

PENDING FEE RULES

COMMITTEE RULES

REVIEW BOOK

Submitted for Review Before
Senate Judiciary & Rules Committee
65th Idaho Legislature
Second Regular Session – 2020



Prepared by:

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

January 2020

SENATE JUDICIARY & RULES COMMITTEE

ADMINISTRATIVE RULES REVIEW

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IDAPA 11 – IDAHO STATE POLICE

DOCKET NO. 11-0000-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections (Alcohol Beverage Control) 23-616, 23-932, 23-946, 23-1010(7), 23-1011A, 23-1330, 23-1408, (Bureau of Criminal Identification) 67-3001, 67-3003, 67-3004, 67-3007, 67-3010, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 11, rules of the Idaho State Police:

IDAPA 11

- 11.05.01, *Rules Governing Alcohol Beverage Control*
- 11.10.02, *Rules Governing State Criminal History Records and Crime Information*

The adoption of these rules is necessary to allow the Idaho State Police to carry out the statutory duties of providing public safety services to law enforcement, prosecuting attorneys, the judicial system, and everyone who travels through or resides in the State of Idaho. The changes to these rules were clean up in nature, which in some instances consolidated and/or eliminated definitions; combined, re-ordered and re-numbered similar sections; and removed office hours and other information included on the coversheet. All the changes maintain the intent, scope, and purpose intended and previously approved.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 1306-1318](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

- 11.05.01.013.01 – Priority list fee
- 11.05.01.013.03 – Licensing fee return provision
- 11.10.02.031 – Fingerprint and background check fees

This fee or charge is being imposed pursuant to Sections 23-904, 23-907, and 67-3010, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact:

- 11.05.01 ABC — Captain Brad Doty, Phone: (208) 884-7062, Fax: (208) 884-7462, E-mail bradley.doty@isp.idaho.gov
- 11.10.02 BCI — Bureau Chief Leila McNeill, Phone: (208) 884-7136, Fax: (208) 884-7193, E-mail leila.mcneill@isp.idaho.gov

Dated this 2nd day of October, 2019.

Charlie Spencer
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Rules Review Officer
Idaho State Police
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Phone: (208) 884-7203
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**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections (Alcohol Beverage Control) 23-616, 23-932, 23-946, 23-1010(7), 23-1011A, 23-1330, 23-1408, (Bureau of Criminal Identification) 67-3001, 67-3003, 67-3004, 67-3007, 67-3010, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 11, rules of the Idaho State Police:

IDAPA 11

- 11.05.01, *Rules Governing Alcohol Beverage Control*
- 11.10.02, *Rules Governing State Criminal History Records and Crime Information*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the

orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The Idaho State Police Alcohol Beverage Control is tasked with issuing licenses, maintaining priority waiting lists, inspecting new and existing premises, and enforcing violations of Idaho criminal statutes. The Idaho state central repository of criminal history records is an automated database of records based on fingerprint arrest records reported to BCI from Idaho criminal justice agencies. The information in the database is critical to effective decision-making at every phase of the criminal justice process. Additionally, the criminal history system is increasingly used for non-criminal justice background checks, such as employment screening and licensure. BCI also provides fingerprinting services to the public for a fee as prescribed in rule. Failure to reauthorize these rules would eliminate the ability of the Idaho State Police to carry out the statutory duties of providing public safety services to law enforcement, prosecuting attorneys, the judicial system, and everyone who travels through or resides in the State of Idaho.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. The fees referenced in IDAPA 11.05.01.013.03 and 11.05.01.013.05 help to keep a fair and consistent list of applicants for the priority waiting list for future liquor licenses in incorporated cities. This rule ensures that the applicants are treated equitably and benefits the future economic status and development of business within the State of Idaho. The fees referenced in IDAPA 11.10.02 are collected for fingerprinting and background check services provided to the public and to local and state agencies and become part of a dedicated funding source for the Idaho State Police to provide these services. Failure to adopt this fee-based rule will make it impossible for these public services to be provided. Many state and local agencies will not be able to make fitness determinations for employment or licensing as required by statute due to lack of criminal history record information gained from fingerprint-based or name-based background checks run through the ISP. Fingerprinting services offered to the general public would not be available. This rule also provides procedures for expungement of criminal history records.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

- 11.05.01.013.01 – Priority list fee
- 11.05.01.013.03 – Licensing fee return provision
- 11.10.02.031 – Fingerprint and background check 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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact

- 11.05.01 ABC — Captain Brad Doty, Phone: (208) 884-7062, Fax: (208) 884-7462,
E-mail bradley.doty@isp.idaho.gov
- 11.10.02 BCI — Bureau Chief Leila McNeill, Phone: (208) 884-7136, Fax: (208) 884-7193,
E-mail leila.mcneill@isp.idaho.gov

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 10th day of May, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 11-0000-1900F

11.05.01 – RULES GOVERNING ALCOHOL BEVERAGE CONTROL

000. LEGAL AUTHORITY.

The Director of the Idaho State Police has general rulemaking authority to prescribe rules and regulations for alcohol beverage enforcement, pursuant to Sections 23-932, 23-946(b), 23-1330 and 23-1408, Idaho Code. (3-6-07)

001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 11.05.01, “Rules Governing Alcohol Beverage Control.” (2-20-01)

02. **Scope.** The rules relate to the governance and operation of Alcohol Beverage Control. Unless a specific reference herein limits application of a rule to a particular kind of alcoholic beverage, these rules apply to and implement Idaho Code Sections for liquor (Title 23, Chapter 9, Idaho Code), beer (Title 23, Chapter 10, Idaho Code), and wine (Title 23, Chapter 13, Idaho Code). (2-20-01)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Licensed Premises.** Any premises for which a license has been issued under any of the provisions of Title 23, Chapters 9, 10 or 13, Idaho Code. All areas included on the floor plan submitted to the Director with the licensee’s application for a license constitute the licensed premises. In the event of loss or move of the physical licensed premises, the licensee has ninety (90) days to secure and occupy a new premises in which to display the license. All licenses must be prominently displayed in a suitable premises and remain in actual use by the licensee and available for legitimate sales of alcoholic beverages by the drink. An additional sixty (60) days may be granted by the Director, upon petition by the license holder. (3-6-07)

02. **New Licenses.** For purposes of Section 23-908(4), Idaho Code, a “new license” is one that has become available as an additional license within a city’s limits under the quota system after July 1, 1980. The requirement of Section 23-908(4), Idaho Code, that a new license be placed into actual use by the licensee and remain in use for at least six (6) consecutive months is satisfied if the licensee makes actual sales of liquor by the drink during at least eight (8) hours per day, no fewer than six (6) days per week. (3-6-07)

03. **Multipurpose Arena.** (4-4-13)

a. For purposes of Section 23-944(3), Idaho Code, a Multipurpose Arena is a: (4-4-13)

i. Publicly or privately owned or operated arena, coliseum, stadium, or other facility where sporting events, concerts, live entertainment, community events, and other functions are presented for a ticketed price of admission or one whose premises are leased for private events such as receptions; (4-4-13)

ii. Facility that is licensed to sell liquor by the drink at retail for consumption upon the premises; and (4-4-13)

iii. Facility that has been endorsed by the director. (4-4-13)

b. A Multipurpose Arena facility must apply annually for an endorsement on its alcohol beverage license. (4-4-13)

c. To receive a Multipurpose Arena endorsement under this Section will require the facility to have food available including, but not limited to, hamburgers, sandwiches, salads, or other snack food. The director may also restrict the type of events at a Multipurpose Arena facility at which beer, wine, and liquor by the drink may be served. The director will also consider the seating accommodations, eating facilities, and circulation patterns in such a facility, and other amenities available at a Multipurpose Arena facility before the director will endorse the license. (4-4-13)

d. A licensee that applies for a Multipurpose Arena endorsement must submit with the application an operating/security plan to the director and the local law enforcement agency for review and approval. Once approved, the plan remains in effect until the licensee requests a change or the director determines that a change is necessary due to demonstrated problems or conditions not previously considered or adequately addressed in the original plan. The plan must be submitted in a format designated by the director and contain all of the following elements: (4-4-13)

- i. How the Multipurpose Arena facility will prevent the sale and service of alcohol to persons under twenty-one (21) years of age and those who appear to be intoxicated; (4-4-13)
 - ii. The ratio of alcohol service staff and security staff to the size of the audiences at events where alcohol is being served; (4-4-13)
 - iii. Training provided to staff who serve, regulate, or supervise the service of alcohol; (4-4-13)
 - iv. The facility's policy on the number of alcoholic beverages that will be served to an individual patron during one (1) transaction; (4-4-13)
 - v. A list of event type/categories to be held in the facility at which alcohol service is planned, along with a request for the level of alcohol service at each event; and (4-4-13)
 - vi. Diagrams and designation of alcohol service areas for each type of event category with identified restrictions of minors. (4-4-13)
- e.** Prior to the first of each month, the licensee must provide a schedule of events for the upcoming month to the director and local law enforcement office. This schedule must show the date and time of each event during which alcohol service is planned. The licensee must notify the director and local law enforcement at least twenty-four (24) hours in advance of any events where alcohol service is planned that were not included in the monthly schedule. (4-4-13)
- f.** To prevent persons who are under twenty-one (21) years of age or who appear intoxicated from gaining access to alcohol, the director may require that an operating plan include additional mandatory requirements if it is determined that the plan does not effectively prevent violations of liquor laws and regulations, particularly those that prevent persons under twenty-one (21) years of age or who are apparently intoxicated from obtaining alcohol. (4-4-13)
- g.** If premises, licensed as a Multipurpose Arena, subsequently ceases to meet the qualifications of a Multipurpose Arena, the restrictions contained in Section 23-943, Idaho Code, apply and the posting of signs as provided for in Section 23-945, Idaho Code, is required. The licensee shall advise the director, by mail, that his premises no longer constitute a Multipurpose Arena, so that the license may be modified accordingly. (4-4-13)
- 04. Partition.** A partition, as used in Section 23-944 Idaho Code, is defined as a structure separating the place from the remainder of the premises. Access through the structure to the place will be controlled to prevent minors from entering the place. The structure must be: (3-6-07)
- a.** Permanently fixed from the premises ceiling to the premises floor. (3-6-07)
 - b.** Made or constructed of solid material such as glass, wood, metal or a combination of those products. (3-6-07)
 - c.** Designed to prevent an alcoholic beverage from being passed over, under or through the structure. (3-6-07)
 - d.** All partitions must be approved by the Director. (3-6-07)
- 05. Place.** For the purposes of Section 23-943, Idaho Code, "Place" as defined by Section 23-942(b), for a one (1) room restaurant without a barrier or partition, refers to the immediate bar area wherein there is seating alongside a counter or barrier that encloses bar supplies and equipment that are kept, and where alcoholic beverages are mixed, poured, drawn or served for consumption. (3-6-07)
- 06. Restaurant.** The term Restaurant, as defined by Section 23-942(c), Idaho Code, is further defined as an establishment maintained, advertised and held out to the public as primarily a food eating establishment, where individually priced meals are prepared and regularly served to the public, primarily for on-premises consumption.

The establishment must also have a dining room or rooms, kitchen and cooking facilities for the preparation of food, and the number, and type of employees normally used in the preparing, cooking and serving of meals. Primarily as defined for the purposes of Section 010, also includes that the licensee must show to the director the following:

(3-6-07)

- a. An established menu identifying the individually priced meals for consumption; (3-20-04)
- b. Food service and preparation occurs on the premises by establishment employees; (3-20-04)
- c. Stoves, ovens, refrigeration equipment or such other equipment usually and normally found in restaurants are located on the premises of the establishment; (3-20-04)
- d. The licensee must demonstrate to the satisfaction of the Director, through appropriate business records, that the establishment is advertised and held out to the public as primarily a food eating establishment, or that at least forty percent (40%) of the establishment's consumable purchases are derived from purchases of food and non-alcoholic beverages. (3-20-04)

07. Stock Transfer. For the purposes of Section 23-908, Idaho Code, the sale or exchange of stock in a closely held corporation holding a license is deemed a transfer of the license. However, the sale or exchange of shares in a family corporation among family members, is not a transfer. (3-6-07)

011. GENERAL PROVISIONS.

01. Delegation of Authority to License Alcoholic Beverages. The Director hereby delegates his authority for the licensing of establishments which sell alcoholic beverages, as contained in Title 23, Chapters 9, 10, and 13, Idaho Code, to the, Alcohol Beverage Control Bureau, Idaho State Police. All applications and inquiries concerning alcoholic beverage licenses must be directed to the Alcohol Beverage Control Bureau. The Alcohol Beverage Control Bureau provides forms for all applications and inquiries. Nothing contained herein shall interfere with the Director's supervisory authority for alcoholic beverage licensing. (Section 67-2901(4), Idaho Code). ()

02. Authority to Stagger the Renewal of Licenses to Sell Alcohol. For the purposes of Sections 23-908, 23-1010 and 23-1316, Idaho Code, the Director may adjust the renewal month to accommodate population increases. Renewal months vary by county and are available on the Alcohol Beverage Control website. ()

012. TRANSFER OF ALCOHOLIC BEVERAGE LICENSES.

01. Transfer of License Subject to Sanctions. The Director of the Idaho State Police may deny the transfer of an alcoholic beverage license which is subject to possible disqualification, revocation or suspension under the provisions of Title 23, Chapters 9, 10, and 13, Idaho Code, or these rules, when an action has been filed to such effect before the Idaho State Police pursuant to Sections 23-933, 23-1037 or 23-1331, Idaho Code. (7-1-93)

02. Death or Incapacity of Licensee. In the event of the incapacity, death, receivership, bankruptcy, or assignment for the benefit of creditors of a licensee, his guardian, executor, administrator, receiver, trustee in bankruptcy, or assignee for benefit of creditors may, upon written authorization from the Alcohol Beverage Control Bureau, continue the business of the licensee on the licensed premises for the duration of the license or until the business is terminated. Any person operating the licensed premises under this regulation must submit a signed agreement that he will assume all of the responsibilities of the licensee for operation of the premises in accordance with law. A person operating licensed premises under the regulation must demonstrate to the satisfaction of the Alcohol Beverage Control Bureau that he is qualified to hold an alcoholic beverage license. A guardian, executor, administrator, receiver, trustee in bankruptcy, or assignee for benefit of creditors may renew or transfer a license so held, in the same manner as other licensees, subject to the approval of the Alcohol Beverage Control Bureau. (Sections 23-908(1), 23-1005A, and 23-1317, Idaho Code). (3-31-95)

03. Authorization to Transfer and Assignment of Privilege to Renew. Any person applying to renew a liquor license who was not the licensee at the applicable premises for the preceding year, must submit with the application to renew, a written Authorization to Transfer and Assignment of Privilege to Renew signed by the current licensee. (7-1-93)

04. Temporary Permits. When application for transfer of an alcoholic beverage license has been made, the Alcohol Beverage Control Bureau, in its discretion, may authorize issuance of a temporary permit during the review of the application, during which time the applicant for transfer may conduct business as a temporary permit holder. The permit holder, in accepting the temporary permit, is responsible for complying with all statutes and rules pertinent to the sale of alcoholic beverages. Sanctions against such permit holder, whether civil, administrative, or criminal lies with the permittee, and acceptance of the permit constitutes a waiver of any defenses by permit holder based upon the fact that the permit holder is not, technically, a licensee. The Alcohol Beverage Control Bureau may withdraw a temporary permit it has issued pursuant to this rule at any time without hearing or notice. (3-6-07)

05. Product Replacement and Credit. Any beer or wine products removed from the licensed retailer's premises by a wholesaler/distributor for quality control or public health are not considered to be a violation of Section 23-1033 or 23-1325, Idaho Code, which prohibit aid to the retailer or of Sections 23-1031 or 23-1326, Idaho Code, which prohibit extension of credit to a retailer, if: (3-6-07)

a. The packages or kegs are replaced with identical product and quantity; or (8-1-95)

b. In the instance of replacement of a partial keg of beer or wine, a credit to be redeemed on subsequent alcoholic beverage purchases by the retailer is given for the value of the unused portion; or (3-6-07)

c. In the instance of removal of product for which the identical product or quantity thereof is not immediately available to the wholesaler/distributor at the time of removal of the product, a credit is given. The credit shall be redeemed on subsequent alcoholic beverage purchases by the retailer; or (8-1-95)

d. In the case of a licensed establishment which is in operation no less than two (2) months and no more than nine (9) months of each year, prior to its period of closure, it is apparent that product will become outdated or spoiled before the date of re-opening, a wholesaler/distributor may remove product from the retailer's premises and may give a credit to the retailer. Such credit shall be redeemed on subsequent alcoholic beverage purchases by the same retailer. (8-1-95)

e. Credit is given to a retailer for the amount paid by the retailer at the time of purchase of the product being removed by the wholesaler/distributor. (3-6-07)

06. Expiration of Licenses. When a county or city has, pursuant to Sections 23-927 and/or 23-1012, Idaho Code, passed an ordinance extending the hours of sale of liquor and/or beer to two o'clock a.m. (2:00 a.m.), all liquor and/or beer licenses in that county expire at two a.m. (2 a.m.), on the first of the renewal month of the year following their issuance. (Section 23-908(1), Idaho Code). ()

07. Maintenance of Keg Receipts. Licensees shall retain a copy of all completed keg receipts required by Section 23-1018, Idaho Code, for a period of six (6) months. (3-6-07)

013. PRIORITY LISTS.

01. Priority Lists for Incorporated City Liquor Licenses. The Alcohol Beverage Control Bureau maintains a priority list of applicants for those cities in which no incorporated city liquor license is available. A separate list is maintained for each city. A person, partnership, or corporation desiring to be placed on a priority list shall file a completed application for an incorporated city liquor license, accompanied by payment of one-half (1/2) of the annual license fee. Such application need not show any particular building or premises upon which the liquor is to be sold, nor that the applicant is the holder of any license to sell beer. Priority on the list is determined by the earliest application, each succeeding application is placed on the list in the order received. (3-6-07)

02. Written Notification. When an incorporated city liquor license becomes available Alcohol Beverage Control offers it in writing to the applicant whose name appears first on the priority list. If the applicant does not notify the Alcohol Beverage Control Bureau in writing within ten (10) days of receipt of the notice of his intention to accept the license, the license is offered to the next applicant in priority. An applicant accepting the license shall have a period of one hundred eighty (180) days from the date of receipt of Notice of License Availability in which to complete all requirements necessary for the issuance of the license. Provided, however, that upon a showing of good cause the Director of the Idaho State Police may extend the time period in which to complete the

necessary requirements for a period not to exceed ninety (90) days. (3-6-07)

03. Refusal to Accept Offer of License or Failure to Complete Application for License. An applicant refusing a license offered under this rule or an applicant who fails to complete his application may have his name placed at the end of the priority list upon his request. Should the applicant holding first priority refuse or fail to accept the license or to complete the application within the time specified, the applicant shall be dropped from the priority list, the deposit refunded, and the license offered to the applicant appearing next on the list. (3-6-07)

04. Limitations on Priority Lists. An applicant shall hold only one position at a time on each incorporated city priority list. An applicant must be able to demonstrate to the Director the ability to place an awarded license into actual use as required by Section 23-908(4), Idaho Code and these rules. An applicant for a place on an incorporated city liquor license priority list may not execute an inter vivos transfer or assignment of his place on the priority lists. For the purposes of this rule, "inter vivos transfer or assignment" means the substitution of any individual; partnership; corporation, including a wholly owned corporation; organization; association; or any other entity for the original applicant on the waiting list. An attempt to assign inter vivos a place on an incorporated city liquor license priority list shall result in the removal of the name of the applicant from the lists. An applicant, however, may assign his or her place on an alcoholic liquor license priority list by devise or bequest in a valid will. A place on an incorporated city liquor license priority list becomes part of an applicant's estate upon his or her death. (3-6-07)

05. Priority Lists Where Licenses Are Available. The Alcohol Beverage Control Bureau shall not maintain a list for a city in which a liquor license is available, nor for a city that does not permit retail sale of liquor. ()

014. CONDUCT OF LICENSED PREMISES.

Upon request of an agent of the Director, a licensee, or anyone acting on his behalf, must produce any records required to be kept pursuant to Title 23, Chapters 9, 10, or 13, Idaho Code, and permit the agent of the Director or peace officer to examine them and permit an inspection of the licensee's premises. Upon request of a peace officer, a licensee, or anyone acting on his behalf, must permit an inspection of the licensee's premises. Any inspection performed pursuant to this rule must occur during the licensee's regular and usual business hours. The failure to produce such records or to permit such inspection on the part of any licensee is a violation of this rule. A violation of this rule, federal or state law or local code or ordinance may subject the licensee to administrative sanctions pursuant to Sections 23-933, 23-1037 and 23-1331, Idaho Code. (3-6-07)

015. -- 020. (RESERVED)

021. AGE RESTRICTION REQUIREMENTS.

01. Over/Under Clubs. Minors cannot enter, remain or loiter in any licensed establishment that sells alcoholic beverages by the drink, or where drinking alcohol is the predominant activity, or where an environment is created in which drinking alcohol appears to be the predominant activity. This includes an establishment that provides entertainment and whose primary source of revenue comes from the sale of alcoholic beverages for consumption on the premises, or cover charges, or both. ()

02. Posting of Age Restriction Signs. Sections 23-945 and 23-1026, Idaho Code, require every alcoholic beverage licensee to post an age restriction sign. Such sign must contain the following words in lettering of at least one (1) inch in height: "Admittance of persons under twenty-one (21) years of age prohibited by law." Such sign must be placed conspicuously over or on the door of each entrance to the licensed premises and be clearly visible from the exterior approached to such premises. (3-6-07)

03. Counterfeit or Altered Age Documents. If alcoholic beverage licensees, their employees, or agents receive age identification documents which have been lost or voluntarily surrendered, they shall deliver the documents to an agent or investigator of the Alcohol Beverage Control Bureau or to other law enforcement officials within fifteen (15) days from the date they were received, found or voluntarily surrenders. When identification documents that appear to be mutilated, altered or fraudulent are presented to a licensee, their employees or agents, they must contact law enforcement and/or refuse service. (3-6-07)

022. AGE RESTRICTION REQUIREMENTS FOR LICENSED MOVIE THEATERS - WHEN MINORS PERMITTED.

01. Minors Prohibited. Persons under twenty-one (21) years of age are prohibited from entering or being in any movie theater licensed to sell alcoholic beverages during the time alcohol is available for sale or consumption in the movie theater. Age restriction signs must be posted as outlined in Subsection 021.02 of these rules at all times alcoholic beverages are sold, served or consumed in the movie theater. ()

02. Minors Permitted. Any person under twenty-one (21) years of age is permitted in a movie theater licensed to sell alcoholic beverages and no age restriction posting is required at any time when all alcohol is secured, locked up and not available for sale or consumption. (4-7-11)

03. Exemption. Nothing in this rule applies to any movie theater that qualifies under Section 23-944(7), Idaho Code. (4-7-11)

023. -- 999. (RESERVED)

11.10.02 – RULES GOVERNING STATE CRIMINAL HISTORY RECORDS AND CRIME INFORMATION

000. LEGAL AUTHORITY.

These rules are authorized by Sections 67-3001, 67-3003, 67-3004, 67-3007, and 67-3010, Idaho Code. (3-20-14)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 11.10.02, “Rules Governing State Criminal History Records and Crime Information.” (3-20-14)

02. Scope. The rules relate to the governance and operation of criminal history records and crime information. (3-30-01)

002. -- 009. (RESERVED)

010. DEFINITIONS.

Except as otherwise specifically provided, the terms defined or abbreviated in Section 67-3001, Idaho Code, have the same meaning in these rules. Any other terms not defined in Section 67-3001 are given their ordinary and commonly understood meaning. ()

01. Acquittal. The legal certification by a jury or judge that a person is not guilty of the crime charged. (3-20-14)

02. Criminal Summons. Includes any summons, information or indictment issued in a criminal proceeding or action. (3-20-14)

03. Dismissal. Termination of a criminal action without further hearing or trial in the interest of justice. ()

04. Expunge. To erase or destroy, to declare null and void outside the record, so that it is noted in the original record as expunged, and redacted from all future copies. (3-20-14)

05. Serious Misdemeanor. A crime, that if convicted, could be punishable by imprisonment in a county jail. (3-20-14)

011. -- 020. (RESERVED)

021. EXPUNGEMENT PROCEDURE.

A person seeking to expunge their criminal history record must: ()

01. Application. Submit the proper completed application to the Bureau of Criminal Identification as provided by the Bureau. ()

02. Required Information. Include a copy of one (1) of the following to the Bureau of Criminal Identification: ()

a. Criminal citation; or (3-20-14)

b. Criminal Summons, Complaint, and Affidavit of Service by the county sheriff’s office; or (3-20-14)

c. Indictment; or (3-20-14)

d. Information. (3-20-14)

03. Certified Copy of Order of Acquittal or Order of Dismissal. ()

a. Include a certified copy of the court’s order of acquittal finding the applicant was not guilty of the crime charged; or ()

b. A certified copy of the dismissal order, showing that all charges related to that arrest were dismissed. ()

022. TRANSMITTAL OF CRIMINAL HISTORY RECORDS.

The transmittal of criminal history arrest fingerprint(s) may be via electronic submission from a live-scan or card scanner over a secured and approved network or by hard copy through regular mail. (3-20-14)

023. PROCEDURE FOR CONTESTING THE ACCURACY AND COMPLETENESS OF A CRIMINAL HISTORY RECORD CONTAINED IN AGENCY FILE.

01. Challenge Accuracy of Records. A person may challenge the accuracy and correctness of their criminal history records contained in the Bureau's database. (3-20-14)

a. The applicant must submit to fingerprinting through either the Bureau of Criminal Identification or other law enforcement agency. A fingerprinting fee may apply. (3-20-14)

02. Notification of Fingerprints Not Matched. If the applicant's fingerprints do not match those contained in the Bureau's database, the applicant will be notified by certified mail. (3-20-14)

03. Documentation of Erroneous Information. If the applicant's fingerprints match, but the applicant has documentation showing the information is in error, the applicant may submit such information to the Bureau of Criminal Identification. (3-20-14)

04. Correction of Records. The Bureau of Criminal Identification will correct its records per the direction of the law enforcement agency where the initial criminal action arose or appropriate court order. (3-20-14)

024. -- 030. (RESERVED)

031. FEES FOR SERVICES.

The Bureau shall charge fees as follows: ()

01. Fingerprint Check. Not more than twenty-five dollars (\$25) for each fingerprint check requested for other than law enforcement purposes. ()

02. Name Check. Not more than twenty dollars (\$20) for each name check requested for other than law enforcement purposes. ()

03. Rolling Fingerprint. Not more than ten dollars (\$10) for rolling a set of fingerprints and no more than five dollars (\$5) for each additional copy of such rolled fingerprints. ()

032. -- 999. (RESERVED)

**IDAPA 11 – IDAHO STATE POLICE
IDAHO PUBLIC SAFETY AND SECURITY INFORMATION SYSTEM**

DOCKET NO. 11-1001-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 19-5201 - 5204, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 11, rules of the Idaho State Police, Idaho Public Safety and Security Information System, known as “ILETS”:

IDAPA 11

- 11.10.01, *Rules Governing Idaho Public Safety and Security Information System*

The adoption of these rules is necessary to allow the Idaho State Police to carry out the statutory duties of providing public safety services to law enforcement, prosecuting attorneys, the judicial system, and everyone who travels through or resides in the State of Idaho. The changes to these rules were clean up in nature, which in some instances consolidated and/or eliminated definitions; combined, re-ordered and re-numbered similar sections; and removed office hours and other information included on the coversheet. All the changes maintain the intent, scope, and purpose intended and previously approved.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 1513-1525](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. All law enforcement agencies with a signed user agreement and a direct terminal connection or system access to the ILETS network pay access and usage fees based on that agency’s percentage of total annual messages sent and received by the agency through the ILETS message switcher. The total percentage for an agency includes the message traffic generated by any other agency authorized to access ILETS through that agency’s direct terminal or system access. This fee or charge is being imposed pursuant to Section 19-5202, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Bureau Chief Leila McNeill, phone (208) 884-7136, Fax (208) 884-7193, email Leila.mcneill@isp.idaho.gov.

Dated this 3rd day of October, 2019.

Charlie Spencer, Police Services Major / Rules Review Officer
Phone (208) 884-7203 / Fax: (208) 884-7290
Charlie.spencer@isp.idaho.gov

Idaho State Police
700 S. Stratford Drive
Meridian, ID 83642

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

EFFECTIVE DATE: The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 19-5201 – 5204, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 11, rules of the Idaho State Police, Idaho Public Safety and Security Information System, known as “ILETS”:

IDAPA 11

- 11.10.01, *Rules Governing Idaho Public Safety and Security Information System*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. ILETS is a dedicated data communication network that links local, state, federal and foreign criminal justice agencies to state records and files, and to the National Crime Information Center (NCIC), which includes criminal history data and files on wanted or missing persons, orders of protection, property and other files critical to criminal justice and public protection. Through ILETS, information and identification services are provided that assist law enforcement agencies to detect and apprehend criminals, promoting public and officer safety, and supporting the criminal justice system in the prosecution, adjudication, and correctional supervision of offenders. IDAPA rules, supporting the operation and connection of ILETS to other state and national criminal history data, provide a vital connection that is not available in any other agency, form, or process.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state’s obligations and

provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. Funds generated by user access/usage fees cover costs associated with creating and maintaining the ILETS system, including data circuits and routers, message switch hardware and software, staff support and all other necessary components to the overall system. Section 19-5202(4), Idaho Code, mandates access fees based upon usage by participating agencies/users. Failure to fund the ILETS system through IDAPA required fees would put the entire Idaho Law Enforcement data sharing system in danger of collapse, potentially causing extreme public and officer safety issues. Other states, federal and foreign data sharing systems and Law Enforcement personnel would also be negatively affected if the Idaho ILETS system is non-operational.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. All law enforcement agencies with a signed user agreement and a direct terminal connection or system access to the ILETS network pay access and usage fees based on that agency's percentage of total annual messages sent and received by the agency through the ILETS message switcher. The total percentage for an agency includes the message traffic generated by any other agency authorized to access ILETS through that agency's direct terminal or system access.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Bureau Chief Leila McNeill, phone (208) 884-7136, Fax (208) 884-7193, e-mail Leila.mcneill@isp.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 10th day of May, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 11-1001-1900F

11.10.01 – RULES GOVERNING IDAHO PUBLIC SAFETY AND SECURITY INFORMATION SYSTEM

000. LEGAL AUTHORITY.

Title 19, Chapter 52, Idaho Code, creates an information system board and authorizes it to make rules necessary to establish and operate the Idaho Public Safety and Security Information System, known as “ILETS.” (3-19-07)

001. TITLE AND SCOPE.

01. Title. These rules are cited as IDAPA 11.10.01, “Rules Governing Idaho Public Safety and Security Information System.” (3-19-07)

02. Scope. These rules relate to the governance and operation of the Idaho Public Safety and Security Information System. (3-19-07)

002. INCORPORATION BY REFERENCE.

01. Incorporated Documents. IDAPA 11.10.01 incorporates by reference the full text of the requirements relating to criminal justice information and the system used to transport such information found in the following documents: (3-20-04)

a. “Criminal Justice Information Systems,” 28 CFR Part 20 (July 1, 2006); (3-19-07)

b. “Criminal Justice Information Systems--CJIS Security Policy,” Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, Version 5.8 (June 2019); ()

c. “National Crime Information Center 2000, Operating Manual,” Federal Bureau of Investigation, National Crime Information Center (August 2015); ()

d. The International and Public Safety Network, NLETS, Users Guide, (October 19, 2012); ()

e. The International and Public Safety Network, NLETS, Policies and Procedures, (October 19, 2012). ()

02. Document Availability. The above listed documents are available during normal working hours for inspection and copying at the Idaho State Police. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Access Agency. An agency that electronically accesses ILETS through the services of an interface agency. (3-20-04)

02. Administration of Criminal Justice. (3-30-01)

a. Performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. ()

b. It also includes: criminal identification activities; and collection, storage, and dissemination of criminal history record information. ()

03. Associated System. Any automated or manual information system that is accessible through ILETS. (3-30-01)

04. Board. The Board created by Title 19, Chapter 52, Idaho Code to establish priorities and operational policies and procedures relating to ILETS. (3-20-04)

05. Criminal Justice Agency. (3-30-01)

a. Federal and state courts having jurisdiction to hear criminal matters; and (3-30-01)

b. A government agency or a subunit of a government agency that performs the administration of criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of justice. (3-20-04)

06. Department. The Idaho State Police, or its successor agency. (3-20-04)

07. Executive Officer. A position on the ILETS Board filled by the director of the Idaho State Police, or its successor agency. (3-20-04)

08. III. The Interstate Identification Index, which is a cooperative federal-state system for the exchange of automated criminal history records and, to the extent of their participation in the III system, the criminal history repositories of the states. (3-30-01)

09. ILETS. The Idaho Public Safety and Security Information System as established by the director of Idaho State Police pursuant to Title 19, Chapter 52, Idaho Code, includes all hardware, software, electronic switches, peripheral gear, microwave links, and circuitry that comprise the system. (3-19-07)

10. Interface Agency. An agency that has management control of a computer system directly connected to ILETS. (3-20-04)

11. Management Control Agreement. A written agreement between a criminal justice agency and a non-criminal justice agency that provides services (dispatching, record keeping, computer services, etc.) to the criminal justice agency. The agreement gives the criminal justice agency authority to set and enforce policies governing the non-criminal justice agency's access to ILETS. (3-20-04)

12. NCIC 2000. The Federal Bureau of Investigation National Crime Information Center, is a computerized information system that includes telecommunications lines and message facilities authorized by law, regulation, or policy approved by the United States Attorney General to link local, state, tribal, federal, foreign, and international criminal justice agencies for the purpose of exchanging NCIC related information. ()

13. NLETS. The International Justice and Public Safety Information Sharing Network, is a national computerized message switching system that links national and state criminal justice information systems. (3-19-07)

14. Non-Criminal Justice Agency. A state agency, federal agency, or unit of local government that is not a criminal justice agency. The term does not refer to private individuals, corporations, or non-governmental agencies or organizations. (3-30-01)

011. (RESERVED)

012. EXECUTIVE OFFICER OF THE BOARD.

01. Authority of Office. The executive officer represents the Board in the day-to-day administration of ILETS and is responsible for ensuring that all policies and decisions of the Board are promulgated pursuant to the authority of Chapter 52, Title 19, Idaho Code. The executive officer may delegate duties to employees and officers of the department and executes instruments for, and on behalf of, the Board and ILETS. (3-20-04)

