~~ and replace with the following:

**TABLE R302.1(1) - EXTERIOR WALLS**

EXTERIOR WALL ELEMENT		MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
Walls	Fire-resistance rated	1 hour-tested in accordance with ASTM E 119, UL263, or Section 703.3 of the International Building Code with exposure from both sides	< 3 feet
	Not fire-resistance rated	0 hours	≥ 3 feet
Projections	Fire-resistance rated	1 hour on the underside, or heavy timber, or fire retardant-treated wood <sup>a,b</sup>	≥ 2 feet to < 3 feet
	Not fire-resistance rated	0 hours	≥ 3 feet
Openings in Walls	Not allowed	N/A	< 3 feet
	25% maximum of wall area	0 hours	≥ 3 feet to < 5 feet
	Unlimited	0 hours	5 feet
Penetrations	All	Comply with Section R302.4	< 3 feet
		None required	≥ 3 feet

For SI: 1 foot = 304.8 mm.

N/A = Not Applicable

<sup>a</sup> The fire-resistance rating shall be permitted to be reduced to zero (0) hours on the underside of the eave overhang if fireblocking is provided from the wall top plate to the underside of the roof sheathing.

<sup>b</sup> The fire-resistance rating shall be permitted to be reduced to zero (0) hours on the underside of the rake overhang where gable vent openings are not installed.(4-6-23)T

**f.** ~~Delete Table R302.6 Dwelling-Garage Separation and replace with the following table:~~

<b>SEPARATION</b>	<b>MATERIAL</b>
-------------------	-----------------

<u>From the residence, attics, and habitable rooms above the garage</u>	<u>Not less than 5/8-inch Type X gypsum board or equivalent applied to the garage side</u>
<u>Structure(s) supporting floor/ceiling assemblies used for separation required by this section</u>	
<u>Garages located less than 3 feet from a dwelling unit on the same lot</u>	<u>Not less than 5/8-inch Type X gypsum board or equivalent applied to the interior side of exterior walls that are within this area</u>

( )

- hf.** ~~Section R302.13 Fire protection of floors.~~ Delete.(4-6-23)T
- ig.** ~~Section R303.4.~~ Delete and replace with the following: R303.4 Mechanical Ventilation. Dwelling units shall be provided with whole-house mechanical ventilation in accordance with Section M1505.4. (4-6-23)T
- jh.** ~~Section R313.1 Townhouse automatic fire sprinkler systems.~~ Delete the exception and replace with the following: Exception: Automatic residential fire sprinkler systems shall not be required in townhouses where either two (2) one (1)-hour fire-resistance-rated walls or a common two (2)-hour fire-resistance rated wall, as specified in item number 2 of Section R302.2.2 is installed between dwelling units or when additions or alterations are made to existing townhouses that do not have an automatic residential fire sprinkler system installed. (4-6-23)T
- ki.** ~~Section R313.2 One- and two-family dwellings automatic fire sprinkler systems.~~ Delete. (4-6-23)T
- lj.** ~~Section R314.2.2 Alterations, repairs and additions; Exception Item #2.~~ Delete. and replace with the following: Exceptions: 1. Work involving the exterior surfaces of dwellings, such as, but not limited to, replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck or electrical permits, are exempt from the requirements of this section. 2. Installation, alteration or repairs of plumbing or mechanical systems are exempt from the requirements of this section. (4-6-23)T
- mk.** ~~Section R315.2.2 Alterations, repairs and additions; Exception Item #2.~~ Delete. and replace with the following: Exceptions: 1. Work involving the exterior surfaces of dwellings, such as, but not limited to, replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck or electrical permits, are exempt from the requirements of this section. 2. Installation, alteration or repairs of noncombustion plumbing or mechanical systems are exempt from the requirements of this section. (4-6-23)T
- nl.** ~~Section R322.1.10 As-built elevation documentation.~~ Delete.(4-6-23)T
- o.** ~~Section R322.2.1 and replace with the following: R322.2.1 Elevation requirements. 1. Buildings and structures in flood hazard areas, including flood hazard areas designated as Coastal A Zones, shall have the lowest floors elevated to or above the base flood elevation. 2. In areas of shallow flooding (AO Zones), buildings and structures shall have the lowest floors (including basement) elevated to a height above the highest adjacent grade of not less than the depth number specified in feet (mm) on the FIRM, or not less than two (2) feet (610 mm) if a depth number is not specified. 3. Basement floors that are below grade on all sides shall be elevated to or above base flood elevation. Exception: Enclosed areas below the design flood elevation, including basements with floors that are not below grade on all sides, shall meet the requirements of Section R322.2.2.~~ (4-6-23)T
- p.** ~~Subparagraph 2.1 of Section R322.2.2 Enclosed area below design flood elevation, and replace with the following: 2.1. The total net area of all openings shall be at least one (1) square inch (645 mm<sup>2</sup>) for each square foot (0.093 m<sup>2</sup>) of enclosed area, or the opening shall be designed and the construction documents shall include a statement that the design and installation of the openings will provide for equalization of hydrostatic flood forces on exterior walls by allowing the automatic entry and exit of floodwaters.~~ (4-6-23)T

~~am.~~ ~~Delete~~ Tables R403 Minimum Depth (D) and Width (W) of Crushed Stone Footings (inches), R403.1(1) Minimum Width and Thickness for Concrete Footings for Light-Frame Construction (inches), R403.1(2) Minimum Width and Thickness for Concrete Footings for Light-Frame Construction and Brick Veneer (inches), and R403.1(3) Minimum Width and Thickness for Concrete Footings with Cast-In-Place or Fully Grouted Masonry Wall Construction (inches). ~~Delete.~~(4-6-23)T

~~al.~~ Add the following as Table R403.1:

**TABLE R403.1**  
**MINIMUM WIDTH OF CONCRETE, PRECAST, OR MASONRY FOOTINGS (inches)<sup>a</sup>**

	LOAD-BEARING VALUE OF SOIL (psf)			
	1,500	2,000	3,000	≥ 4,000
<b>Conventional light-frame construction</b>				
1-Story	12	12	12	12
2-Story	15	12	12	12
3-Story	23	17	12	12
<b>4-inch brick veneer over light frame or 8-inch hollow concrete masonry</b>				
1-Story	12	12	12	12
2-Story	21	16	12	12
3-Story	32	24	16	12
<b>8-inch solid or fully grouted masonry</b>				
1-Story	16	12	12	12
2-Story	29	21	14	12
3-Story	42	32	21	16

For SI: 1 inch = 25.4 mm, 1 pound per square foot = 0.0479 kPa.

<sup>a</sup>Where minimum footing width is twelve (12) inches, use of a single wythe of solid or fully grouted twelve (12)-inch nominal concrete masonry units is permitted.(4-6-23)T

~~so.~~ ~~Delete~~ Section R403.1.1. ~~Delete~~ and replace with the following: R403.1.1 Minimum size. Minimum sizes for concrete and masonry footings shall be as set forth in Table R403.1 and Figure R403.1(1). The footing width (W) shall be based on the load bearing value of the soil in accordance with Table R401.4.1. Spread footings shall be at least six (6) inches in thickness (T). Footing projections (P) shall be at least two (2) inches and shall not exceed the thickness of the footing. The size of footings supporting piers and columns shall be based on the tributary load and allowable soil pressure in accordance with Table R401.4.1. Footings for wood foundations shall be in accordance with the details set forth in Section R403.2 and Figures R403.1(2) and R403.1(3).(4-6-23)T

~~tp.~~ ~~Delete~~ Section R602.10. ~~Delete~~ and replace with the following: ~~R602.10 Wall bracing~~—Buildings shall be braced in accordance with this Section or, when applicable Section R602.12, or the most current edition of APA System Report SR-102 as an alternate method. Where a building, or portion thereof, does not comply with one (1) or more of the bracing requirements in this Section, those portions shall be designed and constructed in accordance with Section R301.1.(4-6-23)T

**03. International Existing Building Code.** 2018 Edition.(4-6-23)T

~~**04. International Energy Conservation Code.** 2018 Edition with the following amendments:  
(4-6-23)T~~

**04. International Energy Conservation Code – Commercial Provisions.** The 2018 Edition with the following amendments:( )

**a.** Add ~~the following as new~~ Section C101.5.2: C101.5.2 Industrial, electronic, and manufacturing equipment. Buildings or portions thereof that are heated or cooled exclusively to maintain the required operating temperature of industrial, electronic, or manufacturing equipment shall be exempt from the provisions of this code. Such buildings or portions thereof shall be separated from connected conditioned space by building thermal envelope assemblies complying with this code.(4-6-23)T

**b.** Add the following Exemptions to section C402.1.1:

**i.** Exemption 4. Accessory utility and storage buildings and sports practice buildings accessory to A, B, and E occupancies where buildings maintain no heating or cooling or where intermittent heating and cooling systems are installed.

**ii.** Exemption 5. Buildings for domestic water wells, irrigation wells, sewer pump facilities, and sewer lift station buildings where equipment produces internal heat loads and where intermittent heating or cooling is provided to prevent freezing or overheating of equipment.

~~**b.** Add the following as an exception under Section C402.5 Air leakage – thermal envelope (Mandatory): Exception: For buildings having over fifty thousand (50,000) square feet of conditioned floor area, air leakage testing shall be permitted to be conducted on less than the whole building, provided the following portions of the building are tested and their measured air leakage is area-weighted by the surface areas of the building envelope: 1. The entire floor area of all stories that have any spaces directly under a roof. 2. The entire floor area of all stories that have a building entrance or loading dock. 3. Representative above-grade wall sections of the building totaling at least twenty-five percent (25%) of the above-grade wall area enclosing the remaining conditioned space. Floor area tested under subparagraphs 1. or 2. of this exception shall not be included in the twenty-five percent (25%) of above-grade wall sections tested under this subparagraph.(4-6-23)T~~

**c.** Add the following as exception number 7 under Section C403.5 Economizers (Prescriptive): 7. Unusual outdoor air contaminate conditions – Systems where special outside air filtration and treatment for the reduction and treatment of unusual outdoor contaminants, makes an air economizer infeasible.(4-6-23)T

**d.** Delete Table C404.5.1 and replace with the following:

<b>TABLE C404.5.1</b>			
<b>PIPING VOLUME AND MAXIMUM PIPING LENGTHS</b>			
<b>NOMINAL PIPE SIZE (inches)</b>	<b>VOLUME (liquid ounces per foot length)</b>	<b>MAXIMUM PIPING LENGTH (feet)</b>	
		<b>Public lavatory faucets</b>	<b>Other fixtures and appliances</b>
1/4	0.33	34	50



5/16	0.5	N/A – non-standard size	50
3/8	0.75	17	50
1/2	1.5	10	43
5/8	2	7	32
3/4	3	5	21
7/8	4	N/A – non-standard size	16
1	5	3	13
1 1/4	8	2	8
1 1/2	11	1	6
2 or larger	18	1	4

For SI: 1 inch = 25.4 mm; 1 foot = 304.8 mm; 1 liquid ounce = 0.030 L; 1 gallon = 128 ounces. (4-6-23)F

**05. International Energy Conservation Code – Residential Provisions.** The 2018 Edition with the following amendments: ( )

**a.** R202 General Definitions. Add the following to the definition of “Conditioned Space”: This definition shall not apply to garage spaces or other similar spaces where heating or cooling is installed for frost protection or intermittent use. ( )

**eb.** Delete the rows in Table R402.1.2 Insulation and Fenestration Requirements by Component. Delete the rows in for climate zones “5 and Marine 4” and “6” and replace with the following:

TABLE R402.1.2 INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT <sup>a</sup>										
Climate Zone	Fenestration U-Factor <sup>b</sup>	Skylight <sup>b</sup> U-factor	Glazed Fenestration SHGC <sup>b, e</sup>	Ceiling R-Value	Wood Frame Wall R-Value	Mass Wall R-Value <sup>i</sup>	Floor R-Value	Basement <sup>c</sup> Wall R-Value	Slab <sup>d</sup> R-Value & Depth	Crawlspace <sup>c</sup> Wall R-Value

5	0.32	0.55	NR	38	20 or 13+5 <sup>h</sup>	13/17	30 <sup>g</sup>	15/19	10, 2 ft	15/19
6	0.30	0.55	NR	49	22 or 13+5 <sup>h</sup>	15/20	30 <sup>g</sup>	15/19	10, 4 ft	15/19

(4-6-23)T

~~f.c.~~ Add the following as footnote <sup>k</sup> to the title of Table R402.1.2 - Insulation and Fenestration Requirements by Component. Add the following as footnote <sup>k</sup> to the Table title: <sup>k</sup>. For residential log home building thermal envelope construction requirements see Section R402.6.(4-6-23)T

~~g.d.~~ Delete the rows in Table R402.1.4 Equivalent U-Factors. Delete the rows in for climate zones “5 and Marine 4” and “6” and replace with the following:

Climate Zone	Fenestration U-factor	Skylight U-factor	Ceiling U-factor	Frame Wall U-factor	Mass Wall U-factor <sup>b</sup>	Floor U-factor	Basement Wall U-factor	Crawlspace Wall U-factor
5	0.32	0.55	0.030	0.060	0.082	0.033	0.050	0.055
6	0.30	0.55	0.026	0.057	0.060	0.033	0.050	0.055

(4-6-23)T

~~h.~~ Delete Section R402.4.1 and replace with the following: R402.4.1 Building thermal envelope. 1. Until June 30, 2021, the building thermal envelope shall comply with Sections R402.4.1.1 (Installation) and either Section R402.4.1.2 (Testing) or Section R402.4.1.3 (Visual inspection). 2. Effective July 1, 2021, the building thermal envelope of a minimum of twenty percent (20%) of all new single family homes constructed by each builder shall comply with Section R402.4.1.1 (Installation) and Section R402.4.1.2 (Testing). The authority having jurisdiction may: 2.1. Determine how to enforce this requirement, starting with the fifth house and continuing with each subsequent fifth house. 2.2. Waive this requirement if significant testing indicates the five (5) air changes per hour (ACH) requirement is consistently being met or exceeded (resulting in a lower ACH). 2.3. Grant exceptions to this requirement in rural areas where testing equipment is not available or cost effective. 3. Effective July 1, 2021, the building thermal envelope of eighty percent (80%) of all new single family homes constructed by each builder shall comply with Section R402.4.1.1 (Installation) and either Section R402.4.1.2 (Testing) or Section R402.4.1.3 (Visual inspection). 4. The sealing methods between dissimilar materials shall allow for differential expansion and contraction. (4-6-23)T

~~i.~~ Delete Section R402.4.1.1 and replace with the following: R402.4.1.1 Installation. The components of the building thermal envelope as listed in Table R402.4.1.1 shall be installed in accordance with the manufacturer’s instructions and the criteria listed in Table R402.4.1.1, as applicable to the method of construction. (4-6-23)T

~~j.~~ Delete Section R402.4.1.2 and replace with the following: R402.4.1.2 Testing. Testing building envelope tightness and insulation installation shall be considered acceptable when tested air leakage is less than five (5) air changes per hour (ACH) when tested with a blower door at a pressure of 33.5 psf (50 Pa). Testing shall occur

~~after rough in and after installation of penetrations of the building envelope, including penetrations for utilities, plumbing, electrical, ventilation and combustion appliances. Testing shall be conducted in accordance with RESNET/ICC 380, ASTM E 779 or ASTM E 1827 and reported at a pressure of 0.2 inch w.g. (50 Pascals). During testing: 1. Exterior windows and doors, fireplace and stove doors shall be closed, but not sealed. 2. Dampers shall be closed, but not sealed, including exhaust, intake, makeup air, backdraft and flue dampers. 3. Interior doors shall be open. 4. Exterior openings for continuous ventilation systems and heat recovery ventilators shall be closed and sealed. 5. Heating and cooling system(s) shall be turned off. 6. HVAC ducts shall not be sealed. 7. Supply and return registers shall not be sealed.~~(4-6-23)T

~~ke.~~ ~~Add the following as~~ Section R402.4.1.3~~2~~: ~~R402.4.1.3~~ Add the following exception: Visual inspection. The Permit Holder will determine at the time of permit application the method of determining ~~B~~ building envelope tightness, ~~and insulation installation~~ A visual inspection shall be considered acceptable in lieu of testing when the items listed in Table R402.4.1.1, applicable to the method of construction, are field verified. ~~Where required by code official an approved party independent from the installer of the insulation shall inspect the air barrier and insulation.~~(4-6-23)T

~~lf.~~ ~~Add the following as~~ Add new Section R402.6: R402.6 Residential log home thermal envelope. Residential log home construction shall comply with Section R401 (General), Section R402.4 (Air leakage), Section R402.5 (Maximum fenestration U-factor and SHGC), Section R403.1 (Controls), the mandatory sections of Sections R403.3 through R403.9, Section R404 (Electrical Power and Lighting Systems), and either 1., 2., or 3. as follows: 1. Sections R402.2 through R402.3, Section R403.3.1 (Insulation), Section R404.1 (Lightning equipment), and Table R402.6 (Log Home Prescriptive Thermal Envelope Requirements by Component). 2. Section R405 (Simulated Performance Alternative). 3. REScheck (U.S. Department of Energy Building Codes Program).(4-6-23)T

~~mg.~~ ~~Add the following as~~ new Table R402.6:

<b>TABLE R402.6</b>									
<b>LOG HOME PRESCRIPTIVE THERMAL ENVELOPE REQUIREMENTS BY COMPONENT</b>									
For SI: 1 foot = 304.8 mm.									
Climate Zone	Fenestration U-factor <sup>a</sup>	Skylight U-factor	Glazed Fenestration SHGC	Ceiling R-value	Min. Average Log Size In Inches	Floor R-value	Basement Wall R-value <sup>d</sup>	Slab R-value & Depth <sup>b</sup>	Crawl Space Wall R-value <sup>d</sup>
5, 6 - High efficiency equipment path <sup>c</sup>	0.32	0.60	NR	49	5	30	15/19	10, 4 ft.	10/13
5	0.32	0.60	NR	49	8	30	10/13	10, 2 ft.	10/13
6	0.30	0.60	NR	49	8	30	15/19	10, 4 ft.	10/13

<sup>a</sup>The fenestration U-factor column excludes skylights. The SHGC column applies to all glazed fenestration.

<sup>b</sup>R-5 shall be added to the required slab edge R-values for heated slabs.

<sup>c</sup>90% AFUE natural gas or propane, 84% AFUE oil, or 15 SEER heat pump heating equipment (zonal electric resistance heating equipment such as electric base board electric resistance heating equipment as the sole source for heating is considered compliant with the high efficiency equipment path).

<sup>d</sup>“15/19” means R-15 continuous insulated sheathing on the interior or exterior of the home or R-19 cavity insulation at the interior of the basement wall. “15/19” shall be permitted to be met with R-13 cavity insulation on the interior of the basement wall plus R-5 continuous insulated sheathing on the interior or exterior of the home. “10/13” means R-10 continuous insulated sheathing on the interior or exterior of the home or R-13 cavity insulation at the interior of the basement wall.

(4-6-23)T

~~n:~~ Delete Section R403.3.1 and replace with the following: R403.3.1 Duct insulation requirements. Supply and return ducts located in an attic space shall have an R-value of not less than R-8.(4-6-23)T

~~o:~~ Delete Sections R403.3.6 and R403.3.7.(4-6-23)T

~~p:~~ Delete Section R403.5.3 and replace with the following: R403.5.3 Hot water pipe insulation (Prescriptive). Insulation for hot water piping with a thermal resistance, R-value, of not less than R-3 shall be applied to the following: 1. Piping serving more than one (1) dwelling unit. 2. Piping located outside the conditioned space. 3. Piping located under a floor slab. 4. Buried piping. 5. Supply and return piping in recirculation systems other than demand recirculation systems.(4-6-23)T

~~q:~~ Delete Section R404.1 and replace with the following: R404.1 Lighting equipment (Mandatory). A minimum of seventy five percent (75%) of the lamps in permanently installed lighting fixtures shall be high efficacy lamps or a minimum of seventy five percent (75%) of the permanently installed lighting fixtures shall contain only high efficacy lamps.(4-6-23)T

~~r:~~ Delete Section R406.3 and replace with the following: R406.3 Energy Rating Index. The Energy Rating Index (ERI) shall be determined in accordance with RESNET/ICC 301. Energy used to recharge or refuel a vehicle used for transportation on roads that are not on the building site shall not be included in the ERI reference design or the rated design.(4-6-23)T

~~s:~~ Delete Table R406.4 and replace with the following:

~~**Table R406.4 – Maximum Energy Rating Index**~~

<del>Climate Zone</del>	<del>Energy Rating Index<sup>a</sup></del>
<del>5</del>	<del>68</del>
<del>6</del>	<del>68</del>

<sup>a</sup>Where on-site renewable energy is included for compliance using the ERI analysis of Section R406.4, the building shall meet the mandatory requirements of Section R406.2, and the building thermal envelope shall be greater than or equal to the levels of efficiency and SHGC in Table R402.1.2 or Table R402.1.4 of the 2015 International Energy Conservation Code.(4-6-23)T

~~05. **References to Other Codes.** Where any provisions of the codes that are adopted in this Section make reference to other construction and safety-related model codes or standards which have not been adopted by the involved authority having jurisdiction, to the extent possible, such reference should be construed as pertaining to the equivalent code or standard that has been duly adopted by such jurisdiction.(4-6-23)T~~

~~005. —025.(RESERVED)~~

**026002. DEFINITIONS.**

~~The terms defined in this section have the following meaning for all parts of this chapter, unless the context clearly indicates another meaning:(4-6-23)T~~

~~01. **Listed.** Equipment or other building components included within a current list published by a recognized listing agency that maintains periodic inspection on current production of listed equipment or other building components and whose listing states either that the equipment or component complies with recognized standards or has been tested and determined to be suitable for the use intended.(4-6-23)T~~

**021. Listing Agency.** A person, firm, association, partnership or corporation which is in the business of listing or labeling and which maintains a periodic inspection program on current production of listed materials, and which makes available, not less frequently than annually, a published report of such listing in which specific information is included that the product has been tested to nationally approved standards and found safe for use in a specified manner. (4-6-23)T

**032. Minor Alteration.** The following definition is used for the purpose of administering annual permits.

**a.** Minor alterations shall include, but are not limited to, the following: partition walls constructed within a defined room; relocation of or existing openings or installation of new doors and windows in non-load bearing walls and not in construction meant to compartmentalize fire; window replacement in unaltered existing openings; roof repairs involving installation of less than one hundred (100) square feet of new roof covering; and new suspended ceilings that are not part of a required fire resistive assembly.(4-6-23)T

**b.** Minor alterations shall not include: work that alters the fire resistive characteristics of the building or fire suppression systems; work that creates new openings in construction meant to compartmentalize fire such as fire walls, fire barriers, fire partitions, smoke barriers, smoke partitions, horizontal assemblies, shaft enclosures, stair enclosures; work that increases the floor area or height of the building; work that changes the structural load path of the building for gravity or horizontal loads; work that reduces the thermal resistant capacity of the building envelop; changes in the occupancy classification of the building or space; increases in the floor loads.(4-6-23)T

**027500. PERMITS AND PLAN REVIEW.**

~~01. **Building Permits.** Building permits shall be obtained from the Division prior to the construction of structures governed by the act or rules promulgated by the Board.(4-6-23)T~~

**021. Annual Permit.** In lieu of an individual permit for each minor alteration to an already approved building, the Division may issue an annual permit upon application therefor to any state agency or state governmental organization regularly employing one (1) or more qualified trade persons in the building, structure or on the premises or campus owned or operated by the applicant for the permit. The agency to whom an annual permit is issued shall keep a detailed record of alterations made under such annual permit. The Division shall be allowed access to such records at all times upon request or such records shall be filed with the Division as designated. The permit holder shall request inspections and make the work accessible for inspection as required by the adopted codes and this rule herein. (4-6-23)T

**028. PLAN REVIEW.**

~~01. **Jurisdiction.** The Division shall have exclusive jurisdiction and authority to conduct plan reviews of the construction, additions, repairs, and occupancy of all state buildings of any agency of government at the state~~

~~level for any purposes or occupancy regardless of the source of funding for such construction, addition, repair, or occupancy. (4-6-23)T~~

~~**02. Plans Specifications.** Construction documents shall be dimensioned and drawn upon suitable material. Plans may be submitted electronically or in digital format as approved by the Division. Drawing format shall be equivalent to the paper format. Construction documents shall be of sufficient clarity to indicate the location, nature, and extent of the work proposed and show in detail that the installations will conform to the provisions of the building code and applicable laws, rules, and policies of the Division.(4-6-23)T~~

~~**03. Plans Not Required.** Plans are not required for group U occupancies of Type V conventional light-frame wood construction.(4-6-23)T~~

~~**04. Addenda and Change Orders.** Documents enforcing changes or modifications. Addenda, contract change orders, changes in work requests, and other similar written documents enforcing changes or modifications to plans or specifications, already approved by the Division, which addenda, change orders, or change in work requests deal with structural or fire resistance changes, or such other changes affecting code conformance, shall be submitted to the Division for approval. The use of the terms “addenda,” “change orders,” and “changes in work requests” are not be limited exclusively to such phraseology, but may include such other language used in the professions which essentially have the same meaning.(4-6-23)T~~

**029. FEES:**

**03. Fees.**

**04a.** Technical Service Fee. One hundred dollars (\$100) per hour.(4-6-23)T

**02b.** Building Permit Fees.

The determination of value or valuation will be made by the administrator and includes the total value of all construction work for which a permit is issued.

<b>TABLE 1-A – BUILDING PERMIT FEES</b>	
<b>Total Valuation</b>	<b>Fee</b>
\$1 to \$500	= \$23.50
\$501 to \$2,000	= \$23.50 for the first \$500 plus \$3.05 for each additional \$100, or fraction thereof, to and including \$2,000
\$2,001 to \$25,000	= \$69.25 for the first \$2,000 plus \$14 for each additional \$1,000, or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	= \$391.75 for the first \$25,000 plus \$10.10 for each additional \$1,000, or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	= \$643.75 for the first \$50,000 plus \$7 for each additional \$1,000, or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	= \$993.75 for the first \$100,000 plus \$5.60 for each additional \$1,000, or fraction thereof, to and including \$500,000
\$500,001 to \$1,000,000	= \$3,233.75 for the first \$500,000 plus \$4.75 for each additional \$1,000, or fraction thereof, to and including \$1,000,000
\$1,000,001 to \$5,000,000	= \$5,608.75 for the first \$1,000,000 plus \$3.65 for each additional \$1,000, or fraction thereof, to and including \$5,000,000

\$5,000,001 to \$10,000,000	= \$20,208.75 for the first \$5,000,000 plus \$2.75 for each additional \$1,000, or fraction thereof, to and including \$10,000,000
\$10,000,001 and up	= \$33,958.75 for the first \$10,000,000 plus \$2 for each additional \$1,000, or fraction thereof

(4-6-23)T

**03c.** Fees for Annual Permits. A fee for inspections performed on annual permits shall be charged at the rate of one hundred dollars (\$100) per hour inspection. The Division shall bill the applicant for annual permits and failure of the applicant to pay the fee within sixty (60) days may result in cancellation of the annual permit.

(4-6-23)T

**04d.** Plan Review Fees. Plan review fees shall be charged at an hourly rate of one hundred dollars (\$100) per hour up to a maximum of sixty-five percent (65%) of the calculated building permit fee with a minimum required fee of forty percent (40%) of the calculated building permit fee. All requests for plan review services shall at such time be accompanied by a payment in the amount of at least forty percent (40%) of the calculated building permit fee. Upon completion of the plan review, any additional fees, above the minimum required, are due to the Division by the requesting party.(4-6-23)T

**05.** Refund of Plan Review Fees. Plan review fees are non-refundable.(4-6-23)T

**030. RIGHT OF ENTRY.**

Whenever necessary to make an inspection to enforce any of the provisions of Title 39, Chapters 40 and 41, Idaho Code, or whenever the administrator or his authorized representative has reasonable cause to believe that there exists in any building or upon any premises, any condition which makes such building or premises unsafe, the administrator or his authorized representative shall enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Division by Title 39, Chapters 40 and 41, Idaho Code; provided that if such building or premises is occupied, he shall first present proper credentials and demand entry; and if such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and demand entry. If such entry is refused, the administrator shall have recourse to every remedy provided by law to secure entry.(4-6-23)T

**031. WORK PROCEEDING WITHOUT PERMIT OR APPROVAL.**

Where any work for which a permit or approval, to include plan or system approval, is required by these rules, or by the codes enumerated in Title 39, Chapter 41, Idaho Code, is started or proceeded prior to obtaining said approval or permit, and after notice to such person doing or causing such work to be done, and such person continues or causes to continue such work, the fees specified in these rules shall be doubled, but the payment of such double fee shall not relieve any persons from fully complying with the requirements of Title 39, Chapter 41, Idaho Code, or these rules in the execution of the work nor from any other penalties prescribed by law.(4-6-23)T

**032. STOP WORK ORDERS.**

Whenever any work is being done contrary to any provisions of the codes enumerated in Title 39, Chapter 41, Idaho Code, or contrary to these rules, the administrator or his authorized representative may order the work stopped by notice in writing to any persons engaged in such work, and any such persons shall forthwith stop such work until authorized by the administrator or his representative to proceed with the work. Stop work orders shall be accompanied by a notice of violation that states the specific violation and code reference.(4-6-23)T

**033.—037.(RESERVED)**

**038200. INTEGRATED DESIGN AND FUNDAMENTAL COMMISSIONING OF PUBLIC SCHOOL FACILITIES.**

**01. Definitions.** The following definitions are intended to supplement, and should be read in

~~conjunction with the definitions contained in Section 33-356, Idaho Code.(4-6-23)T~~

~~a. Fundamental Commissioning. A quality focused process for enhancing the delivery of a project. It makes use of a qualified third party employed directly by the building owner.(4-6-23)T~~

~~b. Integrated Design. Integrated design refers to a collaborative design effort in which each of the individual architectural or engineering professionals focuses on the whole building approach, with an emphasis on optimizing the building's performance, environmental sustainability, and cost savings, to include climate, use, loads and systems resulting in a more comfortable and productive environment, and a building that is more energy efficient than would be realized using current best practices.(4-6-23)T~~

**021. Technical and Educational Information.** Technical and educational information related to integrated design and fundamental commissioning in the form of the American Institute of Architects Integrated Project Delivery Guide; Portland Energy Conservation, Inc. (PECI) Commissioning Guides; ASHRAE Guideline 0-2005-The Commissioning Process; and the Northwest Energy Efficiency Alliance Integrated Design Special Focus on Energy Performance Guide is available ~~at on~~ the Division's ~~office locations including 1090 E. Watertower St., Meridian, Idaho 83642, and 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814.~~ A building commissioned under the prescriptive approaches defined by any of the above-named national organizations is deemed to have completed the Fundamental Commissioning process.(4-6-23)T

**032. Commissioning Agents.** The Division has compiled and made available for public examination a list of all known third party building commissioning agents in Idaho and its contiguous states. The Division has ensured that all such commissioning agents appearing on this list have been certified by the Building Commissioning Association (BCA) or other similar certifying entity.(4-6-23)T

**043. Annual Optimization Review.(4-6-23)T**

~~a. A public school building that qualifies for the school building replacement value calculation pursuant to Section 33-356(5)(a), Idaho Code, shall undergo an annual optimization review each year following the first year of operations that the involved school district seeks to qualify such building for the building replacement value calculation. (4-6-23)T~~

~~ba. The systems within a building required to undergo annual optimization review, as well as any relevant measuring criteria for such systems, shall be formulated by the third party commissioning agent that performs the initial fundamental commissioning. The school district shall be provided with a written report from the commissioning agent identifying the systems which will be subject to the annual optimization review along with any other requirements. The third party commissioning agent who performed the initial fundamental commissioning for a public school building must provide the school district with a written report identifying the systems which will be subject to the Idaho Code Section 33-356 annual optimization review and identifying the system requirements and/or other relevant measuring criteria.(4-6-23)T~~

~~e. The report written report required above in Paragraph 038.04.b. of these rules shall, at a minimum include, but is not limited to, at least the following:(4-6-23)T~~

~~i. Verification that the heating, ventilation, and air conditioning (HVAC) systems, controls, dampers, valves, sensors and other equipment used to control the system are functioning as they were at the commissioning of the building.:(4-6-23)T~~

~~ii. Verification that the lighting controls are functioning as they were at the commissioning of the building. and (4-6-23)T~~

~~iii. The requirement that any changes made to any of the controls contained on the agent's list after the initial commissioning be re-set back to the commissioned settings unless it can be demonstrated that the new settings result in greater energy efficiency.(4-6-23)T~~

~~db. The annual optimization review shall be performed by persons qualified to make the required determinations and adjustments.(4-6-23)T~~



~~ec.~~ ~~Following the annual optimization review,~~ the school district shall submit to the Division written verification indicating ~~(1) that~~ the systems identified by the commissioning agent, including those identified in this Section are functioning as they were at the initial commissioning; ~~and (2). Such written verification shall also~~ identify~~ing~~ the persons performing the optimization and their qualifications.(4-6-23)T

~~055.~~ **Commissioning Anniversary Date.** The date upon which the commissioning agent provides the school district with the required written report described in Paragraph 038.04.b. of these rules shall be the commissioning anniversary date for purposes of this Section. If a school district seeks to qualify a building for the building replacement value calculation, the annual optimization review shall be performed within thirty (30) days of the annual commissioning anniversary date following the first year the building is in operation. The written verification required by Paragraph 038.03.e. of these rules is due to the Division not later than sixty (60) days after the annual commissioning anniversary date.(4-6-23)T

~~063.~~ **Fundamental Building Commissioning Requirements.**(4-6-23)T

**a.** School districts seeking to qualify a building for the building replacement value calculation shall engage a building commissioning agent.(4-6-23)T

**b.** The commissioning agent must document the owner's requirements for each commissioned system in the facility. All HVAC and controls systems, duct work and piping, renewable and alternative technologies, lighting controls and day lighting, waste heat recovery, and any other advanced technologies incorporated in the building must be commissioned. Building envelope systems must also be verified. The owner's requirements for these systems may include efficiency targets and other performance criteria such as temperature and lighting levels that will define the performance criteria for the functional performance testing that occurs prior to acceptance.(4-6-23)T

**c.** The commissioning agent shall include commissioning requirements in the project construction documents. This includes the scope of commissioning for the project, the systems to be commissioned, and the various requirements related to schedule, submittal reviews, testing, training, O & M manuals, and warranty reviews.(4-6-23)T

**d.** The commissioning agent shall develop and utilize a commissioning plan. This plan must include an overview of the commissioning process for the project, a list of commissioned systems, primary commissioning participants and their roles, a communication and management plan, an outline of the scope of commissioning tasks, a list of work products, a schedule, and a description of any commissioning testing activities.(4-6-23)T

**e.** The commissioning agent must submit a report to the owner once the commissioning plan has been executed. (4-6-23)T

~~039. 999.(RESERVED)~~

# IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

## 24.39.31 – RULES FOR FACTORY BUILT STRUCTURES

### DOCKET NO. 24-3931-2301 (ZBR CHAPTER REWRITE, FEE RULE)

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo, Incorporation By Reference Synopsis \(IBRS\), & Cost/Benefit Analysis \(CBA\)](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. This rulemaking action is authorized pursuant to Section 67-2604, Idaho Code, and Sections 39-4003, 39-4302, 44-2102, 44-2104, 44-2201, 44-2202, 67-2614, 67-9406, and 67-9409, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The proposed rule chapter was reviewed and agreed to be consistent with the substance and purpose of the rulemaking. There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 6, 2023, Idaho Administrative Bulletin, [Volume 23-9 pages 430-450](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

The fees for applications, licenses, and renewal as designated in Rule 400 of these pending rules and the fee for permits, plan reviews, and inspections in Rule 500 are authorized in Sections 44-2104 and 67-2604, Idaho Code. None of these fees are being changed as a result of this rulemaking or since being previously reviewed by the Idaho legislature.

As authorized in Sections 44-2104 and 67-2604, Idaho Code, the fees in this rulemaking are for applications, licenses, and renewal and permitting, plan review and inspections.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rulemaking is not anticipated to have any negative impact on the State General Fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Katie Stuart, Bureau Chief – Administration, (208)-577-2489.

DATED this 6th day of December, 2023.

Katie Stuart  
Bureau Chief – Administration  
11341 W. Chinden Blvd., Bldg. #4  
Boise, ID 83714  
Phone: (208) 577-2489  
Email: [katie.stuart@dopl.idaho.gov](mailto:katie.stuart@dopl.idaho.gov)

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This rulemaking action is authorized pursuant to Section 67-2604, Idaho Code, and Sections 39-4003, 39-4302, 44-2102, 44-2104, 44-2201, 44-2202, 67-2614, 67-9406, and 67-9409, Idaho Code.

**PUBLIC HEARING SCHEDULE:** The public hearing concerning this rulemaking will be held as follows:

<p><b>Wednesday, September 20, 2023, 9:00 a.m. MT</b></p> <p><b>Division of Occupational and Professional Licenses</b> <b>Chinden Campus Building 4</b> <b>11341 W. Chinden Blvd., Bldg. #4</b> <b>Boise, ID 83714</b></p> <p><b>Telephone and web conferencing information will be posted on:</b> <b><a href="https://dopl.idaho.gov/calendar/">https://dopl.idaho.gov/calendar/</a> and <a href="https://townhall.idaho.gov/">https://townhall.idaho.gov/</a></b></p>
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The hearing site will be accessible to persons with disabilities, if needed. Requests for accommodation must be made not later than five (5) days prior to the meeting to the agency address below.

**DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Under [Executive Order 2020-01, Zero-Based Regulation](#), the Factory Built Structures Advisory Board is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. In conjunction with stakeholders, the proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter and to use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and Executive Order 2020-01.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

The fees for applications, licenses, and reinstatement as designated in Rule 400 of these proposed rules are authorized in Section 44-2104, Idaho Code. None of these fees are being changed as a result of this rulemaking or since being previously reviewed by the Idaho legislature.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

This rulemaking is not anticipated to have any negative fiscal impact on the State General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted under Docket No. 24-ZBRR-2301. The (Second) Omnibus Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023 Idaho Administrative Bulletin, [Vol. 23-6, pp. 75-76](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The Idaho Manufactured Home Installation Standard (January 1, 2018 edition).

The materials cited are incorporated by reference because they would be unduly cumbersome, expensive, or otherwise inexpedient to republish all or in part. The materials cited are codes, standards, or rules adopted by a nationally recognized organization or association.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this proposed rule, contact Katie Stuart, Administration Bureau Chief, at (208) 577-2489. Materials pertaining to the proposed rulemaking, including any available preliminary rule drafts, can be found on the following DOPL website: <https://dopl.idaho.gov/rulemaking/>.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 8th day of August, 2023.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 24-3931-2301**

**24.39.31 – RULES FOR FACTORY BUILT STRUCTURES**

**000. LEGAL AUTHORITY.**

These rules are promulgated pursuant to Sections 39-4003, 39-4302, 44-2102, 44-2104, 44-2201, and 44-2202, Idaho Code. ( )

**001. SCOPE.**

These rules govern the manufacture and installation of modular buildings in Idaho, apply to persons engaged in the business of manufacturing, selling, or installing manufactured or mobile homes for purposes of human habitation in Idaho, apply to disputes between persons licensed as manufacturers, retailers, and installers of manufactured homes, and apply to the installation of manufactured or mobile homes in Idaho. ( )

**002. INCORPORATION BY REFERENCE.**

The Idaho Manufactured Home Installation Standard (January 1, 2018 edition), is hereby adopted and incorporated by reference and is available on the DOPL website: <https://dopl.idaho.gov>. ( )

**003. DEFINITIONS.**

The terms defined in this section have the following meaning, unless the context clearly indicates another meaning. ( )

**01. Alterations to Manufactured Homes.** The replacement, addition, and modification, or removal of any equipment or installation after sale by a manufacturer to a retailer but prior to sale by a retailer to a purchaser which may affect the construction, fire safety, occupancy, plumbing, heat-producing or electrical system. It does not include the addition of an appliance requiring “plug-in” to an electrical receptacle, which appliance was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected. ( )

**02. Deceptive Practice.** Intentionally publishing or circulating any advertising concerning mobile or

manufactured homes which: ( )

a. Is misleading or inaccurate in any material respect; ( )

b. Misrepresents any of the products or services sold or provided by a manufacturer, manufactured/mobile home retailer, or installation company. ( )

**03. Insignia.** A label or tag issued by the Division to indicate compliance with the codes, standards, rules, and regulations established for Modular Buildings and Commercial Coaches. ( )

**04. Installation.** The complete operation of fixing in place a modular building or manufactured or mobile home for occupancy. ( )

**05. Principal Place of Business.** The primary physical location at which the business of a manufactured home retailer is lawfully conducted. Each of the following requirements must be met to qualify as the principal place of business: ( )

a. The business of the manufactured or mobile home retailer is lawfully conducted here; ( )

b. The office or offices of the retailer is or are located here; ( )

c. The public may contact the retailer here; ( )

d. The offices are accessible and open to the public; and ( )

e. The greatest portion of the retailer's business is conducted here. The books and other records of a retailer must be kept and maintained at the retailer's principal place of business and be open to inspection during normal business hours by any authorized agent of the Division. Moreover, there must be displayed on the exterior a sign permanently affixed to the land or building with letters providing the business name of the retailer clearly visible to the major avenue of traffic. ( )

**06. Used Manufactured Home or Mobile Home.** A manufactured home or mobile home, respectively, which has been: ( )

a. Sold, rented, or leased and occupied prior to or after the sale, rental, or lease; or ( )

b. Registered with or been the subject of a certificate of title issued by the Idaho Department of Transportation or the appropriate authority of any state, the District of Columbia, or foreign state or country. ( )

**004. -- 099. (RESERVED)**

**100. LICENSURE.**

**01. Manufactured/Mobile Home Licensure.** ( )

a. **Minimum Age Requirement.** No license will be issued to a person under eighteen (18) years of age at the time of license application. ( )

b. **Designated License Holder.** Any applicant for a license under who is not a natural person must designate a natural person to be license holder and represent the corporation, partnership, trust, society, club, association, or other organization for all licensing purposes under these rules including, but not limited to, testing and education. No issued licenses are transferable. ( )

i. Any person represents one (1) applicant only, and must immediately notify the Division in writing if his working relationship with the applicant has been terminated. The license will be issued in the name of the designated license holder with the name of the organization he represents also noted on the license. The license holder is considered by the Division to be the licensee. ( )

ii. The applicant agrees by acceptance of the designation that the designated person acts as agent of the applicant for all purposes under Title 44, Chapters 21 and 22, Idaho Code, and all rules promulgated thereunder. ( )

iii. Any license issued to a manufactured/mobile home retailer must be posted in a conspicuous place on the business premises of the employer for whom the holder of the license is licensed. The license of a manufacturing facility or branch office must also be posted in a conspicuous place at the location licensed. ( )

iv. To engage in business in the state of Idaho, each manufacturer must be licensed by the Division. ( )

v. The Division requires as a condition of licensing any information it deems necessary for each location where a manufactured/mobile home retailer maintains a branch office. The use of a mobile home park or a state sales office by a licensee for the sale or offering for sale of manufactured/mobile homes constitutes the maintenance of a branch office. A retailer must obtain a license from the Division to operate the branch office. ( )

vi. Applicants for a manufacturer's, retailers, or installer's license must furnish: Any proof the Division may deem necessary that the applicant is a manufacturer, retailer, or installer; any proof the Division may require that the applicant has a principal place of business; In the case of a retailer in new manufactured homes, an instrument in the form prescribed by the Division executed by or on behalf of the manufacturer certifying that the applicant is an authorized franchise retailer for the make concerned; The fee and proof of the bond required by Section 44-2103, Idaho Code; and Proof of passing the examination required by these rules, as applicable. ( )

vii. Within thirty (30) days after receipt of a completed application, the Division will issue or deny the license. ( )

viii. Each license is valid for a period of one (1) year from the date of issuance. ( )

**02. Proof of Education Required.** ( )

a. Satisfactory Proof for Initial Application Submission. An application for a license as a manufactured/mobile home installer must include proof satisfactory to the Division that the applicant has completed the following number of hours of initial education in order to be approved: ( )

i. Installers and retailers who are installers: eight (8) hours. ( )

ii. The course of initial education must be approved by the Division and must include information relating to the provisions of these rules, Title 44, Chapters 21, Idaho Code, and the National Manufactured Housing Construction and Safety Standards Act of 1974. ( )

b. Satisfactory Proof for License Renewal. The Division will not renew any installer license, or retailer license of any retailer who is also an installer, issued pursuant to Title 44, Chapters 21 or 22, Idaho Code, or these rules until the licensee has submitted proof satisfactory to the Division that he has, during the three (3) years immediately preceding the renewal of the license, completed at least eight (8) hours of continuing education. ( )

i. The course of continuing education must be approved by the Division and include information germane to the profession. ( )

**03. Examination Of Applicant For License.** ( )

a. Required Examinations. The Division requires a written examination of each applicant for an initial license as a manufactured/mobile home retailer or installer. ( )

b. Examination and Grade. No license will be issued unless an applicant receives a final grade of seventy percent (70%) or higher. ( )

101. -- 299. (RESERVED)

**300. DISCIPLINARY ACTION AGAINST LICENSEES, CIVIL PENALTIES, AND CONSUMER COMPLAINT AND DISPUTE RESOLUTION.**

**01. The Division may deny, suspend, refuse to renew, or revoke any license or reissue the license subject to reasonable conditions upon any of the following grounds:** ( )

**a. Failure to Provide Business Name.** Failure to include in any advertising the name of the licensed retailer or installer. ( )

**b. Poor Workmanship.** Performing workmanship which is grossly incompetent or repeatedly below the standards adopted by Title 44, Chapters 21 and 22, the provisions of these rules, or the National Manufactured Housing Construction and Safety Standards Act of 1974. ( )

**c. Failure to Honor Warranties.** Failure to honor any warranty or other guarantee given by a licensee for construction, workmanship, or material as a condition of securing a contract, or of selling, leasing, reconstructing, improving, repairing, or installing any manufactured/mobile home. ( )

**d. Failure to Respond to Notice.** Failure to respond to a notice served by the Division. ( )

**e. Failure to Permit Access to Documentary Materials.** Failure or refusing to permit access by the Division to relevant documentary materials after being requested to do so by the Division. ( )

**f. Conviction of Misdemeanor.** Conviction of a misdemeanor for violation of any of the provisions of Title 44, Chapters 21 or 22, Idaho Code. ( )

**g. Conviction of Felony.** Conviction or withheld judgment for a felony in this state, any U.S. territory, or country. ( )

**h. Violation of Permit or Inspection Requirements.** To knowingly violate any permit or inspection requirements of any city or county of this state. ( )

**02. Modular Civil Penalties.** The following acts subject the violator to penalties of not more than two hundred dollars (\$200) for the first offense and not more than one thousand dollars (\$1,000) for each offense thereafter: ( )

**a. Installation.** Any person who installs a modular building on a building site in this state without first receiving approval and securing to the structure insignia evidencing such approval from the Division. ( )

**b. Modification.** Any person who in any way modifies or alters a modular building prior to its initial occupancy which has previously been approved by the Division without first having received approval to do so from the Division. ( )

**03. Manufactured Home Civil Penalties.** Except as otherwise provided, the following acts subject the violator to penalties of not more than five hundred dollars (\$500) for the first offense and not more than one thousand dollars (\$1,000) for each offense thereafter: ( )

**a. Industry Licensing.** Except as provided for by Section 44-2106, Idaho Code, any person who engages in the business of a manufacturer, retailer, or installer, as defined in Section 44-2101A, Idaho Code, without being duly licensed by the Division. ( )

**b. Deceptive Practice.** Any retailer or installer who intentionally publishes or circulates any advertising that is misleading or inaccurate in any material respect or that misrepresents any of the products or services sold or provided by a manufacturer, retailer, or installer. ( )

c. Dealing with Stolen Manufactured or Mobile Homes. Any person who knowingly purchases, sells, or otherwise acquires or disposes of a stolen manufactured or mobile home is subject to a civil penalty of not more than one thousand dollars (\$1,000). ( )

d. Failure to Maintain a Principal Place of Business. Any person who is a retailer duly licensed by the Division and who fails to maintain a principal place of business within Idaho. ( )

e. Violation of Rules and Statutes. Any person who knowingly violates these rules or Title 44, Chapters 21 or 22, Idaho Code. ( )

f. Gross Violation. In case of continued, repeated, or gross violations of these rules, a license revocation may be initiated for licensed individuals under Title 44, Chapter 21, Idaho Code. Non-licensed individuals are subject to prosecution by the appropriate jurisdiction under Idaho law. ( )

**04. Consumer Complaints and Dispute Resolution.** ( )

a. Site Inspection. The Division may perform a site inspection, based on the nature of a complaint or upon request of the complainant in accordance with HUD. ( )

b. Fees. A charge for mileage to and from the inspection site, plus an hourly charge for the time spent conducting the inspection, is assessed the manufacturer, installer, or retailer if a site inspection is made upon a request by the manufacturer, installer, or retailer, and does not involve a serious defect or imminent safety hazard. ( )

c. Inspection Report. Following a site inspection, the inspector will prepare a final report and include photographs. ( )

d. Action. A notification letter and copies of the complaint form and investigation findings may be provided to all involved parties and HUD. ( )

i. Any Division action, notification and follow-up are completed according to HUD guidelines. ( )

ii. If the nature of the complaint pertains to retailer contractual issues or installation problems, a copy of the complaint is to be consolidated with the appropriate Division license files. ( )

iii. A Division building inspector will issue a report concerning correction or repair of defects that are a matter of dispute between the homeowner, retailer, installer, or manufacturer. The report will include the likely cause of the defect and identify the party responsible for creating the defect that is in need of correction or repair. ( )

e. Decisions. The Administrator will review the inspector's report and set forth the required corrective action and identify the party responsible for such action. The Administrator may initiate a contested case proceeding if, in his sole discretion, he determines that such a proceeding or further investigation would be of assistance in reaching a decision. The decision must direct the responsible party to complete the required corrective action within specified timelines and consider the needs of the involved parties including, but not limited to, safety, anticipated expense and availability of funds, time of year, and convenience to the parties. ( )

f. Appeals. Decisions of the administrator are final orders for purposes of appeal. ( )

g. Informal Disposition -- Arbitration -- Mediation. Unless otherwise prohibited by other provisions of law, informal disposition may be made of any complaint by negotiation, stipulation, agreed settlement, and consent order. The parties may agree to enter into binding arbitration or mediation. Informal settlement of matters is to be encouraged. ( )

**301. -- 399. (RESERVED)**

**400. MANUFACTURED/MOBILE HOME LICENSE FEES.**



**01. Fees for Issuance and Renewal of License.** The following fees for the issuance and renewal of a license will be charged: ( )

**a.** Manufactured/mobile home retailer license: four hundred forty dollars (\$440). Retailers who are also installers will have to pay an installer's license fee to hold both licenses. ( )

**b.** Manufacturer license: four hundred forty dollars (\$440); ( )

**c.** Manufactured/mobile home installer license: two hundred twenty dollars (\$220); ( )

**02. Performance Bonding Requirements.** Application for licensing will be accepted when accompanied by the performance bond required by Section 44-2103, Idaho Code. ( )

**401. -- 499. (RESERVED)**

**500. PERMITS, PLAN REVIEWS, AND INSPECTIONS.**

**01. Modular Building Permit Fees.** Permits must be obtained from the Division prior to the construction of structures governed by 39-4303, Idaho Code. Other than as specified in this section, the permit fee schedule for Modular Buildings is as provided in Table 1-A plus ninety dollars (\$90) and two and one-half percent (2.5%) of the plumbing, electrical, and HVAC installation costs. The determination of value or valuation is based on the total value of all construction work for which a permit is issued.

