

PENDING FEE RULES

COMMITTEE RULES

REVIEW BOOK

Submitted for Review Before
Senate Judiciary & Rules Committee
66th Idaho Legislature
Second Regular Session – 2022



Prepared by:

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

January 2022



State of Idaho
DIVISION OF FINANCIAL MANAGEMENT
Executive Office of the Governor

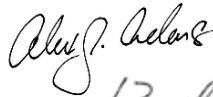

BRAD LITTLE
Governor

ALEX J. ADAMS
Administrator

January 10, 2022

MEMORANDUM

TO: **Members of the 2022 Idaho State Legislature**

FROM: **Alex J. Adams, Administrator** 
Bradley A. Hunt, Rules Coordinator 

SUBJECT: **Overview of Executive Agency Rulemaking in 2021**

Background. Governor Little maintains and continues to stress the importance of an efficiently functioning government along with ensuring continuity of the services citizens expect and implemented through executive administrative rules. Nearly all rules published in the Legislative Rules Review books are simply re-published because the 2021 Legislature adjourned *sine die* without passing a concurrent resolution approving any pending fee rules as specified in Section 67-5224, Idaho Code, as well as not extending any effective rule on July 1 by statute as outlined in Section 67-5292, Idaho Code. The necessary rules were re-published in the following special bulletins:

- [July 21](#) – Temporary Rules
- [October 20](#) – Proposed Rules
- [December 22](#) – Pending Rules

Changes in Existing Rules. Since the vast majority of rules either expired or were not approved, there is no existing rule available to amend. Therefore, only a clean version of the rule chapter is able to be presented to the Legislature in January 2022. In some cases, rules were modified based on public comment, or to implement Executive Order [2020-01](#), Zero-Based Regulation (ZBR), among other reasons. Given the unprecedented volume, edits are incorporated within a single omnibus docket, or in the case of ZBR rulemaking a standalone docket, and presented as a clean rule chapter. There are several ways that legislators may view previous rules for comparison purposes:

- An [archive of any rule](#) since 1996 is available on the DFM website. This allows legislators to see the evolution of a rule over time.
- The Legislative Services Office analyzes all proposed rules. You can find their analysis of proposed rules which, in some cases, may discuss changes between previous rules and the proposed rules. These may be found on the [Legislature's website](#).
- Changes made between the proposed and pending rule stages for omnibus rulemaking were noted in the [December 22](#) bulletin where applicable.

Process for Approving Rules. Below, you will find a brief description on legislative actions and outcomes regarding the rules review process and contents of the Legislative Rules Review Books:

- Pending Fee Rules must be affirmatively approved by both bodies via adoption of concurrent resolution to become final.
- Pending Rules become final and effective *sine die* unless rejected, in whole or in part, via concurrent resolution adopted by both bodies.
 - Pending rules may be approved, in whole or in part, or rejected if determined to be inconsistent with legislative intent of the governing statute.
 - If rejected, new or amended language must be identified at a numerical or alphabetical designation within the rule and specified in the concurrent resolution.
- A link to LSO's proposed rule analysis is provided at the beginning of each docket and includes any required supporting documentation (e.g. Cost Benefit Analysis (CBA), Incorporation By Reference Synopsis (IBRS)) as part of the analysis.
- All 2022 review books can be accessed on the DFM website [here](#).

Contact Information. If questions arise during the rules review process, please do not hesitate to contact the Rules Coordinator, Brad Hunt: Brad.Hunt@dfm.idaho.gov; 208-854-3096.

SENATE JUDICIARY & RULES COMMITTEE

ADMINISTRATIVE RULES REVIEW

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IDAPA 11 – IDAHO STATE POLICE

DOCKET NO. 11-0000-2100F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2022 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 rule and the text of the pending fee rule with an explanation of the reasons for the change.

This pending fee rule adopts and publishes the following rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 11, rules of the Idaho State Police:

IDAPA 11

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

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rulemaking was published in the October 20, 2021, Special Edition of the Idaho Administrative Bulletin, [Vol. 21-10SE, pages 839-848](#).

FEE SUMMARY: The following identifies the fee or charge imposed or increased through this rulemaking:

This rulemaking does not impose a new fee or charge, or increase an existing fee or charge, beyond what has been previously submitted for review 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.

The fees or charges are 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 FY2022 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 via phone at (208) 884-7062, fax (208) 884-7462, or email bradley.doty@isp.idaho.gov.
- 11.10.02 BCI – Bureau Chief Leila McNeill via phone at (208) 884-7136, fax (208) 884-7193, or email leila.mcneill@isp.idaho.gov.

Dated this 22nd day of December, 2021.

Lt. Colonel Bill Gardiner
Chief of Staff
Idaho State Police
700 S. Stratford Dr.
Meridian, Idaho 83642
(208) 884-7004
Bill.Gardiner@isp.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. 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, and 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rulemaking publishes the following rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 11, rules of the Idaho State Police:

IDAPA 11

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

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules. The following is a specific description of the fees or charges authorized in Sections 23-904, 23-907, and 67-3010, Idaho Code:

- 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 FY2022 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 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 proposed rules attached hereto.

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

- 11.05.01 ABC – Captain Brad Doty via phone at (208) 884-7062, fax (208) 884-7462, or email bradley.doty@isp.idaho.gov.
- 11.10.02 BCI – Bureau Chief Leila McNeill via phone at (208) 884-7136, fax (208) 884-7193, or email 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 October 20, 2021.

THE FOLLOWING IS THE TEXT OF OMNIBUS PENDING FEE DOCKET NO. 11-0000-2100F
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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. ()

001. 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). ()

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. ()

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. ()

03. Multipurpose Arena. ()

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

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; ()

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

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

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

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. ()

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: ()

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; ()

ii. The ratio of alcohol service staff and security staff to the size of the audiences at events where

alcohol is being served; ()

iii. Training provided to staff who serve, regulate, or supervise the service of alcohol; ()

iv. The facility's policy on the number of alcoholic beverages that will be served to an individual patron during one (1) transaction; ()

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 ()

vi. Diagrams and designation of alcohol service areas for each type of event category with identified restrictions of minors. ()

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 showing 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. ()

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. ()

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. ()

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: ()

a. Permanently fixed from the premises ceiling to the premises floor. ()

b. Made or constructed of solid material such as glass, wood, metal or a combination of those products. ()

c. Designed to prevent an alcoholic beverage from being passed over, under or through the structure. ()

d. All partitions must be approved by the Director. ()

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. ()

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: ()

a. An established menu identifying the individually priced meals for consumption; ()

- b. Food service and preparation occurs on the premises by establishment employees; ()
- c. Stoves, ovens, refrigeration equipment or such other equipment usually and normally found in restaurants are located on the premises of the establishment; ()
- 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. ()

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. ()

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 interferes 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. ()

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). ()

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. ()

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. ()

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: ()

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

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. ()

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. ()

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. ()

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 will be dropped from the priority list, the deposit refunded, and the license offered to the applicant appearing next on the list. ()

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. ()

05. Priority Lists Where Licenses Are Available. The Alcohol Beverage Control Bureau will 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. ()

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. ()

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. ()

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. ()

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

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. ()

001. SCOPE.

The rules relate to the governance and operation of criminal history records and crime information. ()

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. ()

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

02. **Criminal Summons.** Includes any summons, information or indictment issued in a criminal proceeding or action. ()

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. ()

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

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

a. Criminal citation; or ()

b. Criminal Summons, Complaint, and Affidavit of Service by the county sheriff's office; or ()

c. Indictment; or ()

d. Information. ()

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. ()

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. ()

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

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. ()

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. ()

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. ()

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. 11-1001-2100F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[**LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)**](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2022 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 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 rule and the text of the pending fee rule with an explanation of the reasons for the change.

This pending fee rule adopts and publishes the following rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 11.10, rules of the Idaho State Police, Idaho Public Safety and Security Information System, known as “ILETS”:

IDAPA 11.10

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

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rulemaking was published in the October 20, 2021, Special Edition of the Idaho Administrative Bulletin, [Vol. 21-10SE, pages 1021-1031](#).

Negotiated rulemaking was conducted as part of this rulemaking and two access fees are increasing. The specific fee increase is described in the fee summary. The two network access fees are increasing to help with rising costs of maintain and implementing the system.

