

# **PENDING RULES**

## **COMMITTEE RULES**

### **REVIEW BOOK**

Submitted for Review Before  
**House Commerce &  
Human Resources Committee**  
68th Idaho Legislature  
First Regular Session – 2025



*Prepared by:*

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

*January 2025*

**HOUSE COMMERCE & HUMAN RESOURCES COMMITTEE**

**ADMINISTRATIVE RULES REVIEW**

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## IDAPA 09 – IDAHO DEPARTMENT OF LABOR

### 09.01.01 – RULES OF ADMINISTRATIVE PROCEDURE OF THE DEPARTMENT OF LABOR

#### DOCKET NO. 09-0101-2401 (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 2025 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. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**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 72-1300 et seq., Idaho Code, and Sections 45-600 et seq., 74-106(7), 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:

These rules are being adopted as part of the IDOL's plan to review each rule every 5 years. The changes are consistent with the [Executive Order 2020-01, Zero Based Regulation](#).

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 2, 2024, Idaho Administrative Bulletin, [Vol. 24-10, pages 147-153](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a 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. 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:

This rulemaking is not anticipated to have any fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Darlene Carnopis at (208) 696-2380.

DATED this 20th day of November, 2024.

Darlene Carnopis  
Policy Coordinator  
Idaho Department of Labor  
317 W. 3rd St.  
Boise, ID 83702  
Phone: (208) 696-2380  
Email: [darlene.carnopis@labor.idaho.gov](mailto:darlene.carnopis@labor.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 Sections 72-1300 et seq., Idaho Code, Sections 45-600 et seq., 74-106(7), 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 Oct. 16, 2024.

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:** These rules are being presented for authorization as part of the IDOL's plan to review each rule every 5 years. There are no specific rulemaking changes planned by the IDOL at this time except for evaluation and amendment consistent with the Governor's [Zero-Based Regulation Executive Order](#). It is anticipated that rulemaking stakeholders will propose and advocate for rulemaking changes as part of the negotiated rulemaking process. The IDOL intends to carefully consider all changes presented by the public and may propose certain changes so long as they are consistent with the rules' statutory authority and the Governor's Executive Order. The IDOL will review the documents that are currently incorporated by reference in this rule and update that list as applicable.

**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: No fiscal impact.

**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 July 3, 2024, Idaho Administrative Bulletin, [Vol. 24-7, page 57-58](#).

**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 Darlene Carnopis at 208-696-2380.

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 Oct. 23, 2024.

DATED this 30th day of August, 2024.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 09-0101-2401**

**09.01.01 – RULES OF ADMINISTRATIVE PROCEDURE OF THE DEPARTMENT OF LABOR**

**000. LEGAL AUTHORITY.**

These rules are promulgated under Sections 45-616 and 72-1333(2), Idaho Code. (3-23-22)

**001. SCOPE.**

These rules govern all procedures for rulemaking, petitions for declaratory rulings, and determinations and appeals pursuant to the Employment Security Law, Title 72, Chapter 13, Idaho Code, and the Claims for Wages Act, Title 45, Chapter 6, Idaho Code, and for other programs administered by the Department unless otherwise specified by law. (3-23-22)

~~002. (RESERVED)~~

~~003. ADMINISTRATIVE APPEALS.~~

~~Administrative appeals from determinations under the Employment Security Law and the Claims for Wages Act may be taken as provided in these rules and applicable provisions of the Employment Security Law and the Claims for Wages Act. (3-23-22)~~

~~002. – 003. (RESERVED)~~

**004. PAYMENTS TO THE DEPARTMENT.**

Any payment tendered to the Department will be for collection only and will not constitute payment of any amount due until the payment clears the appropriate financial institution. Should the Department incur any additional expense in the payment collection, the expense will be paid by the person who tenders said payment to the Department. (3-23-22)

**005. – 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Appeals Examiner.** A Department hearing officer designated to hear administrative appeals pursuant to the Employment Security Law and the Claims for Wages Act. (3-23-22)

**02. Claims for Wages Act.** The Claims for Wages Act codified at Title 45, Chapter 6, Idaho Code. (3-23-22)

**03. Department.** The Idaho Department of Labor. (3-23-22)

**04. Determination.** Unless the context clearly suggests otherwise, reference to a determination in these rules includes a determination, redetermination, or a revised determination. (3-23-22)

**05. Employment Security Law.** The Employment Security Law codified at Title 72, Chapter 13, Idaho Code. (3-23-22)

~~011. – 014. (RESERVED)~~

~~015. EXEMPTION FROM ATTORNEY GENERAL ADMINISTRATIVE PROCEDURE RULES FOR CONTESTED CASES.~~

~~Pursuant to Section 67-5206(5), Idaho Code, the procedures contained in Subchapter B, “Contested Cases,” of the Idaho Rules of Administrative Procedure of the Attorney General, IDAPA 04.11.01.100 through 04.11.01.799, do not apply to appeals within the Department. All appeals within the Department are governed solely by the provisions of the Employment Security Law, the Claims for Wages Act, these rules, and by the applicable federal law governing programs administered by the Department. (3-23-22)~~

~~**016. REASONS FOR EXEMPTION FROM ATTORNEY GENERAL'S ADMINISTRATIVE PROCEDURE RULES.**~~

~~**01. Unemployment Insurance Benefits and Tax Contribution Proceedings.** Sections 72-1361 and 72-1368, Idaho Code, provide that all proceedings to determine the rights to unemployment insurance benefits and tax contribution coverage are exempt from the contested case and judicial review provisions of the Idaho Administrative Procedure Act. Appeals of complaint determinations and other decisions arising within the complaint system or other programs administered by the Department must be determined by the requirements of applicable federal law. Procedures for administrative proceedings and appeals are provided for in the Employment Security Law and these rules. All procedures affecting the rights to benefits and unemployment insurance coverage must be determined solely by the requirements of the Employment Security Law. Such proceedings must be speedy and simple as required by the Federal Unemployment Tax Act and the Social Security Act. The Department determines that it can more adequately meet these requirements through promulgating its own rules rather than relying upon the rules applicable to other state agencies. (3-23-22)~~

~~**02. Claims for Wages Proceedings.** All proceedings to determine claims for wages are exempt from the contested case provisions of the Idaho Administrative Procedure Act pursuant to Section 45-617(2), Idaho Code. Procedures for administrative proceedings and appeals are provided for in the Claims for Wages Act and these rules. (3-23-22)~~

~~**017. (RESERVED)**~~

~~**011. – 017. (RESERVED)**~~

**018. DECLARATORY RULING PROCEDURES.**

Form and Contents of Petitions for Declaratory Rulings on Applicability of Statutes or Rules. Any person petitioning for a declaratory ruling on the applicability of a statute or Department rule must comply with this rule. (3-23-22)

**01. Form of Petition.** The petition must: identify the petitioner and state the petitioner's interest in the matter; state the declaratory ruling that the petitioner seeks; and indicate the statute, or rule, and the factual allegations upon which the petitioner relies to support the petition. (3-23-22)

**02. Legal Assertions.** Citations of cases and/or statutory provisions may accompany the legal assertions in a petition for a declaratory ruling. (3-23-22)

**03. Filing Petition.** A petition for a declaratory ruling on applicability of statutes or rules must be filed with the Director of the Department at 317 Main Street, Boise, Idaho 83735. (3-23-22)

~~**04. Disposition of Petitions for Declaratory Rulings.** When a petition is received in the form and content required by these rules, the Director or the Director's designee will review the petition contents and request additional information from the petitioner, if necessary, and thereafter rule on the petition and notify the petitioner and any other interested parties in writing of the ruling. (3-23-22)~~

~~**019. – 0245. (RESERVED)**~~

~~**025. WAGE CLAIMS PROCEDURES.**~~

~~Administrative procedures for wage claims filed with the Department pursuant to the Claims for Wages Act are governed by these rules and Section 45-617, Idaho Code. (3-23-22)~~

**026. DISMISSAL OF WAGE CLAIMS FOR LACK OF PROSECUTION.**

Wage claimants have a responsibility to seek prompt adjudication of their claims. The Department may dismiss, without prejudice, wage claims when claimants fail to respond within thirty (30) days to written notice from the Department that additional action is required on their part to prosecute their claim. The thirty (30) day period for a response begins the date the notice is mailed to the wage claimant's last known address. Mailed responses are deemed received the date they are postmarked. A wage claim dismissed for lack of prosecution may be refiled with the Department subject to limitations of Sections 45-614 and 45-617(1), Idaho Code. (3-23-22)

**027. WAGE CLAIM AND EMPLOYMENT SECURITY LAW DETERMINATIONS.**

**01. Determinations and Time for Filing Appeals.** Department determinations under the Claims for Wages Act and Employment Security Law must be in writing and contain provisions advising the interested parties of their right to appeal the determination within fourteen (14) days from the date of mailing, or the date of electronic transmission to an electronic-mail address approved by the Department, in accordance with Sections 45-617(5), 72-1361 and 72-1368(5), Idaho Code, and must contain and clearly identify the mailing address, fax number and electronic address for filing an appeal. The date of mailing or service indicated on the determination shall be deemed the date of service of the determination. A determination is final unless, within fourteen (14) days after notice, as provided in Sections 45-617(5) and 72-1368(5), Idaho Code, an appeal is filed by an interested party with the Department in accordance with these rules. If an appeal from a wage claim determination is not timely filed, the amount awarded by a final determination will be immediately due and payable to the Department. (3-23-22)

~~**02. Appeals Heard By Appeals Examiners.** Appeals from wage claim and Employment Security Law determinations will be heard by an appeals examiner in accordance with the Claims for Wages Act, the Employment Security Law, and these rules. (3-23-22)~~

~~**032. Computation of Time.** In computing any time period prescribed or allowed by the Employment Security Law or the Claims for Wages Act, the day of the act, event, or default is not to be included. Saturdays, Sundays, and holidays will be counted during the period, except, if the last day of the period is a Saturday, Sunday, or legal holiday, the period extends to the next business day following the Saturday, Sunday, or legal holiday. (3-23-22)~~

**028. – 034. (RESERVED)**

**035. APPEALS TO APPEALS EXAMINER – FORM AND MANNER OF FILING OF NOTICES OF APPEAL.**

**01. Form of Notices of Appeal.** Any appeal taken to an appeals examiner pursuant to the Employment Security Law and the Claims for Wages Act must be in writing, signed by an interested party, the appellant or representative, and contain words that, by fair interpretation, request the appeal process for a specific determination or other decision of the Department. (3-23-22)

**02. Filing of Notices of Appeal.** To appeal a determination or other decision of the Department, interested parties must follow these rules and the instructions on the determination or other decision being appealed. If an appeal is delivered personally, the personal delivery date will be noted on the appeal and deemed the date of filing. A faxed or electronically transmitted appeal will be deemed filed on the date received by the Department (mountain time) or, if received on a weekend or holiday, the next business day. If mailed, the appeal will be deemed filed on the date of mailing as determined by the postmark on the envelope containing the appeal, unless a party establishes by a preponderance of the evidence that but for error by the U.S. Postal Service, the envelope would have been postmarked within the period for timely appeal. If such a postal error is established, the appeal will be deemed to be timely filed. Ref. Section 72-1368(6), and Section 45-617, Idaho Code. (3-23-22)

~~**036. DATE OF SERVICE OF DETERMINATIONS.**~~

~~The date indicated on determinations and decisions as the “Date of Service” or “Date of Mailing” will be presumed to be the date the document was deposited in the United States mail, or the date the document was electronically transmitted to an electronic-mail address approved by the Department pursuant to Section 72-1368(5), Idaho Code, unless shown otherwise by a preponderance of competent evidence. (3-23-22)~~

~~**036. (RESERVED)**~~

**037. EFFECT OF DELAY OR ERROR OF POSTAL SERVICE OR DEPARTMENT.**

**01. Department Determinations.** If a party establishes by a preponderance of the evidence that because of delay or error by the U.S. Postal Service, or because of error on the part of the Department, a determination was not delivered to the party's last known address, or transmitted electronically to the party's electronic-mail address approved by the Department, within fourteen (14) days of the date of mailing or service indicated on the determination, the period for filing a timely appeal extends to fourteen (14) days from the date of

actual notice. (3-23-22)

**02. Decisions of the Appeals Examiner.** If a party establishes by a preponderance of the evidence that, because of delay or error by the U.S. Postal Service, or because of error on the part of the Department, a decision by an appeals examiner was not delivered to the party's last known address, or transmitted electronically to the party's electronic-mail address approved by the Department, within the time periods prescribed by the Employment Security Law or the Claims for Wages Act for filing an application for rehearing or an appeal to the Industrial Commission, as the case may be, then: (3-23-22)

**a.** For an application for rehearing that must be filed within ten (10) days of notice of service of a decision, the period for filing a timely application for rehearing extends to ten (10) days from the date of actual notice; and (3-23-22)

**b.** For an appeal to the Industrial Commission that must be filed within fourteen (14) days of notice of service of a decision, the period for filing a timely appeal extends fourteen (14) days from the date of actual notice. Ref. Section 72-1368 (5) and (6) and Section 45-617(7), Idaho Code. (3-23-22)

**038. DISMISSAL IF FILING IS LATE.**

Where it appears any appeal (request for hearing) to the appeals examiner, or claim, or any other request or application, was not filed within the time period prescribed for filing, it will be dismissed on such grounds; provided, however, before or after such dismissal, the adversely affected interested party will be notified and given an opportunity to show that such appeal, claim for review, petition, or other request was timely. If it is found that such appeal, claim for review, petition, or other request or application was timely, the matter will be decided on the merits. Copies of a decision under this section will either be given, mailed, or electronically transmitted to an electronic-mail address approved by the Department pursuant to Section 72-1368(5), Idaho Code, to all interested parties, together with a clear statement of right of appeal or review. Ref. Section 72-1368 and Section 45-617, Idaho Code. (3-23-22)

**039. – 044. (RESERVED)**

**045. CONDUCT OF APPEALS HEARING.**

Upon request for appeal, a hearing before an appeals examiner will be set. Written notice of the time and place of the hearing will be mailed or electronically transmitted to each interested party not less than seven (7) days prior to the hearing date. (3-23-22)

**01. Telephone Hearings.** Hearings will be held by telephone unless, at the sole discretion of the appeals examiner, a personal hearing should be set. In deciding the manner in which to conduct the hearing, the appeals examiner will consider factors, including but not limited to the desires of the parties, possible delay and expense, the burden of proof, the complexity of the issues, and the number and location of witnesses. (3-23-22)

**02. Continuance.** The appeals examiner may postpone or continue a hearing for good cause on the examiner's own motion or that of any party, before a hearing is concluded. The appeals examiner may dismiss an appeal for good cause, such as abandonment of the appeal. (3-23-22)

**03. Rehearing.** An application for rehearing will be in writing and filed in person or postmarked within ten (10) days after the appeals examiner's decision is served. (3-23-22)

**04. No Appearance Hearings.** If no party appears to present additional evidence, a decision may be based on the existing record. For this purpose, the existing record will consist of documents maintained by the Department in the ordinary course of adjudicating the issues in the case, copies of which are provided to the parties with the notice of hearing. (3-23-22)

**05. Exhibits and Recordings.** Hearing exhibits and recordings may be destroyed, reused, or otherwise disposed of after the expiration of the time period for appeal from the decisions of the appeals examiner. (3-23-22)

~~**06. Subpoenas.** After determining a subpoena of a witness or records is necessary and reasonable, the appeals examiner will issue the subpoena, which may be served by mail or in person. (3-23-22)~~



**076. Failure to Respond to Subpoena.** If a person fails to respond to a subpoena issued by mail, the appeals examiner will proceed with the scheduled hearing and determine, after hearing available testimony, whether the subpoena is still necessary and reasonable. If so, the hearing will be continued and a second subpoena will be issued and personally served. (3-23-22)

**087. Witness Fees.** Individuals who attend hearings before the appeals examiner as subpoenaed witnesses, not parties, are entitled to receive a fee of seven dollars and fifty cents (\$7.50) for each day or portion thereof for attendance. In no case will a witness be paid more than seven dollars and fifty cents (\$7.50) for any one (1) day. Subpoenaed witnesses are entitled to mileage expense at the current allowable mileage reimbursement rate as determined by the Idaho State Board of Examiners. For appeals under the Employment Security Law, such witness fees and mileage expenses will be paid from the Employment Security Administration fund. Under no circumstances will interested parties to a hearing be granted witness fees or mileage expenses. Mileage fees are not allowed for vicinity travel. (3-23-22)

**098. Undecided Issues.** When it is apparent that there is no prior ruling on an issue that must be decided under the Act, the appeals examiner may hear and decide the issue. (3-23-22)

**109. Type of Hearing.** The proceeding before an appeals examiner will be a hearing “de novo” or original hearing and not solely a review proceeding. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (3-23-22)

**140. Role of Appeals Examiner.** The appeals examiner will function as a fact finder and not solely as a judge. The appeals examiner will have the responsibility of developing all the evidence that is reasonably available. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (3-23-22)( )

**121. Order of Witnesses.** The appeals examiner, in the exercise of reasonable discretion, will direct the order of witnesses and develop evidence in a logical and orderly manner to move the hearing along as expeditiously as possible. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (3-23-22)( )

**132. Evidence.** The appeals examiner may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of this state. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (3-23-22)( )

**143. Disruptive Individuals.** The appeals examiner may exclude disruptive individuals from the hearing or may postpone the hearing if the integrity of the proceedings is being compromised. If an interested party is excluded, they will be provided a copy of the recording of the proceedings and given an opportunity to submit written evidence and argument prior to the issuance of the decision and the opposing party will be given an opportunity to respond. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (3-23-22)( )

**154. Challenge of General Knowledge.** If judicially cognizable facts or general, technical, or scientific facts within the appeals examiner's specialized knowledge are used in the decision, the parties will be given an opportunity to challenge them at the time of the hearing, or at the time of the issuance of the decision. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (3-23-22)( )

**165. Closing Arguments.** Closing arguments will be limited to five (5) minutes for each party unless the appeals examiner grants an exception. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (3-23-22)( )

**046. COMMUNICATION WITH APPEALS STAFF.**

No party involved in an appeal may communicate, either directly or indirectly, with appeals examiners, the Chief of the Appeals Bureau, or clerical staff of the Appeals Bureau, regarding any issue of fact or law relevant to an appeal, unless all parties involved have been provided notice and an opportunity to participate in such communication. No person acting on behalf of any party, including the Idaho Department of Labor, may attempt to influence the disposition of an appeal through such communications. No appeals examiner may knowingly cause a communication prohibited by this section to be made. (3-23-22)

**01. Prohibition of Ex Parte Contacts.** The prohibition on ex parte contacts contained in this rule

applies from the time an appeal is filed pursuant to IDAPA 09.01.01.025 or IDAPA 09.01.01.027 until the appeal becomes final and conclusive pursuant to Sections 72-1368 and 45-617, Idaho Code. (3-23-22)

**02. Issues of Fact.** As used in this rule, the term “issue of fact or law relevant to an appeal” includes any matter relating to the merits of an appeal but does not include questions of appeals procedure or case status inquiries. Parties may not direct questions of appeals procedure or case status inquiries to the appeals examiner assigned to their case but rather to other appeals examiners, the Chief of the Appeals Bureau (unless he or she is functioning as the appeals examiner in the case), or to clerical staff of the Appeals Bureau. (3-23-22)

**03. Reporting Prohibited Contacts.** An appeals examiner or other Appeals Bureau employee who receives a communication prohibited by this rule must place in the record of the case all such written communications or a memorandum stating the substance of all such oral communications. The Appeals Bureau must send a full copy of the communication to other interested parties to the appeal and allow an appropriate time for the parties to respond. (3-23-22)

**047. – 059. (RESERVED)**

**060. INDUSTRIAL COMMISSION REVIEW OF APPEALS EXAMINER DECISIONS.**

**01. Claim for Review Under the Employment Security Law.** A claim for review of the appeals examiner's decision, as provided in Section 72-1368, Idaho Code, must be made in writing, signed by the person claiming the review or by his attorney or agent, and filed with the Idaho Industrial Commission in accordance with rules adopted by the Commission. Ref. Sec. 72-1368(7) Idaho Code. (3-23-22)

**02. Transcripts.** Upon receipt of a notice that a claim for review has been filed with the Industrial Commission, a true and correct transcript of the recorded proceedings must be prepared if ordered by the Commission. Copies of transcripts or recording of the proceedings, together with exhibits received in the case, must be transmitted by the Department to the Commission and provided to all interested parties without charge. (3-23-22)

**061. – 064. (RESERVED)**

~~**065. JUDICIAL REVIEW OF WAGE CLAIM DECISIONS.**~~

~~A claimant or employer aggrieved by a final decision of the appeals examiner in a wage claim proceeding may seek judicial review of the decision pursuant to Title 67, Chapter 52, Idaho Code, and Section 45-619, Idaho Code, by timely filing a petition for judicial review in a court of competent jurisdiction. The Department is not an aggrieved party for purposes of any judicial review proceeding and will not be made a party in any petition for judicial review. The proper parties in a petition for judicial review are the claimant and the employer. (3-23-22)~~

~~**066.5. – 999. (RESERVED)**~~

**IDAPA 09 – IDAHO DEPARTMENT OF LABOR**  
**09.01.30 – UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES**  
**DOCKET NO. 09-0130-2401 (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 2025 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. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**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 72-1300 et seq., Idaho Code, and Sections 45-600 et seq., 74-106(7), 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:

These rules are being adopted as part of the IDOL's plan to review each rule every 5 years. The changes are consistent with the [Executive Order 2020-01, Zero Based Regulation](#).

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 2, 2024, Idaho Administrative Bulletin, [Vol. 24-10, pages 154-174](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a 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. 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:

This rulemaking is not anticipated to have any fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Darlene Carnopis at (208) 696-2380.

DATED this 20th day of November, 2024.

Darlene Carnopis  
Policy Coordinator  
Idaho Department of Labor  
317 W. 3rd St.  
Boise, ID 83702  
Phone: (208) 696-2380  
Email: [darlene.carnopis@labor.idaho.gov](mailto:darlene.carnopis@labor.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 Sections 72-1300 et seq., Idaho Code, Sections 45-600 et seq., 74-106(7), 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 Oct. 16, 2024.

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:** These rules are being presented for authorization as part of the IDOL's plan to review each rule every 5 years. There are no specific rulemaking changes planned by the IDOL at this time except for evaluation and amendment consistent with the Governor's [Zero-Based Regulation Executive Order](#). It is anticipated that rulemaking stakeholders will propose and advocate for rulemaking changes as part of the negotiated rulemaking process. The IDOL intends to carefully consider all changes presented by the public and may propose certain changes so long as they are consistent with the rules' statutory authority and the Governor's Executive Order. The IDOL will review the documents that are currently incorporated by reference in this rule and update that list as applicable.

**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: No fiscal impact.

**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 July 3, 2024, Idaho Administrative Bulletin, [Vol. 24-7, page 59-60](#).

**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 Darlene Carnopis at 208-696-2380.

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 Oct. 23, 2024.

DATED this 30th day of August, 2024.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 09-0130-2401**

**09.01.30 – UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES**

**000. LEGAL AUTHORITY.**

These rules are promulgated under Section 72-1333, Idaho Code. (3-23-22)

**001. SCOPE.**

These rules govern claims for unemployment insurance benefits. (3-23-22)

**002. ADMINISTRATIVE APPEALS.**

Administrative appeals under this chapter are governed by Section 72-1368, Idaho Code and IDAPA 09.01.01, "Rules of Administrative Procedure of the Department of Labor." (3-23-22)

**003. -- 009. (RESERVED)**

**010. DEFINITIONS.**

~~01. **Additional Claim.** An initial claim made after a period of employment subsequent to a new claim in the same benefit year. (3-23-22)~~

**021. Average Annual Wage.** For the purpose of determining the taxable wage base, under Section 72-1350(1), Idaho Code, the average annual wage is computed by dividing that calendar year's total wages in covered employment, excluding State government and cost reimbursement employers, by the average number of workers in covered employment for that calendar year as derived from data reported to the Department of Labor by covered employers. (3-23-22)

~~032. **Average Weekly Wage.** For the purpose of establishing the maximum weekly benefit amount, under Section 72-1367(2)(a), Idaho Code, the average weekly wage is computed by dividing the total wages paid in covered employment (including State government and cost reimbursement employers) for the preceding calendar year, as computed from data reported to the Department of Labor by covered employers, by the monthly average number of workers in covered employment for the preceding calendar year and then dividing the resulting figure by fifty-two (52). (3-23-22)~~

~~043. **Central Claims Office.** A claims office designated by the director, where unemployment claims throughout the state are processed. (3-23-22)~~

~~05. **Chargeability Determination.** A determination issued with respect to whether a covered employer's account will be charged for benefits paid on a claim. (3-23-22)~~

~~06. **Claim.** An application for unemployment insurance or "benefits." (3-23-22)~~

~~07. **Continued Claim.** An application for waiting week credit or for benefits for specific compensable weeks. (3-23-22)~~

~~084. **Corporate Officer.** Any individual empowered in good faith by stockholders or directors in accordance with the corporation's articles of incorporation or bylaws to discharge the duties of a corporate officer. (3-23-22)~~

~~095. **Fraud Overpayment.** An established overpayment resulting from a determination that the claimant willfully made a false statement or willfully failed to report a material fact in order to obtain benefits. Ref. Sec. 72-1369, Idaho Code. (3-23-22)~~

~~106. **Full-Time Employment.** A week of full-time employment is one where the claimant worked what are customarily considered full-time hours for that industry or where the earnings were more than one and one half (1-1/2) times his weekly benefit amount. (3-23-22)~~

~~107. **Initial Claim.** The first claim for benefits made by an unemployed individual during a continuous~~

period of unemployment. An initial claim may be either new or additional. (3-23-22)

~~1208.~~ **Interstate Claim.** A claim filed by a worker who resides in a state other than the state (or states) in which he has earned wages in covered employment. (3-23-22)

~~1309.~~ **Intrastate Claim.** A claim filed by a worker who resides in Idaho and has earned wages within or as federal wages assigned to Idaho. (3-23-22)

~~14.~~ **Material.** A fact is material if it is relevant to a determination of a claimant's right to benefits. All information a claimant is asked to provide when applying for unemployment benefits or when making a continued claim report is material and relevant to a determination of a claimant's right to benefits. To be considered material, the fact need not actually affect the outcome of an eligibility determination. Ref. Section 72-1366, Idaho Code. (3-23-22)

~~150.~~ **Monetary Determination.** A determination of eligibility which lists a claimant's base period employer(s) and wages and establishes, if the claimant is eligible, his benefit year, his weekly benefit amount, and his total benefit amount. (3-23-22)

~~16.~~ **New Claim.** The first initial claim made in a benefit year. (3-23-22)

~~17.~~ **Non-Fraud Overpayment.** Any established overpayment other than an overpayment resulting from a determination that a claimant made a false statement or willfully failed to report a material fact in order to obtain benefits. Ref. Sec. 72-1369, Idaho Code. (3-23-22)

~~181.~~ **Non-Monetary Determination.** A determination issued by a claims examiner with respect to the personal eligibility conditions of a claimant. (3-23-22)

~~19.~~ **Tolerance Amount.** A tolerance of four dollars and ninety-nine cents (\$4.99) connection with the recovery of overpayments and at the discretion of the Director, overpayments for this amount or less may be compromised. Ref. Sec. 72-1369, Idaho Code. (3-23-22)

**011. -- 099. (RESERVED)**

**100. ABLE TO WORK.**

"Able to work" is the physical and mental ability to perform work under conditions ordinarily existing during a normal workweek. It does not mean that a person must be able to perform work in his customary occupation or the same kind of work he last performed. Ref. Sec. 72-1366(4), Idaho Code. (3-23-22)

**01. Able to Perform Some Type of Work.** A person must be able to perform work of some type for which he can qualify at the time he files an initial claim for unemployment insurance. (3-23-22)

**02. Able to Work Part-Time.** A person who is able to work only part of the workday or part of the workweek is not considered "able to work" for the purposes of Section 72-1366(4), Idaho Code. This rule does not apply to claimants who establish eligibility under Section 150 of these rules, "Claimants with Disabilities." (3-23-22)

**03. Disability Compensation.** A claimant's receipt of disability compensation does not in itself establish that he is unable to work or unavailable for work, even though the payee has been declared totally disabled. (3-23-22)

**04. Illness Provision.** A person who claims benefits under the illness provision must remain available for local office job referral; however, he may leave the area for treatment of his illness and continue to be eligible under the illness provision. (3-23-22)

**05. Illness Provision as Applied to Transitional or Reopened Claim.** The illness provision will continue to apply even though the current benefit year has ended and a transitional claim is filed the following year or the claim is reopened after a period of not filing with no intervening employment. (3-23-22)

**06. Withdrawing from Labor Market Because of Illness.** A claimant who withdraws from the labor

market because of illness or injury prior to filing a claim is not eligible until he is able and available for work. (3-23-22)

**101. -- 124. (RESERVED)**

**125. ALIEN ELIGIBILITY.**

**01. Benefit Eligibility.** To be eligible for benefits, an alien must fall within one (1) of the following three (3) categories at the time the work on which the claim is based was performed and at the time benefits are claimed, the alien must have current, valid authorization to work from the U.S. Department of Homeland Security in order to meet the continuing eligibility requirement of being able and available to work (unless the alien claimant is a Canadian resident who is claiming benefits under the Interstate Benefit Payment Plan, in which case the claimant must satisfy only Canadian availability requirements). Ref. Sec. 72-1366(4), (19), Idaho Code. (3-23-22)

**a. Permanent Residence.** Aliens who have been lawfully admitted to the United States as “immigrants” and those whose status has been adjusted from that of “non-immigrant” under the Immigration and Nationality Act. Evidence of this status is the Alien Registration Receipt Card, or “green card,” issued to each lawful permanent resident by the U.S. Department of Homeland Security. (3-23-22)

**b. Performing Services.** “Lawfully present for purposes of performing services” includes three (3) groups of aliens: (3-23-22)

**i.** Canadian and Mexican residents who commute daily or seasonally and are authorized to work in the United States; (3-23-22)

**ii.** Legally-admitted non-immigrants who are granted a status by the U.S. Department of Homeland Security which authorizes them to work in the United States during their stay; and (3-23-22)

**iii.** Other aliens with U.S. Department of Homeland Security authorization to work in the United States regardless of their status. (3-23-22)

**c. Permanently Residing Under Color of Law.** The category of individuals who are “permanently residing in the United States under color of law” includes the following groups of aliens: (3-23-22)

**i.** Refugees, asylees, and parolees, as identified in the Immigration and Nationality Act; (3-23-22)

**ii.** Aliens presumed by the U.S. Department of Homeland Security to be lawfully admitted for permanent residence; and (3-23-22)

**iii.** Aliens who, after review of their particular circumstances under U.S. Department of Homeland Security statutory or regulatory procedures, have been granted a status which allows them to remain in the United States for an indefinite period of time. For informal U.S. Department of Homeland Security action to authorize an alien’s residence under “color of law,” the U.S. Department of Homeland Security must know of the alien’s presence, and must provide the alien with official, documented assurance that enforcement of deportation is not planned. (3-23-22)

**126. -- 149. (RESERVED)**

**150. CLAIMANTS WITH DISABILITIES.**

An individual with a disability under the Americans with Disabilities Act (2008) (as defined at 29 C.F.R. Sec 1630.2(g)), and whose disability prevents the claimant from working full time or during particular shifts is not deemed unable to work or unavailable for work for so long as the claimant is able to perform some work and remains available for work to the full extent of his ability. (3-23-22)

**01. Availability Requirement.** A qualified claimant with a disability who is able to work with or without a reasonable accommodation will be considered as having complied with the requirement of being available for work provided the claimant is willing to work the maximum number of hours the claimant is able to work.