TABLE 1-A – MODULAR BUILDING PERMIT FEES		
TOTAL VALUATION		FEE
\$1 to \$500	=	\$23.50
\$501 to \$2,000	=	\$23.50 for the first \$500 plus \$3.05 for each additional \$100, or fraction thereof, to and including \$2,000
\$2,001 to \$25,000	=	\$69.25 for the first \$2,000 plus \$14 for each additional \$1,000, or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	=	\$391.75 for the first \$25,000 plus \$10.10 for each additional \$1,000, or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	=	\$643.75 for the first \$50,000 plus \$7 for each additional \$1,000, or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	=	\$993.75 for the first \$100,000 plus \$5.60 for each additional \$1,000, or fraction thereof, to and including \$500,000
\$500,001 to \$1,000,000	=	\$3,233.75 for the first \$500,000 plus \$4.75 for each additional \$1,000, or fraction thereof, to and including \$1,000,000
\$1,000,001 and up		\$5,608.75 for the first \$1,000,000 plus \$3.65 for each additional \$1,000, or fraction thereof

( )

**02. Modular Plan Review.** The Modular Building fee includes an additional amount equal to sixty-five percent (65%) of the permit fee calculated in accordance with Table 1-A. A fee of sixty-five dollars (\$65) per hour applies to additional plan review required by changes, additions, or revisions to plans. ( )

**03. Manufactured/Mobile Home Installation Permit Fees.** Permits must be obtained from the Division prior to the site installation governed by 44-2202, and 39-4004, Idaho Code in accordance with the following schedule: ( )

- a. Single Section Unit. The permit fee is one hundred fifty dollars (\$150). ( )
- b. Double Section Unit. The permit fee is two hundred dollars (\$200). ( )
- c. More Than Two Sections. The permit fee for a home consisting of more than two (2) sections is two hundred fifty dollars (\$250). ( )

**04. In-Plant Inspection Agency Fees.** In-plant inspection fees for manufactured homes produced by Idaho Manufactures as per 39-4003A and 39-4004 of Idaho Code is set at forty-five dollars (\$45) per floor. ( )

**05. Inspections at Manufacturing Plants.** The Division conducts inspections at the manufacturing plant to determine compliance with codes adopted by Title 39, Chapters 40 and 41, Idaho Code, and Title 54, Chapters 10, 26, and 50, Idaho Code. ( )

**06. Manufactured Home Site Installation Inspections.** Installation permits must be obtained from the Division for installations in areas where there is no approved local program, or from a city or county that has by ordinance adopted building codes pursuant to Section 39-4116, Idaho Code, and whose installation program has been approved by the Division. All installations must be inspected and approved by the authority having jurisdiction before the manufactured home is occupied. ( )

a. Installation inspections shall be conducted in accordance with the Idaho Manufactured Home Installation Standard or the Design Approval Primary Inspection Agency of the manufactured home. ( )

**07. Modular Site Installation Inspection.** In order to complete the installation of an Idaho approved Modular Building, approval and inspection of the installation by the enforcement agency having jurisdiction over the site location is required. ( )

**08. Qualifications of Inspectors.** All inspectors must be properly certified for the type of inspection being conducted. The Factory Built Structures Board recognizes certifications granted through the National Certification Program Construction Code Inspector program (NCPCCI), the National Inspection Testing Certification program (NITC), the International Association of Electrical Inspectors (IAEI), and the International Code Council (ICC). ( )

**09. Minimum Training Requirements for Inspectors.** All manufactured home installation inspectors must complete eight (8) hours of training or instruction germane to the profession. ( )

**10. Rights and Limitations of Local Enforcement Agencies for Modular Buildings.** ( )

a. A local enforcement agency has the right to require a complete set of plans and specifications approved by the Division for each Modular Building to be installed within its jurisdiction, to require that all permits be obtained before delivery of any unit. ( )

b. A local enforcement agency does not have the right to: open for inspection any Modular Building or component bearing an Insignia to determine compliance with any codes or ordinances; require by ordinance or otherwise that Modular Buildings meet any requirements not equally applicable to on-site construction; or to charge permit or plan review fees for any portion of the structure prefabricated or assembled at a place other than the Building Site. ( )

**11. Division Approval.** A city or county that has by ordinance adopted a building code pursuant to Section 39-4116, Idaho Code, is eligible to participate in the inspection of manufactured and mobile homes. Such local installation inspection program must be approved by the Division to provide inspection services if the following minimum criteria is met: ( )

a. Inspections are conducted by the city or county employing inspectors holding a valid certification as residential building inspector from the International Code Council; ( )

b. Inspectors attended training sessions provided or approved by the Division and receive a certificate evidencing successful completion thereof. ( )

c. Voluntary Withdrawal. A city or county may voluntarily withdraw from participation in the program to inspect manufactured homes upon providing to the Administrator of the Division thirty (30) days written notice of its intention to do so. ( )

d. Quality Assurance. Any inspected installation is subject to quality assurance reviews by Division of Occupational and Professional Licenses. Findings made by the Division pursuant to such reviews will be forwarded to the inspection authority having jurisdiction. ( )

i. All inspectors and approved programs are subject to review. ( )

**12. Modular Insignia and Serial Number.** ( )

a. Assigned Insignia are not transferable and are void when not affixed as assigned. ( )

b. Each Modular Building must bear a legible identifying serial number. Each section of a multiple Modular Building must have the same identifying serial number followed by a numerical sequence identifier or a letter suffix, or both. ( )

**501. -- 999. (RESERVED)**

[Agency redlined courtesy copy]

**24.39.31 – RULES FOR FACTORY BUILT STRUCTURES**

**000. LEGAL AUTHORITY.**

These rules are promulgated pursuant to Sections 39-4003, 39-4302, 44-2102, 44-2104, 44-2201, and 44-2202, Idaho Code. ( )

**001. SCOPE.**

~~Sections 100 through 199 of these rules apply to~~ These rules govern the manufacture and installation of modular buildings in Idaho. ~~Sections 200 through 299 of these rules~~ apply to persons engaged in the business of manufacturing, selling, or installing manufactured or mobile homes for purposes of human habitation in Idaho. ~~Sections 300 through 399 of these rules~~ apply to disputes between persons licensed as manufacturers, retailers, and installers of manufactured homes. ~~Sections 400 through 499 of these rules~~ and apply to the installation of manufactured or mobile homes in Idaho. ( )

**002. INCORPORATION BY REFERENCE.**

The Idaho Manufactured Home Installation Standard (January 1, 2018 edition), is hereby adopted and incorporated by reference and is available on the DOPL website: <https://dopl.idaho.gov>. ( )

~~002. -- 009. (RESERVED)~~

**~~040~~03. DEFINITIONS.**

The terms defined in this section have the following meaning, unless the context clearly indicates another meaning. ( )

**01. Alterations to Manufactured Homes.** The replacement, addition, and modification, or removal of any equipment or installation after sale by a manufacturer to a retailer but prior to sale by a retailer to a purchaser which may affect the construction, fire safety, occupancy, plumbing, heat-producing or electrical system. ~~It includes any modification made in a manufactured home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance “plug-in” to an electrical receptacle where~~

~~the replaced item is of the same configuration and rating as the one being replaced. It also~~ does not include the addition of an appliance requiring “plug-in” to an electrical receptacle, which appliance was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected.( )

~~**02. Branch Office.** An enclosed structure accessible and open to the public, at which the business of the manufactured/mobile home retailer is conducted simultaneously with and physically separated from his principal place of business. There must be displayed on the exterior a sign permanently affixed to the land or building with letters clearly visible to the major avenue of traffic. The sign must provide the business name of the retailer.( )~~

~~**03. Business.** Occupation, profession, or trade.( )~~

~~**04. Deceptive Practice.** Intentionally publishing or circulating any advertising concerning mobile or manufactured homes which:( )~~

- ~~a. Is misleading or inaccurate in any material respect;( )~~
- ~~b. Misrepresents any of the products or services sold or provided by a manufacturer, manufactured/mobile home retailer, or installation company.( )~~

~~**05. Insignia.** A label or tag issued by the Division to indicate compliance with the codes, standards, rules, and regulations established for Modular Buildings and Commercial Coaches.( )~~

~~**06. Installation.** The term includes “setup” and is the complete operation of fixing in place a modular building or manufactured or mobile home for occupancy.( )~~

~~**07. Manufactured Home.** A structure, constructed after June 15, 1976, in accordance with the HUD manufactured home construction and safety standards, and is transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term must include any structure which meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of Housing and Urban Development and complies with the standards established under 42 U.S.C. Section 5401, et seq.( )~~

~~**08. Manufactured Home Retailer.** Except as otherwise provided in these rules:( )~~

- ~~a. Any person engaged in the business of selling or exchanging new and used units; or( )~~
- ~~b. Any person or who buys, sells, lists, or exchanges three (3) or more new and used units in any one (1) calendar year. ( )~~

~~**09. Mobile Home.** A factory assembled structure or structures generally constructed prior to June 15, 1976, the date of enactment of the National Manufactured Housing Construction and Safety Standards Act (HUD Code), and equipped with the necessary service connections and made so as to be readily movable as a unit or units on their own running gear and designed to be used as a dwelling unit or units with or without a permanent foundation. ( )~~

~~**10. Principal Place of Business.** The primary physical location at which the business of a manufactured home retailer is lawfully conducted. Each of the following requirements must be met to qualify as the principal place of business:( )~~

- ~~a. The business of the manufactured or mobile home retailer is lawfully conducted here;( )~~
- ~~b. The office or offices of the retailer is or are located here;( )~~

- c. The public may contact the retailer here;( )
- d. The offices are accessible and open to the public; and( )

e. The greatest portion of the retailer’s business is conducted here. The books and other records of a retailer must be kept and maintained at the retailer’s principal place of business and be open to inspection during normal business hours by any authorized agent of the Division. Moreover, there must be displayed on the exterior a sign permanently affixed to the land or building with letters providing the business name of the retailer clearly visible to the major avenue of traffic.( )

~~11. **Transit Damage.** Application to manufactured home means that damage encountered en route from the place of manufacture to the dealer or first owner involving structural integrity or any repair that does not result in return to the same construction or assembly as specified in the manufacturer’s design approval without additional reinforcement or change.( )~~

~~126. **Used Manufactured Home or Mobile Home.** A manufactured home or mobile home, respectively, which has been:( )~~

- a. Sold, rented, or leased and occupied prior to or after the sale, rental, or lease; or( )
- b. Registered with or been the subject of a certificate of title issued by the Idaho Department of Transportation or the appropriate authority of any state, the District of Columbia, or foreign state or country.( )

~~011.—099.(RESERVED)~~

~~**SUBCHAPTER A—MODULAR BUILDINGS**~~  
~~(Rules 100 through 199)~~

~~**1500. PERMITS, PLAN REVIEWS, AND INSPECTIONS.**~~

~~**MODULAR PERMITS AND PLAN REVIEW FEES.**~~

~~Building pPermits must be obtained from the Division prior to the construction of structures governed by Title 39, Chapter ~~4339-4303, 44-2202, and 39-4004~~, Idaho Code, or Sections 100 through 199 of these rules.( )~~

~~**101. PLAN REVIEW.**~~

~~**01. Jurisdiction.** The Division has exclusive jurisdiction and authority to conduct plan reviews of the in plant construction of Modular Buildings.( )~~

~~**02. Application Provisions.** The provisions of this section apply only to plans for work that will be accomplished at the place of manufacture.( )~~

~~**102. FEES.**~~

~~The following fees apply to the functions cited:( )~~

~~**01. Modular Building Permit Fees.** Permits must be obtained from the Division prior to the construction of structures governed by 39-4303, Idaho Code. Other than as ~~herein~~ specified in this section, the permit fee schedule for Modular Buildings is as provided ~~herein~~ in Table 1-A plus ninety dollars (\$90) and two and one-half percent (2.5%) of the plumbing, electrical, and HVAC installation costs. The determination of value or valuation is based on the total value of all construction work for which a permit is issued.~~

TABLE 1-A – MODULAR BUILDING PERMIT FEES		
TOTAL VALUATION		FEE
\$1 to \$500	=	\$23.50

\$501 to \$2,000	=	\$23.50 for the first \$500 plus \$3.05 for each additional \$100, or fraction thereof, to and including \$2,000
\$2,001 to \$25,000	=	\$69.25 for the first \$2,000 plus \$14 for each additional \$1,000, or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	=	\$391.75 for the first \$25,000 plus \$10.10 for each additional \$1,000, or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	=	\$643.75 for the first \$50,000 plus \$7 for each additional \$1,000, or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	=	\$993.75 for the first \$100,000 plus \$5.60 for each additional \$1,000, or fraction thereof, to and including \$500,000
\$500,001 to \$1,000,000	=	\$3,233.75 for the first \$500,000 plus \$4.75 for each additional \$1,000, or fraction thereof, to and including \$1,000,000
\$1,000,001 and up		\$5,608.75 for the first \$1,000,000 plus \$3.65 for each additional \$1,000, or fraction thereof

( )

**02. Modular Plan Review.** The Modular Building fee includes an additional amount equal to sixty-five percent (65%) of the permit fee calculated in accordance with Table 1-A. A fee of sixty-five dollars (\$65) per hour applies to additional plan review required by changes, additions, or revisions to plans.( )

**501. MANUFACTURED AND MOBILE HOME PERMIT AND INSPECTION FEES.**

**03. Manufactured/Mobile Home Installation Permit Fees.** Permits must be obtained from the Division prior to the site installation governed by 44-2202, and 39-4004, Idaho Code in accordance with the following schedule:

- a. Single Section Unit.** The permit fee is one hundred fifty dollars (\$150).( )
- b. Double Section Unit.** The permit fee is two hundred dollars (\$200).( )
- c. More Than Two Sections.** The permit fee for a home consisting of more than two (2) sections is two hundred fifty dollars (\$250).( )

**04. In-Plant Inspection Agency Fees.** In-plant inspection fees for manufactured homes produced by Idaho Manufactures as per 39-4003A and 39-4004 of Idaho Code is set at forty-five dollars (\$45) per floor.

**103. MODULAR BUILDINGS INSPECTION REQUIREMENTS.**

~~**01. Enforcement and Administration.** Any officer, agent, or employee of the Division is authorized to enter any premises during any normal or operational hours where Modular Buildings are manufactured for the purpose of examining any records pertaining to quality control and may inspect any such units, equipment, or installations to ensure compliance with the provisions of these rules and codes enumerated in Title 39, Chapter 43, Idaho Code. ( )~~

~~**02. Inspections.**( )~~

~~**051. Inspections at Manufacturing Plants.** The Division conducts inspections at the manufacturing plant to determine compliance with Sections 100 through 199 of these rules and with codes adopted by Title 39, Chapters 40 and 41, Idaho Code, and Title 54, Chapters 10, 26, and 50, Idaho Code.( )~~

**062. Manufactured Home Site Installation Inspections.** Installation permits must be obtained from the Division for installations in areas where there is no approved local program, or from a city or county that has by ordinance adopted building codes pursuant to Section 39-4116, Idaho Code, and whose installation program has been approved by the Division. All installations must be inspected and approved by the authority having jurisdiction before the manufactured home is occupied.( )

**a.** Installation inspections shall be conducted in accordance with the Idaho Manufactured Home Installation Standard or the Design Approval Primary Inspection Agency of the manufactured home.

**07. Modular Site Installation Inspection.** In order to complete the installation of an Idaho approved Modular Building, approval and inspection of the installation by the enforcement agency having jurisdiction over the site location is required.

**b084. Qualifications of Inspectors.** All inspectors performing inspections of modular buildings must be properly certified for the type of inspection being conducted. The Factory Built Structures Board recognizes certifications granted through the National Certification Program Construction Code Inspector program (NCPCCI), the National Inspection Testing Certification program (NITC), the International Association of Electrical Inspectors (IAEI), and the International Code Council (ICC).-Certifications must be current and of the proper classification for the structure or subsystem being inspected.( )

**095. Minimum Training Requirements for Inspectors.** All manufactured home installation inspectors must complete eight (8) hours of training or instruction germane to the profession. ( )

~~**03. Installation Inspection.** In order to complete the installation of an Idaho approved Modular Building, approval and inspection of the installation by the enforcement agency having jurisdiction over the site location is required.( )~~

**1046. Rights and Limitations of Local Enforcement Agencies for Modular Buildings.**( )

**a.** A local enforcement agency has the right to require a complete set of plans and specifications approved by the Division for each Modular Building to be installed within its jurisdiction, to require that all permits be obtained before delivery of any unit.( )

**b.** A local enforcement agency does not have the right to: open for inspection any Modular Building or component bearing an Insignia to determine compliance with any codes or ordinances; require by ordinance or otherwise that Modular Buildings meet any requirements not equally applicable to on-site construction; or to charge permit or plan review fees for any portion of the structure prefabricated or assembled at a place other than the Building Site. ( )

**1107. Division Approval.** A city or county that has by ordinance adopted a building code pursuant to Section 39-4116, Idaho Code, is eligible to participate in the inspection of manufactured and mobile homes. Such local installation inspection program must be approved by the Division to provide inspection services if the following minimum criteria is met:( )

**a.** Inspections are conducted by the city or county employing inspectors holding a valid certification as residential building inspector from the International Code Council:( )

**b.** Inspectors attended training sessions provided or approved by the Division and receive a certificate evidencing successful completion thereof.( )

**c.** Voluntary Withdrawal. A city or county may voluntarily withdraw from participation in the program to inspect manufactured homes upon providing to the Administrator of the Division thirty (30) days written notice of its intention to do so.( )

**d.** Quality Assurance. Any inspected installation is subject to quality assurance reviews by Division of Occupational and Professional Licenses. Findings made by the Division pursuant to such reviews will be forwarded to the inspection authority having jurisdiction. ( )

i. ~~All inspectors and approved programs are subject to review.( )~~

~~12085.~~ **Modular Insignia and Serial Number.**( )

a. ~~Each Modular Building section must bear a Division Insignia prior to leaving the manufacturing facility.~~Assigned Insignia are not transferable and are void when not affixed as assigned.( )

b. Each Modular Building must bear a legible identifying serial number. Each section of a multiple Modular Building must have the same identifying serial number followed by a numerical sequence identifier or a letter suffix, or both.( )

~~104303.~~ **MODULAR-300. CIVIL PENALTIES.**

**01. Modular Civil Penalties.** The following acts subject the violator to penalties of not more than two hundred dollars (\$200) for the first offense and not more than one thousand dollars (\$1,000) for each offense thereafter:( )

~~a.01.~~ **Installation.** Any person who ~~transports a modular building to or~~ installs a modular building on a building site in this state without first receiving approval and securing to the structure insignia evidencing such approval from the Division.( )

~~b.02.~~ **Modification.** Any person who in any way modifies or alters a modular building prior to its initial occupancy which has previously been approved by the Division without first having received approval to do so from the Division. ( )

~~03.~~ **Lawful Orders.** Any person who ~~fails, neglects, or refuses to obey any lawful order issued by the Administrator or his representative under Section 39-4306, Idaho Code, or who refuses to perform any duty lawfully enjoined upon him by the Administrator or his representative under Section 39-4306, Idaho Code.~~( )

~~105. 199.(RESERVED)~~

**SUBCHAPTER B — MANUFACTURED/MOBILE HOME INDUSTRY LICENSING**  
**(Rules 200 through 299)**

~~2100.~~ **100. LICENSURE MANUFACTURED/MOBILE HOME LICENSE REQUIRED.**

**01. Manufactured/Mobile Home Licensure**

~~a.~~ **Minimum Age Requirement.** No license will be issued to a person under eighteen (18) years of age at the time of license application.( )

~~b.02.~~ **Designated License Holder.** Any applicant for a license under ~~Sections 200 through 299 of these rules~~ who is not a natural person must designate a natural person to be license holder and represent the corporation, partnership, trust, society, club, association, or other organization for all licensing purposes under ~~Sections 200 through 299~~ these rules including, but not limited to, testing and education. No issued licenses are transferable.  
( )

~~a.~~ ~~The authorization to act as designated license holder must be in writing, signed by the applicant and the person designated, and filed with the Division along with the application.~~( )

~~bi.a.~~ Any person ~~designated under Subsection 200.02 of these rules~~ represents one (1) applicant only, and must immediately notify the Division in writing if his working relationship with the applicant has been terminated. The license will be issued in the name of the designated license holder with the name of the organization he represents also noted on the license. The license holder is considered by the Division to be the licensee, ~~even if the license holder is the designated representative of an organization.~~( )



~~ii.e.~~ The applicant ~~and the person designated under Subsection 200.02 of these rules~~ agrees by acceptance of the designation that the designated person acts as agent of the applicant for all purposes under Title 44, Chapters 21 and 22, Idaho Code, and all rules promulgated thereunder.( )

~~iii.03. Proof of License.~~ Proof of the existence of any license issued pursuant to Sections 200 through 299 of these rules is carried upon the person of any installation at all times during the performance of the installation work. ~~Moreover, a~~ Any license issued to a manufactured/mobile home retailer must be posted in a conspicuous place on the business premises of the employer for whom the holder of the license is licensed. The license of a manufacturing facility or branch office must also be posted in a conspicuous place at the location licensed.( )

~~04. Real Estate Brokers.~~ Licensed real estate brokers or real estate salesmen representing licensed real estate brokers are not required to obtain a license under Sections 200 through 299 of these rules to sell or lease a used unit that is currently carried on the tax rolls as personal property and that otherwise falls within the exemption contained in Section 44-2102(2), Idaho Code.( )

~~iv.05. License for Manufacturers.~~ To engage in business in the state of Idaho, each manufacturer must be licensed by the Division.( )

~~v.06. License for Branch Office of Manufactured/Mobile Home Retailer.( )~~

~~a.~~ The Division requires as a condition of licensing any information it deems necessary for each location where a manufactured/mobile home retailer maintains a branch office. ~~The mere listing of manufactured/mobile homes for sale does not constitute a branch office, but t~~he use of a mobile home park or a state sales office by a licensee for the sale or offering for sale of manufactured/mobile homes ~~does constitute~~s the maintenance of a branch office. ~~A branch office manager may not manage more than one (1) branch office.( )~~

~~b.~~ To open a branch office, a ~~A~~ retailer must: obtain a license from the Division to operate the branch office. ( )

~~076vi. License to Engage in Business as Manufactured/Mobile Home Retailer, Manufacturer, or Installer; Application; Bond; Issuance, Expiration, and Renewal.( )~~

~~a.~~ Applicants for a manufacturer's, retailers, or installer's license must furnish: Any proof the Division may deem necessary that the applicant is a manufacturer, retailer, or installer; any proof the Division may require that the applicant has a principal place of business; In the case of a retailer in new manufactured homes, an instrument in the form prescribed by the Division executed by or on behalf of the manufacturer certifying that the applicant is an authorized franchise retailer for the make concerned; The fee and proof of the bond required by Section 44-2103, Idaho Code; and Proof of passing the examination required by these rules, as applicable. ( )

~~i.~~ ~~Any proof the Division may deem necessary that the applicant is a manufacturer, retailer, or installer;~~ ( )

~~ii.~~ ~~Any proof the Division may require that the applicant has a principal place of business;( )~~

~~iii.~~ ~~In the case of a retailer in new manufactured homes, an instrument in the form prescribed by the Division executed by or on behalf of the manufacturer certifying that the applicant is an authorized franchise retailer for the make concerned;( )~~

~~iv.~~ ~~The fee and proof of the bond required by Section 44-2103, Idaho Code; and( )~~

~~v.~~ ~~Proof of passing the examination required by Sections 200 through 299 of these rules, as applicable.~~ ( )

~~vii.b.~~ Within thirty (30) days after receipt of a completed application, the Division will issue or deny the license. ( )

~~viii.e.~~ Each license is valid for a period of one (1) year from the date of issuance ~~and may be renewed for~~

~~like consecutive period upon application to and approval by the Division.( )~~

~~2101.~~ **PROOF OF EDUCATION REQUIRED.**

~~021.~~ **Proof of Education Required.**

~~a.~~ **Satisfactory Proof for Initial Application Submission.** An application for a license as a manufactured/mobile home installer must include proof satisfactory to the Division that the applicant has completed the following number of hours of initial education in order to be approved:( )

~~ia.~~ Installers and retailers who are installers: eight (8) hours.( )

~~iib.~~ The course of initial education must be approved by the Division and must include information relating to the provisions of ~~Sections 200 through 299 of~~ these rules, Title 44, Chapters 21, Idaho Code, and the National Manufactured Housing Construction and Safety Standards Act of 1974.( )

~~02.~~ **SATISFACTORY PROOF FOR LICENSE RENEWAL.**

~~b.~~ **Satisfactory Proof for License Renewal.** The Division will not renew any installer license, or retailer license of any retailer who is also an installer, issued pursuant to Title 44, Chapters 21 or 22, Idaho Code, or ~~Sections 200 through 299 of~~ these rules until the licensee has submitted proof satisfactory to the Division that he has, during the three (3) years immediately preceding the renewal of the license, completed at least eight (8) hours of continuing education.( )

~~03a.i.~~ **Continuing Education Course.** The course of continuing education must be approved by the Division and include information ~~germane to the profession, relating to the following:( )~~

~~a.~~ ~~Manufactured housing or mobile home parks;( )~~

~~b.~~ ~~The construction, including components and accessories, rebuilding, servicing, installation, or sale of manufactured/mobile homes;( )~~

~~c.~~ ~~Legislative issues concerning manufactured/mobile home housing and manufactured/mobile home parks, including pending and recently enacted state or federal legislation; and( )~~

~~d.~~ ~~Sections 200 through 299 of these rules, Title 44, Chapters 21 or 22, Idaho Code, and the Manufactured Housing Safety Standards Act of 1974.( )~~

~~21032.~~ **Examination Of Applicant For License.**

~~a.01.~~ **Required Examinations.** The Division requires a written examination of each applicant for an initial license as a manufactured/mobile home retailer or installer.~~To avoid the requirement of an examination and be considered a renewal, any licensee must renew his license within six (6) months of its expiration date.( )~~

~~b.02.~~ **Approval of Examination and Grade.** ~~Examinations for all classifications under Sections 200 through 299 of these rules must be approved by the Division and the Board.~~ No license will be issued unless ~~the~~an applicant receives a final grade of seventy percent (70%) or higher.( )

~~2033002.~~ **DISCIPLINARY ACTION AGAINST LICENSEES, CIVIL PENALTIES, AND CONSUMER COMPLAINT AND DISPUT RESOLUTION.**

~~01.~~ The Division may deny, suspend, refuse to renew, or revoke any license ~~issued under Title 44, Chapter 21, Idaho Code, or Sections 200 through 299 of these rules~~ or reissue the license subject to reasonable conditions upon any of the following grounds:( )

~~01.~~ **Violation of Rules and Statutes.** For any willful or repeated violation of ~~Sections 200 through 299 or 400 through 499 of these rules, or Title 44, Chapters 21 or 22, Idaho Code.( )~~

~~02. **Failure to Have Principal Place of Business.** With regards only to a manufactured/mobile home retailer, failure of the applicant or licensee to have a principal place of business.(—)~~

~~03. **False Information.** Material misstatement in the application or otherwise furnishing false information to the Division.(—)~~

~~04. **Disclosing Contents of Examination.** Obtaining or disclosing the contents of an examination given by the Division.(—)~~

~~05. **Deceptive Practice.** The intentional publication, circulation, or display of any advertising which constitutes a deceptive practice as that term is defined in Subsection 010.04 of these rules.(—)~~

~~06.a **Failure to Provide Business Name.** Failure to include in any advertising the name of the licensed retailer or installer.( )~~

~~07. **Encouraging Falsification.** Intentionally inducing an applicant or licensee to falsify an application.(—)~~

~~08.b. **Poor Workmanship.** Performing workmanship which is grossly incompetent or repeatedly below the standards adopted by Title 44, Chapters 21 and 22, Sections 200 through 299 or 400 through 499 of the provisions of these rules, or the National Manufactured Housing Construction and Safety Standards Act of 1974, or the latest Idaho adopted editions of and amendments to the International Residential Code, the National Electrical Code, the Idaho State Plumbing Code, and the International Mechanical Code.( )~~

~~09. **Installation Supervisor Required.** Failure to have an employee personally supervise any installation of a manufactured/mobile home.(—)~~

~~c 10. **Failure to Honor Warranties.** Failure to honor any warranty or other guarantee given by a licensee for construction, workmanship, or material as a condition of securing a contract, or of selling, leasing, reconstructing, improving, repairing, or installing any manufactured/mobile home.( )~~

~~11. **Revocation or Denial of License.** Revocation or denial of a license issued pursuant to Sections 200 through 299 of these rules or an equivalent license by any other state or U.S. territory.(—)~~

~~d 12. **Failure to Respond to Notice.** Failure to respond to a notice served by the Division.( )~~

~~e 13. **Failure to Permit Access to Documentary Materials.** Failure or refusing to permit access by the Division to relevant documentary materials after being requested to do so by the Division.( )~~

~~f 14. **Conviction of Misdemeanor.** Conviction of a misdemeanor for violation of any of the provisions of Title 44, Chapters 21 or 22, Idaho Code.( )~~

~~g 15. **Conviction of Felony.** Conviction or withheld judgment for a felony in this state, any U.S. territory, or country.( )~~

~~16. **Dealing with Stolen Manufactured or Mobile Homes.** To knowingly purchase, sell, or otherwise acquire or dispose of a stolen manufactured or mobile home.(—)~~

~~h 17. **Violation of Permit or Inspection Requirements.** To knowingly violate any permit or inspection requirements of any city or county of this state.( )~~

~~**204. PROCEDURES FOR LICENSING SUSPENSION, REVOCATION OR NONRENEWAL.**~~

~~Any proceeding to suspend, revoke, or not renew any license will be conducted as a contested case in accordance with the provisions of Title 67, Chapter 52, Idaho Code, and the "Idaho Rules of Administrative Procedure of the Attorney General," IDAPA 04.11.01.000, et seq.(—)~~

~~205. APPLICATION FOR NEW LICENSE.~~

~~Any person whose license has been revoked may not apply for a new license until the expiration of one (1) year from the date of such revocation.( )~~

~~206~~**400. MANUFACTURED/MOBILE HOME LICENSE FEES.**

**01. Fees for Issuance and Renewal of License.** The following fees for the issuance and renewal of a license will be charged:( )

**a.** Manufactured/mobile home retailer license: four hundred forty dollars (\$440). Retailers who are also installers will have to pay an installer's license fee to hold both licenses.( )

**b.** Manufacturer license: four hundred forty dollars (\$440);( )

**c.** Manufactured/mobile home installer license: two hundred twenty dollars (\$220);( )

**02. Performance Bonding Requirements.** Application for licensing will be accepted when accompanied by the performance bond required by Section 44-2103, Idaho Code.( )

~~207. MANUFACTURED HOMES CONSTRUCTION AND SAFETY STANDARDS.~~

~~Effective June 15, 1976, the latest published edition of the National Manufactured Home Construction and Safety Standards and Manufactured Home Procedural and Enforcement Regulations are in effect for all manufactured homes manufactured within the state of Idaho, and for all new manufactured homes for sale within the state of Idaho. All new manufactured homes offered for sale within Idaho after the effective date of this section bear the Housing and Urban Development (H.U.D.) label as authorized in the Manufactured Home Procedural and Enforcement Regulations.( )~~

~~208. CIVIL PENALTIES.~~

~~0201.~~ **Type**~~Manufactured Home Civil Penalties.~~ Except as otherwise provided, the following acts subject the violator to penalties of not more than five hundred dollars (\$500) for the first offense and not more than one thousand dollars (\$1,000) for each offense thereafter:( )

**a. Industry Licensing.** Except as provided for by Section 44-2106, Idaho Code, any person who engages in the business of a manufacturer, retailer, or installer, as defined in Section 44-2101A, Idaho Code, without being duly licensed by the Division.( )

**b. Deceptive Practice.** Any retailer or installer who intentionally publishes or circulates any advertising that is misleading or inaccurate in any material respect or that misrepresents any of the products or services sold or provided by a manufacturer, retailer, or installer.( )

**c. Dealing with Stolen Manufactured or Mobile Homes.** Any person who knowingly purchases, sells, or otherwise acquires or disposes of a stolen manufactured or mobile home is subject to a civil penalty of not more than one thousand dollars (\$1,000).( )

**d. Failure to Maintain a Principal Place of Business.** Any person who is a retailer duly licensed by the Division and who fails to maintain a principal place of business within Idaho.( )

**e. Violation of Rules and Statutes.** Any person who knowingly violates ~~Sections 200 through 299 or 400 through 499 of~~ these rules or Title 44, Chapters 21 or 22, Idaho Code.( )

~~02f.~~ **Gross Violation.** In case of continued, repeated, or gross violations of ~~Sections 200 through 299 or 400 through 499 of~~ these rules, a license revocation may be initiated for licensed individuals under Title 44, Chapter 21, Idaho Code. Non-licensed individuals are subject to prosecution by the appropriate jurisdiction under Idaho law.( )

~~209. 299.(RESERVED)~~

~~SUBCHAPTER C—MANUFACTURED HOMES—  
CONSUMER COMPLAINTS—DISPUTE RESOLUTION  
(Rules 300 through 399)~~

~~03. Consumer Complaints and Dispute Resolution~~ **INVESTIGATION.**

~~a.01.~~ **Site Inspection.** The Division may perform a site inspection, based on the nature of a complaint or upon request of the complainant in accordance with HUD.( )

~~b.02.~~ **Fees.** A charge for mileage to and from the inspection site, plus an hourly charge for the time spent conducting the inspection, is assessed the manufacturer, installer, or retailer if a site inspection is made upon a request by the manufacturer, installer, or retailer, and does not involve a serious defect or imminent safety hazard.  
( )

~~c.03.~~ **Inspection Report.** Following a site inspection, the inspector will prepare a final report and include photographs.( )

~~301. ACTION.~~

~~d.~~ **Action.** A notification letter and copies of the complaint form and investigation findings may be provided to all involved parties and HUD.( )

~~01.i.~~ **Division Action.** Any Division action, notification and follow-up are completed according to HUD guidelines. ( )

~~02.ii.~~ **License File.** If the nature of the complaint pertains to retailer contractual issues or installation problems, a copy of the complaint is to be consolidated with the appropriate Division license files.( )

~~03.iii.~~ **Correction or Repair.** A Division building inspector will issue a report concerning correction or repair of defects that are a matter of dispute between the homeowner, retailer, installer, or manufacturer. The report will include the likely cause of the defect and identify the party responsible for creating the defect that is in need of correction or repair.( )

~~302.50. DECISIONS—APPEALS—INFORMAL DISPOSITION.~~

~~01.e.~~ **Decisions.** The Administrator will review the inspector's report and set forth the required corrective action and identify the party responsible for such action. The Administrator may initiate a contested case proceeding if, in his sole discretion, he determines that such a proceeding or further investigation would be of assistance in reaching a decision. The decision must direct the responsible party to complete the required corrective action within specified timelines and consider the needs of the involved parties including, but not limited to, safety, anticipated expense and availability of funds, time of year, and convenience to the parties.( )

~~02.f.~~ **Appeals.** Decisions of the administrator are final orders for purposes of appeal.( )

~~03.g.~~ **Informal Disposition -- Arbitration -- Mediation.** Unless otherwise prohibited by other provisions of law, informal disposition may be made of any complaint by negotiation, stipulation, agreed settlement, and consent order. The parties may agree to enter into binding arbitration or mediation. Informal settlement of matters is to be encouraged.( )

~~303.—399.(RESERVED)~~

~~SUBCHAPTER D—MANUFACTURED OR MOBILE HOME INSTALLATIONS  
(Rules 400 through 499)~~

~~400. ADOPTION AND INCORPORATION BY REFERENCE.~~

~~The Idaho Manufactured Home Installation Standard (January 1, 2018 edition), is hereby adopted and incorporated~~

by reference into these rules.(—)

**401. APPLICATION COMPLIANCE.**

**01. Application State Preemption.** Cities and counties may not adopt or enforce more or less stringent standards, except as permitted by Section 67-6509(a), Idaho Code, as it pertains to the siting of manufactured homes in residential areas.(—)

**02. Compliance Disciplinary Action Against Licensees.** Failure to comply with these standards constitutes grounds for discipline as provided in Title 44, Chapter 21, Idaho Code.(—)

**402. USE OF MANUFACTURERS' INSTALLATION INSTRUCTIONS.**

In any instance in which there is a conflict between the DAPIA installation instructions and the Idaho Manufactured Home Installation Standards, the DAPIA installation instructions supersede and serve as the controlling authority.  
(—)

**403. INSTALLATION PERMITS AND INSPECTIONS REQUIRED.**

Installation permits must be obtained from the Division for installations in areas where there is no approved local program, or from a city or county that has by ordinance adopted building codes pursuant to Section 39-4116, Idaho Code, and whose installation program has been approved by the Division. All installations must be inspected and approved by the authority having jurisdiction before the manufactured home is occupied.(—)

**404. INSTALLATION PERMIT FEES.**

A city or county whose installation inspection program has been approved by the Division establishes their own fee schedule for installation permits within their jurisdiction. Permits obtained from the Division are in accordance with the following schedule:(—)

**01. Single Section Unit.** The permit fee is one hundred fifty dollars (\$150).(—)

**02. Double Section Unit.** The permit fee is two hundred dollars (\$200).(—)

**03. More Than Two Sections.** The permit fee for a home consisting of more than two (2) sections is two hundred fifty dollars (\$250).(—)

**04. Trade Permits.** Trade permits are administered separately from installation permits, and fees for such are separate from the fees identified in Section 404 of these rules.(—)

**405. INSTALLATION TAGS REQUIRED.**

The owner or installer of a new manufactured home must purchase an installation tag for fifty dollars (\$50) from the Division prior to commencing the installation of a manufactured home in Idaho. Such tag is required regardless of which jurisdiction has authority to perform the installation inspection.(—)

**406. APPROVAL OF LOCAL MANUFACTURED HOME INSTALLATION INSPECTION PROGRAMS.**

**01. Division Approval.** A city or county that has by ordinance adopted a building code pursuant to Section 39-4116, Idaho Code, is eligible to participate in the inspection of manufactured and mobile homes. Such local installation inspection program must be approved by the Division to provide inspection services if the following minimum criteria is met:(—)

**a.** Inspections are conducted by the city or county employing inspectors holding a valid certification as residential building inspector from the International Code Council;(—)

**b.** Inspectors attended training sessions provided or approved by the Division and receive a certificate evidencing successful completion thereof.(—)

**02. Voluntary Withdrawal.** A city or county may voluntarily withdraw from participation in the

~~program to inspect manufactured homes upon providing to the Administrator of the Division thirty (30) days written notice of its intention to do so.(—)~~

**407. ~~MINIMUM TRAINING REQUIREMENTS FOR INSPECTORS.~~**

~~All installation inspectors employed by the Division or a city or county must complete eight (8) hours of training or instruction approved by the Division every three (3) years dedicated to the installation and inspection of manufactured and mobile homes.(—)~~

**408. ~~QUALITY ASSURANCE.~~**

**01. ~~Inspected Installations.~~** ~~Any inspected installation is subject to quality assurance reviews by Division of Occupational and Professional Licenses. Findings made by the Division pursuant to such reviews will be forwarded to the inspection authority having jurisdiction.(—)~~

**02. ~~Inspectors and Programs.~~** ~~All inspectors and approved programs, including the Division, are subject to review.(—)~~

**409. ~~MINIMUM SCOPE OF INSTALLATION INSPECTION.~~**

**01. ~~Scope.~~** ~~At a minimum, the inspection of the installation of a manufactured home by an installer includes the inspection record document must verify that the installer has visually inspected the installation of the mobile or manufactured home.(—)~~

**02. ~~Inspection Minimum Requirements.~~** ~~At a minimum, the inspection of the installation of a manufactured home must include the following by an inspector:(—)~~

**a.** ~~Verification that site location is suitable for home design and construction, and inspection of site-specific conditions, including preparation and grading for drainage;(—)~~

**b.** ~~Inspection of the foundation construction;(—)~~

**e.** ~~Verification that installed anchorage meets minimum requirements; and(—)~~

**d.** ~~Verification of completed inspection record document.(—)~~

**410. ~~999.(RESERVED)~~**

## IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

### 24.39.50 – RULES OF THE PUBLIC WORKS CONTRACTORS LICENSE BOARD

#### DOCKET NO. 24-3950-2301 (ZBR CHAPTER REWRITE, FEE RULE)

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. This rulemaking action is authorized pursuant to Section 67-2604, Idaho Code, and Sections 54-1907, 67-2614, 67-9406, and 67-9409, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

- Rule 100.03.e. Allows for a Type IV self-declaration of specialty construction. This language was added in collaboration with stakeholders during the public comment period.
- Rule 100.03.d. Edited to correct a clerical error and correctly identify that the working capital requirements for an unlimited licensure type are \$1,200,000. Please see table in rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 6, 2023, Edition of the Idaho Administrative Bulletin, [Vol. 23-9, pages 451-474](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

The fees for applications, licenses, certificates, and reinstatement as designated in Rule 400 of these pending rules are authorized in Section 54-4106, Idaho Code. None of these fees are being changed as a result of this rulemaking or since being previously reviewed by the Idaho legislature.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rulemaking is not anticipated to have any impact on the State General Fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Katie Stuart, Bureau Chief- Administration, 208-577-2489.