02. Additional Responsibilities. In addition to the responsibilities assigned to the office by statute, the executive officer is responsible for ensuring, subject to adequate legislative appropriations, that the Board receives adequate staff support and that the following staff duties are performed: (3-30-01)

a. Preparation and dissemination of agendas, posting of legal notices of all meetings, and maintenance of a written record of the proceedings of board meetings; and (3-30-01)

b. Management and safekeeping of all documents relating to the Board and ILETS operations. (3-30-01)

03. Governing Policies and Rules. The executive officer and any department employees and officials

assigned by the executive officer to support ILETS operations will be governed by policies and rules of the State of Idaho and the department concerning, but not limited to, fiscal, purchasing, and personnel matters. (3-30-01)

013. ILETS BOARD: MEETINGS AND QUORUM.

01. Schedule of Meetings. The Board holds regular meetings twice annually and may hold special meetings at other times as the executive officer deems necessary or upon the written request of a majority of the Board. ()

02. Quorum. When meeting, four (4) members of the Board constitutes a quorum necessary for transacting business. (3-20-04)

03. Representation at Meetings. A board member may appoint a proxy to attend a meeting and exercise the voting privilege of that member. (4-7-11)

a. An Idaho State Police proxy must be at least a major in rank; (4-7-11)

b. A police chief proxy must be an Idaho police chief; (4-7-11)

c. A sheriff proxy must be an Idaho sheriff; and (4-7-11)

d. Proxy designations must be made in writing to the Executive Officer prior to the meeting. (4-7-11)

014. ILETS BOARD: POWERS AND DUTIES, CHAIRMAN, AND AD HOC ADVISORY COMMITTEES.

01. Powers and Duties. Pursuant to its authority under Title 19, Chapter 52, Idaho Code, the Board establishes policies relating to management and operation of ILETS. The Board enforces compliance with all laws and regulations governing ILETS operations. (3-20-04)

02. Election of Chairman. At the first regular meeting of a calendar year, the Board elects a chairman from its membership by majority vote. The chairman serves a term of one (1) year and may succeed himself. (3-20-04)

03. Presiding Officer. The chairman presides at all meetings and conduct the meetings pursuant to “Roberts’ Rules of Order, Current Revised Edition.” If the chairman is absent from a meeting, the executive officer presides at that meeting. (3-20-04)

04. Advisory Committees. With the approval of the Board, the chairman may appoint ad hoc advisory committees to assist the Board in the execution of its statutory duties. ()

015. (RESERVED)

016. ILETS NETWORK.

01. Establishment. The executive officer establishes ILETS as a program of the Idaho State Police or its successor agency. (3-20-04)

02. Responsibilities. The program, as established by the executive officer, has the following responsibilities: (3-20-04)

a. Develop and operate a computerized criminal justice telecommunications and information system that provides message switching and record inquiry and retrieval capabilities. (3-30-01)

b. Publish an ILETS Operations Manual and distribute copies to each user agency. (3-30-01)

c. Function as the NCIC control terminal agency and the NLETS control terminal agency for the State

of Idaho. (3-30-01)

d. Assist and train criminal justice agencies regarding information retrieved from ILETS and associated systems for use in administration of criminal justice. (3-30-01)

e. Develop and maintain linkages with the Idaho Transportation Department, Idaho Department of Correction, other agencies and systems to make appropriate information available to Idaho criminal justice agencies that will assist them in the enforcement of state criminal and traffic laws and regulations. (3-30-01)

f. Provide staff support to the ILETS Board. (3-30-01)

g. Operate a program of record validation, quality control, and audits to ensure that records entered into ILETS and NCIC files by the department and user agencies are kept accurate and complete and that compliance with state and national standards is maintained. (3-30-01)

h. Create model management control agreements between criminal justice agencies and non-criminal justice agencies. (3-30-01)

i. Provide assistance and information access to non-criminal justice user agencies for statutory licensing, employment and regulatory purposes and for other purposes authorized by law and approved by the Board. (3-30-01)

017. AGENCY ACCESS TO ILETS.

01. Authorized Agencies. Consistent with Title 19, Chapter 52, Idaho Code, which mandates the exclusive use of ILETS for law enforcement and traffic safety purposes, access to ILETS shall be restricted to the following governmental agencies: (3-30-01)

a. Criminal justice agencies; (3-30-01)

b. Non-criminal agencies that provide computer services, dispatching support, or other direct support service to one (1) or more criminal justice agencies, and which have signed an ILETS-approved management control agreement with the criminal justice agency; (3-30-01)

c. Non-criminal justice agencies with a statutory requirement to use information capabilities that may be available via ILETS, and use of terminal access will not adversely affect criminal justice agency users, and use of the terminal will be for the administration of criminal justice; and (3-30-01)

d. Non-criminal justice agencies that provide information or capabilities needed by criminal justice agencies for a criminal justice purpose, and access or use of a terminal will improve the ability to provide such information or capabilities. (3-30-01)

02. Management Control Agreements. The management control agreement between a criminal justice agency and a non-criminal justice agency grants to the criminal justice agency the authority to set and enforce: (3-20-04)

a. Priorities of service; (3-30-01)

b. Standards for the selection, supervision, and termination of personnel authorized to access ILETS; (3-30-01)
and

c. Policies governing the operation of computers, circuits, and telecommunications terminals used to process, store, or transmit information to or receive information from ILETS. (3-30-01)

03. Board Approval. The Board reviews all requests for access to ILETS and determines whether an agency meets the criteria for access and whether access is appropriate based on system resources. Approved non-criminal justice agencies may have access to ILETS information on a limited basis (for example, motor vehicle

information only) as authorized by the Board. (3-19-07)

018. USER ACCESS FEES.

01. Payment of Fees Required. Any agency that has signed a user agreement with ILETS to have direct terminal or system access to the network must pay access and usage fees as provided in Section 018. (3-13-02)

02. ILETS Network User Access Fees. The access fees approved by the Board and to be collected quarterly in advance by the department are as follows: (3-13-02)

a. An agency at the county or municipal level pays an annual access fee of five thousand dollars (\$5,000). (3-20-14)

b. An agency at the state, federal, or tribal level pays an annual access fee of eight thousand, seven hundred fifty dollars (\$8,750). (3-20-14)

03. Usage Fee. Any agency that has signed a user agreement with ILETS to have direct terminal or system access to the ILETS network pays quarterly a usage fee based on that agency's percentage of total annual messages sent and received by user agencies through the ILETS message switcher. The total percentage for an agency includes the message traffic generated by any other agency authorized to access ILETS through that agency's direct terminal or system access. (3-20-04)

a. The usage fee is assessed according to the following schedule:

Percentage of Total ILETS Message Traffic	Annual Usage Fee Effective October 1, 2014
0 - .25 %	\$1,875
.26 - .50 %	\$3,750
.51 - .75 %	\$7,500
.76 - 1.0 %	\$15,000
1.01 - 1.50 %	\$22,500
1.51 – 2.0 %	\$33,750
2.01 – 5.0 %	\$50,625
> 5.01 %	\$75,939

()

b. The department will conduct audits of ILETS message switcher traffic for even-numbered years to determine an agency's annual usage fee. This fee is effective for two (2) years and begins with the quarterly statement beginning October 1 of odd-numbered years. (3-20-04)

c. If an agency discontinues direct terminal or system access to ILETS and acquires authorized access through another agency, the usage fee for the agency maintaining direct access will be adjusted to reflect the combined historical usage. (3-20-04)

d. A new agency approved for direct ILETS access that does not have historical usage will be assessed an interim usage fee by the department pending the next audit of ILETS message traffic. The department sets an interim fee based on the agency's similarities to existing agencies with direct terminal or system access. An agency may appeal the interim usage fee set by the department to the ILETS Board. (3-20-04)

e. As operator of ILETS, the department, in lieu of payment of fees, provides direct and in-kind support of network operations. The Board reviews biennially the proportion of that support to the overall operating

cost of the system. (3-20-04)

04. Billing and Payment. The department mails billing statements quarterly to all agencies with direct terminal or system access to ILETS. Payment of the fees is due by the first day of the month of each quarter (October 1, January 1, April 1, and July 1), unless it is a Saturday, a Sunday, or a legal holiday, in which event the payment is due on the first successive business day. (3-20-04)

05. Sanctions for Delinquency. Any user agency that becomes delinquent in payment of assessed fees is subject to sanctions under Section 028. (3-20-04)

019. ADJUSTED ACCESS FEES DURING PILOT PROJECTS.

The Board may adjust access fees of user agencies participating in pilot projects being conducted by the department in behalf of ILETS. The fee adjustment is based on any cost savings, actual or anticipated, realized by the ILETS network. (3-20-04)

020. USER RESPONSIBILITIES.

01. User Agreement. Any agency with access to ILETS, whether directly or through another agency, is responsible for adhering to all applicable ILETS rules and policies and must have signed an agreement with ILETS or an interface agency to that effect. (3-20-04)

02. Record Validation. Any agency that enters information into ILETS or NCIC files is responsible for the accuracy, timeliness and completeness of that information. ILETS will send a record validation review list, regularly, to each agency. Validation is accomplished by reviewing the original entry and current supporting documents. Recent consultation with any appropriate complainant, victim, prosecutor, court, motor vehicle registry files, or other appropriate source or individual also is required with respect to the wanted person, missing person, and vehicle files. In the event the agency is unsuccessful in its attempts to contact the victim, complainant, etc., the entering authority must make a determination based on the best information and knowledge available whether or not to retain the original entry in the file. Validation procedures must be formalized and copies of these procedures be on file for review during an ILETS or NCIC audit. When the agency has completed the validation process, the records must be modified to verify their validity no later than thirty (30) days after receiving electronic notification. (3-20-04)

03. Minimum Training. Each agency employee who operates a computer to access ILETS must complete ILETS training at a level consistent with the employee's duties. Each employee who operates a computer to access ILETS must be re-certified by the agency every two (2) years. (3-20-04)

04. Hit Confirmation. When another agency receives a positive record response (Hit) from ILETS or NCIC and requests confirmation of the status of the record (warrant, stolen vehicle, etc.), the agency responsible for entry of the record must respond within ten (10) minutes for urgent hit confirmation requests or within one (1) hour for routine hit confirmation requests, with an answer that indicates the status of the record or a time frame when the record status will be confirmed. (3-20-04)

05. Terminal Agency Coordinators. The agency administrator of each agency with computer access to ILETS must designate one (1) or more terminal agency coordinators who will be the primary contact(s) for all matters relating to use of ILETS by the agency. A terminal agency coordinator must have sufficient authority to implement and enforce necessary policy and procedures. (3-20-04)

06. Background Checks of Terminal Operators Required. Policies for access to the FBI-NCIC system require background screening of all terminal operators with access to the NCIC system. For efficiency and consistency, the NCIC background screening policies are also adopted for all ILETS access. (3-20-04)

021. INFORMATION ACCESS AND DISSEMINATION.

01. General Policy. Information is made available to ILETS users from various sources and agencies, including ILETS and other state justice information system files, motor vehicle departments, NCIC, and NLETS. Each user must observe any restrictions placed on the use or dissemination of information by its source. It is ILETS'

responsibility to advise user agencies of any restrictions which apply to any information accessed via ILETS. (3-30-01)

02. Criminal History Records. Criminal history information accessed via ILETS from a state or national computerized file is available only to criminal justice agencies for criminal justice purposes. This precludes the dissemination of such information for use in connection with licensing applications, regulatory activities, or local or state employment, other than with a criminal justice agency. (3-20-04)

03. Administrative Messages. An administrative message (AM) is a free text message from one (1) agency to one (1) or more agencies. All administrative messages transmitted via ILETS must be by the authority of an authorized user and relate to criminal justice purposes or matters of interest to the user community. Administrative messages sent within Idaho, either statewide, regionally or to individual terminal identifiers are subject to the following restrictions: (3-30-01)

a. No messages supportive or in opposition to political issues, labor management issues, or announcements of meetings relative to such issues. (3-30-01)

b. No messages supportive or in opposition of legislative bills. (3-30-01)

c. No requests for criminal history record information. (3-30-01)

022. -- 023. (RESERVED)

024. ILETS SECURITY.

01. General Policy. The data stored in the ILETS, NCIC, and other criminal justice information system files is documented criminal justice information. This information must be protected to ensure its integrity and its correct, legal and efficient storage, dissemination and use. It is incumbent upon an agency accessing ILETS directly, or another system that has access to the ILETS network, to implement the procedures necessary to make the access device secure from any unauthorized use and to ensure ILETS is not subject to a malicious disruption of service. ILETS access agencies must participate in ILETS training and compliance activities to ensure that all agency personnel authorized to access the ILETS network are instructed in the proper use and dissemination of the information and that appropriate agency personnel are aware of security requirements and of the dangers to network integrity. ILETS retains the authority to disconnect an access agency or network connection when serious security threats and vulnerabilities are detected. (3-20-04)

02. Definitions. The following is a list of terms and their meanings as used in the ILETS security rule: (3-30-01)

a. Computer interface capabilities means any communication to ILETS allowing an agency to participate in the system. (3-20-04)

b. Firewall means a collection of components placed between two (2) networks that keep the host network secure by having the following properties: (3-30-01)

i. All traffic from inside the network to outside, and vice-versa, must pass through it; (3-30-01)

ii. Only authorized traffic is allowed to pass; and (3-30-01)

iii. The components as a whole are immune to unauthorized penetration and disablement. (3-20-04)

c. ILETS Security Officer (ISO) is the department staff member designated by the executive officer to monitor and enforce agency compliance with site and network security requirements. (3-20-04)

d. Peer networks are computer interfaces between cooperative governmental agencies in Idaho where none of the participating entities exercise administrative or management control over any other participating entity. (3-20-04)

e. Interface agency is an agency that has management control of a computer system directly connected to ILETS. (3-20-04)

f. Untrusted system is a system that does not employ sufficient hardware or software security measures to allow its use for simultaneously processing a range of sensitive or confidential information. (3-20-04)

03. Interface Agency Agreements. To ensure agencies having computer interface capabilities to ILETS are fully aware of their duties and of the consequences of failure to carry out those duties, a written and binding Interface Agency Addendum must exist between ILETS and all interface agencies. This agreement will clarify that the interface agency is equally responsible for actions by secondary and affiliated systems connected through their site to ILETS. Interface agencies must put in place similar subsidiary security agreements with secondary and affiliated systems to protect its network and ILETS. (3-20-04)

04. ILETS Security Officer. The ILETS Security Officer is responsible for the following duties: (3-20-04)

a. Disseminating to user agencies copies of ILETS security policies and guidelines; (3-30-01)

b. Communicating to user agencies information regarding current perceived security threats and providing recommended measures to address the threats; (3-30-01)

c. Monitoring use of the ILETS network either in response to information about a specific threat, or generally because of a perceived situation; (3-30-01)

d. Directing an interface agency, through its nominated contact, to rectify any omission in its duty of responsibility; (3-20-04)

e. When an agency is unable or unwilling to co-operate, reporting the issue to the executive officer and initiating the procedure for achieving an emergency disconnection; and (3-30-01)

f. Provide support and coordination for investigations into breaches of security. (3-30-01)

05. Agency Security Contacts. A terminal agency coordinator shall serve as that agency's security contact for ILETS, unless another individual is specifically selected for this purpose and approved by the ILETS Security Officer. ILETS primary sites shall ensure the agency's security contact, or another person or position designated in an incident contingency plan, can be contacted by the ILETS security officer at any time. (3-30-01)

06. Peer Networks. The security responsibilities of the operators of peer networks connected to ILETS, with respect to their user organizations, are parallel to those of ILETS user organizations in respect to their individual users. The ILETS Security Officer shall ensure that a written agreement exists between ILETS and an interface agency, signed by the agency heads, that embodies these principles. (3-20-04)

07. Physical Security Standards. Interface agencies will observe standards and procedures to ensure security of the physical premises and computing equipment. The minimum standards and procedures include the following: (3-20-04)

a. Access to computer rooms will be limited to staff who require access for the normal performance of their duties. (3-30-01)

b. Electrical power protection devices to suppress surges, reduce static, and provide battery backup in the event of a power failure will be used as necessary. (3-30-01)

c. Computer system backups shall be stored in a secure location with restricted access. (3-30-01)

d. Network infrastructure components will be controlled with access limited to support personnel with a demonstrated need for access. (3-20-04)

e. Physical labeling of infrastructure components will be done to assist in proper identification. Additionally, all components will be inventoried at regular intervals for asset management and physical protection. (3-30-01)

f. An interface agency must create and enforce a password policy in which the agency is responsible for assigning ILETS users a unique password. The password policy must require that a new password be initiated by the user or agency every ninety (90) days. (3-20-04)

08. Network Security Standards. User agencies must exercise appropriate security precautions when connecting ILETS and computer systems linked to ILETS with external untrusted systems. The primary objective of such precautions is to prevent unauthorized access to sensitive information while still allowing authorized users free access. The minimum standards and procedures include the following: (3-20-04)

a. Agencies must routinely audit for and remove unused or unneeded services/accounts, review accounts periodically, and enforce aggressive and effective password strategies. (3-20-04)

b. Agencies must ensure that the software security features of the networks they manage are installed and functioning correctly. (3-20-04)

c. Agencies must monitor network security on a regular basis. Adequate information concerning network traffic and activity must be logged to ensure that breaches in network security can be detected. (3-20-04)

d. Agencies must implement and maintain procedures to provide the ILETS network adequate protection from intrusion by external and unauthorized sources. (3-20-04)

e. No computer connected to the network can have stored, on its disk(s) or in memory, information that would permit access to other parts of the network. For example, scripts used in accessing a remote host may not contain passwords. (3-30-01)

f. No connection to ILETS may be established utilizing dial-up communications. Asynchronous communications connections should be limited and tightly controlled as they pose a serious risk because they can circumvent any security precaution enacted to protect networks from untrusted sources. (3-30-01)

g. Network management protocols must be limited to internal or trusted networks. (3-20-04)

h. Any system having direct or indirect access to the Internet via their computer network must have in place services that allow no access to ILETS from the Internet. Organizations with large distributed Wide Area Networks connecting many remote sites may choose to incorporate many security layers and a variety of strategies. These strategies must incorporate the implementation of a firewall to block network traffic, and restriction of remote user access. (3-20-04)

i. Agencies accessing ILETS directly or through another agency, must insure that all telecommunications infrastructure meets the FBI CJIS Security Policy for encryption standards. (3-20-04)

j. No routing or IP Network Translations are to be performed on individual access devices. All routing and translation must be performed on a router or firewall device. (3-20-04)

025. -- 027. (RESERVED)

028. USER AGENCY SANCTIONS.

01. Review of Violations. The board reviews violations of ILETS rules and may impose appropriate sanctions on access agencies. (3-20-04)

02. Objective of Sanctions. The objectives of the sanction procedure are as follows: (3-20-04)

a. To ensure the security, integrity, and financial stability of the ILETS. (3-30-01)

b. To create an awareness among access agencies of the importance of following rules, regulations, and procedures in order to minimize the risk to liabilities that may be incurred by misuse of the system and access to its information. (3-20-04)

03. Class of Sanctions. Sanctions are based upon the class of violation, any previous violations, and any exposure to criminal and civil liabilities that the violation might place on the system, its officials, and the offending agency. Violations are classed as either administrative (minor) or security (serious) violations. Security violations are defined as ones which have or could result in access of ILETS data by unauthorized individuals. All other violations are classed as administrative. (3-20-04)

04. Form of Sanctions. When imposing sanctions, the Board considers the severity of the violation, the violation type, either administrative or security, and previous sanctions issued. The Board may require the violating agency to submit a mediation plan showing how the violation will be corrected and future violations prevented. The Board shall consider such a mediation plan, if submitted, when imposing sanctions. The Board may impose as sanctions one (1) or more of the following: (3-19-07)

- a. Written warning. (3-30-01)
- b. Written notice of violation. (3-30-01)
- c. Written notice of probation. (3-30-01)
- d. Written notice of temporary suspension. (3-30-01)
- e. Written notice of permanent suspension. (3-30-01)

05. Effective Date of Sanctions. Temporary or permanent suspension of service will not begin, unless an emergency exists, until fifteen (15) days after the agency head has received written notice by certified mail or personal service. (3-30-01)

06. Reinstatement. An agency placed on permanent suspension may apply to the Board for reinstatement. (3-30-01)

029. -- 999. (RESERVED)

**IDAPA 11 – IDAHO STATE POLICE
PEACE OFFICER STANDARDS AND TRAINING COUNCIL**

DOCKET NO. 11-1101-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 19-5107, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 11, rules of the Idaho State Police, Peace Officer Standards and Training Council:

IDAPA 11

- 11.11.01, *Rules of the Idaho Peace Officer Standards and Training Council*

Peace Officer Standards and Training (POST) is tasked with establishing the requirements for basic training and certification, providing academy and in-service training, issuing certifications, and maintaining permanent files and transcripts for all law enforcement officers in the State of Idaho. POST is also responsible for conducting decertification investigations of officers who violate standards of conduct as established by the POST Council's code of ethics. This rule must be adopted to allow POST to carry out the statutory duties of providing training and certification to the law enforcement officers who provide public safety services to the citizens of the State of Idaho. The changes to these rules were clean up in nature, which in some instances consolidated and/or eliminated definitions; combined, re-ordered and re-numbered similar sections; and removed office hours and other information included on the coversheet. All the changes maintain the intent, scope, and purpose intended and previously approved.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 1526-1563](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

- 11.11.01.134 – Course evaluation fee
- 11.11.01.135.03 – Course evaluation fee

This fee or charge is being imposed pursuant to Section 19-5112 and 19-5118, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact POST Division Administrator, Brad Johnson, phone (208) 884-7251, Fax (208) 884-7295, email brad.johnson@POST.idaho.gov.

Dated this 15th day of October, 2019.

Charlie Spencer
Police Services Major
Rules Review Officer
Idaho State Police
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**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 19-5107, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 11, rules of the Idaho State Police, Peace Officer Standards and Training Council:

IDAPA 11

- 11.11.01, *Rules of the Idaho Peace Officer Standards and Training Council* (Modifying and reestablishing 11.11.01 to include previous rules defined in 11.11.01 through 11.11.06)

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. Peace Officer Standards and Training (POST) is tasked with establishing the requirements for basic training and certification, providing academy and in-service training, issuing certifications, and maintaining permanent files and transcripts for all law enforcement officers in the State of Idaho. POST is also responsible for conducting decertification investigations of officers who violate standards of conduct as established by the POST Council's code of ethics. Failure to reauthorize these rules, would eliminate the ability of POST to carry out the statutory duties of providing training and certification to the law enforcement officers who provide public safety services to the citizens of the State of Idaho.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. POST is almost entirely operated on dedicated funds. While the majority of those funds come from court fines and fees as provided by Sections 31-3201A, 31-3201B, and 31-3201D, Idaho Code, a portion of POST's dedicated fund revenues are provided by fees charged for services, as authorized in Section 19-5118, Idaho Code. Failure to reauthorize these rules would jeopardize POST's funding and negatively impact POST's ability to provide necessary services. Law enforcement agencies and officers statewide would be affected by any reductions to POST's ability to provide, facilitate, and assist with training.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

11.11.01.134—Course evaluation fee
11.11.01.135.03—Course evaluation fee

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact POST Division Administrator, Brad Johnson, phone (208) 884-7251, Fax (208) 884-7295, e-mail brad.johnson@POST.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 10th day of May, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 11-1101-1900F

11.11.01 – RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

000. LEGAL AUTHORITY.

Pursuant to Section 19-5107, Idaho Code, the Peace Officer Standards and Training Council has authority, in accordance with Title 67, Chapter 52, Idaho Code, to promulgate rules it deems necessary to carry out the provisions of Title 19, Chapter 51, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 11.11.01, “Rules of the Idaho Peace Officer Standards and Training Council,” IDAPA 11, Title 11, Chapter 01. ()

02. Scope. These rules constitute the minimum standards of training, education, employment, and certification for any discipline certified by the POST Council. ()

002. APPLICATIONS AND FORMS.

All persons seeking certification or endorsement by POST under these rules must complete all relevant POST approved forms, which shall be signed by the applicant’s agency head or designee (on file at POST) prior to submission to POST. ()

003. DOCUMENTATION – COPIES.

01. Citizenship, Education, Military and Criminal Records. All documentation of citizenship, educational records and transcripts, military service, and criminal records required by these rules shall be submitted to POST in the form of a copy of a certified original document. ()

02. Training and Other Records. Training records and other records required or allowed to be submitted to POST by these rules shall be submitted in the form of an original or certified copy. Where neither an original or certified copy is available, records shall be legible and not mutilated, altered or damaged. ()

03. Notice of Employment/Termination. The names of all officers hired must be submitted to the Council within fifteen (15) days of employment. The termination of an officer’s employment must also be relayed to the Council within fifteen (15) days of such action on an appropriate form designated by the Council. ()

004. – 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions under 19-5101, Idaho Code, the following terms apply: ()

01. Act. Title 19, Chapter 51, of the Idaho Code. ()

02. Adult Felony Probation and Parole Officer. An employee of the Idaho Department of Correction who is responsible for supervision of adult offenders on felony probation or parole. ()

03. Adult Misdemeanor Probation Officer. An employee of a county misdemeanor probation department or contractor of a county who is responsible for preparing reports to the court, making recommendations regarding conditions of probation, and the supervision of misdemeanor offenders’ compliance with court orders. ()

04. Agency. A law enforcement agency which is a part of or administered by the state of Idaho or any political subdivision thereof and which is responsible for the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; a juvenile detention center; a juvenile probation department; an adult misdemeanor probation department, a Public-Safety Answering Point (PSAP); the Idaho Department of Juvenile Corrections; the Idaho Department of Correction; or a private prison contractor of the State Board of Correction that is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the a private correctional facility. ()

05. Agency Head. A chief of police of a city, sheriff of a county or chief administrator of a law enforcement agency, as defined herein. ()

06. Applicant. A person applying to participate in a POST training program or applying for POST certification. ()

07. **Basic Training Academy.** A basic course of Council approved instruction in a discipline certified by POST. ()
08. **Canine Team.** A specific person and a specific dog controlled by that person as its handler, formally assigned to perform law enforcement duties together. ()
09. **Canine Team Evaluator.** An officer trained and certified by POST to evaluate the competence of canine teams. ()
10. **Challenge Examination.** A test to aid POST in determining whether an officer has sufficient competence that a waiver of completion of a basic training academy for that officer is warranted. ()
11. **College Credit.** A unit of work toward an academic or vocational degree awarded by a college or university accredited by one of the accrediting agencies listed in Subsection 11.11.01.053.01.d. or other POST accepted U.S. regional accrediting agency. ()
12. **Conviction.** Any conviction in any federal, tribal, state, county, or municipal court; a voluntary forfeiture of bail, bond, or collateral deposited to secure a defendant's appearance in court as final disposition; the payment of a fine or civil penalty; a plea of guilty or nolo contendere; or a finding of guilt, notwithstanding the form of judgment or withheld judgment, regardless of whether the sentence is imposed, suspended, deferred, or withheld, or whether the plea or conviction is set aside or withdrawn, or the case or charge is dismissed or reduced, or the record expunged under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the setting aside of the plea or conviction, or dismissal or reduction of the case or charge, or expungement of the record is based upon lenity or rehabilitation rather than upon a defect in the legality or factual basis of the plea, finding of guilt, or conviction. "Conviction" does not include a misdemeanor conviction upon a bond forfeiture for a violation that is or would at the time have in Idaho been an infraction violation, if the only reason it is classified as a misdemeanor is due to the bond forfeiture. ()
13. **Correction Officer.** An employee of the Idaho Department of Correction or a private prison contractor of the State Board of Correction who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in a correction facility. ()
14. **Council.** The Idaho Peace Officer Standards and Training Council. ()
15. **County Detention Officer.** An employee of a county sheriff who works in a county jail and is responsible for the safety, care, protection, and monitoring of county jail inmates. ()
16. **Crime of Deceit.** Any offense described in Section 18-1301 et seq., Idaho Code, (Bribery), Section 18-1401 et seq. (Burglary), Sections 18-1901 (Fictitious Stock Subscription), 18-1902 (Exhibition of False Papers to Public Officers), 18-1903 (Use of False Name in Prospectus), 18-1904 (Illegal Dividends and Reductions of Capital), 18- 1905 (Falsification of Corporate Books), 18-1906 (Fraudulent Reports by Officers), 18- 2202(1) (Computer Crime), 18-2302 (False Swearing as to Qualifications as Voter), 18- 2304 (Procuring Illegal Votes), 18-2305 (Intimidation, Corruption and Frauds), 18-2306 (Illegal Voting or Interference with Election), 18-2307 (Attempting to Vote When Not Qualified or to Repeat Voting), 18-2309 (Officers Attempting to Change Result), 18- 2310 (Forging or Counterfeiting Returns), 18-2311 (Adding to or Subtracting From Votes), 18-2316 (Tampering with Certificates of Nomination or Ballots), 18-2320 (Bribery of Electors), Section 18-2401 et seq. (Theft), Section 18-2601 et seq. (Falsifying Evidence -- Offering Forged or Fraudulent Documents in Evidence), Section 18-2701 et seq. (Bribery of Executive Officers), Sections 18-3105 (False Statement by Commission Merchant, Broker, Agent, Factor or Consignee to Principal or Consignor), 18-3106 (Drawing Check Without Funds -- Drawing Check With Insufficient Funds -- Prima Facie Evidence of Intent -- Standing of Person Having Acquired Rights -- Probation Conditions), 18-3123 (Forgery of a Financial Transaction Card), 18-3124 (Fraudulent Use of a Financial Transaction Card), 18-3125 (Criminal Possession of Financial Transaction Card and FTC Forgery Devices), 18-3125A (Unauthorized Factoring of Credit Card Sales Drafts), 18-3126 (Misappropriation of Personal Identifying Information), 18-3127 (Receiving or Possessing Fraudulently Obtained Goods or Services), 18-3201 (Officer Stealing, Mutilating or Falsifying Public Records), 18-3202 (Private Person Stealing, Mutilating or Falsifying Public Records), 18-3203 (Offering False or Forged Instrument for Record), 18-3204 (False Certificates or Other Instruments from Officers), 18-3206 (Mutilating

Written Instruments), Section 18-3601 et seq. (Forgery and Counterfeiting), Sections 18-4616 (Defacing Marks on Logs or Lumber), 18- 4617 (Stealing Rides on Trains), 18-4621 (Stealing Electric Current -- Tampering with Meters), 18-4622 (Stealing Electric Current -- Accessories Liable as Principals), 18-4624 (Taken or Converted Merchandise as Theft), 18-4626 (Willful Concealment of Goods, Wares or Merchandise -- Defense for Detention), 18-4630 (Illegal Use of Documents), 18-4701 (Alteration of Bills), 18-4702 (Alteration of Enrolled Copies), 18-4703 (Offering Bribes to Legislators), 18-4704 (Legislators Receiving Bribes), Section 18-5401 et seq. (Perjury), Section 18-6501 et seq. (Robbery), Sections 18-8201 (Money Laundering and Illegal Investment -- Penalty -- Restitution), 41-293 (Insurance Fraud), 41-294 (Damage to or Destruction of Insured Property), 41-1306 (False Financial Statements), 49-228 (Receiving or Transferring Stolen Vehicles), 49- 231 (Farm Implements -- Purchasing or Selling When Identifying Number Altered or Defaced a Felony), 49-232 (Fraudulent Removal or Alteration of Numbers Prohibited), 49-518 (Altering or Forging Certificate -- Stolen Cars -- Destroying or Altering Engine or Decal Number -- Use of Fictitious Name -- Fraud), or any attempt, conspiracy or solicitation to commit any of the foregoing offenses, or any racketeering offense under Section 18-7801 et seq., Idaho Code, in which any of the foregoing offenses constitutes at least one (1) of the predicate acts, or any other crime defined in the Idaho Code involving any form of theft or including fraudulent intent as an element, or an offense equivalent to any of the foregoing in any other jurisdiction.

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17. Division Administrator. The administrator of the Idaho Peace Officers Standards and Training Division of the Idaho State Police.

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18. Emergency Communications Officer. Any emergency call taker or dispatcher employed by a Public Safety Answering Point (PSAP), whose responsibilities include receiving or dispatching 9-1-1 calls.

()

19. Field Training. Formal, on the job training for special and defined purposes.

()

20. Full Time. An employee who is, for a calendar month, employed on average at least thirty (30) hours of service per week, or one hundred thirty (130) hours of service per month.

()

21. Hearing Board. A board of three members designated by the Chair of the Council to hear contested cases and enter recommended orders for the Council's decision.

()

22. Hearing Officer. A person designated by the Council to preside over decertification proceedings and to render findings of fact, conclusions of law and a recommended order at the conclusion of those proceedings.

()

23. In-Service Training. Training designed to refresh or enhance a certified officer's ability to perform their duties.

()

24. Juvenile Corrections Direct Care Staff. An employee of the Idaho Department of Juvenile Corrections whose primary job duties include the safety, care, education, protection, or supervision of juveniles committed to the custody of the department. Direct care staff positions include: Rehabilitation Technician Trainee; Rehabilitation Technician; Rehabilitation Supervisor; Rehabilitation Specialist; Rehabilitation Specialist Associate; Instructor – DJC; Instructor Specialist; Instructor Assistant; Safety and Security Officer; Recreation Coordinator, Corrections; and Safety and Security Supervisor.

()

25. Juvenile Detention Center. A facility that is part of or administered by an Idaho county and is responsible for the safety, care, protection, and monitoring of juvenile offenders.

()

26. Juvenile Detention Officer. An employee working in a juvenile detention center who is responsible for the safety, care, protection, and monitoring of juvenile offenders.

()

27. Juvenile Probation Department. A public or private agency administered by or contracted with the court, and providing juvenile probation services to a county at the concurrence and expense of the county commissioners.