(3-23-22)

**02. Burden of Proof.** Claimant has the burden of proving eligibility under this provision with competent evidence. (3-23-22)

**03. Additional Eligibility Requirements.** Qualified claimants with disabilities must meet all other eligibility requirements, including the illness provision of Section 100 of these rules. (3-23-22)

**151. -- 174. (RESERVED)**

**175. AVAILABLE FOR WORK.**

“Available for work” is a state of mind that encompasses a readiness and willingness to work, and a desire to find a job, including the possibility of marketing one’s services in the claimant’s area of availability. There must remain a reasonable possibility of a claimant finding and obtaining, or being referred and hired for, suitable work. Ref. Sec. 72-1366(4), Idaho Code. (3-23-22)

**01. Availability Requirements.** The type of work for which the claimant is available must exist in the claimant’s area to the extent that a normal unemployed person would generally find work within a reasonable period of time. (3-23-22)

~~**02. Child Care.** Child care must be arranged so as not to restrict a claimant’s availability for work or for seeking work. (3-23-22)~~

~~**032. Compelling Personal Circumstances.** For the purposes of this rule, compelling personal circumstances are defined as: (3-23-22)~~

- ~~a. A situation in which the claimant required the assistance of emergency response personnel; (3-23-22)~~
- ~~b. The serious illness, death, or funeral of an immediate family member; or (3-23-22)~~
- ~~c. The wedding of the claimant or an immediate family member. (3-23-22)~~
- ~~d. Under this rule, “immediate family member” means a claimant's spouse, child, foster child, parent, brother, sister, grandparent, grandchild, or the same relation by marriage. (3-23-22)~~
- ~~e. For the purposes of this rule, “workweek” is defined: (3-23-22)~~
  - ~~i. Code ~~R, U, or X~~ Attached. The claimant's normal work week as defined by the employer. (3-23-22)( )~~
  - ~~ii. Code ~~B or C~~ Workseeking. Monday through Friday, 8 a.m.-5 p.m. (3-23-22)( )~~
  - ~~iii. Code ~~D~~ Approved Training. Regular class hours. (3-23-22)( )~~
- ~~f. Claimant work availability requirements are waived on Independence Day, Thanksgiving Day, Christmas Day, and New Year's Day. (3-23-22)~~

~~**043. Conscientious Objection.** No person may be held to be unavailable for work solely because of religious convictions not permitting work on a certain day. (3-23-22)~~

~~**054. Contract Obligation.** A person who is bound by a contract that prevents him from accepting other employment is not eligible for benefits. (3-23-22)~~

~~**065. Distance to Work.** A claimant seeking work must be willing to travel the distance normally traveled by other workers in his area and occupation. (3-23-22)~~



~~07. Domestic Circumstances.~~ A claimant is not eligible for benefits if domestic circumstances take precedence over the claimant's availability for work or for seeking work. (3-23-22)

~~08. Equipment.~~ Claimants will be required to provide necessary tools or equipment in certain occupations. The lack of these tools or equipment will directly affect a claimant's availability for work, unless he will accept other work. (3-23-22)

~~09.~~ **Evidence.** A claimant is responsible for providing proof of his availability for work and for seeking work if his availability is questioned or proof is required by these rules. (3-23-22)

~~10. Experience or Training.~~ A claimant is expected to be available for work consistent with his past experience or training, provided there is no change in his ability to perform that work. (3-23-22)

~~11.~~ **Full-Time/Part-Time Work.** An individual who restricts availability to part-time work pursuant to Section 72-1366(4)(c), Idaho Code, is fully employed and ineligible to receive benefits if the individual works hours comparable to the part-time work experience in their base period. A claimant must be available for a full workweek and a full, normal workday unless the claimant establishes: (3-23-22)

a. The majority of weeks worked during claimant's base period were for less than full-time work, which is established where the total base period wages divided by claimant's last regular rate of pay does not exceed two thousand seventy-nine (2079) hours; or (3-23-22)

b. Eligibility under Section 150 of these rules, "Claimants with Disabilities." (3-23-22)

~~12.~~ **Incarceration/Work Release.** A claimant who is incarcerated for any part of the workweek is not eligible for benefits for that week, unless the claimant can establish he has work release privileges which would provide him a reasonable opportunity to meet his work search requirements and obtain full-time employment. (3-23-22)

~~13.~~ **Jury Duty/Subpoenas.** A claimant serving on jury duty or subpoenaed is excused from the availability and work-seeking requirements of the law for that time period, and may refuse work that would commence during that time period. (3-23-22)

~~14. Licensing or Government Restrictions.~~ A claimant prohibited by law from engaging in certain work must be available for other employment to be eligible for benefits. (3-23-22)

~~15.~~ **Moving to Remote Area.** A claimant who moves to a remote locality where there is very little possibility of obtaining work will be ineligible for benefits. (3-23-22)

~~16.~~ **Public Official.** A public official who receives pay and performs "full-time" service is not unemployed or eligible for benefits. Part-time officials, even though receiving pay, may be considered available for work the same as any other individual employed on a part-time basis. Ref. Sec. 72-1312(1). (3-23-22)

~~17.~~ **Public Service.** Performing public service, including voluntary non-remunerated service, does not disqualify an individual for benefits as long as he is meeting the availability and work-seeking requirements. (3-23-22)

~~18.~~ **Restricting Work to Within the Home.** A claimant who restricts his availability to only work done within the home which severely limits the work available to him is ineligible for benefits. (3-23-22)

~~19.~~ **School Attendance or a Training Course.** A person who is attending school or a training course may be eligible for benefits if the attendance does not conflict in any way with that person's availability for work or for seeking work and if he will discontinue attendance upon receipt of an offer of employment that creates a conflict between employment and the schooling or training. (3-23-22)

~~20.~~ **Temporary Absence from Local Labor Market to Seek Work.** All claimants, regardless of their attachment to an industry or employer, must meet the same standard of remaining within their local labor market area

during the workweek in order to be considered available for work, unless the primary purpose of a temporary absence is to seek work in another labor market. Claimants otherwise eligible to receive benefits while participating in an approved training program or course are not deemed ineligible when the training or course occurs outside of their local labor market due to the unavailability of similar programs or courses within their local labor market. (3-23-22)

**a.** To remain eligible for benefits, claimants will remain within the state, territory, or country included in the USDOL Interstate Benefit Payment Plan. (3-23-22)

~~**21. Time.** (3-23-22)~~

~~**a.** Time Restrictions. A claimant may not impose restrictions on his time, including either hours of the day or days of the week, which will limit his availability to seek or accept suitable work. (3-23-22)~~

~~**b.** Shift Restrictions. A claimant who restricts his availability to a single shift may not be fully available for work if the restriction significantly reduces his chances of becoming employed. (3-23-22)~~

~~**22. Transportation Difficulties.** Lack of transportation is not a bona fide reason for a claimant to fail to be available for or to seek work. Transportation is the responsibility of the claimant. (3-23-22)~~

**2316. Unreasonable Restrictions on Working Conditions.** A claimant who places unreasonable restrictions on working conditions so as to seriously hinder his availability and search for work is ineligible for benefits. (3-23-22)

**2417. Vacation.** A person on a vacation approved by his employer during time when work is available is not eligible for benefits. (3-23-22)

**2518. Wages.** A claimant is eligible for benefits if the wages or other conditions of available work are substantially less favorable to the claimant than those prevailing for similar work in the local area. Ref. Sec. 72-1366(7)(b), Idaho Code. (3-23-22)

**a.** Demanding Higher Wages. A claimant is ineligible for benefits if he unduly restricts his availability for work by insisting on a wage rate that is higher than the prevailing wage for similar work in that area. (3-23-22)

**b.** Prior Earnings. The claimant's prior earnings and past experience are considered in determining whether he is available for suitable work. (3-23-22)

**2619. Waiver of Two-Year Training Limitation.** For purposes of approving a waiver of the two (2) year limitation on school or training courses, specified by Idaho Code Section 72-1366(8)(c)(ii), for claimants who lack skills to compete in the labor market, the following criteria must be met: (3-23-22)

**a.** Financial Plan. The claimant must demonstrate a workable financial plan for completing the school or training course after his benefits have been exhausted. (3-23-22)

**b.** Demand for Occupation. The claimant must establish there is a demand for the occupation in which the claimant will be trained. A "demand occupation" is one in which work opportunities are available and there is not a surplus of qualified applicants. (3-23-22)

**c.** Duration of Training. At the time that the claimant applies for the waiver, the duration of the school or training course is no longer than two (2) years to completion. (3-23-22)

~~**d.** Denial. No claimant will be denied a waiver of the two (2) year limitation on school or training because the claimant is already enrolled or participating in the school or training at the time he requests the waiver. (3-23-22)~~

**176. -- 199. (RESERVED)**

**200. CANCELING CLAIMS.**

Upon the written request of a claimant, a claim may be canceled at any time, provided that the claimant did not misrepresent or fail to report a material fact in making the claim and the claimant has repaid any benefits received on the claim, unless the benefits received will be offset from a new claim the claimant is filing. Ref. Sec. 72-1327A, Idaho Code. (3-23-22)

**201. -- 224. (RESERVED)**

**225. DECEASED CLAIMANTS.**

Upon the death of a benefit claimant who has completed a compensable period prior to his death, distribution of benefits due him will be made to the surviving spouse or, if none, to the dependent child or children. If there is no surviving spouse nor dependent child or children, the benefits become the property of the claimant's estate. (3-23-22)

**226. -- 249. (RESERVED)**

**250. DETERMINATIONS/APPELLATE PROCESSES.**

**01. Rebuttal Procedure.** Whenever any information is provided in response to a claim, and the information contradicts a statement made previously, all interested parties will be given an opportunity for rebuttal. Ref. Sec. 72-1368(3), Idaho Code. (3-23-22)

**02. Reestablishing Eligibility After a Determination of Ineligibility.** Evidence of requalifying wages includes, but is not limited to, the name of the employer, the mailing address, the dates of employment, the type of employment performed, and the claimant's gross earnings. Ref. Sec 72-1366(14), Idaho Code. (3-23-22)

**251. -- 274. (RESERVED)**

**275. DISCHARGE.**

**01. Burden of Proof.** The burden of proving that a claimant was discharged for employment-related misconduct rests with the employer. (3-23-22)

**02. Disqualifying Misconduct.** To disqualify a claimant for benefits, misconduct must be connected with the claimant's employment and involve one of the following: (3-23-22)

**a.** Disregard of Employer's Interest. A willful, intentional disregard of the employer's interest. (3-23-22)

**b.** Violation of Reasonable Rules. A deliberate violation of the employer's reasonable rules. (3-23-22)

**c.** Disregard of Standards of Behavior. If the alleged misconduct involves a disregard of a standard of behavior which the employer has a right to expect of his employees, there is no requirement that the claimant's conduct be willful, intentional, or deliberate. The claimant's subjective state of mind is irrelevant. The test for misconduct in "standard of behavior cases" is as follows: (3-23-22)

**i.** Whether the claimant's conduct fell below the standard of behavior expected by the employer; and (3-23-22)

**ii.** Whether the employer's expectation was objectively reasonable in the particular case. (3-23-22)

**03. Inability to Perform or Ordinary Negligence.** Mere inefficiency, unsatisfactory conduct, failure of good performance as the result of inability or incapacity, inadvertencies, isolated instances of ordinary negligence, or good faith errors in judgment or discretion are not considered misconduct connected with employment. (3-23-22)

**04. Non-Job Related Conduct.** If the claimant was discharged for conduct involving personal, non-job related behavior, the discharge is not for misconduct connected with employment. (3-23-22)

**05. When Notice of Discharge Prompts a Resignation.** If a claimant has resigned after receiving a

notice of discharge (or lay off due to a lack of work), but before the effective date of the discharge, both “separations” must be considered. The following three (3) elements should be present for both actions to affect the claimant’s eligibility: (3-23-22)

- a. The employee was given notice by the employer of a specific separation date; (3-23-22)
- b. The employee’s decision to quit before the effective date of the termination was a consequence of the pending separation; and (3-23-22)
- c. The voluntary quit occurred a short time prior to the effective date of the termination. (3-23-22)

**06. Indefinite Suspension.** A claimant who has been suspended without pay for an indefinite period of time, who has not been given a date to return to work, is considered discharged. (3-23-22)

**276. -- 324. (RESERVED)**

**325. EMPLOYEES OF EDUCATIONAL INSTITUTIONS.**

**01. Possibility of Employment.** An offer of employment by an educational institution or service agency is not “bona fide” if merely a possibility of employment exists. A possibility of employment, rather than a reasonable assurance, exists when: (3-23-22)

- a. The circumstances under which the claimant would be employed are not within the control of the educational institution; and (3-23-22)
- b. The educational institution does not provide evidence that such an individual normally would perform services the following academic year. (3-23-22)

**02. Reasonable Assurance.** “Reasonable assurance” of continuing employment exists when an educational institution or service agency provides an oral or written statement to the Department indicating that the claimant has been given a bona fide offer of a specific job in the second academic period. In addition, for such “reasonable assurance” to exist, the terms and conditions of the job offered in the second period must not be substantially less favorable than the terms and conditions of the job performed in the first period. (3-23-22)

**03. Reasonable Assurance Later Given.** A claimant who initially was determined not to have a reasonable assurance of continuing employment, will subsequently become disqualified for benefits under Sections 72-1366(17)(a), (b), or (c), Idaho Code, when an educational institution or service agency gives the claimant such reasonable assurance. (3-23-22)

**04. Retroactive Payments.** A claimant seeking retroactive payments pursuant to 72-1366(17)(b), Idaho Code, must make a request for the retroactive payment with the Department no later than thirty (30) days after the beginning of the second school year or term or retroactive payment will not be made. In addition, the claimant must provide written evidence from the employer who previously provided reasonable assurance of continuing work, that the claimant was not offered an opportunity to return to work in the second of two (2) successive school years or terms. (3-23-22)

**05. Under Contract, but Between School Terms.** Employees of educational institutions who are hired under contract for the school term, are considered unemployed between school terms even though they may receive their salary in twelve (12) monthly payments. (3-23-22)

**326. -- 349. (RESERVED)**

**350. EXTENDED BENEFITS.**

Ref. Sec. 72-1367A, Idaho Code. (3-23-22)

**01. Evidence of Employment for Extended Benefits.** Satisfactory evidence that an individual’s prospects for obtaining work in his customary occupation within a reasonably short period includes: (3-23-22)

a. A letter signed by a prospective employer giving assurances of work within the next four (4) weeks; or (3-23-22)

b. A verifiable, written statement by the claimant that he will have work within the next four (4) weeks. (3-23-22)

**02. Remuneration Earned.** Remuneration earned must be in employment where an employee-employer relationship exists to satisfy requalification requirements for Extended Benefits. (3-23-22)

**351. -- 374. (RESERVED)**

**375. FULLY EMPLOYED/NOT UNEMPLOYED.**  
Ref. Section 72-1312(1), Idaho Code. (3-23-22)

~~**01. Excessive Earnings Week.** An excessive earnings week is a week in which the claimant's wages allocable to that week are more than one and one half (1 1/2) times the claimant's weekly benefit amount. (3-23-22)~~

**021. Leave of Absence.** A claimant who is on a mutually agreed upon leave of absence, and whose employer has committed to the claimant's return to work at the end of the leave, is employed and not eligible for benefits. (3-23-22)

**032. Suspension.** A claimant suspended with or without pay for a specific number of days, who has been given a date to resume employment after the suspension, is not considered unemployed and is not eligible for benefits. (3-23-22)

**043. Corporate Officer.** (3-23-22)

a. A corporate officer has the burden of proving by a preponderance of evidence that he is unemployed due to circumstances beyond his control or the control of a family member with an ownership interest in the corporation. (3-23-22)

b. Circumstances beyond a corporate officer's control or the control of a family member with an ownership interest in the corporation. Circumstances beyond a corporate officer's or a family member's control are circumstances that last through the corporate officer's benefit year end date and include, but are not limited to, the following: (3-23-22)

i. Unemployment due to the corporate officer's removal from the corporation under circumstances that satisfy the personal eligibility conditions of Section 72-1366, Idaho Code; (3-23-22)

ii. Unemployment due to dissolution of the corporation; or (3-23-22)

iii. Unemployment due to the sale of the corporation to an unrelated third party. (3-23-22)

**376. -- 399. (RESERVED)**

**400. LABOR DISPUTE/UNION RULES.**  
A "labor dispute" is a controversy with respect to wages, hours, working conditions, or right of representation affecting the work or employment of a number of individuals employed for hire which results in a deadlock or impasse between the contending parties. Ref. Sec. 72-1366(7), (10), Idaho Code. (3-23-22)

**01. Burden of Proving Nonparticipation.** The burden of proving non-participation, lack of financing and similar factors is upon the claimant. (3-23-22)

**02. Involvement of Work Site in Labor Dispute.** A claimant will not be denied benefits because of a labor dispute if the dispute is not in any way directly connected with the factory, establishment, or premises at which the individual is or was last employed. (3-23-22)

**03. Lack of Work.** A claimant's unemployment will be deemed due to lack work and not due to a labor dispute if it is shown that because of the labor dispute the employer's business has fallen off to the extent that he can no longer utilize the services of the claimant due to the drop in business. (3-23-22)

**04. Laid Off Before Labor Dispute.** A claimant laid off because of lack of work from an employer where a labor dispute later occurred will not be considered unemployed due to the labor dispute. (3-23-22)

**05. Period of Ineligibility.** The period of ineligibility applies for the whole of any week in which any part of a claimant's unemployment is due to a labor dispute. (3-23-22)

**06. Picketing Work Site.** The act of picketing the work site of a labor dispute constitutes participation in the labor dispute, whether or not payment is made for such services. (3-23-22)

**07. Refusal to Cross Picket Line.** Voluntary refusal to cross a peaceable picket line to work constitutes participation in the labor dispute. (3-23-22)

**08. Subsequent Employment.** Subsequent employment does not make the claimant eligible for benefits if his unemployment is still due to the labor dispute. As long as the claimant intends to return to the employer where the labor dispute exists, his unemployment is due to the labor dispute regardless of any intervening employment. (3-23-22)

**09. Termination of Labor Dispute.** The period of ineligibility due to the labor dispute terminates at the end of the calendar week in which the labor dispute no longer exists. The termination of the dispute does not automatically make a claimant eligible for benefits. (3-23-22)

**10. Union Member.** The fact that an individual is a dues-paying union member alone does not constitute financing a labor dispute. Nor does the fact that he is not a union member establish that he is not financing or participating in the dispute. (3-23-22)

**401. -- 424. (RESERVED)**

**425. NEW CLAIMS/ADDITIONAL CLAIMS.**  
Ref. Sec. 72-1308, Idaho Code. (3-23-22)

**01. Claims for Benefits, Delayed Filing.** When the Central Claims Office has determined that a claimant's attempt to file an initial claim was delayed due to problems with the Department's telephone or electronic filing system, the claim may be backdated if the claimant reported the access problem to the Central Claims Office within seven (7) days of the date the problem occurred. When a claim is backdated, the continued claim report for the period of time involved is timely if filed during the same week or the next week after the claim is filed. (3-23-22)

**02. Effective Date of Backdated Claims.** When the filing of an initial claim for benefits is backdated due to a Department system malfunction, the effective date is the Sunday of the week in which the claimant first reported to the Central Claims Office to file the claim or attempted to access the telephone or electronic claim filing system and there were problems with the system. (3-23-22)

**03. Filing of New Claims, Additional, and Reopen Claims.** For purposes of this section, "new claim" means the first initial claim made in a benefit year. Intrastate and interstate claims, including, without limitation, new claims, additional claims, and reopen claims, may be filed electronically or by telephone at the Department's discretion. (3-23-22)( )

**a. Electronically Filed Claims.** Claimants may file claims electronically by accessing Idaho's Internet claim system or, if filing through an American Job Center, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant completes the application process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an American Job Center is effective as of the Sunday of the week of the date shown on the date/time stamp. (3-23-22)

b. Interstate Claims. Any claim filed by an interstate claimant is accepted in the same manner and conditions for which claims are accepted from intrastate claimants. (3-23-22)

c. Telephone Claims. A claimant may also file a claim by calling the Central Claims Office. A claim filed via telephone is effective as of the Sunday of the week in which the claimant first calls the Central Claims Office to initiate the claim. (3-23-22)

d. Claimants' Electronic Verification. A unique ~~confidential number or other electronic method of verification~~ password or personal identification number approved by the Department may be used by a claimant or an employer to submit information or engage in transactions with the Department through electronic or telephonic means. Use of this method of verification has the same force and effect as a manual signature. (3-23-22)(    )

**04. Registration/Reporting Requirements -- Interstate Claimants.** Interstate claimants are required to comply with the same reporting requirements prescribed for regular Idaho intrastate claimants. Ref. Sec. 72-1366(1), (2), Idaho Code. (3-23-22)

**05. Requirement to Provide Information.** If a claimant fails to provide the Department with all necessary information pertinent to eligibility, the claimant is denied benefits until the information is provided. Any individual making a claim for benefits must provide the Department with: (3-23-22)

- a. The claimant's legal name; (3-23-22)
- b. The claimant's Social Security Number; (3-23-22)
- c. The address where the claimant's mail is delivered; (3-23-22)
- d. The claimant's place of last employment; (3-23-22)
- e. The name, correct mailing address, dates of employment, and the reason for separation from all of the claimant's most recent and base-period employers; (3-23-22)
- f. If requested by the Department, a list of all other employment in the past twenty-four (24) months; (3-23-22)
- g. The claimant's plans for finding other employment at the earliest possible time; and (3-23-22)
- h. Other information necessary for the proper processing of the claim. (3-23-22)
- i. Once a claim has been established, the claimant must provide, upon request, a record of the claimant's work search, in order for the Department to assess compliance with personal eligibility requirements. (3-23-22)

j. If the claimant's identifying information does not match with data provided by the Social Security Administration, the Division of Motor Vehicles, or other public entities for identity verification purposes, the claimant will be provided notice and an opportunity to provide proof of identity before benefits are denied. (3-23-22)

**06. Separation Notice.** (3-23-22)

a. Notice to Employer of Separation. Every employer (including employers not subject to Title 72, Chapter 13, Idaho Code), when contacted by a Department representative for a response, must respond to the Department with the reasons for the separation whenever the claimant: (3-23-22)

- i. Left his employment voluntarily; (3-23-22)
- ii. Was discharged from his employment due to misconduct; (3-23-22)

- iii. Is unemployed due to a strike, lockout, or other labor dispute; (3-23-22)
- iv. Is not working due to a suspension; or (3-23-22)
- v. Was separated for any other reason except lack of available work. (3-23-22)

**b.** Employer Response. The employer's response must be given by the employer or on the employer's behalf by someone having personal knowledge of the facts concerning the separation. The employer should provide to the Department, via electronic media or mail, copies of any documentation supporting their position. (3-23-22)

**07. Additional Claim or Reopened Claim.** A claim must be reestablished after a claimant has failed to report or has reported excessive earnings for two (2) or more consecutive weeks. (3-23-22)

**08. Use of Wage Credits.** All unemployment insurance wage credits from any source that are assignable to the state of Idaho will be used in establishing a claim and determining the claimant's monetary eligibility. Ref. Sec. 72-1367(1), Idaho Code. (3-23-22)

**09. Valid Claim.** To be a valid claim for benefits, a claim must be filed during a week of no work, a week of less than full-time work in which the total wages payable to the claimant for work performed in such week amount to less than one and one-half (1-1/2) times the claimant's weekly benefit amount, or a week in which the claimant is separated from employment. Ref. Sec. 72-1327A and 72-1312, Idaho Code. (3-23-22)

**426. -- 449. (RESERVED)**

**450. QUIT.** Ref. Sec. 72-1366(5), Idaho Code. (3-23-22)

**01. Burden of Proof.** The claimant has the burden of proof to establish that he voluntarily left his employment with good cause in connection with the employment to be eligible for benefits. (3-23-22)

**02. Cause Connected with Employment.** To be connected with employment, a claimant's reason(s) for leaving the employment must arise from the working conditions, job tasks, or employment agreement. If the claimant's reason(s) for leaving the employment arise from personal/non job-related matters, the reasons are not connected with the claimant's employment. (3-23-22)

**03. Good Cause.** The standard of what constitutes good cause is the standard of reasonableness as applied to the average man or woman. Whether good cause is present depends upon whether a reasonable person would consider the circumstances resulting in the claimant's unemployment to be real, substantial, and compelling. (3-23-22)

**04. Moral or Ethical Quit.** A claimant who leaves a job because of a reasonable and serious objection to the work requirements of the employer on moral or ethical grounds and is otherwise eligible, will not be denied benefits. (3-23-22)

**05. Quit Due to Health or Physical Condition.** A claimant whose unemployment is due to his health or physical condition which makes it impossible for him to continue to perform the duties of the job will be deemed to have quit work with good cause connected with employment. (3-23-22)

**06. Quit for Permanent Work or Quit Part-Time Work for Increase in Work Hours.** A claimant who quits a temporary job for a permanent job or who quits part-time employment for employment with an increase in the number of hours of work will be deemed to have quit work with good cause connected with employment. (3-23-22)

**07. Quit or Retirement During Employer Downsizing.** An individual who has continuing suitable work available and who voluntarily elects to retire or to terminate employment during a period of reorganization or downsizing will be deemed to have voluntarily quit the employment for personal reasons. (3-23-22)



**08. Unrelated Discharge Prior to Pending Resignation.** The eligibility of a claimant discharged before a pending resignation has occurred for reasons unrelated to the pending resignation will be determined on the basis of the discharge. (3-23-22)

**09. When Notice of Resignation Prompts a Discharge.** If a claimant had given notice of a pending resignation, but was discharged before the effective date of the resignation, both “separations” must be considered. The following three (3) elements should be present for both actions to affect the claimant’s eligibility: (3-23-22)

- a. The employee gave notice to the employer of a specific separation date; (3-23-22)
- b. The employer’s decision to discharge the claimant before the effective date of the resignation was a consequence of the pending separation; and (3-23-22)
- c. The discharge occurred a short time prior to the effective date of the resignation. (3-23-22)

**10. Quit Due to Harassment.** Good cause for quitting employment may be established by showing the party was subjected to any form of harassment that is unlawful under the Idaho Human Rights Act, Title 67, Chapter 59, Idaho Code. (3-23-22)

**451. -- 459. (RESERVED)**

**460. PROFESSIONAL ATHLETES BETWEEN SEASONS.**  
Ref. Sec. 72-1366(18), Idaho Code. (3-23-22)

**01. Base Period Wages.** No base period wages are used to establish a claim when substantially all services performed during the base period consist of participation in sports, athletic events, training, or preparing to so participate, for any week which commences during the period between two (2) successive sport seasons (or similar periods) if the individual performed such services in the first season (or similar period) and there is a reasonable assurance that the individual will perform such services in the later of such seasons (or similar periods). (3-23-22)

