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**IDAPA 59
TITLE 01
CHAPTER 02**

59.01.02 – PERSI RULES FOR ELIGIBILITY

Subchapter A -- General Provisions

**General Provisions
Rules 0 Through 25**

000. LEGAL AUTHORITY (RULE 000).

All 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. (1-1-94)

001. TITLE AND SCOPE (RULE 1).

The title of this chapter is PERSI Rules for Eligibility. (1-1-94)

002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES (RULE 2).

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/ 334-4026

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 (5-6-94)

003. ADMINISTRATIVE APPEAL (RULE 3).

Administrative appeals are conducted pursuant to PERSI Rules of Administrative Procedure, IDAPA 59, Title 01, Chapter 01, Rules 101 through 104 and 150 through 789. (1-1-94)

004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).

All rules required to be adopted by this chapter are public records. (1-1-94)

005. DEFINITIONS (RULE 5).

The following definitions are supplemental to those provided by Section 59-1302, Idaho Code. (1-1-94)

01. Board. "Board" means the governing authority of the Public Employee Retirement System of Idaho as provided by Section 59-1304, Idaho Code, of the Firefighters' Retirement Fund created by Chapter 14, Title 72, Idaho Code, and the Policeman's Retirement Fund created by Chapter 15, Title 50, Idaho Code. (1-1-94)

02. Compensation. "Compensation" as used in Section 59-1342(6), Idaho Code, means "salary" as defined by Section 59-1302(31), Idaho Code. (1-1-94)

03. Date of Retirement. “Date of retirement” means the effective date on which a retirement allowance becomes payable. (1-1-94)

04. Employee. “Employee” means a person as defined in Section 59-1302(14), Idaho Code. (1-1-94)

05. Employer. “Employer” means the state of Idaho or any political subdivision or governmental entity, provided such subdivision or entity has elected to come into the system. Governmental entity means any organization composed of units of government of Idaho or organizations funded only by government or employee contributions or organizations who discharge governmental responsibilities or proprietary responsibilities that would otherwise be performed by government. A political subdivision and government entity also means an entity that meets each of the requirements of Paragraphs 005.05.a. through c. of this subsection, taking into account all of the facts and circumstances. Entities that may qualify as political subdivisions include, among others, general purpose governmental entities, such as cities and counties (whether or not incorporated as municipal corporations), and special purpose governmental entities, such as special assessment districts that provide for roads, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvements, and other governmental purposes for a State or local governmental unit. (3-28-18)

a. Sovereign powers. Pursuant to a State or local law of general application, the entity has a delegated right to exercise a substantial amount of at least one (1) of the following recognized sovereign powers of a State or local governmental unit: The power of taxation, the power of eminent domain, and police power. (3-28-18)

b. Governmental purpose. The entity serves a governmental purpose. The determination of whether an entity serves a governmental purpose is based on, among other things, whether the entity carries out the public purposes that are set forth in the entity’s enabling legislation and whether the entity operates in a manner that provides a significant public benefit with no more than incidental private benefit. (3-28-18)

c. Governmental control. A State or local governmental unit exercises control over the entity. For this purpose, control is defined in Subparagraph 005.05.c.i. of this rule and a State or local governmental unit exercises such control only if the control is vested in persons described in Subparagraph 005.05.c.ii. of this rule. (3-28-18)

i. Definition of control. “Control” means an ongoing right or power to direct significant actions of the entity. Rights or powers may establish control either individually or in the aggregate. Among rights or powers that may establish control, an ongoing ability to exercise one or more of the following significant rights or powers, on a discretionary and non-ministerial basis, constitutes control: the right or power both to approve and to remove a majority of the governing body of the entity; the right or power to elect a majority of the governing body of the entity in periodic elections of reasonable frequency; or the right or power to approve or direct the significant uses of funds or assets of the entity in advance of that use. Procedures designed to ensure the integrity of the entity but not to direct significant actions of the entity are insufficient to constitute control of an entity. Examples of such procedures include requirements for submission of audited financial statements of the entity to a higher level State or local governmental unit, open meeting requirements, and conflicts of interest limitations. (3-28-18)

