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**IDAPA 18
TITLE 02
CHAPTER 01**

18.02.01 – INSURANCE RATES AND CREDIT RATING

000. LEGAL AUTHORITY.

This rule is promulgated pursuant to the authority granted by Title 41, Sections 41-211 and 41-1843, Idaho Code. (3-20-04)

001. TITLE AND SCOPE.

01. Title. This chapter is titled IDAPA 18.02.01, “Insurance Rates and Credit Rating.” (3-20-04)

02. Scope. This rule implements Section 41-1843, Idaho Code, enacted as Senate Bill No. 1408 by the legislature in 2002 relating to the use of credit rating or credit history by insurers in determining rating and coverage of insurance. (3-20-04)

002. WRITTEN INTERPRETATIONS.

The Department of Insurance may have written statements that pertain to the interpretation of the rules in this chapter. Any written statements are be available for review. (3-20-04)

003. ADMINISTRATIVE APPEALS.

All hearings before the Director of the Department of Insurance shall be governed by Chapter 2, Title 41, and Chapter 52, Title 67, Idaho Code. Any appeal from a decision of the Director can be taken to District Court pursuant to Chapter 52, Title 67, Idaho Code and the Idaho Rules of Civil Procedure. (3-20-04)

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference into these rules. (3-20-04)

005. OFFICE – OFFICE HOURS – MAILING ADDRESS – STREET ADDRESS -- WEB ADDRESS.

This office is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The department’s mailing address is PO Box 83720, Boise, Idaho 83720-0043. The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83702-0043. The department’s website is <http://www.doi.idaho.gov>. (3-20-04)

006. PUBLIC RECORDS.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, and Title 41, Idaho Code. (3-20-04)

007. – 009. (RESERVED)

010. DEFINITIONS.

As used in this rule, unless the context requires otherwise, the following words have the following meanings: (3-20-04)

01. Consumer Report. Any written, oral, or other communication of any information by a consumer reporting agency regulated under the federal Fair Credit Reporting Act (15 U.S.C. 1681) that bears on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. (3-20-04)

02. Credit Factor. A factor or criterion that consists of or is derived from information obtained from a consumer report that is used by an insurer in determining policy premium rates, or in determining whether to issue, cancel or nonrenew a policy. (3-20-04)

03. Department. The Idaho Department of Insurance. (3-20-04)

04. Noncredit Factor. Any factor other than a credit factor that is reasonably expected to affect the risk assumed by an insurer and is used by the insurer in determining policy premium rates, or in determining whether to

issue, cancel or nonrenew a policy. (3-20-04)

05. Policy. A contract for property or casualty insurance, as defined by Chapter 5, Title 41, Idaho Code, that is purchased or maintained primarily for personal, family or household purposes. (3-20-04)

06. Weight. The consideration given by an insurer to a particular credit or noncredit factor relative to other factors considered in the underwriting or rating process. (3-20-04)

011. -- 099. (RESERVED)

100. USE OF CREDIT FACTORS.

01. Prohibited Acts. An insurer shall not charge a higher premium than would otherwise be charged, or cancel, nonrenew or decline to issue a policy, based in any part upon credit factors unless: (3-20-04)

a. The decision is also based on a noncredit factor or factors; and (3-20-04)

b. The aggregate weight given to the noncredit factors considered in making the decision is at least as great as the aggregate weight given to the credit factors considered in making the decision. (3-20-04)

02. Application of Rule. To determine whether a decision to issue, nonrenew or cancel a policy, or to charge a higher rate than would otherwise be charged, is not improperly based primarily upon a credit factor or factors and in violation of Section 41-1843, Idaho Code, the Department will apply the following criteria: (4-4-13)

a. If an insurer declines to issue, nonrenews or cancels a policy based in any part upon a credit factor, the insurer must be able to show that it also relied upon a noncredit factor or combination of noncredit factors in making the decision and that the noncredit factor(s) played at least as great a role in the decision as did the credit factor. Nothing in this rule is intended to modify or alter any provisions contained in Title 41, Chapter 25, Idaho Code. (4-4-13)

b. If an insurer relies in any part upon a credit factor in establishing an initial rate for new business or to impose an increase in premium rate for a customer, the insurer must be able to show that it also considered noncredit factors in establishing the initial rate and that not more than one-half (½) of the initial or renewal premium rate is attributable to the credit factor. To satisfy this requirement, an insurer shall do one (1) of the following: (4-4-13)

i. Compare the premium rate using the highest credit factor to the premium rate using the lowest credit factor. The difference in the premium rate between the highest and lowest shall be not more than one-half (½) the highest premium rate; or (4-4-13)

ii. Compare a premium rate calculated using the highest credit factor to a premium rate calculated without using credit. The premium rate calculated without using credit shall be equal to or greater than one-half (½) of the premium rate calculated using the highest credit factor. To calculate the premium rate without using credit, an insurer shall demonstrate that it has applied all the noncredit factors and replaced the actual credit factor with the average credit factor. The average credit factor must be calculated from the actual distribution of Idaho business by credit factor at the time the credit factor rating system was implemented or last revised. For purposes of this Subparagraph, 100.02.b.ii., "last revised" means any subsequent changes to the credit factor system utilized by the insurer as part of its overall rate filing. Under this approach, as long as the highest rate charged using a credit factor is not more than double the rate using the average credit factor, the rate will be treated as meeting the requirements of Section 41-1843, Idaho Code. (4-4-13)

03. Information Used in Reviewing Insurer's Decision. To evaluate whether an underwriting or rating decision was based primarily upon credit factors, the department may require the insurer to explain in detail the insurer's underwriting or rating process, identify all factors considered in the process, and describe how the process was applied in the case under review. The department may also require the insurer to apply its underwriting or rating process to hypothetical cases submitted to the insurer by the Department. (3-20-04)

101. -- 199. (RESERVED)

200. OTHER LAWS OR RULES.

Nothing in this rule shall be construed to limit or modify any other laws or rules imposing restrictions regarding rating, issuing, canceling or nonrenewing a policy. (3-20-04)

201. -- 299. (RESERVED)

300. TRADE SECRETS.

Any information submitted by an insurer pursuant to this rule that the insurer considers to be a trade secret as defined by Section 9-340D, Idaho Code, and not subject to public disclosure, shall be clearly identified as such at the time it is submitted to the department. (3-20-04)

301. -- 399. (RESERVED)

400. RETENTION OF RECORDS.

Insurers subject to this rule shall document the factors and criteria considered in underwriting and rating decisions and shall retain the documentation for at least five (5) years from the date of the decision. (3-20-04)

401. -- 499. (RESERVED)

500. VIOLATIONS.

A failure to comply with this rule is a violation of Section 41-1843, Idaho Code. (3-20-04)

501. -- 999. (RESERVED)

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