- 02. Reasonable Assurance.** Reasonable assurance requires the following: (3-23-22)
- a. The claimant has a contract, either written or oral; (3-23-22)
  - b. The claimant offered to work and the employer expressed an interest in hiring the player for the next season (or similar period); or (3-23-22)
  - c. The claimant expresses a readiness and willingness or intent to participate in the sport the following season. Reasonable assurance exists if the claimant asserts he or she intends to pursue employment as a professional athlete the next season despite not having a specific employer to return to or a formal offer of employment. (3-23-22)

**03. Substantially All Services.** An individual is deemed to have performed “substantially all services” in sports, athletic events, training, or preparing to so participate if ninety percent (90%) or more of the base period wages were based on such services. (3-23-22)

**461. -- 474. (RESERVED)**

**475. REFUSAL OF WORK/FAILURE TO APPLY.**  
Ref. Sec. 72-1366(6), (7), Idaho Code. (3-23-22)

**01. Citizenship or Residency Requirements.** An employer’s restrictions on citizenship or residency is deemed good cause for a claimant’s failure to apply for available work if he does not meet the requirements. (3-23-22)

**02. Claimant Conduct.** A claimant who, by his conduct, causes an employer to withdraw an offer of suitable work or terminate the offer after the claimant has accepted it is ineligible. (3-23-22)

- 03. Claimant Responsibility.** A claimant has the responsibility to apply for and accept suitable work. (3-23-22)
- 04. Conscientious Objection.** A claimant may refuse employment that requires him to work on his Sabbath if his religious convictions do not permit him to work on that day. (3-23-22)
- 05. Employer Requirements.** Claimants are expected to comply with reasonable, lawful requirements that are typical of certain occupations, such as a requirement that a worker be bonded. Unreasonable requirements by employers will not be used as a basis to deny benefits. However, a claimant must have good cause to refuse or fail to meet an employer's reasonable, lawful employment requirements to be eligible for benefits. (3-23-22)
- 06. Failure to Report.** A claimant who fails to report to the Department when so directed, fails to follow explicit instructions for applying for suitable, available work, or fails to report to work after accepting employment, without good cause, is ineligible. Ref. Sec. 72-1366(2), (6), Idaho Code. (3-23-22)
- 07. Failure to Return to Work After Layoff.** A claimant who has been laid off, but fails to return to work on the date specified by the employer at the time of layoff or fails to respond to a callback after a layoff, will be considered to have refused an offer of work if the ongoing employment relationship is severed as a result. If the claimant declines work with the employer but the ongoing employment relationship is not severed as a result, the claimant's availability for work will be examined, but the claimant will not be considered to have refused an offer of work under Sections 72-1366(6) or (21)(a)(ii)(A), Idaho Code. (3-23-22)
- 08. Government Requirements.** A claimant who cannot meet government requirements within a reasonable period of time has good cause for refusing that opportunity to work. (3-23-22)
- 09. Moral Objections.** A claimant is not ineligible for failing to apply for or accept employment if the claimant has reasonable, serious objections to the work or the workplace on moral or ethical grounds. (3-23-22)
- 10. Offer of Work.** A claimant whose unemployment is due to his failure without good cause to accept available, suitable work is ineligible. The job offer must have been genuine and known to the claimant. (3-23-22)
- 11. Part-Time Work.** A claimant must be available for and willing to accept suitable part-time work in the absence of suitable full-time work. (3-23-22)
- 12. Personal Circumstances.** To have good cause to refuse to apply for or accept available, suitable work because of personal circumstances, a claimant must show that his circumstances were so compelling that a reasonably prudent individual would have acted in the same manner under the same circumstances. (3-23-22)
- 13. Prospect of More Suitable Work.** A claimant is not ineligible for failing to accept employment if he has excellent prospects for more suitable work with his former employer or in his regular occupation. (3-23-22)
- 14. Suitable Work.** Every claimant has the right to restrict his availability to suitable work. (3-23-22)
- 15. Travel Distance.** A claimant is not ineligible if the travel distance to available work is excessive or unreasonable. A claimant is ineligible if he fails to apply for and accept suitable work within a commuting area similar to other workers in his area and occupation. (3-23-22)

~~476.—499. (RESERVED)~~

**500. REISSUING BENEFIT PAYMENTS.**

~~Whenever a benefit payment is lost, stolen, destroyed, or forged, the claimant will be issued a new benefit payment upon his proper presentation of the facts and submission of an affidavit, in a form prescribed by the Department, for the issuance of a new benefit payment. Ref. Section 72-1368(1), Idaho Code. (3-23-22)~~

~~**01. Affidavit for Issuance of New Benefit Payment.** A claimant's affidavit filed for the issuance of a new benefit payment must be signed before a notary public or an authorized representative of the Department. (3-23-22)~~

~~02. Reissuance of Stolen Benefit Payments. If a claimant knows who took a benefit payment, he must provide evidence that he has taken all reasonably available legal steps and been unsuccessful in recovering the benefit payment before the Department will consider reissuing the benefit payment. (3-23-22)~~

~~501476.~~ -- 524. (RESERVED)

**525. REPORTABLE INCOME.**  
Ref. Sections 72-1312, 72-1328, Idaho Code. (3-23-22)

**01. Back Pay or Disputed Wages.** Amounts received as a result of labor relations awards or judgments for back pay, or for disputed wages, constitute wages for the weeks in which the claimant would have earned them, or are assignable to the weeks stipulated in the award or judgment. (3-23-22)

**02. Disability/Injury Compensation.** Injury or disability compensation payments are not considered wages and are not reportable income for unemployment insurance purposes. (3-23-22)

~~03. Disability Retirement Payments. Retirement payments as a result of disability are treated the same as other types of retirement payments. Ref. Section 72-1312(4), Idaho Code. (3-23-22)~~

**043. Gratuities or Tips.** Gratuities or tips must be reported by a claimant for the week in which each gratuity or tip is earned. (3-23-22)

~~054.~~ **Holiday Pay.** Holiday pay must be reported as though earned in the week in which the holiday occurs. (3-23-22)

**065. Non-Periodic Remuneration.** All non-periodic remuneration such as one-time severance pay, profit sharing, and bonus pay is reportable for the week in which paid. (3-23-22)

~~076.~~ **Penalty or Damage Awards.** Amounts awarded to a claimant as a penalty or damages against an employer, other than for lost wages, do not constitute wages. (3-23-22)

**087. Pension, Retirement, or Annuity Payments.** The pension deduction provision of Section 72-1312(4), Idaho Code, only applies if the pension, retirement pay, annuity, or other similar periodic payment is made under a plan maintained or contributed to by a base period employer. The dollar amount of the weekly pension will be deducted from the claimant's weekly benefit amount unless the claimant has made contributions toward the pension. If the claimant has made contributions toward the pension plan, no deduction for the pension will be made from the claimant's weekly benefit amount. Ref. Section 72-1312(4), Idaho Code. (3-23-22)

**a. Pension Contributions.** The burden is on the claimant to establish by substantial, competent evidence that he has made contributions toward the pension, retirement pay, annuity or other similar payment plan. (3-23-22)

**b. Pension Payment Changes.** Any change in the amount of the pension, retirement, or annuity payments which affects the deduction from the claimant's weekly benefit amount will be applied in the first full week after the effective date of the change. (3-23-22)

~~098.~~ **Relief Work or Public Assistance.** (3-23-22)

~~a.~~ Remuneration received for relief work or public service work will be considered wages on the same basis as any other employment. (3-23-22)( )

~~b.~~ Eligibility When Public Assistance Received. A person receiving public assistance is eligible for benefits if no work is involved and the claimant is otherwise eligible. (3-23-22)

~~109.~~ **Severance Pay.** An equal portion of a periodic severance payment must be reported in each week of the period covered by the payment. However, severance pay received in a lump sum payment at the time of

severance of the employment relationship must be reported when paid. (3-23-22)

**140. Vacation Pay.** Vacation pay allocable to a certain period of time in accordance with an employment agreement must be reported in the week to which it is allocable. However, vacation pay received in a lump-sum payment at the time of severance of the employment relationship must be reported when paid. (3-23-22)

~~**12. Verification of Earnings on Claim Reports.** The Department may verify the earnings and/or reasons for separation reported by claimants on claim reports filed for benefit payments. Ref. Section 72-1368(1), Idaho Code. (3-23-22)~~

**131. Wages for Contract Services.** A person who is bound by a contract which does not prevent him from accepting other employment but who receives pay for a period of not working, is required to report the contract payments as earnings in equal portions in each week of the period covered by the contract. This rule does not apply to employees of educational institutions. (3-23-22)

**142. Wages for Services Performed Prior to Separation.** Wages for services performed prior to a claimant's separation are reportable for the week in which earned. (3-23-22)

**153. Temporary Disability Benefits.** For any week with respect to which a claimant is receiving or has received temporary disability benefits under a worker's compensation law of any state or under a similar law of the United States, such payments must be reported in an amount attributable to such week. (3-23-22)

**526. -- 549. (RESERVED)**

**550. REPORTING REQUIREMENTS.**

Each claimant must report weekly or biweekly for benefits as directed. When filing claim reports, a claimant must use the reporting method assigned by the Department. Failure to file timely reports in a manner required by this rule will result in ineligibility for benefits for the week(s) claimed. Ref. Section 72-1366(1), Idaho Code. (3-23-22)

**01. Mailed Reports.** Reports that are mailed are considered timely when the envelope containing the report is postmarked within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the report period will extend to the next working day. (3-23-22)

**02. Internet Reports.** Reports filed via the Internet are considered timely when made between 12:00 a.m., mountain time zone, of the Sunday following the week being claimed and midnight 11:59 p.m., mountain time zone of the Saturday following the week being claimed. (3-23-22)

**03. Facsimile Reports.** Reports filed by facsimile are considered timely when transmitted on a form provided by the Department to a telephone number designated by the Department to receive such documents within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period will extend to the next working day. Reports are deemed filed upon receipt by the Department. (3-23-22)

**04. Electronic Mail Reports.** Reports filed by electronic mail are considered timely when electronically mailed in a format provided by the Department to an email address designated by the Department to receive such documents within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period will extend to the next working day. Reports are deemed filed upon receipt by the Department. (3-23-22)

**05. Telephone Reports.** Reports filed by telephone are timely if the claimant contacts the Central Claims Office at a telephone number designated by the Department to provide such reports during regular business hours within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the report period will extend to the next working day. (3-23-22)

**06. When Report Missing.** If a claimant establishes, by credible and corroborated evidence, that a missing report was properly filed as required by this rule, a replacement report will be considered timely. (3-23-22)

551. -- 574. (RESERVED)

**575. SEEKING WORK.**

Ref. Sec. 72-1366(4), (6), Idaho Code. (3-23-22)

~~01. Attitude and Behavior. A claimant's attitude and behavior must be conducive to a positive reaction by employers to his job search. (3-23-22)~~

~~02. Effort to Secure Employment. A claimant will be expected to do what is normally done by unemployed persons that are seeking work. (3-23-22)~~

~~03. Employer's Hiring Practices. An employer's reluctance to hire a claimant because of his appearance or physical condition is not a determining factor in ruling on the claimant's eligibility. (3-23-22)~~

**041. Job Attachment Classifications.** For the purpose of administering the work search requirements of Section 72-1366(4) and (6), Idaho Code, a claimant will be classified according to his attachment to an employer or industry, as follows: (3-23-22)

a. Code ~~R-Recall, U-Union~~ or ~~X-Both~~ **Attached**. A claimant who has a firm attachment to an employer, industry or union, or who is temporarily or seasonally unemployed, and expects to return to his former job or employer in a reasonable length of time not to exceed a maximum of sixteen (16) weeks. If during the sixteen (16) weeks the claimant returns to work temporarily for the job attached employer, the claimant's period of job attachment will be extended by one (1) week for each week of verified full-time employment as defined by Section 72-1312, Idaho Code. (3-23-22)( )

b. Code ~~B~~ **Workseeking**. A claimant who possesses marketable skills in an occupation, but has no immediate prospects for reemployment, and whose employment expectations (i.e., wages, hours, etc.) are realistic in relation to the normal labor market supply and demand in his area of availability. (3-23-22)( )

c. Code ~~D~~ **Approved Training**. A claimant who is assigned to a training course under the provisions of Section 72-1366(8), Idaho Code. (3-23-22)( )

~~05. Jobs Availability. A claimant will not be required to make useless employer contacts if there are no jobs available in the area due to seasonal factors. (3-23-22)~~

**062. License or Permits.** A claimant must provide or be capable of obtaining a license or permit if required by law for performance of the work. (3-23-22)

**073. No Employment Prospects.** A claimant must apply for and accept a lower or beginning pay rate for employment if he has no prospects for a better paying job in the locality. (3-23-22)

**084. Seasonal Availability.** A claimant who is regularly employed on a seasonal basis must be available for other types of work in the off-season to be eligible for benefits. (3-23-22)

**095. Work-Seeking Requirement Categories.** A claimant must seek work in accordance with the following categories of work-seeking activity, as instructed by a Department representative or as notified by the Department via electronic claims messaging. A claimant must meet the requirements of the code to which the claimant is assigned. A claimant's category of work-seeking activity will be determined and modified based on the claimant's prevailing local labor market conditions and/or the average county unemployment rates. Failure to comply with work-seeking requirements will result in a denial of benefits. (3-23-22)

a. Code ~~0~~ **zero (0)** claimant must maintain regular contact with his employer(s) or union. (3-23-22)( )

b. Code ~~1~~ **claimant must engage in one (1) or more of the following activities to increase his prospects of securing employment: Code five (5) claimant must make work search actions in accordance with Section 72-1366(4)(a)(i), Idaho Code.** (3-23-22)( )

- ~~Office;~~
- ~~i. Make at least one (1) employer contact each week in the manner prescribed by the Central Claims Office; (3-23-22)~~
  - ~~ii. Attend a Job Search Workshop; (3-23-22)~~
  - ~~iii. Expand work search efforts to surrounding areas or states; (3-23-22)~~
  - ~~iv. Send resumes to firms/businesses that hire people with his skills; (3-23-22)~~
  - ~~v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-23-22)~~
  - ~~vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (3-23-22)~~
- ~~e. Code 2 claimant must engage in one (1) or more of the following activities to increase his prospects of securing employment: (3-23-22)~~
- ~~Office;~~
- ~~i. Make at least two (2) employer contacts per week in the manner prescribed by the Central Claims Office; (3-23-22)~~
  - ~~ii. Attend a Job Search Workshop; (3-23-22)~~
  - ~~iii. Expand work search efforts to surrounding areas or states; (3-23-22)~~
  - ~~iv. Send resumes to firms/businesses that hire people with their skills; (3-23-22)~~
  - ~~v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-23-22)~~
  - ~~vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (3-23-22)~~
- ~~d. Code 3 claimant must engage in one (1) or more of the following activities to increase his prospects of securing employment: (3-23-22)~~
- ~~Office;~~
- ~~i. Make at least three (3) employer contacts per week in the manner prescribed by the Central Claims Office; (3-23-22)~~
  - ~~ii. Attend a Job Search Workshop; (3-23-22)~~
  - ~~iii. Expand work search efforts to surrounding areas or states; (3-23-22)~~
  - ~~iv. Send resumes to firms/businesses that hire people with their skills; (3-23-22)~~
  - ~~v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-23-22)~~
  - ~~vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (3-23-22)~~

**576. -- 599. (RESERVED)**

**600. SELF-EMPLOYMENT.**

A claimant is ineligible when his self-employment is of such size and nature that the operation of it is his principal duty and working for an employer is merely incidental. Ref. Sec. 72-1366(13), Idaho Code. (3-23-22)

**01. Occupational Conflicts.** Agricultural activities, commercial enterprises, family enterprises, and commission sales work are examples of self-employment which may render a claimant ineligible unless he can show he is seeking employment and is available for suitable work. (3-23-22)

**02. Potential Employability.** A claimant is eligible if his self-employment in no way interferes with his potential employability and work schedule. (3-23-22)

~~601. – 649.~~ (RESERVED)

~~**650. SIGNATURES OF ILLITERATES AND WITNESSES.**~~

~~If a claimant is unable to write his name, he must instead use the mark (X). The mark must be witnessed by a Department representative or an individual who must enter, immediately after the mark (X), the words "His Mark." Next, the name of the claimant must be printed, followed by the signature of the Department representative or the individual who witnessed the mark. Ref. Sec. 72-1366 (1), Idaho Code. (3-23-22)~~

~~651.01. – 674.~~ (RESERVED)

**675. TOTAL TEMPORARY DISABILITY ALTERNATE BASE PERIOD (TTD).**

The alternate base period provision of Section 72-1306(2), Idaho Code, will apply only if the claimant cannot establish monetary eligibility by using the regular base period described in of Section 72-1306(1), Idaho Code. (3-23-22)

**676. – 699.** (RESERVED)

**700. PARTIAL PAYMENTS OF AMOUNTS OWED THE DEPARTMENT.**

Upon the Department's receipt of a partial payment of an overpayment and accrued interest and penalties thereon, the Department must, unless other arrangements have been made with the debtor and approved by the Department, apply the partial payment to the amounts owed as follows: (3-23-22)

**01. Interest.** The partial payment must be applied first to any accrued interest of the amounts due, starting with the oldest accrued interest; (3-23-22)

**02. Penalties.** After any accrued interest has been paid in full, the partial payment must be applied next to any assessed penalties, starting with the oldest assessed penalty; (3-23-22)

**03. Fraud Overpayments.** After all accrued interest and assessed penalties have been paid in full, the partial payment must be applied next to any fraud overpayments due, starting with the oldest fraud overpayment; and (3-23-22)

**04. Nonfraud Overpayments.** After all fraud overpayments have been paid in full, the partial payment must be applied next to any nonfraud overpayments, starting with the oldest nonfraud overpayment. Ref. Sec. 72-1369, Idaho Code. (3-23-22)

**701. – 724.** (RESERVED)

**725. RECOVERIES.**

Unless the overpayment resulted from a determination that the claimant willfully made a false statement or willfully failed to report a material fact, overpayments will be deducted from any future benefits payable. Ref. Secs. 72-1369 and 72-1366, Idaho Code. (3-23-22)

**726. – 749.** (RESERVED)

**750. WAIVER OF REPAYMENT.**

An interested party must submit a written request for a waiver of repayment within fourteen (14) days of the date of mailing of the Determination of Overpayment. Ref. Sec. 72-1369 (3-23-22)

**751. – 999.** (RESERVED)

**IDAPA 09 – IDAHO DEPARTMENT OF LABOR**  
**09.01.35 – UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES**  
**DOCKET NO. 09-0135-2401 (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 2025 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. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**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 72-1300 et seq., Idaho Code, and Sections 45-600 et seq., 74-106(7), 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:

These rules are being adopted as part of the IDOL's plan to review each rule every 5 years. The changes are consistent with the [Executive Order 2020-01, Zero Based Regulation](#).

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 2, 2024, Idaho Administrative Bulletin, [Vol. 24-10, pages 175-190](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a 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. 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:

This rulemaking is not anticipated to have any fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Darlene Carnopis at (208) 696-2380.

DATED this 20th day of November, 2024.

Darlene Carnopis  
Policy Coordinator  
Idaho Department of Labor  
317 W. 3rd St.  
Boise, ID 83702  
Phone: (208) 696-2380  
Email: [darlene.carnopis@labor.idaho.gov](mailto:darlene.carnopis@labor.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 Sections 72-1300 et seq., Idaho Code, Sections 45-600 et seq., 74-106(7), 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 Oct. 16, 2024.

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:** These rules are being presented for authorization as part of the IDOL's plan to review each rule every 5 years. There are no specific rulemaking changes planned by the IDOL at this time except for evaluation and amendment consistent with the Governor's [Zero-Based Regulation Executive Order](#). It is anticipated that rulemaking stakeholders will propose and advocate for rulemaking changes as part of the negotiated rulemaking process. The IDOL intends to carefully consider all changes presented by the public and may propose certain changes so long as they are consistent with the rules' statutory authority and the Governor's Executive Order. The IDOL will review the documents that are currently incorporated by reference in this rule and update that list as applicable.

**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: No fiscal impact.

**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 July 3, 2024, Idaho Administrative Bulletin, [Vol. 24-7, page 61-62](#).

**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 Darlene Carnopis at 208-696-2380.

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 Oct. 23, 2024.

DATED this 30th day of August, 2024.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 09-0135-2401**

**09.01.35 – UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES**

**000. LEGAL AUTHORITY.**

These rules are promulgated under Section 72-1333, Idaho Code. (3-23-22)

**001. SCOPE.**

These rules govern Department procedures and the rights and duties of employers under the Unemployment Insurance Program. (3-23-22)

**002. ADMINISTRATIVE APPEALS.**

Administrative appeals from determinations under this chapter may be taken as provided in IDAPA 09.01.01, "Rules of Administrative Procedure of the Department of Labor," and Sections 72-1361 and 72-1368, Idaho Code. (3-23-22)

**003. -- 010. (RESERVED)**

**011. GENERAL PROVISIONS.**

**01. Quarterly Reporting.** Subject employers shall report all wages paid for services in covered employment each calendar quarter. In the event a subject employer does not pay wages during a calendar quarter, the employer shall file a quarterly report indicating that no wages were paid. Ref. Section 72-1337, Idaho Code. (3-23-22)

**02. Contribution Due Date.** If the normal due date falls on a weekend or holiday the next workday is the due date for contributions. Ref. Section 72-1349, Idaho Code. (3-23-22)

**03. Penalties and Interest on Bankruptcy.** Penalty and/or interest shall not be assessed on amounts covered in the Department's Proof of Claim with the Bankruptcy Court for the period after the filing date of the Bankruptcy Petition and ending with the conclusion of bankruptcy proceedings and distribution of assets. Post petition penalty and interest shall be compromised, provided the amount due is paid in full by a date established after the termination of the bankruptcy proceedings. Ref. Section 72-1356, Idaho Code. (3-23-22)

**04. Lien Interest.** Lien interest on a delinquent account shall be assessed against the remaining unpaid balance computed from the day following the recording of a tax lien. Ref. Section 72-1360, Idaho Code. (3-23-22)

~~**05. Penalty and Interest During Controversy.** Penalty and/or interest shall be compromised for periods when a valid controversy exists if amounts determined to be due are paid in full by a date established at the conclusion of the issue. Ref. Sections 72-1354 and 72-1360, Idaho Code. (3-23-22)~~

**06. Determinations and Appeals.** The rules governing the form, filing, and other procedures relating to determinations under this chapter, and any appeal from those determinations, are provided in IDAPA 09.01.01, "Rules of Administrative Procedure of the Department of Labor." (3-23-22)

~~**07. When Reports Replace Determinations.** In cases where a determination of amounts due is made by the Department pursuant to Section 72-1358, Idaho Code, the reports shall replace the determination and will be used to establish the employer's liability if: (3-23-22)~~

~~**a.** The employer files reports for the periods covered by the determination before the determination becomes final; and (3-23-22)~~

~~**b.** The Department determines that the reports are accurate and complete. If the Department determines the reports are not accurate or complete, the reports shall be treated as an appeal of the determination. (3-23-22)~~

**08. Determination of Payment Date.** Each amount shall be deemed to have been paid on the date that

the Department receives payment thereof in cash or by check or other order for the payment of money honored by the drawer on presentment; provided, that if sent through the mail, it shall be deemed to have been paid as of the date mailed as determined by the postmark on the envelope containing same, or the date of the check in lieu of a postmark. Provided further, that in the case of payments received by means of garnishment, execution, or levy, the amount received shall be deemed to have been paid as of the date that the order of garnishment, execution, or levy is served. Ref. Section 72-1349, Idaho Code. (3-23-22)

**097. Release of Lien upon Payment in Full.** An amount secured by a lien shall be deemed to be satisfied when payment in full is received by the Department in the form of cash, money order, or other certified funds, or proof presented that a check or other negotiable instrument has been honored by its drawer upon presentment. Ref. Section 45-1908, Idaho Code. (3-23-22)

**1008. Contribution Reports.** Each contribution shall be accompanied by an employer's contribution report. All contribution reports shall be filed electronically with the department unless the employer has petitioned the department in writing for a waiver and the department has granted a waiver allowing the filing of a non-electronic contribution report. All contribution reports shall be in a form or medium prescribed and furnished or approved for such purpose by the department, giving such information as may be required, including number of individuals employed and wages paid or payable to each, which must be signed, furnished, or acknowledged by the covered employer or, on their behalf by someone having personal knowledge of the facts therein stated, and who has been authorized by the covered employer to submit the information. Ref. Section 72-1349, Idaho Code. (3-23-22)

**a.** Common paymaster arrangements as referenced by Internal Revenue Code Section 3306 are prohibited for Idaho unemployment insurance purposes. Each covered employer shall complete and submit an Idaho business registration form and the Department will assign to the covered employer a unique unemployment insurance account number. The covered employer must file quarterly reports under its assigned unemployment insurance account number. The workers of one (1) covered employer may not be reported using the assigned unemployment insurance account number of a different covered employer or related entity. Ref. Sections 72-1325 and 72-1315, Idaho Code. (3-23-22)

**012. -- 039. (RESERVED)**

**040. COMPROMISE OF PENALTY AND CIVIL PENALTY.**

Pursuant to Section 72-1354, Idaho Code, the Director or his authorized representative may, for good cause shown, compromise the amount of penalties owed on an employer account. An employer shall submit a request in writing for compromise of penalties, setting forth the reason(s) for the delinquency, and attaching any available evidence supporting the request. (3-23-22)

**01. Good Cause.** An employer has established good cause if the employer can show that one (1) of the following criteria has been met: (3-23-22)

**a.** The reason for the delinquency was beyond the reasonable control of the employer. Examples of circumstances that are beyond the reasonable control of the employer include, but are not limited to, the following: (3-23-22)

i. Departmental error, including but not limited to providing incorrect information to the employer or not furnishing proper forms in sufficient time to permit timely payment of contributions; (3-23-22)

ii. Death or serious illness or injury of the employer or the employer's accountant or members of their immediate families; (3-23-22)

iii. Destruction by fire or other casualty of the employer's place of business or business records; or (3-23-22)

iv. Postal service delays. (3-23-22)

**b.** The delinquency was due to circumstances for which the imposition of penalties would be inequitable. (3-23-22)

c. Good cause is also established in the case of an employer who has never received a status determination, who has never paid any contributions to the director, who voluntarily approaches the Department to inquire as to whether workers are engaged in covered employment, and the failure to pay contributions was due to the employer's good faith belief that the employer was not a covered employer pursuant to the provisions of Idaho Employment Security Law. Ref. Section 72-1354, Idaho Code. (3-23-22)

**041. -- 050. (RESERVED)**

**051. ROUNDING WAGES REPORTED ON CONTRIBUTION REPORT TO NEXT LOWER DOLLAR AMOUNT.**

The total wages and taxable wages shown on the contribution report which are to be used in computing contributions due shall be reduced to the next lower dollar amount. Ref. Section 72-1349, Idaho Code. (3-23-22)

**052. -- 055. (RESERVED)**

**056. APPLICATION OF PAYMENTS ON DELINQUENT ACCOUNTS.**

Unless otherwise specified and approved by the Department, apply payment as follows: (3-23-22)

**01. First Application.** First, credit such payment in satisfaction of interest due for the calendar quarter or period most delinquent in point of time; (3-23-22)

**02. Second Application.** Next, credit the remainder of such payment in satisfaction of penalty due for such calendar quarter or period most delinquent in point of time; (3-23-22)

**03. Third Application.** Next, credit the remainder of such payment in satisfaction of contributions due for the calendar quarter or period most delinquent in point of time; (3-23-22)

**04. Subsequent Applications.** Such applications shall be applied in a like manner for each remaining delinquent quarter. Any remaining credit shall be applied to interest on civil penalties then to civil penalty due until the amount of payment is exhausted. Ref. Section 72-1354, Idaho Code. (3-23-22)

**057. -- 060. (RESERVED)**

**061. DEFINITIONS.**

The definitions listed in IDAPA 09.01.35, "Unemployment Insurance Tax Administration Rules," Section 011, and the following are applicable to the UI Compliance Bureau. (3-23-22)

**01. Tolerance Amount.** A tolerance of four dollars and ninety-nine cents (\$4.99) is established in connection with collection of amounts due; and under normal circumstances, no delinquency or credit will be issued or carried on the books of accounts for this amount or less. Ref. Section 72-1349, Idaho Code. (3-23-22)

**02. Wages.** The term "wages" includes all remuneration from whatever source, paid or given in exchange for services performed or to be performed, including the cash value of remuneration in any medium other than cash. "Wages" in covered employment, and subject to unemployment insurance reporting, include, but are not limited to: (3-23-22)

a. Commissions, bonuses, draws, distributions, dividends and any other forms or types of payments made by corporations or other similar entities if paid in exchange for services; (3-23-22)

b. Bonuses, prizes, and gifts given to an employee in recognition of services, sales, or production; (3-23-22)

c. Commissions for past services in covered employment; (3-23-22)

d. Remuneration paid to corporate officers which is paid in exchange for services performed or to be performed for or on behalf of the corporation; (3-23-22)