DATED this 6th day of December, 2023.

Katie Stuart  
Bureau Chief- Administration  
11341 W. Chinden Blvd., Bldg. #4  
Boise, ID 83714  
Phone: (208) 577-2489  
Email: [katie.stuart@dopl.idaho.gov](mailto:katie.stuart@dopl.idaho.gov)



**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This rulemaking action is authorized pursuant to Section 67-2604, Idaho Code, and Sections 54-1907, 67-2614, 67-9406, and 67-9409, Idaho Code.

**PUBLIC HEARING SCHEDULE:** The public hearing concerning this rulemaking will be held as follows:

<p><b>Monday, September 11, 2023, 9:00 a.m. MT</b></p> <p><b>Division of Occupational and Professional Licenses</b> <b>Chinden Campus Building 4</b> <b>11341 W. Chinden Blvd., Bldg. #4</b> <b>Boise, ID 83714</b></p> <p><b>Telephone and web conferencing information will be posted on:</b> <b><a href="https://dopl.idaho.gov/calendar/">https://dopl.idaho.gov/calendar/</a> and <a href="https://townhall.idaho.gov/">https://townhall.idaho.gov/</a></b></p>
--

The hearing site will be accessible to persons with disabilities, if needed. Requests for accommodation must be made not later than five (5) days prior to the meeting to the agency address below.

**DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Under [Executive Order 2020-01, Zero-Based Regulation](#), the Public Works Contractors License Board is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. In conjunction with stakeholders, the proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter and to use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and Executive Order 2020-01.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

The fees for applications, licenses, and reinstatement as designated in Rule 400 of these proposed rules are authorized in Section 54-1907, Idaho Code. None of these fees are being changed as a result of this rulemaking or since being previously reviewed by the Idaho legislature.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

This rulemaking is not anticipated to have any negative fiscal impact on the State General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted under Docket No. 24-ZBRR-2301. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June, 7 2023 Idaho Administrative Bulletin, [Vol. 23-6, pp. 75-76](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this proposed rule, contact Katie Stuart, Administration Bureau Chief, at (208) 577-2489. Materials pertaining to the proposed rulemaking, including any available preliminary rule drafts, can be found on the following DOPL website: <https://dopl.idaho.gov/rulemaking/>.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 8th day of August, 2023.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 24-3950-2301**

**24.39.50 – RULES OF THE PUBLIC WORKS CONTRACTORS LICENSE BOARD**

**000. LEGAL AUTHORITY.**

This chapter is adopted pursuant to Sections 54-1907, 67-2604, 67-2614, 67-9409, and 67-9406 Idaho Code, as amended. ( )

**001. TITLE.**

These rules govern the practice of public works contractors in Idaho. ( )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Compiled.** A type of financial statement in which the information presented is based solely upon representations by an organization's management. ( )

**02. Estimated Cost.** The total aggregate amount of the value of all the separate or individual jobs, parts, components, or undertakings involved in the construction of a single project when combined and considered as a whole. ( )

**03. Financial Statement.** A balance sheet and income statement prepared in accordance with generally accepted accounting principles. ( )

**04. Incidental Work.** Work, the nature of which does not require any additional trade licenses and which may be carried out in conjunction with an activity for which the licensee is licensed, but is not intended to produce an amount of income over ten percent (10%) of the total bid amount. ( )

**05. Independent Audit Report.** A report prepared by an independent certified public accountant presenting opinion on the fairness of the organization's financial statements and prepared in accordance with generally accepted auditing standards. ( )

**06. Qualified Individual.** The person qualifying by examination as to the experience and knowledge required by Section 54-1910(a), Idaho Code. ( )

**07. Reviewed.** A financial statement that is accompanied by the opinion of a certified public accountant stating that, based upon representations by the organization's management, the reviewer has a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the financial

statements in order for the statements to be in accordance with generally accepted accounting principles. ( )

**011. -- 099. (RESERVED)**

**100. LICENSURE.**

**01. Renewal. ( )**

**a. Filing Deadline.** Applications for renewal of a license must be filed by the last working day of the month in which the license expires. ( )

**b. Extension of Time.** A petition for an extension of time in which to renew must be filed by the last working day of the month in which the license expires and may be extended once for a period not to exceed sixty (60) days. Approval of a petition for extension of time authorizes operation as a contractor. ( )

**c. Failure to File.** If the licensee fails to file a timely application for renewal or petition for extension, the license lapses and expires on the last day of the license period. Licenses not renewed in a timely manner are considered delinquent for a period of one (1) year from the last day of the license period and may be renewed at any time during that year. ( )

**d. Expedited Licensure.** Upon an applicant's request and payment of a fee of one hundred dollars (\$100), the Division will expedite its review and determination of a license application. ( )

**02. Petition to change or add types of construction.** A petition to change or add types of construction must be supported by evidence, satisfactory to the administrator, of work history, job performance, experience, equipment, and financial responsibility. ( )

**03. Application.** The applicant must submit to the administrator, on such forms and in a format as the administrator prescribes. ( )

**a.** For Class A, AA, AAA, and Unlimited license applications, financial statements must be accompanied by an independent auditor's report, or be reviewed. For Class B and CC license applications, financial statements must be accompanied by an independent audit report or be reviewed or compiled by a certified public accountant. For Class C and Class D license applications, financial statements must be accompanied by an independent audit report or be reviewed, compiled, or on the form provided by the administrator. ( )

**b.** Applicants requesting a higher licensing class must provide documentation of having performed projects similar in scope and character to those for which license is requested. Licenses granted under this rule are valid for twelve (12) months from the date of issuance. ( )

**c. Extension of Time to File Financial Statement.** The administrator may grant an extension of time to file the annual financial statement if the licensee provides an interim compiled balance sheet and income statement for the applicant's fiscal year-to-date. A renewal application must be filed prior to the first day of the licensing period, and is valid for a period of twelve (12) months from the date of the issuance. ( )

**d. Financial Requirements:**

LICENSE CLASS	NET WORTH	WORKING CAPITAL
Unlimited	\$2,000,000	\$1,200,000
AAA	\$1,200,000	\$400,000
AA	\$900,000	\$300,000
A	\$600,000	\$200,000
B	\$300,000	\$100,000

LICENSE CLASS	NET WORTH	WORKING CAPITAL
CC	\$150,000	\$50,000
C	\$50,000	\$15,000
D	\$20,000	\$6,000

( )

**e.** Type IV Self Declaration. Upon initial licensure for Type IV licensure or anytime thereafter, an applicant or licensee may voluntarily self-declare a specialty trade of craft. Any self-declaration shall not guarantee competency or otherwise construed as an endorsement to practice the scope of work by the Division of Occupational and Professional Licenses. ( )

**04. Examination.** The Board approves all subject areas and topics to be included in the public works contractor license examination. Applicants for licensure must pass an examination as approved by the Board. ( )

**a.** Professional Testing Services. The administrator may contract with a professional testing service to administer the examination. ( )

**b.** Individual Qualified By Examination. Written notice that the Qualified Individual of a public works contractor has ceased to be connected with the contractor must be provided to the Administrator. ( )

**05. Limitations.** ( )

**a.** One License. A licensee will be permitted to hold only one (1) class of license at any given time. ( )

**b.** Previous License Null and Void. When a licensee of one class has been issued a license of another class, the previous license is null and void. ( )

**c.** Total Bid Cost. The total of any single bid on a given public works project, or the aggregate total of any split bids, or the aggregate total of any base bid and any alternate bid items, or the aggregate total of any separate bid by a licensee of any class, except Class Unlimited, may not exceed the estimated cost or bid limit of the class of license held by the licensee. The aggregate total of bids must include all bids of the subcontractors. Subcontractor bids are not considered a separate bid for the purposes of computing the bid on a given public works project. ( )

**d.** Two or More Licensees. Two (2) or more licensees of the same class or of different classes are not permitted to combine the estimated cost or bid limit of their licenses to submit a bid in excess of the license held by either licensee. ( )

**06. Construction Manager Examinations.** ( )

**a.** If the applicant fails an examination, the applicant may take the examination a second time. If the applicant fails to achieve a passing grade, the applicant must wait for a period set by the Administrator before taking the examination again. The applicant must then take and pass all sections of the examination. ( )

**101. -- 199. (RESERVED)**

**200. PRACTICE STANDARDS.**

**01. Business Organization -- Changes In Organization Or Structure -- Members Of Joint Ventures - Changes For Reasons Other Than Death.** A licensed public works contractor or construction manager who undergoes a change in business organization or structure (such as a change from an individual proprietor to a partnership, corporation, limited liability partnership, limited liability company, joint venture, or other combination thereof), or where there is a change in ownership, must file an application for a new license on behalf of such successor organization or new owners within sixty (60) days after such change occurs. The administrator may

authorize the continuous operation of the licensee as a contractor during the interim period until the application of the successor organization is reviewed; provided written notice of such change is filed within thirty (30) days after such change occurs. Each participant in a joint venture must be licensed at the time of bidding. Where there is a change in the surviving members of a licensed partnership, limited liability company, or limited liability partnership, due to a reason other than the death of one (1) of the partners, the remaining or succeeding member or members are required to file an application for an original license. ( )

**02. License Number On Bids.** Licensee must place his license number on any and all bids submitted or contracts entered into, for any public works projects in the state of Idaho. ( )

**03. Changes In License Certificate.** ( )

**a.** When any change in the license certificate has been approved by the Board, a new license certificate will be issued. ( )

**201. -- 399. (RESERVED)**

**400. FEES.**

**01. Public Works Contractor.**

License Class	Initial Fee	Renewal Fee
Unlimited	\$550	\$440
AAA	\$450	\$360
AA	\$350	\$280
A	\$250	\$160
B	\$150	\$120
CC	\$125	\$100
C	\$100	\$80
D	\$50	\$40

( )

**02. Construction Manager:**

License Activity	Fee
Initial Licensing	\$200
License Renewal	\$200
Inactive License	\$50
License Reinstatement	\$200
Certificate of Authority	\$100

( )

**401. -- 999. (RESERVED)**

[Agency redlined courtesy copy]

*Italicized text indicates changes between the text of the proposed rule as adopted in the pending rule.*

## **24.39.50 – RULES OF THE PUBLIC WORKS CONTRACTORS LICENSE BOARD**

### **000. LEGAL AUTHORITY.**

This chapter is adopted pursuant to Sections 54-1907, 67-2604, 67-2614, 67-9409, and 67-9406 Idaho Code, as amended. ( )

### **001. TITLE.**

These rules govern the practice of public works contractors in Idaho.( )

### ~~002. 009.(RESERVED)~~

### **010. DEFINITIONS.**

~~As used in these rules.~~( )

~~01. Applicant. Any person who has filed an application with the administrator.~~( )

**012. Compiled.** A type of financial statement in which the information presented is based solely upon representations by an organization's management.( )

~~023. Estimated Cost. For the purposes of the application of Section 54-1903(i), Idaho Code, the term "estimated cost" refers to the total aggregate amount of the value of all the separate or individual jobs, parts, components, or undertakings involved in the construction of a single project when combined and considered as a whole, regardless of the types of trades, sub contracts, work, or other individual aspects involved, and without regard to the number of trades or crafts that are involved.~~( )

**034. Financial Statement.** A balance sheet and income statement prepared in accordance with generally accepted accounting principles.( )

**045. Incidental Work.** Work, the nature of which does not require any additional trade licenses and which may be carried out in conjunction with an activity for which the licensee is licensed, but is not intended to produce an amount of income over ten percent (10%) of the total bid amount.( )

**056. Independent Audit Report.** A report prepared by an independent certified public accountant presenting ~~such auditor's~~ opinion on the fairness of the organization's financial statements and prepared in accordance with generally accepted auditing standards.( )

~~07. Licensee. Includes any individual proprietor, partnership, limited liability partnership, limited liability company, corporation, joint venture, or other business organization holding a current, unrevoked public works contractor license.~~( )

**068. Qualified Individual.** The person qualifying by examination as to the experience and knowledge required by Section 54-1910(a), Idaho Code.( )

~~079. Reviewed. Refers to a A~~ financial statement that is accompanied by the opinion of a certified public accountant stating that, based upon representations by the organization's management, the reviewer has a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the financial statements in order for the statements to be in accordance with generally accepted accounting principles.( )

### ~~010. 101.(RESERVED)~~

**102. COMMUNICATION.**

All communications are deemed officially received only when delivered to the office of the administrator.( )

**103. PETITIONS.**

An applicant or licensee seeking an order or decision of the administrator or the Board on any matter, or disciplinary proceeding, must file a written petition.( )

**104. FORM AND CONTENT OF PETITION.**

**01. Form.** The petition, including the heading, the name of the petitioner or person making the request, and the purpose of the petition must contain the following:( )

- a.** The petitioner's name, address, and license number.( )
- b.** The petitioner's request in brief, precise and specific terms, including references to any pertinent statutes or rules, and a detailed explanation of the purpose for the request.( )
- c.** Statements of fact to support the request. Briefs and supporting documents may accompany petitions.( )

**02. Service.** The petition must be dated and signed by the petitioner, and filed as set forth in Section 102 of these rules.( )

**~~105-100. LICENSURE RENEWAL — FILING DEADLINES; PETITIONS FOR EXTENSION OF TIME TO FILE; LAPSED LICENSES.~~**

**01. Renewal**

**a. Filing Deadline.** Applications for renewal of a license must be filed by the last working day of the month in which the license expires.( )

**02b. Extension of Time.** A petition for an extension of time in which to renew must be filed by the last working day of the month in which the license expires and may be extended once for a period not to exceed sixty (60) days. Approval of a petition for extension of time authorizes operation as a contractor. . The petition must be accompanied by a fee in the amount of the prorated portion of the annual license fee for the class of license applied for, with a minimum fee of at least fifty dollars (\$50). The fee for this service is required in addition to the licensing and renewal fees provided for in Section 201 of these rules and paid to the Division at the time of application for licensure. Petitions not accompanied by the required fees or filed after the license has expired will not be honored.( )

**a.** The petition must specify the number of days for which the extension is being requested; however under no circumstances may an extension exceed sixty (60) days.( )

**03. Approval of Petition.** Approval of a petition for an extension of time authorizes operation as a contractor until the administrator completes action on the renewal application, provided the application for renewal is filed with the Administrator within the extended time specified.( )

**04.c. Failure to File.** If the licensee fails to file a timely application for renewal or petition for extension, the license lapses and expires on the last day of the license period. Licenses not renewed in a timely manner are considered delinquent for a period of one (1) year from the last day of the license period and may be renewed at any time during that year. Licenses delinquent for more than a period of one (1) year must be reinstated and the applicant for reinstatement must apply as if for a new license.( )

**05.d. Expedited Licensure.** Upon an applicant's request and payment of a fee of one hundred dollars (\$100), the Division will expedite its review and determination of a license application. The fee for this service is required in addition to the licensing and renewal fees provided for in Section 201 of these rules and must be paid to

the Division at the time of application for licensure.( )

**~~106. SPECIAL PROVISIONS COVERED IN A PETITION TO CHANGE OR ADD TYPES OF CONSTRUCTION.~~**

~~02. **Petition to change or add types of construction.** A petition to change or add types of construction must be supported by evidence, satisfactory to the administrator, of work history, job performance, experience, equipment, and financial responsibility, and a minimum of three (3) letters of reference. The evidence of work history, job performance, experience, and financial responsibility must comply with the requirements of Subsections 110.01 and 110.02 of these rules. All of the evidence must specifically pertain to work that is similar in scope and value to that for which the change or addition is being requested.( )~~

**~~107. 108.(RESERVED)~~**

**~~109. NOTICE.~~**

~~In any contested case or other matter of Board business, written notification, mailed to the licensee or the applicant at the most current address on record with the Board, constitutes sufficient notification for all purposes within Title 54, Chapter 19, Idaho Code, and these rules.( )~~

**~~110. APPLICATION FOR LICENSURE — DOCUMENTATION; APPRAISALS; REFERENCES; BONDING; AND FINANCIAL STATEMENTS.~~**

~~031. **Application Documentation.** To obtain a license, the applicant must submit to the administrator, on such forms and in a format as the administrator prescribes, including electronically, accompanied by the required fee for the class of license applied for, a complete written application for such license. All of the information submitted by the applicant must specifically pertain to work that is similar in scope and value to that for which licensure is being requested or that is being requested in a petition to change or add types of construction. The information contained in such application forms must include:( )~~

~~a. A complete statement of the general nature of applicant's contracting business, including a concise description of the applicant's experience and qualifications as a contractor and a list of clients for whom work has been performed; (—)~~

~~b. A description of the value and character of contract work completed and for whom performed during the three (3) year period prior to filing the application;(—)~~

~~c. A general description of applicant's machinery and equipment; and(—)~~

~~d. An annual financial statement, as herein defined, that covers a period of time ending no more than twelve (12) months prior to the date of submission of the application, indicating compliance with such financial requirements as the Board may prescribe by rule. The applicant's financial statement may be supplemented with:  
( )~~

~~i. Bonding. As authorized by Section 54-1910(e), Idaho Code, a letter from applicant's bonding company, not an insurance agent, stating the amount of the applicant's bonding capability per project and in the aggregate, including supporting documentation;(—)~~

~~ii. Guaranty. Documentation, satisfactory to the administrator, of the existence of a written guaranty agreement between the applicant and a third party in which the third party guarantor agrees to assume financial responsibility for payment of any obligations of the applicant for any particular project as may be determined by a court of competent jurisdiction. The guaranty agreement, along with financial statements meeting the requirements of Paragraph 110.01.e. of this rule, must be submitted with the license application.( )~~

~~ea. For Class A, AA, AAA, and Unlimited license applications, financial statements must be accompanied by an independent auditor's report, or be reviewed. For Class B and CC license applications, financial statements must be accompanied by an independent audit report or be reviewed or compiled by a certified public accountant. For Class C and Class D license applications, financial statements must be accompanied by an independent audit report or be reviewed, compiled, or on the form provided by the administrator, and include such~~



~~additional information as may be required by the administrator to determine the applicant's fitness for a license.~~  
 ( )

~~**f.** The name, social security number, and business address of an individual applicant or, if the applicant is a partnership, its tax identification number, business address, and the names and addresses of all general partners; and if the applicant is a corporation, association, limited liability company, limited liability partnership, or other organization, its tax identification number, business address, and the names and addresses of the president, vice president, secretary, treasurer, and chief construction managing officers, or responsible managing employee.~~  
 ( )

~~**g.b.** Applicants requesting a higher licensing class higher than that for which the applicant is currently licensed must provide documentation, satisfactory to the administrator, of having performed projects, similar in scope and character to those for which license is requested. Licenses granted under this rule are valid for twelve (12) months from the date of issuance. The monetary value of those jobs must fall within a range not less than thirty percent (30%) below that for which the applicant is currently licensed.~~ ( )

~~**02.** Application for Change in Licensing Class. Requests for a licensing class higher than that for which the applicant is currently licensed must be accompanied by the information in Subsection 110.01 of these rules, and the applicable fee. Licenses granted under Subsection 110.02 of these rules are valid for a period of twelve (12) months from the date of issuance.~~ ( )

~~**03.c.** Extension of Time to File Financial Statement. The administrator may grant an extension of time to file the annual financial statement if the licensee provides an interim compiled balance sheet and income statement for the applicant's fiscal year-to-date, duly certified as true by the applicant, and if a partnership, limited liability company, or limited liability partnership by a member thereof, and if a corporation, by its executive or financial officer. Such renewal application must be filed prior to the first day of the such renewal licensing period, and. In the event an extension is granted, the renewal license is valid for a period of twelve (12) months from the date of the issuance, of the renewal license.~~ ( )

~~**04.** Appraisals. The administrator may require submission of an independent appraisal of any real or chattel property reported by an applicant or licensee. Such appraisals must be conducted by a disinterested person or firm established and qualified to perform such services.~~ ( )

~~**05.** References. The administrator may require an applicant for an original or renewal license to furnish such personal, business, character, financial, or other written references as deemed necessary and advisable in determining the applicant's qualifications.~~ ( )

**111. FINANCIAL REQUIREMENTS.**

The financial requirements for obtaining and maintaining a heavy, highway, building, and specialty construction license under this act must be as described in this section for each respective class. An applicant requesting a license for each class identified in this section must have a minimum net worth and possess an amount of working capital as provided in Table 111.01:

**d. Financial Requirements:**

<b>TABLE 111.01 — FINANCIAL REQUIREMENTS</b>		
<b>LICENSE CLASS</b>	<b>NET WORTH</b>	<b>WORKING CAPITAL</b>
Unlimited	<del>\$1,000,000</del> <u>2,000,000</u>	<del>\$1,000,000</del> <u>2,000,000</u>
AAA	<del>\$600,000</del> <u>1,200,000</u>	<del>\$200,000</del> <u>400,000</u>
AA	<del>\$450,000</del> <u>900,000</u>	<del>\$150,000</del> <u>300,000</u>
A	<del>\$300,000</del> <u>600,000</u>	<del>\$100,000</del> <u>200,000</u>

B	<del>\$150,000</del> 300,000	<del>\$50,000</del> 100,000
CC	<del>\$75,000</del> 150,000	<del>\$25,000</del> 50,000
C	<del>\$25,000</del> 50,000	<del>\$7,500</del> 15,000
D	<del>\$40,000</del> 20,000	<del>\$3,000</del> 6,000

**PENDING TEXT 100.03.d.**

LICENSE CLASS	NET WORTH	WORKING CAPITAL
Unlimited	\$2,000,000	<del>\$2,000,000</del> \$1,200,000
AAA	\$1,200,000	\$400,000
AA	\$900,000	\$300,000
A	\$600,000	\$200,000
B	\$300,000	\$100,000
CC	\$150,000	\$50,000
C	\$50,000	\$15,000
D	\$20,000	\$6,000

( )

**PENDING [NEW] TEXT 100.03.e.**

*e. Type IV Self Declaration. Upon initial licensure for Type IV licensure or anytime thereafter, an applicant or licensee may voluntarily self-declare a specialty trade of craft. Any self-declaration shall not guarantee competency or otherwise construed as an endorsement to practice the scope of work by the Division of Occupational and Professional Licenses.( )*

**~~112. EXAMINATION.~~**

**~~04. Examination.~~** The Board approves all subject areas and topics to be included in the public works contractor license examination. Applicants for licensure must pass an examination as approved by the Board.

( )

**~~01. Frequency of Conducting of Examinations.(—)~~**

**~~a:~~** Examinations for all classes of licenses under the Public Contractors laws and rules will be given a minimum of four (4) times each year in the Division’s three (3) office locations.(—)

**~~b:~~** The applicant will be notified in writing of the date, time, and location at which the examinations will be given, following approval of the application.( )

~~02.a. Professional Testing Services. In lieu of the administration by the administrator of the examination for licenses, the administrator may contract with a professional testing service to administer the examination, and require all license applicants, with the exception of Class D applicants, to pay to the testing service the fee that they have set for the examination, to take such examination at the time set by such service, and provide the Division acceptable verification of the test score. In such instances, the Division may charge and retain the application fee provided for by Section 54-1911, Idaho Code, to cover the cost of reviewing the applicant's application. ( )~~

~~a. Class D applicants will utilize the existing in-house, open-book examination.( )~~

~~b. Class D licensees pursuing an upgrade must reapply and pass the examination administered by the professional testing service.( )~~

~~03. Required Score. The applicant must receive a final grade of seventy percent (70%) or higher prior to issuance of the appropriate license.( )~~

~~04. Failed Examinations.( )~~

~~a. An applicant receiving less than a passing score on a first or second examination may be reexamined without reapplication.( )~~

~~b. Before being reexamined after failing an examination the third time, an applicant must resubmit the application and fee.( )~~

~~e. Before being reexamined after any further failures, an applicant for reexamination must wait until the expiration of sixty (60) days from the date of the failed examination and resubmit the application and fee for each subsequent examination.( )~~

~~113. INDIVIDUAL QUALIFIED BY EXAMINATION.~~

~~01.b. Written Notice. Individual Qualified By Examination. Written notice, required by Section 54-1910(a), Idaho Code, that the Qualified Individual of a public works contractor has ceased to be connected with the contractor must be provided to the Administrator, on forms prescribed by the Administrator indicating the date the Qualified Individual ceased to be connected with the contractor.( )~~

~~02. Reasonable Length of Time. If a public works contractor notifies the Administrator that the contractor's Qualified Individual has ceased to be connected with the contractor, the contractor's license will remain in force for ninety (90) days from the date of the notice.( )~~

~~114. 198.(RESERVED)~~

~~199. LIMITATIONS.~~

~~01.05. Limitations~~

~~a. One License. A licensee will be permitted to hold only one (1) class of license at any given time. ( )~~

~~02.b. Previous License Null and Void. When a licensee of one class has been issued a license of another class, the previous license is null and void.( )~~

~~03.c. Total Bid Cost. The total of any single bid on a given public works project, or the aggregate total of any split bids, or the aggregate total of any base bid and any alternate bid items, or the aggregate total of any separate bid by a licensee of any class, except Class Unlimited, may not exceed the estimated cost or bid limit of the class of license held by the licensee. The aggregate total of bids must include all bids of the subcontractors. Subcontractor bids are not considered a separate bid for the purposes of computing the bid on a given public works project. ( )~~

~~04.d. Two or More Licensees.~~ Two (2) or more licensees of the same class or of different classes are not permitted to combine the estimated cost or bid limit of their licenses to submit a bid in excess of the license held by either licensee.( )

~~05. Type 4 License Holder.~~ The holder of a license for Type 4, Specialty Construction, are entitled to bid a public works project as a prime contractor or as a subcontractor, if more than fifty percent (50%) of the work to be performed by him on such project is covered by a category or categories listed on the license held by the licensee. ( )

~~200. TYPE 4 SPECIALTY CONSTRUCTION CATEGORIES.~~

~~A license for Type 4 Specialty Construction must list one (1) or more specialty construction categories to which the license is restricted. Categories and their definitions are:( )~~

~~01. 01107 Engineering.~~ A specialty contractor whose primary business includes providing engineering and design services such as civil, electrical, mechanical, and structural.( )

~~02. 01541 Scaffolding and Shoring.~~ A specialty contractor whose primary business is the installation of any temporary elevated platform and its supporting structure used for supporting workmen or materials or both, and props or posts of timber or other material in compression used for the temporary support of excavations, formwork or unsafe structures; the process of erecting shoring.( )

~~03. 01542 Craning and Erection.~~ A specialty contractor whose primary business includes the art, ability and skill to safely control the workings of a crane in such a manner that building materials, supplies, equipment and structural work can be raised and set in a final position.( )

~~04. 01550 Construction Zone Traffic Control.~~ A specialty contractor whose primary business is the installation or removal of temporary lane closures, flagging or traffic diversions, utilizing pilot cars, portable devices such as cones, delineators, barricades, sign stands, flashing beacons, flashing arrow trailers, and changeable message signs on roadways, public streets and highways or public conveyances.( )

~~05. 01570 Temporary Erosion and Sediment Controls.~~ A specialty contractor whose primary business includes the ability and expertise to install silt fencing or other similar devices to prevent erosion and contain silt. ( )

~~06. 02110 Excavation, Removal and Handling of Hazardous Material.~~ A specialty contractor whose primary business includes the excavation and removal of toxic and hazardous site materials. Contractors must be properly licensed and certified if required.( )

~~07. 02115 Removal of Underground Storage Tanks.~~ A specialty contractor whose primary business includes, but is not limited to, the excavation, removal, cleanup, and disposal of underground storage tanks that have contained petrochemical type fuels. This work should include the sampling and testing of surrounding materials and filing of closure documents.( )

~~08. 02195 Environmental Remediation, Restoration and Soil Stabilization.~~ A specialty contractor whose primary business is the remediation and restoration of contaminated environmental sites.( )

~~09. 02210 Drilling.~~ A specialty contractor whose primary business includes practical elementary knowledge of geology and hydrology; the art, ability, knowledge, science and expertise to bore, drill, excavate, ease, pack or cement by use of standard practices, including the use of diamond bits, cable tools, percussion, air percussion, rotary, air rotary, reverse circulation rotary methods or jetting.( )

~~10. 02220 Demolition.~~ A specialty contractor whose primary business includes the ability and expertise to demolish all types of buildings or structures and to remove all of such buildings or structures from the premises, and maintain the premises surrounding demolition site safely for passing public.( )

~~11. 02230 Site Clearing.~~ A specialty contractor whose primary business includes the ability and

~~expertise to remove and dispose of all trees, brush, shrubs, logs, windfalls, stumps, roots, debris and other obstacles in preparation for excavation of a construction site or other uses.(—)~~

~~12. **02231 Logging.** A specialty contractor whose primary business and expertise includes the clearing, cutting, removal and transportation of logs and trees and the construction of temporary roads and structures for such operations along with any reclamation work associated with such operations.(—)~~

~~13. **02232 Tree Removal and Trimming.** A specialty contractor whose primary business includes pruning, removal, or guying of trees, limbs, stumps, and bushes including grinding and removal of such items.  
(—)~~

~~14. **02240 Dewatering and Subsurface Drainage.** A specialty contractor whose primary business is to control the level and flow of subsurface water.(—)~~

~~15. **02260 Earth Retention Systems, Mechanical Stabilized Earth Walls and Retaining Walls.** A specialty contractor whose primary business includes the building of earth retention systems, mechanical stabilized earth walls and retaining walls.(—)~~

~~16. **02265 Slurry Walls.** A specialty contractor whose primary business is the construction of below ground structural diaphragm walls or containment walls through the combined use of trench excavation, mud slurry and tremie concrete.(—)~~

~~17. **02270 Rockfall Mitigation and High Sealing.** A specialty contractor whose primary business is rockfall mitigation and high sealing.(—)~~

~~18. **02310 Excavation and Grading.** A specialty contractor whose primary business includes such work as digging, moving and placing material forming the surface of the earth in such manner that a cut, fill, excavation and any similar excavating operation can be done with the use of hand and power tools and machines that are used to dig, move and place that material forming the earth's surface.(—)~~

~~19. **02312 Dust Control, Dust Abatement and Dust Oiling.** A specialty contractor whose primary business is dust control, dust abatement and dust oiling.(—)~~

~~20. **02317 Rock Trenching.** A specialty contractor whose primary business is rock trenching.(—)~~

~~21. **02318 Hauling.** A specialty contractor whose primary business includes the ability and expertise to obtain or move specified materials by transportation in a vehicle.(—)~~

~~22. **02319 Blasting.** A specialty contractor whose primary business includes the use of conventional and high explosives for pre-splitting, surface, underground and underwater blasting, drill, trench, or excavate for use of explosives; priming and loading drilled, trenched or excavated areas by pipe tamping, pneumatic loading, injector loading, mud capping, slurry loading, combination of pneumatic and injector loading or hand loading; use of volt, ohms and milliampere meter (VOM) in testing blasting machine output voltage, power line voltage, measuring electric blasting cap or blasting circuit resistance, testing for current leakage, testing for AC DC stray current and voltage, leading wires for open or short circuits, rack bar blasting machine for running short or galvanometer output voltage; use of blasting caps, electric blasting caps, delay electric blasting caps, primacord and all other detonating devices.  
(—)~~

~~23. **02325 Dredging.** A specialty contractor whose primary business includes the excavation or removal of earth, rock, silt, or sediment from bodies of water including but not limited to streams, lakes, rivers or bays by means of specialized equipment.( ————)~~

~~24. **02404 Horizontal and Directional Earth Boring, Trenching and Tunneling.** A specialty contractor whose primary business and expertise includes boring, trenching or tunneling.(—)~~

~~25. **02450 Drilled Piers, Pile Driving, Caisson Drilling, Geopier and Helical Piers.** A specialty contractor whose primary business includes drilling piers, pile driving, caisson drilling, Geopier and helical piers.~~

(—)

~~26. 02500 Utilities. A specialty contractor whose primary business includes the construction and installation of pipe lines for the transmission of sewage, gas and water, including minor facilities incidental thereto; installation of electrical poles, towers, arms, transformers, fixtures, conduits, conductors, switch gear, grounding devices, panels, appliances and apparatus installed outside of buildings; including excavating, trenching, grading, back fill, asphalt patching as well as all necessary work and installation of appurtenances in connection therewith.~~

(—)

~~27. 02520 Well Drilling. A specialty contractor whose primary business includes the practical elementary knowledge of geology, hydrology, the occurrence of water in the ground, water levels in wells, the prevention of surface and sub-surface contamination and pollution of the ground water supply; and the art, ability, experience, knowledge, science, and expertise to bore, drill, excavate, case, screen, cement, clean and repair water wells; or to do any or any combination of any or all such boring, drilling, excavating, casing, cementing, cleaning and repairing with hand or power tools or rigs, including the installation and repair of pumps.(—)~~

~~28. 02580 Installation of Communication Towers. A specialty contractor whose primary business and expertise is the installation of communication towers.(—)~~

~~29. 02660 Membrane Liners for Ponds and Reservoirs. A specialty contractor whose primary business includes the installation of liners for the purpose of containment of liquids.(—)~~

~~30. 02720 Crushing. A specialty contractor whose primary business includes the ability and expertise to reduce rocks and aggregates to a smaller and uniform size and gradation to meet an agreed specification.(—)~~

~~31. 02740 Asphalt Paving. A specialty contractor whose primary business includes the installation of aggregate base course, cement treated base, bitumen treated base, asphalt concrete and the application of asphalt surfacing and surface repairs of streets, intersections, driveways, parking lots, tennis courts, running tracks, play areas; including the application or installation of primer coat, asphalt binder course, tack coating, seal coating and chips, slurry seal and chips, flush or flog coats, asphalt curbs, concrete bumper curbs, redwood headers, asphalt surface binder emulsion, asbestos and sand and acrylic color systems. (Synthetic and athletic surfacing are category 02790 Athletic and Recreational Surfaces.) Also includes crack sealing, asphalt maintenance repair and soil pulverization. (—)~~

~~32. 02761 Traffic Marking and Striping. A specialty contractor whose primary business includes the art, ability and expertise to apply markings to streets, roadways, or parking surfaces pre-designed for the use of parking or passage of vehicles by the application of directional lines, buttons, markers, and signs made of but not limited to plastic, paint, epoxies and rubber, in such manner as to provide for the channeling and controlling of the traffic flow. Also includes temporary striping.(—)~~

~~33. 02785 Asphalt Maintenance and Repair, Seal Coating, Crack Sealing and Chip Sealing. A specialty contractor whose primary business is asphalt maintenance and repair, seal coating, crack sealing and chip sealing. (—)~~

~~34. 02790 Athletic and Recreational Surfaces. A specialty contractor whose primary business is the installation of specialty surfaces including but not limited to non-wood athletic floors, tennis courts, running tracks and artificial turf. This would include any subsurface preparation such as leveling, excavation, fill and compaction or grading. The application of surfacing, mixing, spreading or placing of emulsions, binders, sand and acrylic color systems is also included along with the installation of modular, plastic athletic floors such as "Sport Court" type floors. This category does not include any type of structure required for the installation of these surfaces.(—)~~

~~35. 02810 Sprinkler and Irrigation Systems. A specialty contractor whose primary business includes the installation of types and kinds of water distribution systems for complete artificial water or irrigation of gardens, lawns, shrubs, vines, bushes, trees and other vegetation, including the trenching, excavating and backfilling in connection therewith. (Low voltage only).(—)~~

~~36. 02820 Fencing. A specialty contractor whose primary business includes the installation and repair~~

of any type of fencing.(—)

~~37. 02840 Guardrails and Safety Barriers. A specialty contractor whose primary business includes the installation of guardrails and safety barriers (including cattle guards).(—)~~

~~38. 02850 Bridges and Structures. A specialty contractor whose primary business includes the installation, alteration and repair of bridges and related structures, including culverts.(—)~~

~~39. 02855 Bridge Crossings and Box Culverts. A specialty contractor whose primary business is the installation or construction, or both, of any bridge or crossing structure shorter than twenty (20) feet measured on the centerline of the roadway or trail.(—)~~

~~40. 02880 Installation of School Playground Equipment. A specialty contractor whose primary business is the installation of school playground equipment.(—)~~

~~41. 02890 Traffic Signs and Signals. A specialty contractor whose primary business includes the art, ability, knowledge, experience, science and expertise to fabricate, install and erect signs, including electrical signs and including the wiring of such signs. A licensed electrician must perform all the electrical work.(—)~~

~~42. 02900 Landscaping, Seeding and Mulching. A specialty contractor whose primary business includes the preparation of plots of land for architectural, horticulture and provisions of decorative treatment and arrangement of gardens, lawns, shrubs, vines, bushes, trees and other decorative vegetation; construction of conservatories, hot and green houses, drainage and sprinkler systems, and ornamental pools, tanks, fountains, walls, fences and walks, arrange, fabricate and place garden furniture, statuary and monuments in connection therewith.  
( )~~

~~43. 02910 Slope Stabilization, Hydroseeding, Hydromulching, Native Plant Revegetation for Erosion Control. A specialty contractor whose primary business is slope stabilization, including necessary tillage and plant bed preparation using hydroseeding, hydromulching and native plant revegetation for erosion control.  
(—)~~

~~44. 02935 Landscape Maintenance. A specialty contractor whose primary business and expertise includes the maintenance of existing lawns, gardens, and sprinkler systems. This would include mowing, weeding, fertilization, pest control and minor repair or relocation of sprinkler systems.(—)~~

~~45. 02937 Pest Control, Sterilization and Herbicide Applications. A specialty contractor whose primary business includes the mixing, transportation and application of fertilizers, pesticides, herbicides, and sterilization chemicals for the control of insects, pests and weeds.(—)~~

~~46. 02955 Pipeline Cleaning, Sealing, Lining and Bursting. A specialty contractor whose primary business and expertise includes cleaning, sealing, lining and bursting pipelines.(—)~~

~~47. 02965 Cold Milling, Rumble Strip Milling, Asphalt Reclaiming and Pavement Surface Grinding. A specialty contractor whose primary business includes cold milling, rumble strip milling, asphalt reclaiming and pavement surface grinding.(—)~~

~~48. 02990 Structural Moving. A specialty contractor whose primary business includes but is not limited to raising, lowering, cribbing, underpinning and moving of buildings or structures. This does not include the alterations, additions, repairs or rehabilitation of the retained portion of the structure.(—)~~

~~49. 03200 Concrete Reinforcing Rebar Installation. A specialty contractor whose primary business includes the ability and expertise to fabricate, place and tie steel mesh or steel reinforcing bars or rods of any profile, perimeter or cross section that are or may be used to reinforce concrete.(—)~~

~~50. 03300 Concrete. A specialty contractor whose primary business includes the ability and expertise to process, proportion, batch and mix aggregates consisting of sand, gravel, crushed rock or other inert materials having clean uncoated grains of strong and durable minerals, cement and water or to do any part or any combination~~

of any thereof, in such a manner that acceptable mass, pavement, flat and other cement and concrete work can be poured, placed, finished and installed, including the placing, forming and setting of screeds for pavement or flat work. Also includes concrete sidewalks, driveways, curbs and gutters.(—)

**51. 03370 Specially Placed Concrete, Concrete Pumping and Shotcreting.** A specialty contractor whose primary business includes the ability and equipment necessary to deliver and install concrete, and similar materials to their final destination in buildings and structures.(—)

**52. 03380 Post-Tensioned Concrete Structures or Structural Members.** A specialty contractor whose primary business is the post-tensioning of structural elements using sleeved tendons of high-strength prestressing steel.(—)

**53. 03500 Gyperete.** A specialty contractor whose primary business includes the ability and expertise to mix and apply gypsum concrete.(—)

**54. 03600 Concrete Grouting.** A specialty contractor whose primary business includes the ability and the equipment necessary to place concrete grouts. Concrete grouts are thin, fluid, shrink resistant, mortar-like materials used for filling joints and cavities and setting and anchoring items in masonry and concrete.(—)

**55. 03650 Pressure Grouting and Slab Jacking.** A specialty contractor whose primary business includes pressure foundation grouting and jacking and the injection of concrete or mortar into foundations for stabilization. (—)

**56. 03900 Concrete Demolition, Concrete Sawing and Cutting, Core Drilling, Joint Sealing and Hydrocutting.** A specialty contractor whose primary business includes concrete cutting, drilling, sawing, cracking, breaking, chipping or removal of concrete. This category also includes the caulking or sealing of joints or cracks caused by such operations.(—)

**57. 04000 Masonry.** A specialty contractor whose primary business includes the installation with or without the use of mortar or adhesives of brick, concrete block, adobe units, gypsum partition tile, pumice block or other lightweight and facsimile units and products common to the masonry industry.(—)

**58. 04900 Chemical Cleaning and Masonry Restoration.** A specialty contractor whose primary business includes the cleaning or restoration of masonry through the use of chemicals, pressure washing, sand blasting or other methods.(—)

**59. 05090 Welding.** A specialty contractor whose primary business causes metal to become permanently attached, joined and fabricated by the use of gases or electrical energy, developing sufficient heat to create molten metal, fusing the elements together.(—)

**60. 05100 Steel Fabrication, Erection and Installation.** A specialty contractor whose primary business includes the ability and expertise to fabricate, place and tie steel reinforcing bars, erect structural steel shapes and plates, of any profile, perimeter or cross-section, that are or may be used to reinforce concrete or as structural members for buildings and structures, including riveting, welding and rigging only in connection therewith, in such a manner that steel reinforcing and structural work can be fabricated and erected.(—)

**61. 05700 Ornamental Metals.** A specialty contractor whose primary business includes the art, ability, experience, knowledge, science and expertise to assemble, case, cut, shape, stamp, forge, fabricate and install sheet, rolled and cast, brass, bronze, copper, cast iron, wrought iron, monel metal, stainless steel, and any other metal or any combination thereof, as have been or are now used in the building and construction industry for the architectural treatment and ornamental decoration of buildings and structures, in such a manner that, under an agreed specification, acceptable ornamental metal work can be executed, fabricated and installed; but does not include the work of a sheet metal contractor.(—)

**62. 05830 Bridge Expansion Joints and Repair.** A specialty contractor whose primary business and expertise is the repair of bridge expansion joints.(—)



~~63. 06100 Carpentry, Framing and Remodeling. A specialty contractor whose primary business includes the placing and erection of floor systems, walls, sheeting, siding, trusses, roof decking of either wood or light gauge metal framing. This contractor also installs finish items such as running trim, sashes, doors, casing, cabinets, cases and other pre-manufactured finished items.(—)~~

~~64. 06130 Log and Heavy Timber Construction. A specialty contractor whose primary business includes the ability and expertise to build and erect log or heavy timber structures.(—)~~

~~65. 06139 Docks Log and Wood Structures. A specialty contractor whose primary business includes the ability and expertise to construct log and wood structured docks.(—)~~

~~66. 06200 Finish Carpentry and Millwork. A specialty contractor whose primary business includes the art, ability, experience, knowledge, science and expertise to cut, surface, join, stick, glue and frame wood and wood products, in such a manner that, under an agreed specification, acceptable cabinet, case, sash, door, trim, nonbearing partition, and such other mill products as are by custom and usage accepted in the building and construction industry as millwork and fixtures, can be executed; including the placing, erecting, fabricating and finishing in buildings, structures and elsewhere of such millwork and fixtures or to do any part or any combination of any thereof. (—)~~

~~67. 07100 Waterproofing and Dampproofing. A specialty contractor whose primary business includes the ability and expertise to apply waterproofing membranes, coatings of rubber, latex, asphaltum, pitch, tar or other materials or any combination of these materials, to surfaces to prevent, hold, keep and stop water, air or steam from penetrating and passing such materials, thereby keeping moisture from gaining access to material or space beyond such waterproofing.(—)~~

