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**IDAPA 59
TITLE 01
CHAPTER 08**

59.01.08 - PERSI GAIN SHARING RULES

**Subchapter A -- General Provisions
(Rules 001 Through 099)**

001. LEGAL AUTHORITY (RULE 1).

PERSI rules are adopted under the legal authority of Sections 50-1507, 50-1508, 50-1524, 59-1301, 59-1305, 59-1314, 59-1372, 59-1383, 59-1392, 72-1405, and 72-1406, Idaho Code. (3-15-02)

002. TITLE AND SCOPE (RULE 2).

01. Title. The title of this chapter is IDAPA 59.01.08, "PERSI Gain Sharing Rules". (3-15-02)

02. Scope. This chapter relates to the allocation of extraordinary gains from the PERSI Base Plan to active members, retirees and employees. (3-15-02)

003. WRITTEN INTERPRETATIONS -- AGENCY GUIDELINES (RULE 3).

Written interpretations of these rules, to the extent they exist, are available from PERSI, at the following locations:

PERSI Boise Office
607 North Eighth Street
Boise, Idaho 83702
Phone: 208/334-3365 or 1-800-451-8228
Fax: 208/334-3804

PERSI Pocatello Office
850 E. Center, Suite D
Pocatello, Idaho 83201
Phone: 208/236-6225 or 1-800-762-8228
Fax: 208/236-6159

PERSI Coeur d'Alene Office
2005 Ironwood Parkway, Suite 142
Coeur d'Alene, Idaho 83814
Phone: 208/769-1474 or 1-800-962-8228
Fax: 208/769-1476 (3-15-02)

004. ADMINISTRATIVE APPEAL (RULE 4).

Administrative appeals are conducted pursuant to IDAPA 59.01.01, "Rules of Administrative Procedure of the Public Employee Retirement System of Idaho". (3-15-02)

005. PUBLIC RECORDS ACT COMPLIANCE (RULE 5).

All public records not exempt from disclosure are available by making a written request to the "Records Custodian" at PERSI's Boise office listed in Rule 3. Requested records must be identified with specificity. (3-15-02)

006. DEFINITIONS (RULE 6).

PERSI adopts through incorporation by reference as if set forth fully herein all of the definitions listed in IDAPA 59.01.02, Section 005, "Eligibility Rules of the Public Employee Retirement System of Idaho". In addition, the following definitions shall also apply to this chapter. In the event of any conflict between the definitions incorporated from the Eligibility Rules, and the definitions set forth in this chapter, for purposes of applying the provisions of this chapter, the definitions set forth in this chapter will control unless the context clearly indicates otherwise. (3-15-02)

01. Active Member. A member participates in the active member allocation only if they are active and have at least twelve (12) months of accrued membership service on the last day of the fiscal year. For purposes of

allocating extraordinary gains, active members also include: (3-15-02)

a. Seasonal employees who have a pattern of employment that includes at least six (6) months of membership service in each of the preceding three (3) consecutive years; and (3-15-02)

b. Employees who are on leave of absence on the last day of the fiscal year and either: (3-15-02)

i. Return to active service for at least thirty (30) days before December 31 immediately following the end of the fiscal year; or (3-15-02)

ii. Are entitled to benefits under the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA). (3-15-02)

02. Actuary. This is the actuary retained by the board. (3-15-02)

03. Base Plan or Account. This is the PERSI defined benefit plan not including gain sharing allocations or interest thereon, or the individual accounts therein. (3-15-02)

04. Choice Plan or Account. This includes two (2) elements: (3-15-02)

a. The defined contribution component of the PERSI plan consisting of gain sharing allocations together with earnings thereon or the individual accounts therein; and (3-15-02)

b. The plan designated to receive voluntary and employer contributions as provided in Section 59-1308, Idaho Code, or the individual accounts therein. (3-15-02)

05. Employer. This includes any PERSI employer who accrued contribution liability during the fiscal year. (3-15-02)

06. Fiscal Year. This is the twelve (12) month period ending each June 30. (3-15-02)

07. Gain Sharing. This refers to the process of allocating extraordinary gains from the base plan into the defined contribution component of the PERSI plan as permitted in Section 414(k) of the Internal Revenue Code and as provided by Section 59-1309, Idaho Code, and IDAPA 59.01.08, "PERSI Gain Sharing Rules". (3-15-02)

08. Permissive Service Credits. This includes all credits obtained through voluntary purchase but does not include service obtained through repayment of a separation benefit under Section 59-1363, Idaho Code. (3-15-02)