FEE SUMMARY: The following identifies the fee or charge imposed or increased through this rulemaking:

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. The network user access fee for two types of users increased:

- In Subsection 11.10.01.018.02.a., the access fee for county or municipal level users increased by \$425 (from \$5,000 to \$5,425).
- In Subsection 11.10.01.018.02.b., the access fee for any agency at the state, federal, or tribal level increased by \$250 (from \$8,750 to \$9,000).

The increases will result in an additional \$36,000 per year needed to maintain and operate ILETS. The additional \$36,000 will go into the ILETS dedicated fund and be used for ILETS costs.

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 FY2022 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 22nd day of December, 2021.

Lt. Colonel Bill Gardiner
Chief of Staff
Idaho State Police
700 S. Stratford Dr.
Meridian, Idaho 83642
(208) 884-7004
Bill.Gardiner@isp.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rulemaking publishes similar to the previous year's temporary fee rule submitted to and reviewed by the Idaho Legislature under IDAPA 11.10, rules of the Idaho State Police, Idaho Public Safety and Security Information System, known as "ILETS":

IDAPA 11.10

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

Negotiated rulemaking was conducted as part of this rulemaking and two access fees are increasing. The specific fee increase is described in the fee summary. The two network access fees are increasing to help with rising costs of maintaining and implementing the system.

FEE SUMMARY: 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. The network user access fee for two types of users increased:

- In Subsection 11.10.01.018.02.a., the access fee for county or municipal level users increased by \$425 (from \$5,000 to \$5,425).
- In Subsection 11.10.01.018.02.b., the access fee for any agency at the state, federal, or tribal level increased by \$250 (from \$8,750 to \$9,000).

The increases will result in an additional \$36,000 per year needed to maintain and operate ILETS. The additional \$36,000 will go into the ILETS dedicated fund and be used for ILETS costs.

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 FY2022 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 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.

Negotiated rulemaking conducted outside of this omnibus rulemaking under Docket No. 11-1001-2101 published in the July 7, 2021 Idaho Administrative Bulletin, [Vol. 21-7, page 22-23](#), and affects the following rule chapter included in this proposed rulemaking: IDAPA 11.10.01.

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 proposed rule attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Bureau Chief Leila McNeill, phone (208) 884-7136, fax (208) 884-7193, email 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 October 20, 2021.

THE FOLLOWING IS THE TEXT OF OMNIBUS PENDING FEE DOCKET NO. 11-1001-2100F
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IDAPA 11 – IDAHO STATE POLICE IDAHO PUBLIC SAFETY AND SECURITY INFORMATION SYSTEM

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.” ()

001. SCOPE.

These rules relate to the governance and operation of the Idaho Public Safety and Security Information System. ()

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: ()

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

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. ()

02. Administration of Criminal Justice. ()

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. ()

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

05. Criminal Justice Agency. ()

a. Federal and state courts having jurisdiction to hear criminal matters; and ()

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. ()

06. Department. The Idaho State Police, or its successor agency. ()

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

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. ()

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. ()

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

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. ()

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. ()

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. ()

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. ()

02. Additional Responsibilities. 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: ()

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 ()

b. Management of all documents relating to the Board and ILETS operations. ()

013. -- 015. (RESERVED)

016. ILETS NETWORK.

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

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

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

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

c. Function as the NCIC control terminal agency and the NLETS control terminal agency for the State of Idaho. ()

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

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. ()

f. Provide staff support to the ILETS Board. ()

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. ()

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

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. ()

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 is restricted to the following governmental agencies: ()

a. Criminal justice agencies; ()

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; ()

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 ()

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. ()

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: ()

- a. Priorities of service; ()
- b. Standards for the selection, supervision, and termination of personnel authorized to access ILETS; 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. ()

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. ()

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. ()

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: ()

- a. An agency at the county or municipal level pays an annual access fee of five thousand, four hundred and twenty-five dollars (\$5,425). ()
- b. An agency at the state, federal, or tribal level pays an annual access fee of nine thousand dollars (\$9,000). ()

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. ()

- 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. ()

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. ()

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. ()

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. ()

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. ()

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

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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: ()

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

b. No messages supportive or in opposition of legislative bills. ()

c. No requests for criminal history record information. ()

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. ()

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

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

b. Firewall means a collection of components placed between two (2) networks that keep the host

network secure by having the following properties: ()

- i. All traffic from inside the network to outside, and vice-versa, must pass through it; ()
- ii. Only authorized traffic is allowed to pass; and ()
- iii. The components as a whole are immune to unauthorized penetration and disablement. ()
- 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. ()
- 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. ()
- e. Interface agency is an agency that has management control of a computer system directly connected to ILETS. ()
- 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. ()

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. ()

- 04. ILETS Security Officer.** The ILETS Security Officer is responsible for the following duties: ()
- a. Disseminating to user agencies copies of ILETS security policies and guidelines; ()
 - b. Communicating to user agencies information regarding current perceived security threats and providing recommended measures to address the threats; ()
 - c. Monitoring use of the ILETS network either in response to information about a specific threat, or generally because of a perceived situation; ()
 - d. Directing an interface agency, through its nominated contact, to rectify any omission in its duty of responsibility; ()
 - 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 ()
 - f. Provide support and coordination for investigations into breaches of security. ()

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. ()

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. ()

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: ()

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

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. ()

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

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

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. ()

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. ()

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: ()

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

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

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. ()

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

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. ()

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. ()

g. Network management protocols must be limited to internal or trusted networks. ()

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. ()

i. Agencies accessing ILETS directly or through another agency, must insure that all

telecommunications infrastructure meets the FBI CJIS Security Policy for encryption standards. ()

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. ()

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. ()

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

a. To ensure the security, integrity, and financial stability of the ILETS. ()

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. ()

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. ()

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: ()

a. Written warning. ()

b. Written notice of violation. ()

c. Written notice of probation. ()

d. Written notice of temporary suspension. ()

e. Written notice of permanent suspension. ()

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. ()

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

029. -- 999. (RESERVED)

IDAPA 21 – IDAHO DIVISION OF VETERANS SERVICES

DOCKET NO. 21-0000-2100F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2022 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, and 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 rule and the text of the pending fee rule with an explanation of the reasons for the change.

This pending fee rule adopts and publishes the following rule chapters previously submitted to and reviewed by the Idaho Legislature 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*; and
- 21.01.04, *Rules Governing the Idaho Veterans Cemetery*.

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rulemaking was published in the October 20, 2021, Special Edition of the Idaho Administrative Bulletin, [Vol. 21-10SE, pages 3252-3279](#).

FEE SUMMARY: The following identifies the fee or charge imposed or increased through this rulemaking:

This rulemaking does not impose a new fee or charge, or increase an existing fee or charge, beyond what has been previously submitted for review in the prior rules. A specific description of the fees or charges being imposed pursuant to Section 65-202(8) and Section 66-907, Idaho Code, is listed below:

- 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, and Memorial.

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 FY2022 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, Management Assistant, at 208-780-1308.

Dated this 22nd day of December, 2021.

Kevin R. Wallior
Idaho Division of Veterans Services
Boise, ID 83702
Fax: 208-780-1301

Management Assistant
351 Collins Road
Ph: 208-780-1380

THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 65-202, 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rulemaking publishes the following rule chapters previously submitted to and reviewed by the Idaho Legislature 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*; and
- 21.01.04, *Rules Governing the Idaho Veterans Cemetery*.

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules.

The following is a specific description of the fees or charges:

- 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, and Memorial.

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 FY2022 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 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.

Negotiated rulemaking conducted outside of this omnibus rulemaking under docket 21-0104-2101 published in the June 2021 Idaho Administrative Bulletin, [Vol. 21-6, page 58](#), and affects the following rule chapter included in this proposed rulemaking: IDAPA 21.01.04.

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 proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Kevin Wallior, 208-780-1308 or kevin.wallior@veterans.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 October 20, 2021.