ii. Control vested in a State or local governmental unit or an electorate. Control is vested in persons described as a State or local governmental unit possessing a substantial amount of each of the sovereign powers and acting through its governing body or through its duly authorized elected or appointed officials in their official capacities or an electorate established under applicable State or local law of general application, provided the electorate is not a private faction. (3-28-18)

iii. Definition of “private faction”. A private faction is any electorate if the outcome of the exercise of control described in 005.05.c.i. of this rule is determined solely by the votes of an unreasonably small number of private persons. The determination of whether a number of such private persons is unreasonably small depends on all of the facts and circumstances, including, without limitation, the entity’s governmental purpose, the number of members in the electorate, the relationships of the members of the electorate to one another, the manner of apportionment of votes within the electorate, and the extent to which the members of the electorate adequately represent the interests of persons reasonably affected by the entity’s actions. For purposes of this definition, an electorate is a private faction if any three (3) private persons that are members of the electorate possess, in the aggregate, a majority of the votes necessary to determine the outcome of the relevant exercise of control. Provided

however, an electorate is not a private faction if the smallest number of private persons who can combine votes to establish a majority of the votes necessary to determine the outcome of the relevant exercise of control is greater than ten (10) persons. For example, if an electorate consists of twenty (20) private persons with equal, five-percent (5%) shares of the total votes, that electorate is not a private faction because a minimum of eleven (11) members of that electorate is necessary to have a majority of the votes. By contrast, for example, if an electorate consists of twenty (20) private persons with unequal voting shares in which some combination of ten (10) or fewer members has a majority of the votes, then that electorate does not qualify for the safe harbor from treatment as a private faction under this subparagraph. The following rules apply for purposes of determining numbers of voters and voting control in Subparagraph 005.05.c.iii. of this rule, related parties (as defined in 26 CFR § 1.150-1(b)) are treated as a single person; and in computing the number of votes necessary to determine the outcome of the relevant exercise of control, all voters entitled to vote in an election are assumed to cast all votes to which they are entitled. (3-28-18)

06. Employment. “Employment” as used in Section 59-1302(14)(B)(b), Idaho Code, shall mean the period of time from a member’s date of hire to the member’s succeeding date of separation from that employer. Placing a member on leave of absence with or without pay shall not be considered as a separation from the employer. (1-1-94)

07. Firefighters' Retirement Fund. “Firefighters’ Retirement Fund” or “FRF” is the retirement fund provided by Chapter 14, Title 72, Idaho Code. (1-1-94)

08. General Member. “General member” is a PERSI member not classified as a police officer, firefighter, or paid firefighter. (1-1-94)

09. Paid Firefighter. “Paid firefighter” includes a former FRF members and paid firefighters as defined by Section 59-1391(f), Idaho Code, hired October 1, 1980, and thereafter. (4-7-11)

10. Police Officer. “Police officer” means an employee who is serving in a position designated by Section 59-1303(3), Idaho Code, or in a position so designated by the Retirement Board as provided by Section 59-1303(4), Idaho Code. (1-1-94)

11. Primary Employer. The primary employer is the employer from whom the employee receives the highest aggregate salary per month. (1-1-94)

12. Public Employee Retirement System of Idaho. “Public Employee Retirement System of Idaho” or “PERSI” is the retirement system created by Chapter 13, Title 59, Idaho Code. (1-1-94)

13. Retirement Board. “Retirement Board” means the governing authority of the Public Employee Retirement System of Idaho as provided by Section 59-1304, Idaho Code, and of the Firefighters’ Retirement Fund created by Chapter 14, Title 72, Idaho Code, and the Policeman’s Retirement Fund created by Chapter 15, Title 50, Idaho Code. (1-1-94)

14. Same Position. “Same position” as set forth in Section 59-1303(7), Idaho Code, means the same job classification or position title including continued employment in any revised job classification or new position title evolving from that same position as the result of personnel reclassification procedures provided the continued employment remains within the same state agency or within the same department of a political subdivision. (1-1-94)