~~68. 07200 Thermal Insulation. A specialty contractor whose primary business includes the installation of any insulating media in buildings and structures for the purpose of temperature control.(—)~~

~~69. 07240 Stucco and Exterior Insulation Finish Systems (EIFS). A specialty contractor whose primary business includes the ability and expertise to install Stucco and EIFS.(—)~~

~~70. 07400 Roofing and Siding. A specialty contractor whose primary business includes the ability and expertise to examine surfaces and to bring such surfaces to a condition where asphaltum, pitch, tar, felt, flax, shakes, shingles, roof tile, slate and any other material or materials or any combination thereof, that use and custom has established as usable for, or which material or materials are now used as, such waterproof, weatherproof or watertight seal for such membranes, roof and surfaces; but does not include a contractor whose sole contracting business is the installation of devices or stripping for the internal control of external weather conditions.(—)~~

~~71. 07450 Siding and Decking. A specialty contractor whose primary business includes the application or installation of exterior siding, decking or gutters including wood, wood products, vinyl, aluminum and metal to new or existing buildings and includes wooden decks and related handrails. (This category does not include the construction or installation of covers or enclosures of any kind.)(—)~~

~~72. 07700 Sheet Metal Flashings, Roof Specialties and Accessories. A specialty contractor whose primary business includes the art, ability, experience, knowledge, science and expertise to select, cut, shape, fabricate and install sheet metal such as cornices, flashings, gutters, leaders, rainwater down spouts, pans, etc., or to do any part or any combination thereof, in such a manner that sheet metal work can be executed, fabricated and installed.(—)~~

~~73. 07800 Sprayed on Fireproofing. A specialty contractor whose primary business includes the mixing, transportation, and installation of fire proofing materials for buildings and structures.(—)~~

~~74. 07920 Caulking and Joint Sealants. A specialty contractor whose primary business includes the ability and expertise for installation of elastomeric and rigid joint sealants, caulking compounds, and related accessories. (—)~~

~~75. 08100 Doors, Gates, Specialty Doors and Activating Devices. A specialty contractor whose primary business is the installation, modification or repair of residential, commercial or industrial doors and door~~

hardware. This includes but is not necessarily limited to wood, metal clad or hollow metal, glass, automatic, revolving, folding and sliding doors, power activated gates, or movable sun shades/shutters. Card activated equipment and other access control devices and any low voltage electronic or manually operated door hardware devices are also a part of this category.(——)

~~76. 08500 Windows, Glass and Glazing.~~ A specialty contractor whose primary business includes the art, ability, experience, knowledge and expertise to select, cut, assemble and install all makes and kinds of glass and glass work, and execute the glazing of frames, panels, sash and doors, in such a manner that under an agreed specification, acceptable glass work and glazing can be executed, fabricated and installed, and may include the fabrication or installation in any building or structure of frames, glazed in panels, sash or doors, upon or within which such frames, glazed in panels, sash or doors, such glass work or glazing has been or can be executed or installed.( )

~~77. 09110 Steel Stud Framing.~~ A specialty contractor whose primary business includes the ability and expertise to build or assemble steel stud framing systems.(——)

~~78. 09200 Lath and Plaster.~~ A specialty contractor whose primary business includes the ability and expertise to prepare mixtures of sand, gypsum, plaster, quick lime or hydrated lime and water or sand and cement and water or a combination of such other materials as create a permanent surface coating; including coloring for same and to apply such mixtures by use of a plaster's trowel, brush or spray gun to any surface which offers a mechanical key for the support of such mixture or to which such mixture will adhere by suction; and to apply wood or metal lath or any other materials which provide a key or suction base for the support of plaster coatings; including the light gauge metal shapes for the support of metal or other fire proof lath. Includes metal stud framing.(——)

~~79. 09250 Drywall.~~ A specialty contractor whose primary business includes the ability and expertise to install unfinished and prefinished gypsum board on wood and metal framing and on solid substrates; gypsum and cementitious backing board for other finishes; accessories and trim; and joint taping and finishing.(——)

~~80. 09300 Tile and Terrazzo.~~ A specialty contractor whose primary business includes the ability and expertise to examine surfaces and bring such surfaces to a condition where acceptable work can be executed and fabricated thereon by the setting of chips or marble, stone, tile or other material in a pattern with the use of cement, and to grind or polish the same.(——)

~~81. 09500 Acoustical Treatment.~~ A specialty contractor whose primary business includes the installation, application, alteration and repair of all types of acoustical systems, to include acoustical ceilings, wall panels, sound control blocks and curtains, hangers, clips, inserts, nails, staples, related hardware and adhesive, lightweight framing systems and related accessories (electrical excluded), installation and repair of gypsum wall board, painting, accessories, taping and texturing.(——)

~~82. 09600 Flooring.~~ A specialty contractor whose primary business includes the ability and expertise to examine surfaces, specify and execute the preliminary and preparatory work necessary for the installation of flooring, wherever installed, including wood floors and flooring (including the selection, cutting, laying, finishing, repairing, scraping, sanding, filling, staining, shellacking and waxing) and all flooring of any nature either developed as or established through custom and usage as flooring.(——)

~~83. 09680 Floor Covering and Carpeting.~~ A specialty contractor whose primary business includes the installation, replacement and repair of floor covering materials, including laminates and including preparation of surface to be covered, using tools and accessories and industry accepted procedures of the craft.(——)

~~84. 09900 Painting and Decorating.~~ A specialty contractor whose primary business includes the ability and expertise to examine surfaces and execute the preliminary and preparatory work necessary to bring such surfaces to a condition where acceptable work can be executed thereon with the use of paints, varnishes, shellacs, stains, waxes, paper, oilcloth, fabrics, plastics and any other vehicles, mediums and materials that may be mixed, used and applied to the surface of buildings, and the appurtenances thereto, of every description in their natural condition or constructed of any material or materials whatsoever that can be painted or hung as are by custom and usage accepted in the building and construction industry as painting and decorating.(——)

~~85. 09950 Sand Blasting. A specialty contractor whose primary business includes the ability and expertise to sand blast surfaces through the use of equipment designed to clean, grind, cut or decorate surfaces with a blast of sand or other abrasive applied to such surfaces with steam or compressed air.(—)~~

~~86. 09960 Specialty Coatings. A specialty contractor whose primary business includes the surface preparation and installation of specialty coatings.(—)~~

~~87. 10150 Institutional Equipment. A specialty contractor whose primary business includes the installation, maintenance and repair of booths, shelves, laboratory equipment, food service equipment, toilet partitions, and such other equipment and materials as are by custom and usage accepted in the construction industry as institutional equipment.(—)~~

~~88. 10270 Raised Access Flooring. A specialty contractor whose primary business includes the installation of wood or metal framed elevated computer flooring systems. This does not include the structural floor on which the computer floor is supported or mezzanines.(—)~~

~~89. 10445 Non Electrical Signs. A specialty contractor whose primary business includes the installation of all types of non-electrical signs, including but not limited to traffic delineators, mile post markers, post or pole supported signs, signs attached to structures, painted wall signs, and modifications to existing signs.  
(—)~~

~~90. 11001 Specialty Machinery and Equipment Installation and Servicing. A specialty contractor whose primary business is the installation, removal, modification or repair of pumps, water and waste water equipment, conveyors, cranes, dock levelers, various hoisting and material handling equipment, trash compactors and weighing scales installation and servicing. This does not include the construction of buildings or roof structures for this equipment.(—)~~

~~91. 11140 Petroleum and Vehicle Service Equipment, Installation and Repair. A specialty contractor whose primary business includes the installation and repair of underground fuel storage tanks used for dispensing gasoline, diesel, oil or kerosene fuels. This includes installation of all incidental tank related piping, leak line detectors, vapor recovery lines, vapor probes, low voltage electrical work, associated calibration, testing and adjustment of leak detection and vapor recovery equipment, and in station diagnostics. This contractor may also install auto hoisting equipment, grease racks, compressors, air hoses and other equipment related to service stations.  
(—)~~

~~92. 11200 Water/Wastewater and Chemical Treatment. A specialty contractor whose primary business is the supply, installation and operational startup of equipment and chemicals for chemical treatment of water, wastewater or other liquid systems.(—)~~

~~93. 11485 Climbing Wall Structures and Products. A specialty contractor whose primary business includes the ability and expertise to design, fabricate and install climbing wall structures and equipment. This does not include concrete foundations or buildings in which the climbing walls may be supported or housed.(—)~~

~~94. 12011 Prefabricated Equipment and Furnishings. A specialty contractor whose primary business includes the installation of prefabricated products or equipment including but not limited to the following: theater stage equipment, school classroom equipment, bleachers or seats, store fixtures, display cases, toilet or shower room partitions or accessories, closet systems, dust collecting systems, appliances, bus stop shelters, telephone booths, sound or clean rooms, refrigerated boxes, office furniture, all types of pre-finished, pre-wired components, detention equipment and other such equipment and materials as are by custom and usage accepted in the construction industry as prefabricated equipment.(—)~~

~~95. 12490 Window, Wall Coverings, Drapes and Blinds. A specialty contractor whose primary business includes the installation of decorative, architectural or functional window glass treatments or covering products or treatments for temperature control or as a screening device.(—)~~

~~96. 13110 Cathodic Protection. A specialty contractor whose primary business is the prevention of corrosion by using special cathodes and anodes to circumvent corrosive damage by electric current.(—)~~

~~97. **13121 Pre-Manufactured Components and Modular Structures.** A specialty contractor whose primary business includes the moving, setup, alteration or repair of pre-manufactured components, houses or similar modular structures.(—)~~

~~98. **13125 Pre-Engineered Building Kits.** A specialty contractor whose primary business includes the assembly of pre-engineered building kits or structures obtained from a single source. This category is limited to assembly only of pre-engineered metal buildings, pole buildings, sunrooms, geodesic structures, aluminum domes, air supported structures, manufactured built greenhouses or similar structures. This does not include any other categories such as concrete foundations, carpentry, plumbing, heating or cooling, or electrical work.(—)~~

~~99. **13150 Swimming Pools and Spas.** A specialty contractor whose primary business includes the ability to construct swimming pools, spas or hot tubs including excavation and backfill of material, installation of concrete, Gunitite, tile, pavers or other special materials used in pool construction. This category also includes the installation of heating and filtration equipment, using those trades or skills necessary for installing the equipment, which may require other licenses including electrical and plumbing.(—)~~

~~100. **13165 Aquatic Recreational Equipment.** A specialty contractor whose primary business includes the ability and expertise to design, fabricate and erect water slides and water park equipment and structures. This does not include any other categories such as concrete foundations, carpentry, plumbing, heating, cooling or electrical work. (—)~~

~~101. **13201 Circular Prestressed Concrete Storage Tanks (Liquid and Bulk).** A specialty contractor whose primary business is the construction of circular prestressed concrete structures post-tensioned with circumferential tendons or wrapped circular prestressing.(—)~~

~~102. **13280 Hazardous Material Remediation.** A specialty contractor whose primary business includes the ability and expertise to safely encapsulate, remove, handle or dispose of hazardous materials within buildings, including but not limited to asbestos, lead and chemicals. Contractors must be properly licensed and certified.(—)~~

~~103. **13290 Radon Mitigation.** A specialty contractor whose primary business and expertise includes the detection and mitigation of Radon gas.(—)~~

~~104. **13800 Instrumentation and Controls.** A specialty contractor whose primary business includes the installation, alteration or repair of instrumentation and control systems used to integrate equipment, sensors, monitors' controls and mechanical operators for industrial processes, building equipment, mechanical devices and related equipment.(—)~~

~~105. **13850 Alarm Systems.** A specialty contractor whose primary business includes the installation, alteration and repair of communication and alarm systems, including the mechanical apparatus, devices, piping and equipment appurtenant thereto (except electrical).(—)~~

~~106. **13930 Fire Suppression Systems (Wet and Dry Pipe Sprinklers).** A specialty contractor whose primary business includes the ability and expertise to lay out, fabricate and install approved types of Wet Pipe and Dry Pipe fire suppression systems, charged with water, including all mechanical apparatus, devices, piping and equipment appurtenant thereto. Licensure with State Fire Marshal is required.(—)~~

~~107. **13970 Fire Extinguisher and Fire Suppression Systems.** A specialty contractor whose primary business is the installation of pre-engineered or pre-manufactured fixed chemical extinguishing systems primarily used for protecting kitchen cooking equipment and electrical devices. Contractor also furnishes, installs and maintains portable fire extinguishers.(—)~~

~~108. **14200 Elevators, Lifts and Hoists.** A specialty contractor whose primary business includes the ability to safely and efficiently install, service and repair all elevators, lifts, hoists, including the fabrication, erection and installation of sheave beams, sheave motors, cable and wire rope, guides, cabs, counterweights, doors, sidewalk elevators, automatic and manual controls, signal systems and other devices, apparatus and equipment appurtenant to the installation. (—)~~

~~109. 15100 Pipe Fitter and Process Piping. A specialty contractor whose primary business is the installation of piping for fluids and gases or materials. This category does not include domestic water, sewage, fire protection and utilities as they are covered under other categories.(—)~~

~~110. 15400 Plumbing. A specialty contractor whose primary business includes the ability to create and maintain sanitary conditions in buildings, by providing a permanent means for a supply of safe, pure and wholesome water, ample in volume and of suitable temperatures for drinking, cooking, bathing, washing, cleaning, and to cleanse all waste receptacles and like means for the reception, speedy and complete removal from the premises of all fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, including a safe and adequate supply of gases for lighting, heating, and industrial purposes. (Licensure with Division of Building Safety is required).(—)~~

~~111. 15510 Boiler and Steam Fitting. A specialty contractor who installs, services and repairs boilers and associated steam distribution systems. This category is limited to work not requiring a heating, ventilating, and air conditioning (HVAC) license issued by the Division of Building Safety.(—)~~

~~112. 15550 Chimney Repair. A specialty contractor whose primary business includes the cleaning or repair of multi-type chimneys, flues or emission control devices used to conduct smoke and gases of combustion from above a fire to the outside area.(—)~~

~~113. 15600 Refrigeration. A specialty contractor whose primary business includes the art, ability, experience, knowledge, science and expertise to construct, erect, install, maintain, service and repair devices, machinery and units for the control of air temperatures below fifty (50) degrees Fahrenheit in refrigerators, refrigerator rooms, and insulated refrigerated spaces and the construction, erection, fabrication and installation of such refrigerators, refrigerator rooms, and insulated refrigerator spaces, temperature insulation, air conditioning units, ducts, blowers, registers, humidity and thermostatic controls of any part or any combination thereof, in such a manner that, under an agreed specification acceptable refrigeration plants and units can be executed, fabricated, installed, maintained, serviced and repaired, but does not include those contractors who install gas fuel or electric power services for such refrigerator plants or other units.(—)~~

~~114. 15700 Heating, Ventilation, and Air Conditioning (HVAC). A specialty contractor whose primary business includes the installation, alteration and repair of heating, ventilating, and air conditioning (HVAC) systems. Licensure by the Division of Building Safety as an HVAC contractor is required.(—)~~

~~115. 15950 Testing and Balancing of Systems. A specialty contractor whose primary business includes the installation of devices and performs any work related to providing for a specified flow of air or water in all types of heating, cooling or piping systems.(—)~~

~~116. 16000 Electrical. A contractor engaging in, conducting, or carrying on the business of installing wires or equipment to carry electric current or installing electrical apparatus to be operated by such current. A contractor licensed in this category may perform all work covered in categories defined in Subsection 200.118 of these rules. A contractor in this category must be an electrical contractor, licensed pursuant to Section 54-1007(1), Idaho Code. (—)~~

~~117. 16700 Communication. A specialty contractor whose primary business includes the installation, alteration or repair of communication systems (voice, data, television, microwave, and other communication systems): (—)~~

~~118. 16800 Limited Electrical Contractor. A contractor engaging in, conducting, or carrying on the business of installing, altering, or repairing special classes of electrical wiring, apparatus, or equipment. A contractor in this category must be an electrical specialty contractor, licensed pursuant to Section 54-1007(1), Idaho Code, and may perform only that work included within the specialty license. Electrical specialty categories include, but are not limited to: (—)~~

~~a. Elevator, Dumbwaiter, Escalator or Moving walk Electrical;(—)~~

- ~~b. Sign Electrical;(—)~~
- ~~e. Manufacturing or Assembling Equipment;(—)~~
- ~~d. Limited Energy Electrical License (low voltage);(—)~~
- ~~e. Irrigation Sprinkler Electrical;(—)~~
- ~~f. Well Driller and Water Pump Installer Electrical; and(—)~~
- ~~g. Refrigeration, Heating and Air Conditioning Electrical Installer.(—)~~

~~119. 18100 Golf Course Construction. A specialty contractor whose primary business includes the construction, modification, and maintenance of golf courses. This includes clearing, excavation, grading, landscaping, sprinkler systems and associated work. This does not include the construction of buildings or structures such as clubhouses, maintenance or storage sheds.(—)~~

~~120. 18200 Underwater Installation and Diving. A specialty contractor whose primary business is marine construction under and above water.(—)~~

~~121. 18300 Develop Gas and Oil Wells. A specialty contractor whose primary business includes the ability and expertise to perform oil well drilling and other oil field related specialty work. This does not include water well drilling.(—)~~

~~122. 18400 Nonstructural Restoration After Fire or Flood. A specialty contractor whose primary business includes cleaning and nonstructural restoration after fire, flood or natural disasters.(—)~~

~~123. 18600 Building Cleaning and Maintenance. A specialty contractor whose primary business includes the cleaning and maintenance of a structure designed for the shelter, enclosure and support of persons, chattels, personal and moveable property of any kind.(—)~~

~~124. 18700 Snow Removal. A specialty contractor whose primary business includes the plowing, removal or disposal of snow from roads, streets, parking lots and other areas of the public rights of way.(—)~~

~~125. 18800 Roadway Cleaning, Sweeping and Mowing. A specialty contractor whose primary business includes the clearing of trash and debris by manual or automated means from public thoroughfares. This category also includes cutting or mowing of grasses, plants, or weeds from public rights of way.( )~~

**400.201. FEES.**

**01. Public Works Contractor, Licensing Fees.** In accordance with Section 54-1904, Idaho Code, fees for each class of public works contractor licenses are as provided below:

<b>TABLE 201.01 – INITIAL AND RENEWAL LICENSING FEES</b>		
<b>License Class</b>	<b>Initial Fee</b>	<b>Renewal Fee</b>
Unlimited	\$550	\$440
AAA	\$450	\$360
AA	\$350	\$280
A	\$250	\$160
B	\$150	\$120

CC	\$125	\$100
C	\$100	\$80
D	\$50	\$40

( )

**02. Construction Manager.** ~~Licensing Fees. Fees for construction manager licenses are, in accordance with Section 54-4510, Idaho Code, as follows:~~( )

TABLE 201.02 – CONSTRUCTION MANAGER LICENSING FEES	
License Activity	Fee
Initial Licensing	\$200
License Renewal	\$200
Inactive License	\$50
License Reinstatement	\$200
<del>Exam Administration</del>	<del>Fee established by testing agency</del>
Certificate of Authority	\$100

**03. Payment of Fees.** ~~Fees are payable to “Division of Building Safety—Public Works Contractors.”~~  
 ( )

**04. Application Filed With Fees.** ~~An application filed without the listed fees is deemed incomplete and returned to the applicant.~~( )

**202. COMPLAINTS.**

~~Complaints alleging a violation of Title 54, Chapter 19, Idaho Code, or these rules must be in writing and filed with the administrator. All complaints must be verified and submitted on forms provided by the Board.~~( )

**203. 299.(RESERVED)**

**300. 200. PRACTICE STANDARDS**

**01. BUSINESS ORGANIZATION -- CHANGES IN ORGANIZATION OR STRUCTURE -- MEMBERS OF JOINT VENTURES - CHANGES FOR REASONS OTHER THAN DEATH.**

A licensed public works contractor or construction manager who undergoes a change in business organization or structure (such as a change from an individual proprietor to a partnership, corporation, limited liability partnership, limited liability company, joint venture, or other combination thereof), or where there is a change in ownership, must file an application for a new license on behalf of such successor organization or new owners within sixty (60) days after such change occurs. The administrator may authorize the continuous operation of the licensee as a contractor during the interim period until the application of the successor organization is reviewed; provided written notice of such change is filed within thirty (30) days after such change occurs. Each participant in a joint venture must be licensed at the time of bidding. Where there is a change in the surviving members of a licensed partnership, limited liability company, or limited liability partnership, due to a reason other than the death of one (1) of the partners, the remaining or succeeding member or members are required to file an application for an original license.

( )

~~301.—399.(RESERVED)~~

~~400. CERTIFICATES—DISPLAY AND POSSESSION.~~

~~Licensee must sign and display the license certificate issued to him in his main office or chief place of business and must furnish satisfactory evidence of the possession of a current license upon the administrator's demand.( )~~

~~401.~~

~~02. LICENSE NUMBER ON BIDS.~~

~~Licensee must place his license number on any and all bids submitted or contracts entered into, for any public works projects in the state of Idaho.( )~~

~~402.~~

~~03. CHANGES IN LICENSE CERTIFICATE.~~

~~a. When any change in the license certificate has been approved by the Board, a new license certificate will be issued.~~

~~( )~~

~~403.—501.(RESERVED)~~

~~502. TECHNICALITIES OF FORM.~~

~~The administrator may, during any hearing or proceeding waive any technicalities of form not deemed necessary in the circumstances.( )~~

~~503. HEARINGS.~~

~~The general procedure for hearings before the administrator and the Board is as prescribed in these rules and Title 67, Chapter 52, Idaho Code.(—)~~

~~01. Notes. Any interested persons may request, in writing, five (5) days before any scheduled hearing in a contested case that the oral proceedings thereof be taken in the form of stenographic notes to be transcribed at his own expense. (—)~~

~~02. Procedure. The Board reserves the right to amend, modify or repeal all or any part of the above procedure or to dispense with any part thereof, at any hearing before the Board, as it may deem necessary in the circumstances. (—)~~

~~504.—599.(RESERVED)~~

~~600.~~

~~06. CONSTRUCTION MANAGER EXAMINATIONS.~~

~~a. If the applicant fails an examination, the applicant may take the examination a second time. A grade of at least seventy-five percent (75%) is required to pass each section of the examination. If the applicant fails to score a passing grade, the applicant must pass all failed sections within one (1) year of the initial test date. If the applicant fails to achieve a passing grade in each individual section on the second examination, the applicant must wait one (1) full year for a period set by the Administrator before taking the examination again. The applicant must then take and pass all sections of the examination, (receiving no credit for sections successfully completed during the previous year).( )~~

~~601.—999.(RESERVED)~~



## IDAPA 59 – PUBLIC EMPLOYEES RETIREMENT SYSTEM OF IDAHO

### 59.01.01 – RULES FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)

#### DOCKET NO. 59-0101-2301 (ZBR CHAPTER REWRITE)

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 59-1301, 59-1314, 59-1372, 59-1383, and 59-1392, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

There are changes to two sections of the pending rule. Section 200 is the addition of the words “the definition of” to clarify that the addition to Section 59-1302(16), Idaho Code, is with respect to the definition of a firefighter. Section 702 has changes to clarify the active member is the member that participates in the active member allocation. The other changes are to correct grammar.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the November 1, 2023, Idaho Administrative Bulletin, [Vol. 23-11, pages 119-153](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

Does not apply to this rulemaking.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The change in this rule will not have any fiscal impact on the state General Fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact: Cheryl George, (208) 287-9231.

DATED this 27th of November 2023.

Don Drum, Executive Director  
Public Employees Retirement System of Idaho  
P.O. Box 83720  
Boise, ID 83720-0078  
Phone: (208) 287-9230  
Fax: (208) 334-3804

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 1-2002, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 15, 2023.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In accordance with the [Zero-Based Regulation E. O. 2020-01](#), the goal of this rulemaking is to make changes and modifications that remove obsolete language, eliminate unnecessary restrictions, and provide overall clarity.

Sections 002, 012, 013, 150, 325, 375, 376, 401, 532, 544, 548, and 600 are deleted as unnecessary; Sections 103, 114, and 503 are amended to be more easily read; Section 200 is amended to change statutory reference; Section 308 is amended to delete subsection 03 as unnecessary; Section 404 is amended to delete the last sentence as unnecessary; Section 526 deletes the phrase “will not be considered in determining benefits” as is unnecessary; Sections 532 and 543 are deleted as duplicative; Section 535 is deleted and replaced by Section 539; Section 549 amended to delete the first two sentences as unnecessary and 549.02 deleted because this is addressed in 508; Section 702 is replaced with the language from Subsection 004.01; and Section 508 is amended to comply with federal law, Secure 2.0 Act of 2022 section 107.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

There are no fees or charges associated with this rulemaking.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year: The change in this rule will not have any fiscal impact on the state General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the September 6, 2023, Idaho Administrative Bulletin, [23-9 pages 909-910](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

There are no documents incorporated by reference in this chapter of rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule(s), contact Cheryl George, (208) 287-9231.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 22, 2023.

DATED this 6th day of October, 2023.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 59-0101-2301**

**59.01.01 – RULES FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)**

**001. LEGAL AUTHORITY.**

Sections 50-1507, 50-1508, 50-1524, 59-1301, 59-1314, 59-1372, 59-1383, 59-1392, and 72-1405, Idaho Code.

( )

**002. (RESERVED)**

**003. ADMINISTRATIVE APPEAL.**

Administrative appeals are conducted pursuant to these rules.

( )

**004. DEFINITIONS.**

The definitions in Section 59-1302, Idaho Code, and the following apply to this chapter:

( )

**01. Active Member.** A member participates in the active member allocation only if they are active and have at least twelve (12) months of accrued membership service on the last day of the fiscal year. For purposes of allocating extraordinary gains, active members also include:

( )

**a.** Seasonal employees who have a pattern of employment that includes at least six (6) months of membership service in each of the preceding three (3) consecutive years; and

( )

**b.** Employees who are on leave of absence on the last day of the fiscal year and either:

( )

**i.** Return to active service for at least thirty (30) days before December 31 immediately following the end of the fiscal year; or

( )

**ii.** Are entitled to benefits under the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA).

( )

**02. Actuary.** This is the actuary retained by the Board.

( )

**03. Administrator.** The Board.

( )

**04. Applicant.** “Applicant” means an applicant for disability retirement under Section 59-1352, Idaho Code, or an individual requesting resumption of a disability retirement allowance under Section 59-1354A, Idaho Code.

( )

**05. Base Plan or Account.** This is the PERSI defined benefit plan not including gain sharing allocations or interest thereon, or the individual accounts therein.

( )

**06. Board.** “Board” means the governing authority of the Public Employee Retirement System of Idaho as provided by Section 59-1304, Idaho Code, of the Firefighters’ Retirement Fund created by Chapter 14, Title 72, Idaho Code, and the Policeman’s Retirement Fund created by Chapter 15, Title 50, Idaho Code.

( )

**07. Choice Plan or Account.** This includes two (2) elements:

( )

**a.** The defined contribution component of the PERSI plan consisting of gain sharing allocations together with earnings thereon or the individual accounts therein; and

( )

**b.** The plan designated to receive voluntary and employer contributions as provided in Section 59-1308, Idaho Code, or the individual accounts therein.

( )

**08. Code.** The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the IRS Code are to such sections as they may from time to time be amended or renumbered.

( )

**09. Compensation.** “Compensation” as used in Section 59-1342(6), Idaho Code, means “salary” as defined by Section 59-1302(31), Idaho Code. ( )

**10. Court Security.** “Court Security” as used in Section 59-1303(3)(g), Idaho Code, means the employee’s primary responsibilities are designated by court order to quell disturbances in the courthouse, to prevent the escape of prisoners, to exclude weapons from the courthouse, and to perform other related courthouse security matters. ( )

**11. Date of Retirement.** “Date of retirement” means the effective date on which a retirement allowance becomes payable. ( )

**12. Designated Beneficiary.** The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under section 401(a)(9) of the IRS Code and section 1.401(a)(9)-4, Q&A-4, of the Treasury regulations. ( )

**13. Employment.** “Employment” as used in Section 59-1302(14)(B)(b), Idaho Code, shall mean the period of time from a member’s date of hire to the member’s succeeding date of separation from that state agency, political subdivision or government entity. Placing a member on leave of absence with or without pay shall not be considered as a separation from the employer. ( )

**14. Firefighters' Retirement Fund.** “Firefighters’ Retirement Fund” or “FRF” is the retirement fund provided by Chapter 14, Title 72, Idaho Code. ( )

**15. Gain Sharing.** This refers to the process of allocating extraordinary gains from the base plan into the defined contribution component of the PERSI plan as permitted in Section 414(k) of the Internal Revenue Code and as provided by Section 59-1309, Idaho Code, and these rules. ( )

**16. General Member.** “General member” is a PERSI member not classified as a police officer, firefighter, paid firefighter, or school employee. ( )

**17. Likely.** For the purpose of Section 59-1302(12)(b), Idaho Code, “likely” means with reasonable medical certainty. ( )

**18. Occupational Hazard.** “Occupational Hazard” means an injury or ailment solely resulting from the work an applicant does or from the environment in which an applicant works. ( )

**19. Pension Protection Act Definitions.** Solely for purposes of the implementation by PERSI of section 402(l) of the Internal Revenue Code, the following definitions apply: ( )

**a. Chaplain.** Any individual serving as an officially recognized or designated member of a legally organized volunteer fire department or legally organized police department, or an officially recognized or designated public employee of a legally organized fire or police department who was responding to a fire, rescue, or police emergency. ( )

**b. Eligible Retired Public Safety Officer.** An individual who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer with the state agency, political subdivision or government entity who maintains the eligible retirement plan from which distributions are made. ( )

**c. Normal Retirement Age.** The member’s age at the time that the member is eligible to retire with an unreduced benefit. ( )

**d. Public Safety Officer.** An individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, as a firefighter, as a chaplain, or as a member of a rescue squad or ambulance crew. ( )

**20. Primary Employer.** The primary employer is the state agency, political subdivision or government

entity from whom the employee receives the highest aggregate salary per month. ( )

**21. Public Employee Retirement System of Idaho.** “Public Employee Retirement System of Idaho” or “PERSI” is the retirement system created by Chapter 13, Title 59, Idaho Code. ( )

**22. Required Beginning Date.** The date specified in Section 508.02 of these rules. ( )

**23. Retiree.** Retiree includes any member, contingent annuitant, or surviving spouse, receiving regular monthly allowances at the close of the fiscal year. It also includes members receiving a monthly disability retirement allowance, surviving spouses who elected an annuity option under Section 59-1361(5), Idaho Code, and members who were inactive at the close of the fiscal year but retire on or before the first day of January following the end of the fiscal year, retroactive to the first day of June of the fiscal year or earlier. ( )

**24. Service.** For the purposes of Sections 536 and 539, “service” includes only service for which the member is normally in the administrative offices of the state agency, political subdivision or government entity or normally required to be present at any particular work station for the state agency, political subdivision or government entity. ( )

**25. Surviving Spouse.** “Surviving spouse” is a person as defined in Section 15-2-802, Idaho Code. ( )

**26. Transportation Of Prisoners.** “Transportation of prisoners” as used in Section 59-1303(3)(g), Idaho Code, means the employee’s primary responsibility is designated by court order to move prisoners from one (1) place to another. ( )

**005. -- 010. (RESERVED)**

**SUBCHAPTER A – PERSI RULES OF ADMINISTRATIVE PROCEDURE**  
**Rules 011 through 099**

**011. OPT OUT OF ATTORNEY GENERAL’S RULES – TABLE.**

PERSI declines to adopt the following Idaho Rules of Administrative Procedure of the Attorney General, IDAPA 04.11.01 as follows for the reasons listed:

<b>Rules Promulgated by the Office of the Attorney General will be followed except the following sections of IDAPA 04.11.01 will be excluded</b>	
151	PERSI procedure uses “petitioners” or “appellants” rather than “applicants” or “claimants.”
155	PERSI procedure uses “petitioners” rather than “protestants.”
156	PERSI procedure does not separately use intervention.
220	PERSI procedure uses “petitions” rather than “applications,” “claims” or “appeals.”
250	PERSI procedure uses “petitions” rather than “protests.”
350 - 399	PERSI procedure does not separately use intervention.
420 - 425	PERSI does not have a prosecutorial investigative function.
566	PERSI does not hold joint hearings.
730	PERSI statutes do not provide for preliminary orders.
741	PERSI has no authority to award costs or fees.

<b>Rules Promulgated by the Office of the Attorney General will be followed except the following sections of IDAPA 04.11.01 will be excluded</b>	
791.01.c.	The venue of all actions in which the Board is a party shall be Ada County, Idaho.” Idaho Code § 59-1305(1)
791.01.d.	The venue of all actions in which the Board is a party shall be Ada County, Idaho. Idaho Code § 59-1305(1)

( )

**012. – 099. (RESERVED)**

**SUBCHAPTER B – PERSI RULES FOR ELIGIBILITY**  
**Rules 100 through 249**

**100. MANDATORY MEMBERSHIP.**

Membership in PERSI is mandatory for all persons who meet the statutory definition of an “employee” in Section 59-1302(14), Idaho Code. ( )

**101. MULTIPLE EMPLOYERS -- MEMBERSHIP ELIGIBILITY.**

An employee establishes separate PERSI membership eligibility with each state agency, political subdivision or government entity with which the employee meets the statutory definition of an “employee” as found in Section 59-1302(14), Idaho Code. ( )

**01. Does Not Meet the Statutory Definition.** Because membership eligibility is established independently with each state agency, political subdivision or government entity, neither employer nor employee contributions are required on salary paid by employers to employees who do not meet the statutory definition of an “employee” as found in Section 59-1302(14), Idaho Code. ( )

**02. State Agencies.** An employee working for more than one (1) state agency establishes eligibility based on the total hours of employment worked with all state agencies. ( )

**102. ELECTED AND APPOINTED OFFICIALS NOT SUBJECT TO TWENTY HOUR REQUIREMENT.**

Elected and appointed officials are not subject to the hourly requirement of Section 59-1302(14)(A)(a), Idaho Code. ( )

**103. ELECTED AND APPOINTED OFFICIALS.**

**01. Hourly Requirement.** Elected and appointed officials are not subject to the hourly requirement of Section 59-1302(14)(A)(a), Idaho Code. ( )

**02. Salary and Honorarium.** Elected and appointed officials serving on boards, councils, or commissions who receive salary or honorarium for services performed are members of PERSI even though they receive nominal salary and do not normally work twenty (20) hours or more per week. ( )

**104. -- 110. (RESERVED)**

**111. TEACHER WORKING HALF-TIME OR MORE.**

For the purposes of Section 59-1302(14)(A)(a), Idaho Code, a teacher is considered to be working half-time or more if the teacher’s contract specifies that the engagement is half or more of a full contract. Teachers and all other school employees not employed under such a contractual arrangement shall be required to meet the requirement of normally working twenty (20) hours or more per week. ( )

**112. RESPONSIBILITY OF EMPLOYER TO DETERMINE EMPLOYEE ELIGIBILITY.**

It is the responsibility of each state agency, political subdivision or government entity to make the initial

determination of which employees within its jurisdiction meet the requirements of eligibility for membership and to withhold the required member contributions from salary paid. ( )

**113. NORMALLY WORKS TWENTY HOURS.**

If a person works twenty (20) hours or more per week for more than one-half (1/2) of the weeks during the period of employment being considered, then the person meets the requirements of Section 59-1302(14)(A)(a), Idaho Code (“normally works twenty (20) hours or more per week”), and shall be considered an employee if the person meets the other requirements of Section 59-1302(14), Idaho Code. ( )

**114. APPLICATION OF THE FIVE MONTH REQUIREMENT.**

An employee working twenty (20) hours or more per week who is hired with the expectation of working less than five (5) consecutive months, becomes retroactively eligible for membership and employee and employer contributions must be immediately withheld whenever it becomes evident the period of employment will be five (5) consecutive months or longer and the employee meets the other requirements of Section 59-1302(14), Idaho Code. Delinquent payments will be paid by the employer within three (3) months. Regular interest will be assessed against the outstanding balance at the rate provided in Section 59-1325, Idaho Code. ( )

**115. -- 120. (RESERVED)**

**121. CEASING TO BE AN EMPLOYEE.**

A member ceases to be an employee on the day following the effective date that the member is separated from their employer. Membership service credits stop on the day the member ceases to be an employee. ( )

**122. LEAVE OF ABSENCE.**

A member is ineligible to contribute and receive membership service credit while on leave of absence without pay or while on leave of absence with less than one-half (1/2) pay, unless the absence is occasioned by a worker’s compensation claim approved by a surety. An active member separated from employment under conditions where both the member and the employer plan a later return to employment should be placed on leave of absence without pay during the planned period of absence. ( )

**01. Employer and Employee Contributions -- Leave of Absence.** During the leave of absence without pay, employer and employee contributions cease. If the member is on a leave of absence as a result of an approved worker’s compensation claim, employer and employee contributions are due and payable on any salary paid to the member. The member is entitled to a month of membership service credit for each month the member remains on leave of absence as a result of an approved worker’s compensation claim and receives salary in addition to income benefits. ( )

**02. Documentation of Leave of Absence.** The employer shall provide PERSI with documentation, on a form provided by PERSI, of a leave of absence to clarify the member’s status and retirement benefit entitlement. ( )

**03. Status of Employee on Leave of Absence.** An employee placed on a leave of absence by an employer remains in an employee status and is ineligible for payment of any separation benefits or for payment of a service, early, disability, or vested retirement allowance. If a member on leave of absence without pay terminates employment without returning to work, the leave without pay status is negated. ( )

**04. Leave of Absence -- Effect on Benefit Enhancement.** An employee shall not be placed on a leave of absence without pay prior to the effective date of a benefit enhancement and then return to work after the effective date of the benefit enhancement for the purpose of qualifying for the benefit enhancement. An employee placed on unpaid leave of absence prior to the date of the benefit enhancement who returns to work after the effective date of the benefit enhancement and subsequently applies for retirement shall include with the application for retirement, certification from the state agency, political subdivision or government entity that the leave of absence was not granted for the purpose of allowing the person to qualify for the benefit enhancement. ( )

**123. -- 199. (RESERVED)**

**200. DETERMINATION OF FIREFIGHTER.**

In addition to Section 59-1302(16), Idaho Code, the definition of a firefighter member for retirement purposes is an employee appointed to the position of fire chief by a city council but not eligible to be a “paid firefighter,” or the chief fire warden of a timber protective association, or is an employee of either the department of lands or of a timber protective association whose primary position and principal accountability in that position either requires direct supervision of employees engaged in the prevention, presuppression and suppression of wild land fires or requires the performance of those duties as the principal function of the position. A firefighter member for retirement purposes does not include an employee who may be required on occasion to engage in those functions as a secondary requirement of the position. ( )

**201. INCORRECT CLASSIFICATION OF FIREFIGHTER.**

An employer or agency which believes that any position is incorrectly classified as a firefighter position or a non-firefighter position may petition the Board for inclusion or exclusion of such position as a firefighter position. Such petition shall be in writing and explain in detail the principal duties of the position. The Board will review the petition and evidence, together with such information and evidence as may be presented by the staff of PERSI. The Board may decide the matter based upon the information supplied, may request additional information, or may request an oral presentation before the Board. ( )

**202. PAID FIREFIGHTER EXCLUSION FROM RULES 200 AND 201.**

The provisions of Sections 200 and 201 of this subchapter do not apply to a “paid firefighter” as defined by Sections 59-1391(f) or 72-1403(A), Idaho Code, or to any references to “firefighter” found in Title 72, Chapter 14, Idaho Code.