THE FOLLOWING IS THE TEXT OF OMNIBUS PENDING FEE DOCKET NO. 21-0000-2100F
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IDAPA 21 – IDAHO DIVISION OF VETERANS SERVICES

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. ()

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.” ()

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. ()

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. ()

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: ()

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

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. ()

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. ()

04. Commission. The Idaho Veterans Affairs Commission. ()

05. Division. Division of Veterans Services in the Idaho Department of Self Governing Agencies. ()

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. ()

07. Home Administrator. Administrator of an Idaho State Veterans Home. The chief officer of each respective Veterans Home. ()

08. Home. An Idaho State Veterans Home. ()

09. Idaho State Veterans Home. Pursuant to Section 66-901, Idaho Code, a Home for eligible veterans. ()

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. ()

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. ()

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. ()

13. Maintenance Charge. A charge made for care and residence at an Idaho State Veterans Home, based upon the current established rate. ()

14. Net Income. That income used to compute charges after allowable deductions have been made. ()

15. Resident. A person who is a resident of an Idaho State Veterans Home. ()

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. ()

17. VA. United States Department of Veterans Affairs. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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

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 E 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. ()

076. -- 099. (RESERVED)

100. ELIGIBILITY REQUIREMENTS.

Applicants and residents must satisfy the following requirements: ()

01. Veterans or Eligible Spouse. ()

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. ()

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. ()

02. Idaho Residency. The applicant must be a bona fide resident of the state of Idaho at the time of admission to a Home. ()

03. Incompetent Applicants. Applicants and residents who are incompetent must provide copies of a legally sufficient guardianship or power of attorney. ()

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. ()

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. ()

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; ()
- ii. Maintaining his room in a neat and orderly manner at all times; ()
- iii. Keeping all clothing clean through proper laundering; ()
- iv. Observing cleanliness in person, dress and living habits and dressing himself; ()
- v. Bathing or showering frequently; ()
- vi. Shaving daily or keeping his mustache or beard neatly groomed; ()
- vii. Proceeding to and returning from the dining room and feeding himself; ()
- viii. Securing medical attention on an ambulatory basis and managing medications; ()
- ix. Maintaining voluntary control over body eliminations or control by use of an appropriate prosthesis; and ()
- x. Making rational decisions as to his desire to remain or leave the Home. ()

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. ()

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. ()

08. Medicare Coverage. If eligible for Medicare, the applicants and residents must elect to participate, unless participation is waived by the Home Administrator. ()

09. Income Limitation. ()

a. Nursing Care. None. ()

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." ()

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.

()

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. ()

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. ()

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. ()

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: ()

a. Veterans who served during any war or conflict officially engaged in by the government of the United States. ()

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. ()

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. ()

d. Receive special consideration as per the request of the medical director because of his desire to provide a very specific continuum of care. ()

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. ()

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. ()

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: ()

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. ()

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: ()

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 ()

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. ()

201. WEAPONS.

Weapons including, but not limited to, firearms, ammunition, straight razors, and knives are not allowed. ()

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. ()

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. ()

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. ()

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: ()

a. Requirements: ()

i. Possess a valid driver's license; ()

ii. Have a current motor vehicle registration; ()

iii. Operator is insured against liability and property damage in accordance with Idaho law; and ()

iv. Park only in assigned spaces. ()

b. Prohibitions. Nonoperable motor vehicles and motor vehicle repairs are not permitted on the grounds of a Home. ()

03. Housekeeping. ()

a. Housekeeping services for nursing care residents shall be provided by the Home. ()

b. Each residential and domiciliary care resident must adhere to the following requirements (residential care residents may need minimal assistance): ()

i. Making his bed daily; ()

- ii. Maintaining his room in a neat and orderly manner at all times; and ()
- iii. Assuring that all clothing is appropriately marked, stored and kept clean through proper laundering. ()
- c. All residents are prohibited from: ()
 - i. Washing clothes or other articles which present a health or safety hazard in resident rooms or bathrooms; ()
 - ii. Using electrical devices, including televisions, radios, recorders, and shavers, until they have been certified by Home maintenance staff as being safe for use; ()
 - iii. Entering the kitchen, laundry, shop or mechanical spaces without permission; and ()
 - iv. Interfering or tampering with the heating, refrigeration or air conditioning systems, televisions, lighting, appliances, plumbing, or mechanical equipment at the Home without authorization. ()
- 04. Personal Conduct.** Each resident must adhere to the following: ()
 - a. Requirements: ()
 - i. Observing cleanliness in person, dress and in living habits; ()
 - ii. Bathing or showering frequently; ()
 - iii. Observing the smoking policies of a Home; and ()
 - 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. ()
 - b. Prohibitions: ()
 - i. Creating a disturbance or using intoxicating beverages or nonprescribed controlled substances in the buildings or on the grounds (unless prescribed by a physician); ()
 - ii. Marking or writing on the walls of a building, or damaging the grounds or any other property; ()
 - iii. Using profanity or exhibiting vulgar behavior in the Home or in any other public place; ()
 - iv. Becoming involved in quarrels, persistent dissension or criticism of others; ()
 - v. Lending money to, or borrowing money from, another resident or an employee of the Home; ()
 - vi. Smoking in an unauthorized area; ()
 - vii. Taking food (other than fresh fruit for consumption within a reasonable time period), condiments, dishes or utensils from the dining room; ()
 - viii. Cooking or using heating devices in residents' rooms or other unauthorized areas; and ()
 - ix. Storing flammable or combustible material including, but not limited to, gasoline, butane, solvents, and acetone on Home grounds. ()

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. ()

01. Emergency Discharge or Transfer. Upon determination by the Home Administrator that an emergency exists, a resident may be immediately discharged or transferred. ()

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: ()

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; ()

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. ()

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: ()

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; ()

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; ()

c. The resident ceases to pay the resident's maintenance charges or a bed hold charge applicable to an absence. ()

04. Voluntary Transfer or Discharge. A resident may be transferred or discharged at any time upon voluntary consent of the resident. ()

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. ()

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. ()

03. Readmission Requirements. Residents discharged for unauthorized absences must reapply for admission and are subject to the same restrictions and conditions as other applicants. ()

353. -- 850. (RESERVED)

851. AVAILABLE SERVICES.

The Division will make available the following services. ()

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. ()

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. ()

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. ()

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: ()
- i. Social Security benefits; ()
 - ii. Retirement benefits; ()
 - iii. Income from annuities; ()
 - iv. Insurance benefits; ()
 - v. Rental from property; ()
 - vi. Farm income; ()
 - vii. VA pensions or compensations; ()
 - viii. Tax refunds; and ()
 - ix. Income from any and all other sources. ()

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). ()

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). ()

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). ()

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). ()

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: ()

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 ()

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: ()

i. Prosthetic, orthopedic, and paraplegic appliances; ()

ii. Sensory aids; ()

iii. Wheelchairs; ()

iv. Therapy services; ()

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. ()

c. Reasonable medical insurance premiums, as paid, with documentation of payment. Other insurance premiums are excluded from consideration; or ()

d. An allowance established pursuant to Section 916 of these rules for retention by a resident for personal needs; ()

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.) ()

04. Income Eligibility Limits. ()

a. Nursing Care. None. ()

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. ()

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. ()

05. Continued Eligibility. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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; ()
 - b. The effective date of the action; ()
 - 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 ()
 - e. The procedure for requesting a hearing, as provided in Subsection 982.03 of these rules. ()
 - 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: ()
 - 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. ()
 - 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. ()
- 04. Notification Deadlines for Residential Care.** The following notification deadlines are established for Residential Care only: ()
 - 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. ()
 - 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. ()
- 05. Notification Deadlines for Nursing Care.** The following notification deadlines are established for Nursing Care only: ()
 - 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. ()
 - 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. ()
 - 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. ()
 - 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. ()

e. The Home does not need to provide notice of voluntary transfer or discharge pursuant to Subsection 350.04 of these rules. ()

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. ()

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. ()

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." ()

02. Hearing Rights. Residents and applicants have the following rights to a hearing: ()

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. ()

b. If an application for residency in a Home is rejected, the applicant may request a hearing. ()

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. ()

c. A request for a hearing must be submitted within three (3) days of receipt of the written notice of action or denial. ()

d. Pending a hearing, benefits will be continued or held in abeyance as follows: ()

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. ()

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. ()

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; ()

b. A statement of the legal authority under which the hearing is to be held; ()

c. A reference to the particular sections of any statutes and rules involved; ()

d. A statement of the issues involved; ()

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; ()

f. A statement that all parties may be represented by counsel; and ()

g. A statement concerning advance requests for hearing transcripts pursuant to Subsection 983.08 of these rules. ()

h. The assignment of a hearing officer for the hearing. The Division Administrator may designate the Commission as a hearing officer. ()