15. Surviving Spouse. “Surviving spouse” is a person as defined in Section 15-2-802, Idaho Code. (1-1-94)

16. Teacher. “Teacher” is defined as a school employee who is required to be certified. (1-1-94)

006. CITATION (RULE 6).
The official citation of this chapter is IDAPA 59.01.02.000, et seq. For example, this section’s citation is IDAPA 59.01.02.006. In documents submitted to PERSI or issued by PERSI these rules may be cited as PERSI Eligibility Rules and action number less leading zeros. For example, this rule may be cited as PERSI Eligibility Rule 6.(1-1-94)

007. EFFECTIVE DATE (RULE 7).

Unless otherwise indicated in the bracketed material following each Rule, the effective date of every rule in this chapter is January 1, 1994. (1-1-94)

008. -- 025. (RESERVED)

Subchapter B -- Eligibility
Employer Eligibility
Rule 26 Through 99

026. -- 099. (RESERVED)

Employee Eligibility
Rule 100 through 250

100. MANDATORY MEMBERSHIP (RULE 100).

Membership in PERSI is mandatory for all persons who meet the statutory definition of an “employee” in Section 59-1302(14), Idaho Code. (1-1-94)

101. MULTIPLE EMPLOYERS -- MEMBERSHIP ELIGIBILITY (RULE 101).

An employee establishes separate PERSI membership eligibility with each employer with which the employee meets the statutory definition of an “employee” as found in Section 59-1302(14), Idaho Code. (1-1-94)

01. Does Not Meet the Statutory Definition. Because membership eligibility is established independently with each employer, neither employer nor employee contributions are required on salary paid by employers to employees who do not meet the statutory definition of an “employee” as found in Section 59-1302(14), Idaho Code. (1-1-94)

02. State Agencies. The agencies of the state of Idaho shall be considered a single employer; an employee working for more than one (1) state agency establishes eligibility based on the total hours of employment worked with all state agencies. (1-1-94)

102. ELECTED AND APPOINTED OFFICIALS NOT SUBJECT TO TWENTY HOUR REQUIREMENT (RULE 102).

Elected and appointed officials are not subject to the hourly requirement of Section 59-1302(14)(A)(a), Idaho Code. (1-1-94)

103. ELECTED AND APPOINTED OFFICIALS -- MEMBERS OF PERSI (RULE 103).

Elected and appointed officials serving on boards, councils, or commissions who receive salary or honorarium for services performed are members of PERSI even though they receive nominal salary and do not normally work twenty (20) hours or more per week. (1-1-94)

104. -- 110. (RESERVED)

111. TEACHER WORKING HALF-TIME OR MORE (RULE 111).

For the purposes of Section 59-1302(14)(A)(a), Idaho Code, a teacher is considered to be working half-time or more if the teacher’s contract specifies that the engagement is half or more of a full contract. Teachers and all other school employees not employed under such a contractual arrangement shall be required to meet the requirement of normally working twenty (20) hours or more per week. (1-1-94)

112. RESPONSIBILITY OF EMPLOYER TO DETERMINE EMPLOYEE ELIGIBILITY (RULE 112).

It is the responsibility of each employer unit to make the initial determination of which employees within its jurisdiction meet the requirements of eligibility for membership and to withhold the required member contributions from salary paid. (1-1-94)

113. DEFINITION OF NORMALLY WORKS TWENTY HOURS (RULE 113).

If a person works twenty (20) hours or more per week for more than one-half (1/2) of the weeks during the period of employment being considered, then the person meets the requirements of Section 59-1302(14)(A)(a), Idaho Code (“normally works twenty (20) hours or more per week”), and shall be considered an employee if the person meets the other requirements of Section 59-1302(14), Idaho Code. Statutory References: Section 59-1302(14)(A)(a). (4-7-11)

114. APPLICATION OF THE FIVE MONTH REQUIREMENT (RULE 114).

An employee working twenty (20) hours or more per week who is hired with the expectation of working less than five (5) consecutive months, becomes retroactively eligible for membership whenever it becomes evident the period of employment will be five (5) consecutive months or longer and the employee meets the other requirements of Section 59-1302(14), Idaho Code. (1-1-94)