()

28. Juvenile Probation Officer. An employee of a juvenile probation department who is responsible for preparing social history reports to the court, making recommendations regarding conditions of probation, and the

supervision of juvenile offenders' compliance with court orders. ()

29. Law Enforcement Certification Program. A program operated by a college or university, law enforcement agency, or private entity and satisfying POST basic training academy requirements. ()

30. Law Enforcement Certification Program Facility. A facility at which law enforcement certification programs conduct training. ()

31. Law Enforcement Profession. As used in these rules in reference to agreements authorized pursuant to Section 19-5112, Idaho Code, the “law enforcement profession” includes the following positions: Peace Officer, County Detention Officer, Emergency Communications Officer, Juvenile Detention Officer, Juvenile Probation Officer, Correction Officer, Juvenile Corrections Direct Care Staff, Adult Felony Probation and Parole Officer, Idaho Department of Juvenile Corrections Direct Care Staff, and Adult Misdemeanor Probation Officer. ()

32. Marine Deputy. A person employed by a county sheriff whose primary function is to perform marine-related enforcement duties within established policies and procedures. ()

33. Misdemeanor Probation Department. A public or private agency administered by or contracted with the county, and providing misdemeanor probation services to a county at the concurrence and expense of the county commissioners. ()

34. Part-Time Employee. An employee, regardless of discipline, who works less than thirty (30) hours per week or one hundred thirty (130) hours per month. ()

35. Peace Officer. A full or part-time patrol officer employed by an agency whose duties primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision. “Peace officer” also means a patrol or reserve officer employed by a police or law enforcement agency of a federally recognized Indian tribe who has completed a POST basic training academy and has been deputized by a sheriff of a county or a chief of police of a city in Idaho. ()

36. POST. The Idaho Peace Officer Standards and Training Program. ()

37. POST Certified Instructor. A person certified by POST as qualified to instruct or assess students in a course of instruction which meets POST standards for certification or training. ()

38. Program Coordinator. A person designated by a college, university, or agency to be responsible for a law enforcement certification program. ()

39. Prosecutor. A city prosecuting attorney, city assistant prosecuting attorney, county prosecuting attorney, county deputy prosecuting attorney, attorney general, deputy attorney general, United States attorney, or assistant United States attorney. ()

40. Public Safety Answering Point (PSAP). A city, county, or state emergency call center that receives direct or transferred 9-1-1 calls for police, firefighting, and ambulances. ()

41. Regional Training Specialist. A POST employee who is assigned to a specific region of the state, and who assesses training materials and instruction for law enforcement personnel to assure compliance with POST standards. ()

42. Reserve Peace Officer. A person appointed by an agency to perform the duties of a peace officer on a limited basis. ()

43. School. A school, college, university, academy, or local training program which offers law enforcement training and which is certified by the Council. ()

44. State. Unless otherwise indicated, the state of Idaho. ()

45. **Student.** A person participating in any Council-approved basic training program or law enforcement certification training program. ()

46. **Temporary/Seasonal.** Employment of less than one hundred eighty (180) consecutive days.()

47. **Trainee.** A POST certified officer participating in in-service training. ()

011. – 029. (RESERVED)

030. POST COUNCIL.

01. **Council Members.** The Council will be made up of such members as designated by statute. ()

02. **Compensation.** Council members will not be compensated for services to POST, but will be allowed actual and necessary expenses incurred in performing their duties. ()

03. **Resignations.** A Council member who ceases to qualify as such or intends to resign from the Council needs to notify the Governor and Chair in writing as soon as practicable. ()

031. POWERS AND DUTIES OF POST COUNCIL.

The duties of the Council include, but are not limited to, the following: ()

01. **Certification.** Authorizing POST to issue certification to members of the law enforcement profession as defined in these rules and issue certifications, approvals or endorsements to instructors, schools and programs providing instruction to law enforcement personnel. ()

02. **Records.** Maintaining records on all certified officers, certified or endorsed instructors and approved law enforcement certification programs, and furnish records upon request in accordance with the Idaho Public Records Act. ()

03. **Committees.** Establishing such committees as may be necessary to more fully carry out the duties of the Council. ()

04. **Vice-Chairman.** Electing a Vice-Chairman annually from among the Council’s membership. ()

05. **Rules.** Adopting rules and procedures for the internal management of POST and the operation of law enforcement certification programs. ()

06. **Assist, Study, Consult and Cooperate.** Assisting departments and law enforcement certification training programs in complying with POST requirements, studying law enforcement training methods, consulting and cooperating with agencies and educational institutions concerned with law enforcement training. ()

07. **Additional Time to Complete POST Training and Certification.** Granting or delegating to the Division Administrator the authority to grant additional time, upon a showing of good cause and in writing, to complete POST training and certification. Good cause includes, but is not limited to, sickness or physical disability of officer or immediate family member, cancellation of a basic academy, natural disaster, or reapplication to the academy after failing or being unable to complete a previous basic academy. ()

08. **Reimbursement of Instructors.** Reimbursing instructors at POST certified training programs for travel, food and lodging at state per diem rates. ()

032. POST HEARING BOARD.

The Council may appoint a Hearing Board to hear matters assigned to the Board by the Council. ()

01. **Members.** The Council Chair will appoint three (3) members of the Council to serve on the

Hearing Board. ()

02. Recommended and Final Orders. Orders issued by the Hearing Board at the conclusion of proceedings are recommended orders and become final orders after the Council's review. ()

03. Discovery. Discovery may be conducted in contested cases before a Hearing Officer and the Council. ()

033. POST DIVISION ADMINISTRATOR.

The Idaho State Police will employ a POST Division Administrator in a non-classified position, to serve under the direction of the Council. ()

01. Selection. The Director of the Idaho State Police will, subject to approval of the Council, select the Division Administrator from the register established by the Idaho Division of Human Resources after competitive testing. The Council Chair will select one (1) Chief or Sheriff from the Council to serve on the examining board. ()

02. Responsibilities. The Division Administrator will: ()

a. Supervise POST employees; ()

b. Report to the Council on such matters as the Council may direct; and ()

c. Perform such other duties as set forth in these rules or as the Council and the Director of the Idaho State Police direct. ()

03. Administration. For administrative purposes, the Division Administrator and POST staff are governed by the Policies and Rules of the Idaho State Police, concerning but not limited to fiscal, purchasing, and personnel matters. ()

034 – 049. (RESERVED)

050. BASIC CERTIFICATION OF LAW ENFORCEMENT OFFICERS.

All applicants for POST certification must meet the following standards and comply with the following requirements to be eligible to attend a basic training academy and for certification and employment in Idaho in any law enforcement discipline. ()

051. MANDATORY AND VOLUNTARY CERTIFICATION.

01. Mandatory Certification. Except as otherwise provided in these rules, no person shall act as a peace officer, marine deputy, county detention officer, emergency communications officer, juvenile detention officer, juvenile probation officer, correctional officer, adult probation and parole officer, juvenile direct care staff or misdemeanor probation officer in Idaho unless they are certified to do so by POST in accordance with these rules. ()

02. Voluntary Certification for Correctional Officers and Adult Probation and Parole Officers Employed Prior to July 1, 2005. Correctional officers and adult probation and parole officers who were employed prior to July 1, 2005 are not required to be POST certified in those disciplines, but may become certified by meeting all requirements for certification set forth in these rules. ()

03. Voluntary Certification for Emergency Communications Officers Employed Prior to July 1, 2012. Emergency Communications Officers who were employed prior to July 1, 2012 are not required to be POST certified, but may become certified by meeting all requirements for certification set forth in these rules. ()

04. Voluntary Certification for Certain Officials. The director of the Idaho State Police or any elected official, although specifically excluded by law from meeting the requirements set by the Council, may be certified if they so desire, provided they meet the minimum requirements for certification as prescribed in these rules.

()

052. CITIZENSHIP.

An applicant shall be a citizen of the United States and submit a certified copy or original of one (1) of the following as verification of citizenship: ()

01. Birth Certificate. A birth certificate issued by a city, county, or state; ()

02. Passport. A current passport issued by the United States Government; ()

03. Naturalization Certificate; ()

04. Consular Report of Birth Abroad or Certification of Birth; or ()

05. Certificate of Citizenship. ()

053. EDUCATION.

01. Acceptable Education. An applicant must have: ()

a. Graduated from a school accredited as a high school at the time of graduation by the state in which it is located or by a recognized regional accreditation body; ()

b. Passed a GED or an IBM Assessment Test in subject areas required by POST; ()

c. Have completed a high school equivalency program and obtained a state- issued certificate; ()

d. Completed a minimum of fifteen (15) credits at a college accredited by one of the following: Middle States Association of Schools and Colleges; New England Association of Schools and Colleges; North Central Association of Colleges and Schools (the Higher Learning Commission); Northwest Association of Colleges and Universities; Southern Association of Colleges and Schools; and Western Association of Schools and Colleges; or ()

e. Completed a course of study, either in a formal school setting or through homeschooling if the program is recognized by a state or by a local school district within a state as having met that state's high school graduation requirements. ()

f. If educated outside the United States, an applicant must have passed GED testing or provide an evaluation from a member of the National Association of Credential Evaluation Services (NACES) or Association of International Credential Evaluators, Inc. (AICE), showing the applicant's education meets or exceeds the U.S. requirements for high school graduation. ()

02. Documentation of Education. An applicant must provide a certified copy or original of one of the following: ()

a. High school diploma indicating date of graduation; ()

b. Official high school transcript indicating date of graduation; ()

c. Official transcript of GED results indicating a passing score; ()

d. Correspondence from the Idaho Department of Labor, providing a passing score result of testing; ()

e. Correspondence from a state or local school district indicating that the applicant has met that state's high school graduation requirements; ()

- f. State-issued high school equivalency certificate; ()
- g. Official transcript from a POST accepted U.S. regionally-accredited college indicating completion of a minimum of fifteen (15) credits; ()
- h. Official evaluation of foreign education by a member of the National Association of Credential Evaluation Services (NACES) or Association of International Credential Evaluators, Inc. (AICE) showing the applicant's education meets or exceeds the U.S. requirements for high school graduation. ()

054. AGE.

The minimum age requirements for employment in the following disciplines are: ()

01. Twenty-One (21) Years of Age. Patrol officers, felony probation and parole officers, misdemeanor probation officers, juvenile detention officers, juvenile probation officers, and juvenile corrections direct care staff. ()

02. Eighteen (18) Years of Age. Corrections officers, adult detention officers, emergency communications officers. ()

055. INELIGIBILITY BASED UPON PAST CONDUCT.

An applicant is ineligible to attend a basic training academy and for certification under the following circumstances. ()

01. Criminal Conviction. An applicant is ineligible if he was convicted of: ()

a. A felony, if the applicant was eighteen (18) years old or older at the time of conviction; ()

b. A misdemeanor Driving Under the Influence offense(s) within two (2) years immediately preceding application, or two or more (2) misdemeanor Driving Under the Influence offenses within five (5) years immediately preceding application; ()

c. A misdemeanor crime involving domestic violence, if the relevant law enforcement discipline requires the applicant to possess a firearm in the course of their duty, or if the conviction occurred within 5 years immediately preceding application; ()

d. A misdemeanor crime of deceit, as defined in these rules, or a misdemeanor sex offense, if the conviction occurred within five (5) years immediately preceding application; ()

e. A misdemeanor drug-related offense, if the conviction occurred within one (1) year immediately preceding application. ()

02. Driver's License. An applicant is ineligible if he does not possess a valid driving license from the applicant's state of residence and is unable to qualify for an Idaho driver's license, except for the following disciplines: ()

a. Correction Officers; ()

b. Emergency Communications Officers. ()

03. Marijuana. An applicant is ineligible if he used marijuana, cannabis, hashish, hash oil, or THC in synthetic and natural forms, whether charged or not, if such use occurred: ()

a. Within one (1) year immediately preceding application; ()

b. While employed as a law enforcement officer, in a prosecutorial position, or in a position of public safety, regardless of when the use occurred. ()

04. Violations of Idaho Controlled Substances Act. An applicant is ineligible if he, while eighteen (18) years old or older, violated any provision of the Idaho Uniform Controlled Substances Act, Section 37-2701 et seq., Idaho Code, whether charged or not, that constitutes a felony, or of a comparable statute of another state or country, if the violation occurred: ()

a. Within three (3) years immediately preceding application; ()

b. While employed as a law enforcement officer, in a prosecutorial position, or in a position of public safety, regardless of when the illegal use occurred. ()

05. Use of Prescription or Other Legally Obtainable Controlled Substance. An applicant is ineligible if he unlawfully used any prescription drug or a legally obtainable controlled substance within the past three (3) years, unless: ()

a. The applicant was under the age of eighteen (18) at the time of using the controlled substance; or ()

b. An immediate, pressing, or emergency medical circumstance existed to justify the use of a prescription controlled substance not specifically prescribed to the person. ()

06. Military Discharge. An applicant is ineligible if he received a “dismissal,” “bad conduct discharge” (BCD), “dishonorable discharge” (DD), or administrative discharge of other than honorable (OTH) from military service. ()

07. Decertification or Denial of Certification. An applicant is ineligible if he has been denied certification or his basic certificate has been revoked by the Council in this state or the responsible licensing agency in any other issuing jurisdiction, unless the denial or revocation has been rescinded by the Council or by the responsible licensing agency of the issuing jurisdiction. ()

056. DOCUMENTATION OF CRIMINAL, TRAFFIC, AND MILITARY DISCHARGE RECORDS. With a POST application, an applicant shall submit the following to verify criminal, traffic or military records. ()

01. Criminal or Traffic Matters. Charging documents, including citations, complaints, information or indictments; judgements of convictions, orders of restitution; orders involving probation, parole, or revocation of probation or parole; orders of dismissal or release; records of payments to the court. ()

02. Military Discharge. Copies of a DD214 for active military service, NGB Form 22 for National Guard Service, or Official Military Discharge Documentation for Reserve military service. ()

057. REQUIREMENTS FOR BASIC CERTIFICATION. In addition to complying with the foregoing standards, each applicant for certification must also comply with the following requirements. ()

01. Agency Employment. Each applicant must be an employee of an agency, as defined in these rules, in a position requiring POST certification, or be a member of POST professional staff. ()

02. Background Investigation. The employing agency must conduct a comprehensive background investigation of each applicant to ensure that he meets requirements for POST certification and employment in the law enforcement profession. ()

a. The applicant must complete a comprehensive application and personal history statement prior to a background investigation in aid of determining he is eligible for certification. ()

b. The applicant must be fingerprinted on a standard FBI Applicant fingerprint card and a search of local, state, and national fingerprint data bases must be made to disclose any criminal record. The employing agency must retain originals of all records check results. ()

c. The employing agency must investigate the applicant's traffic records in each state in which he resided. ()

d. The background investigation must include information from personal references, schools, the applicant's last three (3) previous employers, and law enforcement agency or PSAP records in jurisdictions where the applicant has lived or worked. ()

e. The employing agency must interview each applicant to ascertain his suitability for the law enforcement profession. Interview topics must include use of intoxicants, controlled substances, physical, mental, and emotional history, family problems, moral outlook and habits, and the applicant's financial history. ()

f. An experienced investigator must conduct a thorough investigation into the applicant's reputation, integrity, honesty, dependability, qualifications, experience, associations, emotional stability, and respect for the law. ()

03. Physical Readiness Assessment. The employing agency shall require an assessment of an applicant's physical readiness to ensure he can perform physically demanding tasks and tests while attending a basic training academy or equivalent program. An applicant who fails a required physical test during an academy may be dismissed, but may attend a future academy and must pass a physical readiness test prior to certification. ()

04. Mental Readiness Assessment. Where there is a question as to whether the applicant may be subject to a mental or emotional disorder that calls his suitability for the law enforcement profession into question, the employing agency shall have a psychiatrist or clinical psychologist conduct a thorough evaluation to ensure he is capable of performing law enforcement duties. ()

05. Application. Each applicant must fill out a POST Application and submit it to the employing agency, which shall submit it to POST with all required documentation. ()

a. Upon review of an application, POST may inspect an agency's background investigation file to ensure it is accurate and complete. If a review indicates that information submitted to POST may be inaccurate, incomplete or falsified, the Division Administrator must inspect the agency's background investigation file. ()

b. If the application contains inaccuracies or omissions, the Division Administrator may require the agency to supplement the application, and may approve the application. ()

c. If the application contains evident falsifications, the Division Administrator shall reject the application. ()

06. Aptitude Test. An applicant shall complete an aptitude test to ensure he is capable of performing law enforcement duties. ()

07. Code of Ethics/Standards of Conduct. Each applicant shall attest that he will abide by the following Law Enforcement Code of Ethics, and that he understands violations thereof constitute grounds for decertification:

As a member of the law enforcement profession, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality and justice.

I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret, unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and the relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge or position of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of law enforcement/public service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other law enforcement or emergency communications officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence. I will constantly strive to achieve these objectives and ideals, dedicating myself before God or have a sincere and unfaltering commitment to my chosen profession...law enforcement.

()

08. Time for Completing Basic Training Academy or Alternative Training, Field Training and Probationary Period.

()

a. Except as otherwise provided in these rules, every person attending a basic training academy must complete that academy, a minimum of 40 hours of field training and six consecutive months of probation in that discipline with that hiring agency within twelve months of beginning employment in order to be certified.

()

b. Emergency communications officers attending a basic training academy must complete that academy, and six consecutive months of probation in that discipline with that hiring agency within eighteen (18) months of beginning employment in order to be certified.

()

c. Any person who does not become certified in the relevant discipline within three (3) years of graduating from a basic training academy or POST certified equivalent program must repeat that entire academy or program in order to become certified.

()

d. Every person seeking certification through the POST challenge process must complete that process within one year of beginning employment with an agency.

()

058. STANDARDS OF CONDUCT FOR BASIC TRAINING ACADEMY STUDENTS.

01. Required Behavior. All students shall conduct themselves in a manner which will bring credit to the law enforcement profession. Student behavior must reflect courtesy, consideration and respect for others.

()

02. Prohibited Conduct. Any conduct detrimental to the efficiency or discipline of the academy, whether or not stated in the instructions, is prohibited and can be cause for disciplinary action or expulsion. A student's agency head will be informed of any such infraction.

()

03. Notice. POST shall inform students of requirements relating to residency, equipment, supplies, and conduct at the academy at the time of their acceptance into an academy.

()

059. CHALLENGING A BASIC TRAINING ACADEMY.

An applicant for POST certification may challenge the basic training academy in the relevant discipline under the following circumstances, and subject to the following conditions.

()

01. Requirements for Challenging a Basic Training Academy. Except as otherwise provided by these rules, an applicant challenging a basic training academy must:

()

a. Be employed by an agency in Idaho;

()

- b.** Have been employed, and if applicable, have been certified or commissioned by another state or the federal government as an officer in the relevant discipline within the last five (5) years, or a student who has satisfactorily completed a basic training academy equivalent to the POST basic training academy in the relevant discipline within the last three (3) years; ()
- c.** Submit a POST certification challenge packet, including copies of all relevant service, educational and training records; ()
- d.** Disclose all information regarding any decertification investigation or proceeding or the equivalent from any other jurisdiction; ()
- e.** Complete a probationary period of at least six (6) consecutive months with the employing agency in the relevant discipline; ()
- f.** Comply with any additional provisions required by POST for a challenge in a specific discipline; and ()
- g.** Reserve Officers must have been employed, certified, or commissioned by another state or the federal government as an officer in the relevant discipline within the last three (3) years. ()

02. Patrol and Detention Law Enforcement Certification Program or POST Academy Graduates. An applicant who is appointed to either a peace officer or a detention officer position from 3 to 5 years after completing both the patrol and detention officer training through a POST approved law enforcement certification program or POST basic training academy, will be eligible for certification in the other discipline without attending an additional basic training academy, provided the officer: ()

- a.** Was appointed to a peace officer or detention officer position in Idaho within three (3) years from graduating from a law enforcement certification program or a POST Academy; ()
- b.** Possesses a detention or peace officer certification from POST; ()
- c.** Submits a POST challenge packet; ()
- d.** Discloses information regarding any decertification investigation or proceeding or the equivalent from any other jurisdiction; ()
- e.** Completes a probationary period of at least six (6) consecutive months with the employing agency in the relevant discipline; and ()
- f.** Complies with any additional provisions required by POST for a challenge in a specific discipline. ()

060. AGREEMENT TO SERVE – REIMBURSEMENT REQUIREMENT.

01. Agreement. Pursuant to Section 19-5112, Idaho Code, any student attending a POST funded basic training academy must execute an agreement promising to remain within the law enforcement profession in Idaho for two (2) years immediately following graduation. Violation of the agreement will give rise to a civil action which may be commenced by the Council on behalf of the state for restitution of all costs of education paid by the Council plus costs and reasonable attorney’s fees. ()

02. Fulfillment of Agreement. The agreement will be fulfilled if, following graduation from a basic training academy, the student remains in the law enforcement profession in Idaho, as follows: ()

- a.** On a full-time basis, for two (2) full calendar years immediately following graduation date; or ()
- b.** On a part-time basis, and the officer provides the Council with documentation of four thousand one

hundred sixty (4,160) hours of service immediately following graduation date. ()

03. Relief from Obligation to Serve. A student is relieved of his obligations under the agreement if the student is: ()

a. Terminated by the employing agency due to budget cutbacks or loss of funding and the agency provides POST with a letter stating the student was terminated due to the agency's lack of funding; ()

b. Forced to resign due to his own or an immediate family member's terminal illness or prolonged debilitating condition and the student provides POST with documentation from an attending physician verifying the medical condition; ()

c. Ordered into full-time active military service, and the student provides POST with documentation of official military orders; or ()

d. The spouse of a person who is a member of the military and is being required to transfer outside Idaho for a prolonged period of time, and the student provides POST with documentation of the spouse's official military orders. ()

04. Reimbursement. A student who graduates from a basic training academy whose employment is terminated or resigns prior to fulfillment of the agreement or does not qualify for disqualification must reimburse the state for educational training expenses. ()

05. Proration. A student's reimbursement obligation under the agreement will be prorated if he remains in the law enforcement profession in Idaho following graduation from a basic training academy for the following time periods: ()

a. On a full-time basis for less than twelve (12) complete months following graduation. The full amount of money set forth in the agreement shall be owed; ()

b. On a full-time basis for a minimum of twelve (12) complete months following graduation but less than twenty-four (24) complete months. The amount owed to the Council will be reduced proportionately for each complete month worked from the date of graduation to the date of separation; or ()

c. On a part-time basis for a documented minimum of two thousand eighty (2,080) hours service following graduation, but less than four thousand one hundred sixty (4,160) hours. The amount owed to the Council will be reduced proportionately for each one hundred seventy-three (173) hours worked from the date of graduation to the date of separation. ()

06. Multiple Basic Training Academies. A student who graduates from more than one (1) basic training academy must fulfill a two-year agreement for each academy attended. ()

07. Decertification. A student who is decertified by POST prior to a period of two (2) years after graduating from an academy shall not be relieved of the obligation to reimburse POST pursuant to this section. ()

061. – 069. (RESERVED)

070. HIGHER LEVEL CERTIFICATION.

In addition to basic certification, the Council may issue higher-level certifications in recognition of additional training and experience to full-time officers already possessing a basic POST certification. ()

01. Types of Higher-Level Certification. In addition to basic certification, the Council may issue the following: ()

a. Intermediate certification for peace officers, detention officers, juvenile probation officers, juvenile detention officers and emergency communications officers; ()

- b. Advanced certification for peace officers, detention officers and emergency communications officers; ()
- c. Supervisor certification for peace officers, detention officers and emergency communications officers; ()
- d. Master certification for peace officers, detention officers and emergency communications officers; ()
- e. Management certification for peace officers, detention officers and emergency communications officers; ()
- f. Executive certification for peace officers. ()

02. Requirements. In addition to the requirements otherwise set forth in these rules, the following are required for higher level certification: ()

- a. An applicant shall possess POST basic certification in the relevant discipline and be a full-time employee of an agency. ()
- b. An applicant shall attach to his POST application all relevant transcripts, certificates, diplomas, degrees, course outlines, or other documents not listed on the applicant's POST training record, verifying his education and training. ()
- c. The agency of an applicant for a Supervisor, Management, or Executive certification must submit a job description or other documentation verifying the applicant's duties. ()

071. LAW ENFORCEMENT EXPERIENCE, MILITARY EXPERIENCE, AND COLLEGE CREDITS FOR PURPOSES OF HIGHER CERTIFICATION.

For purposes of determining whether a person is eligible for higher level certifications based upon experience and education, the following apply. ()

01. Law Enforcement Experience. Law enforcement experience shall include actual time served with a law enforcement agency as a peace officer or county detention officer. POST Council determines the acceptability of time served in one of those positions in a jurisdiction other than Idaho, or one which does not comply with the minimum standards set forth in these rules. ()

02. Juvenile Justice Experience. Juvenile justice experience means actual time served as a full-time juvenile corrections, juvenile detention, or juvenile probation officer. ()

03. Emergency Communications Officer Experience. Emergency communications officer experience means actual time served as a full-time emergency communications officer with a duly constituted law enforcement or PSAP agency. ()

04. Military Law Enforcement Service and Education. An applicant who has served in the military as a full-time military law enforcement officer may be awarded partial credit toward law enforcement experience and training. The applicant shall have served as a full-time military law enforcement officer for the period of time for which credit is requested. Regular guard duty does not qualify. ()

- a. Credit will be awarded as follows: ()
 - i. One (1) year of accepted military law enforcement service shall equal three (3) months of law enforcement experience. ()
 - ii. Eight (8) hours of accepted military law enforcement training shall equal four (4) hours of law enforcement training. ()

b. No applicant shall be awarded more than two (2) years of law enforcement experience or more than one thousand (1,000) hours of law enforcement training. ()

c. Educational credit may be awarded for completion of military law enforcement schools. All certificates, course outlines, diplomas, DD-214's, and certificates of completion showing length of school shall be submitted to POST with the application for higher certification. ()

05. College Credits. POST may award credits for college education as follows: ()

a. One (1) college or university semester hour or unit shall equal one (1) college credit. ()

b. One (1) college or university quarter hour or unit shall equal two-thirds (2/3) of one (1) college credit. ()

c. College credits may be converted to POST training hours at the rate of twenty (20) POST training hours for one (1) college credit. ()

d. When college credit is awarded or purchased for POST approved training, it may be counted for either POST training hours or college credit, whichever is to the advantage of the applicant. ()

e. Applicants shall submit an official college transcript as verification of college credit. ()

072. INTERMEDIATE AND ADVANCED CERTIFICATION.

POST Intermediate and Advanced certification recognizes the additional training and experience of patrol, detention, emergency communications officers, juvenile probation officers and juvenile detention officers already possessing a basic POST certification. In addition to the requirements otherwise set forth in these Rules, the following are required for an Intermediate or Advanced Certificate. ()

01. Intermediate Certification. An applicant shall hold a current POST basic certification, and have acquired either the combination of college credits and/or POST training hours, combined with the prescribed years of law enforcement experience, or an associate or baccalaureate degree from a college recognized by a regional accreditation agency, combined with the prescribed years of law enforcement experience, as set forth in the following subsections: ()

a. Peace officers.

POST Training Hours Including POST Basic Patrol Academy	600 hours	800 hours	1,200 hours	1,600 hours	1,800 hours	POST Basic Patrol Academy	
One College Credit Equals Twenty (20) POST Training Hours	The above may be a combination of College Credits and POST Training Hours					Associate Degree	Baccalaureate Degree
Years of Law Enforcement Experience	8 or more	7	6	5	4	4	2

()

b. Detention officers.

POST Training Hours Including POST Basic Detention Academy	600 hours	800 hours	1,200 hours	1,600 hours	1,800 hours	POST Basic Detention Academy	
One College Credit Equals Twenty (20) POST Training Hours	The above may be a combination of College Credits and POST Training Hours					Associate Degree	Baccalaureate Degree
Years of Law Enforcement Experience	8 or more	7	6	5	4	4	2

()

c. Emergency communications officers. The applicant shall:

()

i. Have completed a minimum of one hundred twenty (120) hours of POST certified training, which must include basic training.

()

ii. A minimum of three (3) years of emergency communications officer experience.

()

d. Juvenile detention officers.

POST Training Hours Including POST Basic Juvenile Detention Academy	200 hours	400 hours	600 hours	800 hours	1,000 hours	POST Basic Juvenile Detention Academy	
One College Credit Equals Twenty (20) POST Training Hours	The above may be a combination of College Credits and POST Training Hours					Associate Degree	Baccalaureate Degree
Years of Juvenile Justice Experience	8 or more	7	6	5	4	4	2

()

e. Juvenile probation officers.

POST Training Hours Including POST Basic Juvenile Probation Academy	200 hours	400 hours	600 hours	800 hours	1,000 hours	POST Basic Juvenile Probation Academy	
One College Credit Equals Twenty (20) POST Training Hours	The above may be a combination of College Credits and POST Training Hours					Associate Degree	Baccalaureate Degree

Years of Juvenile Justice Experience	8 or more	7	6	5	4	4	2
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02. Advanced Certification. An applicant shall hold a current POST basic certification, possess or be eligible to possess an intermediate certificate, and have acquired either the combination of college credits and POST training hours, combined with the prescribed years of law enforcement experience, or an associate, baccalaureate, master’s or doctoral degree from a college recognized by a regional accreditation agency, combined with the prescribed years of law enforcement experience, as set forth in the following subsections: ()

a. Peace officers.

POST Training Hours Including POST Basic Patrol Academy	500 hours	600 hours	700 hours	800 hours	900 hours	1,200 hours	POST Basic Patrol Academy		
College Credits	15	20	30	40	45	60	Associate Degree	Baccalaureate Degree	Master’s Degree or PhD
Years of Law Enforcement Experience	13 or more	12	11	10	9	8	8	6	4

Graduation from the Drug Enforcement Administration School in Washington, D.C., the Northwestern University Traffic Institute School of Police Staff and Command, the FBI National Academy or Southern Police Institute’s Administrative Officers Course/Command Officers Development Course shall be accepted in lieu of the fifteen (15) college credits required for the Advanced Certificate with thirteen (13) years or more of experience. ()

b. Detention officers.

POST Training Hours Including POST Basic Detention Academy	500 hours	600 hours	700 hours	800 hours	900 hours	1,200 hours	POST Basic Detention Academy		
College Credits	15	20	30	40	45	60	Associate Degree	Baccalaureate Degree	Master’s Degree or PhD
Years of Law Enforcement Experience	13 or more	12	11	10	9	8	8	6	4

Graduation from the Drug Enforcement Administration School in Washington, D.C., the Northwestern University Traffic Institute School of Police Staff and Command, the FBI National Academy or Southern Police Institute’s Administrative Officers Course/Command Officers Development Course shall be accepted in lieu of the fifteen (15) college credits required for the Advanced Certificate with thirteen (13) years or more of experience. ()

- c. Emergency communications officers. ()
 - i. Have completed a minimum of five hundred (500) hours of POST certified training, which must include POST approved basic training. ()
 - ii. Have at least ten (10) years of communications specialist experience. ()

03. Probationary Period. An applicant shall have completed a probationary period of at least six (6) consecutive months with the employing agency prior to applying for intermediate or advanced certificates. Agencies may require a longer probationary period prior to application. ()

073. SUPERVISOR CERTIFICATION.

POST supervisor certification recognizes the training and experience of patrol, detention and emergency communications officers employed in positions above the operational level who holds the rank of sergeant or equivalent title and who are responsible for the direct supervision of line personnel. In addition to the requirements otherwise set forth in these rules, an applicant for a supervisor certificate must: ()

01. Position. Be employed for a minimum of one (1) year by an agency in a first-line supervision position above the operational level which is responsible for the direct supervision of nonsupervisory personnel. ()

02. Certification. Possess an intermediate or advanced patrol, detention officer or emergency communications officer certificate. ()

03. Training. Have completed one hundred (100) hours of POST certified supervisory-level training, of which fifty (50) hours shall have been completed within three (3) years immediately prior to submitting an application for the supervisor certificate. ()

074. MASTER CERTIFICATION.

POST master certification recognizes the training and experience of patrol, detention and emergency communications officers who hold a rank below sergeant or equivalent title and who have focused their career efforts on line functions. In addition to the requirements otherwise set forth in these Rules, an applicant for a master certificate must: ()

01. Prior Certification. Possess an advanced certificate. ()

02. Training. Have completed one thousand five hundred (1,500) hours of POST certified training. College credits may be converted to POST training hours at the rate of one (1) college credit equals twenty (20) POST training hours. ()

03. Experience. Have completed a minimum of fifteen (15) years of full-time law enforcement service in assignments which did not include full-time supervisory, management, or executive positions. ()

075. MANAGEMENT CERTIFICATION.

POST management certification recognizes the training and experience of patrol, detention and emergency communications officers in positions between a first-line supervisor and an executive, with responsibility for direct supervision of supervisory personnel and/or command duties. POST management certification is also available to city police chiefs or administrators within state agencies having law enforcement powers whose duties are primarily administrative. In addition to the requirements otherwise set forth in these rules, the following are required for an award of a management certificate. ()

01. Position. An applicant must be employed by an agency for a minimum of six (6) months in a management or executive position with primary responsibilities that are administrative or managerial in nature, including direct supervision of supervisory personnel and/or command duties, and which is typically occupied by a person holding the rank of lieutenant or higher, or equivalent title. ()

02. Certification. An applicant must possess POST certification as a peace officer, detention officer, or

emergency communications officer; certification from another state that has minimum peace officer standards; or a certificate of completion from a city, county, state, or federal law enforcement academy that meets that state's minimum training standards. ()

03. Training. An applicant must have completed one hundred (100) hours of POST certified management-level training, of which fifty (50) hours shall have been completed within three (3) years immediately prior to submitting an application for the Management Certificate. ()

04. Officers not Certified in Idaho. In addition to the other requirements of this section, officers who are not POST certified must: ()

a. Submit a Patrol Challenge Packet to POST, including copies of POST training records from other states, transcripts, certificates, diplomas, or other documents substantiating the officer's training, education and experience. ()

b. Attend a POST approved course of study in Idaho law and pass the POST Idaho law exam. ()

05. Police Chiefs, Agency Administrators. City police chiefs or administrators within state agencies having law enforcement powers who have duties which are primarily administrative may satisfy the certification requirement of Section 19-5109(2), Idaho Code, by obtaining this certificate. All other city police chiefs or state agency administrators having law enforcement powers may be awarded this certificate upon meeting the requirements, but shall also complete the requirements necessary to obtain a Basic Certificate. ()

076. EXECUTIVE CERTIFICATION.

POST Executive Certification recognizes the training and experience of law enforcement agency heads. In addition to the requirements otherwise set forth in these rules, an applicant for an Executive Certificate must: ()

01. Position. Be employed for a minimum of three (3) years as a chief of police, sheriff, director or chief executive of an agency. ()

02. Prior Certification. Possess a POST Advanced or Management Certificate, or the equivalent from another state meeting or exceeding Idaho standards. ()

03. Training. Have completed one hundred (100) hours of POST certified executive-level training, of which fifty (50) hours shall have been completed within three (3) years immediately prior to application for an Executive Certificate. ()

077. – 079. (RESERVED)

080. CERTIFICATIONS FOR PART-TIME OFFICERS.

In addition to basic POST certification, as set forth in these rules, the Council may issue certifications to the following employees who work under the supervision of full-time, POST certified Officers. ()