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: ()

a. To formulate or simplify the issues; ()

b. To obtain admissions or stipulations of fact and of documents; ()

c. To arrange for exchange of proposed exhibits or prepared expert testimony; ()

d. To limit the number of witnesses; ()

e. To determine the procedure at the hearing; and ()

f. To determine any other matters which may expedite the orderly conduct and disposition of the proceeding. ()

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. ()

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. ()

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. ()

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. ()

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. ()

b. Form and Content of Petitions. Petitions for leave to intervene must be in writing and must clearly: ()

i. Identify the proceeding in which it is sought to intervene, setting forth the name and address of the intervenor; ()

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; ()

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; ()

iv. If affirmative relief is sought, the petition must contain a clear and concise statement of relief sought and the basis thereof; and ()

v. A statement as to the nature and quantity of evidence the intervenor will present if such petition is granted. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

02. Service of Documents. Documents concerning hearings must be served as follows: ()

a. All pleadings, briefs and subsequent papers must be served upon every party of record concurrently with the filing with the Division Administrator. ()

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. ()

c. The initial complaint or petition must be served in person or by certified mail. ()

c. The initial hearing request must be served in person or by certified mail. ()

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. ()

e. Proof of service must accompany all documents when they are filed with the Division Administrator. ()

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: ()

a. Determine the order of presentation; ()

- b. Grant or deny petitions for reconsideration; ()
 - c. Determine the need, if any, for consolidation; ()
 - d. Rule on all evidentiary questions; ()
 - e. Rule on motions and objections and dispose of procedural requests; ()
 - f. Determine the need for prehearing conferences, recesses, adjournments, hearings on motions and postponements; ()
 - g. Administer oaths and affirmations; ()
 - h. Examine witnesses; ()
 - i. Issue subpoenas or request orders in the form of subpoenas as provided by law; ()
 - j. Prescribe general rules of hearing decorum and conduct; ()
 - k. Regulate the course of the proceeding; ()
 - 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. ()
 - m. Perform any functions including those set forth in Sections 67-5241 through 67-5251, Idaho Code; and ()
 - n. All other functions specifically authorized by statute or rule. ()
 - o. The hearing officer shall not have the jurisdiction or authority to invalidate any federal or state statute, rule, or regulation. ()
- 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. ()
- 05. Representation by Counsel.** Any party in a contested case proceeding may be represented by counsel, at the party's own expense. ()
- 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. ()
- 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. ()
- 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. ()
- 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. ()

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. ()

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. ()

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. ()

13. Official Notice. ()

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. ()

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: ()

- i. Rules of the Division and other state agencies; ()
- ii. Federal regulations; ()
- iii. The constitution and statutes of the United States and Idaho; ()
- iv. Public records; and ()
- v. Such other materials that a court of law must judicially notice. ()

14. Hearing Officer Decision. The hearing officer will issue a written order as provided in Section 67-5243, Idaho Code. ()

a. Recommended orders will contain a statement of the schedule for review of that order by the Division Administrator. ()

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. ()

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. ()

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: ()

- a. All notices, pleadings, motions and rulings; ()
- b. All evidence received or considered; ()
- c. A statement of all matters officially noticed; ()
- d. A record of testimony and offers of proof, objections and rulings thereon; ()
- e. A record of proposed findings and exceptions; ()
- f. Any decision, opinion, or report by the Commission; ()
- g. All staff memoranda or data submitted to the Commission in connection with consideration of the case; ()
- h. All briefs or memoranda submitted by any party; and ()
- i. Any recommended order, preliminary order, final order, or order on reconsideration. ()

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: ()

- a. Review recommended orders as provided in Section 67-5244, Idaho Code; ()
- 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 ()
- c. Issue a final order as provided in Section 67-5246, Idaho Code. ()

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. ()

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. ()

02. No Motions for Reconsideration. Unless otherwise provided by law or these rules, motions for reconsideration shall not be permitted. ()

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. ()

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. ()

986. -- 999. (RESERVED)

21.01.04 – RULES GOVERNING IDAHO STATE VETERANS CEMETERIES

000. LEGAL AUTHORITY.

The Idaho Legislature has given the Administrator of the Division of Veterans Services the authority to promulgate rules governing the Idaho State Veterans Cemetery pursuant to Section 65-202, Idaho Code. ()

001. SCOPE.

These rules contain provisions for eligibility for interment at Idaho State Veterans Cemeteries and the provisions for operation and maintenance of Idaho State Veterans Cemeteries. ()

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. ()

b. 38 U.S.C.A. Section 2402, (2004 and Supp. 2004). ()

c. 38 CFR 39.5(d), dated July 1, 2008. ()

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

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Administrator.** The Administrator of the Idaho Division of Veterans Services or his designee. ()

02. **Applicant.** The individual requesting interment, disinterment or reinterment of a qualified person. ()

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. ()

04. **Cemetery.** Idaho State Veterans Cemeteries authorized pursuant to Section 65-108, Idaho Code. ()

05. **Committal Service.** A gathering of one (1) or more individuals prior to interment or reinterment. ()

06. **Cremains.** Cremated human remains. ()

07. **Designated Interpretive Trail.** A public recreational trail designated by a sign or marker. ()

08. **Disinterment.** The removal of human remains from their place of interment. ()

09. **Division.** The Idaho Division of Veterans Services. ()

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. ()

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). ()

12. **Reinterment.** The interment of previously interred human remains. ()

13. **Unremarried Spouse.** An individual who is the surviving spouse of a deceased armed forces

member and who has not remarried. ()

14. USDVA. The United States Department of Veterans Affairs. ()

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. ()

a. Proof of qualification as an Armed Forces Member as evidenced by: ()

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; ()

ii. A copy of a Reserve Retirement Eligibility Benefits Letter in the name of the individual; ()

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; ()

iv. Any other evidence satisfactory to the Administrator. ()

b. Proof of qualification for relatives of an Armed Forces Member as evidenced by the documentation necessary for an Armed Forces Member and the following: ()

i. For a parent of the individual, a valid birth or adoption record identifying such parent, and proof of the individual's birth date; or ()

ii. 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 ()

iii. Any other evidence satisfactory to the Administrator. ()

03. Burden of Proof. The burden of proof in establishing eligibility for interment or reinterment in the cemetery is on the applicant. ()

04. Application. Applications must be submitted on a form prescribed by the Administrator by a qualified person or their legal representative, the Administrator of their estate, or the personal representative or a relative of a deceased person. ()

021. (RESERVED)

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. ()

02. Committal Services. The cemetery will provide a designated non-gravesite location for committal services. The cemetery will not provide facilities for viewing of remains. The arrangements for and any expenses associated with committal services are the responsibility of the applicant. ()

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. ()

02. Reinterment. ()

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. ()

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. ()

024. FEES FOR INTERMENT, DISINTERMENT, REINTERMENT, AND MEMORIAL.

The Administrator shall charge the following fees: ()

01. Interment. ()

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 seven hundred dollars (\$700) for preparation of an interment site not containing a pre-placed crypt. ()

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. ()

04. Memorial Marker. A fee of two hundred dollars (\$200) to order, install, and provide perpetual care of a furnished flush granite marker to commemorate an eligible deceased Veteran whose remains have not been recovered or identified, were buried at sea, donated to science, or cremated and the remains scattered. ()

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. ()

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. ()

03. Public Behavior. The Administrator may adopt and enforce policies regarding public behavior in the cemetery, including but not limited to preservation of property, recreation, ceremonies and gatherings, animals, motor vehicles, alcohol, and photography. ()

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 at their own cost may submit an application on a form prescribed by the Administrator. Memorials approved by the Administrator are considered donations to the cemetery. ()

03. Grave Markers. Grave markers issued by the USDVA are approved as follows: ()

a. Graves – Upright granite markers. ()

b. Interments in an area reserved for the interment of cremains in the soil – Flush granite markers. ()

c. Interment of cremains in a structure reserved for the interment of cremains – Granite niche markers. ()

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. ()

041. – 999. (RESERVED)

IDAPA 50 – IDAHO COMMISSION OF PARDONS AND PAROLE

DOCKET NO. 50-0101-2100F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2022 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 Section 20-1005.

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 rule and the text of the pending fee rule with an explanation of the reasons for the change.