01. Employee and Employer Contributions. Employee and Employer contributions must be immediately withheld by the Employer and forwarded when it becomes evident the period of employment will be five (5) consecutive months or more, and the employee meets the other requirements of Section 59-1302(14), Idaho Code. Delinquent employee and employer contributions on all prior months of employment, shall be paid by the employee and the employer pursuant to Rules 114.02 and 114.03 of this chapter. (1-1-94)

02. Delinquent Employee Contributions. Delinquent employee contributions must be paid by the employee within six (6) months, once it becomes evident the period of employment will be five (5) consecutive months or more. If the delinquent employee contributions are not paid within six (6) months, regular interest will be assessed against the outstanding balance until the delinquent employee contributions are paid in full. (1-1-94)

03. Delinquent Employer Contributions. Delinquent employer contributions must be paid by the employer within three (3) months, once it becomes evident the period of employment will be five (5) consecutive months or more. If the delinquent employer contributions are not paid within three (3) months, interest shall be assessed against the outstanding balance at the rate provided in Section 28-22-104(1), Idaho Code. (1-1-94)

115. -- 120. (RESERVED)

121. CEASING TO BE AN EMPLOYEE (RULE 121).

A member ceases to be an employee on the day following the effective date that the member is separated from their employer. Membership service credits stop on the day the member ceases to be an employee. (1-1-94)

122. LEAVE OF ABSENCE (RULE 122).

A member is ineligible to contribute and receive membership service credit while on leave of absence without pay or while on leave of absence with less than one-half (1/2) pay, unless the absence is occasioned by a worker's compensation claim approved by a surety. An active member separated from employment under conditions where both the member and the employer plan a later return to employment should be placed on leave of absence without pay during the planned period of absence. (4-7-11)

01. Employer and Employee Contributions -- Leave of Absence. During the leave of absence without pay, employer and employee contributions cease. If the member is on a leave of absence as a result of an approved worker's compensation claim, employer and employee contributions are due and payable on any salary paid to the member. The member is entitled to a month of membership service credit for each month the member remains on leave of absence as a result of an approved worker's compensation claim and receives salary in addition to income benefits. (1-1-94)

02. Documentation of Leave of Absence. The employer shall provide PERSI with documentation, on a form provided by PERSI, of a leave of absence to clarify the member's status and retirement benefit entitlement. (1-1-94)

03. Status of Employee on Leave of Absence. An employee placed on a leave of absence by an employer remains in an employee status and is ineligible for payment of any separation benefits or for payment of a service, early, disability, or vested retirement allowance. If a member on leave of absence without pay terminates employment without returning to work, the leave without pay status is negated. (5-8-09)

04. Leave of Absence -- Effect on Benefit Enhancement. An employee shall not be placed on a leave

of absence without pay prior to the effective date of a benefit enhancement and then return to work after the effective date of the benefit enhancement for the purpose of qualifying for the benefit enhancement. An employee placed on unpaid leave of absence prior to the date of the benefit enhancement who returns to work after the effective date of the benefit enhancement and subsequently applies for retirement shall include with the application for retirement, certification from the employer that the leave of absence was not granted for the purpose of allowing the person to qualify for the benefit enhancement. (1-1-94)

123. -- 249. (RESERVED)

Subchapter C -- Police Officer Members
Police Officer Members -- Eligibility
Rule 250 Through 299

250. POLICE OFFICER MEMBERSHIP CERTIFICATION (RULE 250).

The executive director or the executive director's designee may accept or reject the employer's certification that an employee's primary position with the employer is a police officer for retirement purposes as required in Section 59-1303(6), Idaho Code. Acceptance of the certification shall not limit PERSI's right to review and reclassify the position for retirement purposes based upon an audit or other relevant information presented to PERSI. (1-1-94)