Statutory References: Sections 59-1302(16), 59-1391(f) and 72-1403, Idaho Code. ( )

**203. -- 249. (RESERVED)**

**SUBCHAPTER C – PERSI GENERAL PROVISIONS, CONTRIBUTION RATE,  
MISCELLANEOUS, AND INTEREST RATE RULES  
Rules 250 through 374**

**250. -- 302. (RESERVED)**

**303. EMPLOYEE CONTRIBUTIONS BASED ON GROSS SALARY.**

Employee contributions shall be based on the employee’s total gross salary regardless of source or employer funds from which the employee is paid. ( )

**304. (RESERVED)**

**305. MULTIPLE EMPLOYERS -- CONTRIBUTION RATE.**

If the employee has met eligibility requirements with more than one (1) employer that would result in different contribution rates, contributions shall be made at the rate for the member’s classification with the primary employer. ( )

**306. STATE EMPLOYEE CONTRIBUTIONS.**

If an employee establishes membership with the state, the employee and each agency must make contributions on the employee’s salary regardless of the number of hours worked at each state agency. ( )

**307. POLICE OFFICER CONTRIBUTIONS WITHHELD INCORRECTLY.**

If an employee’s contributions are withheld by an employer and received by PERSI at the rate established for police members on the presumption the certification required by Section 59-1303, Idaho Code, will be accepted, but if it is rejected, the employer shall adjust the employee’s contribution rate to a general member rate and PERSI shall return to the employer any excess employee contributions that have occurred. ( )

**308. CONTRIBUTIONS DUE WHILE MEMBER IS RECEIVING WORKER'S COMPENSATION.**

**01. Contributions Due and Payable.** Contributions are due and payable on whatever percentage of salary is paid while the member is on a leave of absence occasioned by an approved worker’s compensation claim and the member will be entitled to a month of membership service credit for each month the member remains



eligible. ( )

**02. Accruing Service.** This means for an employee to continue accruing service the employer must continue to pay salary equal to the lesser of: ( )

**a.** The amount necessary to meet the statutory definition of employee (half-time at the pre-injury rate or more), or ( )

**b.** The employee's full-time salary less the employee's worker's compensation income benefit. ( )

**309. VACATION AND CONTRACTUAL PAYMENTS SUBJECT TO CONTRIBUTIONS.**

Compensation paid for vacation or remaining contractual payments is salary subject to employee and employer contributions and earns membership credit through the effective date of separation from employment at the usual rate of compensation. ( )

**310. -- 349. (RESERVED)**

**350. REGULAR INTEREST.**

Regular interest for each calendar year shall be the greater of ninety percent (90%) of the rate of return on the PERSI fund net of all expenses for the fiscal year ending immediately prior to the calendar year as reported in the actuary's annual valuation report or one percent (1%). ( )

**351. INTEREST – MEMBER CONTRIBUTIONS.**

Regular interest as defined in Section 59-1302(26), Idaho Code, shall accrue to and be credited monthly to a member's accumulated contributions. ( )

**352. REINSTATEMENT INTEREST.**

Reinstatement interest for each calendar year shall equal the average of the prime rate on June 30 of the latest three (3) years, plus one percent (1%). For purposes of this rule, the prime rate is the "prime rate" listed in the "Money Rates" section of the Wall Street Journal on June 30, or in the event no rate is listed on June 30, on the latest date preceding June 30 for which a prime rate is listed. Unless otherwise provided by statute or rule, reinstatement interest shall apply to all amounts owed to the fund. ( )

**353. -- 374. (RESERVED)**

**SUBCHAPTER D – PERSI DISABILITY RULES**  
**Rules 375 through 499**

**375. -- 399. (RESERVED)**

**400. APPLYING FOR DISABILITY RETIREMENT.**

Eligible members may apply for disability retirement by completing a required form available from any PERSI office. The application process may include an interview by a PERSI representative. Applicants must release all medical records and information to PERSI. The hours worked to qualify as an employee as defined in Section 59-1302(14), Idaho Code, is inapplicable for purposes of determining disability. ( )

**401. (RESERVED)**

**402. DISABILITY ASSESSMENT REVIEW.**

Applicants will be assessed to determine whether they qualify for disability retirement under the applicable standard. The assessment may include without limitation, records review, medical and psychological examinations, vocational assessments, or any combination thereof as determined by PERSI. Failure to timely comply with any request made by PERSI during the assessment process shall result in automatic denial of disability retirement. At the conclusion of the assessment process, PERSI will notify applicants in writing whether or not they qualify for disability retirement. ( )

**403. RECONSIDERATION OF DISABILITY ASSESSMENT DECISION.**

Applicants who are denied disability retirement as a result of an adverse disability assessment decision, and wish to contest that decision, are required to participate in a reconsideration process. A request for reconsideration must be made within thirty (30) days of the issuance of the disability assessment decision. Any additional information the applicant wishes to be considered must be submitted to PERSI within thirty (30) days of the request for reconsideration. The additional information will be reviewed and a reconsideration decision will be issued in writing to the applicant. ( )

**404. ADMINISTRATIVE REVIEW OF THE RECONSIDERATION DECISION.**

A reconsideration decision shall be considered a final decision under Section 59-1314(2), Idaho Code, and may be appealed to the Board for review. In any related administrative hearing, the applicant shall be limited to presenting facts and evidence made available to PERSI in the reconsideration process. No new or additional evidence may be presented at the hearing. If the applicant has additional facts or evidence that were not made available to PERSI during the assessment or reconsideration process, the applicant must submit a new application for disability retirement, proceed again through the assessment process, and pay the costs associated with the second or subsequent assessment process. ( )

**405. DELEGATION.**

PERSI may, by contract or otherwise, delegate all or part of these processes to third parties. Where such delegation has been made, the term "PERSI" includes those third parties. When a member requests the resumption of a disability retirement allowance pursuant to Section 59-1354A, Idaho Code, the board may delegate its authority under Section 59-1354A, Idaho Code, to a third party. Where such delegation has been made, the term "Board" includes those third parties. ( )

**406. REASSESSMENT OF DISABILITY RETIREES.**

Disability retirees are subject to reassessment of their disability at any time to determine whether they continue to be disabled under the standard in Section 59-1302(12), Idaho Code. However, pursuant to Section 59-1302(12)(b), Idaho Code, after two (2) years of continuous disability retirement, a disability retiree is not required to undergo medical examinations more often than every twelve (12) months. Disability retirees who are notified that they have been selected for reassessment are under the same obligation as applicants to supply information. ( )

**407. ATTORNEY'S FEES AND COSTS.**

Attorney's fees and costs incurred by an applicant in his efforts to obtain disability retirement are the sole responsibility of the applicant and shall not be paid by PERSI except for fees related to judicial review for which applicant is found to be entitled under applicable law. ( )

**408. -- 424. (RESERVED)**

**425. BURDEN ON APPLICANT.**

Applicant must demonstrate that, on or before applicant's last day of employment, he was disabled under the disability standard. The last day of employment is the last day applicant earned compensation, including annual leave and sick leave. When a member requests the resumption of a disability retirement allowance pursuant to Section 59-1354A, Idaho Code, the member must demonstrate that he could not successfully return to work because of the same disability on which his disability retirement was based. ( )

**426. STATUTORY STANDARD.**

In applying the disability standard in Section 59-1302(12), Idaho Code, substantially all avenues of employment are reasonably closed if the applicant is permanently prevented, due to bodily injury or disease, from performing every substantial and material duty of any occupation for which the applicant is reasonably qualified by education, training or experience. ( )

**427. (RESERVED)**

**428. HIRE-ABILITY OF APPLICANT.**

The inability of the applicant to secure employment in and around the area where the applicant resides is not considered in determining whether or not the applicant is disabled. If the applicant is able to perform every substantial and material duty of any jobs existing in the economy for which the applicant is reasonably qualified by

education, training or experience, the applicant will not be considered disabled regardless of other factors that might affect the applicant's ability to actually secure employment, such as employer decisions and practices or the fact that there are no open positions or that the applicant is not selected for those positions. ( )

**429. -- 449. (RESERVED)**

**450. COMMENCEMENT AND DURATION OF DISABILITY ALLOWANCE.**

The commencement and duration of payment of disability benefits is governed by Section 59-1354, Idaho Code. For purposes of Section 59-1354(1)(b), Idaho Code, a member "becomes eligible" on the first of the month following the date selected by the member which follows the date on which the member is unable to and thereafter does not return to work on a regular basis for two (2) consecutive weeks but not later than the date on which the member ceases to make contributions. ( )

**451. DETERMINING WORKER'S COMPENSATION OFFSET.**

To determine the offset required by Section 59-1353, Idaho Code, the amount payable under the provisions of any worker's compensation law which represents income benefits as defined in Section 72-102, Idaho Code, shall be converted to a monthly equivalent and deducted from the monthly retirement allowance. ( )

**452. EFFECT OF UNUSED SICK LEAVE ON DISABILITY ALLOWANCE.**

Unused sick leave entitlement provided for by either Section 33-1228, 33-2109A, or 67-5339, Idaho Code, shall not be considered salary or compensation in the application of Section 59-1354(1), Idaho Code. ( )

**453. -- 474. (RESERVED)**

**475. APPLICATION OF THIS SUBCHAPTER TO FRF DISABILITY RETIREMENT.**

All the provisions of this subchapter, except Sections 375, 376, 406, 426, 427, 451 and 452, apply also to applications for disability retirement under the FRF plan to the extent they do not conflict with the provisions of Title 72, Chapter 14, Idaho Code. ( )

**476. -- 499. (RESERVED)**

**SUBCHAPTER E – PERSI SEPARATION FROM SERVICE RULES**  
**Rules 500 through 524**

**500. REPAYMENT OF SEPARATION BENEFITS -- EMPLOYEE STATUS.**

Repayment of a separation benefit must commence while the member is an employee, as defined in Section 59-1302(14), Idaho Code. For purposes of this rule the term employee includes employees accruing benefits under the Department of Employment Retirement Plan, the Firefighters' Retirement Fund, and the Policeman's Retirement Fund. ( )

**501. INTEREST ACCRUAL AND CALCULATION ON SEPARATION BENEFITS.**

Repayment of separation benefits as provided in Section 59-1360, Idaho Code, for employees whose most recent date of reemployment is after January 23, 1990, shall include payment of interest that shall accrue from the date each separation benefit was issued. Repayment of separation benefits as provided in Section 59-1360, Idaho Code, for employees whose most recent date of reemployment is before January 23, 1990, shall include payment of interest as determined by the law, statutes and rules in effect on the date of last reinstatement to employee status, except as provided in Section 502 of this subchapter. ( )

**502. REPAYMENT OF SEPARATION BENEFITS BY EMPLOYEES PREVIOUSLY PRECLUDED FROM REPAYMENT.**

Any employee who was precluded from repaying a separation benefit due to the fact they failed to meet the requirements of Section 59-1360, Idaho Code, may reinstate their previous credited service by repaying the full amount of their accumulated contributions provided such repayment includes payment of regular interest accruing from the date of each such separation benefit payment. ( )

**503. METHODS OF REPAYMENT OF SEPARATION BENEFITS.**

**01. Periodic and Lump-Sum Payments.** Where an active member elects to repay a separation benefit to reinstate previous service as provided in Section 59-1360, Idaho Code, the member may request that repayment be made in periodic payments or in a lump-sum payment. No service will be reinstated until the full repayment has been made. ( )

**02. Repayments Initiated on or After March 1, 2000.** For all repayments initiated on or after March 1, 2000, except as provided in Section 501 of this subchapter, a repayment amount will be determined which shall be the sum of the separation benefit(s) plus regular interest from the date of the benefit payment(s) until the date of the first payment. The repayment amount will be amortized over the repayment period at the reinstatement rate in effect on the date of the first periodic payment. ( )

**03. Repayments Initiated Before March 1, 2000.** For all periodic repayments initiated before March 1, 2000, a repayment amount will be determined which shall be the sum of the separation benefit(s) plus regular interest from the date of the benefit payment(s) until the date of the first payment. The repayment amount will be amortized over the repayment period at four point seventy-five percent (4.75%) interest. This is a grandfathered rate based on the rate in effect December 31, 1999, and will apply so long as payments exceed interest charges on a calendar year basis. If payments fail to exceed interest charges in any calendar year, the grandfathered rate will be forfeited and replaced by the reinstatement rate beginning in January immediately after the year in which the failure occurs. For purposes of these rules, a repayment is initiated by signing an agreement and making a payment. ( )

**04. Repayments Under Section 59-1331(2), Idaho Code.** For (waiting period) payments made pursuant to Section 59-1331(2), Idaho Code, the repayment amount is the sum of contributions that would have been made plus regular interest from December 31, 1975 until the date of the first payment. The repayment amount will be amortized over the payment period at the reinstatement rate in effect on the date of the first periodic payment. ( )

**504. IN-SERVICE TRANSFERS TO REINSTATE SERVICE.**

To the extent permitted by federal law, and in accordance with any regulation or other guidance issued by the Internal Revenue Service, an active member may transfer funds from a 401(k), a 403(b), or an eligible 457(b) plan, in which they are currently eligible to participate, to the Base Plan for purposes of buying back service previously forfeited due to receiving a separation benefit, purchasing service related to eligible waiting periods, or purchasing service for periods of delinquent contributions. ( )

**505. (RESERVED)**

**506. ROLLOVERS ACCEPTED INTO THE BASE PLAN.**

The PERSI Base Plan will accept participant rollover contributions and direct rollovers of distributions made after December 31, 2001, for purposes of reinstating or purchasing service as permitted under the plan, from the following plans. No after-tax contributions may be rolled over into the Base Plan. ( )

**01. Qualified Plans.** A qualified plan described in section 401(a) or 403(a) of the Internal Revenue Code (Code). ( )

**02. Annuity Contracts.** An annuity contract described in section 403(b) of the IRS Code. ( )

**03. 457 Plans.** An eligible plan under section 457(b) of the IRS Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. ( )

**04. IRAs.** Any portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the IRS Code that is eligible to be rolled over and would otherwise be includable in gross income. ( )

**507. DIRECT ROLLOVERS OUT OF THE BASE PLAN.**

A direct rollover is a payment by the plan to an eligible retirement plan specified by the distributee. ( )

**01. Rollover Election.** Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this part, a distributee may elect, at the time and in the manner prescribed by the

plan administrator, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars (\$500) paid directly to an eligible retirement plan specified by the distributee in a direct rollover. ( )

**02. Eligible Rollover Distribution.** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: ( )

**a.** Any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; ( )

**b.** Any distribution to the extent such distribution is required under section 401(a)(9) of the IRS Code); ( )

**c.** Any amount that is distributed on account of hardship; ( )

**d.** The portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and ( )

**e.** Any other distribution(s) that is reasonably expected to total less than two hundred dollars (\$200) during a year. ( )

**03. After-Tax Contributions.** For purposes of the direct rollover provisions in Subsection 507.02, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the IRS Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the IRS Code that agrees to separately account for the amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable. ( )

**04. Eligible Retirement Plan.** An eligible retirement plan is an individual retirement account described in section 408(a) of the IRS Code, an individual retirement annuity described in section 408(b) of the IRS Code, a Roth IRA described in Section 408A of the IRS Code, an annuity plan described in section 403(a) of the IRS Code, an annuity contract described in section 403(b) of the IRS Code, an eligible plan under section 457(b) of the IRS Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, or a qualified plan described in section 401(a) of the IRS Code, that accepts the distributee's eligible rollover distribution. ( )

**05. Alternate Payees.** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse, who is the alternate payee under a domestic retirement order, approved as provided in Sections 59-1319 and 1320, Idaho Code, are distributees with regard to the interest of the spouse or former spouse. ( )

**508. REQUIRED MINIMUM DISTRIBUTIONS.**

**01. Default Application of Federal Requirements.** With respect to distributions under the Base Plan, and except as provided in Subsection 508.06, the Plan will apply the minimum distribution requirements of section 401(a)(9) of the IRS Code in accordance with a good faith interpretation of section 401(a)(9), notwithstanding any provision of the Base Plan to the contrary. ( )

**02. Required Beginning Date.** Except as otherwise provided in Subsections 508.04 through 508.08, distributions under the Base Plan shall begin not later than April 1 following the later of (a) the commencement year or (b) the year in which the member retires. For purposes of Section 508, the "commencement year" is the calendar year in which the member reaches the applicable age, as defined in Internal Revenue Code Section 401(a) as now in effect and thereafter amended. ( )

**03. PERSI Selects Retirement Option.** Any member required to take minimum distributions, as provided in this Section 508, and fails to complete and submit an approved retirement application and select either a regular or optional retirement allowance by April 1 following the later of (a) the commencement year or (b) the year in which the member retires shall be deemed to have made the following selection: ( )

**a.** If single, a regular retirement allowance and no other selection shall be required or permitted. ( )

**b.** If married, Option 1 and no other selection shall be required or permitted, unless proof is provided that spouse has no community property interest in the benefit. ( )

**04. Lifetime Distributions.** Distribution shall be made over the life of the participant or the lives of the participant and his beneficiary; or over a period certain not extending beyond the life expectancy of the member or the joint life and last survivor expectancy of the member and his beneficiary. ( )

**05. Timing of Required Distributions.** A required distribution shall be deemed to have been made during the commencement year if actually made by the following April 1, but such delayed distribution shall not change the amount of such distribution, and the distribution otherwise required during the subsequent calendar year shall be calculated as if the first distribution had been made on the last day of the commencement year. ( )

**06. Adjustment of Required Distributions.** Benefits paid prior to the commencement year shall reduce the aggregate amount subject to (but shall not otherwise negate) the minimum distribution requirements described herein. ( )

**07. Benefits Deferred Beyond Service Retirement.** The first payment of benefits of an inactive member following deferment beyond service retirement will be in a lump sum that includes payment for those months of service dating from the date of service retirement when a monthly retirement payment would have started through the current monthly payment. Subsequent payments will be for the monthly retirement allowance only. ( )

**08. Death Benefits.** All death benefits payable under the Base Plan will be distributed as soon as administratively practicable after request, but must in any event be distributed within fifteen (15) months of the member's death, unless the identity of the beneficiary is not ascertainable. ( )

**509. TRANSFERS TO NON-SPOUSE BENEFICIARIES.**

Notwithstanding any other provision of the Base Plan to the contrary that would otherwise limit the options of the beneficiary of a deceased member who is not the member's spouse, the administrator shall, upon the request of such a beneficiary, transfer a lump sum distribution to the trustee of an individual account established under Section 408 of the IRS Code in accordance with the provisions of Section 402(e)(11) of the IRS Code. ( )

**510. -- 524. (RESERVED)**

**SUBCHAPTER F – PERSI RETIREMENT RULES**  
**Rules 525 through 649**

**525. AVERAGE MONTHLY SALARY COMPUTATION -- EQUITABLE TREATMENT -- DIFFERENT WORK PERIODS.**

Equitable treatment for all members can be achieved only if members whose career patterns covering the same time frame and who received identical annual salaries during each of the twelve-month periods of that time frame accrue the same monthly service retirement allowance. To achieve this equity for the member whose annual salary has been paid on other than a twelve-month salary schedule during any contractual or like twelve-month period, the average monthly salary used for each one of those twelve-month periods will be determined from the total base period salary by using a divisor representing the months of membership service which would have been accumulated at that rate over a full base period. ( )

**526. UNUSUAL COMPENSATION PATTERN EFFECT ON RETIREMENT CALCULATION.**

Upon application for a retirement benefit, any portion of compensation which represents payments in excess of and inconsistent with the usual compensation pattern, for example, but not limited to lump sum contract payouts, excess vacation paid but not taken, paid sick leave, or a clothing allowance. ( )

**527. MAXIMUM RETIREMENT ALLOWANCE (RULE 111).**

If the amount of a member's initial retirement allowance on the date of retirement would exceed the average salary during the member's highest thirty-six (36) consecutive calendar months of salary, then the member's initial retirement allowance will be limited to the greater of: the average salary during the highest thirty-six (36) consecutive calendar months of salary; or the initial retirement allowance based on credited service through April 1990. Optional retirement allowances will be computed after any limitation above has been applied. ( )

**528. MEMBER NOTIFIED OF AVAILABLE RETIREMENT OPTIONS PRIOR TO BOARD APPROVAL.**

The Retirement Board shall not act on any application for retirement unless the member has previously been provided with notification of the regular retirement option and options one (1) and two (2) election available to the member including the value of the monthly allowance of each. The value of options three (3) and four (4) will be provided if the member so requests the value of the option and provides information required to calculate that option (such as but not limited to social security benefit estimates) which is not available to PERSI but that can be provided by the member. ( )

**529. -- 530. (RESERVED)**

**531. RETIREMENT APPLICATIONS.**

Except as provided in this rule, a member is required to complete and submit an approved retirement application and select either a regular or optional retirement allowance. The member's signature must be notarized. The application for retirement indicating the election made by the retiring member shall also be signed by the spouse certifying the spouse understands and consents to the election made by the member. The spouse's signature must be notarized. Until an application for retirement is filed, no benefit payment is required. Applications with retroactive retirement dates are entitled to lump sum payments and do not include interest. ( )

**532. (RESERVED)**

**533. ELECTED OR APPOINTED OFFICIAL WORKING FOR MULTIPLE STATE AGENCIES, POLITICAL SUBDIVISIONS OR GOVERNMENT ENTITIES.**

An active member separated from employment by one (1) state agency, political subdivision or government entity for whom he or she did normally work twenty (20) hours or more per week and who is age sixty-two (62) or older and eligible to retire but remains an elected or appointed official with a different state agency, political subdivision or government entity, may retire and continue in that elected or appointed position provided that position is one in which he or she does not normally work twenty (20) hours or more per week. The member shall receive retirement allowances under the conditions provided by Section 538. ( )

**534. ELECTED OR APPOINTED OFFICIAL RETIRING IN PLACE.**

An active member serving as an elected or appointed official who does not normally work twenty (20) hours or more per week who is age sixty-two (62) or older and eligible to retire and who is not an eligible employee with another state agency, political subdivision or government entity pursuant to Section 101 may then retire and continue in that position. The member shall receive retirement allowances under the conditions provided by Section 538. ( )

**535. (RESERVED)**

**536. RETIRED MEMBER BECOMING AN ACTIVE MEMBER.**

**01. Return to Service.** A PERSI retired member employed in a position which involves service of normally twenty (20) hours or more per week for a period of five (5) or more consecutive months or longer will return to the status of an active member. Retirement benefits will suspend on reemployment and employee and employer contributions will resume to provide additional retirement credits. If a retired member is reemployed in a position which involves service of twenty (20) hours or more per week for a period of less than five (5) consecutive months, their monthly retirement benefits will continue to be paid. If the member's reemployment should equal or

exceed the five (5) month period for any reason, the member will be required to repay the retirement benefits paid during the five (5) month period which they were reemployed and they will return to the status of an active member. Employee and employer contributions will be due for the five (5) consecutive month period. ( )

**537. REEMPLOYMENT LESS THAN FIVE CONSECUTIVE MONTHS.**

If the period of reemployment develops to be less than five (5) consecutive months, contributions will be refunded and retirement allowances will resume as of the date they were discontinued. ( )

**538. REEMPLOYMENT -- WORKING LESS THAN TWENTY HOURS OR LESS THAN FIVE CONSECUTIVE MONTHS.**

Monthly retirement allowances will continue to be paid to the PERSI retired member who returns to employment in a position where the member does not normally work twenty (20) hours or more per week or the reemployment is for a period which does not total five (5) consecutive months and the state agency, political subdivision or government entity so certifies. In such cases, employee and employer contributions are neither required nor acceptable and no new retirement credits can be earned. ( )

**539. RETIRED MEMBER BECOMING AN ELECTED OR APPOINTED OFFICIAL.**

A PERSI retired member who is subsequently elected or appointed by an employer to public office and who is not normally required to perform services of twenty (20) hours or more per week in that position may continue to receive retirement allowances in the status of a reemployed retired member under conditions outlined by Section 537. ( )

**540. SEPARATION FROM EMPLOYMENT AFTER REEMPLOYMENT.**

Upon subsequent separation from employment after reemployment, the member's original monthly retirement allowance will resume with appropriate cost-of-living adjustments plus the addition of a separate allowance computed with respect to salary and service credited during the reemployment period. ( )

**541. EARLY RETIREMENT MEMBER -- REEMPLOYMENT.**

A PERSI member who had been receiving an early retirement allowance and who returns to employment as an active member may refund all retirement benefits previously paid plus regular interest accrued from the date each monthly allowance had been paid, thereby negating the previous retirement status. The month of last contribution prior to the negated retirement and the month of initial contribution upon return to active membership shall be considered consecutive months of contributions in the determination of an appropriate salary base period upon subsequent retirement. ( )

**542. BENEFIT ENHANCEMENT -- QUALIFICATION.**

To qualify for a benefit enhancement, a person must remain an active member through the day following the effective date of the enhancement. ( )

**543. – 544. (RESERVED)**

**545. PRE-ERISA VESTING RULES.**

**01. Termination or Partial Termination.** Upon the effective date of any termination or partial termination or upon a complete discontinuation of contributions: ( )

a. No persons who were not theretofore members shall be eligible to become members; ( )

b. No further benefits shall accrue; and ( )

c. The accrued benefits of all members not theretofore vested and not theretofore forfeited shall immediately become fully vested. ( )

**546. FORFEITURES.**

Forfeitures will not be applied to increase the benefits any employee would otherwise receive under the Base Plan. ( )



**547. ACTUARIAL ASSUMPTIONS TO BE SPECIFIED.**

Whenever the amount of any Base Plan benefit is to be determined on the basis of actuarial assumptions, such assumptions will be specified in rule in a manner that precludes employer discretion. ( )

**548. (RESERVED)**

**549. DEFINED BENEFIT DOLLAR LIMITATION.**

The “maximum permissible benefit” is the defined benefit dollar limitation (adjusted where required, as provided in Subsection 549.01 and, if applicable, in Subsections 549.02 through 549.04 of these rules). ( )

**01. Less Than Ten Years of Service.** If the participant has fewer than ten (10) years of participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction: ( )

**a.** The numerator of which is the number of years (or part thereof) of participation in the plan; and ( )

**b.** The denominator of which is ten (10). ( )

**02. Benefit Begins at Age Sixty-Five.** If the benefit of a participant begins after the participant attains age sixty-five (65), the defined benefit dollar limitation applicable to the participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the participant at age sixty-five (65) (adjusted under Subsection 549.01, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age sixty-five (65) is determined as set forth in IRS regulation under section 415(b)(2) of the IRS Code. ( )

**03. Transition.** Benefit increases resulting from the increase in the limitations of section 415(b) of the IRS Code shall be provided to all current and former participants (with benefits limited by section 415(b)) who have an accrued benefit under the plan immediately prior to the effective date of this Section (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under section 415(b)). ( )

**550. COMPUTATION OF BENEFITS FOR EMPLOYEES OF WITHDRAWN EMPLOYER.**

**01. PERSI’s Responsibility.** PERSI’s responsibility to a withdrawing political subdivision or governmental entity or its employees is limited to the vested accrued actuarial benefits of the system’s members upon the date of complete withdrawal. ( )

**02. Withdrawal Liability Calculations.** On the occasion that a withdrawing political subdivision or governmental entity fails to pay, in full with accrued interest from date of withdrawal, the withdrawal liability calculated in accordance with Section 59-1326(7), Idaho Code, PERSI shall exhaust all efforts to collect the outstanding withdrawal liability as follows: ( )

**a.** Collect the full withdrawal liability from withdrawing political subdivision or governmental entity at date of withdrawal. If full withdrawal liability is not paid, then; ( )

**b.** Contract with withdrawing political subdivision or governmental entity, in accordance with section 59-1326(9) and file a lien on the assets of the withdrawing political subdivision or governmental entity. If scheduled payments are not timely made or assets are insufficient or unavailable, then; ( )

**c.** PERSI will pursue collection efforts against the authorizing state agency, political subdivision or governmental entity that caused the withdrawing political subdivision or governmental entity to be formed. If these collection efforts are ineffective, then; ( )

**d.** PERSI will cause an actuarial study to be performed for the withdrawing political subdivision or governmental entity and its employees to determine the actuarial value of the accrued benefits at time of withdrawal and will reduce an employee’s benefit to match funded status. ( )

**551. COMPUTING VALUE OF SICK LEAVE.**

For those members who accrue sick leave based upon each month of service, the rate of pay for purposes of computing the monetary value of a retired member's unused sick leave as outlined in Sections 59-1365, 67-5333, and 33-2109A, Idaho Code, shall be the base hourly rate of compensation reported by the employer during the month of separation from employment prior to retirement, not including any temporary increases, bonuses, or payoffs. For those members employed on a contract basis under Section 33-1228, Idaho Code, the rate of pay for purposes of computing the monetary value of a retiring member's unused sick leave based upon each month of service shall be determined at a daily rate by dividing the annual contract amount by the required days of work. No temporary increases, bonuses or payoffs shall be included in the contract amount. Where the daily rate is affected by changes in the work week such as adoption of a four (4) day work week or similar events, adjustments shall be made to convert the daily rate to maintain equity within the pool. No other forms of leave may be converted to sick leave or otherwise considered in computing the value of unused sick leave. ( )

**552. SICK LEAVE FUNDING RATES.**

The sick leave pools shall be funded by employer contributions as follows: ( )

**01. State Agencies and Junior College Districts.** All employer groups participating in the pools established by Sections 33-2109A and 67-5333, Idaho Code, shall contribute point sixty-five percent (.65%) of employee covered payroll. ( )

**02. Schools.** All employer groups participating in the pool established by Section 33-1228, Idaho Code, shall contribute the percentage of employee covered payroll based on the number of days of paid sick leave permitted during the contract year for certified teachers as set forth in the following table:

<b>Beginning:</b>	<b>July 1, 2006</b>
9-10 days	1.16%
11-14 days	1.26%
More than 14 days	Individual rate to be set by the Retirement Board based on current cost and actuarial data and reviewed annually

Where a four (4) day work week or similar policies have been adopted, adjustments shall be made to convert the number of days of paid sick leave to the contribution level necessary to maintain equity within the pool. ( )

**03. Subdivisions.** All political subdivision or government entity groups participating in the pool established by Section 59-1365, Idaho Code, shall make contributions as provided in Section 578. ( )

**553. LIMITATION ON INSURANCE PROGRAMS.**

The health, accident, and life insurance programs maintained by state agencies, political subdivisions or government entities as outlined in Sections 59-1365, 33-1228, and 33-2109A, Idaho Code, are limited to plans where the policy holder is the state agency, political subdivision or government entity or a consortium of state agencies, political subdivisions or government entities. Insurance programs outlined in Section 67-5333, Idaho Code, shall be maintained by the state agency, political subdivision or government entity. The board may require plans to sign an agreement before participating. ( )

**554. PAYMENT OF INSURANCE PREMIUMS.**

Upon certification by the state agency, political subdivision or government entity and the insurance carrier that a plan qualifies under Section 553 of this subchapter, the board may pay the monthly premiums for a retired member using unused sick leave account funds as prescribed by Idaho Code. ( )

**01. Adjustments.** Coverage and premium changes or adjustments must be submitted to PERSI no less than thirty (30) days prior to their effective date unless PERSI has previously agreed in writing to a shorter period. ( )

**02. Duration of Payments.** Premium payments will continue to be made from the unused sick leave account until credits are insufficient to make a premium payment, or until the retiree's death, whichever first occurs. ( )

**555. SEPARATION BY REASON OF RETIREMENT.**

Unused sick leave benefits are credited only to employees who are eligible to retire at the time they separate from the state agency, political subdivision or government entity. When an employee separates from service and does not immediately retire, unused sick leave benefits are credited to the member but not available for use unless the member actually retires without intervening employment resulting in PERSI participation. The existence of available unused sick leave credits does not necessarily mean they are usable. A member must also be eligible to participate in the retiree plan offered by the state agency, political subdivision or government entity from which the member retired. Except for school district employees transferring from one (1) district to another, unused sick leave credits may not be transferred from one (1) state agency, political subdivision or government entity to another. If a member negates their retirement under Section 541 and returns to work for a new PERSI state agency, political subdivision or government entity, unused sick leave credits are also negated and eligibility for unused sick leave credits must be reestablished with the new state agency, political subdivision or government entity. ( )

**556. PROHIBITION AGAINST CASH OPTION.**

All state agencies, political subdivisions or government entities participating in any PERSI administered sick leave pool are prohibited from offering or permitting any employee to convert unused sick leave to cash, other forms of leave, or any other benefit, even if the employee is not eligible to receive credits. Failure to comply with this prohibition will result in the state agencies, political subdivisions or government entities inability to participate in PERSI administered unused sick leave pools. ( )

**557. -- 575. (RESERVED)**

**576. PARTICIPATION IN SUBDIVISION UNUSED SICK LEAVE POOL.**

Any PERSI state agency, political subdivision or government entity meeting the following requirements may elect to participate in the unused sick leave pool authorized by Section 59-1365, Idaho Code: ( )

**01. No Current Plan.** The state agency, political subdivision or government entity does not participate in any other statutorily created plan that offers benefits for unused sick leave, including but not limited to, those plans created under Sections 33-1228, 33-2109, and 67-5333, Idaho Code. ( )

**02. All Inclusive Participation.** All of a participating state agencies, political subdivisions or government entities employees who are PERSI members and who accrue sick leave must be participants in the plan, except that state agencies, political subdivisions or government entities may exclude certain distinctive classes of employees for legitimate business reasons. For example, a city could exclude employees covered by a collective bargaining agreement, or a county may choose to exclude elected officials. ( )

**03. No Other Options for Unused Sick Leave.** No employee may be given any option to receive benefits from unused sick leave other than through this plan. For example, no employee, other than those properly excluded under Subsection 576.02, may be given the option of exchanging sick leave for cash or other forms of payment or leave. ( )

**04. Fixed Annual Accrual of Sick Leave.** State agency, political subdivision or government entity must comply with a policy that offers a fixed amount of sick leave annually that is applicable to all employees or employee groups. A "personal leave" option that fails to distinguish between sick, vacation, or other forms of leave is not permitted. ( )

**05. Medicare Eligible Retirees.** State agencies, political subdivisions or government entities plan must provide coverage to all retired employees eligible for unused sick leave credits, including retirees that become Medicare eligible. ( )

**06. Annual Application.** State agency, political subdivision or government entity must annually update and submit an application for participation in the Subdivision Unused Sick Leave Pool on the form prescribed by PERSI. ( )

**577. OPERATION OF SUBDIVISION POOL.**

Upon separation from employment by retirement, in accordance with Chapter 13, Title 59, Idaho Code, every

employee of a participating state agency, political subdivision or government entity shall, upon payment by the state agency, political subdivision or government entity under Section 578, receive a credit for unused sick leave in the same manner and under the same terms as provided in Section 67-5333(1), Idaho Code. ( )

**578. FUNDING OF SUBDIVISION POOL.**

Participating state agencies, political subdivisions or government entities shall, within ten (10) days of retiree's last day in pay status, pay to PERSI a sum equal to the retiree's unused sick leave credit, together with any administrative fees the board may require. Investment earnings on funds paid into this pool will remain in the pool, together with any reversions due to the death of a retiree, and may be used by the board to pay some or all administrative costs. ( )

**579. TERMINATION, WITHDRAWAL, OR REMOVAL FROM SUBDIVISION POOL.**

Any state agency, political subdivision or government entity failing to meet the requirements of participation provided by Section 576 shall be terminated from participation in the Subdivision Pool. Any state agency, political subdivision or government entity failing to meet the funding requirements provided by Section 578 shall be terminated from participation in the Subdivision Pool, provided however, a state agency, political subdivision or government entity may submit a detailed explanation for its failure to meet the funding requirements as required in Section 578 and subject to PERSI approval. State agencies, political subdivisions or government entities that have withdrawn or have been terminated shall not be allowed to rejoin. ( )

**580. -- 600. (RESERVED)**

**601. FIREFIGHTER RETIREMENT ALLOWANCE.**

Notwithstanding Sections 525 and 526 of this subchapter, the retirement allowances of firefighter members, as defined by Section 59-1391(b), Idaho Code, shall be determined pursuant to the provisions of Chapter 14, Title 72, Idaho Code. ( )

**602. REEMPLOYMENT OF RETIRED FRF FIREFIGHTER.**

A paid firefighter retired under the provisions of Chapter 14, Title 72, (FRF), Idaho Code, who returns to employment as a paid firefighter with the same fire department from which retired shall be considered reemployed in the manner provided for PERSI members by Section 59-1356(1), Idaho Code. Retirement benefits shall then terminate and contributions shall again commence under conditions specified prior to retirement. The terminated benefit shall resume upon subsequent retirement with adjustments made in the manner prescribed by Section 59-1356(1), Idaho Code, as they would apply to the member's retirement benefit entitlement computed under the provisions of Chapter 14, Title 72, Idaho Code. ( )

**603. -- 624. (RESERVED)**

**625. PURCHASE OF SERVICE GENERALLY.**

No member may purchase more than forty-eight (48) months of membership service, whether purchased under Section 59-1362, or 59-1363, Idaho Code, or a combination thereof. In all cases, the cost of purchasing service shall be the full actuarial costs, as determined by the board, of providing additional benefits resulting from the purchased service. Service may only be purchased at the time of retirement. In no event can a member revoke a purchase of service after payment has been made. ( )

**626. TIME OF RETIREMENT.**

Within ninety (90) days before a member's effective date of retirement, the member may request the cost of service to be purchased. Costs provided for purchased service are valid only for the effective date requested. Purchased service will be calculated into the member's benefit only to the extent that it is paid by the effective date. In no event shall service be credited for which payment has not been made. Service may be purchased with after-tax dollars or with eligible rollover distributions. The member's service class at the time of purchase determines the class of service that may be purchased. ( )

**627. RETIREMENT DELAYED OR NEGATED AFTER PURCHASE.**

If a member purchases service and thereafter revokes their application for retirement or negates their retirement as provided in Rule 541, the contributions made to purchase the service shall remain in the system until a distributable event occurs. If the distributable event results in payment of a monthly retirement benefit or an optional death benefit,

the purchase price of the service previously purchased will be recalculated based on factors existing on the date the new benefit becomes effective. If, based on the new factors, the purchase price is higher than previously determined, the number of months purchased will be reduced to reflect the higher cost unless the member elects to pay the difference. If the purchase price is lower, the difference will be paid to the member as a lump-sum payment within sixty (60) days after the date of retirement unless the member elects to convert the difference into additional months and can do so without exceeding the forty-eight (48) month limit, the IRS limit referenced in Subsection 705.05, or any other statutory limitation, including the limitation in Section 59-1342(6), Idaho Code. ( )

**628. TREATMENT OF PURCHASE OF SERVICE CONTRIBUTIONS.**

Contributions made for purposes of purchasing service, and interest earnings thereon, are not considered for purposes of determining death benefits under Section 59-1361(3), Idaho Code, and distributions under Section 59-1309(5), Idaho Code. When determining death benefits under Section 59-1361(3), Idaho Code, first calculate two hundred percent (200%) of accumulated contributions, excluding contributions and interest related to purchased service, then add member contributions and interest related to purchased service. Member contributions and interest will also be included in any separation benefit. In no event shall employer contributions for purchased service be included in any separation benefit or lump-sum death benefit. ( )

**629. EMPLOYER PARTICIPATION.**

State agency, political subdivision or government entity participation must be in the form of lump-sum payments at the time of retirement. In the event a state agency, political subdivision or government entity makes a contribution on behalf of a member and a distribution other than periodic payments occurs prior to the actual retirement effective date, the state agency, political subdivision or government entity may claim a credit against future contributions equal to the amount of the contribution. State agency, political subdivision or government entity contributions must be accompanied by or preceded by a written statement endorsed by the governing body or officer of the state agency, political subdivision or government entity verifying that the participation is properly authorized and that the state agency, political subdivision or government entity indemnifies PERSI against any loss resulting from failure of the state agency, political subdivision or government entity, or any person acting on its behalf, to act within its authority. ( )

**630. ADDITIONAL LIMITS ON PURCHASED SERVICE.**

The Internal Revenue Code imposes limits on the amount of retirement benefits that can be paid to a retiree under a defined benefit plan. Benefits acquired through purchase of service are subject to these limits for some purposes. In no event can a member purchase service that would result in the member exceeding the limits imposed in Section 415(n)(1)(A) of the IRS Code. In addition, a member's initial retirement benefit, including purchased service, continues to be subject to the limitation in Section 59-1342(6), Idaho Code. ( )

**631. -- 649. (RESERVED)**

**SUBCHAPTER G – PERSI GAIN SHARING RULES**  
**Rules 650 through 755**

**650. EXISTENCE OF EXTRAORDINARY GAINS.**

The existence of extraordinary gains triggers the possibility that allocations will be made as provided in Section 59-1309, Idaho Code. However, the existence of extraordinary gains does not obligate the retirement board to make an allocation. The Board may choose not to allocate extraordinary gains, or it may choose to allocate all or part of the extraordinary gains. Extraordinary gains exist when, at the close of the fiscal year, the value of plan assets exceeds plan liabilities as determined by the actuary, plus a sum necessary to absorb a one (1) standard deviation market event without increasing contribution rates, as determined by the Board. The amount of extraordinary gains available for possible distribution equals the amount by which the assets exceed the sum of the liabilities and the one standard deviation. ( )

**651. VALUE OF PLAN ASSETS.**

This is the total assets held in the PERSI base plan, as reported in the actuarial valuation at the end of the fiscal year. ( )

**652. PLAN LIABILITIES.**

This is the actuarial liability of the PERSI base plan, including but not limited to, the cost of the proposed COLA to

be effective in March following the close of the fiscal year, the cost of any benefit enhancements to the base plan approved by the legislature, and the cost of actuarial gains and losses, as reported in the actuarial valuation for the fiscal year. ( )

**653. ONE STANDARD DEVIATION.**

This is the amount of reserve necessary to absorb normal market fluctuations and is a function of the risk associated with investment holdings and strategies, and will be determined by the Board based on those factors. ( )

**654. BOARD DISCRETION.**

The Board retains full discretion in determining whether to allocate extraordinary gains when they exist. Because of the broad range of factors that might be relevant to such a determination, and to assure that the Board will not be limited in exercising its discretion, these rules do not attempt to identify any of the factors that might be considered in the Board's fiduciary capacity. When extraordinary gains exist, the Board will decide whether they will be allocated no later than the first day of December following the end of the fiscal year. Such decision shall be in writing and shall constitute an amendment to the plan document for purposes of the Internal Revenue Code of 1986, as amended, or any successor thereto. In the absence of any such decision, the allocation for that year shall be zero (0.00). ( )

**655. -- 674. (RESERVED)**

**675. ALLOCATION BETWEEN GROUPS.**

If extraordinary gains exist, and the Board determines that all or part of such gains should be allocated, an allocation will be made among the three (3) groups identified by Section 59-1309, Idaho Code. The three (3) groups and allocations are: ( )

- a. Active PERSI members - 38 percent (38%); ( )
- b. PERSI retirees - twelve percent (12%); and ( )
- c. PERSI employers - fifty percent (50%) ( )

**676. -- 699. (RESERVED)**

**700. ACTIVE MEMBER ALLOCATION.**

After the amount to be allocated to the active member group has been determined, it shall be allocated among the members of the group. The active member allocation determines each member's initial share before considering any applicable individual limits. Each member's initial share shall be determined by dividing that member's accumulated contributions in the base plan at the close of the fiscal year by the total accumulated contributions in the base plan of all members of the group at the close of the fiscal year, multiplied by the amount allocated to the active member group. In no event shall a member's initial share, before considering individual limits, exceed the maximum annual contribution limit under Section 415(c) of the IRS Code applicable for the limitation year. ( )

**701. MINIMUM ALLOCATION AMOUNT.**

Due to the costs associated with maintaining individual choice accounts, no allocation shall be made to any member whose allocation share does not exceed thirty-eight dollars (\$38) after considering individual limits, unless the member had a PERSI choice account on the last day of the fiscal year and has not withdrawn funds before the allocation date. ( )

**702. ACTIVE MEMBER.**

A member participates in the active member allocation only if such member is active and has at least twelve (12) months of accrued membership service on the last day of the fiscal year. For purposes of allocating extraordinary gains, active members also include: ( )

- a. Seasonal employees who have a pattern of employment that includes at least six (6) months of membership service in each of the preceding three (3) consecutive years; and ( )
- b. Employees who are on leave of absence on the last day of the fiscal year and either: ( )

i. Return to active service for at least thirty (30) days before the December 31st immediately following the end of the fiscal year; or ( )

ii. Are entitled to benefits under the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA). ( )

**703. ACCUMULATED CONTRIBUTIONS.**

For purposes of allocating extraordinary gains within the active member group, accumulated contributions do not include contributions or interest related to the purchase of permissive service credits or contributions or interest in the Choice Plan or accounts. ( )

**704. TRANSFER TO DEFINED CONTRIBUTION CHOICE ACCOUNTS.**

After each member's initial share has been determined, it will be transferred to an individual account as permitted under Section 414(k) of the IRS Code, subject to individual limits imposed by the Internal Revenue Code. The Board may transfer allocations anytime after necessary compensation data is received and processed by the Board. ( )

**705. LIMITATIONS ON ALLOCATION.**

In no event shall a member's final allocation exceed the limits imposed by Section 415(c) of the IRS Code, based on compensation earned during the calendar year that included the end of the fiscal year. ( )

**706. INTERVENING RETIREMENT.**

When a member is included in the active member pool but retires prior to the transfer of allocations, the member's allocation will be made as a one-time payment directly to the member rather than a transfer to an individual account. Such allocations will not be limited by Section 705 but will be subject to the limitations of Section 729. ( )

**707. INTERVENING WITHDRAWAL OF CONTRIBUTIONS.**

When a member is included in the active member pool but terminates prior to the transfer of allocations, the allocation will be made to the member's individual account if the member has not withdrawn contributions from the Base account prior to the date of transfer of the allocation. No member who has withdrawn contributions from the Base account prior to the transfer of the allocation is eligible to receive an allocation. ( )

**708. INTERVENING DEATH OF ACTIVE MEMBER.**

When a member would have been included in the active member allocation but dies prior to the transfer of allocations, no allocation shall be made to the member, beneficiary or estate except that an optional death benefit recipient will receive the active member's allocation as limited by Section 729. ( )

**709. TREATMENT OF GAIN SHARING ALLOCATIONS IN THE CHOICE ACCOUNT.**

Gain sharing allocations transferred to individual Choice Accounts have no effect on an individual's Base Plan benefit. Gain sharing allocations, and the earnings thereon, will be accounted for separately from other Choice Plan contributions but will be treated as one plan for purposes of reporting, investing, distributions, and fees to the extent they are applicable. Related provisions of the Plan adopted by the Board to facilitate voluntary and employer contributions are applicable to gain sharing allocations to the extent not inconsistent with these rules and Sections 59-1308 and 59-1309, Idaho Code. However, no loans or hardship withdrawals may be taken against gain sharing account balances. ( )

**710. -- 724. (RESERVED)**

**725. RETIREE ALLOCATION.**

After the amount to be allocated to the retiree group has been determined, it shall be allocated among the members of the group. The retiree allocation determines each member's share before considering any applicable individual limits. Each member's initial share shall be determined by dividing that retiree's monthly benefit at the close of the fiscal year by the total monthly benefits payable to all members of the group at the close of the fiscal year, multiplied by the amount allocated to the retiree group. ( )

**726. RETIREE.**

For purposes of allocating extraordinary gains, a member must be a retiree as defined in this subchapter. ( )

**727. MONTHLY BENEFIT.**

This is the monthly benefit for the last month of the fiscal year but does not include benefits related to other months that may also have been paid during the last month of the fiscal year. In no event shall a retiree's share be determined based on more than the retiree's annual benefit, not including any gain sharing allocations, divided by twelve (12). ( )

**728. PAYMENT OF ALLOCATION.**

After each retiree's initial share has been determined, it will be paid no later than February 1 following the close of the fiscal year directly to the retiree either together with the retiree's monthly benefit or separately, subject to individual limits imposed by the Internal Revenue Code. ( )

**729. LIMITATIONS ON ALLOCATION.**

Prior to allocation, a retiree's initial share shall be further limited as necessary to comply with the limits of Section 415(b) of the IRS Code. ( )

**730. INTERVENING DEATH OF A RETIREE.**

When a retiree is included in the retiree allocation but dies prior to the transfer of allocations, no allocation shall be made unless benefit payments are continuing to be made to a contingent annuitant. ( )

**731. INTERVENING REEMPLOYMENT.**

When a retiree is included in the retiree allocation but becomes reemployed as defined in Section 59-1356, Idaho Code, prior to the date of distribution, the retiree allocation shall be made in the form of an active member allocation, and shall be subject to active member limitations. ( )

**732. NEGATED RETIREMENT.**

Gain sharing allocations received by a retiree are not included in the amounts required to be repaid when negating retirement under Section 541. ( )

**733. -- 749. (RESERVED)**

**750. EMPLOYER ALLOCATION.**

After the amount to be allocated to the employer group has been determined, it shall be allocated among the members of the group. Each employer's share shall be determined by dividing that employer's contribution liability for the fiscal year by the total contribution liability for all members of the group for the fiscal year, multiplied by the amount allocated to the employer group. ( )

**751. EMPLOYER.**

Participation in the employer pool is limited to those entities defined as an employer in this subchapter. ( )

**752. CONTRIBUTION LIABILITY.**

This includes only employer contributions that are accrued during the fiscal year and required to be paid by Section 59-1322, Idaho Code, unreduced by gain sharing credits. It does not include contributions made to fund sick leave pools, to pay costs of other plans such as the Firefighters Retirement Fund, or to contributions required by Sections 33-107A and 33-107B, Idaho Code. Only adjustments related to fiscal year contributions will be considered. ( )

**753. CREDIT OF ALLOCATION.**

After each employer's share has been determined, it will be credited against the employer's future contribution invoices. The credits shall be applied only to offset future employee and employer contributions required to be remitted by Section 59-1325(1), Idaho Code, until the credit is exhausted. An employer may elect to use the credits solely against employer contributions to the extent that no carry-over credits (as described in Section 754) result. ( )

**754. CARRY-OVER OF CREDIT.**

Should the credit exceed the employer's contribution invoices for the succeeding twelve (12) month period, any remaining credits will carry over to the following year together with an additional credit representing an interest payment. The interest credit shall equal the balance of remaining credits multiplied by a ratio representing the regular rate of interest. This process shall be repeated annually until all credits have been used. ( )



**755. WITHDRAWAL OF EMPLOYER.**

When an employer is included in the employer pool but withdraws from the system as provided in Section 59-1326, Idaho Code, prior to allocation of credits, the employer shall not be entitled to receive any credits. When an employer is entitled to carry-over credits but withdraws prior to using all its credits, it shall not be entitled to additional credits based on interest payments. ( )

**756. -- 999. (RESERVED)**

[Agency redlined courtesy copy]

*Italicized text indicates changes between the text of the proposed rule as adopted in the pending rule.*

**59.01.01 – RULES FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)**

**001. LEGAL AUTHORITY.**

~~All PERSI rules are adopted under the legal authority of~~ Sections 50-1507, 50-1508, 50-1524, 59-1301, 59-1314, 59-1372, 59-1383, 59-1392, and 72-1405, Idaho Code. (3-31-22)( )