This pending fee rule adopts and publishes the following rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 50, rules of the Commission of Pardons and Parole:

IDAPA 50

- 50.01.01, *Rules of the Commission of Pardons and Parole.*

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rulemaking was published in the October 20, 2021, Special Edition of the Idaho Administrative Bulletin, [Vol. 21-10SE, pages 4993-5014](#).

FEE SUMMARY: The following identifies the fee or charge imposed or increased through this rulemaking:

This rulemaking does not impose a new fee or charge, or increase an existing fee or charge, beyond what has been previously submitted for review in the prior rules. This fee or charge is being imposed pursuant to Section 20-1005, Idaho Code.

IDAPA rule 250.09.b.iii. Interstate Compact fee of \$95.00 for administrative costs to the Commission of Pardons and Parole to offset the cost of administration of the bond paid by offenders, offenders families or others when requesting an Interstate Compact to transfer parole supervision. Authorized by Section 20-1005, 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 FY2022 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rule and fee being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Mary Schoeler (208)334-2520.

Dated this 22nd day of December, 2021.

Ashley Dowell, Executive Director
Commission of Pardons and Parole
3056 Elder St.
Boise, ID 83705
(208)334-2520 phone
(208) 334-3501 fax

THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 20-1004, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Tuesday, November 2, 2021 – 8:30 a.m. (MT)

**Idaho State Police Office
700 S. Stratford Drive
Meridian, Idaho 83642**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rulemaking publishes the following rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 50, rules of the Commission of Pardons and Parole:

IDAPA 50

- 50.01.01, *Rules of the Commission of Pardons and Parole.*

The Commission is updating statute references in the rules as the Parole Commission now has its own chapter in Idaho Code. The Commission has made changes that better reflect current business practices, to include signing and storage of minutes, review of disciplinary offense reports and victims' conditions by the Executive Director, consistent requirements for hearing attendance and notification of commutation decisions. In addition, the Commission has added an extradition waiver requirement to the general conditions of parole and clarified that Commission warrants do not allow bond.

The Commission has added the amount of an assessed administrative fee for returned Interstate Compact bonds as required in by statute. This amount was inadvertently removed several years ago but has not changed. This modification now makes the Commission's chapter a fee chapter.

With the changes to Idaho Code, the Commission gained the authority for rule making on foreign national treaty requests and respites and reprieves; and the current language adds processes for those types of petitions.

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules.

Rule 250.09.b.iii. Interstate Compact fee of \$95.00 for administrative costs to the Commission of Pardons and Parole to offset the cost of administration of the bond paid by offenders, offenders families or others when requesting an Interstate Compact to transfer parole supervision. Authorized by Section 20-1005, 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 FY2022 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 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 proposed rule attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mary Schoeler, (208) 334-2520.

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 October 20, 2021.

<p>THE FOLLOWING IS THE TEXT OF OMNIBUS PENDING FEE DOCKET NO. 50-0101-2100F</p>

IDAPA 50 – COMMISSION OF PARDONS AND PAROLE

50.01.01 – RULES OF THE COMMISSION OF PARDONS AND PAROLE

000. LEGAL AUTHORITY.

This chapter is adopted in accordance with Section 20-1004, Idaho Code, which provides that the Commission has the power to establish rules in compliance with Title 67, Chapter 52, Idaho Code. ()

001. SCOPE.

The rules govern parole, pardons, firearm rights restoration, remission of fines, and commutations for the state of Idaho; and other matters within the authority of the Commission. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Absconder. An offender who has fled supervision, whose whereabouts are unknown, and for whom a warrant for a violation of supervision has been issued or requested. ()

02. Commission Warrant. Warrant of arrest for alleged parole violation issued by the Executive Director or a Commissioner. ()

03. Commissioner. A member of the Commission who is appointed by the Governor to carry out decision-making functions regarding parole, pardons, commutations, remission of fines, and firearm rights restoration. ()

04. Commutation. Clemency powers pursuant to Article IV, Section 7 of the Idaho Constitution and Sections 20-1016 and 20-1012, Idaho Code, granted to the Commission or to the Commission with the approval of the Governor, as required by law, which allow for a sentence to be modified, including a final discharge from the remaining period of parole. ()

05. Concurrent Sentence. Sentence served at the same time as another. ()

06. Consecutive Sentence. Sentence served upon completion of another sentence or before beginning another sentence. ()

07. Detainer. A document authorizing the detention of an offender in custody for a parole violation. Offender may be housed in a county jail or a correctional institution in state or out of state. ()

08. Determinate Sentence. Fixed portion of the sentence when an offender is not eligible for release on parole. ()

09. Dispositional Hearing. A hearing held before the Commissioners to render a decision whether to reinstate, modify, or revoke parole. ()

10. Executive Session. Any meeting or part of a meeting of the Commission that is closed to the public for deliberation on certain matters, as set forth in Section 20-1003, Idaho Code. ()

11. File or Case Review. Review of central file, Commission file, and/or additional information submitted, without testimony or interview of offender or parolee. ()

12. Full Term Release Date. The date an offender completes the term of sentence. ()

13. Hearing. The opportunity to be interviewed by the Commission, a Commissioner, or other designated Commission staff. ()

14. Hearing Session/Session. A series of hearings conducted by the Commission. ()

15. Indeterminate Sentence. Portion of sentence following the determinate sentence, during which time an offender is eligible for release on parole. ()

16. Offender. A person under the legal care, custody, supervision, or authority of the board of correction, including a person within or outside Idaho pursuant to agreement with another state or contractor. ()

17. Pardon. Clemency powers pursuant to Article IV, Section 7 of the Idaho Constitution and Section 20-1016, Idaho Code, granted to the Commission or to the Commission with the approval of the Governor as required by law, which allows for sparing the applicant from punishment for a crime, removing any other effects, penalties, or disabilities that the conviction carries or stem from that conviction, and restoring the applicant's civil rights. ()

18. Parole. Conditional release from a penal institution under a contractual agreement between the Commission of Pardons and Parole and offender. Parole is not a right, but is a matter of grace. ()

19. Parole Eligibility Date. The earliest date that an offender may be eligible for parole release, which coincides with the date that the indeterminate portion of the offender's sentence begins. In the event there are multiple sentences, the sentence having the latest indeterminate begin date will be used as the offender's parole eligibility date. ()

20. Preliminary Hearing. A hearing conducted by an objective representative of the supervising authority or an individual appointed by the Executive Director to determine if there is probable cause to believe the alleged violations of the parole contract occurred. ()

21. Risk Assessment. Validated tool developed to determine risk of recidivating based on offender criminogenic needs. ()

22. Respite. The temporary suspension of the execution of a sentence other than death until the next session of the Commission. ()

23. Reprieve. The temporary suspension of the execution of a sentence of death until the next session of the Commission. ()

24. Supervising Authority. The agency responsible for community supervision of parolees which is Idaho Department of Correction. ()

011. -- 099. (RESERVED)

100. GENERAL PROVISIONS.

The rules contained herein govern practice and procedure of the Idaho Commission of Pardons and Parole, hereafter referred to as the Commission. The Commission reserves the right to deviate from established rules whenever special circumstances warrant, and to act, at its discretion, in circumstances not specifically outlined but within confines established by the constitution and Idaho Code. ()

101. HEARINGS.

01. Conduct of Hearings. All hearings of the Commission will be conducted in accordance with the open meeting law as provided in Chapter 2, Title 74, Idaho Code, and as modified by Section 20-1003, Idaho Code. Each Commissioner will have an opportunity to ask questions or provide comments, or both. The Executive Director or Commission staff may provide information during the hearing or ask questions. ()

02. Deliberations. Receipt and exchange of information or opinion relating to a decision concerning the granting, revoking, reinstating, or denial of parole, or related decisions, to include commutations, pardons, and restoration of firearm rights. Deliberations will be made in executive session. Votes of individual members will not be made public. ()

102. HEARING SESSIONS.

The Executive Director or designee will schedule hearing sessions according to the number of hearings required for the specific month. ()

103. BUSINESS MEETINGS.

The Commission schedules a business meeting at least quarterly or at the call of the Executive Director and notice of such meetings must comply with the open meeting law requirements. Such meeting may be cancelled at the vote of a majority of the Commission or by the Executive Director if the scheduled business cannot be conducted. ()

104. RECORD OF HEARINGS AND BUSINESS MEETINGS.

01. Minutes of Hearings and Case Reviews. ()

a. Summary minutes of individual hearings and case reviews shall be maintained by the Commission office. ()

b. Audio recordings of open hearings may be made and may be maintained by the Commission. The recordings will be subject to disclosure pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. Executive sessions will not be recorded. ()