- e. Salary advances against commissions; (3-23-22)
  - f. All forms of profit sharing for services rendered unless specifically exempt under Section 72-1328, Idaho Code; (3-23-22)
  - g. Excess travel or employer business allowances over actual expense, or over the federal allowance per diem rate for the area of travel, unless returned to the employer; (3-23-22)
  - h. Vacation or “idle-time” pay, no matter when paid; (3-23-22)
  - i. Personal expense reimbursement, not gifts, i.e., clothing, family expenses, rent. (3-23-22)
  - j. The director or his authorized representative shall determine the fair market value of any other remuneration, regardless of its classification, form, or label, which is paid to a worker in exchange for services. In making such determination, consideration will be given to the prevailing wage for similar services. Ref. Section 72-1328, Idaho Code. (3-23-22)
- 03. Exclusions From Wages.** The term “wages” described in Section 72-1328, Idaho Code, does not include the following: (3-23-22)
- a. Prizes or gifts for special occasions which are expressions of good will; (3-23-22)
  - b. Bonuses paid for signing a contract; (3-23-22)
  - c. Fees paid to participate periodically in meetings of boards of directors unless exceedingly high; i.e., amounts comparable to other employers in the same industry, of relatively the same size; (3-23-22)
  - d. Drawings or advances by partners of a partnership, or by members of a limited liability company treated for federal tax purposes as a partnership or sole proprietorship; (3-23-22)
  - e. Rental charge for personal equipment provided by the employee on the job: if (3-23-22)
    - i. There is a rental agreement; and (3-23-22)
    - ii. The worker has received a reasonable wage for services performed; and (3-23-22)
    - iii. The fees are held separately on the employer’s records. (3-23-22)
  - f. Stock or membership interests issued for purposes other than services performed or to be performed; (3-23-22)
  - g. Reimbursement for actual employee expense, or business allowance arrangements with employees that requires them: (3-23-22)
    - i. To have paid or incurred reasonable job related expenses while performing services as employees; and (3-23-22)
    - ii. To account adequately to the employer for these expenses; and (3-23-22)
    - iii. To return any excess reimbursement or allowance. (3-23-22)
  - h. Payments for employee travel expenses, provided: (3-23-22)
    - i. Payments are job related expenses while performing services; and (3-23-22)
    - ii. Payments do not exceed actual expenses or the federal allowance per diem rate for the area of

travel; and (3-23-22)

iii. Records for days of travel pertaining to per diem payments are verifiable. (3-23-22)

i. Employee fringe benefits as set forth in Section 132 of the Internal Revenue Code, which are excluded from an employee's gross income and which are not subject to federal unemployment taxes. (3-23-22)

j. Noncash payment to farmworkers. Noncash payments for farm work will be excluded from wages if they are "de minimis" in relation to the amount of cash wages paid to the farmworkers, or are not intended to be treated as the cash equivalent of wages, or as the cash payment of wages. Ref. Section 72-1328, Idaho Code. (3-23-22)

k. Payments of any kind by a partnership to its partner or by a sole proprietorship to its owner. (3-23-22)

**04. Treatment of Limited Liability Companies.** For purposes of state unemployment tax coverage, a limited liability company will have the same status as it may have elected for federal tax purposes, or as that status may be determined or required by the federal government, subject to the provisions of Subsections 061.02 and 061.03. Any member of a limited liability company that has elected to be treated as a corporation for federal tax purposes shall be treated as a corporate officer for state Employment Security Law purposes. (3-23-22)

**05. Domestic Employment.** Domestic employment is defined as work performed in the operation or maintenance of a private home, local college club, or local chapter of a college fraternity or sorority, as distinguished from services as an employee in pursuit of an employer's trade, occupation, profession, enterprise, or vocation. In general, domestic employment "in the operation or maintenance of a private home, local college club, or local chapter of a college fraternity or sorority" includes, but is not limited to, services rendered by cooks, waiters, butlers, maids, janitors, handymen, gardeners, housekeepers, housemothers, and in-home caregivers. Ref. Section 72-1315, Idaho Code. (3-23-22)

**06. Casual Labor.** Casual labor is labor that meets the requirements of Section 72-1316A(19), Idaho Code. The term, "services not in the course of the employer's trade or business," refers to services that do not promote or advance the trade or business of the employer. (3-23-22)

**07. Willfully.** When applied to the intent with which an act is done or omitted, willfully implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, in the sense of having an evil or corrupt motive or intent. It is more nearly synonymous with "intentionally," "designedly," "without lawful excuse," and therefore not accidental. Ref. Section 72-1372 and 72-1351A, Idaho Code. (3-23-22)

**062. SUBSTANCE VS. FORM.**

In recognizing covered employers, covered employment and in classifying wages, the Department shall examine both the substance and the form of the arrangement, contract, transaction or event, but more consideration shall be given to the substance of the arrangement, contract, transaction or event than to the form. If it is determined that true economic substance is lacking or the operations, accounting practices and records do not reflect the purported form or legal status, the Department shall, regardless of the form, determine proper coverage or classification. (3-23-22)

**063. -- 080. (RESERVED)**

**081. EMPLOYER RECORDS.**

Each person hiring one (1) or more individuals, whether or not such employment is sufficient to create the status of a covered employer, shall maintain records for five (5) years to show the information hereinafter indicated. Ref. Section 72- 1337, Idaho Code. (3-23-22)

**01. Required Information.** Such records shall show with respect to each employee unless the Department has ruled that the services do not constitute covered employment: (3-23-22)

a. Full name and home address of worker; (3-23-22)

- b. Social Security account number; (3-23-22)
- c. The place of work within this State; (3-23-22)
- d. Date on which employee was hired, rehired, or returned to work after temporary or partial layoff; (3-23-22)
- e. Date employment was terminated; whether the termination occurred by voluntary action of the individual and the reason given, or by discharge or death, and the reason for discharge; (3-23-22)
- f. Wages paid for employment in each pay period and total wages for all pay periods ending in each quarter of the year, showing separately: money wages; the cash value of other remuneration; and the amount of all bonuses or commissions. (3-23-22)

**02. Travel or Employee Business Expenses.** Amounts paid to employees as allowances or reimbursement for travel and employee business expenses and the amounts of such expenditures actually incurred and accounted for by them. (3-23-22)

**03. Records to Be Made Available.** The records to be made available to the director or his authorized representative, in accordance with the provisions of Section 72-1337, Idaho Code, shall include all of the business records, such as journals, ledgers, time books, minute books, or any other records or information which would tend to establish the existence of and/or amounts paid for services performed, whether or not in covered employment, and for information necessary to assist in or enable collection efforts or any other investigations conducted by the Department. (3-23-22)

**082. -- 095. (RESERVED)**

**096. EMPLOYER STATUS REPORT.**

**01. Status Report.** Each employer shall report on such form or any online system as may be prescribed and furnished, such information as may be necessary to make an initial or subsequent determination of status under the Idaho Code. Said reports shall be signed by the employer, or on behalf of the employer by a duly authorized representative for such purpose. Ref. Section 72-1337, Idaho Code. (3-23-22)

**02. Exceptions.** The provisions of this Rule do not apply to any employer for whom the services performed do not, by virtue of the provisions of Section 72-1316, Idaho Code, constitute covered employment, except that the director reserves the right, in his discretion, to require any such employer at any time to make the reports mentioned in Section 096 of this rule. Ref. Section 72-1337, Idaho Code. (3-23-22)

**097. -- 105. (RESERVED)**

**106. CLAIMS OF EXEMPTION.**

Any employer claiming that services performed for the employer or remuneration paid by the employer does not constitute covered employment or covered wages, as defined in Section 72-1316 and 72-1328, Idaho Code, shall make a report to the Department of Labor of all pertinent facts upon which said claim is based, which report needs to be signed by the person making the claim, if he is the employer, or on behalf of the employer by an authorized representative. Ref. Section 72- 1337, Idaho Code. (3-23-22)

**107. REMUNERATION PAID CONSTITUTES BOTH TAXABLE WAGES AND EXCLUDED AMOUNTS.**

When remuneration paid includes payment for other than wages for services performed in covered employment, the employer's records must account for wages and other remuneration separately. When this distribution is not shown on the records, the employee's entire remuneration will be deemed to be wages. Ref. Section 72-1337, Idaho Code. (3-23-22)

**108. ELECTION TO EXEMPT CORPORATE OFFICERS.**

A corporation may elect to exempt one (1) or more corporate officers from coverage by registering with the Department each qualifying corporate officer it elects to exempt pursuant to Section 72-1352A, Idaho Code. Registrations in the format prescribed by the Department made on or before December 15th shall become effective on the first day of the next calendar year and remain effective for at least two (2) consecutive calendar years. Exemptions are not retroactive and no refund or credit shall be given for contributions paid before the effective date of the exemption. Exemptions continue to remain in effect after two (2) consecutive calendar years unless the exemption is terminated according to Subsection 108.04 of this rule or coverage is reinstated according to Subsection 108.05 of this rule. (3-23-22)

**01. Public Company Election.** A public company, as defined in Section 72-1352A, Idaho Code, may elect to exempt any bona-fide corporate officer who: (3-23-22)

**a.** Is voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation; (3-23-22)

**b.** Is a shareholder of the corporation; (3-23-22)

**c.** Exercises control in the daily management of the corporation; and (3-23-22)

**d.** Does not perform manual labor as a primary work responsibility. (3-23-22)

**02. Election for Corporations That Are Not Public Companies.** A corporation that is not a public company as defined in Section 72-1352A, Idaho Code, may exempt from coverage any bona-fide corporate officer who: (3-23-22)

**a.** Is a shareholder of the corporation; (3-23-22)

**b.** Voluntarily agrees to be exempted from coverage; and (3-23-22)

**c.** Exercises substantial control in the daily management of the corporation. (3-23-22)

**03. Election to Exempt Not Applicable.** The election to exempt does not apply to corporate officers covered by Sections 72-1316A, 72-1322D and 72-1349C, Idaho Code. (3-23-22)

**04. Termination of Exemption.** A corporate officer's exemption terminates upon the corporate officer's failure to satisfy the election criteria of Section 72-1352A, Idaho Code. It is the responsibility of the corporation to notify the Department in writing in a format required by the Department when an exempt corporate officer no longer meets the election criteria. A corporation is responsible for any taxes, penalties, and interest due after the date the exemption is terminated or should have been terminated. (3-23-22)

**05. Reinstatement of Coverage.** A corporation may elect to reinstate coverage for one (1) or more corporate officers previously exempted. Reinstatement requires written notice from the corporation to the Department in a format required by the Department. Reinstatement requests received by the Department on or before December 15th become effective the first day of the calendar year following the end of the exemption's initial two (2) year effective date. Coverage shall not be reinstated retroactively. (3-23-22)

**06. Definitions.** For purposes of this chapter: (3-23-22)

**a.** "Bona-fide corporate officer" is defined as any individual empowered in good faith by stockholders or directors, in accordance with the corporation's articles of incorporation or bylaws, to discharge the duties of a corporate officer. (3-23-22)

**b.** "Exercise substantial control in the daily management of the corporation" is defined as when an individual makes managerial decisions over a business function or functions that have some effect on the entire corporation. This includes the authority to hire and fire, to direct other's activities in the corporation, or the responsibility to account for and pay over taxes or debts incurred by the corporation. (3-23-22)



**07. Services in Employment.** Unless specifically exempted, services performed by corporate officers are considered services in employment and are covered for purposes of unemployment insurance. (3-23-22)

**109. -- 110. (RESERVED)**

**111. SERVICES PERFORMED PART IN COVERED EMPLOYMENT AND PART IN EXCLUDED EMPLOYMENT.**

When wages paid cover services performed both in covered employment and excluded employment, the employer's records must show the hours and wages for covered employment and also hours and wages for excluded employment. When this distribution is not shown on the records, the employee's entire wage will be deemed to have been earned in covered employment. Ref. Section 72-1337, Idaho Code. (3-23-22)

**112. DETERMINING STATUS OF WORKER.**

**01. Determining if Worker Is an Employee.** In making a determination as to whether a worker is performing services in covered employment, it shall be determined whether the worker is an employee. To determine whether a worker is an employee, the following factors may be considered: (3-23-22)

**a.** The way in which the business entity represented its relationship with the worker prior to the investigation or litigation, including representations to the Internal Revenue Service; (3-23-22)

**b.** Statements made to the Department; (3-23-22)

**c.** Method of payment to the worker, in particular whether federal, state, and FICA taxes are withheld from paychecks; and (3-23-22)

**d.** Whether life, health, or other benefits are provided to the worker at the business entity's expense. (3-23-22)

**02. Determining if Worker Is an Independent Contractor.** If it cannot be determined that a worker is an employee pursuant to Subsection 112.01 above, then a determination shall be made whether the worker is an "independent contractor" pursuant to the terms of Section 72-1316(4), Idaho Code. For the purposes of that section and these rules, an independent contractor is a worker who meets the requirements of both Sections 72-1316(4)(a) and (b), Idaho Code. (3-23-22)

**03. Proving Worker Is Free from Control or Direction in His Work.** To meet the requirement of Section 72-1316(4)(a), Idaho Code, the alleged employer must prove that a worker has been and will continue to be free from control or direction in the performance of his work, both under his contract of service and in fact. The following factors may be considered in this determination: (3-23-22)

**a.** Whether the alleged employer has control over the details of the work, the manner, method or mode of doing the work, and the means by which the work is to be accomplished, but without reference to having control over the results of the work. (3-23-22)

**b.** The freedom from direction and control must exist in theory (under a contract of service) and in fact; and (3-23-22)

**c.** The employer must demonstrate that it lacked a right to control the worker. (3-23-22)

**04. Proving Worker Is Engaged in Independently Established Business.** To meet the requirement of Section 72-1316(4)(b), Idaho Code, it must be proven that a worker is engaged in an independently established trade, occupation, profession or business. The following factors are significant and shall be considered in making this determination, although no single factor is regarded as controlling: (3-23-22)

**a.** The level of skill required to perform the work; (3-23-22)

**i.** A worker who performs routine tasks requiring little or no training is indicative of the worker's

status as an employee. (3-23-22)

ii. A worker who performs work requiring skills marketable as a trade, occupation, profession or business, such as an electrician, attorney, physician, or CPA, is indicative of the worker's status as an independent contractor. (3-23-22)

iii. A worker who performs work requiring special licensing or compliance with regulatory requirements is indicative of the worker's status as an independent contractor. (3-23-22)

iv. A worker who receives all or substantially all of the worker's job training from the alleged employer is indicative of the worker's status as an employee. (3-23-22)

**b.** The extent to which the worker's services are an integral part of the alleged employer's business; (3-23-22)

i. A worker who performs the primary type of work that the alleged employer is in business to provide to its customers or clients is indicative of the worker's status as an employee. For example, an automotive repair business hires an additional mechanic to help in its service repair shop. Since the work provided by the worker is the primary type of work the automotive repair business provides to its customers, the work is indicative of the worker's status as an employee. (3-23-22)

ii. A worker who performs a specific job that is secondary to an integral part of the employer's business is indicative of the worker's status as an independent contractor. For example, if a manufacturing business requiring routine electrical work within its manufacturing facility hires an independent electrical company to provide that service, the electrical work performed is indicative of the worker's status as an independent contractor. (3-23-22)

iii. A worker who supervises the alleged employer's employees is indicative of the worker's status as an employee. (3-23-22)

iv. If the success of a business depends to an appreciable degree upon the performance of certain services, the worker performing those services is indicative of that worker's status as an employee. (3-23-22)

v. If a worker is not required to work solely for the alleged employer and there is a separate contractual relationship for each job that ends upon the completion of that job, the work is indicative of the worker's status as an independent contractor. (3-23-22)

**c.** The permanency of the relationship; (3-23-22)

i. The longer a worker works solely for a single alleged employer, the more indicative it is of the worker's status as an employee. (3-23-22)

ii. A worker who makes the worker's services available to the general public for hire on a regular and consistent basis is indicative of the worker's status as an independent contractor. (3-23-22)

iii. A worker whose hours worked are regularly scheduled, rather than sporadic or occasional, is indicative of the worker's status as an employee. (3-23-22)

iv. Work with a specific ending date that ends the working relationship between the worker and the alleged employer is indicative of the worker's status as an independent contractor. (3-23-22)

v. Work that is open ended allowing the worker to continue working for the same alleged employer as long as performance standards are met, is indicative of the worker's status as an employee. (3-23-22)

**d.** A worker's investment in facilities and equipment; (3-23-22)

i. A worker who is reimbursed for work-related purchases, materials or supplies, or is furnished work-related materials or supplies by the alleged employer is indicative of the worker's status as an employee.

(3-23-22)

ii. A worker who uses the tools and equipment of the alleged employer is indicative of the worker's status as an employee. (3-23-22)

iii. A worker's significant investment in tools and equipment compared to the cost of the tools and equipment provided by the alleged employer is indicative of the worker's status as an independent contractor. (3-23-22)

iv. A worker who is financially responsible to the alleged employer for damage to equipment or tools is indicative of the worker's status as an independent contractor. (3-23-22)

v. A worker's investment in physical facilities used by the worker in performing services is indicative of the worker's status as an independent contractor. (3-23-22)

vi. A worker's lack of investment in physical facilities indicating a dependence on the alleged employer for whom the worker's services are performed is indicative of the worker's status as an employee. (3-23-22)

e. Whether a worker is customarily engaged in an outside trade, occupation, profession, or business providing the same type of services the worker provides for the alleged employer engaging his services; (3-23-22)

i. A worker who provides one (1) type of service for an alleged employer, while providing the same type of service to others for hire, is indicative of the worker's status as an independent contractor. (3-23-22)

ii. A worker who provides one (1) type of service for an alleged employer, while providing a different type of service to others for hire, is indicative of the worker's status as an employee of the alleged employer. (3-23-22)

iii. A worker who advertises independently via yellow pages, business cards, web pages, or other types of media is indicative of the worker's status as an independent contractor. (3-23-22)

f. A worker's opportunities for profit and loss; (3-23-22)

i. A worker required to carry business related expenses such as insurance, bonding, or workers compensation coverage is indicative of the worker's status as an independent contractor. (3-23-22)

ii. A worker's ability to earn a profit by performing work more efficiently or suffer a loss because of the work performed is indicative of the worker's status as an independent contractor. (3-23-22)

iii. A worker who is subject to a risk of economic loss due to significant investments or a bona fide liability for expenses is indicative of the worker's status as an independent contractor. (3-23-22)

g. Other factors when viewed fairly in light of all the circumstances that may or may not indicate that the worker was engaged in an independently established trade occupation, profession, or business. These factors may include control of the premises, right to determine hours, or who sets the rate of pay. (3-23-22)

**05. Meeting Criteria for Covered Employment.** A worker who meets one (1), but not both, of the tests in Subsections 112.03 and 112.04 above shall be found to perform services in covered employment. (3-23-22)

**06. Evidence of Contractual Liability for Termination.** For purposes of making a determination under Section 72-1316(4), Idaho Code, and this regulation, the party alleging that summary termination by either party would result in contractual liability must present some evidence upon which to base such allegation. Ref. Section 72-1316(4), Idaho Code. (3-23-22)

**113. -- 130. (RESERVED)**

**131. FARM COMMODITY OWNERSHIP.**

In determining if the farm operator-processor produced more than fifty percent (50%) of the commodities being processed, the following apply: (3-23-22)

**01. Quantity.** It will be determined on a quantity basis where the farm operator processes only one (1) commodity. (3-23-22)

**02. Wages.** It will be determined on the basis of the relationship between wages paid for processing commodities raised by the farm operator-processor and total wages paid for processing where the farm operator processes several commodities. Wages paid for processing each commodity will be determined. The proportionate share of such wages paid for processing that portion of the commodity raised by the farm operator-processor will be ascertained on the basis of the percentage of such commodity which was produced by the farm operator. This will be done for each commodity processed so as to ascertain total wages paid for processing commodities produced by the farm operator-processor. If such total is more than fifty percent (50%) of the total wages paid for processing all commodities, the activity will be exempt but if it is fifty percent (50%) or less, it will not be exempt. Ref. Section 72-1304, Idaho Code. (3-23-22)

**132. STATUS.**

**01. Status Information Required.** To determine the taxable status of an employer, detailed information regarding the business activities of any person engaged in business in Idaho shall be submitted as required, including articles of incorporation, articles of organization, minutes of boards of directors, financial reports, partnership agreements, number of employees, wages paid, employment contracts, income tax records, and any other records or other information which may tend to establish such person's status. Ref. Section 72-1337, Idaho Code. (3-23-22)

**02. Notification to Liable Employers.** An employer shall be notified in writing of any determination as to its liability for contributions, or its status as a covered employer if a formal determination was made after the employer questioned its status. The determination shall be in the form required by IDAPA 09.01.01.27.01, and shall become final if no timely appeal is taken to an appeals examiner pursuant to the Rules of Administrative Procedure of the Department of Labor. (3-23-22)

**03. Employer Quarterly Report Forms.** Employers who are liable to pay tax contributions, or who have elected a cost reimbursement option in lieu of tax contributions, shall submit quarterly report forms in any form or medium designated by the director or his authorized representative. Ref. Section 72-1349, Idaho Code. (3-23-22)

**04. Update Requirements.** Covered employers shall furnish the Department with pertinent status data when new or additional information is available. Ref. Section 72-1337, Idaho Code. (3-23-22)

**133. (RESERVED)**

**134. PROFESSIONAL EMPLOYER ORGANIZATIONS.**

A professional employer organization shall fully comply with the requirements of the Professional Employer Recognition Act, Chapter 24, Title 44, Idaho Code in order to be eligible for any transfers of experience rating as allowed by Section 72-1349B, Idaho Code. (3-23-22)

**01. Methods of Reporting.** To report the wages and employees covered by the professional employer arrangement between a professional employer and client, professional employers and their clients shall make reports to the Department in one (1) of the following ways, subject to the conditions in Subsections 134.02 through 134.06 of this rule: (3-23-22)

**a.** Report the workers included in the professional employer arrangement under the employer account number of the professional employer and transfer the rate of the client to the professional employer; or (3-23-22)

**b.** Report the workers included in the professional employer arrangement under the employer account number of the client without an experience rate transfer. Ref. Section 72-1349B, Idaho Code. (3-23-22)

**02. Joint Transfer of Experience Rate.** In order to effect a transfer of a client's experience rate into the experience rate of a professional employer organization, both the client and the professional employer organization shall jointly apply for the transfer of the experience rate within the same timeframes as required of employers by Section 72-1351(5), Idaho Code, from the date of the contract entered into between the professional employer organization and the client required by Section 44-2405, Idaho Code. Failure to submit a timely joint request for transfer of experience rate shall result in the professional employer organization reporting wages for the client under the employer account number of the client. Ref. Section 72-1351(5), Idaho Code. (3-23-22)

**03. Partial Transfers of Experience Rate Prohibited.** In the event that a client and a professional employer organization jointly apply to transfer the experience rate of the client into that of the professional employer, the client's entire experience rate and factors of experience rate shall be transferred into that of the professional employer, and no partial transfers of experience factors or the experience rate shall be allowed. Ref. Section 72-1349B, Idaho Code. (3-23-22)

**04. Partial Reporting of Workers.** If some of the client's workers are included in the professional employer arrangement and some are not included, and the professional employer organization and the client elect to report the workers included in the professional employer arrangement under the employer account number of the client, then only one (1) quarterly report shall be remitted to the Department, which shall list or include all the client's workers whether or not included in the professional employer arrangement. Ref. Section 72-1349B, Idaho Code. (3-23-22)

**05. Combined Wages or Services for Purposes of Coverage.** If a client employer has employees or employment, or both, that does not independently meet the coverage or threshold requirements necessary to constitute covered employment, such employees, services or employment shall nonetheless be deemed to meet the coverage requirements of the Employment Security Law if, in combination with other employees, employment or services of such other employees of the professional employer organization or any of its clients, such wages, services or employees do jointly meet coverage requirements. (3-23-22)

**135. -- 165. (RESERVED)**

**166. FIELD OPERATIONS CONTROL.**

When circumstances dictate, and as a result of nonpayment of liabilities, the employer shall be notified by mail to the last known address of lien proceedings against the employer's interests, with an explanation of the amounts due, and the accrual of interest at the proper rate until the lien is satisfied. Ref. Section 72-1360, Idaho Code. (3-23-22)

**01. Limitation for Commencing Administrative Procedures.** The director may commence an administrative proceeding for purposes of establishing a tax liability, or otherwise to enforce the provisions of Section 72-1349, Idaho Code, by issuing a determination at any time within five (5) years from the due date of a quarterly report or the date a quarterly report is filed, whichever is later, subject to tolling pursuant to Section 72-1349, Idaho Code. (3-23-22)

**a. Notification of Audits.** Employers shall be notified as soon as practicable of an impending payroll records audit for tax liability purposes. This shall allow time in which to agree as to a convenient time and place for audit. Ref. Section 72-1337, Idaho Code. (3-23-22)

**b. Frequency of Audits.** The frequency of audits or inspections of an employer's records to ensure compliance with the law and Department rules shall be based on the following criteria: (3-23-22)

**i.** On the basis of random selection and other selection criteria in accordance with federal requirements; (3-23-22)

**ii.** As a result of information received from any source, provided that the information received is of such a nature that it would be reasonable to conduct an audit or inspection of records as a result of that information; or (3-23-22)

**iii.** As a result of a previous audit, if the business practices or records of the employer are of such a nature that it would be reasonable for a Department employee to re-inspect or re-audit the records to ensure future

compliance with the law. Ref. Section 72-1337, Idaho Code. (3-23-22)

**02. Execution Against Assets.** The Department of Labor, when the situation warrants, shall levy upon or execute against any real or personal property, both tangible and intangible, in which an indebted person has an interest, including any offsets as allowed by Section 67-1026, Idaho Code. Ref. Section 72-1360, Idaho Code. (3-23-22)

**03. Relief of Indebtedness.** Neither the full running of the statute of limitations nor the writing off of the account as uncollectible relieves an employer of tax indebtedness. Ref. Section 72-1364, Idaho Code. (3-23-22)

**167. -- 185. (RESERVED)**

**186. ACCOUNTING AND DELINQUENCY CONTROL.**

Overpayments on employer accounts may be refunded without written application by the employer. Credits resulting from overpayments or adjustments to an employer's account shall be refunded periodically unless such credit is applied to a subsequent balance due. Ref. Section 72-1357, Idaho Code. (3-23-22)

**01. Erroneous Wage Reports.** An employer submitting an erroneous report of employee wages resulting in payment of unearned unemployment insurance benefits shall have said benefit payments subtracted from any refund due that employer, if such employer benefited from the unearned benefit payments. Ref. Section 72-1372, Idaho Code. (3-23-22)

**02. Notification of Underpayments.** Employers shall be notified periodically of any taxes, penalties, or lien interest due on their tax account. Ref. Section 72-1349, Idaho Code. (3-23-22)

**03. Cancellation of Refund Warrants.** Refund warrants, outstanding after the validity date, shall be canceled, stop-payment procedures initiated, and then reissued only upon completion of an affidavit for the replacement of the lost or destroyed warrant. Ref. Section 72-1357, Idaho Code. (3-23-22)

**187. -- 220. (RESERVED)**

**221. TRANSFER OF EXPERIENCE RATING.**

Upon request, employers shall be informed of the requirements for transferring an experience rating record. Notification shall be issued to interested parties when an experience rating record transfer request is made. Ref. Sections 72-1351 and 72-1351A, Idaho Code. (3-23-22)

**01. Mandatory Transfer of Rate.** An experience rating record transfer shall be mandatory if there is a transfer of trade or business and ownership or management or control is substantially the same between the predecessor and successor. The parties in interest shall be notified of such transfer of experience as determined from the facts applicable to the case. The determination shall be in the form required by IDAPA 09.01.01.027.01, and become final if no appeal is taken to an appeals examiner pursuant to the Rules of Administrative Procedure of the Department of Labor. (3-23-22)

**02. Partial Experience Rate Transfers.** The following method is used to compute the pro-rata share of the experience rate account that is to be transferred from the predecessor to a successor. The pro-rata share is determined by dividing the gross payroll associated with the portion of the business acquired by the total gross payroll for the entire business operations for the same time period. The time period upon which this computation is based is the four (4) most recently completed quarters as reported by the predecessor prior to the date of acquisition or change in entity. (3-23-22)

**03. Continued Predecessor Employment for Liquidation.** When a total transfer of experience rating record has been completed and it is found that the predecessor employer continues to have employment in connection with the liquidation of his business, such employer shall continue to pay contributions at the assigned rate for the period of liquidation but not to extend beyond the balance of the rate year. Ref. Section 72-1351, Idaho Code. (3-23-22)

**04. Management or Ownership or Control Substantially the Same.** For the purposes of Subsection

72-1351A, Idaho Code, in determining whether the ownership or management or control of a successor is substantially the same as the ownership or management or control of the predecessor factors to be considered include, but are not limited to, the extent of policy making authority, the involvement in daily management of operations, the supervision over the workforce, the percentage of ownership of shares or assets, and the involvement on boards of directors or other controlling bodies. (3-23-22)