**002. ~~WRITTEN INTERPRETATIONS – AGENCY GUIDELINES.~~ (RESERVED)**

~~Written interpretations of these rules, to the extent they exist, are available from PERSI, at the Boise Office at 607 North Eighth Street, Boise, Idaho 83702.~~ (3-31-22)

**003. ADMINISTRATIVE APPEAL.**

Administrative appeals are conducted pursuant to these rules. ( )

**004. DEFINITIONS.**

The definitions in Section 59-1302, Idaho Code, and the following apply to this chapter: ( )

**01. Active Member.** A member participates in the active member allocation only if they are active and have at least twelve (12) months of accrued membership service on the last day of the fiscal year. For purposes of allocating extraordinary gains, active members also include: ( )

**a.** Seasonal employees who have a pattern of employment that includes at least six (6) months of membership service in each of the preceding three (3) consecutive years; and ( )

**b.** Employees who are on leave of absence on the last day of the fiscal year and either: ( )

**i.** Return to active service for at least thirty (30) days before December 31 immediately following the end of the fiscal year; or ( )

**ii.** Are entitled to benefits under the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA). ( )

**02. Actuary.** This is the actuary retained by the Board. ( )

**03. Administrator.** The Board. ( )

**04. Applicant.** “Applicant” means an applicant for disability retirement under Section 59-1352, Idaho Code, or an individual requesting resumption of a disability retirement allowance under Section 59-1354A, Idaho Code. ( )

**05. Base Plan or Account.** This is the PERSI defined benefit plan not including gain sharing allocations or interest thereon, or the individual accounts therein. ( )

**06. Board.** “Board” means the governing authority of the Public Employee Retirement System of Idaho as provided by Section 59-1304, Idaho Code, of the Firefighters’ Retirement Fund created by Chapter 14, Title 72, Idaho Code, and the Policeman’s Retirement Fund created by Chapter 15, Title 50, Idaho Code. ( )

**07. Choice Plan or Account.** This includes two (2) elements: ( )

**a.** The defined contribution component of the PERSI plan consisting of gain sharing allocations together with earnings thereon or the individual accounts therein; and ( )

**b.** The plan designated to receive voluntary and employer contributions as provided in Section 59-1308, Idaho Code, or the individual accounts therein. ( )

**08. Code.** The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the IRS Code are to such sections as they may from time to time be amended or renumbered. ( )

**09. Compensation.** “Compensation” as used in Section 59-1342(6), Idaho Code, means “salary” as defined by Section 59-1302(31), Idaho Code. ( )

**10. Court Security.** “Court Security” as used in Section 59-1303(3)(g), Idaho Code, means the employee’s primary responsibilities are designated by court order to quell disturbances in the courthouse, to prevent the escape of prisoners, to exclude weapons from the courthouse, and to perform other related courthouse security matters. ( )

**11. Date of Retirement.** “Date of retirement” means the effective date on which a retirement allowance becomes payable. ( )

**12. Designated Beneficiary.** The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under section 401(a)(9) of the IRS Code and section 1.401(a)(9)-4, Q&A-4, of the Treasury regulations. ( )

~~**13. Employer.** Entities that may qualify as political subdivisions include, among others, general purpose governmental entities, such as cities and counties (whether or not incorporated as municipal corporations), and special purpose governmental entities, such as special assessment districts that provide for roads, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvements, and other governmental purposes for a State or local governmental unit. (4-6-23)~~

**14. Employment.** “Employment” as used in Section 59-1302(14)(B)(b), Idaho Code, shall mean the period of time from a member’s date of hire to the member’s succeeding date of separation from that state agency, political subdivision or government entity. Placing a member on leave of absence with or without pay shall not be considered as a separation from the employer. ( )

**15. Firefighters' Retirement Fund.** “Firefighters’ Retirement Fund” or “FRF” is the retirement fund provided by Chapter 14, Title 72, Idaho Code. ( )

**16. Gain Sharing.** This refers to the process of allocating extraordinary gains from the base plan into the defined contribution component of the PERSI plan as permitted in Section 414(k) of the Internal Revenue Code and as provided by Section 59-1309, Idaho Code, and these rules. ( )

**17. General Member.** “General member” is a PERSI member not classified as a police officer, firefighter, paid firefighter, or school employee. (4-6-23)

**18. Likely.** For the purpose of Section 59-1302(12)(b), Idaho Code, “likely” means with reasonable medical certainty. ( )

**198. Occupational Hazard.** “Occupational Hazard” means an injury or ailment solely resulting from the work an applicant does or from the environment in which an applicant works. ( )

**2019. Pension Protection Act Definitions.** Solely for purposes of the implementation by PERSI of section 402(l) of the Internal Revenue Code, the following definitions apply: ( )

**a. Chaplain.** Any individual serving as an officially recognized or designated member of a legally organized volunteer fire department or legally organized police department, or an officially recognized or designated public employee of a legally organized fire or police department who was responding to a fire, rescue, or police emergency. ( )

**b. Eligible Retired Public Safety Officer.** An individual who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer with the state agency, political subdivision or government entity who maintains the eligible retirement plan from which distributions are made. ( )

**c. Normal Retirement Age.** The member’s age at the time that the member is eligible to retire with an unreduced benefit. ( )

**d. Public Safety Officer.** An individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, as a firefighter, as a chaplain, or as a member of a rescue squad or ambulance crew. ( )

**240. Primary Employer.** The primary employer is the state agency, political subdivision or government entity from whom the employee receives the highest aggregate salary per month. ( )

**221. Public Employee Retirement System of Idaho.** “Public Employee Retirement System of Idaho” or “PERSI” is the retirement system created by Chapter 13, Title 59, Idaho Code. ( )

**232. Required Beginning Date.** The date specified in Section 508.02 of these rules. ( )

**243. Retiree.** Retiree includes any member, contingent annuitant, or surviving spouse, receiving regular monthly allowances at the close of the fiscal year. It also includes members receiving a monthly disability retirement allowance, surviving spouses who elected an annuity option under Section 59-1361(5), Idaho Code, and members who were inactive at the close of the fiscal year but retire on or before the first day of January following the end of the fiscal year, retroactive to the first day of June of the fiscal year or earlier. ( )

**254. Service.** For the purposes of Sections 536 and 539, “service” includes only service for which the member is normally in the administrative offices of the state agency, political subdivision or government entity or normally required to be present at any particular work station for the state agency, political subdivision or government entity. ( )

**265. Surviving Spouse.** “Surviving spouse” is a person as defined in Section 15-2-802, Idaho Code. ( )

**276. Transportation Of Prisoners.** “Transportation of prisoners” as used in Section 59-1303(3)(g), Idaho Code, means the employee’s primary responsibility is designated by court order to move prisoners from one (1) place to another. ( )

**005. -- 010. (RESERVED)**

**SUBCHAPTER A – PERSI RULES OF ADMINISTRATIVE PROCEDURE**  
**Rules 011 through 099**

**011. OPT OUT OF ATTORNEY GENERAL’S RULES – TABLE.**

PERSI declines to adopt the following Idaho Rules of Administrative Procedure of the Attorney General, IDAPA 04.11.01 as follows for the reasons listed:

<b>Rules Promulgated by the Office of the Attorney General will be followed except the following sections of IDAPA 04.11.01 will be excluded</b>	
151	PERSI procedure uses “petitioners” or “appellants” rather than “applicants” or “claimants.”
155	PERSI procedure uses “petitioners” rather than “protestants.”
156	PERSI procedure does not separately use intervention.
220	PERSI procedure uses “petitions” rather than “applications,” “claims” or “appeals.”
250	PERSI procedure uses “petitions” rather than “protests.”
350 - 399	PERSI procedure does not separately use intervention.
420 - 425	PERSI does not have a prosecutorial investigative function.
566	PERSI does not hold joint hearings.
730	PERSI statutes do not provide for preliminary orders.
741	PERSI has no authority to award costs or fees.
791.01.c.	The venue of all actions in which the Board is a party shall be Ada County, Idaho.” Idaho Code § 59-1305(1)
791.01.d.	The venue of all actions in which the Board is a party shall be Ada County, Idaho. Idaho Code § 59-1305(1)

( )

**~~012. VENUE:~~**

~~Venue under Section 67-5272, Idaho Code, is not applicable on its face. Venue is Ada County, Idaho, per Section 59-1305, Idaho Code.~~ (3-31-22)

**~~013. OBTAINING COPIES OF IRAP:~~**

~~An official copy of IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General,” can be obtained through the Office of the Administrative Rules Coordinator, Division of Financial Management.~~ (3-31-22)

**~~014. – 099. (RESERVED)~~**

**SUBCHAPTER B – PERSI RULES FOR ELIGIBILITY**  
**Rules 100 through 249**

**100. MANDATORY MEMBERSHIP.**

Membership in PERSI is mandatory for all persons who meet the statutory definition of an “employee” in Section 59-1302(14), Idaho Code. ( )

**101. MULTIPLE EMPLOYERS -- MEMBERSHIP ELIGIBILITY.**

An employee establishes separate PERSI membership eligibility with each state agency, political subdivision or government entity with which the employee meets the statutory definition of an “employee” as found in Section 59-1302(14), Idaho Code. ( )

**01. Does Not Meet the Statutory Definition.** Because membership eligibility is established independently with each state agency, political subdivision or government entity, neither employer nor employee contributions are required on salary paid by employers to employees who do not meet the statutory definition of an “employee” as found in Section 59-1302(14), Idaho Code. ( )

**02. State Agencies.** An employee working for more than one (1) state agency establishes eligibility based on the total hours of employment worked with all state agencies. ( )

**102. ELECTED AND APPOINTED OFFICIALS NOT SUBJECT TO TWENTY HOUR REQUIREMENT.**

Elected and appointed officials are not subject to the hourly requirement of Section 59-1302(14)(A)(a), Idaho Code. ( )

**103. ELECTED AND APPOINTED OFFICIALS — MEMBERS OF PERSI.**

~~Elected and appointed officials serving on boards, councils, or commissions who receive salary or honorarium for services performed are members of PERSI even though they receive nominal salary and do not normally work twenty (20) hours or more per week. (3-31-22)~~

**01. Hourly Requirement.** Elected and appointed officials are not subject to the hourly requirement of Section 59-1302(14)(A)(a), Idaho Code. ( )

**02. Salary and Honorarium.** Elected and appointed officials serving on boards, councils, or commissions who receive salary or honorarium for services performed are members of PERSI even though they receive nominal salary and do not normally work twenty (20) hours or more per week. ( )

**104. -- 110. (RESERVED)**

**111. TEACHER WORKING HALF-TIME OR MORE.**

For the purposes of Section 59-1302(14)(A)(a), Idaho Code, a teacher is considered to be working half-time or more if the teacher's contract specifies that the engagement is half or more of a full contract. Teachers and all other school employees not employed under such a contractual arrangement shall be required to meet the requirement of normally working twenty (20) hours or more per week. ( )

**112. RESPONSIBILITY OF EMPLOYER TO DETERMINE EMPLOYEE ELIGIBILITY.**

It is the responsibility of each state agency, political subdivision or government entity to make the initial determination of which employees within its jurisdiction meet the requirements of eligibility for membership and to withhold the required member contributions from salary paid. ( )

**113. NORMALLY WORKS TWENTY HOURS.**

If a person works twenty (20) hours or more per week for more than one-half (1/2) of the weeks during the period of employment being considered, then the person meets the requirements of Section 59-1302(14)(A)(a), Idaho Code ("normally works twenty (20) hours or more per week"), and shall be considered an employee if the person meets the other requirements of Section 59-1302(14), Idaho Code. ~~Statutory References: Section 59-1302(14)(A)(a). (3-31-22)( )~~

**114. APPLICATION OF THE FIVE MONTH REQUIREMENT.**

An employee working twenty (20) hours or more per week who is hired with the expectation of working less than five (5) consecutive months, becomes retroactively eligible for membership and employee and employer contributions must be immediately withheld whenever it becomes evident the period of employment will be five (5) consecutive months or longer and the employee meets the other requirements of Section 59-1302(14), Idaho Code. Delinquent payments will be paid by the employer within three (3) months. Regular interest will be assessed against the outstanding balance at the rate provided in Section 59-1325, Idaho Code. (3-31-22)( )

~~**01. Employee and Employer Contributions.** Employee and Employer contributions must be immediately withheld by the state agency, political subdivision or government entity and forwarded when it becomes evident the period of employment will be five (5) consecutive months or more, and the employee meets the other requirements of Section 59-1302(14), Idaho Code. Delinquent employee and employer contributions on all prior months of employment, shall be paid by the state agency, political subdivision or government entity pursuant to Subsection 114.02 of this chapter. (3-31-22)~~

~~**02. Delinquent Contributions.** Employer shall collect and pay delinquent contributions of employer and employee within three (3) months once it becomes evident the period of employment will be five (5) consecutive~~

~~months or more. If the delinquent contributions are not paid within three (3) months, regular interest will be assessed against the outstanding balance until the delinquent employee contributions are paid in full. (3-31-22)~~

**115. -- 120. (RESERVED)**

**121. CEASING TO BE AN EMPLOYEE.**

A member ceases to be an employee on the day following the effective date that the member is separated from their employer. Membership service credits stop on the day the member ceases to be an employee. ( )

**122. LEAVE OF ABSENCE.**

A member is ineligible to contribute and receive membership service credit while on leave of absence without pay or while on leave of absence with less than one-half (1/2) pay, unless the absence is occasioned by a worker's compensation claim approved by a surety. An active member separated from employment under conditions where both the member and the employer plan a later return to employment should be placed on leave of absence without pay during the planned period of absence. ( )

**01. Employer and Employee Contributions -- Leave of Absence.** During the leave of absence without pay, employer and employee contributions cease. If the member is on a leave of absence as a result of an approved worker's compensation claim, employer and employee contributions are due and payable on any salary paid to the member. The member is entitled to a month of membership service credit for each month the member remains on leave of absence as a result of an approved worker's compensation claim and receives salary in addition to income benefits. ( )

**02. Documentation of Leave of Absence.** The employer shall provide PERSI with documentation, on a form provided by PERSI, of a leave of absence to clarify the member's status and retirement benefit entitlement. ( )

**03. Status of Employee on Leave of Absence.** An employee placed on a leave of absence by an employer remains in an employee status and is ineligible for payment of any separation benefits or for payment of a service, early, disability, or vested retirement allowance. If a member on leave of absence without pay terminates employment without returning to work, the leave without pay status is negated. ( )

**04. Leave of Absence -- Effect on Benefit Enhancement.** An employee shall not be placed on a leave of absence without pay prior to the effective date of a benefit enhancement and then return to work after the effective date of the benefit enhancement for the purpose of qualifying for the benefit enhancement. An employee placed on unpaid leave of absence prior to the date of the benefit enhancement who returns to work after the effective date of the benefit enhancement and subsequently applies for retirement shall include with the application for retirement, certification from the state agency, political subdivision or government entity that the leave of absence was not granted for the purpose of allowing the person to qualify for the benefit enhancement. ( )

**123. -- 149. (RESERVED)**

~~**150. POLICE OFFICER MEMBERSHIP CERTIFICATION.**~~

~~The executive director or the executive director's designee may accept or reject the employer's certification that an employee's primary position with the employer is a police officer for retirement purposes as required in Section 59-1303, Idaho Code. Acceptance of the certification shall not limit PERSI's right to review and reclassify the position for retirement purposes based upon an audit or other relevant information presented to PERSI. A position title or occasional assignments to active law enforcement service or hazardous law enforcement duties does not create a condition for designation as a police officer member for retirement purposes. (3-31-22)~~

~~**151. -- 199. (RESERVED)**~~

**200. DETERMINATION OF FIREFIGHTER.**

~~A "firefighter" means an employee whose primary occupation with an employer as defined by Section 59-1302(16), Idaho Code, is that of preventing and extinguishing fires. In addition to Section 59-1302(16), Idaho Code, the definition of a firefighter member for retirement purposes is an employee appointed to the position of fire chief by a city council but not eligible to be a "paid firefighter," or the chief fire warden of a timber protective association, or is~~

an employee of either the department of lands or of a timber protective association whose primary position and principal accountability in that position either requires direct supervision of employees engaged in the prevention, presuppression and suppression of wild land fires or requires the performance of those duties as the principal function of the position. A firefighter member for retirement purposes does not include an employee who may be required on occasion to engage in those functions as a secondary requirement of the position.

Statutory References: Sections 59-1302(16), 59-1391(f) and 72-1403, Idaho Code. (3-31-22)( )

**201. INCORRECT CLASSIFICATION OF FIREFIGHTER.**

An employer or agency which believes that any position is incorrectly classified as a firefighter position or a non-firefighter position may petition the Board for inclusion or exclusion of such position as a firefighter position. Such petition shall be in writing and explain in detail the principal duties of the position. The Board will review the petition and evidence, together with such information and evidence as may be presented by the staff of PERSI. The Board may decide the matter based upon the information supplied, may request additional information, or may request an oral presentation before the Board.

Statutory References: Sections 59-1302(16), 59-1391(f) and 72-1403, Idaho Code. (3-31-22)( )

**202. PAID FIREFIGHTER EXCLUSION FROM RULES 200 AND 201.**

The provisions of Sections 200 and 201 of this subchapter do not apply to a “paid firefighter” as defined by Sections 59-1391(f) or 72-1403(A), Idaho Code, or to any references to “firefighter” found in Title 72, Chapter 14, Idaho Code.

Statutory References: Sections 59-1302(16), 59-1391(f) and 72-1403, Idaho Code. ( )

**203. -- 249. (RESERVED)**

**SUBCHAPTER C – PERSI GENERAL PROVISIONS, CONTRIBUTION RATE,  
MISCELLANEOUS, AND INTEREST RATE RULES  
Rules 250 through 374**

**250. -- 302. (RESERVED)**

**303. EMPLOYEE CONTRIBUTIONS BASED ON GROSS SALARY.**

Employee contributions shall be based on the employee’s total gross salary regardless of source or employer funds from which the employee is paid. ( )

**304. (RESERVED)**

**305. MULTIPLE EMPLOYERS -- CONTRIBUTION RATE.**

If the employee has met eligibility requirements with more than one (1) employer that would result in different contribution rates, contributions shall be made at the rate for the member’s classification with the primary employer. ( )

**306. STATE EMPLOYEE CONTRIBUTIONS.**

If an employee establishes membership with the state, the employee and each agency must make contributions on the employee’s salary regardless of the number of hours worked at each state agency. ( )

**307. POLICE OFFICER CONTRIBUTIONS WITHHELD INCORRECTLY.**

If an employee’s contributions are withheld by an employer and received by PERSI at the rate established for police members on the presumption the certification required by Section 59-1303, Idaho Code, will be accepted, but if it is rejected, the employer shall adjust the employee’s contribution rate to a general member rate and PERSI shall return to the employer any excess employee contributions that have occurred. ( )

**308. CONTRIBUTIONS DUE WHILE MEMBER IS RECEIVING WORKER'S COMPENSATION.**

**01. Contributions Due and Payable.** Contributions are due and payable on whatever percentage of salary is paid while the member is on a leave of absence occasioned by an approved worker’s compensation claim and the member will be entitled to a month of membership service credit for each month the member remains eligible. ( )

**02. Accruing Service.** This means for an employee to continue accruing service the employer must continue to pay salary equal to the lesser of: ( )

**a.** The amount necessary to meet the statutory definition of employee (half-time at the pre-injury rate or more), or ( )

**b.** The employee's full-time salary less the employee's worker's compensation income benefit. ( )

~~**03. Maintaining Eligibility for Injured Workers.** The intent of this rule is to permit employers to maintain eligibility for injured workers without having to pay salary that, when added to the employee's worker's compensation income benefit, would exceed the employee's total salary prior to the injury. Section 122 is inapplicable to the extent it conflicts with this rule. (3-31-22)~~

**309. VACATION AND CONTRACTUAL PAYMENTS SUBJECT TO CONTRIBUTIONS.**

Compensation paid for vacation or remaining contractual payments is salary subject to employee and employer contributions and earns membership credit through the effective date of separation from employment at the usual rate of compensation. ( )

~~**310. -- 324. (RESERVED)**~~

~~**325. TRANSFER OF CONTRIBUTIONS TO PERSI.**~~

~~Employee and employer contributions shall be calculated and forwarded to PERSI by each employer for each employee that meets the statutory definition of "employee" as defined in Section 59-1302 (14), Idaho Code. All Contributions shall be remitted, together with an approved report to PERSI no later than five (5) days after each pay date as provided in Section 59-1325(1), Idaho Code. (3-31-22)~~

~~**326. -- 349. (RESERVED)**~~

**350. REGULAR INTEREST.**

Regular interest for each calendar year shall be the greater of ninety percent (90%) of the rate of return on the PERSI fund net of all expenses for the fiscal year ending immediately prior to the calendar year as reported in the actuary's annual valuation report or one percent (1%). ( )

**351. INTEREST – MEMBER CONTRIBUTIONS.**

Regular interest as defined in Section 59-1302(26), Idaho Code, ~~and Section 300 in this subchapter,~~ shall accrue to and be credited monthly to a member's accumulated contributions. (3-31-22)( )

**352. REINSTATEMENT INTEREST.**

Reinstatement interest for each calendar year shall equal the average of the prime rate on June 30 of the latest three (3) years, plus one percent (1%). For purposes of this rule, the prime rate is the "prime rate" listed in the "Money Rates" section of the Wall Street Journal on June 30, or in the event no rate is listed on June 30, on the latest date preceding June 30 for which a prime rate is listed. Unless otherwise provided by statute or rule, reinstatement interest shall apply to all amounts owed to the fund. ( )

~~**353. -- 374. (RESERVED)**~~

**SUBCHAPTER D – PERSI DISABILITY RULES**  
**Rules 375 through 499**

~~**375. GENERAL RULE.**~~

~~Only members of PERSI with five (5) years of credited service are eligible for disability retirement except as provided in Section 59-1352(2), Idaho Code. (3-31-22)~~

~~**376. SERVICE RELATED DISABILITY FOR POLICE, GENERAL MEMBERS, AND FIREFIGHTERS.**~~



~~Police, general members, and certain firefighter members are eligible for disability retirement beginning from the first day of employment when the disability is caused by occupational hazards, as provided in Section 59-1352(2), Idaho Code. (3-31-22)~~

~~377~~**5.** -- 399. (RESERVED)

**400. APPLYING FOR DISABILITY RETIREMENT.**

Eligible members may apply for disability retirement by completing a required form available from any PERSI office. The application process may include an interview by a PERSI representative. Applicants must release all medical records and information to PERSI. The hours worked to qualify as an employee as defined in Section 59-1302(14), Idaho Code, is inapplicable for purposes of determining disability. ( )

~~401. INITIAL APPLICATION REVIEW.~~ **(RESERVED)**

~~Applications will first be reviewed to determine whether the applicant meets eligibility requirements. If all eligibility requirements are met, the application will proceed to disability assessment review. If all eligibility requirements are not met, the applicant will be notified in writing. (3-31-22)~~

**402. DISABILITY ASSESSMENT REVIEW.**

Applicants will be assessed to determine whether they qualify for disability retirement under the applicable standard. The assessment may include without limitation, records review, medical and psychological examinations, vocational assessments, or any combination thereof as determined by PERSI. Failure to timely comply with any request made by PERSI during the assessment process shall result in automatic denial of disability retirement. At the conclusion of the assessment process, PERSI will notify applicants in writing whether or not they qualify for disability retirement. ( )

**403. RECONSIDERATION OF DISABILITY ASSESSMENT DECISION.**

Applicants who are denied disability retirement as a result of an adverse disability assessment decision, and wish to contest that decision, are required to participate in a reconsideration process. A request for reconsideration must be made within thirty (30) days of the issuance of the disability assessment decision. Any additional information the applicant wishes to be considered must be submitted to PERSI within thirty (30) days of the request for reconsideration. The additional information will be reviewed and a reconsideration decision will be issued in writing to the applicant. ( )

**404. ADMINISTRATIVE REVIEW OF THE RECONSIDERATION DECISION.**

A reconsideration decision shall be considered a final decision under Section 59-1314(2), Idaho Code, and may be appealed to the Board for review. In any related administrative hearing, the applicant shall be limited to presenting facts and evidence made available to PERSI in the reconsideration process. No new or additional evidence may be presented at the hearing. If the applicant has additional facts or evidence that were not made available to PERSI during the assessment or reconsideration process, the applicant must submit a new application for disability retirement, proceed again through the assessment process, and pay the costs associated with the second or subsequent assessment process. ~~This rule is intended to promote the efficient use of fund resources by encouraging full and complete disclosure of information during the disability assessment process. (3-31-22)( )~~

**405. DELEGATION.**

PERSI may, by contract or otherwise, delegate all or part of these processes to third parties. Where such delegation has been made, the term "PERSI" includes those third parties. When a member requests the resumption of a disability retirement allowance pursuant to Section 59-1354A, Idaho Code, the board may delegate its authority under Section 59-1354A, Idaho Code, to a third party. Where such delegation has been made, the term "Board" includes those third parties. ( )

**406. REASSESSMENT OF DISABILITY RETIREES.**

Disability retirees are subject to reassessment of their disability at any time to determine whether they continue to be disabled under the standard in Section 59-1302(12), Idaho Code. However, pursuant to Section 59-1302(12)(b), Idaho Code, after two (2) years of continuous disability retirement, a disability retiree is not required to undergo medical examinations more often than every twelve (12) months. Disability retirees who are notified that they have been selected for reassessment are under the same obligation as applicants to supply information. ( )

**407. ATTORNEY’S FEES AND COSTS.**

Attorney’s fees and costs incurred by an applicant in his efforts to obtain disability retirement are the sole responsibility of the applicant and shall not be paid by PERSI except for fees related to judicial review for which applicant is found to be entitled under applicable law. ( )

**408. -- 424. (RESERVED)**

**425. BURDEN ON APPLICANT.**

Applicant must demonstrate that, on or before applicant’s last day of employment, he was disabled under the disability standard. The last day of employment is the last day applicant earned compensation, including annual leave and sick leave. When a member requests the resumption of a disability retirement allowance pursuant to Section 59-1354A, Idaho Code, the member must demonstrate that he could not successfully return to work because of the same disability on which his disability retirement was based. ( )

**426. STATUTORY STANDARD.**

In applying the disability standard in Section 59-1302(12), Idaho Code, substantially all avenues of employment are reasonably closed if the applicant is permanently prevented, due to bodily injury or disease, from performing every substantial and material duty of any occupation for which the applicant is reasonably qualified by education, training or experience. ( )

**427. (RESERVED)**

**428. HIRE-ABILITY OF APPLICANT.**

The inability of the applicant to secure employment in and around the area where the applicant resides is not considered in determining whether or not the applicant is disabled. If the applicant is able to perform every substantial and material duty of any jobs existing in the economy for which the applicant is reasonably qualified by education, training or experience, the applicant will not be considered disabled regardless of other factors that might affect the applicant’s ability to actually secure employment, such as employer decisions and practices or the fact that there are no open positions or that the applicant is not selected for those positions. ( )

**429. -- 449. (RESERVED)**

**450. COMMENCEMENT AND DURATION OF DISABILITY ALLOWANCE.**

The commencement and duration of payment of disability benefits is governed by Section 59-1354, Idaho Code. For purposes of Section 59-1354(1)(b), Idaho Code, a member “becomes eligible” on the first of the month following the date selected by the member which follows the date on which the member is unable to and thereafter does not return to work on a regular basis for two (2) consecutive weeks but not later than the date on which the member ceases to make contributions. ( )

**451. DETERMINING WORKER'S COMPENSATION OFFSET.**

To determine the offset required by Section 59-1353, Idaho Code, the amount payable under the provisions of any worker's compensation law which represents income benefits as defined in Section 72-102, Idaho Code, shall be converted to a monthly equivalent and deducted from the monthly retirement allowance. ( )

**452. EFFECT OF UNUSED SICK LEAVE ON DISABILITY ALLOWANCE.**

Unused sick leave entitlement provided for by either Section 33-1228, 33-2109A, or 67-5339, Idaho Code, shall not be considered salary or compensation in the application of Section 59-1354(1), Idaho Code. ( )

**453. -- 474. (RESERVED)**

**475. APPLICATION OF THIS SUBCHAPTER TO FRF DISABILITY RETIREMENT.**

All the provisions of this subchapter, except Sections 375, 376, 406, 426, 427, 451 and 452, apply also to applications for disability retirement under the FRF plan to the extent they do not conflict with the provisions of Title 72, Chapter 14, Idaho Code. ( )

**476. -- 499. (RESERVED)**

**SUBCHAPTER E – PERSI SEPARATION FROM SERVICE RULES**  
**Rules 500 through 524**

**500. REPAYMENT OF SEPARATION BENEFITS -- EMPLOYEE STATUS.**

Repayment of a separation benefit must commence while the member is an employee, as defined in Section 59-1302(14), Idaho Code. For purposes of this rule the term employee includes employees accruing benefits under the Department of Employment Retirement Plan, the Firefighters' Retirement Fund, and the Policeman's Retirement Fund.

[Statutory Reference: Section 59-1360, Idaho Code.](#)

[\(3-31-22\)\( \)](#)

**501. INTEREST ACCRUAL AND CALCULATION ON SEPARATION BENEFITS.**

Repayment of separation benefits as provided in Section 59-1360, Idaho Code, for employees whose most recent date of reemployment is after January 23, 1990, shall include payment of interest that shall accrue from the date each separation benefit was issued. Repayment of separation benefits as provided in Section 59-1360, Idaho Code, for employees whose most recent date of reemployment is before January 23, 1990, shall include payment of interest as determined by the law, statutes and rules in effect on the date of last reinstatement to employee status, except as provided in Section 502 of this subchapter.

[Statutory Reference: Section 59-1360, Idaho Code.](#)

[\(3-31-22\)\( \)](#)

**502. REPAYMENT OF SEPARATION BENEFITS BY EMPLOYEES PREVIOUSLY PRECLUDED FROM REPAYMENT.**

Any employee who was precluded from repaying a separation benefit due to the fact they failed to meet the requirements of Section 59-1360, Idaho Code, may reinstate their previous credited service by repaying the full amount of their accumulated contributions provided such repayment includes payment of regular interest accruing from the date of each such separation benefit payment.

[Statutory Reference: Section 59-1360, Idaho Code.](#)

[\(3-31-22\)\( \)](#)

**503. METHODS OF REPAYMENT OF SEPARATION BENEFITS.**

**01. Periodic and Lump-Sum Payments.** Where an active member elects to repay a separation benefit to reinstate previous service as provided in Section 59-1360, Idaho Code, the member may request that repayment be made in periodic payments or in a lump-sum payment. No service will be reinstated until the full repayment has been made. ( )

**02. Repayments Initiated on or After March 1, 2000.** For all repayments initiated on or after March 1, 2000, except as provided in Section 501 of this subchapter, a repayment amount will be determined which shall be the sum of the separation benefit(s) plus regular interest from the date of the benefit payment(s) until the date of the first payment. The repayment amount will be amortized over the repayment period at the reinstatement rate in effect on the date of the first periodic payment. ( )

**03. Repayments Initiated Before March 1, 2000.** For all periodic repayments initiated before March 1, 2000, a repayment amount will be determined which shall be the sum of the separation benefit(s) plus regular interest from the date of the benefit payment(s) until the date of the first payment. The repayment amount will be amortized over the repayment period at four point seventy-five percent (4.75%) interest. This is a grandfathered rate based on the rate in effect December 31, 1999, and will apply so long as payments exceed interest charges on a calendar year basis. If payments fail to exceed interest charges in any calendar year, the grandfathered rate will be forfeited and replaced by the reinstatement rate beginning in January immediately after the year in which the failure occurs. For purposes of these rules, a repayment is initiated by signing an agreement and making a payment. ( )

**04. Repayments Under Section 59-1331(2), Idaho Code.** For (waiting period) payments made pursuant to Section 59-1331(2), Idaho Code, ~~a the repayment amount shall be determined which shall be~~ **is** the sum of contributions that would have been made plus regular interest from December 31, 1975 until the date of the first payment. The repayment amount will be amortized over the payment period at the reinstatement rate in effect on the date of the first periodic payment. [\(3-31-22\)\( \)](#)

**504. IN-SERVICE TRANSFERS TO REINSTATE SERVICE.**

To the extent permitted by federal law, and in accordance with any regulation or other guidance issued by the Internal Revenue Service, an active member may transfer funds from a 401(k), a 403(b), or an eligible 457(b) plan, in which they are currently eligible to participate, to the Base Plan for purposes of buying back service previously forfeited due to receiving a separation benefit, purchasing service related to eligible waiting periods, or purchasing service for periods of delinquent contributions. ( )

**505. (RESERVED)**

**506. ROLLOVERS ACCEPTED INTO THE BASE PLAN.**

The PERSI Base Plan will accept participant rollover contributions and direct rollovers of distributions made after December 31, 2001, for purposes of reinstating or purchasing service as permitted under the plan, from the following plans. No after-tax contributions may be rolled over into the Base Plan. ( )

**01. Qualified Plans.** A qualified plan described in section 401(a) or 403(a) of the Internal Revenue Code (Code). ( )

**02. Annuity Contracts.** An annuity contract described in section 403(b) of the IRS Code. ( )

**03. 457 Plans.** An eligible plan under section 457(b) of the IRS Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. ( )

**04. IRAs.** Any portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the IRS Code that is eligible to be rolled over and would otherwise be includable in gross income. ( )

**507. DIRECT ROLLOVERS OUT OF THE BASE PLAN.**

A direct rollover is a payment by the plan to an eligible retirement plan specified by the distributee. ( )

**01. Rollover Election.** Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this part, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars (\$500) paid directly to an eligible retirement plan specified by the distributee in a direct rollover. ( )

**02. Eligible Rollover Distribution.** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: ( )

**a.** Any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; ( )

**b.** Any distribution to the extent such distribution is required under section 401(a)(9) of the IRS Code); ( )

**c.** Any amount that is distributed on account of hardship; ( )

**d.** The portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and ( )

**e.** Any other distribution(s) that is reasonably expected to total less than two hundred dollars (\$200) during a year. ( )

**03. After-Tax Contributions.** For purposes of the direct rollover provisions in Subsection 507.02, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the IRS Code, or to a

qualified defined contribution plan described in section 401(a) or 403(a) of the IRS Code that agrees to separately account for the amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable. ( )

**04. Eligible Retirement Plan.** An eligible retirement plan is an individual retirement account described in section 408(a) of the IRS Code, an individual retirement annuity described in section 408(b) of the IRS Code, a Roth IRA described in Section 408A of the IRS Code, an annuity plan described in section 403(a) of the IRS Code, an annuity contract described in section 403(b) of the IRS Code, an eligible plan under section 457(b) of the IRS Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, or a qualified plan described in section 401(a) of the IRS Code, that accepts the distributee's eligible rollover distribution. ( )

**05. Alternate Payees.** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse, who is the alternate payee under a domestic retirement order, approved as provided in Sections 59-1319 and 1320, Idaho Code, are distributees with regard to the interest of the spouse or former spouse. ( )

#### **508. REQUIRED MINIMUM DISTRIBUTIONS.**

**01. Default Application of Federal Requirements.** With respect to distributions under the Base Plan, and except as provided in Subsection 508.06, the Plan will apply the minimum distribution requirements of section 401(a)(9) of the IRS Code in accordance with a good faith interpretation of section 401(a)(9), notwithstanding any provision of the Base Plan to the contrary. ( )

**02. Required Beginning Date.** Except as otherwise provided in Subsections 508.04 through 508.08, distributions under the Base Plan shall begin not later than April 1 following the later of (a) the commencement year or (b) the year in which the member retires. For purposes of Section 508, the "commencement year" is the calendar year in which the member reaches ~~age seventy-two (72)~~ the applicable age, as defined in Internal Revenue Code Section 401(a) as now in effect and thereafter amended. (3-31-22)( )

**03. PERSI Selects Retirement Option.** Any member required to take minimum distributions, as provided in this Section 508, and fails to complete and submit an approved retirement application and select either a regular or optional retirement allowance by April 1 following the later of (a) the commencement year or (b) the year in which the member retires shall be deemed to have made the following selection: ( )

**a.** If single, a regular retirement allowance and no other selection shall be required or permitted. ( )

**b.** If married, Option 1 and no other selection shall be required or permitted, unless proof is provided that spouse has no community property interest in the benefit. ( )

**04. Lifetime Distributions.** Distribution shall be made over the life of the participant or the lives of the participant and his beneficiary; or over a period certain not extending beyond the life expectancy of the member or the joint life and last survivor expectancy of the member and his beneficiary. ( )

**05. Timing of Required Distributions.** A required distribution shall be deemed to have been made during the commencement year if actually made by the following April 1, but such delayed distribution shall not change the amount of such distribution, and the distribution otherwise required during the subsequent calendar year shall be calculated as if the first distribution had been made on the last day of the commencement year. ( )

**06. Adjustment of Required Distributions.** Benefits paid prior to the commencement year shall reduce the aggregate amount subject to (but shall not otherwise negate) the minimum distribution requirements described herein. ( )

**07. Benefits Deferred Beyond Service Retirement.** The first payment of benefits of an inactive member following deferment beyond service retirement will be in a lump sum that includes payment for those

months of service dating from the date of service retirement when a monthly retirement payment would have started through the current monthly payment. Subsequent payments will be for the monthly retirement allowance only. ( )

**08. Death Benefits.** All death benefits payable under the Base Plan will be distributed as soon as administratively practicable after request, but must in any event be distributed within fifteen (15) months of the member's death, unless the identity of the beneficiary is not ascertainable. ( )

**509. TRANSFERS TO NON-SPOUSE BENEFICIARIES.**

Notwithstanding any other provision of the Base Plan to the contrary that would otherwise limit the options of the beneficiary of a deceased member who is not the member's spouse, the administrator shall, upon the request of such a beneficiary, transfer a lump sum distribution to the trustee of an individual account established under Section 408 of the IRS Code in accordance with the provisions of Section 402(e)(11) of the IRS Code. ( )

**510. -- 524. (RESERVED)**

**SUBCHAPTER F – PERSI RETIREMENT RULES**  
**Rules 525 through 649**

**525. AVERAGE MONTHLY SALARY COMPUTATION -- EQUITABLE TREATMENT -- DIFFERENT WORK PERIODS.**

Equitable treatment for all members can be achieved only if members whose career patterns covering the same time frame and who received identical annual salaries during each of the twelve-month periods of that time frame accrue the same monthly service retirement allowance. To achieve this equity for the member whose annual salary has been paid on other than a twelve-month salary schedule during any contractual or like twelve-month period, the average monthly salary used for each one of those twelve-month periods will be determined from the total base period salary by using a divisor representing the months of membership service which would have been accumulated at that rate over a full base period.

Statutory Reference: Sections 59-1302(5A), 59-1391(b), Idaho Code.

(3-31-22)( )

**526. UNUSUAL COMPENSATION PATTERN EFFECT ON RETIREMENT CALCULATION.**

Upon application for a retirement benefit, any portion of compensation which represents payments in excess of and inconsistent with the usual compensation pattern, for example, but not limited to lump sum contract payouts, excess vacation paid but not taken, paid sick leave, or a clothing allowance ~~will not be considered in determining benefits.~~

(3-31-22)( )

**527. MAXIMUM RETIREMENT ALLOWANCE (RULE 111).**

If the amount of a member's initial retirement allowance on the date of retirement would exceed the average salary during the member's highest thirty-six (36) consecutive calendar months of salary, then the member's initial retirement allowance will be limited to the greater of: the average salary during the highest thirty-six (36) consecutive calendar months of salary; or the initial retirement allowance based on credited service through April 1990. Optional retirement allowances will be computed after any limitation above has been applied. ( )

**528. MEMBER NOTIFIED OF AVAILABLE RETIREMENT OPTIONS PRIOR TO BOARD APPROVAL.**

The Retirement Board shall not act on any application for retirement unless the member has previously been provided with notification of the regular retirement option and options one (1) and two (2) election available to the member including the value of the monthly allowance of each. The value of options three (3) and four (4) will be provided if the member so requests the value of the option and provides information required to calculate that option (such as but not limited to social security benefit estimates) which is not available to PERSI but that can be provided by the member. ( )

**529. -- 530. (RESERVED)**

**531. RETIREMENT APPLICATIONS.**

Except as provided in this rule, a member is required to complete and submit an approved retirement application and select either a regular or optional retirement allowance. The member's signature must be notarized. The application

for retirement indicating the election made by the retiring member shall also be signed by the spouse certifying the spouse understands and consents to the election made by the member. The spouse's signature must be notarized. Until an application for retirement is filed, no benefit payment is required. Applications with retroactive retirement dates are entitled to lump sum payments and do not include interest. ( )

**532. ~~PAYMENT DATE OF EARLY OR SERVICE RETIREMENT ALLOWANCE — GENERAL MEMBERS.~~ (RESERVED)**

~~As set forth by Section 59-1344, Idaho Code, a PERSI member's service retirement allowance or early retirement allowance is payable on the first of the month following the month in which the member ceases to be an employee while eligible for either of these forms of retirement.~~

~~Statutory References: Section 59-1344 and 59-1356(2), Idaho Code. (3-31-22)~~

**533. ELECTED OR APPOINTED OFFICIAL WORKING FOR MULTIPLE STATE AGENCIES, POLITICAL SUBDIVISIONS OR GOVERNMENT ENTITIES.**

An active member separated from employment by one (1) state agency, political subdivision or government entity for whom he or she did normally work twenty (20) hours or more per week and who is age sixty-two (62) or older and eligible to retire but remains an elected or appointed official with a different state agency, political subdivision or government entity, may retire and continue in that elected or appointed position provided that position is one in which he or she does not normally work twenty (20) hours or more per week. The member shall receive retirement allowances under the conditions provided by Section 538.

~~Statutory References: Sections 59-1344 and 59-1356(2), Idaho Code. (3-31-22)( )~~

**534. ELECTED OR APPOINTED OFFICIAL RETIRING IN PLACE.**

An active member serving as an elected or appointed official who does not normally work twenty (20) hours or more per week who is age sixty-two (62) or older and eligible to retire and who is not an eligible employee with another state agency, political subdivision or government entity pursuant to Section 101 may then retire and continue in that position. The member shall receive retirement allowances under the conditions provided by Section 538.

~~Statutory References: Sections 59-1344 and 59-1356(2), Idaho Code. (3-31-22)( )~~

**535. ~~RESTRICTIONS ON REEMPLOYMENT OF RETIRED MEMBERS.~~ (RESERVED)**

~~There are no restrictions placed upon employment or earnings of retired members except with respect to employment by a state agency, political subdivision or government entity member of PERSI. Unless specified otherwise, the conditions of reemployment outlined in this subchapter apply for employment with any state agency, political subdivision or government entity member of the system.~~

~~Statutory Reference: Section 59-1356, Idaho Code. (3-31-22)~~

**536. RETIRED MEMBER BECOMING AN ACTIVE MEMBER.**

**01. Return to Service.** A PERSI retired member employed in a position which involves service of normally twenty (20) hours or more per week for a period of five (5) or more consecutive months or longer will return to the status of an active member. Retirement benefits will suspend on reemployment and employee and employer contributions will resume to provide additional retirement credits. If a retired member is reemployed in a position which involves service of twenty (20) hours or more per week for a period of less than five (5) consecutive months, their monthly retirement benefits will continue to be paid. If the member's reemployment should equal or exceed the five (5) month period for any reason, the member will be required to repay the retirement benefits paid during the five (5) month period which they were reemployed and they will return to the status of an active member. Employee and employer contributions will be due for the five (5) consecutive month period.

~~Statutory Reference: Section 59-1356, Idaho Code. (3-31-22)( )~~

**02. Return to School District.** A PERSI retired member who qualifies to return to employment with a school district under Section 59-1356(4), Idaho Code, must return in the same job capacity to fulfill the intent of the statute, to fill hard-to-fill positions. A school teacher must return to work as a school teacher, a qualified bus driver must return to work as a bus driver, an administrator must return to work as an administrator. (3-31-22)

**537. REEMPLOYMENT LESS THAN FIVE CONSECUTIVE MONTHS.**

If the period of reemployment develops to be less than five (5) consecutive months, contributions will be refunded and retirement allowances will resume as of the date they were discontinued.

~~Statutory Reference: Section 59-1356, Idaho Code. (3-31-22)( )~~

**538. REEMPLOYMENT -- WORKING LESS THAN TWENTY HOURS OR LESS THAN FIVE CONSECUTIVE MONTHS.**

Monthly retirement allowances will continue to be paid to the PERSI retired member who returns to employment in a position where the member does not normally work twenty (20) hours or more per week or the reemployment is for a period which does not total five (5) consecutive months and the state agency, political subdivision or government entity so certifies. In such cases, employee and employer contributions are neither required nor acceptable and no new retirement credits can be earned.

~~Statutory Reference: Section 59-1356, Idaho Code. (3-31-22)( )~~

**539. RETIRED MEMBER BECOMING AN ELECTED OR APPOINTED OFFICIAL.**

A PERSI retired member who is subsequently elected or appointed by an employer to public office and who is not normally required to perform services of twenty (20) hours or more per week in that position may continue to receive retirement allowances in the status of a reemployed retired member under conditions outlined by Section 537.

~~Statutory Reference: Section 59-1356, Idaho Code. (3-31-22)( )~~

**540. SEPARATION FROM EMPLOYMENT AFTER REEMPLOYMENT.**

Upon subsequent separation from employment after reemployment, the member's original monthly retirement allowance will resume with appropriate cost-of-living adjustments plus the addition of a separate allowance computed with respect to salary and service credited during the reemployment period.