01. Requirements. Part-time officers in all disciplines except reserve peace officers, marine deputies and part-time juvenile detention officers will meet the same requirements as full time officers and will be issued a basic certificate. ()

a. Part-time juvenile detention officers who attend the basic juvenile detention academy will receive a basic certificate. Part-time juvenile detention officers who attend the part-time juvenile detention training will be issued a part-time juvenile detention certificate. ()

b. Part-time misdemeanor probation officers must work sixty (60) hours per year to maintain certification. ()

c. Reserve peace officers will be issued a reserve peace officer certification. ()

d. Marine deputies will be issued a marine deputy certification. ()

02. Lapse of Certification. All part-time POST certifications shall lapse in the same manner as basic certifications, and as set forth in these rules. ()

03. Decertification. All-part time officers are subject to decertification in the manner set forth in these rules. ()

04. Limit and Authority. The certification and authority of part-time officers is not limited except where indicated in these rules. ()

081. RESERVE PEACE OFFICER CERTIFICATION.

The Council may issue reserve peace officer certification for part-time employees of agencies who are assigned limited duties and work under the supervision of full-time, POST certified peace officers. ()

01. Eligibility. An applicant for reserve peace officer certification must be a reserve peace officer employed on a part-time basis by an agency and meet minimum standards for employment as provided in these rules. ()

02. Reserve Officer Training. An applicant for reserve peace officer certification shall complete the POST approved reserve peace officer academy. ()

03. Peace or Reserve Officers Certified In Another State, Commissioned by the Federal Government, or Graduates of a Basic Police Academy. An applicant who has served as a full-time certified peace officer or reserve officer in another state or as a full-time commissioned peace officer of the federal government within the three (3) years immediately preceding application or a student who has completed an equivalent to the basic patrol academy within the three (3) years immediately preceding application is eligible for reserve officer certification without attending the reserve officer academy, provided he: ()

a. Submits, with a reserve officer certification packet, records of certifications and training from other states, and transcripts, certificates, diplomas, or other documents that verify the officer's training and experience; ()

b. Discloses all information regarding any decertification investigation or proceeding or the equivalent from any other jurisdiction; ()

c. Comply with any additional provisions required by POST. ()

04. Absence of Three Years. An officer who has not served in law enforcement for over three (3) years must complete all requirements set forth in this section to be eligible for reserve peace officer certification. ()

05. Supervision. An agency utilizing reserve peace officers shall have a policy regarding the duties and supervision of certified reserve peace officers. ()

06. Limitation on Certification. A reserve peace officer's certification is effective only while he is formally assigned to peace officer duties by the employing agency. ()

07. Retaining Certification. A certified reserve peace officer must work a minimum of one hundred twenty (120) hours annually in a peace officer capacity to retain certification. A certified reserve peace officer working less than one hundred twenty (120) hours annually must complete all requirements for initial reserve peace officer certification to be recertified. ()

082. MARINE DEPUTY CERTIFICATION.

01. Appointment by Sheriff. Marine deputies may be appointed by the Sheriff of a county for the purpose of enforcing: ()

- a. The provisions of Title 67, Chapter 70, Idaho Code; ()
- b. The provisions of IDAPA 26, Title 01, Chapter 30, Administrative Rules of the Idaho Department of Parks and Recreation; ()
- c. City and county ordinances pertaining to watercraft and waterways; and ()
- d. Enforcement of Idaho Code as assigned by the Sheriff. ()

02. Minimum Basic Training. A person desiring marine deputy certification shall complete the Council approved core curriculum, comprising basic law enforcement and marine specific courses. ()

03. Peace Officer Eligibility. A person who, within the three (3) years immediately preceding application, has served as a full-time POST certified peace officer shall be eligible for POST marine deputy certification without completing the core curriculum, provided he completes required marine specific courses and passes the marine deputy certification examination. ()

04. Certified or Commissioned in Another Jurisdiction; Graduate of Basic Police Academy. A person who has, within the three (3) years immediately preceding application, served as a full-time certified peace officer in another state, or served as a full-time commissioned peace officer for the federal government, or completed a basic police academy equivalent to the POST basic patrol academy may be eligible for POST marine deputy certification, provided he passes the POST marine deputy certification examination and meets all additional POST requirements for marine deputy certification. ()

05. Absence of Three Years. A person who has not served as a marine deputy or as a peace officer for over three (3) years must complete the POST core curriculum to be eligible for marine deputy certification. ()

083. PART-TIME JUVENILE DETENTION OFFICER CERTIFICATION.

A part-time juvenile detention officer must be certified by the Council within one (1) year of the date he was first employed as a part-time juvenile detention officer. ()

- 01. Eligibility.** An applicant shall: ()
 - a. Meet the definition of part-time juvenile detention officer as defined in these rules. ()
 - b. Meet the minimum standards for certification provided in these rules. ()
 - c. Must have been employed by the agency for a minimum six (6) consecutive months, which may include part-time juvenile detention officer training time, prior to certification. ()

- 02. Requirements for Certification.** An applicant must: ()
 - a. Complete POST approved part-time juvenile detention officer training. ()
 - b. Complete POST approved part-time juvenile detention officer field-training of no less than forty (40) hours. ()
 - c. Comply with any additional provisions required by POST. ()

03. Retaining Certification. A certified part-time juvenile detention officer must work sixty (60) hours annually in a juvenile detention officer capacity to retain certification. Documentation of hours worked must be kept on file at the appointing agency. A part-time juvenile detention officer working less than sixty (60) hours annually must complete all requirements for certification set forth in this section to be recertified. ()

- 04. Limitations on Certification and Authority.** ()
 - a. A part-time juvenile detention officer's certification is effective only during those periods when he

is formally assigned by the employing agency to perform the duties of a certified part-time juvenile detention officer. ()

b. All certified part-time juvenile detention officers shall be directly supervised by a POST certified full-time juvenile detention officer, and each agency shall have a policy regarding supervision of part-time juvenile detention officers. ()

084. – 089. (RESERVED)

090. CANINE-RELATED CERTIFICATIONS.

Canine related certificates ensure the competence of law enforcement canine teams and evaluators. These rules do not limit the use of canine teams employed by other states or federal agencies for law enforcement purposes, or the use of volunteer canine teams in which the handler is not an Idaho peace, detention, correction, or adult probation and parole officer. ()

091. CANINE TEAM CERTIFICATION.

01. Mandatory Certification. A canine team shall be POST certified to perform law enforcement duties. ()

02. Eligibility. A canine handler shall hold a POST law enforcement certification. Contract employees are not eligible for canine team certification. ()

03. Areas of Certification. The Council shall certify a canine team which successfully demonstrates the handler's ability to control the dog, under the scrutiny of an evaluator, in addition to proficiency in one (1) or more areas as deemed by the Council. ()

04. Evaluation. Evaluators of canine teams shall use POST standards for that particular skill category. Performance shall be rated on a pass/fail basis. The evaluator may discontinue testing if excessive time has been spent without results. The evaluator shall not be the owner or handler of the dog being evaluated, and not have a proprietary interest in the training of the team being evaluated. A Regional Training Specialist shall be notified of all canine certification testing. ()

05. Failed Evaluation. If a team fails any portion of an evaluation, the entire evaluation is considered as having been failed. All skills shall be repeated and successfully demonstrated during retesting. The team shall wait at least twenty-four (24) hours before retesting, and be retested by the same evaluator, or his designee, that evaluated the failed test. ()

06. Expiration of Certification. POST Canine Certification is valid for fifteen (15) months. A canine team must be evaluated prior to their certification expiration date to maintain certification. Certification shall lapse if the handler and canine dog cease to perform canine team functions together. ()

092. CANINE EVALUATOR CERTIFICATION.

01. Certification. POST shall certify applicants who meet the requirements set forth in this section and are deemed qualified by their training and experience to evaluate police canine teams. Certificates shall be issued in the areas of Patrol and Detection. ()

02. Eligibility. To be eligible for a Canine Evaluator Certificate, each applicant shall: ()

a. Possess a current or previous POST professional certification and not have been previously decertified as a public safety official in any jurisdiction; ()

b. Have three (3) years of experience as a certified canine handler; ()

c. Have three hundred ninety (390) hours of POST certified or federally- approved canine-related training; ()

- d. Complete the POST certified Canine Evaluators course; ()
- e. Evaluate seven (7) dogs while under supervision of a POST certified canine evaluator; and ()
- f. Submit a Canine Evaluator Application Packet to POST, which includes: ()
 - i. Transcripts, certificates, diplomas, or other documents verifying the applicant's education and training in the canine field; and ()
 - ii. A letter of recommendation from an administrator within the applicant's agency. ()

03. Retaining Certification. A certified canine evaluator shall evaluate a minimum of four (4) dogs every two (2) years in the discipline in which they are certified to evaluate. Any evaluator not satisfying this requirement shall complete all requirements for initial canine evaluator certification to be recertified. ()

04. Revocation. The Council may revoke Canine Evaluator certification if an evaluator is deemed unqualified to continue evaluating police canine teams. Review of canine evaluator certification may be initiated upon the request of an agency head, other reliable source or the Council. ()

093. – 099. (RESERVED)

100. LAPSE OF BASIC CERTIFICATION – REINSTATEMENT.

01. Lapse by Time. POST basic certification in any discipline will lapse if the officer does not serve as an officer in the discipline of certification in Idaho for three (3) consecutive years. The three-year period will be tolled during any time an officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. ()

02. Exception for Officers Remaining With Agency. A POST certified officer who changes from one certified discipline to another while remaining with the same agency will retain certification in the original discipline in which he was employed if he satisfies the continuing training requirements set forth in these rules. ()

03. Reinstatement After Three to Five Years Absence. An officer who has not served in full-time law enforcement from three (3) to five (5) years must meet the following requirements to be recertified: ()

- a. Submit a POST Certification Challenge Packet; ()
- b. Disclose all information regarding any decertification investigation or proceeding or the equivalent from any other jurisdiction. ()
- c. Comply with any additional provisions required by POST. ()
- d. Satisfy any applicable probationary period set forth in these rules. ()

04. Reinstatement After Five Years to Eight Years Absence. An officer who has not served in full-time law enforcement for over five (5) years but less than eight (8) years must attend a basic training academy to be recertified. ()

a. The Council may waive this requirement on a showing of good cause supported by clear and convincing evidence that during a substantial part of the that time out of full-time law enforcement, the officer engaged in an occupation requiring law enforcement training, skill, and experience equivalent to that required in the officer's discipline of certification. This evidence must be submitted with a POST challenge packet. ()

- b. Upon receiving a waiver, the officer must: ()
 - i. Disclose all information regarding any decertification investigation or proceeding or the equivalent

from any other jurisdiction. ()

ii. Satisfy any applicable probationary period set forth in these rules. ()

iii. Comply with any additional provisions required by POST. ()

05. Reinstatement After Eight Years Absence. An officer who has not served in full-time law enforcement for over eight (8) years must attend a basic training academy to be recertified. ()

101 – 109. (RESERVED)

110. DECERTIFICATION.

01. Mandatory Decertification. The Council shall decertify any person for: ()

a. A conviction of any felony or offense which would be a felony if committed in Idaho; ()

b. A conviction for a misdemeanor offense involving domestic violence; ()

c. Willfully falsifying or omitting any material information to obtain certification. ()

02. Discretionary Decertification. The Council may decertify any person for: ()

a. A conviction of any misdemeanor; ()

b. A violation of the Council’s Code of Ethics; ()

c. Criminal conduct whether charged or not; ()

d. Consuming alcoholic beverages on duty, except as necessary for the lawful performance of duties; ()

e. Harassment or intimidation; ()

f. Lying or falsifying official written or verbal communications; ()

g. Inappropriate sexual conduct while on duty; ()

h. An inappropriate relationship, sexual or otherwise, with a person who the officer knows or should have known is a victim, witness, defendant, or informant in an ongoing investigation or adjudication; ()

i. Unauthorized use or unlawful conversion of the employing agency’s property, equipment, or funds; ()

j. Intentional and unauthorized disclosure of confidential information or information that may compromise an official investigation; ()

k. Failure to report being charged with a felony or misdemeanor within five (5) business days; ()

l. Failure to respond or to respond truthfully to questions related to an investigation or legal proceeding. ()

03. Required Notifications by Officers and Agencies. ()

a. An officer charged with a felony or a misdemeanor shall notify his agency head within five (5) business days. ()

b. The agency head of an officer charged with a felony or misdemeanor shall notify the Division Administrator within fourteen (14) days of learning of the charge. ()

c. A person who is not currently employed by a law enforcement agency but is certified by POST shall notify POST of a misdemeanor or felony charge within fourteen (14) business days. ()

04. Effect of Decertification. ()

a. A person decertified by the Council is ineligible for POST certification of any kind for ten (10) years following the date of decertification. After the expiration of ten (10) years an agency head may petition the Council to allow a decertified officer to attend a basic academy and become certified. ()

b. No decertified person shall exercise any law enforcement authority until recertified. Any officer who is the subject of a decertification investigation is ineligible for any additional POST certification while under investigation. ()

111. DUE PROCESS PROCEDURES IN DECERTIFICATION PROCEEDINGS.

01. Legal Authority. In accordance with the Idaho Rules of Administrative Procedure of the Attorney General, IDAPA 04.11.01.050, the Council declines to adopt the procedures established in IDAPA 04.11.01 for contested cases. The procedures provided within these rules meet the unique requirements of the law enforcement profession for expeditious resolution of contested cases in order to assure public safety and to secure a just, speedy and economical determination of all matters presented to the Council. These procedures meet or exceed minimum Constitutional requirements for due process while allowing the Council to fulfill its obligations to protect the safety of the public and the integrity of the law enforcement profession. ()

02. Overview. The Division Administrator shall investigate all trustworthy allegations of misconduct by a person holding POST certification and determine whether decertification proceedings will be commenced. ()

03. Decertification Investigations. A person who is the subject of a decertification investigation shall receive an administrative warning requiring that he respond to questions, to answer such questions truthfully, and to acknowledge his understanding that no statements provided shall be used against him in criminal proceedings, as based on *Garrity v. New Jersey*, 385 U.S. 493 (1967). ()

112. DECERTIFICATION PROCEEDINGS.

If the Division Administrator determines that the allegations of misconduct by an officer, if proven, are cause for decertification, the officer shall be provided with notice and an opportunity to respond before a decision regarding decertification is made. ()

01. Notice of Intent to Decertify. The Division Administrator shall provide the person who is the subject of the proceeding with a notice of the intent to decertify, which includes: ()

a. The basis for the contemplated decertification and an explanation of the evidence supporting the intended action. ()

b. That the person shall have the opportunity to respond and present the Division Administrator, in writing or in person, any reasons why the intended action should not be taken. ()

c. That the officer person has a right to be represented by a person of their own choosing. ()

d. That the person may waive a response by submitting a written waiver to the Division Administrator. ()

e. That, if the person waives a response or fails to respond within the designated time, the Division Administrator will enter an order of decertification. ()

02. Decision – Request for Hearing. After the person who is the subject of the decertification proceeding has responded or waived a response, or the period to respond has expired, the Division Administrator shall, within twenty-eight (28) days, issue a decision on decertification. ()

a. The decision shall include findings of fact and conclusions of law and be final unless the person files a request for a hearing on the decision with the Council within fourteen (14) days of the date of the Division Administrator’s decision. ()

b. A request for hearing shall include a brief statement of the issues on which the person contends a hearing is required. ()

03. Hearing and Order. Upon receipt of a request for hearing, the Council shall assign the matter to a hearing officer for hearing. ()

a. The hearing officer shall have the power to subpoena witnesses, administer oaths, examine evidence and witnesses and request additional information from the parties. ()

b. The person who is the subject of the proceeding shall have the right to be represented at the hearing by a person of their own choosing and the right to conduct discovery. ()

c. Prior to submitting testimonial evidence, the person shall receive an administrative warning requiring that he provide testimony truthfully, and to acknowledge his understanding that no statements provided shall be used against him in criminal proceedings, based on *Garrity v. New Jersey*, 385 U.S. 493 (1967). ()

d. The hearing shall be recorded at the Council’s expense. The recording will be the official record of the hearing. Any party to the action may, at their expense, request that a transcript of the hearing be prepared or that additional recordings be made. Such a request shall be approved if the additional recording does not distract from or disrupt the hearing. ()

e. Pursuant to Idaho Code Section 19-5113, the Division Administrator shall have the authority to compel the attendance and testimony of witnesses and production and examination of books, papers, and records. ()

f. At the conclusion of proceedings, the hearing officer shall issue a decision in writing consisting of findings of fact, conclusions of law and an order that the person be decertified or that POST failed to show grounds for decertification and reinstating the officer. The decision and the record of the proceedings, shall be filed with the Council. ()

g. The decision shall be final, unless a petition for review by the full Council is filed with the Council within twenty-eight (28) days of the date of the decision. A petition for review shall include a brief statement of the basis upon which review is requested. ()

h. Where the decision directs the reinstatement of the person’s certification, the Division Administrator shall reinstate certification upon the expiration of the time for filing a petition for review. ()

04. Petition for Review. ()

a. Upon receipt of a petition for review, the Council shall issue a briefing schedule allowing the petitioner an opening brief, the respondent a response brief and the petitioner a reply brief. The Council shall review the record, briefs submitted and may allow oral argument. The petitioner may be represented by a person of their own choosing. ()

b. The Council may affirm, reverse, or modify the decision of the hearing officer, or may remand the matter. The Council’s decision shall be final and may be appealed to district court by filing a notice of appeal within twenty-eight (28) days of the date of service of the decision. ()

05. Service. Service of all notices to be given, orders or other documents under Section 092 shall be by

personal service, facsimile, other electronic means, or by U.S. mail, with postage prepaid, addressed to a party's last known address. ()

113. – 119. (RESERVED)

120. POST INSTRUCTOR CERTIFICATION.

To ensure the competence of instructors of subjects pertinent to law enforcement personnel, the Council will certify instructors who meet the requirements set forth in these rules. ()

121. POST INSTRUCTOR CERTIFICATION – GENERAL PROVISIONS.

01. POST Training Credit. POST will grant training credit for completion of training conducted by POST or instructed entirely by POST certified instructors provided the training is documented and meets POST training standards. ()

02. Agency Responsibility. Agencies, school directors, and POST Academy and Regional Training Specialists shall supervise, monitor, and audit instructors and courses to ensure that instructional excellence is maintained. ()

122. REQUIREMENTS FOR INSTRUCTORS OF LAW ENFORCEMENT SUBJECTS.

In addition to the other requirements for instructor certification set forth in these rules, instructors of law enforcement subjects must meet the following requirements. ()

01. Experience and Certification. An applicant must have a minimum of three (3) years of law enforcement experience, possess current or previous Idaho POST professional certification, and must not have been previously decertified as a law enforcement official of any jurisdiction. ()

02. Instructor Development Course. An applicant must complete the POST Instructor Development Course or approved equivalent. ()

03. Additional Requirements. An applicant must comply with any additional provisions required by POST. ()

123. REQUIREMENTS FOR HIGH LIABILITY INSTRUCTOR ENDORSEMENT.

POST certified instructors must obtain additional endorsements to instruct any topics deemed as “high liability” by the Council. ()

01. Completion of a High Liability Instructor School. An applicant for High Liability Instructor Endorsement must complete all requirements of the POST instructor course specific to the high liability topic area in which the applicant intends to instruct. ()

02. Application. After meeting the requirements for POST instructor certification, the applicant must submit a completed POST High Liability Instructor Endorsement Application Packet and must comply with any additional provisions required by POST. ()

03. Multiple Endorsements. A current POST endorsed high liability instructor applying for instructor endorsement in an additional high liability topic area must meet the requirements of this section for the additional topic area prior to endorsement in that topic. ()

04. Instruction Pending Endorsement. Prior to evaluation by a Regional Training Specialist, high liability instructor endorsement applicants cannot act as an instructor for any course offered for POST training credit in the intended topic area: Following completion of the POST instructor course specific to the intended high liability intended topic area, and upon notice from the Regional Training Specialist, the applicant may begin co-instruction of in the intended topic area, in preparation for evaluation. ()

05. Continuing Training Requirements. High liability instructors must complete a minimum of eight (8) hours of continuing instructor training every two (2) years, including use of force law, liability, and further

instructor training specific to the endorsed topic area(s). ()

124. REQUIREMENTS FOR CANINE INSTRUCTOR CERTIFICATION.

POST canine instructor certificates recognize the competency of instructors of canine subjects pertinent to law enforcement. In addition to the other requirements set forth in these rules of POST Instructors, the following are necessary for award of a POST canine instructor certificate: ()

01. Canine Instructor School. The applicant must have completed a POST approved Canine Instructor School. ()

02. Certification and Service in Specific Discipline. The applicant must have served a minimum of five (5) years as a handler and have a minimum of five (5) annual certifications in the specific discipline for which certification is sought. ()

03. Canine Training. The applicant must have received a minimum of six hundred eighty (680) hours of canine training. ()

04. Recommendation. The applicant must be recommended for canine instructor certification by a committee comprised of a POST Training Specialist and two (2) POST certified canine instructors. ()

05. Application. After meeting the foregoing requirements, the applicant must submit a completed Certified Instructor Packet to POST. ()

06. Requirements for Maintaining Certification. To maintain certification, a POST certified canine instructor must teach a minimum of forty (40) hours every two (2) years in the specific discipline they are certified to teach. ()

07. Additional Requirements for Patrol Canine Instructor Certification. In addition to the requirements in this section, applicants for Patrol Canine Instructor Certification must obtain a High Liability Instructor Endorsement. ()

125. MASTER INSTRUCTOR CERTIFICATION.

POST master instructor certificates recognize exceptional competence as an instructor of instructors in subjects pertinent to law enforcement personnel. The Council will determine master instructor disciplines. In addition to the requirements otherwise set forth in these Rules, the following are required for award of a master instructor certificate. ()

01. POST Instructor Certification. POST will determine the number of master instructor certifications issued based upon POST's need of instructors. An applicant shall be a current POST certified instructor in the subject for which master instructor certification is sought in for a minimum of three (3) years prior to application. The Council may, upon written request, waive this requirement in exceptional cases. An applicant shall: ()

02. Instruction. Have instructed a minimum of forty (40) hours of classes in the subject for which he is applying for master instructor certification during each of the previous two (2) years. ()

03. Additional Training or Education. Have received additional training or education beyond basic training in the area of their instructor certification. ()

04. Exceptional Ability. Have demonstrated exceptional ability to develop and present training.()

05. Recommendation. Be recommended for master instructor certification by a Regional Training Specialist or POST certified master instructor. ()

06. Maintain Certification. Teach a minimum of one (1) instructor class during the certification period to maintain certification. ()

07. Compliance With Other POST Requirements. Comply with any additional provisions required by POST. ()

126. MAINTAINING POST INSTRUCTOR CERTIFICATIONS AND ENDORSEMENTS.

01. Renewal of High Liability Endorsement. High liability instructor endorsements are valid for two (2) years, except Firearms endorsements which are valid for one (1) year, provided the instructor remains in good standing and complies with all POST requirements for in-service training. To renew the endorsement, the instructor must comply with any additional provisions required by POST. ()

02. Renewal of Master Instructor Certification. Master instructor certification is valid for three (3) years. To renew the certification, the instructor must comply with any additional provisions required by POST. If a master instructor's certification through the manufacturer becomes invalid for any reason, his POST certification for that device shall immediately be deemed inactive. ()

03. Renewal of Canine Instructor Certification. Canine instructor certification is valid for two (2) years. To renew the certification, the instructor must comply with any additional provisions required by POST. ()

04. Lapse of POST Instructor Certification. Except as otherwise set forth in these rules, POST instructor certification is valid indefinitely, provided it is not suspended or revoked, the instructor remains in good standing, and complies with all POST in-service training requirements. ()

a. Instructors who fail to instruct for a period of two (2) years will be deemed inactive and may not instruct as a POST instructor until they have reapplied. ()

b. Inactive instructors may be required to complete a POST approved instructor orientation course. ()

127. SUSPENSION AND REVOCATION OF INSTRUCTOR CERTIFICATION OR ENDORSEMENT.

01. Suspension. The Division Administrator may suspend instructor certification or endorsement for up to one year if an instructor significantly or repeatedly fails to develop, document, conduct, or report training activities according to POST standards, or fails to abide by the POST Instructor Code of Ethics. A suspension will initiate an immediate review to determine if a revocation of the instructor's certificate is warranted. ()

02. Revocation. The Council may revoke instructor certification if an instructor is deemed unqualified to continue instructing. Review of instructor certification may be initiated upon request of an agency head, school director or coordinator, POST Division Administrator, the Council, or other reliable source. ()

128. – 129. (RESERVED)

130. IN-SERVICE TRAINING REQUIREMENTS.

The Council may, as a condition of continuing certification, require law enforcement officers to attend in-service training meeting POST standards. ()

131. IN-SERVICE TRAINING REQUIREMENTS FOR RETAINING BASIC CERTIFICATION.

01. Peace Officers and County Detention Officers. To retain POST certification, a peace officer or county detention officer must complete a minimum of forty (40) hours of continuing law enforcement training related to law enforcement every two (2) calendar years beginning January 1 following the date the officer was certified. ()

02. Emergency Communications Officers. To retain POST certification, an emergency communications officer must complete a minimum of forty (40) hours of continuing training related to public safety emergency communications every two (2) calendar years beginning January 1 following the date the officer was certified. ()

03. Tolling of Two-Year Period. The two (2) year continuing training period shall be tolled while an officer is on active military duty, and recommence upon the officer's return to duty with his agency. The agency shall submit a Notice of Separation/Change in Status form upon the officer's departure from and return to the agency. ()

132. DOCUMENTATION OF IN-SERVICE TRAINING.

01. Agency Responsibility to Ensure Accuracy of Training Records. Agency heads are required to ensure POST records of agency personnel training are up to date and complete as of December 31 of each year. ()

02. Agency Retention of Training Records. Each agency shall maintain, and make available to POST, records of each in-service training course provided, including: ()

a. The name of the course provider and name and resume of the course instructor; ()

b. The course learning objectives, the number of instructional hours, the number of in-service training hours awarded and the attendance roster. ()

c. The names of the trainees completing the course and the date of completion. ()

03. POST Training Credit. No officer may receive POST training credit for training which has not been certified or approved by POST. ()

04. Notice of Non-Compliance. POST shall give written notice to officers who are not in compliance with in-service training requirements, and their agency heads. If an officer is not in compliance by December 31 of a two-year training cycle, his certification shall be suspended beginning January 1 of the following calendar year, unless an extension of time, not to exceed six (6) months, is granted by POST. The Division Administrator, may grant an additional extension of time for good cause shown. ()

05. College Courses. An officer fulfilling continuing training requirements by successfully completing a college course must have the college provide the employing agency with a transcript. The agency will make the transcript available to POST upon request. ()

133. POST CREDIT FOR IN-SERVICE TRAINING.

01. Credit for POST In-Service Training Provided by a Post Certified Instructor in Idaho. POST will grant training credit for in-service training according to the following criteria: ()

a. The training was provided by Idaho POST Certified Instructor(s). One (1) or more training instructors for any class must be POST certified. Instructors who are not POST certified will not be given credit for POST instructor hours. ()

b. The training was at least thirty (30) minutes in length. ()

02. Credit for POST In-Service Training Provided by an Organization or Vendor who is not POST Certified. All third-party in-service training must be pre-approved. The Council may maintain a list of organizations and vendors that will be exempt from this pre-approval process based on their reputation providing quality training, that are well established training organizations within the law enforcement training community, or that are offered through a regionally accredited college or university. Organizations and vendors who do not meet the criteria established through the Council, or its designee must meet the following criteria. ()

a. At least thirty (30) days prior to an in-service training session, the host agency will submit the following documents to a Regional Training Specialist: ()

i. A course outline; ()

- ii. A description of the subject material and the time period to be devoted to each subject area; ()
- iii. A description of the enforcement personnel to be instructed; ()
- iv. A résumé on each instructor, unless the instructor is POST certified or approved; and ()
- v. A lesson plan and all presentation and handout materials used in the course. ()
- b.** The course must be at least four (4) hours in length. ()
- c.** Any course which has been approved through this process, may be placed on the Council's designated pre-approved list after meeting the following criteria: ()
 - i. The course has been taught at least once in a calendar year, for at least three (3) consecutive years; or ()
 - ii. Is approved by the International Association of Directors of Law Enforcement Standards and Training (IADLEST) and placed on the IADLEST national course certification index. ()

03. Course Attendance Roster. A lead instructor or facilitator must submit an original or electronic POST course attendance roster no later than thirty (30) days following the completion of the training for POST training credit approval. ()

04. Training Outside Idaho. In-service training which is delivered outside of Idaho will be considered POST approved if the trainee provides any of the following: ()

- a.** The training was approved by the state's equivalent of POST, where the training occurred; or ()
- b.** The training course was approved by the International Association of Directors of Law Enforcement Standards and Training (IADLEST); or ()
- c.** The training course meets the criteria set forth above; and ()
- d.** Is submitted within thirty (30) days of the completion of the course; and ()
- e.** The trainee provides POST with the location, hours of the training, and a course syllabus or table of contents. ()

134. COURSE EVALUATION FEE.

01. Fee Schedule. POST may charge an entity applying for school or course approval a course evaluation fee at the time of application as follows: ()

- a.** One (1) to four (4) hour course: \$200. ()
- b.** Five (5) to eight (8) hour course: \$400. ()
- c.** Nine (9) to sixteen (16) hour course: \$600. ()
- d.** Seventeen (17) to twenty-four (24) hour course: \$800. ()
- e.** Twenty-five (25) to forty (40) hour course: \$1,000. ()
- f.** Over 40 hours: A combination of the above as determined by the Division Administrator. ()
- 02. Exception.** POST will not charge a course evaluation fee to governmental entities. ()

- 03. Waiver.** The Division Administrator may waive a course evaluation fee in whole or in part. ()

135. ALTERNATIVE METHODS OF IN-SERVICE TRAINING.

The Council may approve alternative methods of delivering training, including but not limited to training by videotape or compact discs, computer programs, internet-based training or written correspondence. ()

- 01. Training Medium.** The training medium utilized must be indicated on the application for approval of the training. ()

- 02. Specialized Equipment.** The applicant must provide POST with any specialized equipment, software, network access, etc. needed for the evaluation, at no cost at the time of application. ()

- 03. Course Evaluation Fee.** A course evaluation fee may be charged pursuant to these rules. ()

136. – 139. (RESERVED)

140. LAW ENFORCEMENT CERTIFICATION PROGRAM APPROVAL.

POST approval of a law enforcement certification program is established to ensure that instruction offered by such programs is equivalent to or exceeds POST basic academy training. ()

141. LAW ENFORCEMENT CERTIFICATION PROGRAM – GENERAL PROVISIONS.

- 01. Eligibility.** To be eligible for approval as a law enforcement certification program, program must comply with all Idaho Department of Education standards if applicable, for such programs, and all other requirements of these rules. ()

- 02. Permission to Proceed With Approval Process.** A program seeking approval as a law enforcement certification program must receive permission to proceed from POST prior to beginning the approval process, comply with the requirements of these Rules, and contact a Regional Training Specialist to schedule an on-site assessment. ()

- 03. Initial Assessment.** POST will conduct an on-site assessment and provide the results to the program coordinator. ()

- a.** If the assessment finds that all requirements for program approval have not been met, the program will be given ninety (90) days to correct the deficiencies and a Regional Training Specialist will conduct a second on-site assessment. ()

- b.** If all requirements for the program approval are met, the Council will approve the program. ()

- 04. Assessment Visits.** POST may conduct scheduled and unscheduled visits to entities seeking law enforcement certification program approval and currently- approved programs, to assess adherence to POST standards. ()

- 05. Expiration and Renewal of Certification.** ()

- a.** Initial and subsequent law enforcement certification program approval is valid for two (2) years. ()

- b.** Renewals must be completed prior to the program approval expiration date. ()

142. ADMINISTRATION OF COLLEGE OR UNIVERSITY PROGRAM.

A college or university law enforcement certification program shall have an advisory committee comprised of the Division Administrator or his designee and criminal justice executives or their designees from several agencies representative of the region the program serves. ()

01. Chair and Vice-Chair; Selection; Term. The advisory committee will elect a chair and vice-chair from among the committee members other than the Division Administrator or designee. The terms of office will be initially staggered. No chair or vice-chair may serve in that capacity for longer than four (4) consecutive years. ()

02. Duties of Chair and Vice-Chair. The chair or vice-chair schedule meetings and set agendas for advisory committee, meetings, work with the program coordinator and the program's administration, and perform other duties as necessary. ()

143. MAINTENANCE OF RECORDS.

A law enforcement certification program must maintain: ()

01. Course File. A file for each POST approved law enforcement training course it conducts, including curriculum, class schedules, attendance and discipline records, counseling records, tests with answer sheets, a course summary, and course evaluations. ()

02. Student Training File. A training file for each student including sufficient records to determine whether the student has completed all performance objectives. ()

03. Instructor File. A file for each instructor for the program including proof that the instructor is POST certified for each subject the instructor teaches, a copy of the instructor's student evaluations for the past year, and any other pertinent information related to the instructor's performance. ()

144. MINIMUM ATTENDANCE REQUIREMENTS.

A law enforcement certification program may have no fewer than six (6) students in a required class. Training required for certification will not be conducted for a class of less than six (6) students. The Council may consider exceptions upon a written request from the program coordinator. ()

145. POST-GRADUATION SELF-EVALUATION.

A law enforcement certification program must conduct post-graduation evaluations of its entry-level training from six (6) to twelve (12) months after students leave the program, and must assess the relevance of the training to current law enforcement practices. ()

146. INSTRUCTION.

A law enforcement certification program must: ()

01. Monitoring of Instruction. Conduct periodic and random monitoring of instruction to ensure that lesson plans are being used, objectives are being addressed, appropriate instructional aids are available and being used properly, the instructor is in control and engaging the students; and classroom conditions such as lighting, noise levels, and temperature are acceptable. ()

02. Lesson Plans. Have a lesson plan on file for every training class and must review and update lesson plans and curricula on a regular basis to ensure compliance with POST requirements. ()

03. Evaluation of Instructors. Require students to complete written evaluations of every instructor. ()

04. Student Complaints. Investigate any student complaint regarding an instructor or the training process. ()

147. STANDARDS.

01. Law Enforcement Certification Program Student. Shall: ()

a. Meet the minimum standards for POST certification as set forth in these rules, with the exception of age. ()

b. Attest that he has read, understands, and will abide by the Law Enforcement Code of Conduct as set

forth in these rules. ()

02. Law Enforcement Certification Program. Shall: ()

a. Have an integrity policy, which provides that dishonesty, including academic dishonesty, plagiarism and untruthfulness are grounds for disciplinary action and expulsion. All students shall review this policy on entering the program. ()

b. Have a policy prohibiting students from social contact, on or off campus, with staff members or instructors. Students and program staff or instructors shall maintain a professional relationship at all times. ()

c. Address other standards of conduct and behavior that reflect courtesy, consideration, and respect for others. Any conduct detrimental to the conduct, efficiency, or discipline of the program is prohibited. ()

148. PERIODIC ASSESSMENT BY POST.

01. Assessment. POST will perform periodic on-site assessments of each law enforcement certification program. POST will provide the program coordinator with no less than two (2) weeks notice prior to the assessment, and notify the program coordinator of the results. ()

02. Failure to Comply With Standards; Reassessment. If a law enforcement certification program does not meet all requirements for POST approval, the Council may suspend approval and direct corrective action. ()

a. The program must remedy all deficiencies within ninety (90) days of the initial assessment unless the Council grants an extension of time. ()

b. After ninety (90) days, or the applicable period if an extension of time is granted, POST will conduct a reassessment of the program. If all deficiencies are corrected, the Council will approve the program. ()

c. If all standards are not met, POST will notify the program administrator and, if applicable, the chairman of the program's advisory committee of the continuing deficiencies. The Council will review the reassessment report and may grant additional time to correct the deficiencies. ()

d. If all deficiencies are not corrected, the Council will revoke approval. ()

149. – 999. (RESERVED)

IDAPA 21 – IDAHO DIVISION OF VETERANS SERVICES

DOCKET NO. 21-0000-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 65-202; 65-204; 66-907, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapters promulgated as proposed rules under this docket number under IDAPA 21, rules of the Idaho Division of Veterans Services:

IDAPA 21

- 21.01.01, *Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure*
- 21.01.04, *Rules Governing the Idaho State Veterans Cemetery*

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 4384 – 4415](#). These rules ensure that the Idaho Division of Veterans Services can honor and serve Idaho's Veterans to the highest standard, whether living or deceased. The provisions laid out in these rules provide standards for admission in the State Veterans Homes and interment in the State Veterans Cemeteries. IDAPA 21.01.01 ensures the ability of the Idaho Division of Veterans Services to provide necessary care to honorably discharged eligible Veterans. IDAPA 21.01.04 ensures the ability of the Idaho Division of Veterans Services to provide a dignified final resting place for honorably discharged Veterans and their eligible dependents. These rules provide the guidance to ensure proper collection of VA burial benefits and necessary fees to ensure the Idaho State Veterans Cemetery is able to inter, disinter, or reinter as needs be with dignity and respect. Technical corrections were made to both IDAPA 21.01.01 and 21.01.04 for clarity, accuracy, and brevity.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. IDAPA 21.01.01.915 - Maintenance Charges; IDAPA 21.01.01.916.01 - Monthly Charges and Allowances Nursing Care; IDAPA 21.01.01.916.02 - Monthly Charges And Allowances Residential and Domiciliary Care; IDAPA 21.01.04.024 - Fees for Interment, Disinterment, and Reinterment. These fees or charges are being imposed pursuant to Section 66-907, Idaho Code, and 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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Kevin Wallior (208) 780-1308.