**05. Wage Paid by Predecessor.** The successor employer may use wages paid by the predecessor employer to arrive at the wage base for purposes of calculating taxable wages only when the experience rate of a predecessor employer has been transferred to a successor employer. Ref. Sections 72-1349(1), 72-1351(5), and 72-1350(8), Idaho Code. (3-23-22)

**222. -- 230. (RESERVED)**

**231. EXPERIENCE RATING -- QUALIFYING PERIOD.**

When an eligible employer ceases to have covered employment for a period of six (6) consecutive quarters or more, they must complete another qualifying period in order to again be eligible for consideration for a reduced contribution rate. Ref. Section 72-1319, Idaho Code. (3-23-22)

**232. -- 240. (RESERVED)**

**241. BOARD, LODGING, MEALS.**

When board, lodging, meals, or any other payment in kind considered as payment for services performed by an employee constitute a part of wages or wholly comprise an employee's wages, the value of such board, lodging, or other payment shall be determined as follows: (3-23-22)

**01. Cash Value.** If a cash value for such board, lodging, or other payment is agreed upon in any contract of hire, the amount so agreed upon shall be used provided it is a reasonable, fair market value. If there is no agreement, or if the contract of hire states an amount less than a reasonable, fair market value, the Department of Labor shall determine the reasonable or fair market value to be used. Ref. Section 72-1328, Idaho Code. (3-23-22)

**02. Meals and Lodging Not Included in Gross Wages.** The value of meals and lodging furnished by an employer to the employee will not be included in the employee's gross income if it meets the following tests: (3-23-22)

- a.** The meals or lodging are furnished on the employer's business premises; (3-23-22)
- b.** The meals or lodging are furnished for the employer's convenience; and (3-23-22)
- c.** In the case of lodging (but not meals), the employees must be required to accept the lodging as a condition of their employment. This means that they must accept the lodging to allow them to properly perform their duties. (3-23-22)
- d.** In order to exclude the value of lodging from an employee's gross wages, the employer must show that the wages paid to the employee for services performed meets the prevailing wage for those services. If the employer's records do not show or establish that the employee received the prevailing wage for services performed, then the reasonable or fair market value of the lodging will be included in the employee's gross income as wages. Ref. Section 72-1328, Idaho Code. (3-23-22)

**03. Meals or Lodging for Employer Convenience.** Meals or lodging furnished will be considered for the employer's convenience if the employer has a substantial business reason other than providing additional pay to the worker. A statement that the meals or lodging are not intended as pay is not enough to prove that either meals or lodging are furnished for the employer's convenience. Ref. Section 72-1328, Idaho Code. (3-23-22)

**04. Subsistence Remuneration.** In the case of employees who receive remuneration in the form of subsistence, such as groceries, staples, and fundamental shelter, the fair value of such subsistence will be determined by the Director. Ref. Section 72-1328, Idaho Code. (3-23-22)

**242. -- 255. (RESERVED)**

**256. DETERMINATION OF FAIR VALUE OF REMUNERATION FOR PERSONAL SERVICES.**

When the amount paid to an employee by an employer includes remuneration for other than personal services such as equipment use, travel costs, etc., the Director shall determine the fair value of the remuneration for the employee's personal services. In making such determination, the Director shall consider the wages specified in the contract of hire, the prevailing wages for similar work under comparable conditions, and other pertinent factors. The wages so determined by the Director shall be reported by the employer. Ref. Section 72-1328, Idaho Code. (3-23-22)

**257. -- 261. (RESERVED)**

**262. DETERMINATION OF PROPER QUARTER IN WHICH TO ASSIGN AND REPORT WAGES.**

**01. Wage Assignment to Proper Calendar Quarter.** Wages paid shall be assigned to the calendar quarter in which the wages were: (3-23-22)

**a.** Actually paid to the employee in accordance with the employer's usual and customary payday as established by law or past practice; or (3-23-22)

**b.** Due the employee in accordance with the employer's usual and customary payday as established by law or past practice but not actually paid on such date because of circumstances beyond the control of the employer or the employee; or (3-23-22)

**c.** Not paid on the usual or customary payday as established by law or past practice but set apart on the employer's books as an amount due and payable or otherwise recognized as a specific and ascertainable amount due and payable to the worker in accordance with an agreement or contract of hire under which services were rendered. Ref. Section 72-1367, Idaho Code. (3-23-22)

**02. Draws and Advances on Wages.** Payments to employees made prior to regular or established paydays will be assignable and reportable during the quarter in which they would have been paid unless a practice is established whereby all employees or a class of employees are given an opportunity to take a "draw" by which such action, another "regular" payday appears to have been created. (3-23-22)

**03. Judgments of Wages.** Amounts received as a result of labor relations awards or judgments for back pay, or for disputed wages, constitute wages and will be reported in the quarter or quarters in which the award or judgment has become final, after all appeals have been exhausted, or the quarter or quarters to which the court assigns the wages, if different. Ref. Section 72-1328, Idaho Code. (3-23-22)

**04. Awarded Damages Against Employers.** Amounts awarded to the claimant as a penalty or damages against the employer, other than for lost wages, do not constitute wages. Ref. Section 72-1328, Idaho Code. (3-23-22)

**263. DETERMINATION OF REPORTABLE QUARTERS.**

An employer shall be covered for all four (4) quarters in the calendar year in which the employer becomes a covered employer as well as for all four (4) quarters in the succeeding calendar year. Employers are not required to file quarterly reports until meeting the coverage criteria pursuant to Section 72-1315, Idaho Code. Upon becoming a covered employer within a calendar year, the quarterly report(s) for the quarter(s) prior to the employer becoming covered shall be filed with the quarterly report for the quarter in which the employer became covered. Quarterly reports for the periods subsequent to coverage shall be filed when due after the end of each quarter. Ref. Sections 72-1315 and 72-1337, Idaho Code. (3-23-22)

**264. -- 999. (RESERVED)**



## IDAPA 17 – INDUSTRIAL COMMISSION

### 17.01.01 – ADMINISTRATIVE RULES UNDER THE WORKER'S COMPENSATION LAW

#### DOCKET NO. 17-0101-2301 (ZBR CHAPTER REWRITE)

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

[LINK: LSO Rules Analysis Memo and Incorporation By Reference Synopsis \(IBRS\)](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2025 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. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**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 72-508 and 72-304, 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 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 2, 2024, Idaho Administrative Bulletin, [Vol. 24-10, pages 212-244](#).

The Commission has approved and adopted only one relatively minor change to this pending rule from the previously published proposed rule, based on comments the Commission received at the Public Hearings on the ZBR Re-write of this Chapter. In the proposed rule, the Commission added a provision to Rule 17.01.01.601.07 that imposed a timeline of seven (7) days for sureties or self-insured employers to provide requested information to the Commission to process a claim. Some of our stakeholders expressed concern that the seven-day time limit to provide the requested information placed a heavy burden on sureties, particularly if the surety did not have regular communication with or a well-established relationship with the injured worker's employer. To address this concern, the Commissioners amended the subsection to clarify that the Commission simply expects the surety or self-insured employer to respond to the Commission's request for information within the seven-day timeline. Therefore, the Commission amended Rule 17.01.01.601.07 by striking the following language "provide the requested information promptly" and replacing it with "respond."

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a 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 Section 72-301, Idaho Code, mandates the Idaho Industrial Commission to adopt rules governing the qualifications of self-insured employers. The pending rule 17.01.01.301.02b imposes a \$250 application fee for an employer to self-insure. This is not an increase of the current application fee. Nor does the proposed rule impose any new or additional fees.

**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: There is no anticipated fiscal impact.

**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 20th day of November, 2024.

George Gutierrez  
Director  
Industrial Commission  
11321 W. Chinden Blvd.

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 Sections 72-508 and 72-304, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

**17.01.01 – Administrative Rules Under The Worker's Compensation Law**

**Monday, October 7, 2024 – 10:00 a.m. - 11:00 a.m. (MT)**  
**Sawtooth Room, Chinden Campus Building 2**  
**11321 W. Chinden Blvd.**  
**Boise, ID 83714**

[Virtual Meeting Link](#)

**17.01.01 – Administrative Rules Under The Worker's Compensation Law**

**Thursday, October 24, 2024 – 10:00 a.m. - 11:00 a.m. (MT)**  
**Sawtooth Room, Chinden Campus Building 2**  
**11321 W. Chinden Blvd.**  
**Boise, ID 83714**

[Virtual Meeting Link](#)

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 Industrial Commission 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 proposed amendments to the rules don't impose any new or increased fees.

**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: There is no anticipated fiscal impact.

**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 November 1, 2024 Idaho Administrative Bulletin, Vol. 23-11, pg. 18-19 and the May 1, 2024 Idaho Administrative Bulletin, Vol.24-5, pg. 206-210.

**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:

Incorporation of the CMS Fee Schedules (Physician Fee Schedule, Acute Inpatient Prospective Payment System, Hospital Outpatient Prospective Payment System, Ambulatory Surgical Center Payment System) and the CPT Codes are necessary because, pursuant to Idaho Code 72-803, the Commission is required to use these schedules to set fees for physician services for medical services and for medicine and related benefits. Additionally, it is critical to use a universally recognized standard so both payors and providers are aware of how costs for medical services, medicine and related benefits will be reimbursed. Incorporation of the EDI Implementations Guides is necessary because it is an industry practice to use a universally recognized standard for claim data and reporting.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kamerron Slay, Commission Secretary, (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 October 28, 2024.

DATED this 28th day of August, 2024.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 17-0101-2301

Italicized red text that is *double underscored* indicates amendments to the proposed text as adopted in the pending rule.

## 17.01.01 – ADMINISTRATIVE RULES UNDER THE WORKER'S COMPENSATION LAW

### 000. LEGAL AUTHORITY.

~~This chapter is adopted under the legal authority of 72-301, 72-301A, 72-304, 72-327, 72-432, 72-508, 72-528, 72-602, 72-803, and 72-806, Idaho Code.~~ (3-23-22)(\_\_\_\_)

### 001. ~~TITLE AND SCOPE.~~

~~01. **Title.** The title of this chapter is "Administrative Rules Under the Worker's Compensation Law" IDAPA 17, Title 01, Chapter 01.~~ (3-23-22)

~~02. **Scope.** This chapter includes the Industrial Commission's worker's compensation rules.~~ (3-23-22)

### 001. **(RESERVED)**

### 002. **WRITTEN INTERPRETATIONS****INCORPORATION BY REFERENCE.**

~~The Industrial Commission uses the following guidelines for implementing the EDI reporting requirements set out in~~

~~this Chapter. These rules incorporate by reference the following documents, which may be obtained from the main office of the Industrial Commission or are available on the agency's website. (3-23-22)( )~~

~~**01. EDI Guide and Tables.** The Idaho Industrial Commission Claims EDI Implementation Guide and Trading Partner Tables ("EDI Guide and Tables"). The Idaho Industrial Commission Claims EDI Implementation Guide and Trading Partner Tables are available on the Commission's website at <https://iic.idaho.gov/>. (3-23-22)~~

~~**02. EDI Implementation Guide.** International Association of Industrial Accidents Boards and Commissions (IAIABC) EDI Claims Release 3.0 or, after September 14, 2023, Release 3.1, Implementation Guide ("EDI Implementation Guide"). The IAIABC Claims Release 3.0 and Release 3.1 Implementation Guides are available at the IAIABC website at <https://www.iaiaabc.org/>. (4-6-23)~~

**01. EDI Implementation Guide.** The Industrial Commission uses the International Association of Industrial Accident Boards and Commissions (IAIABC) Electronic Data Interchange (EDI) Claims Implementation Guide ("EDI Implementation Guide"), as published annually, available at <http://www.iaiaabc.org/edi-claims>, and the IAIABC Claims EDI Implementation Guide and Trading Partner Tables available at <https://iic.idaho.gov/>. See Rule 601 of these rules. ( )

**02. CMS Fee Schedules.** Pursuant to Idaho Code § 72-803, these rules incorporate by reference the Physician Fee Schedule, Hospital Outpatient Prospective Payment System, and Ambulatory Surgical Center Payment System, as published by the Centers for Medicare and Medicaid Services (CMS), effective January 1, 2024, available at <https://www.cms.gov/medicare/payment/fee-schedules/physician>; <https://www.cms.gov/medicare/payment/prospective-payment-systems/hospital-outpatient>; <https://www.cms.gov/medicare/payment/prospective-payment-systems/ambulatory-surgical-center-asc> respectively. Additionally, these rules incorporate by reference the Acute Inpatient Prospective Payment System, as published by the CMS, effective October 1, 2024, available at <https://www.cms.gov/medicare/payment/prospective-payment-systems/acute-inpatient-pps>. See Rule 803 of these rules. ( )

**03. CPT Codes.** Pursuant to Idaho Code § 72-803, these rules incorporate by reference the Current Procedural Terminology (CPT) codes, as published by the American Medical Association, effective January 1, 2024, available at [ama-assn.org/practice-management/cpt](http://ama-assn.org/practice-management/cpt). See Rule 803 of these rules. ( )

**003 -- 009. (RESERVED)**

**010. DEFINITIONS.**

The definitions set forth in Chapter 72, Idaho Code apply to these rules. In addition, the following terms have the meaning set forth below: (3-23-22)

**01. Adjustor.** Means an individual who adjusts worker's compensation claims. (3-23-22)

**02. Ambulatory Payment Classification (APC).** Means the payment system adopted by Centers for Medicare and Medicaid Services (CMS) for outpatient services (3-23-22)( )

**03. Available Funds.** Means a sum of money to which a Charging Lien may attach. It does not include any compensation paid or not disputed to be owed prior to Claimant's agreement to retain the attorney. (3-23-22)

**04. Ambulatory Surgery Center (ASC).** Means a facility providing medical services on an outpatient basis only. (3-23-22)( )

**05. Approval by Commission.** Means the Commission has approved attorney fees in conjunction with an award of compensation or an Settlement Agreement (SA) ~~LSS~~ or otherwise in accordance with Section 802 of this rule upon a proper showing by the attorney seeking to have the fees approved. (3-23-22)( )

**06. Average Wholesale Price (AWP).** Means the average wholesale price for medicine obtained from pricing data provided by the original manufacturer of that medicine to industry-wide compilers of drug prices, e.g., Red Book and Medi-Span. (3-23-22)( )

- 07. Charge.** Means the expense or cost. For hospitals and ASCs, “charge” means the total charge. (3-23-22)
- a.** Acceptable charge. Means a charge calculated in compliance with Section 803 of this rule or as billed by the Provider, whichever is lower, or the charge agreed to pursuant to a written contract. (3-23-22)
- b.** Customary charge. 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. (3-23-22)
- c.** Reasonable charge. Means a charge that does not exceed the Provider's “usual” charge and does not exceed the “customary” charge. (3-23-22)
- d.** Usual charge. Means the most frequent charge made by an individual Provider for a given medical service to non-industrially injured patients. (3-23-22)
- 08. Charging Lien.** Means a lien against a Claimant's right to any compensation under the Worker's Compensation Law, which may be asserted by an attorney who is able to demonstrate that: (3-23-22)
- a.** There are compensation benefits available for distribution on equitable principles; (3-23-22)
- b.** The services of the attorney operated primarily or substantially to secure the fund out of which the attorney seeks to be paid; (3-23-22)
- c.** It was agreed that counsel anticipated payment from compensation funds rather than from the client; (3-23-22)
- d.** The Claim is limited to costs, fees, or other disbursements incurred in the case through which the fund was raised; and (3-23-22)
- e.** There are equitable considerations that necessitate the recognition and application of the Charging Lien. (3-23-22)
- 09. Claim.** Means filing for worker's compensation benefits through a Form 1A-1, First Report of Injury or Illness (FROI) or an application for hearing, referred to as a Complaint, with the Commission. (3-23-22)
- 10. Claims Administrator.** Means an organization, including insurers, third party administrators, independent adjusters, or self-insured employers, that services worker's compensation claims. (3-23-22)
- 11. Claims Services.** Aspects of claims handling to include but are not limited to reserve setting, three-point contacts, accident investigations, acceptance or denial of claims, authorization of medical treatment, authorization and triggering of the medical and income benefit payments to be issued. Medical fee schedule adjustments and issuance of authorized benefit payments may be considered ministerial or administrative functions. ( )
- 12. Claimant.** Means a person who has filed a Claim for worker's compensation benefits and includes their agents, such as attorneys. (3-23-22)
- ~~**12. Commission.** Means the Idaho Industrial Commission. (3-23-22)~~
- 13. Critical Access Hospital.** Means a hospital currently designated as a critical access hospital by CMS. (3-23-22)
- 14. Current Procedural Terminology (CPT).** Means the medical code published by the American Medical Association. (3-23-22)( )
- 15. Death Claim.** Means a Claim arising from the death of a worker as a result of a work-related injury or occupational disease. (3-23-22)

16. **Electronic Data Interchange (EDI).** Means a computer to computer exchange of data in a standardized format. (3-23-22)( )
17. **Fee Agreement.** Means a written agreement between a worker and an attorney in conformity with the Idaho Rules of Professional Conduct. (3-23-22)
- a. Reasonable, as used in Section 802 of this rule, means that an attorney's fees are consistent with the fee agreement and are to be satisfied from Available Funds, subject to the element of reasonableness contained in Idaho Rules of Professional Conduct 1.5. (3-23-22)
18. **First Degree of Consanguinity.** Means the relationship between parents and their children whether related by blood or affinity. Adopted or step children and their adoptive or step parents are deemed to be within the first degree of consanguinity. (3-23-22)
19. **First Report of Injury (FROI).** Means the first filing of information with the Industrial Commission that a reportable workplace injury has occurred or an occupational disease has ~~been~~ manifested, as required by Section 72-602(1), Idaho Code; filed in accordance with these rules. (3-23-22)( )
20. **Gross Direct Premiums Written.** Means the gross sum of premiums on policies written, without any deduction for refunds or repayments resulting from cancellations. It does not include premiums on contracts between insurers or reinsurers. For all policies written, gross direct premiums written may reflect experience modifications, deviations, and retrospective rating. (3-23-22)
21. **Healthcare Common Procedure Coding System (HCPCS).** Means the set of healthcare procedure codes based on the American Medical Association's Current Procedural Terminology. (3-23-22)( )
22. **Hospital.** Means an acute care facility providing medical or rehabilitation services on an inpatient and outpatient basis. (3-23-22)
23. **IAIABC EDI ~~Release 3.0 or 3.1~~ Claims.** Means the IAIABC authored EDI Claims ~~Release 3.0 or 3.1~~ standards that cover the transmission of claims (FROI and SROI) information ~~through electronic reporting.~~ (3-23-22)( )
24. **Impairment Rated Claim.** Means those claims in which the Provider establishes an impairment rating for the ~~injured worker~~ claimant or the claimant has a statutory impairment award per the schedule. (3-23-22)( )
25. **Implantable Hardware.** Means objects or devices that are made to support, replace, or act as a missing anatomical structure or to support or manage proper biological functions or disease processes and where surgical or medical procedures are needed to insert or apply such devices and surgical or medical procedures are required to remove such devices. The term also includes equipment necessary for the proper operation of the implantable hardware, even if not implanted in the body. (3-23-22)
26. **Indemnity Benefits.** Means payments made to or on behalf of worker's compensation Claimants, including temporary or permanent total or partial disability benefits, death benefits paid to dependents, retraining benefits, and any other type of income benefits, but excluding medical and related benefits. (3-23-22)
27. **Indemnity Claim.** Means any claim made for the payment of indemnity benefits. (3-23-22)
- ~~28. **Legacy Claim.** Means a FROI that was either filed on paper or electronically prior to the EDI Claims Release 3.1 implementation. (3-23-22)~~
- ~~29.~~ **Litigated Case.** Means a case in which a complaint has been filed. (3-23-22)
- ~~30~~**29. **Medical Only Claim.** Means the ~~injured worker~~ claimant will not suffer a disability lasting more than five (5) calendar days as a result of a job-related injury or occupational disease, nor be admitted to a hospital as**

an inpatient. (3-23-22)( )

**3130. Medical Report.** Means and includes without limitation, all bills, chart notes, surgical records, testing results, treatment records, hospital records, prescriptions, and medication records. (3-23-22)

**321. Medicare Severity - Diagnosis Related Group.** Means a system adopted by CMS that groups hospital admissions based on diagnosis codes, surgical procedures, and patient demographics. (3-23-22)

**332. Net Premiums Written.** Means the amount of gross direct premiums on policies written less returned premiums and premiums on policies not taken. Paid dividends shall not be deducted for the purposes of calculating net premiums written. (3-23-22)

**343. Payor.** Means the entity that is responsible for making payment to a Provider for services rendered to treat an ~~industrially injured patient~~ claimant and includes self-insured employers, sureties, adjusters, and their agents. (3-23-22)( )

**354. Payroll.** Means the gross amount paid by an employer for salaries, wages, or commissions earned by its own direct employees, but not including any money paid to another entity or received from another entity for leased employees. (3-23-22)

**365. Pharmacy.** Means a facility as defined in Section 54-1705(29), Idaho Code. (3-23-22)

**376. Supplemental or Subsequent Report of Injury (SROI).** Means the filing of additional information with the Industrial Commission, regarding benefits paid or changes in the status or condition of an ~~injured worker~~ claimant, of a Claim for benefits, as required by Sections 72-602(2), (3), and (4), Idaho Code; filed in accordance with these rules. (3-23-22)( )

**387. Termination of Disability.** Means the date upon which the obligation of the Employer/Surety becomes certain as to duration and amount whether by settlement agreement (SA), decision, or periodic payments in the ordinary course of claims processing. If resolved by ~~LSS SA~~, the termination of disability shall occur on the date the ~~LSS SA~~ is ~~approved and filed or~~ an order approving is filed by the Industrial Commission. If resolved by decision, the termination of disability shall occur on the date the decision resolving all issues becomes final. (3-23-22)( )

**398. Time Loss Claim.** Means the ~~injured worker~~ claimant will suffer, or has suffered, a disability that lasts more than five (5) calendar days as a result of a job-related injury or occupational disease, or the ~~injured worker~~ claimant requires, or required, in-patient treatment as a result of such injury or disease. (3-23-22)( )

**4039. Trading Partner.** Means an insurance carrier, self-insured employer, or Claims Administrator that has entered into a Trading Partner Agreement with the Industrial Commission. (3-23-22)

**440. Trading Partner Agreement.** Means an agreement between the Industrial Commission and a Trading Partner that sets out the terms and conditions for the electronic reporting of information to the Commission. (3-23-22)

**~~011. ABBREVIATIONS.~~**

~~The following abbreviations have the meaning set forth below:~~ (3-23-22)

~~01. APC. Means Ambulatory Payment Classification. (3-23-22)~~

~~02. ASC. Means Ambulatory Surgery Center. (3-23-22)~~

~~03. AWP. Means Average Wholesale Price. (3-23-22)~~

~~04. CMS. Means Centers for Medicare and Medicaid Services. (3-23-22)~~

~~05. CPT. Means Current Procedural Terminology. (3-23-22)~~

- ~~06. EDI. Means Electronic Data Interchange. (3-23-22)~~
- ~~07. FROI. Means First Report of Injury. (3-23-22)~~
- ~~08. HCPCS. Means Healthcare Common Procedure Coding System. (3-23-22)~~
- ~~09. IAABC. Means International Association of Industrial Accident Boards and Commissions. (3-23-22)~~
- ~~10. ISIF. Means the Industrial Special Indemnity Fund, which is commonly referred to as the Second Injury Fund. (3-23-22)~~
- ~~11. LSS. Means Lumps Sum Settlement. (3-23-22)~~
- ~~12. MSDRG. Means Medicare Severity Diagnosis-Related Group. (3-23-22)~~
- ~~13. NCCI. Means National Council on Compensation Insurance. (3-23-22)~~
- ~~14. NDC. Means National Drug Code. (3-23-22)~~
- ~~15. RBRVS. Means Resource-Based Relative Value Scale. (3-23-22)~~
- ~~16. RVU. Means Relative Value Unit. (3-23-22)~~
- ~~17. SROI. Means Supplemental or Subsequent Report of Injury. (3-23-22)~~

~~012. LIBERAL CONSTRUCTION.~~

~~Rulemaking before the Industrial Commission should be just, speedy, and economical; unless prohibited by statute, the Industrial Commission may permit deviation from these rules when it finds compliance with them is impracticable, unnecessary, or not in the public interest. (3-23-22)~~

~~013~~**1. -- 200. (RESERVED)**

**201. RULE GOVERNING 72-212(5) EXEMPTIONS.**

**01. Exemptions.** Each person who elects to exempt themselves from coverage or revoke their exemption under Section 72-212(5), Idaho Code, must file an IC53 Declaration form with the Industrial Commission. The form is available on the Commission's website. (3-23-22)

**02. Form.** The form must be signed by both the employee and the employer. An original and one (1) copy of the IC53 form shall be filed with the Commission. Upon approval by the Commission, the copy will be returned to the employee filing for an exemption or revocation of an exemption. (3-23-22)

**03. Approval by Commission.** The Commission must approve the exemption or revocation of exemption. The Commission may require verification of information submitted. Fraud or misrepresentation in the information provided will void the exemption or revocation. (3-23-22)

**04. IC53 Form.** If the employer is insured, it is the employer's responsibility to file a copy of the IC53 form with the employer's insurance company. (3-23-22)

~~05. Effective Date. The effective date of the exemption or revocation of exemption shall be the date the properly completed form is received by the Commission. (3-23-22)~~

~~06. Exemption Effective. The exemption shall remain in effect until a revocation of exemption is filed with the Commission, or, termination of employment with the designated employer, or upon the death of the employee, whichever occurs first. (3-23-22)~~



202. -- 300. (RESERVED)

**301. RULES GOVERNING QUALIFICATIONS TO WRITE INSURANCE OR SELF-INSURE.**

**01. Insurance Carriers.** In order to gain approval from the Industrial Commission to underwrite worker's compensation insurance under Section 72-301, Idaho Code, an insurance carrier shall comply with the additional following requirements: (3-23-22)( )

a. Deposit With State Treasurer. The carrier must receive approval from the Director of the Idaho Department of Insurance to underwrite casualty and surety insurance under Sections 41-506 and 41-507, Idaho Code, and shall initially deposit security in the amount of two hundred fifty thousand dollars (\$250,000) with the State Treasurer, under the provisions of Section 72-302, Idaho Code. (3-23-22)

b. Application. To receive approval from the Industrial Commission, an insurance carrier must ~~supply an application with~~ submit a completed application, available from the Industrial Commission's Fiscal Department, including: (3-23-22)( )

i. ~~A statement recommendation from the Director of the~~ Idaho Department of Insurance ~~documenting compliance with Paragraph 01.a, above that the carrier be approved to transact worker's compensation insurance in the State of Idaho;~~ A statement recommending that the carrier be approved to transact worker's compensation insurance in the State of Idaho; (3-23-22)( )

ii. The latest audited financial statement of said carrier; (3-23-22)

iii. ~~The name and address of the agent for service of process in Idaho~~ A statement appointing the Director of the State of Idaho Department of Insurance as its agent to receive service of legal process; (3-23-22)( )

iv. The name and address of the carrier's appointed Claims Administrator employing an Idaho licensed resident adjuster or the insurance carrier's own in-house Idaho adjusting staff with authority to make compensation payments and adjustments of claims arising under the Act. Each Claims Administrator shall have only one (1) mailing address on record at the Commission for claims adjusting purposes. If more than one (1) Claims Administrator is utilized in Idaho, a list of every such Claims Administrator and all corresponding policyholders shall be provided; (3-23-22)( )

v. A statement that the carrier will distribute blank forms that are prescribed by the Commission to its insured; (3-23-22)

vi. A statement that all surety bonds covering the payment of compensation will be filed with the Idaho State Treasurer for all employers insured. All carriers will use the continuous bond form set out on the Commission's website. (3-23-22)

vii. A statement that renewal certificates on said bonds will be issued and filed with the Industrial Commission immediately, when and if renewed; (3-23-22)

viii. A statement that all surety contract cancellations will be canceled in compliance with Section 72-311, Idaho Code; (3-23-22)

ix. A statement that said carrier will deposit, in addition to other security required by this rule, further security equal to all unpaid outstanding awards of compensation; (3-23-22)

x. A statement that said carrier will comply with the statutes of the state of Idaho and rules of the Industrial Commission and that payments of compensation shall be sure and certain and not unnecessarily delayed; and (3-23-22)( )

xi. A statement that the carrier will make reports to the Commission as are required-; and (3-23-22)( )

~~xii.~~ A copy of the Certificate of Authority from the carrier's State of Domicile. ( )

**02. Self-Insured Employers.** In order to gain written approval from the Industrial Commission to self-insure under Section 72-301, Idaho Code, an employer shall comply with the following requirements: (3-23-22)( )

~~a.~~ Payroll. Have an average annual Idaho Payroll over the preceding three (3) years of at least ~~four~~ seven million dollars (\$~~4~~7,000,000). (3-23-22)( )

~~b.~~ Application. Submit a completed application, available from the Industrial Commission's Fiscal Department, along with the application fee of two hundred fifty dollars (\$250), to the Idaho Industrial Commission, Attention: Fiscal Department, including: (3-23-22)( )

~~ei.~~ Documentation. ~~Submit documentation~~ demonstrating the sound financial condition of the employer, such as the most recent CPA reviewed or, if available, audited, financial statement. (3-23-22)( )

~~dii.~~ Claims Adjusting. ~~Designate in writing~~ Written designation of a Claims Administrator employing an Idaho licensed resident adjuster including name and address. Each Claims Administrator shall have only one (1) mailing address on record at the Commission for claims adjusting purposes. (3-23-22)( )

~~eiii.~~ Previous Claims. ~~Provide a~~ A claims history of all worker's compensation claims filed with the employer or the employer's worker's compensation carrier, as well as all compensation paid, during the previous five (5) calendar years. (3-23-22)( )

~~fi.~~ Excess Insurance. ~~Provide a~~ A copy of an insurance plan that ~~must~~ includes excess insurance coverage ~~and or~~ copies of all proposed policies of excess worker's compensation insurance coverage. (3-23-22)( )

~~g.~~ Actuarial Study. ~~Provide a~~ An actuarial study prepared by a qualified actuary determining adequate rates for the proposed self-funded worker's compensation plan based upon a fifty percent (50%) confidence level. (3-23-22)( )

~~hvi.~~ Feasibility Study. ~~Provide a~~ A self-insurance feasibility study that includes an analysis of the advantages and disadvantages of self insurance as compared to current coverage, and the related costs and benefits. (3-23-22)( )

~~ivii.~~ Custodial Agreement. ~~Set up a~~ A custodial agreement with the State Treasurer for securities required to be deposited under Sections 72-301 and 72-302, Idaho Code. (3-23-22)( )

~~jviii.~~ Supplemental Information. ~~Provide supplemental~~ information as requested. (3-23-22)( )

~~kix.~~ Initial Security Deposit. Prior to final approval, ~~deposit~~ an initial security deposit must be made with the Idaho State Treasurer ~~in the form permitted by~~ per Section 72-301, Idaho Code, or a self-insurer's bond in substantially the form as the Commission's self-insurer's compensation bond, available on the Commission's website, in the amount of one hundred fifty thousand dollars (\$150,000), plus five percent (5%) of the first ten million dollars (\$10,000,000) of the employer's average annual Payroll in the state of Idaho for the three (3) preceding years; along with such additional security as may be required by the Commission based on prior claims history. (3-23-22)( )

~~lx.~~ Initial Guaranty Agreement. ~~The Commission may allow or, w~~ Where financial reports or other factors such as the high risk industry of the employer indicate the need, the Commission may require an employer that is organized as a joint venture or a wholly owned subsidiary to provide an initial guaranty agreement from each member of the joint venture or the parent company. This guaranty agreement confirms the continuing agreement of each of the joint venture members or the parent company to guarantee the payment of all Idaho worker's compensation claims of employees of that joint venture or subsidiary employer. The guaranty agreement shall be in substantially the same form as the ~~current sample~~ Self-insured Indemnity and Guaranty Agreement and, as applicable, the companion Consent of the Board of Directors, both available on the Commission's website.