~~Statutory Reference: Section 59-1356, Idaho Code. (3-31-22)( )~~

**541. EARLY RETIREMENT MEMBER -- REEMPLOYMENT.**

A PERSI member who had been receiving an early retirement allowance and who returns to employment as an active member may refund all retirement benefits previously paid plus regular interest accrued from the date each monthly allowance had been paid, thereby negating the previous retirement status. The month of last contribution prior to the negated retirement and the month of initial contribution upon return to active membership shall be considered consecutive months of contributions in the determination of an appropriate salary base period upon subsequent retirement.

~~Statutory Reference: Section 59-1356, Idaho Code. (3-31-22)( )~~

**542. BENEFIT ENHANCEMENT -- QUALIFICATION.**

To qualify for a benefit enhancement, a person must remain an active member through the day following the effective date of the enhancement. ( )

~~**543. 544. POST RETIREMENT ALLOWANCE ADJUSTMENTS PERSI RETIREES. (RESERVED)**~~

~~The Board shall annually determine the post retirement cost of living adjustment (COLA) for the Public Employee Retirement System of Idaho (PERSI) pursuant to Section 59-1355, Idaho Code. The Board shall have discretion in adopting a yearly discretionary and/or retro active COLA. The Board shall yearly adopt this COLA no later than the December Board meeting of each year with an effective date of March 1 of the next year.~~

~~Statutory References: Section 59-1355, Idaho Code. (3-31-22)~~

~~**544. ACTUARIAL ASSUMPTION TABLES.**~~

~~The actuarial tables used for determining optional and early retirement benefits are as follows:~~

TABLE A — PAGE 1 PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO EARLY RETIREMENT FACTORS If the date of last contribution is prior to 10/1/92											
Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.00	.970	.940	.910	.880	.850	.770	.690	.610	.530	.450



<b>TABLE A—PAGE 1</b> <b>PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO</b> <b>EARLY RETIREMENT FACTORS</b> <b>If the date of last contribution is prior to 10/1/92</b>											
Months	Years										
1	.998	.968	.938	.908	.878	.843	.763	.683	.603	.523	
2	.995	.965	.935	.905	.875	.837	.757	.677	.597	.517	
3	.993	.963	.933	.903	.873	.830	.750	.670	.590	.510	
4	.990	.960	.930	.900	.870	.823	.743	.663	.583	.503	
5	.988	.958	.928	.898	.868	.817	.737	.657	.577	.497	
6	.985	.955	.925	.895	.865	.810	.730	.650	.570	.490	
7	.983	.953	.923	.893	.863	.803	.723	.643	.563	.483	
8	.980	.950	.920	.890	.860	.797	.717	.637	.557	.477	
9	.978	.948	.918	.888	.858	.790	.710	.630	.550	.470	
10	.975	.945	.915	.885	.855	.783	.703	.623	.543	.463	
11	.973	.943	.913	.883	.853	.777	.697	.617	.537	.457	

First sixty months reduction: 0.2500% Next sixty months reduction: 0.6667%

(3-31-22)

<b>TABLE A—PAGE 2</b> <b>PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO</b> <b>EARLY RETIREMENT FACTORS</b> <b>If the date of last contribution is on or after 10/1/92 but prior to 10/1/93</b>											
Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.00	.970	.940	.910	.880	.850	.777	.705	.632	.560	.487
1	.998	.968	.938	.908	.878	.844	.771	.699	.626	.554	
2	.995	.965	.935	.905	.875	.838	.765	.693	.620	.548	
3	.993	.963	.933	.903	.873	.832	.759	.687	.614	.542	
4	.990	.960	.930	.900	.870	.826	.753	.681	.608	.536	
5	.988	.958	.928	.898	.868	.820	.747	.675	.602	.530	
6	.985	.955	.925	.895	.865	.814	.741	.669	.596	.524	
7	.983	.953	.923	.893	.863	.808	.735	.663	.590	.518	
8	.980	.950	.920	.890	.860	.802	.729	.657	.584	.512	
9	.978	.948	.918	.888	.858	.796	.723	.651	.578	.506	
10	.975	.945	.915	.885	.855	.790	.717	.645	.572	.500	
11	.973	.943	.913	.883	.853	.784	.711	.639	.566	.494	

First sixty months reduction: 0.2500% Next sixty months reduction: 0.6042%

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<b>TABLE A—PAGE 3</b>											
<b>PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO</b>											
<b>EARLY RETIREMENT FACTORS</b>											
<b>If the date of last contribution is on or after 10/1/93 but prior to 10/1/94</b>											
Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.00	.970	.940	.910	.880	.850	.785	.720	.655	.590	.525
1	.998	.968	.938	.908	.878	.845	.780	.715	.650	.585	
2	.995	.965	.935	.905	.875	.839	.774	.709	.644	.579	
3	.993	.963	.933	.903	.873	.834	.769	.704	.639	.574	
4	.990	.960	.930	.900	.870	.828	.763	.698	.633	.568	
5	.988	.958	.928	.898	.868	.823	.758	.693	.628	.563	
6	.985	.955	.925	.895	.865	.817	.752	.687	.622	.557	
7	.983	.953	.923	.893	.863	.812	.747	.682	.617	.552	
8	.980	.950	.920	.890	.860	.807	.742	.677	.612	.547	
9	.978	.948	.918	.888	.858	.804	.736	.671	.606	.541	
10	.975	.945	.915	.885	.855	.796	.731	.666	.601	.536	
11	.973	.943	.913	.883	.853	.790	.725	.660	.595	.530	

First sixty months reduction: 0.2500% Next sixty months reduction: 0.5417%

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<b>TABLE A—PAGE 4</b>											
<b>PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO</b>											
<b>EARLY RETIREMENT FACTORS</b>											
<b>Date of last contribution is on or after 10/1/94 or later</b>											
Months	Years										
	0	1	2	3	4	5	6	7	8	9	10
0	1.0	.970	.940	.910	.880	.850	.792	.735	.677	.620	.562
1	.998	.968	.938	.908	.878	.845	.788	.730	.673	.615	
2	.995	.965	.935	.905	.875	.840	.783	.725	.668	.610	
3	.993	.963	.933	.903	.873	.836	.778	.721	.663	.606	
4	.990	.960	.930	.900	.870	.831	.773	.716	.658	.601	
5	.988	.958	.928	.898	.868	.826	.769	.711	.654	.596	
6	.985	.955	.925	.895	.865	.821	.764	.706	.649	.591	
7	.983	.953	.923	.893	.863	.816	.759	.701	.644	.586	
8	.980	.950	.920	.890	.860	.812	.754	.697	.639	.582	
9	.978	.948	.918	.888	.858	.807	.749	.692	.634	.577	

<b>TABLE A—PAGE 4</b>											
<b>PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO</b>											
<b>EARLY RETIREMENT FACTORS</b>											
<b>Date of last contribution is on or after 10/1/94 or later</b>											
<b>Months</b>	<b>Years</b>										
10	.975	.945	.915	.885	.855	.802	.745	.687	.630	.572	.515
11	.973	.943	.913	.883	.853	.797	.740	.682	.625	.567	.510

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<b>TABLE B—Page 4</b>											
<b>PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO</b>											
<b>RETIREMENT REDUCTION FACTORS FOR OPTIONS 3 AND 4 AND CERTAIN DEATH BENEFITS</b>											
<b>Options 3 and 4: Years and Months Until Member Would Be Social Security Retirement Age</b>											
<b>Death Benefits: Additional Years and Months Until Member Would Qualify</b>											
<b>for an Unreduced Service Retirement Allowance</b>											
<b>AFTER Applying Table A factors</b>											
<b>Months</b>	<b>Years</b>										
	0	1	2	3	4	5	6	7	8	9	10
0	1.00	.923	.853	.787	.727	.671	.620	.572	.528	.488	.451
1	.993	.917	.847	.782	.722	.667	.616	.568	.525	.485	.448
2	.987	.911	.841	.777	.717	.662	.612	.565	.521	.481	.444
3	.980	.905	.836	.772	.713	.658	.608	.561	.518	.478	.441
4	.974	.899	.830	.767	.708	.654	.604	.557	.515	.475	.438
5	.967	.893	.825	.762	.703	.649	.600	.554	.511	.472	.435
6	.961	.887	.819	.756	.699	.645	.596	.550	.508	.469	.432
7	.955	.881	.814	.751	.694	.641	.592	.546	.504	.466	.429
8	.948	.876	.808	.746	.689	.636	.588	.543	.501	.463	.426
9	.942	.870	.803	.742	.685	.632	.584	.539	.498	.460	.423
10	.936	.864	.798	.737	.680	.628	.580	.535	.494	.457	.420
11	.930	.858	.793	.732	.676	.624	.576	.532	.491	.454	.417

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**TABLE B—Page 2**  
**PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO**  
**RETIREMENT REDUCTION FACTORS FOR OPTIONS 3 AND 4 AND CERTAIN DEATH BENEFITS**  
**Options 3 and 4: Years and Months Until Member Would Be Social Security Retirement Age**  
**Death Benefits: Additional Years and Months Until Member Would Qualify**  
**for an Unreduced Service Retirement Allowance**  
**AFTER Applying Table A factors**

Months	Years										
	10	11	12	13	14	15	16	17	18	19	20
0	.451	.416	.384	.355	.327	.302	.279	.258	.238	.220	.203
1	.448	.413	.382	.352	.325	.300	.277	.256	.236	.218	
2	.445	.411	.379	.350	.323	.298	.276	.254	.235	.217	
3	.442	.408	.377	.348	.321	.296	.274	.253	.233	.215	
4	.439	.405	.374	.345	.319	.294	.272	.251	.232	.214	
5	.436	.402	.372	.343	.317	.293	.270	.249	.230	.213	
6	.433	.400	.369	.341	.315	.291	.268	.248	.229	.211	
7	.430	.397	.367	.339	.313	.289	.267	.246	.227	.210	
8	.427	.394	.364	.336	.311	.287	.265	.244	.226	.208	
9	.424	.392	.362	.334	.308	.285	.263	.243	.224	.207	
10	.422	.389	.359	.332	.306	.283	.261	.241	.223	.206	
11	.419	.387	.357	.330	.304	.281	.260	.240	.221	.204	

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**TABLE B—Page 3**  
**PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO**  
**RETIREMENT REDUCTION FACTORS FOR OPTIONS 3 AND 4**  
**AND CERTAIN DEATH BENEFITS**  
**Options 3 and 4: Years and Months Until Member**  
**Would Be Social Security Retirement Age**  
**Death Benefits: Additional Years and Months Until Member Would Qualify**  
**for an Unreduced Service Retirement Allowance**  
**AFTER Applying Table A Factors**

Months	Years					
	20	21	22	23	24	25
0	.203	.187	.173	.160	.148	.136
1	.202	.186	.172	.159	.147	.135
2	.200	.185	.171	.158	.146	.134
3	.199	.184	.170	.157	.145	.134
4	.198	.183	.169	.156	.144	.133

**TABLE B— Page 3**  
**PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO**  
**RETIREMENT REDUCTION FACTORS FOR OPTIONS 3 AND 4**  
**AND CERTAIN DEATH BENEFITS**  
**Options 3 and 4: Years and Months Until Member**  
**Would Be Social Security Retirement Age**  
**Death Benefits: Additional Years and Months Until Member Would Qualify**  
**for an Unreduced Service Retirement Allowance**  
**AFTER Applying Table A Factors**

Months	Years					
5	-196	-181	-167	-155	-143	-132
6	-195	-180	-166	-154	-142	-131
7	-194	-179	-165	-153	-141	-130
8	-192	-178	-164	-152	-140	-129
9	-191	-177	-163	-151	-139	-128
10	-190	-175	-162	-150	-138	-127
11	-189	-174	-161	-149	-137	-127

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**TABLE C— Page 4**  
**PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO**  
**CONTINGENT ANNUITANT FACTORS**  
**For persons retiring before July 1, 1995**

	Age Difference in Years	Factors	
		Option 1	Option 2
	15*	0.600	0.750
	14	0.610	0.758
	13	0.621	0.766
	12	0.631	0.775
	11	0.642	0.782
Member	10	0.652	0.789
Older	9	0.663	0.797
Than	8	0.674	0.804
Contingent Annuitant	7	0.685	0.812
	6	0.697	0.821
	5	0.708	0.830
	4	0.720	0.838
	3	0.732	0.846

<b>TABLE C— Page 1</b> <b>PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO</b> <b>CONTINGENT ANNUITANT FACTORS</b> <b>For persons retiring before July 1, 1995</b>			
	<b>Age Difference in Years</b>	<b>Factors</b>	
	2	0.746	0.855
	1	0.762	0.865
	0	0.780	0.876
	1	0.799	0.887
	2	0.823	0.902
	3	0.836	0.910
	4	0.847	0.918
	5	0.856	0.924
Member	6	0.865	0.930
Younger	7	0.873	0.935
Than	8	0.881	0.940
Contingent Annuitant	9	0.888	0.944
	10	0.897	0.949
	11	0.906	0.955
	12	0.916	0.961
	13	0.926	0.967
	14	0.934	0.969
	15 or more	0.940	0.970

\*For each year the member is more than fifteen (15) years older than the contingent annuitant subtract .01 from the factor for Option 1 and subtract .006 from the factor for Option 2. (3-31-22)

<b>TABLE C— Page 2</b> <b>PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO</b> <b>CONTINGENT ANNUITANT FACTORS</b> <b>For persons retiring on or after July 1, 1995</b>			
	<b>Age Difference in Years</b>	<b>Factors</b>	
		Option 1	Option 2
	15*	0.690	0.810
	14	0.700	0.816
	13	0.710	0.822

<b>TABLE C— Page 2</b> <b>PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO</b> <b>CONTINGENT ANNUITANT FACTORS</b> <b>For persons retiring on or after July 1, 1995</b>			
	<b>Age Difference in Years</b>	<b>Factors</b>	
	12	0.720	0.828
	11	0.730	0.834
Member	10	0.735	0.840
Older	9	0.740	0.846
Than	8	0.745	0.852
Contingent Annuitant	7	0.750	0.858
	6	0.755	0.864
	5	0.760	0.870
	4	0.765	0.876
	3	0.770	0.882
	2	0.785	0.888
	1	0.800	0.894
	0	0.815	0.900
	1	0.835	0.915
	2	0.855	0.925
	3	0.875	0.935
	4	0.890	0.945
	5	0.900	0.950
Member	6	0.910	0.955
Younger	7	0.920	0.960
Than	8	0.930	0.965
Contingent Annuitant	9	0.940	0.967
	10	0.944	0.969
	11	0.946	0.971
	12	0.948	0.973
	13	0.950	0.975
	14	0.952	0.977
	15 or more	0.954	0.979

\*For each year the member is more than fifteen (15) years older than the contingent annuitant subtract .01 from the

factor for Option 1 and subtract .006 from the factor for Option 2. (Amended 96)

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<b>TABLE C — Page 3</b> <b>PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO</b> <b>CONTINGENT ANNUITANT FACTORS</b> <b>For persons retiring on or after July 1, 2011</b>			
	<b>Age Difference in Years</b>	<b>Factors</b>	
		Option 1	Option 2
	15*	0.729	0.851
	14	0.736	0.856
	13	0.743	0.861
	12	0.750	0.866
	11	0.757	0.871
Member	10	0.764	0.876
Older	9	0.771	0.881
Than	8	0.778	0.886
Contingent Annuitant	7	0.785	0.891
	6	0.792	0.896
	5	0.799	0.902
	4	0.808	0.908
	3	0.818	0.914
	2	0.833	0.920
	1	0.848	0.926
	0	0.863	0.932
	1	0.875	0.938
	2	0.887	0.944
	3	0.895	0.949
	4	0.902	0.954
	5	0.909	0.959
Member	6	0.916	0.963
Younger	7	0.923	0.966
Than	8	0.930	0.968
Contingent Annuitant	9	0.940	0.970
	10	0.944	0.972
	11	0.946	0.974



<b>TABLE C— Page 3</b>			
<b>PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO</b>			
<b>CONTINGENT ANNUITANT FACTORS</b>			
<b>For persons retiring on or after July 1, 2014</b>			
	<b>Age Difference in Years</b>	<b>Factors</b>	
	42	0.948	0.976
	43	0.950	0.978
	44	0.952	0.980
	45 or more	0.954	0.982

\*For each year the member is more than fifteen (15) years older than the contingent annuitant subtract .01 from the factor for Option 1 and subtract .01 from the factor for Option 2. (3-31-22)

**545. PRE-ERISA VESTING RULES.**

**01. Termination or Partial Termination.** Upon the effective date of any termination or partial termination or upon a complete discontinuation of contributions: ( )

a. No persons who were not theretofore members shall be eligible to become members; ( )

b. No further benefits shall accrue; and ( )

c. The accrued benefits of all members not theretofore vested and not theretofore forfeited shall immediately become fully vested. ( )

**546. FORFEITURES.**

Forfeitures will not be applied to increase the benefits any employee would otherwise receive under the Base Plan. ( )

**547. ACTUARIAL ASSUMPTIONS TO BE SPECIFIED.**

Whenever the amount of any Base Plan benefit is to be determined on the basis of actuarial assumptions, such assumptions will be specified in rule in a manner that precludes employer discretion. ( )

**548. ~~COMPENSATION LIMIT (RESERVED)~~**

~~**01. Limit.** Except for members of the system prior to July 1, 1996, as provided in Section 59-1302(31)(B), Idaho Code, the annual compensation of each participant taken into account in determining benefit accruals in any plan year beginning after December 31, 2001, shall not exceed two hundred thousand dollars (\$200,000). Annual compensation means compensation during the calendar year (the determination period). In determining benefit accruals for determination periods beginning before January 1, 2002, compensation shall be two hundred thousand dollars (\$200,000). (3-31-22)~~

~~**02. Limit Adjustment.** The two hundred thousand dollars (\$200,000) limit on annual compensation in Subsection 548.01 shall be adjusted for cost of living increases in accordance with Section 401(a)(17)(B) of the IRS Code. The cost of living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. (3-31-22)~~

**549. DEFINED BENEFIT DOLLAR LIMITATION.**

The “defined benefit dollar limitation” is one hundred sixty thousand dollars (\$160,000), as adjusted, effective January 1 of each year thereafter, under Section 415(d) of the IRS Code in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under Section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies. The “maximum permissible benefit” is the defined benefit dollar limitation (adjusted where required, as provided in Subsection

549.01 and, if applicable, in Subsections 549.02 through 549.04 of these rules). ~~(3-31-22)~~( )

**01. Less Than Ten Years of Service.** If the participant has fewer than ten (10) years of participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction: ( )

a. The numerator of which is the number of years (or part thereof) of participation in the plan; and ( )

b. The denominator of which is ten (10). ( )

~~**02. Benefit Begins Prior to Age Sixty-Two.** If the benefit of a participant begins prior to age sixty-two (62), the defined benefit dollar limitation applicable to the participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the participant at age sixty-two (62) (adjusted under Subsection 549.01, if required). The defined benefit dollar limitation applicable at an age prior to age sixty-two (62) is determined as set forth in IRS regulation under section 415(b)(2) of the IRS Code. This Subsection 549.02 does not apply to participants who have at least fifteen (15) years of credited service for which the member was classified as a police officer or firefighter.~~

~~(3-31-22)~~

**03. Benefit Begins at Age Sixty-Five.** If the benefit of a participant begins after the participant attains age sixty-five (65), the defined benefit dollar limitation applicable to the participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the participant at age sixty-five (65) (adjusted under Subsection 549.01, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age sixty-five (65) is determined as set forth in IRS regulation under section 415(b)(2) of the IRS Code. ( )

**04. Transition.** Benefit increases resulting from the increase in the limitations of section 415(b) of the IRS Code shall be provided to all current and former participants (with benefits limited by section 415(b)) who have an accrued benefit under the plan immediately prior to the effective date of this Section (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under section 415(b)). ( )

## **550. COMPUTATION OF BENEFITS FOR EMPLOYEES OF WITHDRAWN EMPLOYER.**

**01. PERSI's Responsibility.** PERSI's responsibility to a withdrawing political subdivision or governmental entity or its employees is limited to the vested accrued actuarial benefits of the system's members upon the date of complete withdrawal, ~~Section 59-1326(10), Idaho Code.~~ ~~(3-31-22)~~( )

**02. Withdrawal Liability Calculations.** On the occasion that a withdrawing political subdivision or governmental entity fails to pay, in full with accrued interest from date of withdrawal, the withdrawal liability calculated in accordance with Section 59-1326(7), Idaho Code, PERSI shall exhaust all efforts to collect the outstanding withdrawal liability as follows: ( )

a. Collect the full withdrawal liability from withdrawing political subdivision or governmental entity at date of withdrawal. If full withdrawal liability is not paid, then; ( )

b. Contract with withdrawing political subdivision or governmental entity, in accordance with section 59-1326(9) and file a lien on the assets of the withdrawing political subdivision or governmental entity. If scheduled payments are not timely made or assets are insufficient or unavailable, then; ( )

c. PERSI will pursue collection efforts against the authorizing state agency, political subdivision or governmental entity that caused the withdrawing political subdivision or governmental entity to be formed. If these collection efforts are ineffective, then; ( )

d. PERSI will cause an actuarial study to be performed for the withdrawing political subdivision or governmental entity and its employees to determine the actuarial value of the accrued benefits at time of withdrawal and will reduce an employee's benefit to match funded status. ( )

**551. COMPUTING VALUE OF SICK LEAVE.**

For those members who accrue sick leave based upon each month of service, the rate of pay for purposes of computing the monetary value of a retired member's unused sick leave as outlined in Sections 59-1365, 67-5333, and 33-2109A, Idaho Code, shall be the base hourly rate of compensation reported by the employer during the month of separation from employment prior to retirement, not including any temporary increases, bonuses, or payoffs. For those members employed on a contract basis under Section 33-1228, Idaho Code, the rate of pay for purposes of computing the monetary value of a retiring member's unused sick leave based upon each month of service shall be determined at a daily rate by dividing the annual contract amount by the required days of work. No temporary increases, bonuses or payoffs shall be included in the contract amount. Where the daily rate is affected by changes in the work week such as adoption of a four (4) day work week or similar events, adjustments shall be made to convert the daily rate to maintain equity within the pool. No other forms of leave may be converted to sick leave or otherwise considered in computing the value of unused sick leave. ( )

**552. SICK LEAVE FUNDING RATES.**

The sick leave pools shall be funded by employer contributions as follows: ( )

**01. State Agencies and Junior College Districts.** All employer groups participating in the pools established by Sections 33-2109A and 67-5333, Idaho Code, shall contribute point sixty-five percent (.65%) of employee covered payroll. ( )

**02. Schools.** All employer groups participating in the pool established by Section 33-1228, Idaho Code, shall contribute the percentage of employee covered payroll based on the number of days of paid sick leave permitted during the contract year for certified teachers as set forth in the following table:

<b>Beginning:</b>	<b>July 1, 2006</b>
9-10 days	1.16%
11-14 days	1.26%
More than 14 days	Individual rate to be set by the Retirement Board based on current cost and actuarial data and reviewed annually

Where a four (4) day work week or similar policies have been adopted, adjustments shall be made to convert the number of days of paid sick leave to the contribution level necessary to maintain equity within the pool. ( )

**03. Subdivisions.** All political subdivision or government entity groups participating in the pool established by Section 59-1365, Idaho Code, shall make contributions as provided in Section 578. ( )

**553. LIMITATION ON INSURANCE PROGRAMS.**

The health, accident, and life insurance programs maintained by state agencies, political subdivisions or government entities as outlined in Sections 59-1365, 33-1228, and 33-2109A, Idaho Code, are limited to plans where the policy holder is the state agency, political subdivision or government entity or a consortium of state agencies, political subdivisions or government entities. Insurance programs outlined in Section 67-5333, Idaho Code, shall be maintained by the state agency, political subdivision or government entity. The board may require plans to sign an agreement before participating. ( )

**554. PAYMENT OF INSURANCE PREMIUMS.**

Upon certification by the state agency, political subdivision or government entity and the insurance carrier that a plan qualifies under Section 553 of this subchapter, the board may pay the monthly premiums for a retired member using unused sick leave account funds as prescribed by Idaho Code. ( )

**01. Adjustments.** Coverage and premium changes or adjustments must be submitted to PERSI no less than thirty (30) days prior to their effective date unless PERSI has previously agreed in writing to a shorter period. ( )

**02. Duration of Payments.** Premium payments will continue to be made from the unused sick leave account until credits are insufficient to make a premium payment, or until the retiree's death, whichever first occurs.

( )

**555. SEPARATION BY REASON OF RETIREMENT.**

Unused sick leave benefits are credited only to employees who are eligible to retire at the time they separate from the state agency, political subdivision or government entity. When an employee separates from service and does not immediately retire, unused sick leave benefits are credited to the member but not available for use unless the member actually retires without intervening employment resulting in PERSI participation. The existence of available unused sick leave credits does not necessarily mean they are usable. A member must also be eligible to participate in the retiree plan offered by the state agency, political subdivision or government entity from which the member retired. Except for school district employees transferring from one (1) district to another, unused sick leave credits may not be transferred from one (1) state agency, political subdivision or government entity to another. If a member negates their retirement under Section 541 and returns to work for a new PERSI state agency, political subdivision or government entity, unused sick leave credits are also negated and eligibility for unused sick leave credits must be reestablished with the new state agency, political subdivision or government entity. ( )

**556. PROHIBITION AGAINST CASH OPTION.**

All state agencies, political subdivisions or government entities participating in any PERSI administered sick leave pool are prohibited from offering or permitting any employee to convert unused sick leave to cash, other forms of leave, or any other benefit, even if the employee is not eligible to receive credits. Failure to comply with this prohibition will result in the state agencies, political subdivisions or government entities inability to participate in PERSI administered unused sick leave pools. ( )

**557. -- 575. (RESERVED)**

**576. PARTICIPATION IN SUBDIVISION UNUSED SICK LEAVE POOL.**

Any PERSI state agency, political subdivision or government entity meeting the following requirements may elect to participate in the unused sick leave pool authorized by Section 59-1365, Idaho Code: ( )

**01. No Current Plan.** The state agency, political subdivision or government entity does not participate in any other statutorily created plan that offers benefits for unused sick leave, including but not limited to, those plans created under Sections 33-1228, 33-2109, and 67-5333, Idaho Code. ( )

**02. All Inclusive Participation.** All of a participating state agencies, political subdivisions or government entities employees who are PERSI members and who accrue sick leave must be participants in the plan, except that state agencies, political subdivisions or government entities may exclude certain distinctive classes of employees for legitimate business reasons. For example, a city could exclude employees covered by a collective bargaining agreement, or a county may choose to exclude elected officials. ( )

**03. No Other Options for Unused Sick Leave.** No employee may be given any option to receive benefits from unused sick leave other than through this plan. For example, no employee, other than those properly excluded under Subsection 576.02, may be given the option of exchanging sick leave for cash or other forms of payment or leave. ( )

**04. Fixed Annual Accrual of Sick Leave.** State agency, political subdivision or government entity must comply with a policy that offers a fixed amount of sick leave annually that is applicable to all employees or employee groups. A "personal leave" option that fails to distinguish between sick, vacation, or other forms of leave is not permitted. ( )

**05. Medicare Eligible Retirees.** State agencies, political subdivisions or government entities plan must provide coverage to all retired employees eligible for unused sick leave credits, including retirees that become Medicare eligible. ( )

**06. Annual Application.** State agency, political subdivision or government entity must annually update and submit an application for participation in the Subdivision Unused Sick Leave Pool on the form prescribed by PERSI. ( )

**577. OPERATION OF SUBDIVISION POOL.**

Upon separation from employment by retirement, in accordance with Chapter 13, Title 59, Idaho Code, every employee of a participating state agency, political subdivision or government entity shall, upon payment by the state agency, political subdivision or government entity under Section 578, receive a credit for unused sick leave in the same manner and under the same terms as provided in Section 67-5333(1), Idaho Code. ( )

**578. FUNDING OF SUBDIVISION POOL.**

Participating state agencies, political subdivisions or government entities shall, within ten (10) days of retiree's last day in pay status, pay to PERSI a sum equal to the retiree's unused sick leave credit, together with any administrative fees the board may require. Investment earnings on funds paid into this pool will remain in the pool, together with any reversions due to the death of a retiree, and may be used by the board to pay some or all administrative costs. ( )

**579. TERMINATION, WITHDRAWAL, OR REMOVAL FROM SUBDIVISION POOL.**

Any state agency, political subdivision or government entity failing to meet the requirements of participation provided by Section 576 shall be terminated from participation in the Subdivision Pool. Any state agency, political subdivision or government entity failing to meet the funding requirements provided by Section 578 shall be terminated from participation in the Subdivision Pool, provided however, a state agency, political subdivision or government entity may submit a detailed explanation for its failure to meet the funding requirements as required in Section 578 and subject to PERSI approval. State agencies, political subdivisions or government entities that have withdrawn or have been terminated shall not be allowed to rejoin. ( )

**580. -- ~~599~~600. (RESERVED)**

**~~600. PAYMENT DATE OF RETIREMENT ALLOWANCE FOR FRF MEMBERS.~~**

~~A paid firefighter who retires under the provisions of Chapter 14, Title 72, Idaho Code, is entitled to a retirement allowance computed from the date following separation from employment, payable at the end of the calendar month following separation from employment. (3-31-22)~~

**601. FIREFIGHTER RETIREMENT ALLOWANCE.**

Notwithstanding Sections 525 and 526 of this subchapter, the retirement allowances of firefighter members, as defined by Section 59-1391(b), Idaho Code, shall be determined pursuant to the provisions of Chapter 14, Title 72, Idaho Code. ( )

**602. REEMPLOYMENT OF RETIRED FRF FIREFIGHTER.**

A paid firefighter retired under the provisions of Chapter 14, Title 72, (FRF), Idaho Code, who returns to employment as a paid firefighter with the same fire department from which retired shall be considered reemployed in the manner provided for PERSI members by Section 59-1356(1), Idaho Code. Retirement benefits shall then terminate and contributions shall again commence under conditions specified prior to retirement. The terminated benefit shall resume upon subsequent retirement with adjustments made in the manner prescribed by Section 59-1356(1), Idaho Code, as they would apply to the member's retirement benefit entitlement computed under the provisions of Chapter 14, Title 72, Idaho Code.

~~Statutory References: Section 59-1356, Idaho Code.~~

~~(3-31-22)( )~~

**603. -- 624. (RESERVED)**

**625. PURCHASE OF SERVICE GENERALLY.**

No member may purchase more than forty-eight (48) months of membership service, whether purchased under Section 59-1362, or 59-1363, Idaho Code, or a combination thereof. In all cases, the cost of purchasing service shall be the full actuarial costs, as determined by the board, of providing additional benefits resulting from the purchased service. Service may only be purchased at the time of retirement. In no event can a member revoke a purchase of service after payment has been made. ( )

**626. TIME OF RETIREMENT.**

Within ninety (90) days before a member's effective date of retirement, the member may request the cost of service to be purchased. Costs provided for purchased service are valid only for the effective date requested. Purchased service will be calculated into the member's benefit only to the extent that it is paid by the effective date. In no event shall service be credited for which payment has not been made. Service may be purchased with after-tax dollars or with

eligible rollover distributions. The member's service class at the time of purchase determines the class of service that may be purchased. ( )

**627. RETIREMENT DELAYED OR NEGATED AFTER PURCHASE.**

If a member purchases service and thereafter revokes their application for retirement or negates their retirement as provided in Rule 541, the contributions made to purchase the service shall remain in the system until a distributable event occurs. If the distributable event results in payment of a monthly retirement benefit or an optional death benefit, the purchase price of the service previously purchased will be recalculated based on factors existing on the date the new benefit becomes effective. If, based on the new factors, the purchase price is higher than previously determined, the number of months purchased will be reduced to reflect the higher cost unless the member elects to pay the difference. If the purchase price is lower, the difference will be paid to the member as a lump-sum payment within sixty (60) days after the date of retirement unless the member elects to convert the difference into additional months and can do so without exceeding the forty-eight (48) month limit, the IRS limit referenced in Subsection 705.05, or any other statutory limitation, including the limitation in Section 59-1342(6), Idaho Code. ( )

**628. TREATMENT OF PURCHASE OF SERVICE CONTRIBUTIONS.**

Contributions made for purposes of purchasing service, and interest earnings thereon, are not considered for purposes of determining death benefits under Section 59-1361(3), Idaho Code, and distributions under Section 59-1309(5), Idaho Code. When determining death benefits under Section 59-1361(3), Idaho Code, first calculate two hundred percent (200%) of accumulated contributions, excluding contributions and interest related to purchased service, then add member contributions and interest related to purchased service. Member contributions and interest will also be included in any separation benefit. In no event shall employer contributions for purchased service be included in any separation benefit or lump-sum death benefit. ( )

**629. EMPLOYER PARTICIPATION.**

State agency, political subdivision or government entity participation must be in the form of lump-sum payments at the time of retirement. In the event a state agency, political subdivision or government entity makes a contribution on behalf of a member and a distribution other than periodic payments occurs prior to the actual retirement effective date, the state agency, political subdivision or government entity may claim a credit against future contributions equal to the amount of the contribution. State agency, political subdivision or government entity contributions must be accompanied by or preceded by a written statement endorsed by the governing body or officer of the state agency, political subdivision or government entity verifying that the participation is properly authorized and that the state agency, political subdivision or government entity indemnifies PERSI against any loss resulting from failure of the state agency, political subdivision or government entity, or any person acting on its behalf, to act within its authority. ( )

**630. ADDITIONAL LIMITS ON PURCHASED SERVICE.**

The Internal Revenue Code imposes limits on the amount of retirement benefits that can be paid to a retiree under a defined benefit plan. Benefits acquired through purchase of service are subject to these limits for some purposes. In no event can a member purchase service that would result in the member exceeding the limits imposed in Section 415(n)(1)(A) of the IRS Code. In addition, a member's initial retirement benefit, including purchased service, continues to be subject to the limitation in Section 59-1342(6), Idaho Code. ( )

**631. -- 649. (RESERVED)**

**SUBCHAPTER G – PERSI GAIN SHARING RULES**  
**Rules 650 through 755**

**650. EXISTENCE OF EXTRAORDINARY GAINS.**

The existence of extraordinary gains triggers the possibility that allocations will be made as provided in Section 59-1309, Idaho Code. However, the existence of extraordinary gains does not obligate the retirement board to make an allocation. The Board may choose not to allocate extraordinary gains, or it may choose to allocate all or part of the extraordinary gains. Extraordinary gains exist when, at the close of the fiscal year, the value of plan assets exceeds plan liabilities as determined by the actuary, plus a sum necessary to absorb a one (1) standard deviation market event without increasing contribution rates, as determined by the Board. The amount of extraordinary gains available for possible distribution equals the amount by which the assets exceed the sum of the liabilities and the one standard deviation. ( )

**651. VALUE OF PLAN ASSETS.**

This is the total assets held in the PERSI base plan, as reported in the actuarial valuation at the end of the fiscal year. ( )

**652. PLAN LIABILITIES.**

This is the actuarial liability of the PERSI base plan, including but not limited to, the cost of the proposed COLA to be effective in March following the close of the fiscal year, the cost of any benefit enhancements to the base plan approved by the legislature, and the cost of actuarial gains and losses, as reported in the actuarial valuation for the fiscal year. ( )

**653. ONE STANDARD DEVIATION.**

This is the amount of reserve necessary to absorb normal market fluctuations and is a function of the risk associated with investment holdings and strategies, and will be determined by the Board based on those factors. ( )

**654. BOARD DISCRETION.**

The Board retains full discretion in determining whether to allocate extraordinary gains when they exist. Because of the broad range of factors that might be relevant to such a determination, and to assure that the Board will not be limited in exercising its discretion, these rules do not attempt to identify any of the factors that might be considered in the Board's fiduciary capacity. When extraordinary gains exist, the Board will decide whether they will be allocated no later than the first day of December following the end of the fiscal year. Such decision shall be in writing and shall constitute an amendment to the plan document for purposes of the Internal Revenue Code of 1986, as amended, or any successor thereto. In the absence of any such decision, the allocation for that year shall be zero (0.00). ( )

**655. -- 674. (RESERVED)**

**675. ALLOCATION BETWEEN GROUPS.**

If extraordinary gains exist, and the Board determines that all or part of such gains should be allocated, an allocation will be made among the three (3) groups identified by Section 59-1309, Idaho Code. The three (3) groups and allocations are: ( )

- a. Active PERSI members - 38 percent (38%); ( )
- b. PERSI retirees - twelve percent (12%); and ( )
- c. PERSI employers - fifty percent (50%) ( )

**676. -- 699. (RESERVED)**

**700. ACTIVE MEMBER ALLOCATION.**

After the amount to be allocated to the active member group has been determined, it shall be allocated among the members of the group. The active member allocation determines each member's initial share before considering any applicable individual limits. Each member's initial share shall be determined by dividing that member's accumulated contributions in the base plan at the close of the fiscal year by the total accumulated contributions in the base plan of all members of the group at the close of the fiscal year, multiplied by the amount allocated to the active member group. In no event shall a member's initial share, before considering individual limits, exceed the maximum annual contribution limit under Section 415(c) of the IRS Code applicable for the limitation year. ( )

**701. MINIMUM ALLOCATION AMOUNT.**

Due to the costs associated with maintaining individual choice accounts, no allocation shall be made to any member whose allocation share does not exceed thirty-eight dollars (\$38) after considering individual limits, unless the member had a PERSI choice account on the last day of the fiscal year and has not withdrawn funds before the allocation date. ( )

**702. ACTIVE MEMBER.**

~~A member participates in the active member allocation only if he is an active member as defined in this subchapter. Whenever a member is placed on leave of absence under circumstances making that member eligible for benefits~~

~~under USERRA, the employer shall notify PERSI in writing within thirty (30) days and attach a copy of the member's orders.~~ A member participates in the active member allocation only if *such member is active and has at least twelve (12) months of accrued membership service on the last day of the fiscal year.* For purposes of allocating extraordinary gains, active members also include: ( )

a. Seasonal employees who have a pattern of employment that includes at least six (6) months of membership service in each of the preceding three (3) consecutive years; and ( )

b. Employees who are on leave of absence on the last day of the fiscal year and either: ( )

i. Return to active service for at least thirty (30) days before *the December 31st* immediately following the end of the fiscal year; or ( )

ii. Are entitled to benefits under the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA). ( )

**703. ACCUMULATED CONTRIBUTIONS.**

For purposes of allocating extraordinary gains within the active member group, accumulated contributions do not include contributions or interest related to the purchase of permissive service credits or contributions or interest in the Choice Plan or accounts. ( )

**704. TRANSFER TO DEFINED CONTRIBUTION CHOICE ACCOUNTS.**

After each member's initial share has been determined, it will be transferred to an individual account as permitted under Section 414(k) of the IRS Code, subject to individual limits imposed by the Internal Revenue Code. The Board may transfer allocations anytime after necessary compensation data is received and processed by the Board. ( )

**705. LIMITATIONS ON ALLOCATION.**

In no event shall a member's final allocation exceed the limits imposed by Section 415(c) of the IRS Code, based on compensation earned during the calendar year that included the end of the fiscal year. ( )

**706. INTERVENING RETIREMENT.**

When a member is included in the active member pool but retires prior to the transfer of allocations, the member's allocation will be made as a one-time payment directly to the member rather than a transfer to an individual account. Such allocations will not be limited by Section 705 but will be subject to the limitations of Section 729. ( )

**707. INTERVENING WITHDRAWAL OF CONTRIBUTIONS.**

When a member is included in the active member pool but terminates prior to the transfer of allocations, the allocation will be made to the member's individual account if the member has not withdrawn contributions from the Base account prior to the date of transfer of the allocation. No member who has withdrawn contributions from the Base account prior to the transfer of the allocation is eligible to receive an allocation. ( )

**708. INTERVENING DEATH OF ACTIVE MEMBER.**

When a member would have been included in the active member allocation but dies prior to the transfer of allocations, no allocation shall be made to the member, beneficiary or estate except that an optional death benefit recipient will receive the active member's allocation as limited by Section 729. ( )

**709. TREATMENT OF GAIN SHARING ALLOCATIONS IN THE CHOICE ACCOUNT.**

Gain sharing allocations transferred to individual Choice Accounts have no effect on an individual's Base Plan benefit. Gain sharing allocations, and the earnings thereon, will be accounted for separately from other Choice Plan contributions but will be treated as one plan for purposes of reporting, investing, distributions, and fees to the extent they are applicable. Related provisions of the Plan adopted by the Board to facilitate voluntary and employer contributions are applicable to gain sharing allocations to the extent not inconsistent with these rules and Sections 59-1308 and 59-1309, Idaho Code. However, no loans or hardship withdrawals may be taken against gain sharing account balances. ( )

**710. -- 724. (RESERVED)**



**725. RETIREE ALLOCATION.**

After the amount to be allocated to the retiree group has been determined, it shall be allocated among the members of the group. The retiree allocation determines each member's share before considering any applicable individual limits. Each member's initial share shall be determined by dividing that retiree's monthly benefit at the close of the fiscal year by the total monthly benefits payable to all members of the group at the close of the fiscal year, multiplied by the amount allocated to the retiree group. ( )

**726. RETIREE.**

For purposes of allocating extraordinary gains, a member must be a retiree as defined in this subchapter. ( )

**727. MONTHLY BENEFIT.**

This is the monthly benefit for the last month of the fiscal year but does not include benefits related to other months that may also have been paid during the last month of the fiscal year. In no event shall a retiree's share be determined based on more than the retiree's annual benefit, not including any gain sharing allocations, divided by twelve (12). ( )

**728. PAYMENT OF ALLOCATION.**

After each retiree's initial share has been determined, it will be paid no later than February 1 following the close of the fiscal year directly to the retiree either together with the retiree's monthly benefit or separately, subject to individual limits imposed by the Internal Revenue Code. ( )

**729. LIMITATIONS ON ALLOCATION.**

Prior to allocation, a retiree's initial share shall be further limited as necessary to comply with the limits of Section 415(b) of the IRS Code. ( )

**730. INTERVENING DEATH OF A RETIREE.**

When a retiree is included in the retiree allocation but dies prior to the transfer of allocations, no allocation shall be made unless benefit payments are continuing to be made to a contingent annuitant. ( )

**731. INTERVENING REEMPLOYMENT.**

When a retiree is included in the retiree allocation but becomes reemployed as defined in Section 59-1356, Idaho Code, prior to the date of distribution, the retiree allocation shall be made in the form of an active member allocation, and shall be subject to active member limitations. ( )

**732. NEGATED RETIREMENT.**

Gain sharing allocations received by a retiree are not included in the amounts required to be repaid when negating retirement under Section 541. ( )

**733. -- 749. (RESERVED)**

**750. EMPLOYER ALLOCATION.**

After the amount to be allocated to the employer group has been determined, it shall be allocated among the members of the group. Each employer's share shall be determined by dividing that employer's contribution liability for the fiscal year by the total contribution liability for all members of the group for the fiscal year, multiplied by the amount allocated to the employer group. ( )

**751. EMPLOYER.**

Participation in the employer pool is limited to those entities defined as an employer in this subchapter. ( )

**752. CONTRIBUTION LIABILITY.**

This includes only employer contributions that are accrued during the fiscal year and required to be paid by Section 59-1322, Idaho Code, unreduced by gain sharing credits. It does not include contributions made to fund sick leave pools, to pay costs of other plans such as the Firefighters Retirement Fund, or to contributions required by Sections 33-107A and 33-107B, Idaho Code. Only adjustments related to fiscal year contributions will be considered. ( )

**753. CREDIT OF ALLOCATION.**

After each employer's share has been determined, it will be credited against the employer's future contribution invoices. The credits shall be applied only to offset future employee and employer contributions required to be remitted by Section 59-1325(1), Idaho Code, until the credit is exhausted. An employer may elect to use the credits solely against employer contributions to the extent that no carry-over credits (as described in Section 754) result. ( )

**754. CARRY-OVER OF CREDIT.**

Should the credit exceed the employer's contribution invoices for the succeeding twelve (12) month period, any remaining credits will carry over to the following year together with an additional credit representing an interest payment. The interest credit shall equal the balance of remaining credits multiplied by a ratio representing the regular rate of interest. This process shall be repeated annually until all credits have been used. ( )

**755. WITHDRAWAL OF EMPLOYER.**

When an employer is included in the employer pool but withdraws from the system as provided in Section 59-1326, Idaho Code, prior to allocation of credits, the employer shall not be entitled to receive any credits. When an employer is entitled to carry-over credits but withdraws prior to using all its credits, it shall not be entitled to additional credits based on interest payments. ( )

**756. -- 999. (RESERVED)**

# **IDAPA 59 – PUBLIC EMPLOYEES RETIREMENT SYSTEM OF IDAHO**

## **59.02.01 – RULES FOR THE JUDGES’ RETIREMENT FUND**

### **DOCKET NO. 59-0201-2301 (ZBR CHAPTER REWRITE)**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 59-1301, 59-1314, 59-1372, 59-1383, and 59-1392, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

There is a change to 59.02.01.002 to reflect that the rule is now Rule 2 not Rule 3. There is a change to add a new Subsection 59.02.01.010.17 to the pending rule. This addition was missed in the proposed rule and is necessary to accurately reflect service credit. There is a change to correct typographical and grammatical errors to Section 59.01.02.100 and 59.01.02.402.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the November 1, 2023, Idaho Administrative Bulletin, [Vol. 23-11, pages 154 - 168](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

Does not apply to this rulemaking.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The change in this rule will not have any fiscal impact on the state General Fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact: Cheryl George, (208) 287-9231.

DATED this 27th of November, 2023.