Dated this 10th day of October 10, 2019.

Kevin Wallior
Management Assistant
Phone: (208) 780-1308 / Fax: (208) 780-1301

Idaho Division of Veterans Services
351 Collins Road
Boise, ID 83702

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

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 65-202, 65-204, and 66-907, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 21, rules of the Idaho Division of Veterans Services:

IDAPA 21

- 21.01.01, *Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure*
- 21.01.04, *Rules Governing the Idaho State Veterans Cemetery*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules ensure that the Idaho Division of Veterans Services can honor and serve Idaho's Veterans to the highest standard, whether living or deceased. The provisions laid out in these rules provide standards for admission in the State Veterans Homes and interment in the State Veterans Cemeteries.

Any fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. IDAPA 21.01.01 ensures the ability of the Idaho Division of Veterans Services to provide necessary care to honorably discharged eligible Veterans. Without reauthorization of this rule the ability of the Idaho Division of Veterans Services to provide the quality of care mandated by Federal and

State statutes would be severely hindered. IDAPA 21.01.04 ensures the ability of the Idaho Division of Veterans Services to provide a dignified final resting place for honorably discharged Veterans and their eligible dependents. These rules provide the guidance to ensure proper collection of VA burial benefits and necessary fees to ensure the Idaho State Veterans Cemetery is able to inter, disinter, or reinter as needs be with dignity and respect.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. IDAPA 21.01.01.915 MAINTENANCE CHARGES. IDAPA 21.01.01.916.01 MONTHLY CHARGES AND ALLOWANCES Nursing Care. IDAPA 21.01.01.916.02 MONTHLY CHARGES AND ALLOWANCES Residential and Domiciliary Care. IDAPA 21.01.04.024 FEES FOR INTERMENT, DISINTERMENT, AND REINTERMENT.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kevin Wallior (208) 780-1308.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 21-0000-1900F

**21.01.01 – RULES GOVERNING ADMISSION, RESIDENCY, AND MAINTENANCE
CHARGES IN IDAHO STATE VETERANS HOMES AND DIVISION OF
VETERANS SERVICES ADMINISTRATIVE PROCEDURE**

000. LEGAL AUTHORITY.

The Administrator of the Division of Veterans Services with the advice of the Veterans Affairs Commission is authorized by the Idaho Legislature to establish rules governing requirements for admission to Idaho State Veterans Homes and to establish rules governing charges for residency, pursuant to Sections 65-202, 65-204 and 66-907, Idaho Code. (3-30-01)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 21.01.01, “Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure.” (3-30-01)

02. Scope. These rules contain provisions for determining eligibility for admission and for establishing charges for residency in Idaho State Veterans Homes, together with rules of administrative procedure before the Idaho Veterans Affairs Commission. (3-30-01)

002. POLICY.

Through the facilities and services available at Idaho State Veterans Homes, the Division of Veterans Services will provide necessary care for honorably discharged eligible veterans. No applicant will be denied admission on the basis of sex, race, color, age, political or religious opinion or affiliation, national origin, or lack of income, nor will any care or other benefit at a Home be provided in a manner, place, or quality different than that provided for other residents with comparable disabilities and circumstances. However, if residents are financially able to do so, they must contribute to the cost of their care, with allowances made for retention of funds for their personal needs. (3-30-01)

003. INCORPORATION BY REFERENCE.

01. Incorporated Documents. These rules incorporate by reference: ()

a. 5 U.S.C. Section 2108(1) dated October 7, 2015. ()

b. 38 CFR Part 51, Subpart A, B, C, D, and E dated December 28, 2018. ()

02. Document Availability. Copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-0001. ()

004. -- 009. (RESERVED)

010. DEFINITIONS.

For the purposes of the rules contained in this Chapter, the following terms are used as defined: (3-15-02)

01. Applicant. A person who has expressed interest in applying for residency in an Idaho State Veterans Home. (3-30-01)

02. Asset. Real or personal property that is owned in whole or in part by an applicant or resident, including stocks, bonds, goods, rights of action, evidences of debt, and cash or money that is not income. Insurance payments or monetary compensation for loss of or damage to an asset is an asset. Income not expended in the calendar month received is an asset beginning on the first day of the next calendar month. (4-2-08)

03. Bona Fide Resident. A person who maintains a principal or primary home or place of abode in the state of Idaho coupled with the present intent to remain at that home or abode and return to it after any period of absence pursuant to Section 66-901, Idaho Code. (3-30-01)

04. Commission. The Idaho Veterans Affairs Commission. (3-30-01)

05. Division. Division of Veterans Services in the Idaho Department of Self Governing Agencies. (3-30-01)

06. Division Administrator. The Administrator of the Division of Veterans Services in the Department of Self Governing Agencies, or his designee. The chief officer of the Division of Veterans Services. (3-30-01)

- 07. Home Administrator.** Administrator of an Idaho State Veterans Home. The chief officer of each respective Veterans Home. (3-30-01)
- 08. Home.** An Idaho State Veterans Home. (3-30-01)
- 09. Idaho State Veterans Home.** Pursuant to Section 66-901, Idaho Code, a Home for eligible veterans. (3-30-01)
- 10. Income.** Money received from any source including wages, tips, commissions, private pension and retirement payments, social security benefits, unemployment compensation, veterans assistance benefits, and gifts. (4-2-08)
- 11. Legal Dependents.** The mother, father, spouse, or minor children of an applicant or a resident who, by reason of insufficient financial resources, or non-minor children who because of disease, handicap or disability, must have financial support from the applicant or resident in order to maintain themselves. (3-30-07)
- 12. Liquid Assets.** Those assets which are cash or can be liquidated for cash within a reasonable period of time including, but not limited to, money market certificates, certificates of deposit, stocks and bonds, and some tax shelter investments. (4-2-08)
- 13. Maintenance Charge.** A charge made for care and residence at an Idaho State Veterans Home, based upon the current established rate. (3-30-01)
- 14. Net Income.** That income used to compute charges after allowable deductions have been made. (3-30-01)
- 15. Resident.** A person who is a resident of an Idaho State Veterans Home. (3-30-07)
- 16. Spouse.** The husband or wife, under a marriage recognized by Title 32, Idaho Code, of a veteran or the widow or widower of a veteran under a marriage recognized by Title 32, Idaho Code. (3-30-07)
- 17. VA.** United States Department of Veterans Affairs. (3-30-01)
- 18. Veteran.** Has the meaning established in Section 65-203, Idaho Code. The separation or discharge considered under this definition means the conditions of the most recent separation or discharge from military service. ()

011. -- 049. (RESERVED)

050. ADMINISTRATIVE POWERS.

The Home Administrator has full authority in the management of a Home, subject to review by the Division Administrator and Commission. A Home Administrator can, in the execution of his duties, delegate certain responsibilities to his staff. When requested by the Division Administrator, the Home Administrator will attend regular and special meetings of the Commission. (3-30-01)

01. Representative Powers. The Division Administrator is authorized to represent the Commission in all official transactions between the Homes and other departments of Idaho state government. (3-30-01)

02. Investigation Powers. Upon receipt of an application for residency and for the duration of residency of any resident, the Division is authorized to conduct an investigation to determine the total value of the property and assets of the applicant/resident to determine his ability to pay maintenance charges established in this Chapter pursuant to Section 66-907, Idaho Code. (3-30-01)

03. Inspection Powers. Inspection of the rooms and facilities of a Home, as well as of the dress and appearance of all residents, can be conducted at any time by the Home Administrator. (3-30-01)

04. Emergency Powers. In an emergency, the Home Administrator is authorized to use his judgment in matters not specifically covered by a statute, order, rule, or policy. (3-30-01)

051. -- 074. (RESERVED)

075. ADMINISTRATIVE DUTIES.

The Home Administrator will enforce all orders and rules and implement all policies of the Division in the administration of a Home. (3-30-01)

01. Management of Records. The Home Administrator must maintain accurate fiscal and resident records. (3-30-01)

a. Nursing care records. Records relating to each nursing care resident of a Home will be kept in accordance with Idaho Department of Health and Welfare Rules, IDAPA 16.03.02, "Rules and Minimum Standards for Skilled Nursing and Intermediate Care Facilities in Idaho," and VA Rules 38 CFR Part 51; Subpart A, B, C, and D dated December 28, 2018. ()

b. Residential and domiciliary care records. Records relating to each residential care resident of a Home will be kept in accordance with VA Rules 38 CFR Part 51; Subpart A, B, C, and D dated December 28, 2018. ()

02. Response to Complaints. The Home Administrator will respond in writing to any written and signed complaint made by a resident pursuant to Section 300 of these rules. (3-30-01)

076. -- 099. (RESERVED)

100. ELIGIBILITY REQUIREMENTS.

Applicants and residents must satisfy the following requirements: (3-30-07)

01. Veterans or Eligible Spouse. (3-30-07)

a. Nursing Care. Applicants for and residents of nursing care must be a veteran or the spouse of a veteran who is eligible for admission to a Home. The death of a veteran shall not disqualify a resident spouse if the veteran was eligible for admission to a Home at the time of death. (3-30-07)

b. Residential Care and Domiciliary Care. Applicants for and residents of residential care and domiciliary care must be a veteran. A Home will not grant spouses admission for residential care or domiciliary care. (3-30-07)

02. Idaho Residency. The applicant must be a bona fide resident of the state of Idaho at the time of admission to a Home. (3-30-01)

03. Incompetent Applicants. Applicants and residents who are incompetent must provide copies of a legally sufficient guardianship or power of attorney. (3-30-07)

04. Necessity of Services. Applicants and residents must meet the requirements for the level of care for which they apply or are receiving. At the request of the Home, residents must provide recertification of their need for services from a VA physician or a physician currently licensed by the Idaho Board of Medicine to practice medicine or surgery in the state of Idaho. (3-30-07)

a. Nursing Care. To be eligible to receive nursing care in a Home, applicants must be referred by a VA physician or a physician currently licensed by the Idaho Board of Medicine to practice medicine or surgery in the state of Idaho. (3-30-01)

b. Residential and Domiciliary Care. Each applicant must submit to a physical examination performed by a licensed physician and meet the physical limitation requirements for residential care and domiciliary care. Applicants and residents must be unable to earn a living and have no adequate means of support due to wounds, old

age, or physical or mental disabilities. However, each residential care and domiciliary care resident must ambulate independently or with the aid of a wheelchair, walker, or similar device and be capable of performing at the time of admission, and for the duration of his residency, all of the following with minimal assistance: ()

- i. Making his bed daily; (3-30-01)
- ii. Maintaining his room in a neat and orderly manner at all times; (3-30-01)
- iii. Keeping all clothing clean through proper laundering; (3-30-01)
- iv. Observing cleanliness in person, dress and living habits and dressing himself; (3-30-01)
- v. Bathing or showering frequently; (3-30-01)
- vi. Shaving daily or keeping his mustache or beard neatly groomed; (3-30-01)
- vii. Proceeding to and returning from the dining room and feeding himself; (3-30-01)
- viii. Securing medical attention on an ambulatory basis and managing medications; (3-30-01)
- ix. Maintaining voluntary control over body eliminations or control by use of an appropriate prosthesis; and (3-30-01)
- x. Making rational decisions as to his desire to remain or leave the Home. (3-30-01)

05. Placement Restriction. A Home shall not accept applicants or continue to extend care to residents for whom the facility does not have the capability or services to provide an appropriate level of care. (3-30-01)

06. Financial Statement. Each applicant must file a signed, dated statement with the Home Administrator containing a report of income from all sources and a report of all liquid assets which will be used to determine the amount of the maintenance charge which is required in accordance with Section 66-907, Idaho Code, and these rules. ()

07. Social Security Benefits. If eligible for Social Security benefits, the applicants and residents and their spouses must apply for those benefits unless waived by the Home Administrator. (3-30-07)

08. Medicare Coverage. If eligible for Medicare, the applicants and residents must elect to participate, unless participation is waived by the Home Administrator. (3-30-07)

09. Income Limitation. (3-30-01)

a. Nursing Care. None. (3-30-01)

b. Residential and Domiciliary Care. An applicant whose total monthly net income, at the time of his application for residency, exceeds the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95588 divided by twelve (12) cannot be admitted unless granted a waiver by the Home Administrator. This waiver must include a statement from a VA Medical Center physician indicating the veteran is in “need of continuing medical care.” (3-30-01)

10. VA Pension -- Nursing Care. Unless waived by the Home Administrator, a wartime veteran, as defined in 5 U.S.C. Section 2108, who is a nursing care applicant or resident must be eligible for, apply for, or be in receipt of a VA disability pension in accordance with Public Law 95588. Such waivers may be considered only when the applicant or resident has signed a statement that he is able to defray the necessary expenses of the medical care for which he is applying or receiving and arrangements are made to secure medical services not provided by the VA. (3-30-07)

11. Agreements for Behavior and Care Needs. The Homes may require that applicants or residents

enter into agreements concerning the applicant or resident's behavior or care needs while residing in the Home. The resident's failure to perform these agreements is a basis for discharge from the Home. (3-15-02)

12. Limit on Admission of Spouses. Unless waived in writing by the Division Administrator, a Home shall not accept spouses for admission if the Home's residency is at ninety-five percent (95%) or more of capacity. Homes shall not admit a spouse if the number of spouses residing in the home will exceed twenty-five percent (25%) of the residents of the Home following admission of the applicant. (3-30-07)

101. -- 149. (RESERVED)

150. APPLICATION PROCEDURE.

01. Submission of Application. An application may be submitted to the administrative offices of a Home on a form from the Division. ()

02. Application Processing. Completed applications will be processed no later than three (3) working days from receipt. (3-30-01)

03. Waiting List. An applicant who is approved for admission for whom a vacancy does not exist will be placed on a waiting list and accepted on a first come, first served basis dependent on the Home's ability to provide a level of care consistent with the needs of the applicant. The Home Administrator may award "priority status" to prospective Home residents resulting in their names being placed near the top of the Home waiting list, provided they have completed all preadmission requirements and meet one (1) or more of the following criteria: (3-30-07)

a. Veterans who served during any war or conflict officially engaged in by the government of the United States. (3-30-01)

b. Previous residents of Homes who have been discharged for therapeutic treatment or to live in a lesser level of care or in an independent setting and whose discharge plan indicates a readmission priority. (3-30-01)

c. Current Home residents who demonstrate a need for a level of care provided by a Home and who would benefit from maintaining a stable environment. (3-30-01)

d. Receive special consideration as per the request of the medical director because of his desire to provide a very specific continuum of care. (3-30-01)

04. Provision If Application Rejected. An applicant whose application has been rejected and who feels he meets the eligibility requirements can request a hearing in accordance with the procedures specified in Section 982, et seq., of these rules. (3-30-01)

151. -- 199. (RESERVED)

200. CONDITIONS FOR ADMISSION.

01. Denial of Admission. Admission may be denied to an otherwise eligible applicant for any reason for which an admitted resident could be involuntarily discharged. (3-30-01)

02. Assignment of Personal Property. Prior to admission to a Home, an eligible applicant must agree that while he is a resident of a Home he will assign the following, under the conditions specified: (3-30-01)

a. Pursuant to Section 66-906, Idaho Code, all personal property owned, money held, or assets to which he is entitled at the time of his death -- unless disposed of by will or rightfully claimed within five (5) years of the death of the resident by an heir or person named in the resident's will -- must be assigned to the Division Administrator at the time of application for the sole use and benefit of a Home. (3-30-01)

b. Upon discharge or voluntary departure from a Home, and after written notification is sent to the resident, all personal property owned or money deposited with the Home which is unclaimed by the former resident

will be converted for the sole use and benefit of a Home as specified below: (3-30-01)

i. Personal property unclaimed within thirty (30) days of departure or discharge will be made available to needy Home residents or disposed of at public auction or private sale and the proceeds deposited with the state; or (3-30-01)

ii. Money deposited with the Home will be retained and deposited with the state; however, said money may be claimed by the former resident within five (5) years of departure or discharge. (3-30-01)

201. WEAPONS.

Weapons including, but not limited to, firearms, ammunition, straight razors, and knives are not allowed. (4-11-06)

202. ACKNOWLEDGMENT OF CONDITIONS LEADING TO DISCHARGE.

Upon admission to a Home, each resident will be advised in writing of the conditions under which immediate discharge will occur, as specified in Section 350 of these rules. Each resident must acknowledge receipt of this information by signature, and that acknowledgment will be a permanent part of each resident's file. (5-8-09)

203. -- 299. (RESERVED)

300. CONDUCT OF RESIDENTS.

Each resident must comply with applicable rules in this Chapter and with any order or directive of the Home Administrator. All complaints made by the residents concerning food, quarters, ill treatment, neglect, abusive language, or other violations of any rule or standard applicable to the Home, or complaints against the operation of a Home may be made either verbally or in writing to the Home Administrator. (3-30-01)

01. No Operation of Motor Vehicles by Nursing Care Residents. The operation or storage of privately owned motor vehicles by nursing care residents is prohibited on Home property. (3-20-04)

02. Operation of Motor Vehicles by Domiciliary and Residential Care Residents. Each authorized domiciliary and residential care resident who drives a motor vehicle onto the grounds of a Home must adhere to the following: (3-20-04)

a. Requirements: (3-30-01)

i. Possess a valid driver's license; (3-30-01)

ii. Have a current motor vehicle registration; (3-30-01)

iii. Operator is insured against liability and property damage in accordance with Idaho law; and (3-30-01)

iv. Park only in assigned spaces. (3-30-01)

b. Prohibitions. Nonoperable motor vehicles and motor vehicle repairs are not permitted on the grounds of a Home. (3-30-01)

03. Housekeeping. (3-30-01)

a. Housekeeping services for nursing care residents shall be provided by the Home. (3-30-01)

b. Each residential and domiciliary care resident must adhere to the following requirements (residential care residents may need minimal assistance): (3-30-01)

i. Making his bed daily; (3-30-01)

ii. Maintaining his room in a neat and orderly manner at all times; and (3-30-01)

- iii. Assuring that all clothing is appropriately marked, stored and kept clean through proper laundering. (3-30-01)
- c. All residents are prohibited from: (3-30-01)
 - i. Washing clothes or other articles which present a health or safety hazard in resident rooms or bathrooms; (3-30-01)
 - ii. Using electrical devices, including televisions, radios, recorders, and shavers, until they have been certified by Home maintenance staff as being safe for use; (3-30-01)
 - iii. Entering the kitchen, laundry, shop or mechanical spaces without permission; and (3-30-01)
 - iv. Interfering or tampering with the heating, refrigeration or air conditioning systems, televisions, lighting, appliances, plumbing, or mechanical equipment at the Home without authorization. (3-30-01)
- 04. Personal Conduct.** Each resident must adhere to the following: (3-30-01)
 - a. Requirements: (3-30-01)
 - i. Observing cleanliness in person, dress and in living habits; (3-30-01)
 - ii. Bathing or showering frequently; (3-30-01)
 - iii. Observing the smoking policies of a Home; and (3-30-01)
 - iv. Residential and domiciliary care residents must retire to a recreation area or utilize an individual bed light if desiring to read between 10 p.m. and 6:30 a.m. during which time all room overhead lights are turned off. (3-30-01)
 - b. Prohibitions: (3-30-01)
 - i. Creating a disturbance or using intoxicating beverages or nonprescribed controlled substances in the buildings or on the grounds (unless prescribed by a physician); (3-30-01)
 - ii. Marking or writing on the walls of a building, or damaging the grounds or any other property; (3-30-01)
 - iii. Using profanity or exhibiting vulgar behavior in the Home or in any other public place; (3-30-01)
 - iv. Becoming involved in quarrels, persistent dissension or criticism of others; (3-30-01)
 - v. Lending money to, or borrowing money from, another resident or an employee of the Home; (3-30-01)
 - vi. Smoking in an unauthorized area; (3-30-01)
 - vii. Taking food (other than fresh fruit for consumption within a reasonable time period), condiments, dishes or utensils from the dining room; (3-30-01)
 - viii. Cooking or using heating devices in residents' rooms or other unauthorized areas; and (3-30-01)
 - ix. Storing flammable or combustible material including, but not limited to, gasoline, butane, solvents, and acetone on Home grounds. (3-30-01)

301. -- 349. (RESERVED)

350. TRANSFER AND DISCHARGE OF RESIDENTS.

A resident can be transferred or discharged, for a period to be determined by the Home Administrator, for the bases set forth in Section 350 of these rules. The Home Administrator will provide notice of transfer or discharge and the opportunity to appeal a transfer or discharge in accordance with Section 980 of these rules. (5-8-09)

01. Emergency Discharge or Transfer. Upon determination by the Home Administrator that an emergency exists, a resident may be immediately discharged or transferred. (5-8-09)

02. General Discharge or Transfer. If the Home Administrator determines that one (1) or more of the following is present or has occurred, the resident may be discharged or transferred from the Home: (5-8-09)

a. Possession of a lethal weapon of any kind by the resident on Division property; possession of wine, beer, or liquor by the resident on Division property; or possession of a controlled substance or medication by the resident, unless prescribed by the resident's physician; (4-2-08)

b. Excessive or habitual intoxication; ()

c. Willfully destroys or wrongfully appropriates state or another person's property; ()

d. Failure to comply with the rules of this Chapter or a written directive of the Home Administrator or the Division Administrator; ()

e. Financial conditions set forth in Section 950 of these rules are present; ()

f. Engages in a pattern of behavior that infringes upon the rights of another person; ()

g. Unauthorized absences from the Home in excess of those permitted by Section 352 of these rules; ()

h. Endangers the safety, wellbeing, or health of the resident or other persons or disrupts the peace of the home; ()

i. The resident is required by law to register as a sex offender. Should it be determined by the Home that it must provide resources in excess of those provided to other residents to ensure the safety of the resident or other persons; ()

j. The resident does not meet the requirements and limitations set forth in Section 100 of these rules. (4-2-08)

03. Discharge or Transfer During Absence. A resident who is absent from the Home may be discharged or transferred due to one (1) or more of the following: (5-8-09)

a. The Home will not have the capability or services to provide an appropriate level of care to the resident upon the resident's return to the Home; (5-8-09)

b. The resident has not returned to the Home from an absence prior to the expiration of the bed hold period established by a third party payer paying more than half of the resident's maintenance charges; (5-8-09)

c. The resident ceases to pay the resident's maintenance charges or a bed hold charge applicable to an absence. (5-8-09)

04. Voluntary Transfer or Discharge. A resident may be transferred or discharged at any time upon voluntary consent of the resident. (5-8-09)

351. (RESERVED)

352. UNAUTHORIZED ABSENCES -- RESIDENTIAL AND DOMICILIARY CARE.

01. Unauthorized Absences Prohibited. For residential and domiciliary care residents, no more than three (3) unauthorized absences may be accumulated in a thirty (30) day period. If more than three (3) unauthorized absences are accumulated, the resident may be discharged for a period of thirty (30) days. (5-8-09)

02. Yearly Maximum. The maximum number of unauthorized absences allowable in a one (1) year period is twelve (12). Any resident who exceeds twelve (12) unauthorized absences in one (1) year may be discharged for a period of up to one (1) year. (5-8-09)

03. Readmission Requirements. Residents discharged for unauthorized absences must reapply for admission and are subject to the same restrictions and conditions as other applicants. (5-8-09)

353. -- 850. (RESERVED)

851. AVAILABLE SERVICES.
The Division will make available the following services. (3-15-02)

01. Residential and Domiciliary Care. The Division will make available the services listed below for residential and domiciliary care residents: ()

- a. Barber/Beauty Shop. ()
- b. Chaplain. ()
- c. Dietary. ()
- d. Laundry. ()
- e. Nursing (limited). ()
- f. Referral. ()
- g. Social Work. ()
- h. Therapeutic Recreation. ()
- i. Limited Transportation. ()

02. Nursing Care. In addition to the services listed in Subsection 851.01, the Division will make available the services listed below for nursing care residents: ()

- a. Dental Hygiene. ()
- b. Lab. ()
- c. Nursing (Skilled). ()
- d. Pharmaceutical. ()
- e. Physical Therapy. ()
- f. Physician. ()
- g. Speech Therapy. ()
- h. X-Ray. ()

852. -- 879. (RESERVED)

880. FINANCIAL CONDITION OF APPLICANTS/RESIDENTS.

Each applicant/resident or his legal representative must submit a signed and dated financial statement to the Home Administrator on which his income and liquid assets from all sources are reported. The statement must also indicate whether the applicant/resident is responsible for the support of any legal dependent who should be considered in fixing the amount of monthly charges. If changes occur in the applicant's/resident's income or liquid assets, it is the applicant's/resident's responsibility to submit an accurate financial statement immediately. (3-30-01)

01. Investigation of Financial Condition. The Division is authorized to investigate the financial condition of applicants/residents to determine their ability to pay maintenance charges. An applicant/resident may need to provide a power of attorney or a release of information to the Home Administrator in order to assist in investigating his financial condition and to aid in securing any benefits for which he may be eligible. (3-30-01)

02. Retroactive Income. In the event an applicant/resident is awarded retroactive income from any source, he is responsible to report this award to the Home Administrator and to pay his maintenance charge retroactive to the effective date of income. ()

881. -- 914. (RESERVED)

915. MAINTENANCE CHARGES.

Upon becoming a resident of a Home, each resident is liable for the payment of a maintenance charge as well as expenses for supplies, medication, equipment, and services (other than basic services for the assigned level of care) that are not provided or paid for by VA, Medicaid, Medicare, or other insurance unless otherwise determined by the Home Administrator. Residents living in a Home for any part of a month must pay for each day, based on the actual number of days in the month, at that fraction of their total charge. Refusal or failure to pay the established maintenance charge or related expenses is cause for discharge from the Home. (3-30-01)

01. Nursing Care Charges. Charges shall be computed, based on payment source to include VA, Medicaid, Medicare, or full cost of care. ()

02. Residential and Domiciliary Care Charges. Charges will be computed, based on the following factors: ()

- a.** If the resident has an income, those items used to compute the charge will include: (3-30-01)
 - i. Social Security benefits; (3-30-01)
 - ii. Retirement benefits; (3-30-01)
 - iii. Income from annuities; (3-30-01)
 - iv. Insurance benefits; (3-30-01)
 - v. Rental from property; (3-30-01)
 - vi. Farm income; (3-30-01)
 - vii. VA pensions or compensations; (3-30-01)
 - viii. Tax refunds; and (3-30-01)
 - ix. Income from any and all other sources. (3-30-01)

b. If the resident is single, incompetent, and has liquid assets in excess of one thousand five hundred dollars (\$1,500), he will be assessed the current maximum charge until those assets are reduced to less than one thousand five hundred dollars (\$1,500). (3-15-02)

c. If the resident is single, competent, and has liquid assets in excess of fifteen hundred dollars (\$1,500), he will be assessed the current maximum charge until those assets are reduced to less than fifteen hundred dollars (\$1,500). (3-30-01)

d. Joint income will be used in computing charges for married persons. If the resident has dependents who rely upon him for financial support, the amount of liquid assets will not be drawn upon after they have declined to a level of five thousand dollars (\$5,000). (3-30-01)

e. Residential Care. After allowable deductions, a resident will be assessed a fee of seventy-five percent (75%) of the remaining portion of his net monthly income up to the maximum charge. The maximum monthly maintenance charge shall be seventy-five percent (75%) of the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95 588 divided by twelve (12). (3-30-01) ()

f. Domiciliary Care. After allowable deductions, a resident will be assessed a fee of sixty percent (60%) of the remaining portion of his net monthly income up to the maximum charge. The maximum monthly maintenance charge shall be sixty percent (60%) of the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95 588 divided by twelve (12). ()

03. Exclusions from Income or Payment for Residential and Domiciliary Care. The only exclusions in computing monthly charges will be: (3-30-01)

a. Those funds which a resident receives from the sale of hobby/craft items constructed and sold as part of a Home occupational therapy program; or (3-30-01)

b. Those unusual expenses specified below, which are incurred after the resident's admission to a Home and are approved by the Home Administrator, up to a maximum monthly allowance which is established pursuant to Section 916 of these rules: (3-30-01)

i. Prosthetic, orthopedic, and paraplegic appliances; (3-30-01)

ii. Sensory aids; (3-30-01)

iii. Wheelchairs; (3-30-01)

iv. Therapy services; (3-30-01)

v. Hospital, medical, surgical expenses and bills for prescription drugs incurred and paid by the individual in the current month and documented by a paid receipt. (3-30-01)

c. Reasonable medical insurance premiums, as paid, with documentation of payment. Other insurance premiums are excluded from consideration; or (3-30-01)

d. An allowance established pursuant to Section 916 of these rules for retention by a resident for personal needs; (3-30-01)

e. That amount necessary for a resident of a Home to contribute to the support of a legal dependent where proof of actual payment is documented. A monthly allowance will be established for a spouse or additional dependents pursuant to Section 916 of these rules. (These allowances take into consideration housing and utility costs.) (3-30-01)

04. Income Eligibility Limits. (3-30-01)

a. Nursing Care. None. (3-30-01)

b. Residential and Domiciliary Care. A resident's total monthly net income, from all sources, may not exceed the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95-588 divided

by twelve (12) unless waived by the Home Administrator in accordance with Subsection 100.08 of these rules. (3-30-01)

c. While in residence at a Home, a domiciliary resident may seek outside employment and receive income so that his total monthly net income from all sources will exceed the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95-588 divided by twelve (12) for a one-month transitional period. At the end of this one-month transitional period, the resident will be discharged. (3-30-01)

05. Continued Eligibility. (3-30-01)

a. Nursing Care. A resident may continue to be eligible for residency in a Home, regardless of income changes, if the conditions defined in Subsection 100.09 of these rules continue to be met. (3-30-01)

b. Residential and Domiciliary Care. If a resident's net monthly income exceeds the income eligibility limit after admission to the Home, the resident may appeal to the Home Administrator for a waiver of the income eligibility limit which may be granted for good cause. Consideration for good cause must include "need for continuing medical care" as documented by a VA Medical Center physician. (3-30-01)

06. Payment Schedule. Maintenance charges are due the first of each month and must be paid in full by the resident or guardian on or before the tenth day of the month. Payments may be made either by cash or by check, and a receipt will be issued. (3-15-02)

07. Security Deposit. A deposit of one hundred dollars (\$100) will be required by domiciliary and residential care residents upon admission to a Home, unless waived by the Home Administrator. This deposit will be held until the resident leaves. Any debts or liabilities on behalf of the resident will be offset against this deposit at that time. After payment of any debts or liabilities, the remaining balance of the deposit will be returned to the outgoing resident. (5-3-03)

08. Leave of Absence or Hospitalization. Residents receiving Medicaid, Medicare, or VA per diem will be charged for leave of absence or hospitalization in accordance with Medicaid, Medicare, and VA requirements. The Home will not reduce charges for leave of absence or hospitalization of residents not qualifying for Medicaid, Medicare, or VA payment for such absence and each day will count as if the resident were present at a Home. Unless waived by the Home Administrator or prohibited by law, the Home will charge residents receiving Medicaid, Medicare, or VA per diem the current VA per diem rate for each absent day of a leave of absence or hospitalization in excess of the period eligible for payment by Medicaid, Medicare, or the VA. (3-29-10)