(3-23-22)( )

~~m. Written Approval. Obtain written approval from the Industrial Commission.~~ (3-23-22)

~~xi.~~ Idaho National Laboratory. An employer meeting the requirements of Section 72-301A, Idaho Code, does not have to comply with the requirements of Paragraphs 302.02.a., 02.f., 02.i., and 02.k., above. (3-23-22)

**302. RULES GOVERNING CONTINUING REQUIREMENTS TO UNDERWRITE INSURANCE OR SELF-INSURE.**

**01. Insurance Carriers.** An insurance carrier approved under IDAPA 17.01.01.301.01 shall comply with the following requirements: (3-23-22)

a. Maintain Statutory Security Deposits with the State Treasurer. (3-23-22)

i. Each insurance carrier shall maintain with the Idaho State Treasurer a security deposit in the amount of twenty-five thousand dollars (\$25,000) if approved by the Commission prior to July 15, 1988, or two hundred and fifty thousand dollars (\$250,000) if approved subsequently. (3-23-22)

ii. In addition to the security required in Subsection 01.a.i, of this rule, each insurance carrier shall deposit an amount equal to the total unpaid outstanding awards of said insurance carrier. Such deposit shall be in the form permitted by Section 72-301, Idaho Code. Surety bonds shall be in the form available on the Commission's website. If a surety bond is deposited, the surety company shall be completely independent of the principal and authorized to transact such business in the state of Idaho. A partial release of security deposited hereunder must be requested in writing and approved by the Commission. (3-23-22)

~~iii. Securities which are maintained to satisfy the requirements of this rule may be held in the federal reserve book entry system, as defined in Section 41-2870(4), Idaho Code, and interests in such securities may be transferred by bookkeeping entry in the federal reserve book entry system without physical delivery of certificates representing such securities.~~ (3-23-22)

b. Appoint Agent for Service of Process. Each insurance carrier shall appoint the Director of the Department of Insurance as its agent to receive service of legal process. (3-23-22)

c. Maintain Resident Idaho Office. Each insurance carrier shall maintain a Claims Administrator employing an Idaho licensed resident adjuster or the carrier's own adjusting offices or officers residing in Idaho. (3-23-22)

i. Each authorized insurance carrier shall notify the Commission ~~Secretary~~ in writing of any change ~~of the designated resident adjuster(s) to the primary claims administrator within fifteen (15) days of such change and report the designated claims administrator for every insured Idaho employer within fifteen (15) days of such change through proof of coverage (POC).~~ (3-23-22)( )

ii. Each authorized insurance carrier will ensure that every in-state adjuster can classify and identify all claims adjusted on behalf of said insurance carrier, and that the in-state adjuster will provide such information to the Industrial Commission upon request. Further each in-state Adjustor must have full authority to: (3-23-22)

(1) Investigate and adjust all claims for compensation; (3-23-22)

(2) Pay all compensation benefits due; (3-23-22)

(3) Accept service of claims, applications for hearings, orders of the Commission, and all process which may be issued under the Worker's Compensation Law; (3-23-22)

(4) Enter into compensation agreements and ~~LSSs~~ SAs with Claimants; (3-23-22)( )

(5) Provide at the employer's expense necessary forms to any employee who wishes to file a Claim under the Worker's Compensation Law. (3-23-22)

**d.** Supply Forms. Each insurance carrier shall distribute the required forms prescribed by the Commission to all employers it insures. A list of required forms is available on the Commission's website. (3-23-22)

**e.** Comply with Industrial Commission Reporting Requirements. Each insurance carrier shall, within the time prescribed, file such reports and respond to such information requests as the Commission may require from time to time concerning matters under the Worker's Compensation Law. (3-23-22)

**f.** Report Proof of Coverage. (3-23-22)

**i.** Each insurance carrier shall report all proof of coverage to [National Council on Compensation Insurance \(NCCI\)](#). NCCI is the designated agent to receive, process, and forward the proof of coverage information required by these rules to the Commission. The address of the Commission's designated agent is available on the Commission's website. (~~3-23-22~~)

**ii.** The Industrial Commission adopts the IAIABC's electronic proof of coverage record layout and transaction standards as the required reporting mechanism for new policies, renewal policies, endorsements, cancellations, and non-renewals of policies. A copy of the record layout, data element requirements, and transaction standards is available on the Commission's website. Each insurance carrier shall report data for all mandatory elements in the current IAIABC proof of coverage record layout and transaction standards on each policy reported. (3-23-22)

**iii.** The most recent proof of coverage information contained in the Industrial Commission's database shall be presumed to be correct for the purpose of determining the insurance carrier providing coverage. (3-23-22)

**g.** Report New Policy, Renewal Policy, and Endorsement Information Within Thirty Days. Each insurance carrier shall report the issuance of any new worker's compensation policy, renewal policy, or endorsement to the Industrial Commission or its designated agent within thirty (30) days of the effective date of the transaction. (3-23-22)

**h.** Report Cancellation and Non-Renewal of Policy Within Time Prescribed by Statute. Each insurance carrier shall report the cancellation and/or nonrenewal of any worker's compensation insurance policy to the Industrial Commission or its designated agent within the time frames prescribed by Section 72-311, Idaho Code. Receipt of cancellation or nonrenewal notices by the Commission's designated agent shall be deemed to have been received by the Commission. (3-23-22)

**i.** Report Election of Coverage on Form IC52 or Similar Format. Each insurance carrier shall report election of coverage or revocation of election of coverage on or in a format substantially the same as Form IC52, "Election of Coverage," available on the Commission's website. (3-23-22)

**j.** Report Deductible Policy. On or before March 3rd of each year, every insurance carrier shall submit a report of all deductible policies that were issued and in effect during the previous calendar year. That report shall be submitted in a form substantially similar to the current "Deductible Policy Report" available on the Commission's website. The report shall include the following information: insured name, policy number, effective and expiration dates, deductible amount, the premium charged for the policy before credit for the deductible, and the final premium after credit for the deductible. (3-23-22)

**k.** Report Outstanding Awards. Each insurance carrier shall report to the Industrial Commission at the end of each calendar quarter, or more often as required by the Commission, any outstanding award. (3-23-22)

**i.** The report of outstanding awards shall be filed with the Industrial Commission by the end of the month following the end of each calendar quarter. (3-23-22)

**ii.** The report shall be filed even if there are no outstanding awards. In that event, the carrier shall certify the fact that there are no outstanding awards to be reported. (3-23-22)

iii. The report shall be submitted ~~on~~ in a manner as prescribed by the Industrial Commission or in a format that is substantially the same as the current Form IC36A, "Report of Outstanding Awards - Insurance Carriers" available on the Commission's website. The report may be produced as a computerized spreadsheet or database printout. (3-23-22)(    )

iv. ~~The report~~ Reports submitted in a format other than online filing, such as hard copy or email attachment, shall be signed and certified to be correct by a corporate officer. If an insurance carrier has designated more than one adjuster for worker's compensation claims in Idaho, a corporate officer of the insurance carrier shall prepare, certify, and file a consolidated report of outstanding awards. (3-23-22)(    )

v. The report shall list all outstanding awards, commencing with the calendar quarter during which the award is made or benefits are first paid, whichever occurs earlier. (3-23-22)

~~1. Comply with Law and Rules. Each insurance carrier shall comply with the statutes of the state of Idaho and the rules of the Industrial Commission to ensure that payments of compensation shall be sure and certain and not unnecessarily delayed.~~ (3-23-22)

**02. Self-Insured Employers.** A self-insured employer approved under Subsection 301.02 shall comply with the following requirements: (3-23-22)

a. Payroll Requirements. Maintain an average annual Idaho Payroll over the preceding three (3) years of at least ~~four~~ seven million dollars (~~\$4,000,000~~), if such employer was originally approved by the Commission subsequent to June 30, 2025, and four million dollars (\$4,000,000), if such employer was originally approved by the Commission prior to July 1, 2025. Any self-insured employer that does not meet the Payroll requirement of this rule for two consecutive semi-annual premium tax reporting periods shall be allowed to maintain their self-insured status for six (6) months from the end of the last reporting period in order to permit them time to increase their Payroll or obtain worker's compensation coverage with an insurance carrier authorized to write worker's compensation insurance in the state of Idaho. (3-23-22)(    )

b. Security Deposit with Treasurer. (3-23-22)

i. Maintain a primary security deposit with the Idaho State Treasurer in the form permitted by Section 72-301, Idaho Code, a self-insurer's bond form available on the Commission's website, or in substantially the same form, or in such other form approved by the Commission, in the amount of one hundred fifty thousand dollars (\$150,000), plus five percent (5%) of the employers' average annual Payroll in the state of Idaho for the three (3) preceding years, not in excess of ten million dollars (\$10,000,000). If a surety bond is deposited, the surety company shall be completely independent of the principal and authorized to transact such business in the state of Idaho. In addition thereto, the self-insured employer shall deposit additional security in such amount as the Commission determines is necessary to secure the self-insured employer's total unpaid liability for compensation under the Worker's Compensation Law. No approved security shall be accepted for deposit above its par value. Additional deposits of approved security may be required semi-annually if the market value of an approved investment falls below its par value or if the total value of the employer's security deposit falls below the total security required to be maintained on deposit when calculated in accordance with this rule. (3-23-22)

ii. Self-insured employers shall receive a credit for the primary security deposit against the self-insured employer's obligation to post the additional security required by Subparagraph 302.02.b.i. of this rule. (3-23-22)

iii. Excess insurance coverage approved by the Commission may apply as a credit against the self-insured employer's obligation to post the additional security required by Subparagraph 302.02.b.i. of this rule. The Commission must be provided with thirty (30) days advance written notice of any change or cancellation of an approved excess insurance policy. No credit will be given for any excess insurance coverage provided by a surplus lines carrier, as described in Chapter 12, Title 41, Idaho Code. (3-23-22)

~~iv. All security deposited by the self insured employer shall be maintained as provided by Section 72-302, Idaho Code.~~ (3-23-22)

- iv. Any withdrawal or partial release of security deposited hereunder must be requested in writing and approved by the Commission. Only one (1) request may be made per calendar year. (3-23-22)(    )
- c. Continue or Provide Guaranty Agreement. (3-23-22)
- i. A self-insured employer that is organized as a joint venture or a wholly owned subsidiary shall continue in effect any guaranty agreement that the Commission has previously allowed or required, until termination is permitted by the Commission. (3-23-22)
- ii. Where an adverse change in financial condition or other relevant factors such as claims history or industry risk indicates the need, a self-insured employer that is organized as a joint venture or a wholly owned subsidiary may be allowed to, or shall upon request, provide a guaranty agreement from each member of the joint venture or the parent company. This guaranty agreement confirms the continuing agreement of each of the joint venture members or the parent company to guarantee the payment of all Idaho worker's compensation claims of employees of that joint venture or subsidiary self-insured employer. The guaranty agreement shall be in substantially the same form as the current sample Indemnity and Guaranty Agreement, and as applicable, the companion Consent of the Board of Directors, available on the Commission's website. (3-23-22)
- d. Maintain a Licensed Resident Adjuster. Maintain an Idaho licensed, resident claims adjuster located within the state of Idaho who shall have full authority to make decisions and to authorize the payment of all compensation on said claims on behalf of the employer including, but not limited to, the following: (3-23-22)
- i. Investigate and adjust all claims for compensation; (3-23-22)
- ii. Pay all compensation benefits due; (3-23-22)
- iii. Accept service of claims, applications for hearings, orders of the Commission, and all process which may be issued under the Worker's Compensation Law; (3-23-22)
- iv. Enter into compensation agreements and ~~LSSs~~ SAs with Claimants; (3-23-22)(    )
- v. Provide at the employer's expense necessary forms to any employee who wishes to file a Claim under the Worker's Compensation Law. (3-23-22)
- e. File Reports. Report to the Industrial Commission semi-annually, or more often as required by the Commission, total unpaid liability on all open claims. (3-23-22)
- i. The semi-annual report of total unpaid liability shall be filed with the Industrial Commission by the end of the months of January and July. (3-23-22)
- ii. The report shall provide the aggregate number of open claims, including indemnity with medical and Medical Only Claims, along with the amount of any compensation paid on open claims, as of the end of each June and December. (3-23-22)
- iii. The report shall be filed even if there are no open claims. In that event, the employer shall certify the fact that there are no open claims to be reported. (3-23-22)
- iv. The report shall be submitted on or in a manner as prescribed by the Industrial Commission or in a format that is substantially the same as the current Form IC-211, "Self-Insured Employer Report of Total Unpaid Liability," available on the Commission's website. The report may be produced as a computerized spreadsheet or database printout. (3-23-22)(    )
- v. ~~The report~~ Reports submitted in a format other than online filing, such as hard copy or email attachment, shall be signed and certified to be correct by a corporate officer. If an employer has designated more than one adjuster for worker's compensation claims in Idaho, a corporate officer of the employer shall prepare, certify, and file a consolidated report of all unpaid liability. (3-23-22)(    )

vi. A self-insured employer shall also make, within the time prescribed, such other reports and respond to such information requests as the Commission may require from time to time concerning matters under the Worker's Compensation Law. (3-23-22)

f. Submit to Audits by Industrial Commission. Each year a self-insured employer shall provide the Industrial Commission with a copy of its annual financial statements, or other acceptable documentation. Each self-insured employer shall submit to audit by the Commission or its designee at any time and as often as it requires to verify the amount of premium such self-insured employer would be required to pay as premium to the State Insurance Fund, and to verify compliance with the provisions of these rules and the Idaho Worker's Compensation Law. For the purpose of determining such premium for uninsured contractors of a self-insured employer, the most recent proof of coverage information contained in the Industrial Commission's database shall be presumed to be correct for the purpose of determining such coverage. (3-23-22)

~~g. Comply with Law and Rules. Comply with the statutes of the state of Idaho and the rules of the Industrial Commission to the end that payment of compensation shall be sure and certain and not unnecessarily delayed. The Commission may withdraw its approval of any employer to operate as a self insurer if it shall appear to the Commission that workers secured by said self insured employer are not adequately protected and served, or the employer is failing to comply with the provisions of these rules or the Worker's Compensation Law. (3-23-22)~~

hg. Idaho National Laboratory. An employer meeting the requirements of Section 72-301A, Idaho Code, does not have to comply with Paragraph 303.02.a. and 302.02.b., above. (3-23-22)

### **303. RULE GOVERNING THE COLLECTION OF PREMIUM TAX ON WORKER'S COMPENSATION INSURANCE POLICIES.**

~~This rule governs the collection of premium tax on worker's compensation insurance policies. This procedure applies to all worker's compensation policies. (3-23-22)~~

01. **Procedure for Submitting Premium Tax Forms.** The form IC 4008, ~~available on the Commission's website,~~ to be filed in the manner prescribed by the Commission, shall be used to report numbers of policies and the total gross premiums written. ~~The original shall be sent to the Commission; a~~ A copy shall also must be attached to the reporting entity's annual premium tax statement that is filed with the Idaho Department of Insurance. Forms submitted in a format other than online filing, such as hard copy or email attachment, shall be signed and certified to be correct by a corporate officer. This form is due to the Commission by July 31 for the reporting period of January 1 through June 30; it is due by March 3 for the reporting period of July 1 through December 31. (3-23-22)(    )

### **304. RULE GOVERNING PREMIUM TAX COMPUTATION FOR SELF-INSURED EMPLOYERS.**

01. **Payroll Reports.** ~~No later than March 3rd and July 31st, self-insured employers shall file a semi-annual premium tax report with the Fiscal Department of the Commission.~~ Self-insured employers shall use file in the manner prescribed by the Commission's ~~current report a~~ form IC 4010, along with the accompanying computation form IC 4010a, ~~available on the Commission's website.~~ Forms submitted in a format other than online filing, such as hard copy or email attachment, shall be signed and certified to be correct by a corporate officer. The premium tax payment due ~~from a self-insured employer~~ shall be based upon the manual premium calculated for each reporting period, as modified by an experience modification factor calculated by NCCI and submitted to the Commission in accordance with Subsection 304.02 of this rule. No other rating factor shall be allowed. If the self-insured employer elects to not provide such experience modification factor, the premium tax will be computed based upon the manual premium only. (3-23-22)(    )

02. **Experience Modification.** A self-insured employer that elects to use an experience modification factor in computing premium tax shall make an annual application to NCCI for an experience modification factor using the NCCI form ERM-6 and paying to NCCI any fees charged for providing that calculation. An NCCI experience modification factor may only be based on the employer's Idaho operations for which self-insured status is authorized. In order to have an experience modification factor considered for any reporting period, an employer must timely submit to the Commission's Fiscal Department: (3-23-22)

- a. A copy of the completed form ERM-6 filed with NCCI; (3-23-22)
- b. The resulting experience modification factor received from NCCI; and (3-23-22)
- c. The completed IC 4010 Semi-Annual Premium Tax Form for Self-Insurers and IC 4010a Computation Form. (3-23-22)

**305. REQUIREMENTS FOR MAINTAINING IDAHO WORKER'S COMPENSATION CLAIMS FILES.**

~~All insurance carriers, self-insured employers, and licensed adjusters servicing Idaho worker's compensation claims shall comply with the following requirements:~~ (3-23-22)

**01. Idaho Office.** (3-23-22)

a. All insurance carriers, self-insured employers, and licensed adjusters servicing Idaho worker's compensation claims shall maintain an office within the state of Idaho. ~~The offices shall be staffed by adequate personnel to conduct business.~~ (3-23-22)( )

b. The insurance carrier or self-insured employer shall authorize and require a member of its in-state staff or an Idaho licensed resident adjuster to service and make decisions regarding claims pursuant to Section 72-305, Idaho Code. (3-23-22)

c. As staffing changes occur and, at least annually, the insurance carrier, self-insured employer, or licensed adjuster shall submit to the Commission Secretary the names of those authorized to make decisions regarding claims pursuant to Section 72-305, Idaho Code. Each authorized insurance carrier shall designate only one (1) Claims Administrator for each policy of worker's compensation insurance. (3-23-22)

**02. Claim Files.** All Idaho worker's compensation claim files shall be maintained within the state of Idaho in either hard copy or immediately accessible electronic format. Claim files shall include, ~~but are not limited to~~ all documents relevant to the claim file: (3-23-22)( )

- a. FROI and Claim for Benefits; (3-23-22)
- b. Copies of bills for medical care; (3-23-22)
- c. Copy of lost-time computations, if applicable; (3-23-22)
- d. Correspondence reflecting reasons for any delays in payments, the resolution of such delays, and acceptance or denial of compensability; (3-23-22)
- e. Employer's return-to-work communications; and (3-23-22)
- f. Medical reports. (3-23-22)

**03. Correspondence.** All original correspondence involving adjusting decisions regarding Idaho worker's compensation claims shall be authorized ~~from and maintained at in-state offices~~ and accessible through electronic reproduction by the resident Idaho adjuster. (3-23-22)( )

**04. Date Stamp.** Each of the documents listed in Subsections 305.02 and 305.03, above, shall be date-stamped with the name of the receiving office on the day received, and by each receiving agent or vendor acting on behalf of the claims office. (3-23-22)

**05. Notice and Claim.** All First Reports of Injury, Claims for Benefits, notices of occupational illnesses, and fatalities shall be sent directly to the in-state adjuster for the insurance carrier or self-insured employer. ~~The original copy~~ An EDI Filing of the FROI, Claim for Benefits, and notices of occupational illness and fatality shall be sent electronically to the Industrial Commission. (3-23-22)( )



- 06. Compensation Payments - Generally.** (3-23-22)
- a. All compensation, as defined by Section 72-102, Idaho Code, must be issued from the in-state office. (3-23-22)
- b. Except as ordered otherwise by the Commission, the insurance carrier or self-insured employer may make compensation payments by either: (3-23-22)
- i. Check or other readily negotiable instrument; (3-23-22)
- ii. ~~When requested by the Claimant, electronic transfer payment to an account designated by the Claimant in accordance with the requirements of Subsection 305.07; or~~ Upon the Claimant's written request, through an electronic payment transfer to an account designated by the Claimant. The Claimant or Claimant's attorney may discontinue receiving the electronic transfer payment and revert to receiving compensation payments via check by written notification; or (3-23-22)(\_\_\_\_)
- iii. ~~When requested by the Claimant, electronic transfer payments made through an access card; if that option is made available by the carrier or self insured employer, in accordance with the requirements of Subsection 305.08~~ An insurance carrier or a self-insured employer may pay compensation through either: (1) an automated teller machine (ATM) card, (2) debit card, or (3) access card (hereinafter, collectively referred to as an "access card") to a Claimant if there is a signed agreement between the insurance carrier or self-insured employer and the Claimant. An insurance carrier or self-insured employer shall not reduce compensation payments paid to a Claimant through an access card for any fees, surcharges, and adjustments unless they are for direct costs in replacing an access card through an expedited mail service, international transaction fees, or out-of-network ATM fees. The Claimant or Claimant's attorney may discontinue receiving payment via access card by written notification. (3-23-22)(\_\_\_\_)
- c. Notwithstanding subsection (ii) and (iii) above ~~If~~ if the Claimant is represented by an attorney who may have an attorney's lien for fees due on such compensation payments, the attorney must agree to payment by electronic transfer to Claimant's account or payment through an access card before such compensation may be paid other than by a check made payable to the Claimant and the attorney. Upon request, updated electronic payment history shall be provided by written notification to represented parties. (3-23-22)(\_\_\_\_)
- 07. Electronic Transfer Payments.** (3-23-22)
- ~~a. A Claimant may request that the insurance carrier or self insured employer make compensation payments by electronic transfer to a personal bank account by providing the insurance carrier or self insured employer in writing: the name and routing transit number of the financial institution and the account number and type of account to which the Claimant wants to have the compensation electronically transferred. The insurance carrier or self insured employer shall provide the Claimant with a written form to fill out the required information by this subsection within seven (7) days of receiving a request for electronic transfer of payments from the Claimant unless the Claimant has already completed an on line electronic form provided by the carrier or employer. (3-23-22)~~
- ~~b. The insurance carrier or self insured employer may make compensation payments to the Claimant by electronic transfer to an account designated by the Claimant if the Claimant: (3-23-22)~~
- ~~i. Requests in writing that payment be made by electronic transfer; (3-23-22)~~
- ~~ii. Provides the information required by Paragraph 305.07.a. above; and (3-23-22)~~
- ~~iii. Is reasonably expected to be entitled to receive compensation payments for a period of eight (8) weeks or more from the point that Subparagraphs 305.07.b.i. and 07.b.ii. are satisfied. (3-23-22)~~
- ~~e. The insurance carrier or self insured employer shall initiate payment by electronic transfer starting with the first benefit payment due on or after the twenty first day after the requirements of Paragraph 305.07.b., above are met, but shall continue to make timely payments by check until the insurance carrier or self insured employer initiates benefit payment delivery by electronic transfer. (3-23-22)~~

~~d. If the Claimant has previously been receiving benefit payments by electronic transfer and wants to receive benefits by check, the insurance carrier or self insured employer shall initiate benefit payment delivery by check starting with the first benefit payment due to the Claimant on or after the seventh day after receiving a written request for such payments. (3-23-22)~~

~~**08. Access Card Payments. (3-23-22)**~~

~~a. Access card means any card or other payment method that may be used by a Claimant to initiate electronic fund transfer from an insurance carrier's or a self insured employer's bank account. The term "access card" does not include stored value cards or prepaid cards that store funds directly on the card and that are not linked to an insurance carrier's or a self insured employer's bank account. (3-23-22)~~

~~b. An insurance carrier or a self insured employer may pay compensation through an access card to a Claimant if there is written mutual agreement signed by the insurance carrier or self insured employer and the Claimant. The insurance carrier or self insured employer shall maintain accurate records of the mutual agreement for, at a minimum, four hundred and one (401) weeks from the date of injury. The written agreement shall contain an acknowledgment that the Claimant received and agreed to the written disclosure required by Paragraph 305.08.d. (3-23-22)~~

~~e. An insurance carrier or a self insured employer providing compensation payments to a Claimant through an access card shall: (3-23-22)~~

~~i. Permit the Claimant to withdraw the entire amount of the balance of an access card in one transaction; (3-23-22)~~

~~ii. Not reduce compensation payments paid to a Claimant through an access card for the following fees, surcharges, and adjustments: (3-23-22)~~

~~(1) Overdraft services under which a financial institution pays a transaction (including a check or other item) when the Claimant has insufficient or unavailable funds in the account; (3-23-22)~~

~~(2) ATM withdrawal or point of sale purchase for more than the card holds and the transaction is denied; (3-23-22)~~

~~(3) ATM balance inquiries; (3-23-22)~~

~~(4) Withdrawing money from network ATMs; (3-23-22)~~

~~(5) Withdrawing money from a teller; (3-23-22)~~

~~(6) Customer service calls; (3-23-22)~~

~~(7) Activating the card; (3-23-22)~~

~~(8) Fees for card inactivity; (3-23-22)~~

~~(9) Closing account; (3-23-22)~~

~~(10) Access card replacement through standard mail; (3-23-22)~~

~~(11) Withdrawing the entire payment in one transaction; (3-23-22)~~

~~(12) Point of sale purchases, or (3-23-22)~~

~~(13) Any other fees or charges that are not authorized under Subparagraph 305.08.e.iii., and (3-23-22)~~