09. Retiree. Retiree includes any member, contingent annuitant, or surviving spouse, receiving regular monthly allowances at the close of the fiscal year. It also includes members receiving a monthly disability retirement allowance, surviving spouses who elected an annuity option under Section 59-1361(5), Idaho Code, and members who were inactive at the close of the fiscal year but retire on or before the first day of January following the end of the fiscal year, retroactive to the first day of June of the fiscal year or earlier. (3-15-02)

007. CITATION (RULE 7).

The official citation of this Chapter is IDAPA 59.01.08.000, et seq. For example, this Section's citation is IDAPA 59.01.08.007. In documents submitted to PERSI or issued by PERSI these rules may be cited as PERSI Gain Sharing Rules with Section number less leading zeros. For example, this rule may be cited as PERSI Gain Sharing Rule 7. Within these rules, where a rule number is cited without reference to a chapter, the citation is to the numbered rule within that chapter. For example, a reference to "Rule 2" within this chapter would be a reference to Gain Sharing Rule 2. (3-15-02)

008. EFFECTIVE DATE (RULE 8).

Unless otherwise indicated, the effective date of each rule is noted in brackets at the end of each Rule. (3-15-02)

009. -- 099. (RESERVED).

Subchapter B -- Determining the Amount of Extraordinary Gains
(Rules 100 Through 199)

100. EXISTENCE OF EXTRAORDINARY GAINS (RULE 100).

The existence of extraordinary gains triggers the possibility that allocations will be made as provided in Section 59-1309, Idaho Code. However, the existence of extraordinary gains does not obligate the retirement board to make an allocation. The board may choose not to allocate extraordinary gains, or it may choose to allocate all or part of the extraordinary gains. Extraordinary gains exist when, at the close of the fiscal year, the value of plan assets exceeds plan liabilities as determined by the actuary, plus a sum necessary to absorb a one (1) standard deviation market event without increasing contribution rates, as determined by the board. The amount of extraordinary gains available for possible distribution equals the amount by which the assets exceed the sum of the liabilities and the one standard deviation. (3-15-02)

101. VALUE OF PLAN ASSETS (RULE 101).

This is the total assets held in the PERSI base plan, as reported in the actuarial valuation at the end of the fiscal year. (3-15-02)

102. PLAN LIABILITIES (RULE 102).

This is the actuarial liability of the PERSI base plan, including but not limited to, the cost of the proposed COLA to be effective in March following the close of the fiscal year, the cost of any benefit enhancements to the base plan approved by the legislature, and the cost of actuarial gains and losses, as reported in the actuarial valuation for the fiscal year. (3-15-02)

103. ONE STANDARD DEVIATION (RULE 103).

This is the amount of reserve necessary to absorb normal market fluctuations and is a function of the risk associated with investment holdings and strategies, and will be determined by the board based on those factors. (3-15-02)

104. BOARD DISCRETION (RULE 104).

The board retains full discretion in determining whether to allocate extraordinary gains when they exist. Because of the broad range of factors that might be relevant to such a determination, and to assure that the board will not be limited in exercising its discretion, these rules do not attempt to identify any of the factors that might be considered in the board's fiduciary capacity. When extraordinary gains exist, the board will decide whether they will be allocated no later than the first day of December following the end of the fiscal year. Such decision shall be in writing and shall constitute an amendment to the plan document for purposes of the Internal Revenue Code of 1986, as amended, or any successor thereto. In the absence of any such decision, the allocation for that year shall be zero (0.00). (3-15-02)

105. -- 199. (RESERVED).

Subchapter C -- Allocating Extraordinary Gains Between Groups
(Rules 200 Through 299)

200. ALLOCATION BETWEEN GROUPS (RULE 200).

01. Extraordinary Gains. If extraordinary gains exist, and the board determines that all or part of such gains should be allocated, an allocation will be made among the three (3) groups identified by Section 59-1309, Idaho Code. The three (3) groups are: (3-15-02)

- a.** Active PERSI members; (3-15-02)
- b.** PERSI retirees; and (3-15-02)
- c.** PERSI employers. (3-15-02)

02. Allocation of Extraordinary Gains. Until otherwise determined by the board, extraordinary gains

- will be allocated as follows: (3-15-02)
- a. Active members - 38 percent (38%); (3-15-02)
 - b. Retirees - twelve percent (12%); and (3-15-02)
 - c. Employers - fifty percent (50%). (3-15-02)
- 201. -- 299. (RESERVED).**