09. Medicaid Eligibility. All nursing care residents, including re-admitted residents must either apply for or become eligible for Medicaid benefits, or must pay the maximum monthly charge as it may be established from time to time. Eligibility for Medicaid benefits is determined entirely by the Idaho Department of Health and Welfare and its agents. Residents who cannot, or choose not to, qualify for Medicaid are required to pay for services in full from other than Medicaid funds. Care and services for those residents who are Medicaid eligible will be billed to and paid by Medicaid. Residents eligible for Medicaid will be assessed a fee equal to the resident's liability as determined by Medicaid. ()

916. MONTHLY CHARGES AND ALLOWANCES.

01. Nursing Care. Pursuant to Section 66-907, Idaho Code, maximum monthly charges are established by the Division Administrator with the advice of the Commission. A schedule of charges will be available in the business office of each Home. Charges will be reviewed from time to time by the Division Administrator and the Commission. ()

a. Changes to Charges. Members of the public may comment on proposed changes at meetings of the Commission when changes are considered. ()

b. Notification and Posting. When changes are made to charges, residents or their families or sponsors will receive written notification and changes will be posted in the business office of each Home a minimum of thirty (30) days prior to the effective date of the change. ()

02. Residential and Domiciliary Care. Pursuant to Section 66-907, Idaho Code, maximum monthly charges and allowances are established by the Division Administrator with the advice of the Commission. A schedule of charges and allowances will be available in the business office of the Homes. Allowances will be reviewed from time to time by the Division Administrator and the Commission. (3-20-04)

a. Changes to Charges and Allowances. Pursuant to Paragraphs 915.02.e. and 915.02.f. of these rules, monthly charges for residential and domiciliary care will be adjusted automatically when a change is made to the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95588 divided by twelve (12). Relative to monthly allowances, members of the public may comment on proposed changes at meetings of the Commission when changes are considered. (3-30-01)

b. Notification and Posting of Changes to Allowances. When changes are made to allowances, residents or their families or sponsors will receive written notification, and changes will be posted in the business office of the Veterans Homes directly following notification pursuant to Public Law 95-588. ()

917. -- 949. (RESERVED)

950. FINANCIAL GROUNDS FOR REJECTION OR DISCHARGE.

The following circumstances may be considered as grounds for rejection of an application for residency or for revocation of residency and subsequent discharge. (When an application is rejected or a resident discharged, the applicant/resident will be given notification of intended application rejection or discharge, in accordance with the provisions in Section 982 of these rules.) ()

01. Disposal of Assets. If the Home Administrator determines that an applicant/resident has disposed of assets following or within sixty (60) months preceding initial application for residency, which would have the effect of reducing his maintenance charge, such action can lead to rejection of the application or discharge from a Home. (4-2-08)

02. Failure to Pay Maintenance Charge. Refusal or failure to pay the established maintenance charge can be cause for discharge from a Home. If the resident is so discharged, or leaves a Home voluntarily, the resident will not be eligible for readmission to a Home until all indebtedness to the Home is paid in full, or acceptable arrangements have been made with the Home Administrator for repayment. ()

03. Failure to Pay for Services. (3-30-01)

a. Residents who are excluded from receiving free services from a VA Medical Center may elect to purchase such services through a sharing agreement or contract between a Home and a VA Medical Center or an outside provider when such sharing agreement or contract exists. In those cases where sharing agreement or contract costs are borne by a Home, the resident must reimburse the Home for the costs of services provided. (3-30-01)

b. Failure to reimburse a Home or a service provider within ten (10) days after receipt of a bill for services provided under a sharing agreement or contract may result in a resident's discharge from the Home. (3-30-01)

951. -- 979. (RESERVED)

980. NOTICE OF RESIDENT TRANSFER OR DISCHARGE AND NOTICE OF DENIAL OF AN APPLICATION FOR RESIDENCY.

The Home Administrator or his designee must notify the applicant or resident of any action to be taken regarding rejection of an application or involuntary transfer or discharge from a Home. ()

01. Form of Notice. ()

a. The notice of denial of application may be made orally. ()

b. The notice of transfer or discharge must be in writing. ()

- 02. Content of Notice of Transfer or Discharge.** The notice must state the following: ()
- a.** The reason for the impending action and a reference to the pertinent rules under which the action is being brought or decision has been made; (5-8-09)
 - b.** The effective date of the action; (5-8-09)
 - c.** The location to which the resident is transferred or discharge, which is established for Nursing Care transfers and discharges only;
 - d.** The applicant's or resident's right to request a hearing according to the provisions in Section 982 of these rules; and (5-8-09)
 - e.** The procedure for requesting a hearing, as provided in Subsection 982.03 of these rules. (5-8-09)
 - f.** The name, address, and telephone number of the State long term care ombudsman; ()
 - g.** The name, address, and telephone number of the State Disability Rights agency responsible for the protection and advocacy for those residents with developmental disabilities or mental illness. ()
- 03. Notification Deadlines for Domiciliary Care.** The following notification deadlines are established for Domiciliary Care only: (5-8-09)
- a.** Discharge notices must be sent to the resident three (3) days prior to the intended effective date of the action, except under the conditions noted in Subsections 350.01, 350.03 and 350.04 of these rules. (5-8-09)
 - b.** Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. (5-8-09)
- 04. Notification Deadlines for Residential Care.** The following notification deadlines are established for Residential Care only: (5-8-09)
- a.** Discharge notices must be sent to the resident fifteen (15) days prior to the intended effective date of the action, except under the conditions noted in Subsections 350.01, 350.03 and 350.04 of these rules. (5-8-09)
 - b.** Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. (5-8-09)
- 05. Notification Deadlines for Nursing Care.** The following notification deadlines are established for Nursing Care only: (5-8-09)
- a.** Notices of general discharge or transfer pursuant to Subsection 350.02 of these rules must be sent to the resident thirty (30) days prior to the intended effective date of the action. (5-8-09)
 - b.** Notices of emergency discharge or transfer pursuant to Subsection 350.01 of these rules must be sent to the resident as soon as practical. (5-8-09)
 - c.** Notices of discharge or transfer during absence pursuant to Subsection 350.03 of these rules must be sent to the resident within three (3) working days of the Home's determination to transfer. (5-8-09)
 - d.** Notice of discharge for unauthorized absences pursuant to Paragraph 350.02.g. of these rules must be sent to the resident within three (3) days of the last unauthorized absence establishing a basis for discharge. (5-8-09)
 - e.** The Home does not need to provide notice of voluntary transfer or discharge pursuant to

Subsection 350.04 of these rules. (5-8-09)

f. Notification of the denial of an application for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. (5-8-09)

981. APPEAL PROCEDURE.

Upon notification to a resident of transfer or discharge from a Home by the Home Administrator, the resident may request a hearing in accordance with the provisions in Section 982, "Provisions for Contested Cases," of these rules. Any additional violation of Home rules by a resident while on notice of transfer or discharge will be treated independent of any pending appeal. (5-8-09)

982. PROVISIONS FOR CONTESTED CASES.

01. Inapplicability of Idaho Rules of Administrative Procedure of the Attorney General. All contested cases shall be governed by the provisions of these rules. The Commission and Division Administrator find that the provisions of IDAPA 04.11.01, et seq., "Idaho Rules of Administrative Procedure of the Attorney General," are inapplicable and inappropriate for contested cases before the Commission, because of the specific and unique requirements of federal and state law regarding notices, hearing processes, procedural requirements, time lines, and other provisions requiring the Division to adopt its own procedures pursuant to Section 67-5206(5)(b), Idaho Code, and hereby affirmatively promulgate and adopt alternative procedures and elect not to be governed by any of the provisions of IDAPA 04.11.01, et seq., "Idaho Rules of Administrative Procedure of the Attorney General." (3-30-01)

02. Hearing Rights. Residents and applicants have the following rights to a hearing: (5-8-09)

a. If a resident of a Home is notified of transfer or discharge, the resident will be afforded an opportunity for a hearing. A resident of a Home must attempt to resolve the bases stated on the notice of action through verbal discussions with the Home Administrator or his designee prior to submission of a written request for a hearing. A resident will not be afforded an opportunity for a hearing based upon a voluntary transfer or discharge under Subsection 350.04 of these rules. (5-8-09)

b. If an application for residency in a Home is rejected, the applicant may request a hearing. (5-8-09)

03. Requesting a Hearing for Nursing Care. A request for a hearing from a nursing care resident for residency in a Home must be submitted to the Idaho Department of Health and Welfare, Fair Hearing Office, P.O. Box 83720, Boise, Idaho 83720. Requests for appeal should be received by the Idaho Department of Health and Welfare before thirty (30) days have passed in order to stop the discharge before it occurs. ()

04. Requesting a Hearing for Residential and Domiciliary Care. ()

a. A request for a hearing from a resident for residential and domiciliary care residency in a Home must be submitted through the Home Administrator to the Division Administrator for possible resolution or the scheduling of a hearing. A resident's request must contain a description of what effort he has taken to satisfy the requirements of Paragraph 982.02.a. of these rules. ()

b. A request for a hearing must be in writing and signed by the applicant/resident. (3-30-01)

c. A request for a hearing must be submitted within three (3) days of receipt of the written notice of action or denial. (3-30-01)

d. Pending a hearing, benefits will be continued or held in abeyance as follows: (3-30-01)

i. Benefits for domiciliary care, residential care, and nursing care residents will not be continued when the transfer or discharge is an emergency discharge under Subsection 350.01 of these rules or a discharge for unauthorized absences under Paragraph 350.02.g. of these rules. If the hearing request is made before the effective date of action and within three (3) days of receipt of the notice, no action will be taken by the Home Administrator on a general discharge under Subsection 350.02 of these rules, except Paragraph 350.02.g., or a transfer under

Subsection 350.03 of these rules pending receipt of the final order. (5-8-09)

e. The Division Administrator will not accept a request for a hearing from a voluntary transfer or discharge pursuant to Subsection 350.04 of these rules. (5-8-09)

983. PREHEARING PROVISIONS FOR RESIDENTIAL AND DOMICILIARY CARE.

The following general provisions are applicable to those phases of all appeals which occur before the hearing is conducted unless precluded by statute or rule. ()

01. Notice of Hearing. Upon the receipt of a timely request for a hearing, the hearing shall be arranged by the Division Administrator and a notice sent to all parties that includes: ()

a. A statement of the time, place and nature of the hearing; (3-30-01)

b. A statement of the legal authority under which the hearing is to be held; (3-30-01)

c. A reference to the particular sections of any statutes and rules involved; (3-30-01)

d. A statement of the issues involved; (3-30-01)

e. A statement that all documents to be relied upon by the hearing officer to make its order or notice of decision, or otherwise related to the issues involved in the hearing and relied upon by any party, are to be filed with the Division Administrator and that each party must serve its own documents unless otherwise stated by law; (5-8-09)

f. A statement that all parties may be represented by counsel; and (3-30-01)

g. A statement concerning advance requests for hearing transcripts pursuant to Subsection 983.08 of these rules. (3-30-01)

h. The assignment of a hearing officer for the hearing. The Division Administrator may designate the Commission as a hearing officer. (5-8-09)

02. Prehearing Conference. The Division Administrator or hearing officer may, upon written or other sufficient notice to all interested parties, hold a prehearing conference for the following purposes: (5-8-09)

a. To formulate or simplify the issues; (3-30-01)

b. To obtain admissions or stipulations of fact and of documents; (3-30-01)

c. To arrange for exchange of proposed exhibits or prepared expert testimony; (3-30-01)

d. To limit the number of witnesses; (3-30-01)

e. To determine the procedure at the hearing; and (3-30-01)

f. To determine any other matters which may expedite the orderly conduct and disposition of the proceeding. (3-30-01)

03. Disposition of Case Without a Hearing. Unless precluded by law, disposition without a hearing may be made of any contested case by stipulation, agreed settlement, consent order, motions to dismiss, summary judgment, or default. (3-30-01)

04. Withdrawal of Appeal. The initiating party at any time may withdraw from any contested case proceeding upon serving written notice of withdrawal to the Division Administrator. (3-30-01)

05. Withdrawal of Attorney or Representative. Any attorney or other person representing a party in

a contested case proceeding who wants to withdraw from such proceeding must immediately notify, in writing, the Division Administrator, and all involved parties. (3-30-01)

06. Intervention. Persons, other than the original parties to the proceeding, who are directly and substantially affected by the proceeding, may intervene if they first secure an order from the Division Administrator granting leave to intervene. (3-30-01)

a. Granting of Leave to Intervene. The granting of leave to intervene or to otherwise appear in any matter or proceeding shall not be construed to be a finding or determination that such party will or may be a party aggrieved by any ruling, order or decision of the agency for purposes of judicial review or appeal. (3-30-01)

b. Form and Content of Petitions. Petitions for leave to intervene must be in writing and must clearly: (3-30-01)

i. Identify the proceeding in which it is sought to intervene, setting forth the name and address of the intervenor; (3-30-01)

ii. Make a clear and concise statement of the direct and substantial interest of the intervenor in such proceeding and the relationship of the intervenor to the other parties; (3-30-01)

iii. State the manner in which such intervenor will be affected by such proceeding, outlining the matters and things relied upon by such intervenor as a basis for his request to intervene in such cause; (3-30-01)

iv. If affirmative relief is sought, the petition must contain a clear and concise statement of relief sought and the basis thereof; and (3-30-01)

v. A statement as to the nature and quantity of evidence the intervenor will present if such petition is granted. (3-30-01)

c. Filing of Petitions. All petitions must be filed with the Division Administrator. Petitions to intervene and proof of service thereof on all other parties of record must be filed within seven (7) days after receiving notice of the proceeding, or if no notice is received, not less than fourteen (14) days prior to the date set for hearing and, if filed thereafter, must state a substantial reason for such delay; otherwise the petition will not be considered. (3-30-01)

07. Hearing Record. The hearing officer or the Division Administrator will arrange for a record to be made of the hearing. The record must be a verbatim record and it will be recorded by a recording device, unless a party requests a stenographic recording by a certified court reporter, in writing, at least seven (7) days prior to the date of hearing. The record will be transcribed at the expense of the party requesting a transcription, and prepayment or guarantee of payment may be required. Once a transcription is requested, any party may obtain a copy at the party's own expense. The recorded proceedings will be provided to the Division Administrator for inclusion into the record. The Division will maintain an official record of each contested case for a period of not less than six (6) months after the expiration of the last date for judicial review, unless otherwise provided by law. The record will include all notices of proceedings, pleadings, motions, briefs, petitions and intermediate rulings, evidence received or considered, any oral or written statements allowed by the hearing officer or the Division Administrator, statement of matters officially noticed, offers of proof and objections and rulings thereon, the recording of the proceedings or any transcript of all or part of the proceedings, staff memoranda or data submitted to the hearing officer or the Division Administrator in connection with the proceeding, and any recommended order, preliminary order, final order or order on reconsideration. (5-8-09)

08. Subpoenas. Where authorized by law, the hearing officer may compel the attendance of specific persons and the production of specific documents, materials, or objects at any hearing by subpoena issued by the Division Administrator. (5-8-09)

09. Stipulations. The parties to a contested case proceeding may stipulate as to any fact at issue, either by written stipulation or by oral statement shown upon the record. Any such stipulation is binding upon all parties so stipulating and may be considered by the hearing officer and the Division Administrator. The hearing officer and the

Division Administrator may require proof by evidence of any facts stipulated to, notwithstanding the stipulation of the parties. (5-8-09)

10. Rules of Civil Procedure. As contested case proceedings and hearings are informal, the Idaho Rules of Civil Procedure do not apply. The hearing officer shall provide the procedure at the hearing, as required by the provisions of Section 67-5242(3), Idaho Code. (5-8-09)

11. Discovery. Prehearing discovery shall be strictly limited to obtaining the names of witnesses and copies of documents the opposing party intends to offer or present at the hearing. The hearing officer may order disclosure of this information if a party refuses to comply after receiving a written request. (5-8-09)

12. Briefing Schedule. The hearing officer may require briefs and written memoranda to be filed by the parties, and may establish a reasonable briefing schedule. (5-8-09)

13. Informal Disposition. Unless otherwise prohibited by statute or rule, the hearing officer may decline to initiate a contested case. Informal disposition may be made of any contested case by negotiation, stipulation, agreed settlement or consent order, which informal settlement is encouraged. The parties may stipulate as to the facts, reserving their right to appeal to a court of competent jurisdiction on issues of law. The hearing officer may request such additional information as may be necessary to decide whether to initiate or to decide a contested case. If the hearing officer declines to initiate or decide a contested case, a brief statement of the reasons for that decision will be furnished to all persons or parties involved. This disposition of a contested case by informal disposition is a final agency action pursuant to Section 67-5241, Idaho Code. (5-8-09)

984. HEARING PROVISIONS FOR RESIDENTIAL AND DOMICILIARY CARE.

The following general provisions are applicable to those phases of all hearings, unless precluded by statute or rule. ()

01. Computation of Time. In computing any period of time relating to a hearing, the first day of the period is not to be included. The last day of the period is to be included unless it is a Saturday, Sunday or legal holiday, in which case the period runs until 5 p.m. of the next working day, unless otherwise provided by law. (5-8-09)

02. Service of Documents. Documents concerning hearings must be served as follows: (5-8-09)

a. All pleadings, briefs and subsequent papers must be served upon every party of record concurrently with the filing with the Division Administrator. (3-30-01)

b. All notices and orders required to be served, other than the initial complaint or petition, must be served in person or by first-class mail. (3-30-01)

c. The initial complaint or petition must be served in person or by certified mail. (3-30-01)

c. The initial hearing request must be served in person or by certified mail. (5-8-09)

d. Service by first-class or certified mail will be deemed complete when the document, properly addressed and stamped, is deposited in the United States mail. The postmark will be the determinant date for all time lines. (3-30-01)

e. Proof of service must accompany all documents when they are filed with the Division Administrator. (5-8-09)

03. Hearing Officer Authority. In the context of each proceeding and unless precluded by law, the hearing officer has the discretion, power and authority to: (5-8-09)

a. Determine the order of presentation; (3-30-01)

b. Grant or deny petitions for reconsideration; (3-30-01)

- c. Determine the need, if any, for consolidation; (3-30-01)
 - d. Rule on all evidentiary questions; (3-30-01)
 - e. Rule on motions and objections and dispose of procedural requests; (3-30-01)
 - f. Determine the need for prehearing conferences, recesses, adjournments, hearings on motions and postponements; (3-30-01)
 - g. Administer oaths and affirmations; (3-30-01)
 - h. Examine witnesses; (3-30-01)
 - i. Issue subpoenas or request orders in the form of subpoenas as provided by law; (3-30-01)
 - j. Prescribe general rules of hearing decorum and conduct; (3-30-01)
 - k. Regulate the course of the proceeding; (3-30-01)
 - l. Formulate a reasoned statement in support of the decision. Findings of fact should be set forth in statutory language and be accompanied by a concise and explicit statement of the underlying facts of record supporting the findings. (3-30-01)
 - m. Perform any functions including those set forth in Sections 67-5241 through 67-5251, Idaho Code; and (3-30-01)
 - n. All other functions specifically authorized by statute or rule. (3-30-01)
 - o. The hearing officer shall not have the jurisdiction or authority to invalidate any federal or state statute, rule, or regulation. (5-8-09)
- 04. Ex Parte Consultations.** Ex parte communications between the hearing officer and any party to a contested case proceeding are precluded pursuant to Section 67-5253, Idaho Code. (5-8-09)
- 05. Representation by Counsel.** Any party in a contested case proceeding may be represented by counsel, at the party's own expense. (3-30-01)
- 06. Open Hearings.** All hearings may be open to the public, unless precluded by law. When the Commission is acting as a hearing officer, hearings will be held during regular meetings of the Commission unless otherwise scheduled by the Commission and will be arranged by the Division Administrator. (5-8-09)
- 07. Testimony Under Oath.** All testimony to be considered, with the exception of matters officially noticed or entered by stipulation, must be given under oath, as administered by the hearing officer or other authority authorized to administer oaths. (5-8-09)
- 08. Appearance and Representation.** Any party to a proceeding may appear and be heard in person or may authorize an attorney to represent the party at the party's own expense. Unless otherwise prohibited by law and with the prior approval of the hearing officer, a party may be assisted, but not represented, by a friend or relative. When a party chooses to appear in person and does not speak or understand the English language, an interpreter shall be allowed to interpret under oath. The interpreter is not allowed to act as a representative of the party and shall act at the party's own expense. (5-8-09)
- 09. Default.** If a party fails to appear at a scheduled hearing or at any stage of a contested case without good cause and reasonable notice to the hearing officer and to all other parties, the hearing officer may enter a notice of proposed default order against the nonappearing party. A default order may be altered or set aside upon petition filed within seven (7) days of service of the order showing sufficient good cause stating the grounds relied on, and providing reasonable notice to all parties. (5-8-09)

10. Order of Presentation and Burden of Proof. At any contested case hearing, the party having the burden of proof shall be the first to present testimony unless the hearing officer determines otherwise. Unless otherwise determined, in advance, by the hearing officer, the burden of proof shall be preponderance of the evidence. (5-8-09)

11. Evidence. Pursuant to Section 67-5251, Idaho Code, the hearing shall be informal and technical rules of evidence do not apply, except that irrelevant, immaterial, incompetent, duly repetitious evidence, or evidence excludable on constitutional or statutory grounds protected by the rules of privilege recognized by law may be excluded. Hearsay evidence may be received if it is relevant to or corroborates competent evidence, but shall not be the sole basis for any finding of fact. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantially prejudicing the interest of any party. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. (3-30-01)

12. Testimony by Telephone or Other Electronic Means. With the prior approval of the hearing officer, witnesses may testify by telephone or other electronic means, provided the examination and responses are audible to all parties. (5-8-09)

13. Official Notice. (3-30-01)

a. Discretionary Notice. Notice may be taken of judicially cognizable facts by the hearing officer on its own motion or on motion of a party. In addition, notice may be taken of generally recognized technical or scientific facts within the hearing officer's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed including any staff memoranda or data, and the parties shall be afforded an opportunity to contest the material so noticed. The hearing officer's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. (5-8-09)

b. Mandatory Notice. For all hearings, the hearing officer must take official notice of the following materials on its own motion or on the motion of any party. Objections going to such notice must become a part of the record. For the purposes of the hearing, it is established as true without proof that the following are admissible, valid and enforceable: (5-8-09)

- i. Rules of the Division and other state agencies; (3-30-01)
- ii. Federal regulations; (3-30-01)
- iii. The constitution and statutes of the United States and Idaho; (3-30-01)
- iv. Public records; and (3-30-01)
- v. Such other materials that a court of law must judicially notice. (3-30-01)

14. Hearing Officer Decision. The hearing officer will issue a written order as provided in Section 67-5243, Idaho Code. (5-8-09)

a. Recommended orders will contain a statement of the schedule for review of that order by the Division Administrator. (5-8-09)

b. Preliminary orders will include notice of the right to seek a review of the order by the Division Administrator and a statement that the order will become final without a request for such review. A request for review shall be filed no later than fourteen (14) days following the issuance of the preliminary order, unless a request for reconsideration by the hearing officer is filed prior to the expiration of such fourteen (14) day period. If a petition for reconsideration is made, a request shall be filed within fourteen (14) days of the hearing officer's order disposing of the petition or the deemed denial of the petition pursuant to Section 67-5243, Idaho Code. (5-8-09)

c. A party may file a motion for reconsideration with the hearing officer no later than fourteen (14)

days following the issuance of the preliminary order or the recommended order. (5-8-09)

15. Contents of the Record. Pursuant to Section 67-5249(2), Idaho Code, the record in a contested case proceeding will be kept by the Division Administrator, on behalf of the hearing officer, and must include the following: (5-8-09)

- a. All notices, pleadings, motions and rulings; (3-30-01)
- b. All evidence received or considered; (3-30-01)
- c. A statement of all matters officially noticed; (3-30-01)
- d. A record of testimony and offers of proof, objections and rulings thereon; (3-30-01)
- e. A record of proposed findings and exceptions; (3-30-01)
- f. Any decision, opinion, or report by the Commission; (3-30-01)
- g. All staff memoranda or data submitted to the Commission in connection with consideration of the case; (3-30-01)
- h. All briefs or memoranda submitted by any party; and (3-30-01)
- i. Any recommended order, preliminary order, final order, or order on reconsideration. (3-30-01)

16. Review by the Division Administrator and Issuance of the Final Order. Following the issuance of an order by the hearing officer, the Division Administrator will: (5-8-09)

- a. Review recommended orders as provided in Section 67-5244, Idaho Code; (5-8-09)
- b. Review preliminary orders upon the appeal of a party or upon the Division Administrator's own motion as provided in Section 67-5245, Idaho Code; and (5-8-09)
- c. Issue a final order as provided in Section 67-5246, Idaho Code. (5-8-09)

17. Judicial Review. In accordance with Section 67-5271, Idaho Code, a party which has exhausted all administrative remedies available within the Division may seek judicial review. Proceedings for judicial review shall be instituted in accordance with Sections 67-5270 and 67-5273, Idaho Code. (3-30-01)

985. POST HEARING PROVISIONS FOR RESIDENTIAL AND DOMICILIARY CARE.

The following provisions are applicable to those phases of all contested case proceedings which occur after the hearing has been conducted: ()

01. Service of Decisions and Orders. Decisions and orders are deemed to have been served when copies thereof are mailed to all parties of record or their attorneys by the Division Administrator. (3-30-01)

02. No Motions for Reconsideration. Unless otherwise provided by law or these rules, motions for reconsideration shall not be permitted. (3-30-01)

03. Public Inspection. All final decisions and orders of the Commission must be maintained by the Division Administrator and made available for public inspection after service on the parties. (3-30-01)

04. Effect of Petition for Judicial Review. The filing of a petition for judicial review shall not stay compliance with the decision and order or suspend the effectiveness of the decision and order, unless otherwise ordered or mandated by law. (3-30-01)

986. -- 999. (RESERVED)

21.01.04 – RULES GOVERNING THE IDAHO STATE VETERANS CEMETERY

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. (5-3-03)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 21.01.04, “Rules Governing the Idaho State Veterans Cemetery.” (5-3-03)

02. Scope. These rules contain the provisions for eligibility for interment at the Idaho State Veterans Cemetery and the provisions for operation and maintenance of the Idaho State Veterans Cemetery. (5-3-03)

002. INCORPORATION BY REFERENCE.

01. Incorporated Documents. These rules incorporate by reference the following: ()

a. The full text of 38 CFR 38.620, dated July 1, 2001. (3-29-10)

b. 38 U.S.C.A. Section 2402, (2004 and Supp. 2004). (3-30-06)

c. 38 CFR 39.5(d), dated July 1, 2008. (3-29-10)

02. Document Availability. Copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-0001. (5-3-03)

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Administrator. The Administrator of the Idaho Division of Veterans Services or his designee. (5-3-03)

02. Applicant. The individual requesting interment, disinterment or reinterment of a qualified person. (5-3-03)

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. (3-29-10)

04. Cemetery. The Idaho State Veterans Cemetery authorized pursuant to Section 65-108, Idaho Code. (5-3-03)

05. Committal Service. A gathering of one (1) or more individuals prior to interment or reinterment. (5-3-03)

06. Cremains. Cremated human remains. (5-3-03)

07. Designated Interpretive Trail. A public recreational trail designated by a sign or marker. (3-30-07)

08. Disinterment. The removal of human remains from their place of interment. (5-3-03)

09. Division. The Idaho Division of Veterans Services. (5-3-03)

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. (5-3-03)

11. 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). (3-29-10)

12. Reinterment. The interment of previously interred human remains. (5-3-03)

13. Unremarried Spouse. An individual who is the surviving spouse of a deceased armed forces member and who has not remarried. (5-3-03)

14. USDVA. The United States Department of Veterans Affairs. (5-3-03)

011. -- 019. (RESERVED)

020. ELIGIBILITY FOR INTERMENT.

01. Eligibility. A qualified person is eligible for interment at the cemetery. An individual who is a qualified person based upon a relationship to an armed forces member is eligible for interment at the cemetery if the armed forces member is pre-registered for interment at the cemetery or is interred at the cemetery. ()

02. Requirements. (5-3-03)

a. Proof of Qualification as an Armed Forces Member. The following documents may be submitted as proof that an individual is a qualified person: (5-3-03)

i. A valid discharge from the armed forces of the United States in the name of the individual indicating that the character of discharge was other than dishonorable; or (5-3-03)

ii. A copy of a Reserve Retirement Eligibility Benefits Letter in the name of the individual; or (5-3-03)

iii. A valid certificate of naturalization or a valid United States passport in the name of the individual and a valid discharge in the name of the individual from the armed forces of an ally of the United States in a war during which the individual served indicating that the character of discharge was other than dishonorable; or (5-3-03)

iv. Any other evidence satisfactory to the Administrator. (5-3-03)

b. Proof of Qualification for Relatives of an Armed Forces Member. The following documents may be submitted as proof that an individual is a qualified person: (5-3-03)

i. One (1) of the items listed in Subparagraphs 020.02.a.i. through 020.02.a.iii. of these rules for a parent of the individual, a valid birth or adoption record identifying such parent, and proof of the individual's birth date; or (5-3-03)

ii. One (1) of the items listed in Subparagraphs 020.02.a.i. through 020.02.a.iii. of these rules for the spouse of the individual, a valid record of marriage between the individual and the armed forces member, and a certification that the individual was an unremarried spouse at the time of death, if the armed forces member predeceased the individual; or (5-3-03)

iii. Any other evidence satisfactory to the Administrator. (5-3-03)

03. Burden of Proof. The burden of proof in establishing eligibility for interment or reinterment in the cemetery shall be upon the applicant. (5-3-03)

021. APPLICATION FOR INTERMENT.

01. Who May Apply. A qualified person seeking to pre-register for interment or their legal representative, the Administrator of a qualified person's estate, the personal representative of a deceased qualified person, or a relative of a deceased qualified person may apply for interment. If the qualified person was married at the time of death, that person's spouse must consent to the application. If no relative or legal representative of a qualified

person is available to apply on the behalf of a deceased qualified person, a veteran’s organization or the Administrator may apply for interment. (5-3-03)

02. Pre-Registration for Interment. A qualified person or the legal representative of a qualified person may pre-register for interment by submitting proof of eligibility and completing an application form prescribed by the Administrator. If the individual seeking to be pre-registered for interment is a qualified person based upon a relationship to an armed forces member, the armed forces member must be pre-registered for interment or interred at the cemetery. If a qualified person is eligible based upon marriage to an armed forces member, the Administrator must receive proof that the qualified person was an unremarried spouse at the time of death prior to interment. (5-3-03)

03. Application Following Death. An applicant may submit an application for interment following the death of a qualified person by submitting proof of eligibility and completing an application form prescribed by the Administrator. (5-3-03)

022. INTERMENT AND REINTERMENT.

01. Remains. Remains shall be delivered to the cemetery in a casket or, if cremated, in a recoverable container. The container for cremains designated by the applicant for interment in a location other than a grave plot shall not exceed nine (9) inches in width, thirteen (13) inches in height, and nine (9) inches in depth. (3-16-04)

02. Committal Services. The cemetery shall provide a designated location for committal services. Graveside committal services shall not be held in the cemetery. The cemetery shall not provide facilities for viewing of remains. The arrangements for and any expenses associated with committal services shall be the responsibility of the applicant. The Administrator may assist the applicant in applying for military honors. (5-3-03)

023. DISINTERMENT AND REINTERMENT.

01. Disinterment. The Administrator may approve an application for disinterment where the applicant for interment, the surviving unremarried spouse, if any, and the children of the interred person, or the legal representatives of any of the foregoing persons, complete and sign an application form prescribed by the Administrator and submit proof of applicable governmental approval of the disinterment, transporting, and reinterment of the remains. The Administrator shall approve an application for disinterment accompanied by the order of a court of competent jurisdiction. (5-3-03)

02. Reinterment. (5-3-03)

a. Who May Be Reinterred. The Administrator may approve an application for reinterment of remains in the cemetery where the remains are of a qualified person and the applicant for interment desires that the remains be interred with remains interred in the cemetery or with the remains of a qualified person pre-registered for interment in the cemetery. (5-3-03)

b. Application and Proof of Eligibility. The applicant for reinterment shall complete an application form prescribed by the Administrator and submit proof of the eligibility of the qualified person and proof of applicable governmental approval of the disinterment, transporting, and reinterment of the remains. If the application seeks reinterment of the remains of a qualified person, the applicant shall identify the qualified person with whom the reinterred remains will be interred. (5-3-03)

024. FEES FOR INTERMENT, DISINTERMENT, AND REINTERMENT.

The Administrator shall charge the following fees: (3-16-04)

01. Interment. (3-30-06)

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. ()

b. In addition to the fee charged under Paragraph 024.01.a. of this rule, the Administrator shall charge a fee of five hundred dollars (\$500) for preparation of an interment site not containing a pre-placed crypt. (4-9-09)

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. ()

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. ()

025. -- 029. (RESERVED)

030. CEMETERY USE.

01. Public Use. The cemetery will be open to public access from 8 a.m. to sunset daily. The Administrator may close the cemetery at 6 p.m. when a public fireworks display is planned. (5-8-09)

02. Interment Schedule. Cemetery staff will schedule interments to ensure that cemetery staff complete their duties between the hours of 8 a.m. and 5 p.m. Cemetery staff will not schedule interments on Saturdays, Sundays and legal holidays without the prior approval of the Administrator. (5-3-03)

031. -- 039. (RESERVED)

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. ()

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 shall submit an application on a form prescribed by the Administrator. The cost of all such memorials shall be the responsibility of the applicant. Memorials approved by the Administrator shall be donations to the cemetery. (5-3-03)

03. Grave Markers. All grave markers in the cemetery shall be markers issued by the USDVA. Upright granite markers shall be used to mark graves. Flush granite markers shall be used to mark interments in an area reserved for the interment of cremains in the soil. Granite niche markers shall be used to mark the interment of cremains in a structure reserved for the interment of cremains. The Administrator may assist the applicant in completing all forms for ordering a grave marker required by the USDVA. (5-3-03)

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. (5-3-03)

041. -- 049. (RESERVED)

050. PUBLIC BEHAVIOR IN THE CEMETERY.

01. Littering. Littering is prohibited in the cemetery. (5-3-03)

02. Preservation of Cemetery Property. The destruction, injury, defacement, removal or disturbance in or of any building, sign, equipment, monument, statute, marker or any other structures, or of any tree, flower, or other vegetation, or of any artifact or any other property in the cemetery is prohibited unless authorized by the Administrator. (5-3-03)

03. Recreation and Entertainment. The cemetery shall not be used for any form of sports, entertainment or recreation, other than use limited solely to designated interpretive trails. The Administrator may limit access to designated interpretive trails to one (1) or more routes designated by a marker or sign. The cemetery shall not be used as a picnic ground. (3-30-07)

04. Public Ceremonies and Gatherings. Except for committal services, any individual or group organizing a ceremony or gathering in the cemetery must first obtain the prior written approval of the Administrator. The cemetery shall not be used for partisan activities. Parties receiving authority to hold a ceremony or public gathering shall comply with all restrictions placed upon the ceremony or public gathering by the Administrator. (3-30-07)

05. Animals. Leashed animals are allowed in the cemetery only on designated interpretive trails and marked designated interpretive trail access areas. Animal owners shall observe posted requirements for gaining access to designated interpretive trails, the use and behavior of animals, and the disposal of animal waste. ()

06. Motor Vehicles. Except as authorized by the Administrator: (5-3-03)

a. Motor vehicles shall remain on authorized, established roadways or parking areas; (5-3-03)

b. Motor vehicles are prohibited on interpretive trails; (5-3-03)

c. Motor vehicle drivers shall observe posted traffic, directional, parking, and speed signs and all applicable state and local laws governing traffic on public roads; and (5-3-03)

d. Overnight parking is prohibited in the cemetery. (5-3-03)

07. Alcohol. No alcoholic beverages can be consumed in the cemetery. (5-3-03)

08. Photographs. No commercial video or commercial still photographs can be taken in the cemetery without the prior written approval of the Administrator. (5-3-03)

051. -- 999. (RESERVED)

IDAPA 57 – SEXUAL OFFENDER MANAGEMENT BOARD

DOCKET NO. 57-0101-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 18-8314, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 57, rules of the Sexual Offender Management Board:

IDAPA 57.01.01

- 57.01.01, *Rules Governing the Sexual Offender Management Board*

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 6702 – 6718](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. This fee or charge is being imposed pursuant to Section 18-8314, Idaho Code.