~~iii. Only permit a Claimant to be charged for the following: (3-23-22)~~

- (1) Fees for access card replacement through an expedited mail service; (3-23-22)
- (2) International transaction fees, and (3-23-22)
- (3) Out-of-network ATM fees. (3-23-22)
- ~~d. Insurance carriers or self-insured employers shall provide a written disclosure to the Claimant contemporaneously with the written mutual agreement required under Paragraph 305.08.b. that includes: (3-23-22)~~
  - ~~i. A summary of the Claimant's liability for unauthorized electronic fund transfers; (3-23-22)~~
  - ~~ii. The telephone number and address of the person or office to be notified when the Claimant believes that an unauthorized electronic fund transfer has been or may be made; (3-23-22)~~
  - ~~iii. The type of electronic fund transfers that the Claimant may make and any limitations on the frequency of transfers; (3-23-22)~~
  - ~~iv. Any fees imposed for electronic fund transfers or for the right to make transfers, including a statement that fees may be imposed by an ATM operator that is out of network; (3-23-22)~~
  - ~~v. Fees for expedited card replacement or international transaction fees will be removed from the balance maintained in the bank account linked to the access card; (3-23-22)~~
  - ~~vi. A summary of the Claimant's right to receipts and periodic statements; (3-23-22)~~
  - ~~vii. All bank locations and network ATMs in the United States where the Claimant may access his or her funds at no cost; (3-23-22)~~
  - ~~viii. A statement informing the Claimant that they have a right to receive payments directly into their personal bank account through direct deposit or by check. (3-23-22)~~
- ~~e. An insurance carrier or a self-insured employer shall provide the written disclosure and any notice of term or condition changes required under Paragraph 305.08.d. that: (3-23-22)~~
  - ~~i. Are printed in not less than twelve (12) point font; (3-23-22)~~
  - ~~ii. Include the full text to communicate all terms and conditions; (3-23-22)~~
  - ~~iii. Are written in a clear and coherent manner and wherever practical, words with common and everyday meaning shall be used to facilitate readability; and (3-23-22)~~
  - ~~iv. Are appropriately divided and captioned in a meaningful sequence such that each section contains an underlined, boldfaced, or otherwise conspicuous title or caption at the beginning of the section that indicates the nature of the subject matter included in or covered by the section. (3-23-22)~~
- ~~f. An access card issued to a Claimant under this Subsection 305.08 shall: (3-23-22)~~
  - ~~i. Not bear any information that could reasonably identify the Claimant as a participant in the worker's compensation system; and (3-23-22)~~
  - ~~ii. Include on the front or back of the access card a toll-free customer service number and website address. Customer service personnel shall be available by phone Monday through Friday during normal business hours (9 a.m. to 6 p.m. Mountain Time). (3-23-22)~~
- ~~g. The insurance carrier or self-insured employer shall provide a written notice to the Claimant at least twenty one (21) days before the effective date of any change in a term or condition of the mutual agreement or~~

~~disclosure, including terminating the access card program, increased fees, or liability for unauthorized electronic fund transfers. Any terms or conditions that violate the requirements of this Subsection 305.08 are null and void and may result in administrative action against the carrier or employer. An insurance carrier or employer shall provide a written notice of term or condition changes that:~~ (3-23-22)

~~i. Provides a comparison of the current terms and the changes; and (3-23-22)~~  
~~ii. References the Claimant's ability to request a change in method of payment to electronic fund transfer to his or her personal bank account in accordance with Subsection 305.07 or to payment by check. (3-23-22)~~

~~h. An insurance carrier or a self-insured employer may close the access card account by issuing a check to the Claimant with the remaining balance of the access card if the account has been inactive for twelve (12) months or longer. (3-23-22)~~

~~i. The insurance carrier or self-insured employer shall not remove money from the Claimant's account or access card except to remove permitted fees under Subparagraph 305.08.e.iii. or to close the account for inactivity of a period of twelve (12) months or more. An insurance carrier or a self-insured employer seeking to recoup overpayments shall follow the requirements of section 72-316, Idaho Code. (3-23-22)~~

~~j. An insurance carrier or a self-insured employer is considered to have made a compensation payment the date the payment is available on the Claimant's access card. (3-23-22)~~

**097. Checks and Drafts.** Checks must be signed and issued within the state of Idaho; drafts are prohibited. (3-23-22)

**a.** The Commission may, upon receipt of a written Application for Waiver, grant a waiver from the provisions of Subsections 305.06 and ~~305.09~~ **this subsection** of this rule to permit an insurance carrier or a self-insured employer to sign and issue checks outside the state of Idaho. (3-23-22)(    )

**b.** An Application for Waiver must be accompanied by an affidavit signed by an officer or principal of the insurance carrier or self-insured employer, attesting to the fact that the insurance carrier or self-insured employer is prepared to comply with all statutes and rules pertaining to prompt payments of compensation. (3-23-22)

**c.** All waivers shall be effective from the date the Commission issues the order granting the waiver. A waiver shall remain in effect until revoked by the Industrial Commission. At least annually, staff of the Industrial Commission may review the performance of any insurance carrier or self-insured employer for which a waiver under this rule has been granted to assure that the insurance carrier or self-insured employer is complying with all statutes and rules pertaining to prompt payments of compensation. (3-23-22)

**d.** If at any time after the Commission has granted a waiver, the Commission receives information permitting the inference that the insurance carrier or self-insured employer has failed to provide timely benefits to any Claimant, the Commission may issue an order to show cause why the Commission should not revoke the waiver; and, after affording the insurance carrier or self-insured employer an opportunity to be heard, may revoke the waiver and order the insurance carrier or self-insured employer to comply with the requirements of Subsections 305.06 and ~~305.09~~ **this subsection** of this rule. (3-23-22)(    )

~~408.~~ **Copies of Checks.** Copies of checks and/or electronically reproducible copies of the information contained on the checks must be maintained in the in-state files for Industrial Commission audit purposes. ~~A copy~~ **Notice** of the first income benefit check shall be sent to the Industrial Commission electronically on the same day of issuance. (3-23-22)(    )

~~409.~~ **Prompt Claim Servicing.** Prompt claim servicing includes, but is not limited to: (3-23-22)

**a.** Making an initial decision to accept or deny a Claim for an injury or occupational disease within thirty (30) days of the date the Claims Administrator receives knowledge of the same. The worker shall be given notice of that initial decision in accordance with Section 72-806, Idaho Code. Nothing in this rule shall be construed as amending the requirement to start payment of income benefits no later than four (4) weeks or twenty-eight (28)

days from the date of disability under the provisions of Section 72-402, Idaho Code. (3-23-22)

b. Payment of medical bills in accordance with the provisions of Section 803 of these rules. (3-23-22)

c. Payment of income benefits on a weekly basis, unless otherwise approved by the Commission. (3-23-22)

i. The first payment of income benefits under Section 72-408, Idaho Code, shall constitute application by the insurance carrier or self-insured employer for a waiver to pay Temporary Total Disability (TTD) benefits on a bi-weekly basis, Temporary Partial Disability (TPD) benefits on other than a weekly basis, Permanent Partial Disability (PPD) benefits based on permanent impairment and Permanent Total Disability (PTD) benefits every twenty-eight (28) days, rather than on a weekly basis. (3-23-22)

ii. Such waiver application shall be granted upon receipt and remain in effect unless revoked by the Industrial Commission in accordance with Subparagraph 305.11.c.iii. (3-23-22)

iii. If at any time after a waiver has been granted pursuant to this section the Commission receives information permitting the inference that the insurance carrier or self-insured employer has failed to service claims in accordance with Idaho law, or that such waiver has created an undue hardship on a Claimant, the Commission may issue an order to show cause why the Commission should not revoke that waiver, and after affording the insurance carrier or employer an opportunity to be heard, may revoke the waiver with respect to all or certain Claimants and order the insurance carrier or self-insured employer to comply with the requirements of Subsection 305.11.c. of this rule. (3-23-22)

d. Payment of the first Permanent Partial Disability (PPD) benefit based on permanent impairment no later than fourteen (14) days after receipt of the Medical Report providing the impairment rating. The first payment shall include payment of benefits retroactive to the date of medical stability. (3-23-22)

e. Temporary Partial Disability (TPD) payments ~~shall~~ may be calculated using the employee's pay period, whether weekly, bi-weekly, or semi-monthly. ~~For employees paid pursuant to any other schedule, TPD benefits shall be calculated semi-monthly.~~ TPD payments owed for a particular pay period shall issue no later than seven (7) days following the date on which employee is ordinarily paid for that pay period. (3-23-22)(    )

~~120.~~ **Audits.** The Industrial Commission ~~will~~ may perform ~~periodic~~ audits to ensure compliance with the above requirements. (3-23-22)(    )

~~131.~~ **Non-Compliance.** Non-compliance with the above requirements may result in the revocation of the authority of an insurance carrier to write worker's compensation insurance or self-insured employer to self-insure its worker's compensation insurance obligations in the state of Idaho, or such lesser sanctions as the Industrial Commission may impose. (3-23-22)

### **306. RULE PROHIBITING USE OF SICK LEAVE OR OTHER ALTERNATIVE COMPENSATION.**

**01. Employee Not Required to Take Sick Leave in Lieu of Compensation.** No employer obligated to pay worker's compensation benefits to an employee as provided by the Worker's Compensation Law may require an employee to accept "sick leave" or other comparable benefit in lieu of the worker's compensation benefits provided by law. ~~Section 72-318(2), Idaho Code, specifically provides that no agreement by an employee to waive his rights to compensation under the Worker's Compensation Law shall be valid.~~ (3-23-22)(    )

**02. Election of Sick Leave or Alternative Compensation Prohibited.** Further, an employee may not elect to accept "sick leave" or other comparable benefit from an employer in lieu of worker's compensation benefits to which the employee is entitled under the Worker's Compensation Law. (3-23-22)

### **307. RULE GOVERNING REPORTING INDEMNITY AND MEDICAL PAYMENTS AND MAKING PAYMENT OF INDUSTRIAL SPECIAL INDEMNITY FUND (ISIF) ASSESSMENT.**

Pursuant to Section 72-327, Idaho Code, the state insurance fund, every authorized insurance carrier, and self-insured employer in Idaho shall report annually to the Industrial Commission the total gross amount of medical only and

Indemnity Benefits paid on Idaho worker's compensation claims during the applicable reporting period. ~~This report is~~  
The reported indemnity payments only are used to calculate the pro rata share of the annual assessment for the ISIF,  
under Section 72-327, Idaho Code. (3-23-22)( )

**01. Filing.** The report of indemnity and medical payments shall be filed with the Industrial Commission simultaneously with the first Semi-Annual Premium Tax Report; which, pursuant to Section 72-523, Idaho Code, is due each year on March 3rd. (3-23-22)

**02. Form.** The report of indemnity and medical payments shall be submitted ~~in writing on, or in a format substantially the same as the current Form IC2-327, available on the Commission's website~~ on Form IC2-327 in the manner prescribed by the Industrial Commission. (3-23-22)( )

**03. Report Required When No Indemnity Paid.** If an entity required to report under this rule has no claims against which indemnity or medical payments have been made during the reporting period, a report shall be filed so indicating. (3-23-22)

**04. Penalty for Late Filing.** A penalty shall be assessed by the Commission for filing the report of indemnity and medical payments later than March 3rd each year. (3-23-22)

**a.** A penalty of two hundred dollars (\$200) for late filing of seven (7) days or less. (3-23-22)

**b.** A penalty of one hundred dollars (\$100) per day for late filing of more than seven (7) days. (3-23-22)

**c.** A penalty assessed by the Commission shall be payable to the Industrial Commission and be submitted with the April 1 payment of the ISIF assessment, following notice by the Commission of the penalty assessment. (3-23-22)

**05. Estimating Indemnity Payments for Entities That Fail to Report Timely.** If an entity required to report indemnity payments under these rules fails to report within the time allowed in these rules, the Commission will estimate the indemnity payments for that entity by using the indemnity amount reported for the preceding reporting period and adding twenty percent (20%). (3-23-22)

**06. Adjustment for Overpayments or Underpayments.** Overpayments or underpayments, including those resulting from estimating the indemnity payments of entities that fail to report timely, will be adjusted on the billing for the subsequent period. (3-23-22)

**308. – 400. (RESERVED)**

**401. RULE GOVERNING COMPUTATION OF AVERAGE WEEKLY WAGE.**

**01. Amounts Paid over Base Rate.** Sums paid by an employer to an employee, over and above the base rate of compensation agreed upon by the employer and the employee in a contract of hire, which are contingent and dependent upon the employee's increased physical exertion and/or efficiency shall be included in computing the employee's average weekly wage pursuant to Section 72-419(4)(a), Idaho Code. Said sums shall not be considered premium pay. (3-23-22)

**02. Fringe Benefits.** Also, in computing the average weekly wage, it shall be presumed that wages include, but are not limited to, cost of living increases, vacation pay, holiday pay, and sick leave. (3-23-22)

**03. Premium Pay.** Further, in computing the average weekly wage, it shall be presumed that premium pay includes, but is not limited to, shift differential pay and overtime pay. (3-23-22)

**04. Examples Not Exclusive.** The above-listed examples ~~shall not be taken as~~ are not exclusive in computing the average weekly wage. (3-23-22)( )

**402. RULE GOVERNING ~~CONVERSION OF~~ AVERAGE OF MULTIPLE IMPAIRMENT RATINGS ~~TO "WHOLE MAN" STANDARD.~~**

~~**01. Converting Single Rating of Body Part to Whole Person Rating.** Impairment ratings shall be converted in accordance with the Industrial Commission Schedule, Section 72-428, Idaho Code, with the base of five hundred (500) weeks for the whole man. (3-23-22)~~

**021. Averaging Multiple Ratings.** Where more than one (1) evaluating physician has given ratings, these shall be converted to the statutory percentage of the whole man, and averaged for the applicable rating. (3-23-22)

~~**032. Correcting Manifest Injustice.** In the event that the Commission deems a manifest injustice would result from the above ruling, it may at its discretion take steps necessary to correct such injustice. The Commission may take steps to correct a manifest injustice resulting from averaging multiple ratings. (3-23-22)( )~~

**403. RULE GOVERNING COMPENSATION FOR DISABILITY DUE TO LOSS OF TEETH.**

**01. Compensation for Disability.** A Claimant under the Worker's Compensation Law shall be entitled to compensation for permanent disability for the loss of each tooth other than wisdom teeth at the rate of one tenth of one percent (.1%) of the whole man. The loss of wisdom teeth shall not constitute any permanent disability. Compensation hereunder shall be in addition to payments for medical services including dental appliances and bridgework necessitated by the injury and any income benefits during the period of Claimant's recovery to which the Claimant be entitled. (3-23-22)

**02. Prima Facie Evidence.** This rule and schedule shall be prima facie evidence of the percentage of permanent disability to be attributed to the loss of teeth. (3-23-22)

**404. SUBMISSION OF MEDICAL REPORTS FROM PROVIDERS**

~~This procedure applies to all open worker's compensation claims where medical services are provided and which have not been denied by the Payor. (3-23-22)~~

**01. Procedure.** In all cases in which a particular injury or occupational disease results in a worker's compensation Claim, the Provider shall submit written Medical Reports for each medical visit to the Payor. A medical authorization for release of records signed by Claimant shall remain in effect until revoked. Payors and Providers may contract with one another to identify specific records that will be provided in support of billings. The Provider shall also submit the same written Medical Reports to the Claimant upon request. These reports shall be submitted within fourteen (14) days following each evaluation, examination, and/or treatment. The first copy of any such reports shall be provided to the Payor and the Claimant, or their attorney, at no charge. If duplicate copies of reports already provided are requested by either the Payor or the Claimant, the Provider may charge the requesting party a reasonable charge to provide the additional reports. Whenever possible, billing information shall be coded using CPT. In the case of Hospitals, reports shall include a Uniform Billing Form 04. In the case of physicians and other Providers supplying outpatient services, this reporting requirement shall include a CMS 1500 form. (3-23-22)( )

**a.** If an injury or occupational disease results in a Claim, the Employer/Surety or Provider shall submit written reports to the Commission upon request. Such request may either be in writing or telephonic. If a Claim is referred to the Rehabilitation Division, Medical Reports shall be furnished by the Payor or Provider directly to the office that requests such reports. The Payor or Provider shall consider this an on-going request until notice is received that the reports are no longer required. (3-23-22)

**b.** If the injury or occupational disease results in a time-loss Claim, the Payor shall submit copies of medical records containing information regarding the beginning and ending of disability, releases to work whether light duty or regular duty, impairment ratings, physical restrictions to the Commission. Other Medical Reports shall be submitted to the Commission only upon request. (3-23-22)

**c.** ISIF shall receive all copies of Medical Reports, without charge, from either the Claimant or the

Payor, depending upon who seeks to join it as a party to a worker's compensation Claim. (3-23-22)

**d.** If the Commission requests Medical Reports from the Payor or Provider, the information shall be provided within a reasonable time period without charge. If information is received for which the Commission has no need, the information may be discarded or destroyed. (3-23-22)

**02. Report Form and Content.** Upon approval of the Commission, Medical Reports may be submitted in electronic or other machine-readable form usable to all parties. (3-23-22)

**03. Timely Response Requirement.** When the Commission requests a Medical Report from a Payor or Provider for use in monitoring a worker's compensation Claim, the Payor or Provider shall provide the requested information promptly. (3-23-22)

**04. Forfeiture of Payment.** If a Provider fails to give records to the Payor or Claimant, the Payor or Claimant may petition the Commission for an order requiring the Provider to provide the requested information. The petition shall set forth the Petitioner's efforts to obtain the information, the responses to those efforts, and why the Petitioner believes that the Provider has the information. In response to the petition, the Commission may enter an order requiring the Provider to furnish the requested records or demonstrate that the records are not available. If a Provider fails to provide records when ordered by the Commission, the Commission may enter an Order of Forfeiture. In the event such an order is entered, the Provider will forfeit its right to payment from both the Payor and Claimant, until such time as the records are provided. (3-23-22)

#### **405. RULE GOVERNING REIMBURSEMENT FOR TRAVEL EXPENSES.**

~~**01. Mileage Rate.** If Claimant has access to, and is able to operate, a vehicle for transportation covered by Sections 72-432(13) or 72-433(3), Idaho Code, employer shall reimburse Claimant at the mileage rate then allowed by the State Board of Examiners for State employees. Such rate shall be published annually by the Industrial Commission, together with the average state wage for the upcoming period. All such miles shall be reimbursed, with fractions of a mile greater than one-half (1/2) mile rounded to the next higher mile and fractions of a mile below one-half (1/2) mile disregarded. (3-23-22)~~

~~**021. Commercial Transportation.** If Claimant has no vehicle, or has access to a vehicle and is reasonably unable to utilize the vehicle for transportation covered by Sections 72-432(13) or 72-433(3), Idaho Code, Claimant's employer shall reimburse Claimant the actual cost of commercial transportation as evidenced by actual receipts. Notwithstanding the above provision, no Claimant shall be eligible for reimbursement of the actual cost of commercial transportation where such Claimant is unable to operate a motor vehicle due to the revocation or suspension of driving privileges because Claimant was under the influence of alcohol and/or drugs. (3-23-22)(    )~~

~~**032. Request for Reimbursement.** It shall be Claimant's responsibility to submit a travel reimbursement request to the employer. Such request shall be made on a form substantially the same as Industrial Commission Form IC 432(1), posted on the Commission's website. The Claimant must attach to the form a copy of a bill or receipt showing that the visit occurred. The employer shall furnish the Claimant with copies of this form. (3-23-22)~~

~~**043. Frequency of Requests.** Claimant shall not request transportation reimbursement more frequently than once every thirty (30) days. However, notwithstanding this provision, should a Claimant request transportation reimbursement more frequently than every thirty (30) days, employer need not issue more than one reimbursement check in any thirty-day (30) period. (3-23-22)~~

**406. -- 500. (RESERVED)**

#### **501. RULE GOVERNING PROTECTION AND DISCLOSURE OF REHABILITATION DIVISION RECORDS.**

~~**01. Request for Disclosure.** Pursuant to Section 74-105(10), Idaho Code, a party requesting rehabilitation records shall do so in writing and identify which provision of 74-105(10), Idaho Code, authorizes their request. (3-23-22)~~



**021. Requests from Other Agencies.** If records are in the possession of the Rehabilitation Division by reason of an agreement to comply with valid confidentiality regulations of any agency of the state of Idaho, or agency of the United States, then disclosure shall be requested from the source agency, and not from the Rehabilitation Division. (3-23-22)

**502. RULE GOVERNING REPORTS OF ATTORNEY COSTS AND FEES IN LITIGATED CASES.**

When requested by the Commission, parties to a Litigated Case shall provide the Commission the information required by Section 72-528, Idaho Code. The form for Sureties is Form 1022 and the form for Claimant's attorneys is Form 1023; both are available on the Commission's website. (3-23-22)

**503. -- 600. (RESERVED)**

**601. SUBMISSION OF FROI AND SROI.**

~~**01. Purpose.** Pursuant to Sections 72-602(1)-(2), Idaho Code, employers must submit a FROI and/or SROI in accordance with these rules. (3-23-22)~~

~~**021. EDI Reporting.** The Commission ~~requires electronic submission of FROIs and SROIs in accordance with the most current versions of the~~ adopts the IAIABC EDI Claims Release 3.0, or release 3.1 after September 14, 2023, and the Commission's EDI Guides and Tables's electronic claims record layout and transaction standards as the required reporting mechanism for all initial claim filings and subsequent reports from any employer not otherwise exempt by these rules. ~~Each FROI and SROI must comply with formatting requirements and must contain the information identified as mandatory or mandatory conditional, as applicable~~ The Commission's EDI Claims Guides and Tables are available on the website. (4-6-23)(    )~~

~~**032. Trading Partner Agreements.** Before commencing ~~with~~ electronic reporting, Trading Partners shall electronically submit a Trading Partner Agreement ~~with the Commission~~, which the Commission must approve prior to submitting reports. ~~This agreement must provide the effective date to send and receive electronic reports, the acceptable data to be sent and received, the method of transmission to be used, and other pertinent elements.~~ This agreement will identify the insurance carrier, the Claims Administrator, the sender of the electronic files, and the electronic filing method. To ensure the accuracy of reported data, the Trading Partner must maintain their profile to reflect changes as they occur and the Commission may make periodic audits of Trading Partner files. ~~In the event that~~ If a Trading Partner Agreement is entered into by a Claims Administrator, notice to the Trading Partner of a FROI shall be deemed to be notice to the underlying insurance carrier or self-insured employer. (3-23-22)(    )~~

~~**043. Report Form and Content for Parties Exempt from EDI Requirements.** (3-23-22)~~

~~a. Individual ~~injured workers~~ claimants, ~~injured worker's~~ claimant's legal counsel, and employers that are not insured are not required to comply with EDI requirements for FROIs and SROIs. (3-23-22)(    )~~

~~b. Parties exempt from EDI requirements must submit FROIs on a form 1A-1 and SROIs on a form IC-8, or in a format substantially similar. Both forms are available on the Commission's website. (3-23-22)~~

~~**054. Retaining Claims Files.** Upon request of the Commission, insurance carriers, Claims Administrators, or employers shall provide to the Commission, in whole or in part according to the request, a copy of the claim file at no cost to the Commission. All insurance carriers, Claims Administrators, or employers shall retain complete copies of claims files for the life of the Claim and a minimum of five (5) years from the date of closure. (3-23-22)~~

~~**065. Filing Not an Admission.** Filing a FROI is not an admission of liability and is not conclusive evidence of any fact stated therein. ~~If a Claim is submitted electronically, no signatures are required.~~ (3-23-22)(    )~~

~~**076. Filing Considered Authorization.** Filing of a Claim shall be considered an authorization for the release of medical records that are relevant to or bearing upon the particular injury or occupational disease for which the Claimant is seeking compensation. (3-23-22)~~

**087. Timely Response Requirement.** When the Commission requests additional information ~~in order~~ to process the Claim, the ~~Claimant or employer surety or self-insured employer~~ shall ~~provide the requested information promptly~~ respond within seven (7) days. The Commission's request may be ~~either~~ in writing or telephonic. (3-23-22)(    )

**602. FINAL REPORTS.**

**01. Report Requirements.** An electronic filing of the Final Report as prescribed by Commission EDI requirements shall be filed for all indemnity claims or any claims resolved by ~~lump sum~~ settlement agreement within thirty (30) days from the date the surety or self-insured employer closes the claim file. In the case of medical-only claims, no Final Report need be filed. For death claims and permanent total disability claims, Annual Reports shall be filed within the first quarter of each calendar year. A Final Report shall be filed within thirty (30) days from the date the surety or self-insured employer closes the death or permanent total disability claim file. In the event the Commission is unable to reconcile the Annual Report or Final Report, a written request for additional information may be made, ~~either in writing or telephonically~~, and the surety or self-insured employer shall submit the requested information within fifteen (15) working days of the request. If the surety or self-insured employer is unable to furnish the requested information, the surety or self-insured employer shall notify the Commission, in writing, of its inability to respond and the reasons therefor within fifteen (15) working days of the request. (3-23-22)(    )

**02. Format.** The required format for Final Reports is contingent on the claim file date: (3-23-22)

**a.** ~~Final Reports for legacy claims filed on paper or via EDI Claims 1.0 prior to November 4, 2017, shall be submitted in a format substantially similar to IC Form 6, available on the Commission's website, or EDI Claims Release 3.1 after September 14, 2023.~~ (4-6-23)

**b.** ~~Final Reports for legacy claims filed via EDI Claims 3.0 shall be submitted electronically via EDI Claims 3.0, or EDI Claims 3.1 after September 14, 2023.~~ (4-6-23)

**032. Change in Status of Employer.** In case of any default by the Employer or in the event the Employer ~~shall~~ fails to pay any final award or awards, by reason of insolvency or because a receiver has been appointed, the receiver or successor shall continue to report to the Commission, including the submission of Annual Reports, Final Reports and schedules of outstanding awards. (3-23-22)(    )

**603. -- 800. (RESERVED)**

**801. RULE GOVERNING CHANGE OF STATUS NOTICE TO CLAIMANTS.**

**01. Notice of Change of Status.** ~~As required and defined by Section 72-806, Idaho Code Pursuant to Section 72-806, Idaho Code,~~ a worker shall receive written notice within fifteen (15) days of any change of status or condition, including, but not limited to, whenever there is an acceptance, commencement, denial, reduction, or cessation of medical or monetary compensation benefits to which the worker might presently or ultimately be entitled. Pursuant to Section 72-316, Idaho Code, ~~Such~~ notice is required when benefits are curtailed to recoup any overpayment of benefits ~~in accordance with the provisions of Section 72-316, Idaho Code.~~ (3-23-22)(    )

**02. By Whom Given.** ~~Any notice to a worker required by Section 72-806, Idaho Code, Notice of Change of Status~~ shall be given by: the surety if the employer has secured Worker's Compensation Insurance; or the employer if the employer is self-insured; or the employer if the employer carries no Worker's Compensation Insurance. (3-23-22)(    )

**03. Form of Notice.** ~~Any notice to a worker required by Section 72-806, Idaho Code, Notice of Change of Status~~ shall be mailed within ten (10) days by regular United States Mail to the last known address of the worker, as shown in the records of the party required to give notice as set forth above. If the worker has elected to receive electronic correspondence, notice may be emailed to the worker within fifteen (15) days. The Notice shall be given in a format substantially similar to IC Form 8, available on the Commission's website. (3-23-22)(    )

**04. Medical Reports.** ~~As required by Section 72-806, Idaho Code, if the change is based on a Medical Report, the party giving notice shall attach a copy of the report to the notice.~~ (3-23-22)

**054. Copies of Notice.** The party giving notice pursuant to Section 72-806, Idaho Code, shall send a copy of any such notice to the ~~Industrial Commission, the~~ employer, and the worker's attorney, if the worker is represented, at the same time notice is sent to the worker. ~~The party giving notice may supply the copy to the Industrial Commission in accordance with the Commission's rule on electronic submission of documents.~~ The party will provide notice to the Commission consistent with its policy on electronic submission of the FROI and SROI. In the case of an overpayment recovery request made pursuant to I.C. 72-316, notice shall be contemporaneously submitted to the Commission by email or in paper format. (3-23-22)(    )

**802. RULE GOVERNING APPROVAL OF ATTORNEYS FEES.**

~~**01. Purpose.** The Industrial Commission promulgates this rule to govern the approval of attorney fees.~~ (3-23-22)

**021. Charges Presumed Reasonable:** (3-23-22)

**a.** In a case in which no hearing on the merits has been held, twenty-five percent (25%) of Available Funds shall be presumed reasonable; or (3-23-22)

**b.** In a case in which a hearing has been held and briefs submitted (or waived) under Judicial Rules of Practice and Procedure (JRP), Rules X and XI, thirty percent (30%) of Available Funds shall be presumed reasonable; or (3-23-22)

**c.** In any case in which compensation is paid for total permanent disability, fifteen percent (15%) of such disability compensation after ten (10) years from date such total permanent disability payments commenced. (3-23-22)

~~**032. Statement of Charging Lien.**~~ (3-23-22)

**a.** All requests for approval of fees shall be deemed requests for approval of a Charging Lien. (3-23-22)

**b.** An attorney representing a Claimant in a Worker's Compensation matter shall ~~in any proposed LSS,~~ within thirty (30) days of the Commission's dismissal of any Settlement Agreement or upon request of the Commission, file with the Commission, and serve the Claimant with a copy of the Fee Agreement, and an affidavit or memorandum containing: (3-23-22)(    )

**i.** The date upon which the attorney became involved in the matter; (3-23-22)

**ii.** Any issues which were undisputed at the time the attorney became involved; (3-23-22)

**iii.** The total dollar value of all compensation paid or admitted as owed by employer immediately prior to the attorney's involvement; (3-23-22)

**iv.** Disputed issues that arose subsequent to the date the attorney was hired; (3-23-22)

**v.** Counsel's itemization of compensation that constitutes Available Funds; (3-23-22)

**vi.** Counsel's itemization of costs and calculation of fees; and (3-23-22)

**vii.** The statement of the attorney identifying with reasonable detail his or her fulfillment of each element of the Charging Lien. (3-23-22)