Subchapter D -- Allocations Within Active Member Group
(Rules 300 Through 399)

300. ACTIVE MEMBER ALLOCATION (RULE 300).

After the amount to be allocated to the active member group has been determined, it shall be allocated among the members of the group. The active member allocation determines each member's initial share before considering any applicable individual limits. Each member's initial share shall be determined by dividing that member's accumulated contributions in the base plan at the close of the fiscal year by the total accumulated contributions in the base plan of all members of the group at the close of the fiscal year, multiplied by the amount allocated to the active member group. In no event shall a member's initial share, before considering individual limits, exceed the maximum annual contribution limit under Section 415(c) of the Internal Revenue Code applicable for the limitation year. [The limit for 2000 is thirty thousand dollars (\$30,000)]. (3-15-02)

301. MINIMUM ALLOCATION AMOUNT (RULE 301).

Due to the costs associated with maintaining individual choice accounts, no allocation shall be made to any member whose allocation share does not exceed thirty-eight dollars (\$38) after considering individual limits, unless the member had a PERSI choice account on the last day of the fiscal year and has not withdrawn funds before the allocation date. (3-15-02)

302. ACTIVE MEMBER (RULE 302).

A member participates in the active member allocation only if he is an active member as defined in this chapter. Whenever a member is placed on leave of absence under circumstances making that member eligible for benefits under USERRA, the employer shall notify PERSI in writing within thirty (30) days and attach a copy of the member's orders. (3-15-02)

303. ACCUMULATED CONTRIBUTIONS (RULE 303).

For purposes of allocating extraordinary gains within the active member group, accumulated contributions do not include contributions or interest related to the purchase of permissive service credits or contributions or interest in the Choice Plan or accounts. (3-15-02)

304. TRANSFER TO DEFINED CONTRIBUTION CHOICE ACCOUNTS (RULE 304).

After each member's initial share has been determined, it will be transferred to an individual account as permitted under Section 414(k) of the Internal Revenue Code, subject to individual limits imposed by the Internal Revenue Code. The board may transfer allocations anytime after necessary compensation data is received and processed by the board. (3-15-02)

305. LIMITATIONS ON ALLOCATION (RULE 305).

In no event shall a member's final allocation exceed the limits imposed by Section 415(c) of the Internal Revenue Code, based on compensation earned during the calendar year that included the end of the fiscal year. (3-15-02)

306. INTERVENING RETIREMENT (RULE 306).

When a member is included in the active member pool but retires prior to the transfer of allocations, the member's allocation will be made as a one-time payment directly to the member rather than a transfer to an individual account. Such allocations will not be limited by Rule 305 but will be subject to the limitations of Rule 404. (3-15-02)

307. INTERVENING WITHDRAWAL OF CONTRIBUTIONS (RULE 307).

When a member is included in the active member pool but terminates prior to the transfer of allocations, the allocation will be made to the member's individual account if the member has not withdrawn contributions from the Base account prior to the date of transfer of the allocation. No member who has withdrawn contributions from the Base account prior to the transfer of the allocation is eligible to receive an allocation. (3-15-02)

308. INTERVENING DEATH OF ACTIVE MEMBER (RULE 308).

When a member would have been included in the active member allocation but dies prior to the transfer of allocations, no allocation shall be made to the member, beneficiary or estate except that an optional death benefit recipient will receive the active member's allocation as limited by Rule 404. (3-15-02)

309. TREATMENT OF GAIN SHARING ALLOCATIONS IN THE CHOICE ACCOUNT (RULE 309).

Gain sharing allocations transferred to individual Choice Accounts have no effect on an individual's Base Plan benefit. Gain sharing allocations, and the earnings thereon, will be accounted for separately from other Choice Plan contributions but will be treated as one plan for purposes of reporting, investing, distributions, and fees to the extent they are applicable. Related provisions of the Plan adopted by the Board to facilitate voluntary and employer contributions are applicable to gain sharing allocations to the extent not inconsistent with these rules and Sections 59-1308 and 59-1309, Idaho Code. However, no loans or hardship withdrawals may be taken against gain sharing account balances. (3-15-02)

310. -- 399. (RESERVED).