Seventy-five dollars (\$75) for initial certification applications and fifty dollars (\$50) for biennial certification renewal applications for: senior/approved level psychosexual evaluators, associate/supervised level sexual offender treatment provider, and associate/supervised level post-conviction sexual offender polygraph examiners.

Fifty dollars (\$50) for initial certification applications and thirty dollars (\$30) for annual certification renewal applications for entry-level provisional/supervised psychosexual evaluators and provisional/supervised sexual offender treatment providers.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Nancy Volle at (208) 658-2002.

Dated this 16th day of October, 2019.

Nancy Volle, SOMB Program Manager
Sexual Offender Management Board
1299 N. Orchard St., Ste #110
Boise, ID 83706
Phone: (208) 658-2002
Fax: (208) 287-3322

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

EFFECTIVE DATE: The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 18-8314, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 57, rules of the Sexual Offender Management Board:

IDAPA 57

- 57.01.01, *Rules Governing the Sexual Offender Management Board* - with the exception of **Section 202**.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The statutory duties of the Sexual Offender Management Board include establishing standards for sexual offender service providers and certifying psychosexual evaluators, sexual offender treatment providers and post-conviction polygraph examiners. This rulemaking ensures the board is able to continue to carry out its statutory duties which creates a higher level of consistency and continuity among providers, to the benefit of sentencing courts, supervision authorities, providers, offenders and other stakeholders.

The fee or charge imposed by the rule is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. No negative fiscal impact on state general funds is anticipated with this rulemaking. Provider certification processing fees collected by the agency are deposited into a dedicated fund. No additional costs to the agency are anticipated to carry out the quality assurance processes as funding is currently factored into the agency's budget.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. This fee or charge is being imposed pursuant to Section 18-8314, Idaho Code.

With this rulemaking, three (3) levels of provider certification have been established for psychosexual evaluators and sexual offender treatment providers, and two (2) levels of certification were established for post-conviction sexual offender polygraph examiners. The proposed application processing fee structure will be set as follows:

Seventy-five dollars (\$75) for initial certification applications and fifty dollars (\$50) for biennial certification renewal applications for: senior/approved level psychosexual evaluators, associate/supervised level sexual offender treatment provider, and associate/supervised level post-conviction sexual offender polygraph examiners.

Fifty dollars (\$50) for initial certification applications and thirty dollars (\$30) for annual certification renewal applications for entry-level provisional/supervised psychosexual evaluators and provisional/supervised sexual offender treatment providers.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Nancy Volle at (208) 658-2002.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 57-0101-1900F

57.01.01 – RULES OF THE SEXUAL OFFENDER MANAGEMENT BOARD

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 18-8314(3), Idaho Code, to implement the provisions of Sections 18-8312 through 18-8316, Idaho Code. (3-20-14)

001. TITLE AND SCOPE.

- 01. Title.** These rules are titled IDAPA 57.01.01, “Rules of the Sexual Offender Management Board.” (3-20-14)
- 02. Scope.** These rules provide procedures for the Sexual Offender Management Board to: (3-20-14)
- a.** Establish certified evaluator, sexual offender treatment provider and post conviction sexual offender polygraph examiner qualifications; (3-20-14)
- b.** Establish standards for psychosexual evaluations and sexual offender treatment programs based on current and evolving best practices; (3-20-14)
- c.** Approve, issue, renew, deny, suspend, revoke, restrict or otherwise monitor a certification; (3-20-14)
- d.** Establish fees for initial and renewal certification; (3-20-14)
- e.** Establish procedures for standards and qualification quality assurance; and (3-20-14)
- f.** Establish standard protocols for sexual offender management, assessment and classification. (3-20-14)
- 03. Relationship to the Department of Correction.** The Board is created within the Idaho Department of Correction, and relies upon the department for fiscal and administrative support. The governor appoints the Board members. The powers and duties of the Board are separate from the Department of Correction, and are set forth in Section 18-8314, Idaho Code. (3-20-14)

002. ADMINISTRATIVE APPEALS.

Due to the size of this board, the frequency and nature of its proceedings, it is in the best interests of the Board and those it serves to decline to adopt the majority of the procedures regarding contested cases in, IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General,” Sections 000 through 799; however, to the extent there is no conflict between the rules of the Board and the rules of the Attorney General, certain provisions of the rules of the Attorney General are adopted or are modified herein to reflect administrative practice before the Board. (3-20-14)

003. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (3-20-14)

01. “Bylaws and Constitution of the American Association of Police Polygraphists,” effective May, 2010, is herein incorporated by reference and is available from the American Association of Police Polygraphists, PO Box 657, Waynesville, Ohio 45068, website <http://www.policepolygraph.org/>. (3-20-14)

02. “Bylaws of the American Polygraph Association,” effective September 2015, is herein incorporated by reference and is available from the American Polygraph Association, PO Box 8037, Chattanooga, Tennessee 37414, website <http://www.polygraph.org/>. (3-24-17)

03. “Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices,” December 2017 revision, is herein incorporated by reference and is available from the Board’s office and on the Board website, <http://somb.idaho.gov/>. (3-28-18)

04. “Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders,” December 2017 revision, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://somb.idaho.gov/>. (3-28-18)

05. The Sexual Offender Management Board's “Required Format for Juvenile Psychosexual

Evaluation Reports,” December 2016 revision, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://somb.idaho.gov/>. (3-24-17)

06. The Sexual Offender Management Board’s “Required Format for Adult Psychosexual Evaluation Reports,” December 2016 revision, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://somb.idaho.gov/>. (3-24-17)

004. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Sexual Offender Management Board described in Section 18-8312, Idaho Code. (3-20-14)

02. Central Roster. A roster of evaluators, treatment providers and polygraph examiners, who meet the qualifications and are certified by the Board to conduct psychosexual evaluations, provide sexual offender treatment or conduct post-conviction sexual offender polygraphs. (3-20-14)

03. Certificate Holder. A person who has been approved by the Board and certified as meeting qualifications to conduct or assist in the conduct of psychosexual evaluations, provide sexual offender treatment or conduct post conviction sexual offender polygraphs. (3-20-14)

04. Certified Evaluator. Either a psychiatrist licensed by this state pursuant to Title 54, Chapter 18, Idaho Code, or a master's or doctoral level mental health professional licensed by this state pursuant to Title 54, Chapters 23, 32, or 34, Idaho Code. The evaluator shall have by education, experience and training, expertise in the assessment and treatment of sexual offenders, shall meet the qualifications and shall be approved by the Board to perform psychosexual evaluations in this state, as described in Section 18-8314, Idaho Code. A person meeting this definition may be certified by the Board as either a senior/approved certified evaluator or an associate/supervised certified evaluator. (3-20-14)

05. Certified Post Conviction Sex Offender Polygraph Examiner. A polygraph examiner who has received specialized post conviction sexual offender testing training, and who is certified by the Board to conduct post conviction sexual offender polygraph examinations as ordered or required by the court, Idaho Department of Correction, or Idaho Commission for Pardons and Parole. A person meeting this definition may be certified by the Board as either a senior/approved post conviction sexual offender polygraph examiner or an associate/supervised post conviction sexual offender polygraph examiner. (3-24-17)

06. Certified Treatment Provider. A person who has been certified by the Board as meeting qualifications to provide sexual offender treatment as ordered by the court, Idaho Department of Correction, Idaho Commission for Pardons and Parole, or Idaho Department of Juvenile Corrections. Such person shall be licensed by this state or another state or jurisdiction as a psychiatrist, or a master's or doctoral level mental health professional, and who has by education, experience and training, expertise in the treatment of sexual offenders. A person meeting this definition may be certified by the Board as either a senior/approved sex offender treatment provider or an associate/supervised sex offender treatment provider. (3-20-14)

07. Client. An adult or juvenile receiving services from a person certified by the Board pursuant to Section 18-8314, Idaho Code. (4-11-15)

08. Established Standards. The “Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices” and the “Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders” as referenced in Section 004 of these rules and established pursuant to Section 18-8314, Idaho Code. (4-11-15)

09. Provisional/Supervised Psychosexual Evaluator. A person with limited clinical experience and specialized training, who may be licensed or is working toward licensure as a psychiatrist or master's or doctoral level mental health professional, who is authorized by the Board to assist with the conduct of psychosexual evaluations under the clinical supervision of a senior/approved psychosexual evaluator. A person with a provisional/

supervised psychosexual evaluator certificate is not considered to be a certified evaluator as defined in Section 18-8303, Idaho Code or for the purposes of conducting a psychosexual evaluation in accordance with Section 18-8316, Idaho Code. Certification approval is specific to adult or juvenile clients. (3-24-17)

10. Provisional/Supervised Sex Offender Treatment Provider. A person with limited clinical experience and specialized training, who may be licensed or is working toward licensure as a psychiatrist or master's or doctoral level mental health professional, who is authorized by the Board to provide sexual offender treatment under the clinical supervision of a senior/approved sex offender treatment provider. Certification approval is specific to adult or juvenile clients. (3-24-17)

11. Psychosexual Evaluation. A comprehensive evaluation and assessment specifically addressing a person's sexual development, sexual deviancy, sexual history and risk of re-offense. A psychosexual evaluation for the purpose of these rules is conducted post conviction, as ordered by the court pursuant to Section 18-8316, Idaho Code, or Title 20, Chapter 5, Idaho Code, by a person who has been certified by the Board. (4-11-15)

12. Quality Assurance. Processes established by the Board to review psychosexual evaluations and sexual offender treatment procedures to assure minimum standards and certificate holder qualifications are met. All quality assurance reviews will be conducted under the direction of the Board. (3-20-14)

13. Sexual Offender. A person adjudicated or convicted of an offense as listed in Section 18-8304, Idaho Code, or a substantially equivalent offense under the laws of another state, territory, commonwealth, or other jurisdiction of the United States including tribal courts and military courts; or who has been adjudicated or convicted of a sexual offense-related crime. (4-11-15)

14. Sexual Offender Classification Board. A board in effect from 1998 to 2011 that determined whether a sexual offender should be designated as a violent sexual predator; set certified evaluator qualifications and standards; and administered an evaluator certification process. (3-20-14)

15. Supervision. (3-20-14)

a. For purposes of clinical practice supervision for associate/supervised psychosexual evaluator or associate/supervised sex offender treatment provider certification, supervision is generally considered as face-to-face direct contact, documented teleconferencing, or interactive video conferencing with a Board-approved supervisor using a ratio of one (1) hour of clinical supervision for every twenty (20) hours of direct service provided; or (3-20-14)

b. For purposes of clinical practice supervision for provisional/supervised psychosexual evaluator or provisional/supervised treatment provider certification, supervision is considered as continual face-to-face direct contact with a Board-approved supervisor for the first two hundred fifty (250) hours of direct service provided followed by face-to-face direct contact with a Board-approved supervisor using a ratio of one (1) hour of clinical supervision for every fifteen (15) hours of direct service provided; or (3-24-17)

c. For purposes of supervision for associate/supervised post conviction sexual offender polygraph examiners, supervision is generally considered as face-to-face direct contact with a Board-approved supervisor during conduct of the supervisee's first five (5) PCSOT polygraphs followed by review by a Board-approved supervisor of one (1) PCSOT polygraph for every five (5) PCSOT polygraphs conducted by the supervisee. Such review shall include chart and report review. (3-24-17)

16. Treatment. For purposes of certification eligibility the provision of face-to-face individual, group, or family therapy with a person who has been investigated by law enforcement or child protective services for commission of a sexual offense, or who has been adjudicated or convicted of a sexual offense or sexual offense-related crime. Treatment must be directly relevant to the client's sexually offending behavior. (3-20-14)

17. Violent Sexual Predator. A person who was designated as a violent sexual predator by the Sexual Offender Classification Board where such designation has not been removed by judicial action or otherwise. (3-20-14)

011. ABBREVIATIONS.

- 01. APA.** The American Polygraph Association. (3-24-17)
- 02. DSM.** The “Diagnostic and Statistical Manual of Mental Disorders,” published by the American Psychiatric Association. (3-20-14)
- 03. IDOC.** The Idaho Department of Correction. (3-20-14)
- 04. IDJC.** The Idaho Department of Juvenile Corrections. (4-11-15)
- 05. PCSOT.** “Post conviction sexual offender testing” is specialized instruction beyond the basic polygraph training for the purpose of specific polygraph testing of post convicted sexual offenders. (3-24-17)
- 06. SOCB.** The Sexual Offender Classification Board. (3-20-14)
- 07. SOMB.** The Sexual Offender Management Board. (3-20-14)

012. -- 019. (RESERVED)

020. RECORDKEEPING.

- 01. Certificate Holders.** Records on all applicants and certifications issued, renewed, denied, suspended, revoked, or otherwise monitored shall be maintained for a period not less than five (5) years. (3-20-14)
- 02. Violent Sexual Predators.** The file on a sexual offender who was designated as a violent sexual predator by the SOCB is maintained by the Board and is considered the official file for all purposes. (3-20-14)

021. BOARD MEETINGS.

- 01. Meetings.** The Board meets at least quarterly and may meet more frequently. All business of the Board is conducted in compliance with the open meeting law, pursuant to Title 67, Chapter 23, Idaho Code, and Section 18-8315, Idaho Code. (3-20-14)
- 02. Agenda.** An agenda for each regularly scheduled meeting is posted in compliance with Section 67-2343, Idaho Code. (3-20-14)

022. -- 039. (RESERVED)

040. CERTIFIED EVALUATOR QUALIFICATIONS.

- 01. Certified Evaluators.** Each evaluator who conducts or assists with the conduct of a psychosexual evaluation pursuant to Section 18-8316, Idaho Code, must meet the qualifications as set forth in the established standards issued by the Board and be certified by the Board. (3-20-14)
 - a.** Certification approval is specific to adult or juvenile clients. (4-11-15)
 - b.** A certificate holder may be separately approved to provide services to both adult and juvenile clients. (4-11-15)
- 02. Certification Requirements.** Minimum requirements for certification as a psychosexual evaluator include criteria, requirements, and expectations in the following categories: (3-20-14)
 - a.** Formal educational requirements; (3-20-14)
 - b.** Professional licensure requirements; (3-20-14)

- c. Clinical experience requirements; (3-20-14)
- d. Specialized training requirements; and (3-20-14)
- e. Continuing education and professional development requirements. (3-20-14)

041. LEVELS OF PSYCHOSEXUAL EVALUATOR CERTIFICATION.

The Board issues certificates within three (3) levels reflective of a person's training and experience specific to the population to be served: (4-11-15)

01. Senior/Approved Psychosexual Evaluator. (3-20-14)

a. Possesses a valid Idaho license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (3-20-14)

b. Has engaged in a combination of direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of one thousand five hundred (1,500) hours. Of this requirement, a minimum of five hundred (500) combined hours shall have been accumulated within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board; and (3-24-17)

c. Has conducted a minimum of nine (9) psychosexual evaluations within the three (3) years preceding an initial application for certification at this level. (3-20-14)

02. Associate/Supervised Psychosexual Evaluator. (3-20-14)

a. Possesses a valid Idaho license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (3-20-14)

b. Has engaged in a combination of supervised direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of five hundred (500) hours. Of this requirement, a minimum of three hundred (300) combined hours shall have been accumulated within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board; (3-24-17)

c. Has conducted a minimum of six (6) psychosexual evaluations within the three (3) years preceding an initial application for certification at this level; and (3-20-14)

d. Shall only conduct psychosexual evaluations under the clinical practice supervision of a Board-approved supervisor as defined in Paragraph 010.15.a. of these rules, and under the terms of a formal clinical supervision agreement. (3-20-14)

03. Provisional/Supervised Psychosexual Evaluator. (3-20-14)

a. Possesses or is currently enrolled in a graduate program of study toward the attainment of a master's or doctoral degree, preferably with an emphasis on the application of forensic clinical practice; (3-20-14)

b. Possesses or is pursuing a valid license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist; (3-20-14)

c. May assist with the conduct of psychosexual evaluations only under the clinical supervision of a Board-approved supervisor as defined in Paragraph 010.15.b. of these rules, and under the terms of a formal clinical supervision agreement. Face-to-face supervision is required when providing direct clinical services to sex offenders. (3-24-17)

042. -- 079. (RESERVED)

080. SEXUAL OFFENDER TREATMENT PROVIDER QUALIFICATIONS.

01. Certified Sexual Offender Treatment Provider. Each person who provides treatment to sexual offenders as ordered or required by the court, Idaho Department of Correction, Idaho Commission for Pardons and Parole, or the Idaho Department of Juvenile Corrections, in accordance with Section 18-8314, Idaho Code, must meet the qualifications as set forth in the established standards issued by the Board and be certified by the Board. (3-20-14)

- a. Certification approval is specific to adult or juvenile clients. (4-11-15)
- b. A certificate holder may be separately approved to provide services to both adult and juvenile clients. (4-11-15)

02. Certification Requirements. Minimum requirements for certification as a sexual offender treatment provider include criteria, requirements, and expectations in the following categories: (3-20-14)

- a. Formal educational requirements; (3-20-14)
- b. Professional licensure requirements; (3-20-14)
- c. Clinical experience requirements; (3-20-14)
- d. Specialized training requirements; and (3-20-14)
- e. Continuing education and professional development requirements. (3-20-14)

081. LEVELS OF SEXUAL OFFENDER TREATMENT PROVIDER CERTIFICATION.

The Board issues certificates within three (3) levels reflective of a person's training and experience specific to the population to be served: (4-11-15)

01. Senior/Approved Sexual Offender Treatment Provider. (3-20-14)

- a. Possesses a valid license to practice in this state or another state or jurisdiction as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist; and (3-20-14)
- b. Has engaged in a combination of direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of one thousand five hundred (1,500) hours. Of this requirement, a minimum of five hundred (500) combined hours shall have been accumulated within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board. (3-24-17)

02. Associate/Supervised Sexual Offender Treatment Provider. (3-20-14)

- a. Possesses a valid license to practice in this state or another state or jurisdiction as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (3-20-14)
- b. Has engaged in a combination of supervised direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of five hundred (500) hours. Of this requirement, a minimum of three hundred (300) combined hours shall have been accumulated within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board; and (3-24-17)
- c. Shall only provide treatment services under the clinical practice supervision of a Board-approved supervisor as defined in Paragraph 010.15.a. of these rules, and under the terms of a formal clinical supervision agreement. (3-20-14)

03. Provisional/Supervised Sexual Offender Treatment Provider. (3-20-14)

a. Possesses or is currently enrolled in a graduate program of study toward the attainment of a master's or doctoral degree, preferably with an emphasis on the application of forensic clinical practice; and (3-20-14)

b. Possesses or is pursuing a valid license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (3-20-14)

c. Shall only provide treatment services under the clinical supervision of a Board-approved supervisor as defined in Paragraph 010.15.b. of these rules, and under the terms of a formal clinical supervision agreement. Face-to-face supervision is required when providing direct clinical services to sex offenders. (3-24-17)

082. -- 099. (RESERVED)

100. SPECIALIZED TRAINING FOR PSYCHOSEXUAL EVALUATORS AND SEXUAL OFFENDER TREATMENT PROVIDERS.

For initial certification as a psychosexual evaluator or sexual offender treatment provider, an applicant must have participated in specialized training in the field of sexual abuse, as set forth in the established standards issued by the Board. Sources for such training may be formal conferences, symposia, seminars and workshops in areas such as: (3-20-14)

01. Sexually Abusive Behavior. Contemporary research regarding the etiology of sexually abusive behavior; (3-20-14)

02. Offending Behavior. Research-identified risk factors for the development and continuation of sexually abusive/offending behavior; (3-20-14)

03. Assessment, Treatment, and Management of Adult or Juvenile Sex Offenders. Contemporary research and practice in the areas of assessment, treatment, and management of adult or juvenile sex offenders; (4-11-15)

04. Specific Risk Assessment Tools. Research-supported, sex offender-specific risk assessment tools; and (3-20-14)

05. Deviant Sexual Arousal and/or Interests. Physiological assessment of deviant sexual arousal and/or interests. (3-20-14)

101. CONTINUING EDUCATION FOR PSYCHOSEXUAL EVALUATORS AND SEXUAL OFFENDER TREATMENT PROVIDERS.

To maintain certification as a psychosexual evaluator or sexual offender treatment provider, a certificate holder must receive continuing education in the field of sexual abuse. (3-20-14)

01. Senior/Approved and Associate/Supervised Certification Levels. A psychosexual evaluator or sexual offender treatment provider who is certified at a senior/approved or an associate/supervised level must receive a minimum of forty (40) hours of specialized continuing education in the form of formal conferences, symposia, seminars, workshops or on-line training over the course of the two (2) year period prior to each renewal period as set forth in the established standards issued by the Board. (3-20-14)

02. Provisional/Supervised Certification Level. A provisional/supervised psychosexual evaluator or sexual offender treatment provider must receive a minimum of twenty (20) hours of specialized continuing education in the form of formal conferences, symposia, seminars, workshops or on-line training annually as set forth in the established standards issued by the Board. (3-20-14)

102. -- 149. (RESERVED)

150. REQUEST FOR CONDITIONAL WAIVER.

01. Conditional Waiver. The Board may consider an applicant's request for a time limited conditional waiver for deficiencies in experience and specialized training qualifications as set forth in the established standards issued by the Board. (3-24-17)

02. Duration. A conditional waiver is limited to a period of two (2) years. Conditional waivers may not be extended or renewed after the third year. (3-20-14)

03. Frequency. A conditional waiver request shall only be considered one (1) time each for: (3-24-17)

a. An initial certification application for psychosexual evaluator and sexual offender treatment provider applicants at the senior/approved or associate/supervised level; (3-24-17)

b. A renewal certification application for psychosexual evaluator and sexual offender treatment provider applicants at the senior/approved or associate/supervised level; (3-24-17)

c. A renewal certification application for post conviction sexual offender polygraph examiner applicants at the senior/approved level; and (3-24-17)

d. A person certified as an associate/supervised post conviction sexual offender polygraph examiner who, after the two-year (2) time limitation at this status has expired, does not meet qualifications for advancement to post conviction sexual offender polygraph examiner certification at the senior/approved level. (3-24-17)

151. (RESERVED)

152. RECIPROCITY.

The Board may consider reciprocity for any applicant who has been licensed or certified to conduct psychosexual evaluations or sexual offender treatment in another state or jurisdiction as set forth in the established standards issued by the Board. (3-20-14)

153. EXCLUSION.

Each mental health employee of the Idaho Department of Correction or Idaho Department of Juvenile Corrections who conducts psychosexual evaluations or provides sexual offender treatment is exempt from the certification process. This exemption shall only apply while the employee is acting within the course and scope of his employment with the applicable agency. (3-20-14)

154. REQUEST FOR CHANGE IN CERTIFICATION LEVEL.

01. Request to Advance in Level of Certification. A certificate holder may apply at any time during an effective certification to advance to the next higher level of certification provided that he meets the established qualifications and requirements as set forth in the established standards issued by the Board. (3-20-14)

02. Request to Change to a Less Independent Level of Certification. A certificate holder may apply at any time during an effective certification for a reduction in his level of certification in the event that he no longer meets the established qualifications and requirements for his current level of certification as set forth in the established standards issued by the Board. (3-20-14)

155. APPLICATION FOR CHANGE IN CERTIFICATION LEVEL.

Application for change in certification level shall be on a form provided by the Board and shall be submitted with the required supporting documentation and applicable renewal application processing fee: (3-20-14)

01. Advance to Senior/Approved Level of Certification Application Fee. A non-refundable renewal application fee payable to the Board in the amount of fifty dollars (\$50) provided that the application is submitted three hundred sixty-five (365) days or more after the most recent effective certification date. The application fee shall be waived if submission is within three hundred sixty-five (365) days from the most recent effective certification date. (3-20-14)

02. Advance to Associate/Supervised Level of Certification Application Fee. A non-refundable renewal application fee payable to the Board in the amount of thirty dollars (\$30) provided that the application is submitted three hundred sixty-five (365) days or more after the most recent effective certification date. The application fee shall be waived if submission is within three hundred sixty-five (365) days from the most recent effective certification date. (3-20-14)

03. Change to a Less Independent Level of Certification Application Fee. A non-refundable renewal application fee payable to the Board in the amount of fifty dollars (\$50) provided that the application is submitted three hundred sixty-five (365) days or more after the most recent effective certification date. The application fee shall be waived if submission is within three hundred sixty-five (365) days from the most recent effective certification date. (3-20-14)

156. -- 199. (RESERVED)

200. POST CONVICTION SEXUAL OFFENDER POLYGRAPH EXAMINER QUALIFICATIONS.

01. Certified Examiner. Each person who conducts post conviction sexual offender polygraphs as ordered or required by the court, Idaho Department of Correction, or Idaho Commission for Pardons and Parole, in accordance with Section 18-8314, Idaho Code, must meet the qualifications as set forth in the established standards issued by the Board and be certified by the Board. There shall not be a separate certification specific to adult or juvenile clients. (4-11-15)

02. Certification Requirements. Minimum requirements for certification as a sexual offender treatment provider include criteria and requirements in the following categories: (3-20-14)

- a. Educational requirements; (3-20-14)
- b. Experience requirements; (3-20-14)
- c. Specialized training requirements; and (3-20-14)
- d. Continuing education and professional development requirements. (3-20-14)

201. LEVELS OF POST CONVICTION SEXUAL OFFENDER POLYGRAPH EXAMINER CERTIFICATION.

The Board issues certificates within two (2) levels reflective of a person's experience in conducting post conviction sexual offender polygraphs. (3-24-17)

01. Senior/Approved Post Conviction Sexual Offender Polygraph Examiner. (3-24-17)

a. Has graduated from an APA-accredited polygraph school; (3-24-17)

b. Has successfully completed a minimum of forty (40) hours of formal post conviction sexual offender polygraph testing beyond the basic polygraph training course requirements from an APA-accredited program or school; and (3-24-17)

c. Has successfully completed a minimum of one hundred (100) polygraph examinations. Of this requirement, a minimum of ten (10) sexual history polygraph examinations and a minimum of ten (10) PCSOT maintenance polygraph examinations shall have been conducted within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board; (3-24-17)

02. Associate/Supervised Post Conviction Sexual Offender Polygraph Examiner. (3-24-17)

a. Has graduated from an APA-accredited polygraph school; (3-24-17)

b. Has successfully completed a minimum of forty (40) hours of formal post conviction sexual offender polygraph testing beyond the basic polygraph training course requirements from an APA-accredited program or school; and (3-24-17)

c. Shall only conduct polygraphs under the supervision of a Board-approved supervisor as defined in Paragraph 010.15.c. of these rules, and under the terms of a formal supervision agreement. (3-24-17)

202. -- 230. (RESERVED)

231. CONTINUING EDUCATION FOR POST CONVICTION SEXUAL OFFENDER POLYGRAPH EXAMINERS.

To maintain certification as a post conviction sexual offender polygraph examiner, a certificate holder must receive a minimum of thirty (30) hours of continuing education related to the field of polygraphy in the form of formal conferences, symposia, seminars, or workshops over the course of the two (2) year period prior to each renewal period as set forth in the established standards issued by the Board. (3-24-17)

232. -- 299. (RESERVED)

300. STANDARDS FOR PROFESSIONAL CONDUCT AND CLIENT RELATIONS.

01. General Considerations for Certified Evaluators and Certified Treatment Providers. Each person who is certified by the Board to conduct or assist with the conduct of psychosexual evaluations or provide sexual offender treatment shall: (3-20-14)

a. Adhere to the ethical principles and codes, and all practice standards and guidelines for the person's respective discipline and area of professional licensure; (3-20-14)

b. Be knowledgeable of statutes and scientific data relevant to specialized sexual offender evaluation and sexual offender treatment; (3-20-14)

c. Be familiar with the statutory requirements for assessments and reports for the courts, pursuant to Section 18-8316, Idaho Code; (3-20-14)

d. Be committed to community protection and safety; (3-20-14)

e. Provide services in a manner that ensures humane and ethical treatment of clients; (3-20-14)

f. Conduct testing in accordance with the person's licensing body, qualifications and experience, and in a manner that ensures the integrity of testing data; (3-20-14)

g. Avoid relationships with clients that may constitute a conflict of interest, impair professional judgment and risk exploitation; and (3-20-14)

h. Have no sexual relationships with any client. (3-20-14)

02. General Considerations for Certified Post Conviction Sexual Offender Polygraph Examiners. Each person who is certified by the Board to conduct post conviction sexual offender polygraph examinations shall: (3-20-14)

a. Adhere to the ethical principles and codes, and all practice standards and guidelines for the person's discipline, area of professional practice, or licensure as promulgated by any applicable regulatory board or licensing authority; (3-20-14)

b. Adhere to the standards and guidelines specific to post conviction sexual offender testing as promulgated by the APA; (3-24-17)

c. Adhere to the ethical principles and codes, and all practice standards and guidelines for the

administration of polygraph examinations generally, as promulgated by the APA or the American Association of Police Polygraphists, as referenced in Section 004 of these rules; (3-24-17)

- d.** Avoid relationships with clients that may constitute a conflict of interest, impair professional judgment and risk exploitation; (4-11-15)
- e.** Have no sexual relationships with any client; (3-24-17)
- f.** Take factors such as age, mental capacity and co-occurring mental health concerns into consideration when utilizing polygraphy with juvenile offenders; (4-11-15)
- g.** Be committed to community protection and safety; and (3-24-17)
- h.** Provide services in a manner that ensures humane and ethical treatment of clients. (3-24-17)

301. -- 329. (RESERVED)

330. INITIAL CERTIFICATION APPLICATION.

An applicant seeking certification by the Board must submit a completed application on forms provided by the Board for the applicant's area of practice and client population, if applicable, accompanied by documentation as outlined in the established standards issued by the Board and an initial certification application fee made payable to the Board. (4-11-15)

331. EXPIRATION AND RENEWAL OF CERTIFICATION.

No certification shall be renewed, except as follows: (3-20-14)

01. Renewal. At least thirty (30) days prior to the expiration of a certification, a certificate holder shall apply for renewal of the certification on forms provided by the Board for the applicant's area of practice and client population, if applicable, accompanied by documentation as outlined in the established standards issued by the Board and a renewal certification application fee made payable to the Board. (4-11-15)

02. Removal from the Roster. A certificate holder who has not renewed his certification shall be removed from the central roster thirty (30) days after his certification has expired. (3-20-14)

03. Renewal After Certification Expiration. A certificate holder whose certification has expired may reapply at any time for certification as follows: (3-20-14)

a. A certificate holder whose certification has been expired for less than three hundred sixty-five (365) days may reapply following the certification renewal process as referenced in Subsection 331.01 of these rules. (3-20-14)

b. A certificate holder whose certification has been expired for three hundred sixty-five (365) days or longer may reapply for certification following the initial certification process as referenced in Section 330 of these rules. (3-20-14)

332. FEES.

The following non-refundable application processing fees are established by the Board: (3-20-14)

01. Initial Certification. Application processing fees for initial certification shall be: (3-20-14)

a. Senior/Approved Psychosexual Evaluator, Treatment Provider, or Post Conviction Sexual Offender Polygraph Examiner – Seventy-five dollars (\$75). (3-24-17)

b. Associate/Supervised Psychosexual Evaluator, Treatment Provide, or Post Conviction Sexual Offender Polygraph Examiner – Seventy-five dollars (\$75). (3-24-17)

c. Provisional/Supervised Psychosexual Evaluator or Treatment Provider – Fifty dollars (\$50).