**c.** Upon receipt and a determination of compliance with this Rule by the Commission by reference to its staff, the Commission may issue an Order Approving Fees without a hearing. The thirty (30) day-time period for counsel to submit the affidavit or memorandum may be waived for good cause shown. (3-23-22)(    )

**043. Procedure if Fees Are Determined Not to Be Reasonable.** (3-23-22)

a. Upon receipt of the affidavit or memorandum, ~~the Commission will designate staff members to determine reasonableness of the fee. T~~he Commission staff will notify counsel in writing of the ~~staff's~~ **Commission's** informal determination, which shall state the reasons for the determination that the requested fee is not reasonable. Omission of any information required by Paragraph 802.02.b. may constitute grounds for an informal determination that the fee requested is not reasonable. (3-23-22)(    )

b. If counsel disagrees with the Commission staff's informal determination, counsel may file, within fourteen (14) days of the date of the determination, a Request for Hearing for the purpose of presenting evidence and argument on the matter. Upon receipt of the Request for Hearing, the Commission shall schedule a hearing on the matter. A Request for Hearing shall be treated as a motion under Rule III(e), JRP. (3-23-22)

c. The Commission shall order an employer to release any Available Funds in excess of those subject to the requested Charging Lien and may order payment of fees subject to the Charging Lien which have been determined to be reasonable. (3-23-22)

d. The proponent of a fee which is greater than the percentage of recovery stated in Subsection 802.02 shall have the burden of establishing by clear and convincing evidence entitlement to the greater fee. The attorney shall always bear the burden of proving by a preponderance of the evidence his or her assertion of a Charging Lien and reasonableness of his or her fee. (3-23-22)

**054. Disclosure Statement.** Upon retention, the attorney shall provide to Claimant a copy of a disclosure statement. No fee may be taken from a Claimant by an attorney on a contingency fee basis unless the Claimant acknowledges receipt of the disclosure by signing it. Upon request by the Commission, an attorney shall provide a copy of the signed disclosure statement to the Commission. The terms of the disclosure may be contained in the Fee Agreement, so long as it contains the following text: (3-23-22)

a. In worker's compensation matters, attorney's fees normally do not exceed twenty-five percent (25%) of the benefits your attorney obtains for you in a case in which no hearing on the merits has been completed. In a case in which a hearing on the merits has been completed, attorney's fees normally do not exceed thirty percent (30%) of the benefits your attorney obtains for you. (3-23-22)

b. Depending upon the circumstances of your case, you and your attorney may agree to a higher or lower percentage which would be subject to Commission approval. Further, if you and your attorney have a dispute regarding attorney fees, either of you may petition the Industrial Commission, PO Box 83720, Boise, ID 83720-0041, to resolve the dispute. (3-23-22)

**803. MEDICAL FEES.**

**01. General Provisions for Medical Fees.** The following provisions shall apply to Commission approval of claims for medical benefits. (3-23-22)

a. **Acceptable Charge.** Payors shall pay Providers the acceptable charge for medical services. (3-23-22)

b. **Coding.** The Commission will generally follow the coding guidelines published by CMS and by the American Medical Association (**AMA**), including the use of modifiers and payment status indicators unless otherwise specified in Section 803 of this rule. (3-23-22)(    )

c. **Disputes.** Disputes between Providers and Payors are governed by Subsection 803.06 of this rule and JRP 19. (3-23-22)

d. **Outside of Idaho.** Reimbursement for medical services provided outside the state of Idaho may be based upon the agreement of the parties. If there is no agreement, services shall be paid in accordance with the worker's compensation fee schedule in effect in the state in which services are rendered. If there is no fee schedule in effect in such state, or if the fee schedule in that state does not allow reimbursement for the services rendered,

reimbursement shall be paid in accordance with these rules. (3-23-22)

**02. Acceptable Charges For Medical Services Provided By Physicians Under The Idaho Worker's Compensation Law.** (3-23-22)

a. The Commission adopts the Resource-Based Relative Value Scale (RBRVS), published by CMS, as amended, as the standard to be used to determine acceptable charges by physicians. (3-23-22)

b. Modifiers. Modifiers for physicians will be reimbursed as follows: (3-23-22)

i. Modifier 50: Additional fifty percent (50%) for bilateral procedure. (3-23-22)

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. (3-23-22)

iii. Modifier 80: Twenty-five percent (25%) of coded procedure. (3-23-22)

iv. Modifier 81: Fifteen percent (15%) of coded procedure. This modifier applies to MD and non-MD assistants. (3-23-22)

c. Conversion Factors. The standard for determining the acceptable charge for a medical service, identified by a code assigned to that service in the latest edition of the Physician's CPT, published by the American Medical Association, as amended, is calculated by the application of the total facility or non-facility Relative Value Unit (RVU) for services as determined by place of service in the latest RBRVS in effect on the first day of January of the current calendar year, to the following corresponding conversion factors. The procedure with the largest RVU will be the primary procedure and will be listed first on the claim form. (3-23-22)( )

<b>MEDICAL FEE SCHEDULE</b>			
<b>SERVICE CATEGORY</b>	<b>CODE RANGE(S)</b>	<b>DESCRIPTION</b>	<b>CONVERSION FACTOR</b>
Anesthesia	00000 - 09999	Anesthesia	\$60.33
Surgery - Group One	22000 - 22999	Spine	\$135.00
	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	
Surgery - Group Two	28000 - 28999	Foot & Toes	\$124.00
	64550 - 64999	Nerves & Nervous System	
Surgery - Group Three	10000 - 19999	Integumentary System	\$88.54
	20000 - 21999	Musculoskeletal System	
	29000 - 29799	Casts & Strapping	
	30000 - 39999	Respiratory & Cardiovascular	
	40000 - 49999	Digestive System	
	50000 - 59999	Urinary System	
	60000 - 60999	Endocrine System	
	62260 - 62999	Spine & Spinal Cord	
	64000 - 64549	Nerves & Nervous System	
	65000 - 69999	Eye & Ear	
Radiology	70000 - 79999	Radiology	\$88.54

<b>MEDICAL FEE SCHEDULE</b>			
<b>SERVICE CATEGORY</b>	<b>CODE RANGE(S)</b>	<b>DESCRIPTION</b>	<b>CONVERSION FACTOR</b>
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	\$49.00
Medicine - Group Two	90750 - 92999 93000 - 93999 95000 - 96020 96040 - 96999 99000 - 99607	Psychiatry & Medicine Cardiography, Catheterization, Vascular Studies Allergy / Neuromuscular Procedures Assessments & Special Procedures E / M & Miscellaneous Services	\$70.00

(3-23-22)

**d.** Anesthesiology. The Conversion Factor for the Anesthesiology CPT Codes shall be multiplied by the current Anesthesia Base Units assigned to that CPT Code by CMS, 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. (3-23-22)

**e.** Services Without CPT Code, RVU or Conversion Factor. The acceptable charge 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 Paragraph 02.c, above, determine the acceptable charge for that service, based on all relevant evidence in accordance with the procedures set out in Subsection 06, below. (3-23-22)

**f.** Medicine Dispensed by Physicians. Reimbursement to physicians for any ~~medicine drug or topical agent, including over-the-counter (OTC),~~ shall not exceed the lesser of the acceptable charge calculated for that medicine as if provided by a Pharmacy under Subsection 04 of this rule ~~without a dispensing or compounding fee, or one hundred thirty percent (130%) of the AWP for the lowest-cost therapeutic equivalent drug.~~ Reimbursement to physicians for repackaged medicine shall be lesser of the AWP for the medicine prior to repackaging, identified by the National Drug Code (NDC) reported by the original manufacturer, or one hundred thirty percent (130%) of the AWP for the lowest-cost therapeutic equivalent drug. Reimbursement may be withheld until the original manufacturer's NDC is provided by the physician. Physicians who dispense medications shall not receive a dispense or compounding fee. (3-23-22)(    )

**g.** Adjustment of Conversion Factors. The conversion factors set out in this rule may be adjusted each fiscal year (FY) by the Commission to reflect changes in inflation or market conditions in accordance with Section 72-803, Idaho Code. (3-23-22)

**03. Acceptable Charges For Medical Services Provided By Hospitals And Ambulatory Surgery Centers Under The Idaho Worker's Compensation Law.** The following standards shall be used to determine the acceptable charge for Hospitals and ASCs. (3-23-22)

**a.** Critical Access Hospitals. The standard for determining the acceptable charge for inpatient and outpatient services provided by a Critical Access Hospital is ninety percent (90%) of the reasonable charge. Implantable hardware charges shall be reimbursed at the rate of the actual cost plus fifty percent (50%). (3-23-22)

**b.** Hospital Inpatient Services. The standard for determining the acceptable charge for inpatient

services provided by Hospitals, other than Critical Access Hospitals, is calculated by multiplying the base rate by the current MS-DRG weight for that service. The base rate for inpatient services is ten thousand two hundred dollars (\$10,200). Inpatient services that do not have a relative weight shall be paid at eighty-five percent (85%) of the reasonable charge; however, Implantable Hardware charges billed for services without an MS-DRG weight shall be reimbursed at the rate of actual cost plus fifty percent (50%). (3-23-22)

**c.** Hospital Outpatient and ASC Services. The standard for determining the acceptable charge for outpatient services provided by Hospitals (other than Critical Access Hospitals) and for services provided by ASCs is calculated by multiplying the base rate by the Medicare Hospital Outpatient Prospective Payment System APC weight in effect on the first day of January of the current calendar year. The base rate for Hospital outpatient services is one hundred forty dollars and seventy-five cents (\$140.75). The base rate for ASC services is ninety-one dollars fifty cents (\$91.50). (3-23-22)

**i.** Medical services for which there is no APC weight listed shall be reimbursed at seventy-five percent (75%) of the reasonable charge, except when bundled with another service appearing on the same bill or is a service defined in 803.03.c.ii. - iv. of this rule. (3-23-22)(    )

**ii.** Status ~~code indicator~~ N-items codes or items with no CPT or HCPCS code shall receive no payment except as provided in Subparagraph 803.03.c.ii.(1) or 803.03.c.ii.(2) of this rule. (3-23-22)(    )

**iii.** Outpatient physical, occupational, and speech therapy services will be reimbursed according to the allowable professional charge under Subsection 803.02 of this rule. (    )

**iv.** Status indicator Q codes are not subject to composite APC packaging standards. (    )

(1) Implantable Hardware may be eligible for separate payment under Subparagraph 03.d.iii. of this rule. (3-23-22)

~~(2) Outpatient laboratory tests provided with no other Hospital outpatient service on the same date, or outpatient laboratory tests provided on the same date of service as other Hospital outpatient services that are clinically unrelated may be paid separately if billed with modifier L1. Payment shall be made in the same manner that services with no APC weight are paid under Subparagraph 803.03.c.i. of this rule.~~ (3-23-22)

~~iii. When no medical services with a status code J1 appears on the same Claim, two (2) or more medical procedures with a status code T on the same Claim shall be reimbursed with the highest weighted code paid at one hundred percent (100%) of the APC calculated amount and all other status code T items paid at fifty percent (50%). When a medical service with a status code J1 appears on the same Claim, all medical services with a status code T shall be paid at fifty percent (50%).~~ (3-23-22)

~~iv. When no medical services with a status code J1 appears on the same Claim, status code Q items with an assigned APC weight will not be discounted. When a medical service with a status code J1 appears on the same Claim, status code Q items shall be paid at fifty percent (50%).~~ (3-23-22)

**d.** Additional Hospital Payments. When the charge for a medical service provided by a Hospital (other than a Critical Access Hospital) meets the following standards, additional payment shall be made for that service, as indicated. (3-23-22)

**i.** Inpatient Threshold Exceeded. When the charge for a Hospital inpatient MS-DRG coded service exceeds the sum of thirty thousand dollars (\$30,000) plus the payment calculated under the provisions of Paragraph 03.b. of this rule, then the total payment for that service shall be the sum of the MS-DRG payment and the amount charged above that threshold multiplied by seventy-five percent (75%). Implantable charges shall be excluded from the calculation for an additional inpatient payment under this Subparagraph. (3-23-22)

**ii.** Inpatient Implantable Hardware. Hospitals may seek additional reimbursement beyond the MS-DRG payment for invoiced Implantable Hardware where the aggregate invoice cost is greater than ten thousand dollars (\$10,000). Additional reimbursement shall be the invoice cost plus an amount which is equal to ten percent (10%) of the invoice cost, but which does not exceed three thousand dollars (\$3,000). Handling and freight charges

shall be included in invoice cost. (3-23-22)

iii. Outpatient Implantable Hardware. Hospitals and ASCs may seek additional reimbursement beyond the APC payment for invoiced Implantable Hardware where the aggregate invoice cost is greater than five hundred dollars (\$500). Additional reimbursement shall be the invoice cost plus an amount which is equal to ten percent (10%) of the invoice cost, but which does not exceed one thousand dollars (\$1,000). Handling and freight charges shall be included in invoice cost. (3-23-22)

e. Adjustment of Hospital and ASC Base Rates. The Commission may periodically adjust the base rates set out in Paragraphs 803.03.b. and 803.03.c. of this rule to reflect changes in inflation or market conditions. (3-23-22)

**04. Acceptable Charges For Medicine Provided By Pharmacies.** The following standards shall be used to determine the acceptable charge for medicine provided by pharmacies. (3-23-22)

a. Brand/Trade Name Medicine. The standard for determining the acceptable charge for brand/trade name medicine shall be the AWP, plus a five dollar (\$5) dispensing fee. (3-23-22)

b. Generic Medicine. The standard for determining the acceptable charge for generic medicine shall be the AWP, plus an eight dollar (\$8) dispensing fee. (3-23-22)

c. Compound Medicine. The standard for determining the acceptable charge for compound medicine shall be the sum of the AWP for each drug included in the compound medicine, plus a five dollar (\$5) dispensing fee and a two dollar (\$2) compounding fee. All components of the compound medicine shall be identified by their original manufacturer's NDC when submitted for reimbursement. Payors may withhold reimbursement until the original manufacturer's NDC assigned to each component of the compound medicine is provided by the Pharmacy. Components of a compound medicine without an NDC may require medical necessity confirmation by the treating physician prior to reimbursement. (3-23-22)

d. Prescribed Over-the Counter Medicine. The standard for determining the acceptable charge for prescribed over-the-counter medicine filled by a Pharmacy shall be the reasonable charge plus a two dollar (\$2) dispensing fee. (3-23-22)

**05. Acceptable Charges For Medical Services Provided By Other Providers Under The Idaho Worker's Compensation Law.** The standard for determining the acceptable charge for Providers other than physicians, Hospitals or ASCs shall be the reasonable charge. (3-23-22)

a. Durable Medical Equipment (DME) Providers. Within the first thirty (30) days of equipment use, the Payor shall be given the option to rent or purchase DME. Rented equipment shall be considered purchased once the rental charges exceed the purchase price, which may not exceed ten percent (10%) of the invoice cost. If purchased, the DME shall become the property of the Claimant. ( )

**06. Billing And Payment Requirements For Medical Services And Procedures Preliminary To Dispute Resolution.** This rule governs billing and payment requirements for medical services provided under the Worker's Compensation Law and the procedures for resolving disputes between Payors and Providers over those bills or payments. (3-23-22)

a. Time Periods. None of the periods herein shall begin to run before the Notice of Injury/Claim for Benefits has been filed with the Employer as required by law. (3-23-22)

b. Provider to Furnish Information. A Provider, when submitting a bill to a Payor, shall inform the Payor of the nature and extent of medical services furnished and for which the bill is submitted. This information shall include, but is not limited to, the patient's name, the employer's name, the date the medical service was provided, the diagnosis, if any, and the amount of the charge or charges. ~~Failure to submit a bill complying with this Paragraph 06.b to the Payor within one hundred twenty (120) days of the date of service will result in the ineligibility of the Provider to utilize the dispute resolution procedures of the Commission set out in Paragraph 803.06.i. of this rule for that service.~~ Except for the circumstances listed below, payment is forfeited when the charges are not billed within



twelve (12) months from the date of service and may not be balance billed as defined in Section 72-102(2), Idaho Code: (3-23-22)( )

- i. The industrial nature of the injury is initially unknown to the Provider: ( )
- ii. A change in Employer's coverage or designated claims administrator is unknown to the Provider. ( )
- iii. This list is not exhaustive, and the Commission has discretion to address disputes regarding timeliness of the billing in the dispute resolution procedures of the Commission set out in Paragraph 803.06.iv. of this rule. ( )
- iv. A Provider's bill shall, whenever possible, describe the Medical Service provided, using the American Medical Association's appropriate CPT coding, including modifiers, the appropriate HCPCS code, the diagnostic and procedure code set version required by CMS and the original NDC for the year in which the service was performed. (3-23-22)
- v. The bill shall also contain the name, address and telephone number of the individual the Payor may contact in the event the Payor seeks additional information regarding the Provider's bill. (3-23-22)
- vi. If requested by the Payor, the bill shall be accompanied by a written report as defined by Subsection 010.31 and required by Section 404 of these rules. Where a bill is not accompanied by such Report, the periods expressed in Paragraphs 803.06.c. and 803.06.e. of this rule, shall not begin to run until the Payor receives the Report. (3-23-22)
- c. Prompt Payment. Unless the Payor denies liability for the Claim or, pursuant to Paragraph 803.06.e. of this rule, sends a Preliminary Objection, a Request for Clarification, or both, as to any charge, the Payor shall pay the charge within thirty (30) calendar days of receipt of the bill or upon acceptance of liability, if made after bill is received from Provider. (3-23-22)
- d. Partial Payment. If the Payor acknowledges liability for the Claim and, pursuant to Paragraph 803.06.e. of this rule, sends a Preliminary Objection, a Request for Clarification, or both, as to only part of a Provider's bill, the Payor must pay the charge or charges, or portion thereof, as to which no Preliminary Objection or Request for Clarification has been made, within thirty (30) calendar days of receipt of the bill. (3-23-22)
- e. Preliminary Objections and Requests for Clarification. (3-23-22)
  - i. Whenever a Payor objects to all or any part of a Provider's bill on the ground that such bill contains a charge or charges that do not comport with the applicable administrative rule, the Payor shall send a written Preliminary Objection to the Provider within thirty (30) calendar days of the Payor's receipt of the bill explaining the basis for each of the Payor's objections. (3-23-22)
  - ii. Where the Payor requires additional information, the Payor shall send a written Request for Clarification to the Provider within thirty (30) calendar days of the Payor's receipt of the bill, and shall specifically describe the information sought. (3-23-22)
  - iii. Each Preliminary Objection and Request for Clarification shall contain the name, address, and phone number of the individual Claims Administrator located within the state of Idaho that the Provider may contact regarding the Preliminary Objection or Request for Clarification. (3-23-22)( )
  - iv. Where a Payor does not send a Preliminary Objection to a charge set forth in a bill or a Request for Clarification within thirty (30) calendar days of receipt of the bill, or provide an in-state contact in accord with Subparagraph 06.e.iii., it shall be precluded from objecting to such charge as failing to comport with the applicable administrative rule. (3-23-22)
- f. Provider Reply to Preliminary Objection or Request for Clarification. (3-23-22)

i. Where a Payor has timely sent a Preliminary Objection, Request for Clarification, or both, the Provider shall send to the Payor a written Reply, if any it has, within thirty (30) calendar days of the Provider's receipt of each Preliminary Objection or Request for Clarification. (3-23-22)

ii. If a Provider fails to timely reply to a Preliminary Objection, the Provider shall be deemed to have acquiesced in the Payor's objection. (3-23-22)

iii. If a Provider fails to timely reply to a Request for Clarification, the period in which the Payor shall pay or issue a Final Objection shall not begin to run until such clarification is received. (3-23-22)

g. Payor Shall Pay or Issue Final Objection. The Payor shall pay the Provider's bill in whole or in part or send to the Provider a written Final Objection, if any it has, to all or part of the bill within thirty (30) calendar days of the Payor's receipt of the Reply. (3-23-22)

h. Failure of Payor to Finally Object. Where the Payor does not timely send a Final Objection to any charge or portion thereof to which it continues to have an objection, it shall be precluded from further objecting to such charge as unacceptable. (3-23-22)

i. Dispute Resolution Process. If, after completing the applicable steps set forth above, a Payor and Provider are unable to agree on the appropriate charge for any Medical Service, a Provider which has complied with the applicable requirements of this rule may move the Commission to resolve the dispute as provided in the Judicial Rule Re: Disputes Between Providers and Payors, as referenced in Paragraph 803.01.c. of this rule. If Provider's motion disputing CPT or MS-DRG coded items prevails, Payor shall pay the amount found by the Commission to be owed, plus an additional thirty percent (30%) of that amount to compensate Provider for costs and expenses associated with using the dispute resolution process. For motions filed by a Provider disputing items without CPT or MS-DRG codes, the additional thirty percent (30%) shall be due only if the Payor does not pay the amount found due within thirty (30) days of the administrative order. (3-23-22)

**804. – 999. (RESERVED)**

**IDAPA 21 – DIVISION OF VETERANS SERVICES**  
**21.01.04 – RULES GOVERNING IDAHO STATE VETERANS CEMETERIES**  
**DOCKET NO. 21-0104-2402 (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 2025 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. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**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 65-108 and 65-202, 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 pending rule will expand eligibility for interment at Idaho State Veterans Cemeteries to non-retiree Guard and Reservists who completed an enlistment of service honorably but are otherwise ineligible because they were never activated federally or did not complete enough service time to retire out of the Guard or Reserves.

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 June 5, 2024, Idaho Administrative Bulletin, [Vol. 24-6, pages 37-40](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a 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:

This rule change imposes a charge for burial in the State Veterans Cemeteries on non-retiree Guard and Reservists who completed a term of service honorably but are ineligible for a VA burial benefit.

As authorized in Section 65-202(8), Idaho Code, the fees in this rulemaking are equal to the then current USDVA reimbursement for opening and closing an interment site containing a pre-placed crypt and \$400 for the cost of a Casket/Upright Marker or \$250 for all other interment/memorial marker types.

**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 change will not have a negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kevin Wallior, 208-780-1308.

DATED this 6th day of December, 2024.

Kevin R. Wallior  
Management Assistant  
Idaho Division of Veterans Services  
351 N. Collins Road  
Boise, ID 83702  
Ph: 208-780-1308; fax: 208-780-1301  
Email: [kevin.wallior@veterans.idaho.gov](mailto:kevin.wallior@veterans.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 Sections 65-108 and 65-202, 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 June 19, 2024.

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 proposed rule seeks to expand eligibility for interment at Idaho State Veterans Cemeteries to non-retiree Guard and Reservists who completed an enlistment of service honorably but are otherwise ineligible because they were never activated federally or did not complete enough service time to retire out of the Guard or Reserves.

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

This rule will impose a fee on non-Veteran guard or reserve eligible for burial but ineligible for USDVA reimbursement equivalent to the USDVA reimbursement amount, as well as a \$400 fee for the cost of a casket/upright marker or \$250 for all other interment/memorial marker types. This fee is authorized under Section 65-202(8), 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:

The fiscal impact is minimal due to the small number of individuals eligible, and the cost being born by those individuals rather than the state.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it is prompted by a change to federal law.

**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 Kevin Wallior, 208-780-1308.

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 June 26, 2024.

DATED this 30th day of April 2024.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 21-0104-2402**

**21.01.04 – RULES GOVERNING IDAHO STATE VETERANS CEMETERIES**

**000. LEGAL AUTHORITY.**

~~The Idaho Legislature has given the Administrator of the Division of Veterans Services the authority to promulgate rules governing the Idaho State Veterans Cemetery pursuant to Section 65-202, Idaho Code. (3-23-22)( )~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**002. INCORPORATION BY REFERENCE.**

- ~~01. Incorporated Documents. These rules incorporate by reference the following: (3-23-22)~~
- ~~a. The full text of 38 CFR 38.620, dated July 1, 2001. (3-23-22)~~
  - ~~b. 38 U.S.C.A. Section 2402, (2004 and Supp. 2004). (3-23-22)~~
  - ~~c. 38 CFR 39.5(d), dated July 1, 2008. (3-23-22)~~

~~02. Document Availability. Copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-0001. (3-23-22)~~

**003. -- 009. (RESERVED)**

**010. DEFINITIONS.**

- 01. Administrator.** The Administrator of the Idaho Division of Veterans Services or his designee. (3-23-22)
- 02. Applicant.** The individual requesting interment, disinterment or reinterment of a qualified person. (3-23-22)
- 03. Armed Forces Member.** A member or former member of the armed forces of the United States, the reserve component of the armed forces of the United States, the reserve officers training corps of the United States, or the armed forces of an ally of the United States who is eligible for burial in national cemeteries pursuant to 38 CFR 38.620 and 38 U.S.C. Section 2402. (3-23-22)
- 04. Cemetery.** Idaho State Veterans Cemeteries authorized pursuant to Section 65-108, Idaho Code. (3-23-22)
- 05. Committal Service.** A gathering of one (1) or more individuals prior to interment or reinterment. (3-23-22)
- 06. Cremains.** Cremated human remains. (3-23-22)
- ~~07. Designated Interpretive Trail. A public recreational trail designated by a sign or marker. (3-23-22)~~
- ~~08. Disinterment.~~ The removal of human remains from their place of interment. (3-23-22)
- ~~09. Division.~~ The Idaho Division of Veterans Services. (3-23-22)
- ~~10. Interment.~~ The disposition of human remains by burial or the placement of cremains in a grave

plot or in any location designated by the Administrator for use as a permanent location of cremains. (3-23-22)

**140. Qualified Person.** A person who satisfies the requirements for eligibility for interment in national cemeteries found at 38 CFR 38.620 and 38 U.S.C. Section 2402 and is not prohibited from being interred by 38 CFR 39.10(b)); or a member or former member of the reserve component of the armed forces of the United States; the reserve officers training corps of the United States; or members of the Army National Guard or Air National Guard who completed at least one (1) term of enlistment, or officers who completed at least four (4) years of service. (3-23-22)( )

**121. Reinterment.** The interment of previously interred human remains. (3-23-22)

**132. Unremarried Spouse.** An individual who is the surviving spouse of a deceased armed forces member and who has not remarried. (3-23-22)

**143. USDVA.** The United States Department of Veterans Affairs. (3-23-22)

**(BREAK IN CONTINUITY OF SECTIONS)**

**024. FEES FOR INTERMENT, DISINTERMENT, REINTERMENT, AND MEMORIAL.**  
The Administrator shall charge the following fees: (3-23-22)

**01. Interment.** (3-23-22)

**a.** A fee equal to the then current USDVA reimbursement for opening and closing an interment site containing a pre-placed crypt. The Administrator will accept, as full payment, the amount of reimbursement by the USDVA to the Division for opening and closing an interment site containing a pre-placed crypt for a qualified veteran persons eligible for USDVA reimbursement. (3-23-22)( )

**b.** ~~In An~~ additional ~~to the fee charged under Paragraph 024.01.a. of this rule, the Administrator shall charge a~~ fee of seven hundred dollars (\$700) for preparation of a casket burial at an interment site not containing a pre-placed crypt. (3-23-22)( )

**c.** For interments ineligible for a USDVA provided marker, the Administrator shall charge: ( )

**i.** Four hundred dollars (\$400) for the cost of a Casket/Upright Marker; or ( )

**ii.** Two hundred fifty dollars (\$250) for all other Interment/Memorial Marker types. ( )

**02. Disinterment.** A fee equal to the then current USDVA reimbursement for opening and closing an interment site. The expenses of removal, transportation and reinterment of remains, and the expenses of removal, transportation and reinstallation of the grave marker, if any, shall be paid by the applicant for disinterment. (3-23-22)

**03. Reinterment.** A fee equal to the then current USDVA reimbursement for opening and closing an interment site for reinterment. The expenses of reinterment of remains and reinstallation of the grave marker, if any, shall be paid by the applicant for reinterment. (3-23-22)

**04. Memorial Marker.** A fee of two hundred fifty dollars (~~\$200~~250) to order, install, and provide perpetual care of a furnished flush granite marker to commemorate ~~an eligible deceased Veteran~~ a qualified person whose remains have not been recovered or identified, were buried at sea, donated to science, or cremated and the remains scattered. (3-23-22)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**040. MEMORIALS AND DONATIONS.**

**01. Flowers and Grave Decorations.** The Administrator will post the requirements for natural and artificial flowers and other grave decorations in the cemetery. Cemetery personnel may remove and discard grave decorations that fail to comply with the posted requirements or that are faded, wilted, tattered or worn. (3-23-22)

**02. Plaques, Statues, and Other Memorials.** The Administrator may approve plaques, statues, and other memorials to commemorate events, units, individuals, groups, and organizations. Persons wishing to install such memorials at their own cost may submit an application on a form prescribed by the Administrator. Memorials approved by the Administrator are considered donations to the cemetery. (3-23-22)

**03. Grave Markers.** Grave markers issued by the USDVA are approved as follows: (3-23-22)

**a.** Graves – Upright granite markers. (3-23-22)

**b.** Interments in an area reserved for the interment of cremains in the soil – Flush granite markers. (3-23-22)

**c.** Interment of cremains in a structure reserved for the interment of cremains – Granite niche markers. (3-23-22)

~~**04. Donations and Gifts.** The Administrator may accept gifts and donations to the Veterans Cemetery Maintenance Fund established pursuant to Section 65-107, Idaho Code. (3-23-22)~~