**Subchapter E -- Allocations Within Retiree Group
(Rules 400 Through 499)**

400. RETIREE ALLOCATION (RULE 400).

After the amount to be allocated to the retiree group has been determined, it shall be allocated among the members of the group. The retiree allocation determines each member's share before considering any applicable individual limits. Each member's initial share shall be determined by dividing that retiree's monthly benefit at the close of the fiscal year by the total monthly benefits payable to all members of the group at the close of the fiscal year, multiplied by the amount allocated to the retiree group. (3-15-02)

401. RETIREE (RULE 401).

For purposes of allocating extraordinary gains, a member must be a retiree as defined in this chapter. (3-15-02)

402. MONTHLY BENEFIT (RULE 402).

This is the monthly benefit for the last month of the fiscal year but does not include benefits related to other months that may also have been paid during the last month of the fiscal year. In no event shall a retiree's share be determined based on more than the retiree's annual benefit, not including any gain sharing allocations, divided by twelve (12). (3-15-02)

403. PAYMENT OF ALLOCATION (RULE 403).

After each retiree's initial share has been determined, it will be paid no later than February 1 following the close of the fiscal year directly to the retiree either together with the retiree's monthly benefit or separately, subject to individual limits imposed by the Internal Revenue Code. (3-15-02)

404. LIMITATIONS ON ALLOCATION (RULE 404).

Prior to allocation, a retiree's initial share shall be further limited as necessary to comply with the limits of Section 415(b) of the Internal Revenue Code. (3-15-02)

405. INTERVENING DEATH OF A RETIREE (RULE 405).

When a retiree is included in the retiree allocation but dies prior to the transfer of allocations, no allocation shall be made unless benefit payments are continuing to be made to a contingent annuitant. (3-15-02)

406. INTERVENING REEMPLOYMENT (RULE 406).

When a retiree is included in the retiree allocation but becomes reemployed as defined in Section 59-1356, Idaho Code, prior to the date of distribution, the retiree allocation shall be made in the form of an active member allocation,

and shall be subject to active member limitations. (3-15-02)

407. NEGATED RETIREMENT (RULE 407).

Gain sharing allocations received by a retiree are not included in the amounts required to be repaid when negating retirement under Retirement Rule 148. (3-15-02)

408. -- 499. (RESERVED).

**Subchapter F -- Allocations Within Employer Group
(Rules 500 Through 599)**

500. EMPLOYER ALLOCATION (RULE 500).

After the amount to be allocated to the employer group has been determined, it shall be allocated among the members of the group. Each employer's share shall be determined by dividing that employer's contribution liability for the fiscal year by the total contribution liability for all members of the group for the fiscal year, multiplied by the amount allocated to the employer group. (3-15-02)

501. EMPLOYER (RULE 501).

Participation in the employer pool is limited to those entities defined as an employer in this chapter. (3-15-02)

502. CONTRIBUTION LIABILITY (RULE 502).

This includes only employer contributions that are accrued during the fiscal year and required to be paid by Section 59-1322, Idaho Code, unreduced by gain sharing credits. It does not include contributions made to fund sick leave pools, to pay costs of other plans such as the Firefighters Retirement Fund, or to contributions required by Sections 33-107A and 33-107B, Idaho Code. For purposes of any gain sharing related to the fiscal year ending June 30, 2000, all proper adjustments made to employer contributions will be considered in determining contribution liability. Thereafter, only adjustments related to fiscal year contributions will be considered. (3-15-02)

503. CREDIT OF ALLOCATION (RULE 503).

After each employer's share has been determined, it will be credited against the employer's future contribution invoices. The credits shall be applied only to offset future employee and employer contributions required to be remitted by Section 59-1325(1), Idaho Code, until the credit is exhausted. An employer may elect to use the credits solely against employer contributions to the extent that no carry-over credits (as described in rule 504) result. (3-15-02)

504. CARRY-OVER OF CREDIT (RULE 504).

Should the credit exceed the employer's contribution invoices for the succeeding twelve (12) month period, any remaining credits will carry over to the following year together with an additional credit representing an interest payment. The interest credit shall equal the balance of remaining credits multiplied by a ratio representing the regular rate of interest. This process shall be repeated annually until all credits have been used. (3-15-02)

505. WITHDRAWAL OF EMPLOYER (RULE 505).

When an employer is included in the employer pool but withdraws from the system as provided in Section 59-1326, Idaho Code, prior to allocation of credits, the employer shall not be entitled to receive any credits. When an employer is entitled to carry-over credits but withdraws prior to using all its credits, it shall not be entitled to additional credits based on interest payments. (3-15-02)

506. -- 999. (RESERVED).

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