02. Minutes of Business Meetings. Summary minutes of business meetings are reviewed by Commissioners who are present at the next business meeting. The summary minutes as approved by the Commissioners will be maintained by the Commission and published on the Commission's website when the summary minutes are approved. ()

03. Official Record of Hearing or Review. The official record of a parole hearing or case review will be the summary minutes of that hearing or review. The official record will be maintained by the Commission and subject to public disclosure pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. ()

105. PREVIOUS DECISIONS.

The Commission reserves the right to review or reconsider any previous decision for any reason and to take whatever action is agreed upon. The Executive Director may bring forward any case determined to need review before the next hearing session. ()

106. (RESERVED)

107. APA APPLICABILITY.

The Commission has the authority to establish rules under Chapter 52, Title 67, Idaho Code (Administrative Procedures Act). No other provision or requirement of the Administrative Procedures Act applies to the Commission. ()

108. RIGHTS, POWERS, AND AUTHORITY OF THE COMMISSION.

01. Decision to Release to Parole. The Commission has the authority to decide whether or not any offender eligible for parole may be released to parole. ()

02. Advisory Commission to Board of Correction. The Commission may act as the advisory Commission to the board of correction. The Commission has any and all authority necessary to fulfill the duties and responsibilities and other duties imposed upon it by law under Section 20-201(2), Idaho Code, and other applicable provisions of Idaho law. ()

109. -- 149. (RESERVED)

150. COMMISSION AND STAFF.

01. Commission Members. The Commission is composed of seven (7) members. ()

02. Commission Staff. ()

a. The Commission has delegated to the Executive Director the authority to approve recommended conditions of parole following the hearing process, allow for emergency suspension of a condition at the request of

the Department of Correction, review Disciplinary Offense Reports and take action by executive decision, issue Commission warrants, issue parole release documents, and all other official documents pertaining, but not limited to paroles, commutations, pardons, firearms rights restoration, and remissions of fines. ()

b. The Executive Director assumes all authority and duties as may be delegated by the Commission and the governor. ()

03. Service of Process on Commissioners or Commission Staff. All service of summons, complaints, subpoenas and other legal process for any cause of action arising from or related to the actions, duties or employment of the Commission or any employee of the Commission, shall be made upon the deputy attorneys general assigned to the Commission in the manner and form required by state and federal rules of procedure. ()

151. -- 199. (RESERVED)

200. HEARING PROCESS.

01. Information for Scheduled Commission Hearings. ()

a. A schedule of Commission hearings will be prepared prior to a hearing session and may be updated as necessary at any time. The hearing schedule will be available five (5) business days prior to a hearing session. The hearing schedule may be revised due to offender movement between institutions or other circumstances and may not be published earlier. A person may obtain the offender's hearing date by contacting the Commission office or on the commission website at www.parole.idaho.gov. ()

b. The hearing schedule will reflect the date, location and starting time of each hearing session and a list of offenders scheduled for hearings and will be published on the Commission website. ()

02. Location of Hearings. ()

a. The Executive Director will determine the location of hearings, based upon available information when the schedule is set. Due to circumstances beyond the Commission's control, it may be necessary to change the location and date of a hearing or hearing session. ()

b. It may be necessary to continue a hearing to a later date to allow for the offender's personal appearance or for other unforeseen reasons. ()

03. Interview Method. For parole hearings, commutation hearings, pardon hearings, remission of fines hearings, and restoration of firearm rights hearings, an interview may be conducted face-to-face, by telephone, or by other electronic means. The interview may be conducted by a hearing officer or other designee of the Executive Director. If an interview is not required, the offender may simply appear before the Commission for a hearing. ()

a. An in-depth investigational report explaining the offender's social history, criminal history, present condition, and offense will be prepared for the Commission. The in-depth investigational report for parole consideration is exempt from public disclosure pursuant to Section 20-1005, Idaho Code. ()

b. The Commission will determine if it will conduct another hearing or make a decision based upon the report. ()

04. Psychological Reports, Mental Health Evaluations, Sex Offender Risk Assessment (SORA), Substance Abuse Evaluation, or Other. ()

a. A SORA will be prepared for the Commission for all offenders serving a commitment for a sex offense, or whose history and conduct indicate an offender may be a sexually dangerous person as described in Section 20-1005, Idaho Code. ()

b. The Commission, the Executive Director, or a hearing officer can order any psychological report,

evaluation, or assessment for an offender serving a commitment for any crime. ()

c. All psychological, SORA, substance abuse evaluations, and mental health reports will be maintained in a confidential manner. ()

05. Interview/Hearing. The subject of the interview/hearing is required to be present at a scheduled interview/hearing, unless presence is excused by the Commission or except as provided below. ()

a. Parole Consideration Hearing. The offender who is the subject of a hearing may be required to be present at a scheduled hearing. If the offender declines to be present at a parole consideration hearing, the offender is required to complete and submit the “Inmate Refusal to Participate in Parole Interview/Hearing Process” form and state the reason for not participating to the Commission. A decision will be made by the Commission based upon available information. ()

b. Parole Violation Hearing. The parolee is required to be present at the violation hearing, unless waived by the parolee as explained in Rule 400.06.f. ()

c. Medical Parole. The offender is encouraged to be present at the hearing; the Commission may make such an appearance mandatory or may make a final decision based on information available. ()

06. Witnesses and Documents. The Commission allows for the participation of attorneys, supporters of the offender, parolee, victims, and others who have a direct relationship to the specific hearing or offender/parolee. ()

a. Persons who want to testify at a hearing must notify the Commission staff five (5) days in advance of the scheduled hearing. Minors will not be allowed to attend, or testify at, the hearings without prior approval of the Executive Director. ()

b. All written documents and letters must be submitted seven (7) days in advance of the scheduled hearing; other documents may be allowed by the presiding Commissioners or the Executive Director. ()

c. An attorney or others as determined by the Executive Director or Commission may be seated with the offender/parolee at the hearing. ()

d. Verbal testimony by witnesses, victims, and attorneys may be limited by the number of persons allowed to give testimony and by a certain time limit. The Commission will allow the attorney representing the offender/parolee a designated time frame to provide information to the Commission. Victims will be allowed to testify. All persons who testify will direct their comments to the Commission. Persons will keep their comments relevant to the proceedings. ()

e. Any communication outside the hearing process directed to a Commissioner is prohibited. Communication from any person concerning a hearing, a decision, Commission practice, or to relay a concern, must be forwarded to the Executive Director. ()

07. Recusal by Commissioner. It is the responsibility of a Commissioner who has personal knowledge of a case or other conflict to decide whether to recuse himself from participating in deliberations and voting. The Commissioner must inform the Executive Director of the potential conflict and recusal. ()

08. Decisions. ()

a. Any decision of the full Commission requires a majority vote of four (4) Commissioners. Panels of less than the full commission are identified below. ()

i. Two (2) members of the Commission may meet to make decisions on the disposition of parole violations. Such decisions must be unanimous. In the event they are not unanimous, then the parole violation disposition decision will be continued and made by the full Commission, pursuant to Section 20-1002, Idaho Code. ()

ii. Three (3) members of the Commission may meet to make decisions to grant or deny parole. Such decisions must be unanimous. In the event they are not unanimous, then the decision to grant or deny parole will be continued and made by the full Commission, pursuant to Section 20-1002, Idaho Code. ()

b. Decisions will be given orally following the hearing and deliberation of a case by the Commission. The decision may be sent to the offender in writing with specific information/conditions. ()

c. In the case of a review without a Commission hearing, the decision will be published within a reasonable time on the Commission website. ()

d. Any decision made by the Commission may be reconsidered at any time pursuant to Rule 105. ()

09. Rules of Conduct at Hearings. ()

a. All persons attending any hearing will conduct themselves in a manner that does not disrupt the proceedings or they may be removed from the hearing. ()

b. All persons attending a hearing must abide by security policies and pertinent statutes of the facility where the hearing is being held, including being subject to search. The number of witnesses allowed in the hearing room will follow the security policies of the facility. ()

c. Audio recording or video recording of any hearing is prohibited unless allowed at the discretion of the Commission or the Executive Director, to include placement, manner, and type of equipment. ()

i. Media interviews with offenders, witnesses, victims, Commission, or staff will not be allowed during the hearing process. The Commission is not responsible for arranging interviews with persons other than the Commission or its staff. Interviews are not allowed without the express consent of the individual. ()