251. DEFINITION OF ACTIVE LAW ENFORCEMENT SERVICE (RULE 251).

"Active law enforcement service" as used in Section 59-1303, Idaho Code, means the primary duties of an employee's position requires the employee to investigate and arrest persons for criminal or suspected criminal violations or designate the employee to be responsible for the safekeeping and custody of persons held in a duly constituted confinement facility. Active law enforcement service may also include other duties which the employee is required to perform within the law enforcement agency provided the employee's assignment to those duties is not permanent but is rotational in nature and strictly for the purpose of providing the employee with a wider range of law enforcement related experiences which will enhance the employee's career pattern in active law enforcement service. (1-1-94)

252. HAZARDOUS LAW ENFORCEMENT DUTIES (RULE 252).

In applying Section 59-1303(4)(a)(i), Idaho Code, factors such as job conditions, physical exertion in apprehending suspects and other required knowledge, skill and physical ability will be considered. To qualify under Section 59-1303(4)(a)(ii), Idaho Code, job duties which are associated with life threatening situations must be an integral part of the job requirements. These duties are comparable to the job of patrol officer or detective. Pursuant to Section 59-1303(4)(a)(iii), Idaho Code, the major purpose of the position must be to compel others to comply with the law. The employee must be able to prescribe and carry out the consequences of non-compliance. All of Section 59-1303(4)(a), Idaho Code, must be met to be considered as hazardous law enforcement. PERSI staff is authorized to obtain all information pertinent to the position including questionnaires, job descriptions, interviews and any other pertinent records in order to make a report to the Board. (1-1-94)

253. DEFINITION OF COURT SECURITY (RULE 253).

"Court Security" as used in Section 59-1303(3)(g), Idaho Code, shall mean the employee's primary responsibilities are designated by court order to quell disturbances in the courthouse, to prevent the escape of prisoners, to exclude weapons from the courthouse, and to perform other related courthouse security matters. (1-1-94)

254. DEFINITION OF TRANSPORTATION OF PRISONERS (RULE 254).

"Transportation of prisoners" as used in Section 59-1303(3)(g), Idaho Code, shall mean the employee's primary responsibility is designated by court order to move prisoners from one (1) place to another. (1-1-94)

255. -- 299. (RESERVED)

Subchapter D -- Firefighter Members
Firefighter Members -- Eligibility
Rule 300 Through 449

300. DETERMINATION OF FIREFIGHTER (RULE 300).

A “firefighter” means an employee whose primary occupation with an employer as defined by Section 59-1302(16), Idaho Code, is that of preventing and extinguishing fires. A firefighter member for retirement purposes is an employee appointed to the position of fire chief by a city council but not eligible to be a “paid firefighter,” or the chief fire warden of a timber protective association, or is an employee of either the department of lands or of a timber protective association whose primary position and principal accountability in that position either requires direct supervision of employees engaged in the prevention, presuppression and suppression of wild land fires or requires the performance of those duties as the principal function of the position. A firefighter member for retirement purposes does not include an employee who may be required on occasion to engage in those functions as a secondary requirement of the position.

Statutory References: Sections 59-1302(16), 59-1391(f) and 72-1403, Idaho Code. (1-1-94)

301. INCORRECT CLASSIFICATION OF FIREFIGHTER (RULE 301).

An employer or agency which believes that any position is incorrectly classified as a firefighter position or a non-firefighter position may petition the Board for inclusion or exclusion of such position as a firefighter position. Such petition shall be in writing and shall explain in detail the principal duties of the position. The Board shall review the petition and evidence, together with such information and evidence as may be presented by the staff of PERSI. The Board may decide the matter based upon the information supplied, may request additional information, or may request an oral presentation before the Board.

Statutory References: Sections 59-1302(16), 59-1391(f) and 72-1403, Idaho Code. (1-1-94)

302. PAID FIREFIGHTER EXCLUSION FROM RULES 300 AND 301 (RULE 302).

The provisions of Rules 300 and 301 of this Chapter do not apply to a “paid firefighter” as defined by Sections 59-1391(f) or 72-1403(A), Idaho Code, or to any references to “firefighter” found in Title 72, Chapter 14, Idaho Code.

Statutory References: Sections 59-1302(16), 59-1391(f) and 72-1403, Idaho Code. (1-1-94)

303. -- 999. (RESERVED)

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