(3-20-14)

02. Renewal Certification. Application processing fees for renewal certification shall be: (3-20-14)

a. Senior/Approved Psychosexual Evaluator, Treatment Provider, or Post Conviction Sexual Offender Polygraph Examiner – Fifty dollars (\$50). (3-24-17)

b. Associate/Supervised Psychosexual Evaluator, Treatment Provider, or Post Conviction Sexual Offender Polygraph Examiner – Fifty dollars (\$50). (3-24-17)

c. Provisional/Supervised Psychosexual Evaluator or Treatment Provider – Thirty dollars (\$30). (3-20-14)

03. Change in Certification Level. Application processing fees for a change in certification level shall be as referenced in Section 155 of these rules. (3-20-14)

333. CERTIFICATION PERIOD.

Provided that the certificate holder continues to meet the criteria for certification and such certification has not been suspended, revoked, otherwise restricted or placed on voluntary inactive status, the effective period for certification is as follows: (3-20-14)

01. Senior/Approved Psychosexual Evaluator or Treatment Provider. Certification shall remain in effect for two (2) years. Certification renewal shall typically occur during the certificate holder's month of birth two (2) years following initial certification and every two (2) years thereafter, unless extended by conditional waiver. (3-24-17)

02. Associate/Supervised Psychosexual Evaluator or Treatment Provider. Certification shall remain in effect for two (2) years. Certification renewal shall typically occur during the certificate holder's month of birth two (2) years following initial certification and every two (2) years thereafter, unless extended by conditional waiver. (3-24-17)

03. Provisional/Supervised Psychosexual Evaluator or Treatment Provider. Certification shall remain in effect for one (1) year. Certification renewal shall typically occur during the certificate holder's month of birth one (1) year following initial certification and annually thereafter. Certification at the provisional/supervised level is limited to a period of three (3) years, at which time the certificate holder must meet minimum requirements for upgrade to the associate/supervised level to be eligible for certification renewal. (3-20-14)

04. Senior/Approved Post Conviction Sexual Offender Polygraph Examiner. Certification shall remain in effect for two (2) years. Certification renewal shall typically occur during the certificate holder's month of birth two (2) years following initial certification and every two (2) years thereafter unless extended by conditional waiver. (3-24-17)

05. Associate/Supervised Post Conviction Sexual Offender Polygraph Examiner. Certification shall remain in effect for two (2) years from the certificate holder's month of birth following initial certification. Thereafter, the certificate holder must meet minimum requirements for upgrade to the senior/approved level to be eligible for certification renewal, unless extended by conditional waiver. (3-24-17)

334. APPLICABILITY AND NOTIFICATION OF CHANGES.

Certification shall only apply to the person named therein and is not transferable. The Board must be notified in writing within thirty (30) days of any change in the certificate holder's name, business address or phone number. (3-20-14)

335. REQUEST FOR PLACEMENT ON INACTIVE STATUS.

Any certificate holder may request placement on inactive status by submitting a written request to the SOMB specifying the reasons for the request and indicating the inactive status effective date. A certificate holder who is placed on inactive status shall be removed from the central roster of certified evaluators, treatment providers and post conviction sexual offender polygraph examiners. A person who has been placed on inactive status may reapply for

certification in accordance with the established standards issued by the Board. (3-20-14)

336. -- 349. (RESERVED)

350. CENTRAL ROSTER OF PSYCHOSEXUAL EVALUATORS, SEXUAL OFFENDER TREATMENT PROVIDERS AND POST CONVICTION SEXUAL OFFENDER POLYGRAPH EXAMINERS.

01. Identification. The Board shall publish a central roster of psychosexual evaluators, sexual offender treatment providers and post conviction sexual offender polygraph examiners pursuant to Sections 18-8312 through 18-8316, Idaho Code. The central roster shall indicate: (3-24-17)

- a. The certificate holder's name; (3-20-14)
 - b. The certificate holder's business address and telephone number; (3-20-14)
 - c. Whether the certificate holder is certified or approved by conditional waiver; (3-20-14)
 - d. The category and applicable level of certification; (3-20-14)
 - e. The expiration date of the certification or conditional waiver; (4-11-15)
 - f. Whether the certificate holder is approved to provide services to adult or juvenile clients, or both; (4-11-15)
- and
- g. Current formal disciplinary action imposed on a certificate holder by the Board. (3-20-14)

02. Availability. A copy of the central roster may be obtained from the Board, and shall be posted on the Board's website. (3-20-14)

351. -- 379. (RESERVED)

380. DENIAL AND GROUNDS FOR DISCIPLINE.

01. Cause. The Board may deny, suspend, revoke, restrict or otherwise monitor certification of an applicant or certificate holder for the following reasons: (3-20-14)

- a. Failure to meet or maintain the minimum eligibility criteria and qualifications for certification; (3-20-14)
- b. Falsification of any information or documentation, or concealing a material fact in the application for certification, or during any investigation or quality assurance review; (3-20-14)
- c. Misrepresentation of current level or designation of certification, or practicing outside the scope or current level or designation of certification; (3-20-14)
- d. Failure to comply with Section 18-8316, Idaho Code, any portion of this chapter, or the established standards issued by the Board; (3-20-14)
- e. Failure to demonstrate an understanding of counter-transference issues and a broad knowledge of sexuality in the general populations, and basic theories and typologies of sexual offenders and sexual assault victims; (3-20-14)
- f. Failure or refusal to comply with the quality assurance review process or to cooperate during any investigation concerning certification, including failure or refusal to provide data, information or records as requested by the Board or designee; (3-20-14)

g. Failure to comply with any informal disciplinary measures, remedial steps, corrective action or final order issued by the Board as a condition of continued certification, including practicing on a suspended or restricted certification; (3-20-14)

h. Engaging in conduct that departs from the established standards issued by the Board; (3-20-14)

i. Revocation, suspension, limitation, reprimand, voluntary surrender or any other disciplinary action or proceeding, including investigation against a license, certificate or privilege to practice by a professional licensing board; (3-20-14)

j. Conviction of, or entry of a withheld judgment or plea of nolo contendere to conduct constituting a felony or crime of moral turpitude; or (3-20-14)

k. Failure to notify the Board in writing of any circumstances that affect a certificate holder's eligibility for certification, including any disciplinary action taken by a respective professional licensing board or conviction of any felony or crime of moral turpitude. (3-20-14)

02. Mirroring Orders. If a state licensing board with authority over a certificate holder's professional license takes action against the professional license which suspends, restricts, limits, or affects the certificate holder's ability to provide services pursuant to their SOMB certification, the SOMB is authorized to issue an order suspending, restricting, limiting, or otherwise affecting the certificate holder's SOMB certification in the same fashion as the professional licensing board's action. (3-20-14)

03. Emergency Suspension. Pursuant to Section 67-5247, Idaho Code, if the Board finds that public health, safety or welfare requires immediate emergency action the Board may take such action necessary to prevent or avoid the immediate danger as outlined in the established standards issued by the Board. (3-20-14)

381. REAPPLICATION FOLLOWING CERTIFICATION DENIAL OR DISCIPLINARY ACTION.

01. Denial. An applicant whose certification was denied may reapply when evidence is available confirming that he meets the required qualifications for the respective area of practice as referenced in Sections 040, 080 or 200 of these rules; (3-20-14)

02. Suspension. A person whose certification has been suspended may apply for reinstatement after the suspension period has expired and following completion of any remedial steps or corrective action ordered by the Board, as outlined in the established standards issued by the Board; (3-20-14)

03. Restriction. A person whose certification has been restricted or otherwise monitored may request removal of the restrictions after the restriction period has expired. If no period of restriction was established, the request may be made following completion of any remedial steps or corrective action ordered by the Board, as outlined in the established standards issued by the Board; (3-20-14)

04. Revocation. A person whose certification has been revoked may request reinstatement after the revocation period has expired, as outlined in the established standards issued by the Board. The Board shall have discretion to impose any monitoring conditions upon a certificate holder whose certification has been reinstated following revocation; (3-20-14)

05. Withheld Discipline and Probation. A certificate holder whose formal discipline was withheld and placed on probationary status may request reinstatement after the probationary period has expired and any conditions imposed have been met, as outlined in the established standards issued by the Board. (3-20-14)

382. LEVELS OF DISCIPLINE.

The levels of disciplinary action utilized by the Board against a certificate holder may generally include formal discipline, informal discipline or withholding formal discipline and probation. (3-20-14)

383. FORMAL DISCIPLINE.

Formal disciplinary action consists of suspension, revocation or other restrictions. Formal disciplinary actions restrict

or otherwise impede a certificate holder's ability to perform sexual offender services consistent with their certification level. (3-20-14)

384. INFORMAL DISCIPLINE.

Informal disciplinary action consists of monitoring a certificate holder or issuing letters of informal reprimand or counseling. Informal disciplinary actions do not restrict or otherwise impede a certificate holder's ability to perform sexual offender services consistent with their certification level. (3-20-14)

385. WITHHOLDING FORMAL DISCIPLINE AND PROBATION.

The Board may withhold the imposition of formal discipline and place the certificate holder on a period of probation not to exceed two (2) years. The Board may impose any conditions of probation as deemed necessary to ensure compliance with the established standards issued by the Board. Such probationary conditions may include attendance at specialized training, review of the certificate holder's work product by the Board or its designee, or supervised practice by a senior level certificate holder. Failure to comply with a probationary condition imposed by the Board may result in the imposition of any suspended disciplinary action. (3-20-14)

386. COMPLAINTS.

Any individual may file against a certificate holder by submitting a written complaint to the Board, as outlined in the established standards issued by the Board. (3-20-14)

01. Initial Review. The Board's designee shall conduct an initial review of any complaint or information received to determine if the Board has jurisdiction. (3-20-14)

02. Investigation. The Board's designee shall conduct an investigation upon a determination that the Board has jurisdiction and a possible violation may exist. Investigative findings shall be presented to the Board as outlined in the established standards issued by the Board. (3-20-14)

387. DISCIPLINARY PROCESS.

The disciplinary process may be initiated as a result of a complaint received by the Board or a quality assurance review, or be based upon a review of information submitted to the Board during the certification process, monitoring process or while under formal probation. The Board must provide the applicant or certificate holder with notice of intent to deny, suspend, revoke, restrict or otherwise monitor certification, and the right to appeal. (3-20-14)

01. Notification. The Board shall notify the applicant or certificate holder of the Board's intended action in writing using certified mail. (3-20-14)

02. Notice Contents. The notice shall: (3-20-14)

a. State the basis for the intended action; (3-20-14)

b. May suggest means by which the matter might be remedied; and (3-20-14)

c. Provide the applicant or certificate holder notice of the right to a hearing in the matter. (3-20-14)

388. RESPONSE TO NOTICE OF INTENDED ACTION.

The applicant or certificate holder shall have not more than thirty (30) days from the date on which the Board's notice of intended action is served upon him to request a hearing with the Board. The written request shall include documentation supporting the applicant or certificate holder's argument refuting the Board's intended action and a requested remedy. (3-20-14)

01. Failure to Respond. The board shall issue a final order imposing formal disciplinary action if the applicant or certificate holder fails to respond to the Board's notice of intended action or request a hearing within the designated time frame. (3-20-14)

02. Petition for Reconsideration. A petition for reconsideration may be filed by an applicant or certificate holder who failed to respond or request a hearing within the required time frame. (3-20-14)

389. HEARING.

Hearings in contested cases shall be conducted by a hearing officer appointed by the Board as outlined in the established standards issued by the Board. (3-20-14)

01. Recommended Order. All decisions by the hearing officer are considered to be a recommended order and will be reviewed by the Board prior to the issuance of a final order or remanded back to the hearing officer for further consideration. (3-20-14)

02. Response to Recommended Order. Within twenty-one (21) days of the service of the recommended order, any party may submit in writing to the Board to support or take exceptions to any part of the recommended order and file briefs in support of the party's position on any issue in the proceeding. The request must identify all legal and factual bases of disagreement with the recommended order. A review by the Board will be conducted as outlined in the established standards issued by the Board. (3-20-14)

03. Resolution without a Hearing. Any contested case may be resolved without a hearing on the merits of the notice of intended action by stipulation, settlement, motion to dismiss, summary judgment, default, withdrawal, or for lack of jurisdiction. The hearing officer must dismiss a request for hearing that is not filed within the time limits set forth in these rules. (3-20-14)

390. FINAL ORDER.

The Board will issue a final order or notice of remand within sixty (60) days of the service of the recommended order, unless a review of the recommended order was filed. (3-20-14)

391. APPEAL TO DISTRICT COURT

Any person aggrieved by a final order issued by the Board in a contested case may appeal to district court pursuant to Section 67-5270, Idaho Code, and IDAPA 04.11.01., "Idaho Rules of Administrative Procedure of the Attorney General," Sections 790 through 799. (3-20-14)

392. -- 399. (RESERVED)

400. QUALITY ASSURANCE.

Policies for technical review and quality assurance of psychosexual evaluation reports and sexual offender treatment services are outlined in the established standards issued by the Board. The Board shall develop a quality assurance process for review of post conviction sexual offender polygraph examinations. (3-20-14)

401. -- 449. (RESERVED)

450. PSYCHOSEXUAL EVALUATIONS.

01. Adult Psychosexual Evaluations. Pre-sentence psychosexual evaluations on adult sexual offenders shall be conducted pursuant to the established standards issued by the Board and written utilizing the "Required Format for Psychosexual Evaluation Reports," as referenced in Section 004 of these rules. (4-11-15)

02. Juvenile Psychosexual Evaluations. Psychosexual evaluations on juveniles adjudicated for sexual offenses shall be conducted in accordance with the established standards issued by the Board and written utilizing the "Required Format for Juvenile Psychosexual Evaluation Reports," incorporated by reference in Section 004 of these rules. (4-11-15)

03. Testing. The evaluator shall utilize testing instrumentation and assessment measures as outlined in the established standards issued by the Board. (3-20-14)

04. Client Participation. The client being evaluated may refuse or decline to participate in any testing, assessment measure, or physiological measure used for the pre-sentence psychosexual evaluation. The evaluator shall document the client's refusal or declination in the psychosexual evaluation report. (3-20-14)

451. -- 479. (RESERVED)

480. POLYGRAPH EXAMINATIONS.

Post conviction sexual offender polygraph examinations performed pursuant to an order or requirement by the court or requested by the Idaho Department of Correction or Idaho Commission for Pardons and Parole shall be conducted by a person certified by the Board to conduct such examinations and shall follow the established standards issued by the Board. (3-20-14)

481. -- 499. (RESERVED)

500. SEXUAL OFFENDER TREATMENT.

Specialized sexual offender treatment conducted pursuant to an order or requirement by the court, the Idaho Department of Correction, the Idaho Commission for Pardons and Parole or the Idaho Department of Juvenile Corrections shall be conducted by a person certified by the Board to conduct such treatment and shall follow the established standards issued by the Board. (3-20-14)

501. -- 999. (RESERVED)

IDAPA 57 – SEXUAL OFFENDER MANAGEMENT BOARD
57.01.01 – RULES OF THE SEXUAL OFFENDER MANAGEMENT BOARD
DOCKET NO. 57-0101-1901
NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo, Incorporation By Reference Synopsis \(IBRS\), & Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

Upon legislative approval of this pending rule the amendments made in this docket will overwrite those sections of the reauthorized rule promulgated under Docket No. 57-0000-1900F, which will also be filed for review for final approval during the upcoming legislative session.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 18-8314, 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 Board is adopting this pending rulemaking to streamline processes and create more efficiencies in the certification process.

This pending rule differs from the proposed rule in that the SOMB previously voted to remove the option of initial certification by conditional waiver as the Board believed there were sufficient paths available for practitioners to become certified without waiving any initial certification requirements. Based on provider feedback and discussions during negotiated rulemaking, the SOMB decided to keep the conditional waiver option for initial certification purposes, while still eliminating the conditional waiver option for renewal applications.

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, 2019 Idaho Administrative Bulletin, Vol. 19-10, pages 349-358.

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

The Board is adopting this pending rulemaking that provides an option for certificate holders to seek a 60-day extension to submit proof of completing continuing education requirements upon renewal of certification. There will be a \$25 fee for this 60-day extension. This fee is authorized pursuant to Section 18-8314, 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:

There will not be any impact on the general fund as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Nancy Volle at (208) 658-2002.

Dated this 10th day of December, 2019.

Nancy Volle, Program Manager
Sexual Offender Management Board
1299 N Orchard St Ste #110
Boise, ID 83706
Phone: (208) 658-2002 / Fax: (208) 287-3322

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 18-8314, Idaho Code.

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

PUBLIC HEARINGS	
Friday, October 11, 2019 9:00 a.m. (MDT)	Friday, November 8, 2019 9:00 a.m. (MST)
299 N. Orchard Street Suite 110, Boise, ID 83706	

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:

The Sexual Offender Management Board is responsible for developing, advancing and overseeing sound sexual offender management policies and practices statewide. This rulemaking addresses proposed modifications to the Board's standards and procedures related to certification of providers who conduct psychosexual evaluations, sex offender treatment and post-conviction sex offender polygraph examinations on adults and juveniles who have been convicted of or adjudicated for sexual offenses; and technical changes to standards-related forms. Specifically, the Board intends to adopt the "Idaho Rules of Administrative Procedure of the Attorney General," IDAPA 04.11.01. Section 000 through 799 to govern contested cases brought before the Board. The Board is also removing references to compliance with IDAPA 06.01.01, "Rules of the Board of Correction," when responding to public records requests. The Board will respond to all public record request in accordance with Title 74, Chapter 1, Idaho Code. This rulemaking removes the option of certification by conditional waiver as the Board believes there are sufficient paths available for practitioners to become certified without waiving any certification requirements. There is an option for certificate holders to seek a 60-day extension to submit proof of completing continuing education requirements upon renewal of certification. There will be a \$25 fee for this 60-day extension. Providers whose certification expires will be immediately removed from the SOMB's official provider roster. This rulemaking will also change the renewal process by routing any required work product of the provider submitted with a renewal application to the quality assurance subcommittee rather than the certification subcommittee, allowing the renewal applications to be processed in a more timely manner. This process will not apply to those providers seeking initial certification, requests for changes in level of certification, reinstatement requests, or providers on monitoring status. Modifications are also being proposed regarding the quality assurance procedures for polygraph examiners. Also updates documents incorporated by reference.

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

There is an option for certificate holders to seek a 60-day extension to submit proof of completing continuing education requirements upon renewal of certification. There would be a \$25 fee for this 60-day extension. This fee is authorized pursuant to Section 18-8314, 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 as a result of this rulemaking:

There will not be any impact on the general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it was not likely that a consensus would be reached on the proposed changes to the certification standards affecting providers of sexual offender services. However, the review of the standards by the SOMB was listed as an agenda item for the board meetings when the standards were discussed, and no interested parties attended those meetings. Recognizing the impact these proposed changes may have on providers, the SOMB intends to solicit comments at future board meetings following publication of this rulemaking as indicated above.

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

The Sexual Offender Management Board is legislatively mandated to establish standards, qualification and certification procedures for post-conviction psychosexual evaluations/evaluators; sexual offender treatment and the providers who offer these services; and post-conviction sexual offender polygraph examiners. The practice standards and certification qualifications established by the agency pursuant to Section 18-8314, Idaho Code, are incorporated by reference. The following documents incorporate by reference the most recent revised editions:

“Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices,” as revised, December 2019; “Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders” as revised, December 2019; “Required Format for Juvenile Psychosexual Evaluation Reports,” as revised, December 2019; and “Required Format for Adult Psychosexual Evaluation Reports,” as revised, December 2019. These documents can be found on the agency’s website: <http://somb.idaho.gov>.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nancy Volle at (208) 658-2002.

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 23, 2019.

Dated this 3rd day of September, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 57-0101-1901

003. ADMINISTRATIVE APPEALS.

The “Idaho Rules of Administrative Procedure of the Attorney General,” IDAPA 04.11.01, Sections 000 through 799 apply to contested cases of the Board. ()

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (3-20-14)

01. “Bylaws and Constitution of the American Association of Police Polygraphists,” effective May, 2010, is herein incorporated by reference and is available from the American Association of Police Polygraphists, PO Box 657, Waynesville, Ohio 45068, website <http://www.policepolygraph.org/>. (3-20-14)

02. “Bylaws of the American Polygraph Association,” effective March 2018, is herein incorporated by reference and is available from the American Polygraph Association, PO Box 8037, Chattanooga, Tennessee 37414, website <http://www.polygraph.org/>. ()

03. “Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices,” December 2019 revision, is herein incorporated by reference and is available from the Board’s office and on the Board website, <http://somb.idaho.gov/>. ()

04. “Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders,” December 2019 revision, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://somb.idaho.gov/>. ()

05. The Sexual Offender Management Board's “Required Format for Juvenile Psychosexual Evaluation Reports,” December 2019 revision, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://somb.idaho.gov/>. ()

06. The Sexual Offender Management Board’s “Required Format for Adult Psychosexual Evaluation Reports,” December 2019 revision, is herein incorporated by reference and is available from the Board’s office and on the Board’s website, <http://somb.idaho.gov/>. ()

(BREAK IN CONTINUITY OF SECTIONS)

006. PUBLIC RECORDS ACT COMPLIANCE.

01. Administrative Rules. The rules contained herein are promulgated pursuant to Title 67, Chapter 52, Idaho Code, and are public records. (3-20-14)

02. Public Records Requests. Requests for public information are processed in compliance with the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. ()

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Sexual Offender Management Board described in Section 18-8312, Idaho Code. (3-20-14)

02. Central Roster. A roster of evaluators, treatment providers and polygraph examiners, who meet the qualifications and are certified by the Board to conduct psychosexual evaluations, provide sexual offender treatment or conduct post-conviction sexual offender polygraphs. (3-20-14)

03. Certificate Holder. A person who has been approved by the Board and certified as meeting

qualifications to conduct or assist in the conduct of psychosexual evaluations, provide sexual offender treatment or conduct post conviction sexual offender polygraphs. (3-20-14)

04. Certified Evaluator. Either a psychiatrist licensed by this state pursuant to Title 54, Chapter 18, Idaho Code, or a master's or doctoral level mental health professional licensed by this state pursuant to Title 54, Chapters 23, 32, or 34, Idaho Code. The evaluator shall have by education, experience, and training, expertise in the assessment and treatment of sexual offenders, meet the qualifications, and be approved by the Board to perform psychosexual evaluations in this state, as described in Section 18-8314, Idaho Code. A person meeting this definition may be certified by the Board as either a senior/approved certified evaluator or an associate/supervised certified evaluator. ()

05. Certified Post Conviction Sex Offender Polygraph Examiner. A polygraph examiner who has received specialized post conviction sexual offender testing training, and who is certified by the Board to conduct post conviction sexual offender polygraph examinations as ordered or required by the court, Idaho Department of Correction, or Idaho Commission for Pardons and Parole. A person meeting this definition may be certified by the Board as either a senior/approved post conviction sexual offender polygraph examiner or an associate/supervised post conviction sexual offender polygraph examiner. (3-24-17)

06. Certified Treatment Provider. A person who has been certified by the Board as meeting qualifications to provide sexual offender treatment as ordered by the court, Idaho Department of Correction, Idaho Commission for Pardons and Parole, or Idaho Department of Juvenile Corrections. Such person shall be licensed by this state or another state or jurisdiction as a psychiatrist, or a master's or doctoral level mental health professional, and who has by education, experience and training, expertise in the treatment of sexual offenders. A person meeting this definition may be certified by the Board as either a senior/approved sex offender treatment provider or an associate/supervised sex offender treatment provider. (3-20-14)

07. Client. An adult or juvenile receiving services from a person certified by the Board pursuant to Section 18-8314, Idaho Code. (4-11-15)

08. Established Standards. The "Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices" and the "Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders" as referenced in Section 004 of these rules and established pursuant to Section 18-8314, Idaho Code. (4-11-15)

09. Provisional/Supervised Psychosexual Evaluator. A person with limited clinical experience and specialized training, who may be licensed or is working toward licensure as a psychiatrist or master's or doctoral level mental health professional, who is authorized by the Board to assist with the conduct of psychosexual evaluations under the clinical supervision of a senior/approved psychosexual evaluator. A person with a provisional/supervised psychosexual evaluator certificate is not considered to be a certified evaluator as defined in Section 18-8303, Idaho Code or for the purposes of conducting a psychosexual evaluation in accordance with Section 18-8316, Idaho Code. Certification approval is specific to adult or juvenile clients. (3-24-17)

10. Provisional/Supervised Sex Offender Treatment Provider. A person with limited clinical experience and specialized training, who may be licensed or is working toward licensure as a psychiatrist or master's or doctoral level mental health professional, who is authorized by the Board to provide sexual offender treatment under the clinical supervision of a senior/approved sex offender treatment provider. Certification approval is specific to adult or juvenile clients. (3-24-17)

11. Psychosexual Evaluation. A comprehensive evaluation and assessment specifically addressing a person's sexual development, sexual deviancy, sexual history and risk of re-offense. A psychosexual evaluation for the purpose of these rules is conducted post conviction, as ordered by the court pursuant to Section 18-8316, Idaho Code, or Title 20, Chapter 5, Idaho Code, by a person who has been certified by the Board. (4-11-15)

12. Quality Assurance. Processes established by the Board to review psychosexual evaluations and sexual offender treatment procedures to assure minimum standards and certificate holder qualifications are met. All quality assurance reviews will be conducted under the direction of the Board. (3-20-14)

13. Sexual Offender. A person adjudicated or convicted of an offense as listed in Section 18-8304, Idaho Code, or a substantially equivalent offense under the laws of another state, territory, commonwealth, or other jurisdiction of the United States including tribal courts and military courts; or who has been adjudicated or convicted of a sexual offense-related crime. (4-11-15)

14. Sexual Offender Classification Board. A board in effect from 1998 to 2011 that determined whether a sexual offender should be designated as a violent sexual predator; set certified evaluator qualifications and standards; and administered an evaluator certification process. (3-20-14)

15. Supervision. (3-20-14)

a. For purposes of clinical practice supervision for associate/supervised psychosexual evaluator or associate/supervised sex offender treatment provider certification, supervision is generally considered as face-to-face direct contact, documented teleconferencing, or interactive video conferencing with a Board-approved supervisor using a ratio of one (1) hour of clinical supervision for every twenty (20) hours of direct service provided; or (3-20-14)

b. For purposes of clinical practice supervision for provisional/supervised psychosexual evaluator or provisional/supervised treatment provider certification, supervision is considered as continual face-to-face direct contact with a Board-approved supervisor for the first two hundred fifty (250) hours of direct service provided followed by face-to-face direct contact with a Board-approved supervisor using a ratio of one (1) hour of clinical supervision for every fifteen (15) hours of direct service provided; or (3-24-17)

c. For purposes of supervision for associate/supervised post conviction sexual offender polygraph examiners, supervision is generally considered as face-to-face direct contact with a Board-approved supervisor during conduct of the supervisee's first five (5) PCSOT polygraphs followed by review by a Board-approved supervisor of one (1) PCSOT polygraph for every five (5) PCSOT polygraphs conducted by the supervisee. Such review shall include chart and report review. (3-24-17)

16. Treatment. For purposes of certification eligibility the provision of face-to-face individual, group, or family therapy with a person who has been investigated by law enforcement or child protective services for commission of a sexual offense, or who has been adjudicated or convicted of a sexual offense or sexual offense-related crime. Treatment must be directly relevant to the client's sexually offending behavior. (3-20-14)

17. Violent Sexual Predator. A person who was designated as a violent sexual predator by the Sexual Offender Classification Board where such designation has not been removed by judicial action or otherwise. (3-20-14)

011. ABBREVIATIONS.

01. APA. The American Polygraph Association. (3-24-17)

02. PCSOT. "Post conviction sexual offender testing" is specialized instruction beyond the basic polygraph training for the purpose of specific polygraph testing of post convicted sexual offenders. (3-24-17)

03. SOCB. The Sexual Offender Classification Board. (3-20-14)

04. SOMB. The Sexual Offender Management Board. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

101. CONTINUING EDUCATION FOR PSYCHOSEXUAL EVALUATORS AND SEXUAL OFFENDER TREATMENT PROVIDERS.

To maintain certification as a psychosexual evaluator or sexual offender treatment provider, a certificate holder must receive continuing education in the field of sexual abuse. (3-20-14)

01. Senior/Approved and Associate/Supervised Certification Levels. A psychosexual evaluator or sexual offender treatment provider who is certified at a senior/approved or an associate/supervised level must receive a minimum of forty (40) hours of specialized continuing education in the form of formal conferences, symposia, seminars, workshops or on-line training over the course of the two-year period prior to each renewal period as set forth in the established standards issued by the Board. **A certificate holder not meeting the continuing education requirements may formally petition the SOMB for a sixty-day extension to submit proof of meeting continuing education requirements.** ()

02. Provisional/Supervised Certification Level. A provisional/supervised psychosexual evaluator or sexual offender treatment provider must receive a minimum of twenty (20) hours of specialized continuing education in the form of formal conferences, symposia, seminars, workshops or on-line training annually as set forth in the established standards issued by the Board. **A certificate holder not meeting the continuing education requirements may formally petition the SOMB for a sixty-day extension to submit proof of meeting continuing education requirements.** ()

102. -- 149. (RESERVED)

150. REQUEST FOR CONDITIONAL WAIVER.

01. Conditional Waiver. The Board may consider an *initial* applicant's request for a time limited conditional waiver for deficiencies in experience and specialized training qualifications as set forth in the established standards issued by the Board. ()

02. Duration. A conditional waiver is limited to a period of two (2) years. Conditional waivers may not be extended or renewed after the third year. (3-20-14)

03. Frequency. A conditional waiver request shall only be considered one (1) time for *an* initial certification application for psychosexual evaluator and sexual offender treatment provider applicants at the senior/approved or associate/supervised level. ()

151. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

155. APPLICATION FOR CHANGE IN CERTIFICATION LEVEL.

Application for change in certification level shall be on a form provided by the Board and submitted with the required supporting documentation and applicable renewal application processing fee: ()

01. Advance to Senior/Approved Level of Certification Application Fee. A non-refundable renewal application fee payable to the Board in the amount of fifty dollars (\$50) provided that the application is submitted three hundred sixty-five (365) days or more after the most recent effective certification date. The application fee shall be waived if submission is within three hundred sixty-five (365) days from the most recent effective certification date. (3-20-14)

02. Advance to Associate/Supervised Level of Certification Application Fee. A non-refundable renewal application fee payable to the Board in the amount of thirty dollars (\$30) provided that the application is submitted three hundred sixty-five (365) days or more after the most recent effective certification date. The application fee shall be waived if submission is within three hundred sixty-five (365) days from the most recent effective certification date. (3-20-14)

03. Change to a Less Independent Level of Certification Application Fee. A non-refundable renewal application fee payable to the Board in the amount of fifty dollars (\$50) provided that the application is submitted three hundred sixty-five (365) days or more after the most recent effective certification date. The application fee shall be waived if submission is within three hundred sixty-five (365) days from the most recent

effective certification date.

(3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

231. CONTINUING EDUCATION FOR POST CONVICTION SEXUAL OFFENDER POLYGRAPH EXAMINERS.

To maintain certification as a post conviction sexual offender polygraph examiner, a certificate holder must receive a minimum of thirty (30) hours of continuing education related to the field of polygraphy in the form of formal conferences, symposia, seminars, or workshops over the course of the two-year period prior to each renewal period as set forth in the established standards issued by the Board. **A certificate holder not meeting the continuing education requirements may formally petition the SOMB for a sixty-day extension to submit proof of meeting continuing education requirements.** ()

(BREAK IN CONTINUITY OF SECTIONS)

331. EXPIRATION AND RENEWAL OF CERTIFICATION.

No certification shall be renewed, except as follows:

(3-20-14)

01. Renewal. At least thirty (30) days prior to the expiration of a certification, a certificate holder shall apply for renewal of the certification on forms provided by the Board for the applicant's area of practice and client population, if applicable, accompanied by documentation as outlined in the established standards issued by the Board and a renewal certification application fee made payable to the Board. (4-11-15)

02. Removal from the Roster. A certificate holder who has not renewed his certification shall be removed from the central roster. ()

03. Renewal After Certification Expiration. A certificate holder whose certification has expired may reapply at any time for certification as follows: (3-20-14)

a. A certificate holder whose certification has been expired for less than three hundred sixty-five (365) days may reapply following the certification renewal process as referenced in Subsection 331.01 of these rules. (3-20-14)

b. A certificate holder whose certification has been expired for three hundred sixty-five (365) days or longer may reapply for certification following the initial certification process as referenced in Section 330 of these rules. (3-20-14)

332. FEES.

The following non-refundable application processing fees are established by the Board:

(3-20-14)

01. Initial Certification. Application processing fees for initial certification are: ()

a. Senior/Approved Psychosexual Evaluator, Treatment Provider, or Post Conviction Sexual Offender Polygraph Examiner – Seventy-five dollars (\$75). (3-24-17)

b. Associate/Supervised Psychosexual Evaluator, Treatment Provide, or Post Conviction Sexual Offender Polygraph Examiner – Seventy-five dollars (\$75). (3-24-17)

c. Provisional/Supervised Psychosexual Evaluator or Treatment Provider – Fifty dollars (\$50). (3-20-14)

02. Renewal Certification. Application processing fees for renewal certification are: ()

a. Senior/Approved Psychosexual Evaluator, Treatment Provider, or Post Conviction Sexual Offender

Polygraph Examiner – Fifty dollars (\$50). (3-24-17)

b. Associate/Supervised Psychosexual Evaluator, Treatment Provider, or Post Conviction Sexual Offender Polygraph Examiner – Fifty dollars (\$50). (3-24-17)

c. Provisional/Supervised Psychosexual Evaluator or Treatment Provider – Thirty dollars (\$30). (3-20-14)

03. Change in Certification Level. Application processing fees for a change in certification level are as referenced in Section 155 of these rules. ()

04. Continuing Education Extension. Application processing fee for a request for an extension of time to complete continuing education requirements is twenty-five dollars (\$25). ()

333. CERTIFICATION PERIOD.

Provided that the certificate holder continues to meet the criteria for certification and such certification has not been suspended, revoked, otherwise restricted or placed on voluntary inactive status, the effective period for certification is as follows: (3-20-14)

01. Senior/Approved Psychosexual Evaluator or Treatment Provider. Certification shall remain in effect for two (2) years. Certification renewal shall typically occur during the certificate holder’s month of birth two (2) years following initial certification and every two (2) years thereafter. ()

02. Associate/Supervised Psychosexual Evaluator or Treatment Provider. Certification shall remain in effect for two (2) years. Certification renewal shall typically occur during the certificate holder’s month of birth two (2) years following initial certification and every two (2) years thereafter. ()

03. Provisional/Supervised Psychosexual Evaluator or Treatment Provider. Certification shall remain in effect for one (1) year. Certification renewal shall typically occur during the certificate holder’s month of birth one (1) year following initial certification and annually thereafter. Certification at the provisional/supervised level is limited to a period of three (3) years, at which time the certificate holder must meet minimum requirements for upgrade to the associate/supervised level to be eligible for certification renewal. (3-20-14)

04. Senior/Approved Post Conviction Sexual Offender Polygraph Examiner. Certification shall remain in effect for two (2) years. Certification renewal shall typically occur during the certificate holder’s month of birth two (2) years following initial certification and every two (2) years. ()

05. Associate/Supervised Post Conviction Sexual Offender Polygraph Examiner. Certification shall remain in effect for two (2) years from the certificate holder’s month of birth following initial certification. Thereafter, the certificate holder must meet minimum requirements for upgrade to the senior/approved level to be eligible for certification renewal. ()

(BREAK IN CONTINUITY OF SECTIONS)

387. DISCIPLINARY PROCESS.

The disciplinary process may be initiated as a result of a complaint received by the Board or a quality assurance review, or be based upon a review of information submitted to the Board during the certification process, monitoring process or while under formal probation. ()

388. -- 399. (RESERVED)

400. QUALITY ASSURANCE.

Policies for technical review and quality assurance of psychosexual evaluation reports and sexual offender treatment services and polygraph examinations are outlined in the established standards issued by the Board. ()