10. Review of Respites and Reprieves Granted by the Governor. ()

a. Approval of Respite or Reprieve. If the Governor approves a petition for a respite or reprieve, the Commission will review the respite or reprieve at the next regularly scheduled session of the full Commission. At that time, the Commission shall either determine the respite or reprieve is no longer appropriate or continue the respite or reprieve until the matter can be scheduled for a commutation or pardon hearing as outlined in these rules. ()

201. -- 249. (RESERVED)

250. PAROLE.

01. Parole Consideration. ()

a. The Commission may release an offender to parole on or after the date of parole eligibility, or not at all. ()

b. Parole consideration is determined by the individual merits of each case. ()

c. Parole decisions will consider factors to include, but not limited to: ()

i. Seriousness of and aggravating factors involved in the crime. ()

ii. Mitigating factors involved in the crime or related to the offender's circumstances. ()

iii. Prior criminal history of the offender. ()

iv. Failure or success of past probation and parole. ()

v. Institutional history to include overall behavior, involvement in programs, jobs, custody level at time of the hearing, and disciplinary and corrective action. ()

vi. Evidence of the development of a positive social attitude and the willingness to fulfill the obligations of a good citizen. ()

vii. Information or reports regarding physical or psychological condition. ()

viii. The strength and stability of the proposed parole plan, including adequate home placement and employment. ()

ix. Outcome of a validated risk and needs assessment. ()

02. Primary Review. For all offenders eligible for parole, a review for the purpose of setting the initial parole hearing will be conducted. ()

a. The Executive Director or a designee will conduct the primary review following receipt of the sentence calculation from the Department of Correction. The month and year of the initial parole hearing will be established based upon the sentence calculation. ()

i. In cases where an offender is serving both a court-ordered retained jurisdiction period and a current sentence of imprisonment, the primary review will not be conducted on the imprisonment case until the court-retained jurisdiction case has been concluded. ()

ii. In cases where the offender has a death sentence, or a life without parole sentence, a primary review will not be conducted. ()

iii. In cases with specified fixed terms, the initial hearing will be scheduled approximately six (6) months prior to the offender's parole eligibility date. An initial hearing will not be scheduled until all fixed terms (consecutive and concurrent) the offender is currently serving are within six (6) months of completion. ()

iv. If an offender escapes prior to the primary review or the initial hearing, the review or hearing will be conducted within a reasonable time of notification of the offender's return to custody, taking into consideration any new commitments, changes in sentence calculation, and the time to conduct an interview and report. ()

v. If an offender is committed to the department of correction and such offender is eligible for parole immediately, or within the first six (6) months of their incarceration, the initial parole hearing will be scheduled within six (6) months from the month the Commission was notified of the commitment. ()

03. General Conditions of Parole. The Commission establishes rules and conditions for every offender released to parole. Rules and conditions of parole will be provided in writing and signed by the parolee indicating the parolee's understanding of the conditions of parole. Conditions of parole include: ()

a. The parolee is required to enter into and comply with an agreement of supervision with the Idaho Department of Correction. The agreement of supervision shall include provisions setting forth potential sanctions for a violation of the conditions imposed and potential rewards for compliance with the conditions imposed, as such sanctions and rewards are set forth in rules of the Board. ()

b. The parolee will go directly to the destination approved by the Commission and, upon arrival, report as instructed to the parole officer or person whose name and address appear on the arrival notice; any deviation in travel plans will require prior permission from the Commission staff. ()

c. The parolee will: ()

i. Support dependents to the best of parolee's ability. ()

- d. The parolee must report to the assigned parole officer as instructed. ()
- e. If at any time it becomes necessary to communicate with the assigned parole officer or other official designee who is unavailable, communication will be directed to the district section supervisor. ()
- f. The parolee will: ()
 - i. Obey all municipal, county, state, and federal laws. ()
 - ii. Not engage in conduct that is, or may be, harmful to himself or others. ()
 - iii. Not purchase, own, sell, or have in the parolee's control, to include storing in residence, vehicle, etc., any type of firearm for whatever purpose. ()
 - iv. Not have in the parolee's control any dangerous weapons used, or intended to be used, for other than normal purposes, such as knives for household use. ()
- g. The parolee will: ()
 - i. Abstain from use of alcoholic beverages. ()
 - ii. Abstain completely from the possession, procurement, use, or sale of narcotics or controlled substances, except as prescribed by a licensed medical practitioner. ()
 - iii. Freely cooperate and voluntarily submit to medical and chemical tests and examinations for the purpose of determining if parolee is using or under the influence of alcohol, narcotics, or other substances, which may be at the parolee's expense. ()
 - iv. Participate in treatment programs as specified by the Commission or ordered by the parole officer. ()
- h. A parolee will submit to a search of person or property, or both, to include residence and vehicle, at any time and place by the supervisory authority or at the direction of the Commission, and the parolee waives the constitutional right to be free from such searches. ()
- i. The parolee is fully advised that written permission is required to: ()
 - i. Willfully change employment and must work diligently in a lawful occupation or a program approved by the supervising officer; ()
 - ii. Willfully change residence; or ()
 - iii. Leave the assigned district. ()
- j. The parolee will not abscond from supervision. ()
- k. Parolee will waive all rights relating to extradition proceedings if taken into custody outside the State of Idaho for failing to comply with conditions of parole and will freely and voluntarily return to the State of Idaho to answer the allegations of parole violations. ()
- 04. Special Conditions of Parole.** ()
 - a. In addition to general conditions of parole, the Commission may add special conditions of parole appropriate to the individual case. ()
 - b. The Commission delegates authority to the Executive Director to add additional special conditions and to allow for emergency suspension of a condition at the request of the Department of Correction. ()

05. Medical Parole. The Commission may parole an offender for medical reasons pursuant to Section 20-1006, Idaho Code. ()

a. Consideration will occur when the offender is permanently incapacitated or terminally ill and when the Commission reasonably believes the offender no longer poses a threat to the safety of society. ()

b. An offender or designated Department of Correction personnel may petition the Commission to consider medical parole. ()

06. Discharge from Parole. When the maximum sentence has expired, a final discharge will be issued by the Commission, unless a Commission warrant was issued before the full-term release date. ()

07. Detainers. ()

a. The Commission may grant a parole to any county, state, or federal detainer that has been lodged against an offender. ()

i. While in the custody of the detaining jurisdiction, the parolee is serving parole and is subject to all rules of the housing facility and may be required to submit monthly reports to Commission staff or the supervising authority. ()

ii. If the parolee is released from custody by the detaining jurisdiction, the parolee must report to the nearest Idaho probation and parole office within five (5) days of release. The parolee must abide by all regular rules of parole and any special conditions ordered by the Commission. ()

b. The Commission may grant an offender parole to a federal immigration detainer for deportation proceedings. ()

i. If the parolee is granted a release on bond or is allowed to remain in the United States, the parolee must contact the nearest Idaho probation and parole office within five (5) days of release. ()

ii. If the parolee is deported from the United States to the country of citizenship, the parolee is not to return to the United States and doing so is considered failure to obey the law and is in violation of the parole contract. ()

08. Miscellaneous File Review. A miscellaneous file review request may be submitted by the supervising authority to request modification of a special condition of parole or request permission for international travel. ()

09. Interstate Compact. ()

a. An offender must be eligible for transfer of supervision to another state under the Interstate Compact and the receiving state must accept the transfer before the offender is released on parole. ()

i. Any person under state parole who applies for a transfer of supervision to another state shall be required to post an application fee pursuant to Section 20-225A, Idaho Code, payable to Idaho Department of Correction, in addition to the Commission's bond. ()

b. Any offender granted parole under the Interstate Compact may be required to post a bond prior to release or prior to such acceptance under the Interstate Compact. The amount of the bond set by the Commission is five hundred dollars (\$500). ()

i. The bond must be posted at the Commission office. A cashier check, money order, or online payment shall be the only acceptable means of posting bond. ()

ii. Failure to successfully complete parole is grounds for forfeiture of the bond. ()

iii. Upon successful completion or discharge of parole without violation, the amount of the bond may be returned to payee less an amount of ninety-five dollars (\$95) for administrative costs. ()

iv. A request must be made for return of the bond within one (1) year of discharge of the offense for which the offender was serving parole. ()