Don Drum  
Executive Director  
Public Employees Retirement System of Idaho  
P.O. Box 83720, Boise, ID 83720-0078  
Phone: (208) 287-9230  
Fax: (208) 334-3804

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections, 59-1301, 59-1314, 59-1372, 59-1383 and 59-1392.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 15, 2023.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

JRF Rule, IDAPA 59.02.01.02, 04, .05, .06, .07, and .11 are deleted as unnecessary. Rule 59.02.01.10.04 is deleted since this rule is not applicable to the JRF as there are not purchase options by statute. Rule 59.02.01.10.64 is deleted because this rule is not applicable because judges do not have purchase options. Rule 59.02.01.12 is amended to make specific reference to the JRF. New definition is added for "Inactive Member and "Retired Member". The definition for "Member" is revised. The definition of "Normal Retirement Age" is deleted because the JRF plan makes no distinction between early and normal retirement. Rule 59.02.01.100.02.a is amended to define the commencement year when a member is required to take a minimum distribution as defined in the Internal Revenue Code section 401(a). This change is a result of Secure 2.0 Act 2022. Rule 59.02.01.100 new subsection .03 is added to add the enforcement mechanism for when PERSI has to issue payments under this section and to specify the retirement option that would be selected. Rule 59.02.01.100.03 becomes the new subsection .04 and is amended to simplify the language used and make it consistent with proper terms. Rule 59.02.01.100 subsection .05 and .06 are deleted since if any prior payments were made, the distribution would not be issued as payments would have continued. Rule 59.02.01.102 is deleted because there aren't any options for annual additions in the JRF plan. JRF doesn't have a purchase of service. Rule 59.02.01.103.01 deleted the last sentence because the only option for a forced distribution would be a lump-sum payment direct to the member or the initiation of monthly retirement benefits. There isn't an option for a forced distribution to be made as a rollover to another plan. Rule 59.02.01.103.03 is deleted because the JRF doesn't allow for post-tax contributions to be made to the plan, so this is unnecessary. Rule 59.02.01.252 is deleted because it refers to tables that are also being deleted. Rule 59.02.01.300 and .301 are deleted as the statute provides that PERSI Board sets the contribution rates, and the rates will be posted on the PERSI web page. Rule 59.02.01.352,.359, are amended to provide gender inclusive language. Rule 59.02.01.401 is deleted because COLAs are in statute (1- 2001(2)(a)(ii - iii). Rule 59.02.01.403 is amended by removing the last sentence as it is redundant. It is part of the Required Minimum Distribution section. Appendix A is deleted as it is not needed in the rules and the table will be available on the PERSI website.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year: The change in this rule will not have any fiscal impact on the state General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the September 6, 2023, Idaho Administrative Bulletin, 23-9 pages 911-912.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule(s), contact Cheryl George, (208) 287-9231.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 22, 2023.

DATED this 6th day of October, 2023.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 59-0201-2301**

**59.02.01 – RULES FOR THE JUDGES' RETIREMENT FUND**

**SUBCHAPTER A – GENERAL PROVISIONS**  
**Rules 001 through 099**

- 000. LEGAL AUTHORITY (RULE 0).** Section 1-2012, Idaho Code. ( )
- 001. TITLE AND SCOPE (RULE 1).**
- 01. Title.** The title of this chapter is IDAPA 59.02.01, "Rules for the Judges' Retirement Fund." ( )
- 02. Scope.** This chapter relates to retirement under the Judges' Retirement Fund. ( )
- 002. ADMINISTRATIVE APPEAL (RULE 2).** Administrative appeals are conducted pursuant to IDAPA 59.01.01. ( )
- 003. -- 009. (RESERVED)**
- 010. DEFINITIONS (RULE 10).** The following definitions apply to this chapter: ( )
- 01. Accrued Benefit.** The actuarial value of the retirement benefit to which the Member is entitled under the Judges' Retirement Fund upon attainment of Normal Retirement Age. ( )
- 02. Active Member.** Each justice or judge who participates in the Judges' Retirement Fund as provided by Idaho Code. ( )
- 03. Administrator.** The Board. ( )
- 04. Beneficiary.** The designated person (or, if none, the Member's estate) who is entitled to receive benefits under the Plan after the death of a Member. ( )
- 05. Board.** The retirement board established in Section 59-1304, Idaho Code. ( )
- 06. Code.** The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to Sections of the Code are to such Sections as they may from time to time be amended or renumbered. ( )
- 07. Compensation.** All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Member's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Member's gross income for the calendar year but for a compensation reduction election under Sections 125, 132(f), 401(k), 403(b), or 457(b) of

the Code. ( )

**08. Contingent Annuitant.** The person designated by a Member under certain retirement options to receive payments upon the death of the Member. The person so designated must be born and living on the effective date of retirement. ( )

**09. Designated Beneficiary.** The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-4, Q&A-4, of the Treasury regulations. ( )

**10. Employer.** The State of Idaho Judicial Branch. ( )

**11. Inactive Member.** A former active member who is not receiving a retirement allowance or has not received a refund of contributions. ( )

**12. Judges' Retirement Fund.** The Judges' Retirement Fund established under Title 1, Chapter 20, Idaho Code, and rules applicable to the Judges' Retirement Fund. The Judges' Retirement Fund is intended to satisfy Code Section 401(a) as applicable to governmental plans described in Code Section 414(d). It is maintained for the exclusive benefit of Members and their beneficiaries. ( )

**13. Member.** An active member, inactive member, or a retired member. ( )

**14. Plan.** The plan of benefits under the Judges' Retirement Fund. ( )

**15. Required Beginning Date.** The date specified in Rule 100 of these rules. ( )

**16. Retired Member.** A former active member receiving retirement compensation. ( )

**17. Service Credit.** Being shown on Employer's payroll as an Active Member receiving a salary. For each calendar month, service is credited only when the Active Member is employed for fifteen (15) days or more during the calendar month. ( )

**18. Severance from Employment.** The date that the Member dies, retires, or otherwise has a separation from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code). ( )

**011. -- 099. (RESERVED)**

**SUBCHAPTER B – DISTRIBUTIONS**  
**Rules 100 through 250**

**100. REQUIRED MINIMUM DISTRIBUTIONS (RULE 100).**

**01. Default Application of Federal Requirements.** With respect to distributions under the Judges' Retirement Fund, and except as provided in Subsection 100.06, the Judges' Retirement Fund will apply the minimum distribution requirements of Section 401(a)(9) of the Internal Revenue Code (Code) in accordance with a good faith interpretation of Section 401(a)(9), notwithstanding any provision of the Judges' Retirement Fund to the contrary. ( )

**02. Required Beginning Date.** Except as otherwise provided in Subsections 100.03 through 100.06, distributions under the Judges' Retirement Fund shall begin not later than April 1 following the later of: ( )

**a.** The commencement year, which is defined as the year in which a member reaches the applicable age, as defined in Internal Revenue Code Section 401(a) as now in effect and thereafter amended. ( )

**b.** The year in which they retire. ( )

**03. PERSI Selects Retirement Option.** Any member required to take minimum distributions, as required in this Section 100 and fails to complete and submit an approved retirement application and select either a regular or optional retirement allowance by April 1 following the later of the commencement year or the year the member separates from employment, the member shall be deemed to have made the following selection. ( )

**a.** If single, a regular retirement allowance and no other selection shall be required or permitted. ( )

**b.** If married, a one hundred percent (100%) spousal option and no other selection shall be required or permitted unless proof is provided that the spouse has no community property interest in the benefit. ( )

**04. Lifetime Distributions.** Distribution shall be made over the life of the Member or the lives of the Member and their contingent annuitant. ( )

**05. Timing of Required Distributions.** A required distribution shall be deemed to have been made during the Commencement Year if actually made by the following April 1, but such delayed distribution shall not change the amount of such distribution, and the distribution otherwise required during the subsequent calendar year shall be calculated as if the first distribution had been made on the last day of the Commencement Year. ( )

**06. Death Benefits.** All death benefits payable in a lump sum will be distributed as soon as administratively practicable after request, but must in any event be distributed within fifteen (15) months of the member's death, unless the identity of the beneficiary is not ascertainable. ( )

**101. MAXIMUM LIMITATIONS ON BENEFITS (RULE 101).**

Beginning effective January 1, 2002, the "defined benefit dollar limitation" is one hundred sixty thousand dollars (\$160,000), as adjusted, effective January 1 of each year thereafter, under Section 415(d) of the Internal Revenue Code (Code) in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under Section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies. The "maximum permissible benefit" is the defined benefit dollar limitation (adjusted where required, as provided in Subsection 101.01 and, if applicable, in Subsections 101.02 through 101.04). ( )

**01. Less Than Ten Years of Service.** If the Member has fewer than ten (10) years of participation in the Judges' Retirement Fund, the defined benefit dollar limitation shall be multiplied by a fraction: ( )

**a.** The numerator of which is the number of years (or part thereof) of participation in the Judges' Retirement Fund; and ( )

**b.** The denominator of which is ten (10). ( )

**02. Benefit Begins Prior to Age Sixty-Two.** If the benefit of a Member begins prior to age sixty-two (62), the defined benefit dollar limitation applicable to the Member at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the Member at age sixty-two (62) (adjusted under Rule 101.01, if required). The defined benefit dollar limitation applicable at an age prior to age sixty-two (62) is determined as set forth in IRS regulation under Section 415(b)(2) of the Code. ( )

**03. Benefit Begins at Age Sixty-Five.** If the benefit of a Member begins after the Member attains age sixty-five (65), the defined benefit dollar limitation applicable to the Member at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the Member at age sixty-five (65) (adjusted under Rule 101.01, if required.) The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age sixty-five (65) is determined as set forth in IRS regulation under Section 415(b)(2) of the Code. ( )

**04. Transition.** Benefit increases resulting from the increase in the limitations of Section 415(b) of the Code shall be provided to all current and former Members (with benefits limited by Section 415(b)) who have an accrued benefit under the Judges' Retirement Fund immediately prior to the effective date of this Rule (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under Section

415(b.)) ( )

**05. Aggregation.** If any member participates in two (2) or more qualified defined benefit plans maintained by the employer (or a predecessor employer), the combined benefits from all such plans may not exceed the "maximum permissible benefit" described in this Rule 101. ( )

**102. ROLLOVER DISTRIBUTIONS (RULE 102).**

**01. Direct Rollovers.** A Member of the Judges' Retirement Fund or a beneficiary of a Member (including a Member's former spouse who is the alternate payee under an approved domestic relations order) who is entitled to an eligible rollover distribution may elect, at the time and in the manner prescribed by the Administrator, to have all or any portion of the distribution paid directly to an eligible retirement plan specified by the Member in a direct rollover. ( )

**02. Eligible Rollover Distribution Defined.** For purposes of this Rule, an eligible rollover distribution means any distribution of all or any portion of a Member's account balance, except that an eligible rollover distribution does not include (a) any installment payment for a period of ten (10) years or more, (b) any distribution made as a result of an unforeseeable emergency, or (c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Code Section 401(a)(9). In addition, an eligible retirement plan means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, a qualified trust described in Section 401(a) of the Code, an annuity plan described in Section 403(a) or 403(b) of the Code, or an eligible governmental plan described in Section 457(b) of the Code, that accepts the eligible rollover distribution. Effective January 1, 2008, an eligible retirement plan shall also mean a Roth IRA described in Section 408A of the Code. ( )

**03. Alternate Payees.** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse, who is the alternate payee under a domestic retirement order, approved as provided in Rule 402 are distributees with regard to the interest of the spouse or former spouse. ( )

**04. Transfers to Non-Spouse Beneficiaries.** This Rule 103.05 applies to distributions made on or after July 1, 2008. Notwithstanding any provision of the Judges' Retirement Fund to the contrary that would otherwise limit the options of the Beneficiary of a deceased Member who is not the Member's spouse, the administrator shall, upon the request of such a Beneficiary transfer a lump sum distribution to the trustee of an individual retirement account established under Section 408 of the Code in accordance with the provisions of Code Section 402(e)(11). ( )

**103. -- 250. (RESERVED)**

**SUBCHAPTER C – ASSUMPTIONS**  
**Rules 251 through 299**

**251. ACTUARIAL ASSUMPTIONS TO BE SPECIFIED (RULE 251).**  
Whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions will be specified in a manner that precludes employer discretion. ( )

**252. -- 299. (RESERVED)**

**SUBCHAPTER D – CONTRIBUTION RATES**  
**Rules 300 through 349**

**300. VACATION AND CONTRACTUAL PAYMENTS SUBJECT TO CONTRIBUTIONS (RULE 300).**  
Compensation paid for vacation is salary subject to employee and employer contributions. ( )

**301. REPORTS (RULE 301).**  
The Employer shall provide to the Board such reports, including compensation and contribution reports, as are required by the Board to verify contributions benefits required or provided and unless extended in writing by the



executive director such reports shall be provided no later than five (5) business days after each pay date. ( )

**302. -- 349. (RESERVED)**

**SUBCHAPTER E – DISABILITY RETIREMENT**  
**Rules 350 through 399**

**350. APPLYING FOR DISABILITY RETIREMENT (RULE 350).**

Eligible members may apply for disability retirement, as provided for in Section 1-2001(4)(a), Idaho Code, by completing a required form available from any PERSI office. The application process may include an interview by a Board representative. Applicants must release all medical records and information to the Board or its agent. ( )

**351. INITIAL APPLICATION REVIEW (RULE 351).**

Applications will first be reviewed to determine whether the applicant meets applicable eligibility requirements. If eligibility requirements are met, the application will proceed to disability assessment review. If all eligibility requirements are not met, the applicant will be notified in writing. ( )

**352. DISABILITY ASSESSMENT REVIEW (RULE 352).**

An applicant will be assessed to determine whether they qualify for disability retirement under the applicable standard. The assessment may include without limitation, records review, medical and psychological examinations, vocational assessments, or any combination thereof as determined by the Board. Failure to timely comply with any request made by the Board during the assessment process shall result in automatic denial of disability retirement. At the conclusion of the assessment process, the Board will notify the applicant in writing whether or not they qualify for disability retirement. ( )

**353. RECONSIDERATION OF DISABILITY ASSESSMENT DECISION (RULE 353).**

Applicants, who are denied disability retirement as a result of an adverse disability assessment decision, and wish to contest that decision, are required to participate in a reconsideration process. A request for reconsideration must be made within thirty (30) days of the issuance of the disability assessment decision. Any additional information the applicant wishes to be considered must be submitted within thirty (30) days of the request for reconsideration. The additional information will be reviewed and a reconsideration decision will be issued in writing to the applicant. ( )

**354. ADMINISTRATIVE REVIEW OF THE RECONSIDERATION DECISION (RULE 354).**

A reconsideration decision shall be considered a final decision, and may be appealed to the Board for review. In any related administrative hearing, the applicant shall be limited to presenting facts and evidence made available in the reconsideration process. No new or additional evidence may be presented at the hearing. If the applicant has additional facts or evidence that were not made available during the assessment or reconsideration process, the applicant must submit a new application for disability retirement, proceed again through the assessment process, and pay the costs associated with the second or subsequent assessment process. This rule is intended to promote the efficient use of fund resources by encouraging full and complete disclosure of information during the disability assessment process. ( )

**355. DELEGATION (RULE 355).**

The Board may, by contract or otherwise, delegate all or part of these processes to third parties. Where such delegation has been made, the term “Board” includes those third parties. Where such delegation has been made, the term “Board” includes those third parties. ( )

**356. REASSESSMENT OF DISABILITY RETIREES (RULE 356).**

A disability retiree is subject to reassessment of his disability at any time to determine whether he continues to be disabled under the standard in Section 1-2001(4)(a), Idaho Code. However, after two (2) years of continuous disability retirement, a disability retiree is not required to undergo medical examinations more often than every twelve (12) months. A disability retiree notified that he has been selected for reassessment is under the same obligation as applicants to supply information. ( )

**357. BURDEN ON APPLICANT (RULE 357).**

Applicant must demonstrate that, on or before applicant’s last day of employment, they were disabled under the

disability standard. The last day of employment is the last day applicant earned compensation, including annual leave and sick leave. ( )

**358. STATUTORY STANDARD (RULE 358).**

In applying the disability standard in Section 1-2001(4)(a), Idaho Code, the applicant is prevented from further performance of the duties of his office if the applicant is permanently prevented, due to bodily injury or disease, from performing every substantial and material duty of his office. ( )

**359. ATTORNEY'S FEES AND COSTS (RULE 359).**

Attorney's fees and costs incurred by an applicant in their efforts to obtain disability retirement are the sole responsibility of the applicant and shall not be paid by the Board except for fees related to judicial review for which applicant is found to be entitled under applicable law. ( )

**360. -- 399. (RESERVED)**

**SUBCHAPTER F – MISCELLANEOUS PROVISIONS**  
**Rules 400 through 999**

**400. ADMINISTRATIVE PROCEDURE -- CROSS REFERENCE (RULE 400).**

See IDAPA 59.01.01, "Rules of Administrative Procedure of PERSI," concerning rules for administrative procedure. ( )

**401. APPROVED DOMESTIC RETIREMENT ORDERS (RULE 401).**

As permitted under Code Section 414(p)(11), the Plan shall recognize and give effect to domestic retirement orders that have been approved in accordance with Plan procedures. An order shall be approved only if it substantially meets the requirements for a qualified domestic relations order under Code Section 414(p), except for Subsection (9) thereof, as determined by the Administrator or its agent. Amounts segregated for the accounts of alternate payees pursuant to a Plan approved domestic retirement order shall be available for immediate distribution to the alternate payee. Distributions pursuant to a domestic retirement order to an alternate payee who is a spouse or former spouse of the Member shall be taxable to the alternate payee rather than the Member to the extent permitted under Code Section 414(p)(12). Distributions pursuant to a qualified domestic relations order to an alternate payee who is not a spouse or former spouse of the Member shall be taxable to the Member. ( )

**402. RETIREMENT APPLICATION AND SPOUSAL CONSENT (RULE 402).**

A member is required to complete and submit a retirement application and select either a regular or optional retirement allowance. The member's signature must be notarized. The application for retirement indicating the election made by the retiring member shall also be signed by the spouse certifying they understand and consent to the election made by the member. The spouse's signature must be notarized. ( )

**403. FORFEITURES (RULE 403).**

Forfeitures will not be applied to increase the benefits any member would otherwise receive. ( )

**404. PRE-ERISA VESTING (RULE 404).**

Upon any termination of the Plan or upon any complete discontinuance of contributions under the Plan, the rights of all Members to benefits accrued to the date of such termination or discontinuance, to the extent then funded, shall become one hundred percent (100%) vested. ( )

**405. EXCLUSIVE PURPOSE (RULE 405).**

The Board shall hold the assets of the Judges' Retirement Fund in trust for the exclusive purpose of providing benefits to Members and Beneficiaries and paying reasonable expenses of administration. It shall be impossible by operation of the Judges' Retirement Fund, by termination, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by other means, for any part of the corpus or income of the Judges' Retirement Fund, or any funds contributed thereto, to inure to the benefit of any Employer or otherwise be used for or diverted to purposes other than providing benefits to Members and Beneficiaries and defraying reasonable expenses of administering the Judges' Retirement Fund. ( )

**406. BENEFITS DURING MILITARY SERVICES (RULE 406).**

**01. Death Benefits. ( )**

**a.** This Subsection 407.01 applies to a member of the Judges' Retirement Fund who dies on or after January 1, 2007, while performing qualified military service as defined in Chapter 43, Title 38 of the United States Code. ( )

**b.** The period of military service that results in the member's death will be counted in the determination of whether the member qualifies for the death benefit described in Section 2009-1(b) to the extent required by Code Section 401(a)(37), ( )

**02. Determination of Return to Employment for Benefit Accrual Purposes. ( )**

**a.** This Subsection 407.02 applies to a member of the Judges' Retirement Fund who becomes disabled or dies on or after January 1, 2007, while performing qualified military service as defined in Chapter 43, Title 38 of the United States Code. ( )

**b.** For benefit accrual purposes, a member of the Judges' Retirement Fund shall be treated as having returned to employment on the day before the death or disability and then terminated on the date of death or disability to the extent permitted by Code Section 414(u)(8). ( )

**03. Differential Wage Payments. ( )**

**a.** This Subsection 407.02 applies to a member of the Judges' Retirement Fund who, on or after January 1, 2009, receives differential wage payments from his or her Employer while performing qualified military service as defined in Chapter 43, Title 38 of the United States Code. ( )

**b.** A member of the Judges' Retirement Fund shall be treated as employed by the Employer while performing qualified military service to the extent required by Code Section 3401(h). ( )

**407. -- 999. (RESERVED)**

[Agency redlined courtesy copy]

*Italicized text indicates changes between the text of the proposed rule as adopted in the pending rule.*

**59.02.01 – RULES FOR THE JUDGES' RETIREMENT FUND**

**SUBCHAPTER A – GENERAL PROVISIONS**  
**Rules 001 through 099**

**000. LEGAL AUTHORITY (RULE 0).**

~~The Rules for the Judges' Retirement Fund rules are adopted under the legal authority of~~ Section 1-2012, Idaho Code. (3-31-22)( )

**001. TITLE AND SCOPE (RULE 1).**

**01. Title.** The title of this chapter is IDAPA 59.02.01, "Rules for the Judges' Retirement Fund." ( )

**02. Scope.** This chapter relates to retirement under the Judges' Retirement Fund. ( )

~~002. WRITTEN INTERPRETATIONS—AGENCY GUIDELINES (RULE 2).~~

~~Written interpretations of these rules, to the extent they exist, are available from PERSI (Public Employee Retirement System of Idaho), at the locations listed in Rule 4 of these rules. (3-31-22)~~

~~003. ADMINISTRATIVE APPEAL (RULE 3).~~

~~Administrative appeals are conducted pursuant to IDAPA 59.01.01, "Rules of Administrative Procedure," Rules 101 through 104 and 150 through 789. (3-31-22)( )~~

~~004. OFFICE—OFFICE HOURS—MAILING ADDRESS AND STREET ADDRESS (RULE 4).~~

~~Office hours are 8 a.m. to 5 p.m. Monday through Friday. PERSI's mailing and street addresses, telephone numbers, and fax numbers are as follows: (3-31-22)~~

~~005. PUBLIC RECORDS ACT COMPLIANCE (RULE 5).~~

~~All rules required to be adopted by this chapter are public records. (3-31-22)~~

~~006. CITATION (RULE 6).~~

~~The official citation of this chapter is IDAPA 59.02.01.000, et seq. For example, this section's citation is IDAPA 59.02.01.006. In documents submitted to the Board or issued by the Board these rules may be cited as Rules for the Judges' Retirement Fund and section number less leading zeros. For example, this rule may be cited as Rules for the Judges' Retirement Fund Rule 7. (3-31-22)~~

~~007. EFFECTIVE DATE (RULE 7).~~

~~Unless otherwise indicated in the bracketed material following each rule, the effective date of every rule in this chapter is July 1, 2014. (3-31-22)~~

~~008. -- 009. (RESERVED)~~

**010. DEFINITIONS (RULE 10).**

The following definitions apply to this chapter: ( )

**01. Accrued Benefit.** The actuarial value of the retirement benefit to which the Member is entitled under the Judges' Retirement Fund upon attainment of Normal Retirement Age. ( )

**02. Active Member.** Each justice or judge who participates in the Judges' Retirement Fund as provided by Idaho Code. ( )

**03. Administrator.** The Board. ( )

~~**04. Annual Additions.** Annual additions are the total of all after-tax Member contributions in a year (not including rollovers) and forfeitures allocated to a Member's account under the Judges' Retirement Fund and all other qualified plans to which contributions are made based on the Member's service with the Employer. (3-31-22)~~

~~**05. Beneficiary.** The designated person (or, if none, the Member's estate) who is entitled to receive benefits under the Plan after the death of a Member. ( )~~

~~**06. Board.** The retirement board established in Section 59-1304, Idaho Code. ( )~~

~~**07. Code.** The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to Sections of the Code are to such Sections as they may from time to time be amended or renumbered. ( )~~

~~**08. Compensation.** All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Member's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Member's gross income for the calendar year but for a compensation reduction election under Sections 125, 132(f), 401(k), 403(b), or 457(b) of the Code. ( )~~

~~**09. Contingent Annuitant.** The person designated by a Member under certain retirement options to~~

receive payments upon the death of the Member. The person so designated must be born and living on the effective date of retirement. ( )

~~109.~~ **Designated Beneficiary.** The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-4, Q&A-4, of the Treasury regulations. ( )

~~11.~~ **Differential Wage Payments.** ~~Differential Wage Payments as defined in 26 U.S.C. 3401(h). A differential wage payment generally refers to an employer payment to an employee called to active duty in the uniformed services for more than thirty (30) days that represents all or a portion of the compensation he would have received from the employer if he were performing services for the employer.~~ (3-31-22) ( )

~~120.~~ **Employer.** ~~The common-law employer of a Member~~ State of Idaho Judicial Branch. (3-31-22) ( )

~~11.~~ **Inactive Member.** A former active member who is not receiving a retirement allowance or has not received a refund of contributions. ( )

~~132.~~ **Judges' Retirement Fund.** The Judges' Retirement Fund established under Title 1, Chapter 20, Idaho Code, and rules applicable to the Judges' Retirement Fund. The Judges' Retirement Fund is intended to satisfy Code Section 401(a) as applicable to governmental plans described in Code Section 414(d). It is maintained for the exclusive benefit of Members and their beneficiaries. ( )

~~143.~~ **Member.** ~~An individual who is currently accruing benefits or who has previously accrued benefits under the Plan and who has not received a distribution of his entire benefit under the Plan~~ active member, inactive member, or a retired member. (3-31-22) ( )

~~15.~~ **Normal Retirement Age.** ~~The age (or combination of age and years of service) at which a Member is entitled to an actuarially unreduced retirement benefit under the Plan. A Member will be fully vested upon attainment of Normal Retirement Age.~~ (3-31-22) ( )

~~164.~~ **Plan.** The plan of benefits under the Judges' Retirement Fund. ( )

~~175.~~ **Required Beginning Date.** The date specified in Rule 100 of these rules. ( )

~~16.~~ **Retired Member.** A former active member receiving retirement compensation. ( )

~~17.~~ **Service Credit.** Being shown on Employer's payroll as an Active Member receiving a salary. For each calendar month, service is credited only when the Active Member is employed for fifteen (15) days or more during the calendar month. ( )

~~18.~~ **Severance from Employment.** The date that the Member dies, retires, or otherwise has a separation from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code). ( )

011. -- 099. (RESERVED)

**SUBCHAPTER B – DISTRIBUTIONS**  
**Rules 100 through 250**

**100. REQUIRED MINIMUM DISTRIBUTIONS (RULE 100).**

**01. Default Application of Federal Requirements.** With respect to distributions under the Judges' Retirement Fund, and except as provided in Subsection 100.06, the Judges' Retirement Fund will apply the minimum distribution requirements of Section 401(a)(9) of the Internal Revenue Code (Code) in accordance with a good faith interpretation of Section 401(a)(9), notwithstanding any provision of the Judges' Retirement Fund to the contrary. ( )

**02. Required Beginning Date.** Except as otherwise provided in Subsections 100.03 through 100.06, distributions under the Judges' Retirement Fund shall begin not later than April 1 following the later of: ( )

**a.** ~~The calendar year (hereinafter referred to as the "Commencement Year") in which the member reaches age seventy and one half (70 ½); and The commencement year, which is defined as the year in which a member reaches the applicable age, as defined in Internal Revenue Code Section 401(a) as now in effect and thereafter amended.~~ (3-31-22)( )

**b.** The year in which ~~he~~ they retires. (3-31-22)( )

**03. PERSI Selects Retirement Option.** Any member required to take minimum distributions, as required in this Section 100 and fails to complete and submit an approved retirement application and select either a regular or optional retirement allowance by April 1 following the later of the commencement year or the year the member separates from employment, the member shall be deemed to have made the following selection. ( )

**a.** If single, a regular retirement allowance and no other selection shall be required or permitted. ( )

**b.** If married, a one hundred percent (100%) spousal option and no other selection shall be required or permitted unless proof is provided that the spouse has no community property interest in the benefit. ( )

**034. Lifetime Distributions.** Distribution shall be made over the life of the Member or the lives of the Member and ~~their contingent annuitant his beneficiary; or over a period certain not extending beyond the life expectancy of the member or the joint life and last survivor expectancy of the member and his beneficiary.~~ (3-31-22)( )

**045. Timing of Required Distributions.** A required distribution shall be deemed to have been made during the Commencement Year if actually made by the following April 1, but such delayed distribution shall not change the amount of such distribution, and the distribution otherwise required during the subsequent calendar year shall be calculated as if the first distribution had been made on the last day of the Commencement Year. ( )

~~**05. Adjustment of Required Distributions.** Benefits paid prior to the Commencement Year shall reduce the aggregate amount subject to (but shall not otherwise negate) the minimum distribution requirements described herein.~~ (3-31-22)

~~**06. Annuity Benefits Payable on Death of a Member.** All death benefits payable in the form of an annuity will begin to be paid as soon as administratively practicable after the member's death, but must in any event begin to be paid before the end of the calendar year following the calendar year in which the member died.~~ (3-31-22)

**076. Death Benefits.** All death benefits payable in a lump sum will be distributed as soon as administratively practicable after request, but must in any event be distributed within fifteen (15) months of the member's death, unless the identity of the beneficiary is not ascertainable. ( )

**101. MAXIMUM LIMITATIONS ON BENEFITS (RULE 101).**

Beginning effective January 1, 2002, the "defined benefit dollar limitation" is one hundred sixty thousand dollars (\$160,000), as adjusted, effective January 1 of each year thereafter, under Section 415(d) of the Internal Revenue Code (Code) in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under Section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies. The "maximum permissible benefit" is the defined benefit dollar limitation (adjusted where required, as provided in Subsection 101.01 and, if applicable, in Subsections 101.02 through 101.04). ( )

**01. Less Than Ten Years of Service.** If the Member has fewer than ten (10) years of participation in the Judges' Retirement Fund, the defined benefit dollar limitation shall be multiplied by a fraction: ( )

**a.** The numerator of which is the number of years (or part thereof) of participation in the Judges' Retirement Fund; and ( )

b. The denominator of which is ten (10). ( )

**02. Benefit Begins Prior to Age Sixty-Two.** If the benefit of a Member begins prior to age sixty-two (62), the defined benefit dollar limitation applicable to the Member at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the Member at age sixty-two (62) (adjusted under Rule 101.01, if required). The defined benefit dollar limitation applicable at an age prior to age sixty-two (62) is determined as set forth in IRS regulation under Section 415(b)(2) of the Code. ( )

**03. Benefit Begins at Age Sixty-Five.** If the benefit of a Member begins after the Member attains age sixty-five (65), the defined benefit dollar limitation applicable to the Member at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the Member at age sixty-five (65) (adjusted under Rule 101.01, if required.) The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age sixty-five (65) is determined as set forth in IRS regulation under Section 415(b)(2) of the Code. ( )

**04. Transition.** Benefit increases resulting from the increase in the limitations of Section 415(b) of the Code shall be provided to all current and former Members (with benefits limited by Section 415(b)) who have an accrued benefit under the Judges' Retirement Fund immediately prior to the effective date of this Rule (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under Section 415(b).) ( )

**05. Aggregation.** If any member participates in two (2) or more qualified defined benefit plans maintained by the employer (or a predecessor employer), the combined benefits from all such plans may not exceed the "maximum permissible benefit" described in this Rule 101. ( )

~~**102. MAXIMUM LIMITATION ON ANNUAL ADDITIONS (RULE 102).**~~

~~**01. Annual Additions Limitation.** Effective January 1, 2002, annual additions shall not exceed the lesser of: (3-31-22)~~

~~a. Forty thousand dollars (\$40,000); or (3-31-22)~~

~~b. One hundred percent (100%) of the Member's compensation. (3-31-22)~~

~~**02. Annual Adjustments.** As of January 1 of each calendar year on and after January 1, 2002, the dollar limitation in Subsection 102.01 of these rules, with respect to both active and retired members, shall be adjusted for increases in the cost of living, taking into consideration applicable guidelines. (3-31-22)~~

~~**03. Other Qualified Plans.** To the extent that any Member of the Judges Retirement Plan is also a member of any other qualified plan, and annual additions to all plans covering the Member would otherwise exceed the limits set forth above, annual additions to such other qualified plan shall be reduced to the extent necessary to avoid exceeding the limitations on annual additions. (3-31-22)~~

~~**103. ROLLOVER DISTRIBUTIONS (RULE 103).**~~

~~**01. Direct Rollovers.** A Member of the Judges' Retirement Fund or a beneficiary of a Member (including a Member's former spouse who is the alternate payee under an approved domestic relations order) who is entitled to an eligible rollover distribution may elect, at the time and in the manner prescribed by the Administrator, to have all or any portion of the distribution paid directly to an eligible retirement plan specified by the Member in a direct rollover. Effective January 1, 2006, in the event of a mandatory distribution greater than one thousand dollars (\$1,000), if the Member does not elect to have such distribution paid directly to an eligible retirement plan specified by the Member in a direct rollover or to receive the distribution directly, then the plan administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the plan administrator. (3-31-22)( )~~

~~**02. Eligible Rollover Distribution Defined.** For purposes of this Rule, an eligible rollover distribution~~

means any distribution of all or any portion of a Member's account balance, except that an eligible rollover distribution does not include (a) any installment payment for a period of ten (10) years or more, (b) any distribution made as a result of an unforeseeable emergency, or (c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Code Section 401(a)(9). In addition, an eligible retirement plan means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, a qualified trust described in Section 401(a) of the Code, an annuity plan described in Section 403(a) or 403(b) of the Code, or an eligible governmental plan described in Section 457(b) of the Code, that accepts the eligible rollover distribution. Effective January 1, 2008, an eligible retirement plan shall also mean a Roth IRA described in Section 408A of the Code. ( )

~~03. After Tax Contributions.~~ For purposes of the direct rollover provisions in Rule 103.01, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for the amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. (3-31-22)

~~04.3~~ **Alternate Payees.** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse, who is the alternate payee under a domestic retirement order, approved as provided in Rule 402 are distributees with regard to the interest of the spouse or former spouse. ( )

~~05.4.~~ **Transfers to Non-Spouse Beneficiaries.** This Rule 103.05 applies to distributions made on or after July 1, 2008. Notwithstanding any provision of the Judges' Retirement Fund to the contrary that would otherwise limit the options of the Beneficiary of a deceased Member who is not the Member's spouse, the administrator shall, upon the request of such a Beneficiary transfer a lump sum distribution to the trustee of an individual retirement account established under Section 408 of the Code in accordance with the provisions of Code Section 402(e)(11). ( )

~~104.3.~~ -- 250. (RESERVED)

**SUBCHAPTER C – ASSUMPTIONS**  
**Rules 251 through 299**

**251. ACTUARIAL ASSUMPTIONS TO BE SPECIFIED (RULE 251).**  
Whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions will be specified in a manner that precludes employer discretion. ( )

~~252. ACTUARIAL TABLES (RULE 252).~~  
The actuarial tables used for determining optional retirement benefits are set forth in Appendix A, which is hereby incorporated by reference and made a part hereof. (3-31-22)

~~253.2.~~ -- 299. (RESERVED)

**SUBCHAPTER D – CONTRIBUTION RATES**  
**Rules 300 through 349**

~~300. EMPLOYER CONTRIBUTION RATE (RULE 300).~~  
The employer contribution rate shall be fifty five point twenty eight percent (55.28%) of salaries until next determined by the Board. Beginning July 1, 2017, the employer contribution rate shall be sixty two point fifty three percent (62.53%) of salaries until next determined by the Board. (3-31-22)

~~301. EMPLOYEE CONTRIBUTION RATE (RULE 301).~~  
The employee contribution rate shall be ten point twenty three percent (10.23%) of salary until next determined by the Board. Beginning July 1, 2017, the employee contribution rate shall be eleven point fifty seven percent (11.57%) of salaries until next determined by the Board. (3-31-22)



**3020. VACATION AND CONTRACTUAL PAYMENTS SUBJECT TO CONTRIBUTIONS (RULE 3020).**  
Compensation paid for vacation is salary subject to employee and employer contributions. ( )

**3031. REPORTS (RULE 3031).**  
The Employer shall provide to the Board such reports, including compensation and contribution reports, as are required by the Board to verify contributions benefits required or provided and unless extended in writing by the executive director such reports shall be provided no later than five (5) business days after each pay date. ( )

**3042. -- 349. (RESERVED)**

**SUBCHAPTER E – DISABILITY RETIREMENT**  
**Rules 350 through 399**

**350. APPLYING FOR DISABILITY RETIREMENT (RULE 350).**  
Eligible members may apply for disability retirement, as provided for in Section 1-2001(4)(a), Idaho Code, by completing a required form available from any PERSI office. The application process may include an interview by a Board representative. Applicants must release all medical records and information to the Board or its agent. ( )

**351. INITIAL APPLICATION REVIEW (RULE 351).**  
Applications will first be reviewed to determine whether the applicant meets applicable eligibility requirements. If eligibility requirements are met, the application will proceed to disability assessment review. If all eligibility requirements are not met, the applicant will be notified in writing. ( )

**352. DISABILITY ASSESSMENT REVIEW (RULE 352).**  
An applicant will be assessed to determine whether ~~he qualifies~~ they qualify for disability retirement under the applicable standard. The assessment may include without limitation, records review, medical and psychological examinations, vocational assessments, or any combination thereof as determined by the Board. Failure to timely comply with any request made by the Board during the assessment process shall result in automatic denial of disability retirement. At the conclusion of the assessment process, the Board will notify the applicant in writing whether or not ~~he qualifies~~ they qualify for disability retirement. (3-31-22)( )

**353. RECONSIDERATION OF DISABILITY ASSESSMENT DECISION (RULE 353).**  
Applicants, who are denied disability retirement as a result of an adverse disability assessment decision, and wish to contest that decision, are required to participate in a reconsideration process. A request for reconsideration must be made within thirty (30) days of the issuance of the disability assessment decision. Any additional information the applicant wishes to be considered must be submitted within thirty (30) days of the request for reconsideration. The additional information will be reviewed and a reconsideration decision will be issued in writing to the applicant. ( )

**354. ADMINISTRATIVE REVIEW OF THE RECONSIDERATION DECISION (RULE 354).**  
A reconsideration decision shall be considered a final decision, and may be appealed to the Board for review. In any related administrative hearing, the applicant shall be limited to presenting facts and evidence made available in the reconsideration process. No new or additional evidence may be presented at the hearing. If the applicant has additional facts or evidence that were not made available during the assessment or reconsideration process, the applicant must submit a new application for disability retirement, proceed again through the assessment process, and pay the costs associated with the second or subsequent assessment process. This rule is intended to promote the efficient use of fund resources by encouraging full and complete disclosure of information during the disability assessment process. ( )

**355. DELEGATION (RULE 355).**  
The Board may, by contract or otherwise, delegate all or part of these processes to third parties. Where such delegation has been made, the term “Board” includes those third parties. Where such delegation has been made, the term “Board” includes those third parties. ( )

**356. REASSESSMENT OF DISABILITY RETIREES (RULE 356).**  
A disability retiree is subject to reassessment of his disability at any time to determine whether he continues to be

disabled under the standard in Section 1-2001(4)(a), Idaho Code. However, after two (2) years of continuous disability retirement, a disability retiree is not required to undergo medical examinations more often than every twelve (12) months. A disability retiree notified that he has been selected for reassessment is under the same obligation as applicants to supply information. ( )

**357. BURDEN ON APPLICANT (RULE 357).**

Applicant must demonstrate that, on or before applicant's last day of employment, ~~he was~~ they were disabled under the disability standard. The last day of employment is the last day applicant earned compensation, including annual leave and sick leave. (3-31-22)( )

**358. STATUTORY STANDARD (RULE 358).**

In applying the disability standard in Section 1-2001(4)(a), Idaho Code, the applicant is prevented from further performance of the duties of his office if the applicant is permanently prevented, due to bodily injury or disease, from performing every substantial and material duty of his office. ( )

**359. ATTORNEY'S FEES AND COSTS (RULE 359).**

Attorney's fees and costs incurred by an applicant in ~~his~~ their efforts to obtain disability retirement are the sole responsibility of the applicant and shall not be paid by the Board except for fees related to judicial review for which applicant is found to be entitled under applicable law. (3-31-22)( )

**360. -- 399. (RESERVED)**

**SUBCHAPTER F – MISCELLANEOUS PROVISIONS**  
**Rules 400 through 999**

**400. ADMINISTRATIVE PROCEDURE -- CROSS REFERENCE (RULE 400).**

See IDAPA 59.01.01, "Rules of Administrative Procedure of PERSI," concerning rules for administrative procedure. ( )

~~**401. POST RETIREMENT ALLOWANCE ADJUSTMENTS (RULE 401).**~~

~~**01. Adjustments Under Section 59-1355, Idaho Code.** For those retirees whose post retirement allowance adjustment is to be determined in accordance with Section 59-1355, Idaho Code, the Board shall annually consider the post retirement cost of living adjustment (COLA) pursuant to Section 59-1355, Idaho Code. The Board has the discretion afforded under Section 59-1355, Idaho Code, related to a discretionary and/or retro active COLA. The Board shall annually consider the COLA no later than the December Board meeting of each year with an effective date of July 1 of the next year. (3-31-22)~~

~~**02. Adjustments Under Section 1-2001(2)(a)(ii).** For those retirees whose COLA is to be determined in accordance with Section 1-2001(2)(a)(ii), Idaho Code, the COLA, if any, shall have an effective date of July 1 of the applicable year. (3-31-22)~~

~~**4021. APPROVED DOMESTIC RETIREMENT ORDERS (RULE 4021).**~~

As permitted under Code Section 414(p)(11), the Plan shall recognize and give effect to domestic retirement orders that have been approved in accordance with Plan procedures. An order shall be approved only if it substantially meets the requirements for a qualified domestic relations order under Code Section 414(p), except for Subsection (9) thereof, as determined by the Administrator or its agent. Amounts segregated for the accounts of alternate payees pursuant to a Plan approved domestic retirement order shall be available for immediate distribution to the alternate payee. Distributions pursuant to a domestic retirement order to an alternate payee who is a spouse or former spouse of the Member shall be taxable to the alternate payee rather than the Member to the extent permitted under Code Section 414(p)(12). Distributions pursuant to a qualified domestic relations order to an alternate payee who is not a spouse or former spouse of the Member shall be taxable to the Member. ( )

~~**4032. RETIREMENT APPLICATION AND SPOUSAL CONSENT (RULE 4032).**~~

A member is required to complete and submit a retirement application and select either a regular or optional retirement allowance. The member's signature must be notarized. The application for retirement indicating the election made by the retiring member shall also be signed by the spouse certifying they understand and consent to

the election made by the member. The spouse's signature must be notarized. ~~If an inactive member reaches service retirement age, or an active member who has reached service retirement age separates from service, and has failed to complete and submit an approved retirement application and select either a regular or optional retirement allowance within ninety (90) days thereafter, the member shall be deemed to have selected a regular retirement allowance and no other selection shall be required or permitted.~~ (3-31-22) ( )

**4043. FORFEITURES (RULE 4043).**

Forfeitures will not be applied to increase the benefits any member would otherwise receive. ( )

**4054. PRE-ERISA VESTING (RULE 4054).**

Upon any termination of the Plan or upon any complete discontinuance of contributions under the Plan, the rights of all Members to benefits accrued to the date of such termination or discontinuance, to the extent then funded, shall become one hundred percent (100%) vested. ( )

**4065. EXCLUSIVE PURPOSE (RULE 4065).**

The Board shall hold the assets of the Judges' Retirement Fund in trust for the exclusive purpose of providing benefits to Members and Beneficiaries and paying reasonable expenses of administration. It shall be impossible by operation of the Judges' Retirement Fund, by termination, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by other means, for any part of the corpus or income of the Judges' Retirement Fund, or any funds contributed thereto, to inure to the benefit of any Employer or otherwise be used for or diverted to purposes other than providing benefits to Members and Beneficiaries and defraying reasonable expenses of administering the Judges' Retirement Fund. ( )

**4076. BENEFITS DURING MILITARY SERVICES (RULE 4076).**

**01. Death Benefits.** ( )

a. This Subsection 407.01 applies to a member of the Judges' Retirement Fund who dies on or after January 1, 2007, while performing qualified military service as defined in Chapter 43, Title 38 of the United States Code. ( )

b. The period of military service that results in the member's death will be counted in the determination of whether the member qualifies for the death benefit described in Section 2009-1(b) to the extent required by Code Section 401(a)(37), ( )

**02. Determination of Return to Employment for Benefit Accrual Purposes.** ( )

a. This Subsection 407.02 applies to a member of the Judges' Retirement Fund who becomes disabled or dies on or after January 1, 2007, while performing qualified military service as defined in Chapter 43, Title 38 of the United States Code. ( )

b. For benefit accrual purposes, a member of the Judges' Retirement Fund shall be treated as having returned to employment on the day before the death or disability and then terminated on the date of death or disability to the extent permitted by Code Section 414(u)(8). ( )

**03. Differential Wage Payments.** ( )

a. This Subsection 407.02 applies to a member of the Judges' Retirement Fund who, on or after January 1, 2009, receives differential wage payments from his or her Employer while performing qualified military service as defined in Chapter 43, Title 38 of the United States Code. ( )

b. A member of the Judges' Retirement Fund shall be treated as employed by the Employer while performing qualified military service to the extent required by Code Section 3401(h). ( )

**4087. -- 999. (RESERVED)**