251. -- 299. (RESERVED)

300. VICTIMS.

01. Notice of Victim Rights. The Commission will advise victims of their constitutional and statutory rights at Parole Commission proceedings. The Commission will exercise all due diligence to notify victims of their rights. ()

02. Testimony. The victim is invited to attend all hearings, except executive sessions, pertinent to the case and to provide testimony. Testimony may be provided verbally in the hearing or in writing prior to the hearing. ()

301. -- 349. (RESERVED)

350. PAROLE PLAN AND RELEASE PROCEDURES.

01. Parole Plan. ()

a. The proposed parole plan should be available at the parole hearing interview and parole consideration hearing and should include a stable residence, employment or maintenance and care plan, as well as treatment for alcohol or drug problems, mental health problems, sex offender treatment, after care treatment, or any other treatment deemed necessary. The plan will be developed to manage and mitigate offender risk and will address the offender's needs. ()

b. Educational programs may be considered, but the offender must demonstrate how normal living, treatment, and transportation expenses, etc., will be paid for. ()

c. All parole plans will be investigated by the supervising authority in the area in which the prospective parolee plans to reside. ()

02. Tentative Parole Dates. All parole release dates granted by the Commission are tentative. ()

a. The parole plan must be approved before the actual release date can be set to allow time for processing the release. ()

b. The Commission may reconsider its decision, and void the tentative parole date if the Commission receives information that was not available at the time of the hearing or the offender has disciplinary problems following the parole hearing. ()

03. Contract. Prior to release to parole, the offender must sign a contract with the Commission and acknowledge all general and special conditions of parole. ()

a. The parolee will be issued reporting instructions that will include contact information for the supervising office. ()

351. -- 399. (RESERVED)

400. PAROLE DISPOSITION PROCESS.

01. Initiated. The parole disposition process is initiated by a written or verbal report describing the

conditions of parole that are alleged to have been violated. ()

02. Warrants. ()

a. A supervising authority may issue an agent's warrant to authorize local law enforcement to transport the parolee to the appropriate jurisdiction to be housed pending an appearance before the Commission, pursuant to Section 20-227, Idaho Code. ()

b. After receipt of a report of violation, a Commission warrant may be issued by the Executive Director or by a member or members of the Commission. There is no bond on this warrant and issuance of this warrant suspends the offender's parole until a determination has been made on the merits of the case. The time that a parolee is considered to be a fugitive from justice will not be counted towards the time on parole or as part of the sentence. ()

i. Following arrest on a Commission warrant, the Executive Director or the Commission will decide if the parolee will be released to continue parole. ()

ii. If the location of the offender is unknown, the warrant will be entered into National Crime Information Center or other law enforcement database and will designate from which states the Commission will extradite the offender once arrested. At any time the Executive Director or designee may change the area of extradition. ()

iii. If an offender is being held in custody on new charges in a state outside of Idaho, the warrant may be placed as a detainer only, and written notice of this action will be submitted to the holding facility. The time limits prescribed by law for service of the factual allegations of the violation of the conditions of parole will begin on the date the holding facility notifies the Commission either the warrant has been served or is notified the offender is available for return to Idaho, whichever is earlier. ()

iv. If the offender is arrested in a state other than Idaho and refuses extradition to Idaho, it may be necessary to request a governor's warrant. ()

03. Notice of Hearing Rights. ()

a. Every parolee arrested on a Commission warrant for alleged violation(s) of parole is entitled to a fair and impartial hearing of the factual allegations of violation of the conditions of parole. ()

b. The parolee shall be provided pertinent due process including written notice of the date, time, and location of any and all public hearings involved in the disposition process. ()

04. Witnesses. The accusing parole officer or alleged parole violator may present witnesses in support or defense of the allegations of parole violation. ()

a. The Commission has no subpoena power to compel any witness to attend a hearing. The alleged parole violator may make a timely written request to the Commission office for certain adverse witnesses to be available for cross-examination, and such request must include the name, address, telephone number, email, and relationship to the case; the hearing officer will make reasonable efforts to request their participation. However, it is the alleged parole violator's responsibility and the accusing parole officer's responsibility to notify their witnesses of the date, time, and location of any and all hearings or change of hearings. ()

b. If it is determined by the hearing officer or the Executive Director that the identification of an informant or the personal appearance of a witness would subject such person to potential risk or harm, confrontation or cross-examination will not be allowed, and the record will reflect such determination. ()

05. Attorney. The alleged parole violator may utilize the services of an attorney at any public hearing conducted during the disposition process. ()

a. An attorney will be paid at the alleged parole violator's expense. ()

b. It is the alleged parole violator's responsibility to notify his attorney of the date, time, and location of any and all hearings or change of hearings. The alleged parole violator's attorney may make a request of the Commission office to be notified of any hearings and if requested in writing, the Commission office will provide the attorney with copies of reports or documents that are subject to disclosure according to the public records act. ()

c. Commission Provided Attorney. Prior to a hearing, the alleged parole violator may request legal representation be provided by the Commission. The Executive Director or designee will determine if the facts presented by the alleged parole violation or the circumstances of the alleged parole violator demonstrate that alleged parole violator does not understand the proceedings and is otherwise incapable of representing himself. ()

i. If a hearing officer, after meeting with the alleged parole violator, believes that the individual is not able to fully understand the hearing proceedings or is otherwise incapable of representing himself, the hearing officer shall notify the Executive Director. Upon receipt of such notification, the Executive Director or the Commission will make an attorney available to assist the alleged parole violator at the Commission's expense if the facts presented demonstrate that the alleged parole violator meets the criteria for Commission-provided attorney. In reaching this decision, the Executive Director or Commission shall: ()

(1) Review the case file and documents regarding the alleged parole violator's personal history, including his physical and mental health status. ()

(2) Consider the alleged parole violator's ability and capacity to understand the proceedings. ()

(3) Order a current or competency assessment if such would be helpful in making a decision regarding the request for counsel. ()

ii. Specific time limits provided for in these rules may be waived at the discretion of the Executive Director when an attorney is requested or provided, or both, at Commission expense. ()

06. Violation and Disposition Hearings. The hearing officer or Executive Director will determine the location of all hearings. The parolee is required to be present at the violation or disposition hearing, unless waived by the offender. ()

a. Violation Hearings. ()

i. Non-technical violations. If the alleged parole violator is accused of violation of parole by absconding supervision or being convicted of a felony or misdemeanor offense, the subject is not entitled to a preliminary hearing, but is entitled to a hearing to determine guilt or innocence of the alleged parole violation within a reasonable time following service of a copy of the report of violation. ()

ii. Technical violations. If the alleged parole violator is accused of a violation of parole other than by absconding supervision or being convicted of a felony or misdemeanor offense the subject is entitled to a preliminary hearing by the supervising authority within a reasonable amount of time. An on-site hearing will be conducted by a Commission hearing officer to determine guilt or innocence within thirty (30) days from the date the accused was served with the copy of the report of violation. ()

iii. Preliminary hearing. A technical parole violator is entitled to a preliminary hearing to establish whether there is probable cause to believe the violations may have occurred, and such hearing will be conducted by staff of the supervising authority or as otherwise directed by the Executive Director. The alleged parole violator is entitled to a written decision within a reasonable time following the preliminary hearing. If it is determined at the preliminary hearing that there is no probable cause to support the allegations of violation of the conditions of parole, the parolee will be released to continue parole. ()

iv. On-Site Violation Hearing. A technical parole violator is entitled to an on-site fact-finding hearing conducted by a hearing officer. The on-site hearing is conducted reasonably near the site of the alleged parole violation(s). The Executive Director or hearing officer will determine where the hearing will be conducted. In situations where the violation(s) occurred outside the state of Idaho, the Executive Director or hearing officer will

determine the location of the hearing. Based on Interstate Compact rules, an on-site hearing may not be possible if charged and arrested in a state other than Idaho. ()

v. **Violation Hearing.** In most cases, a hearing officer will conduct a fact-finding or violation hearing and will make a finding on each allegation as to the guilt or innocence of the alleged parole violator and may dismiss some or all allegations. If a hearing officer is unavailable, the Executive Director will appoint someone to conduct the hearing. ()

b. The parolee shall have the right to appear at a violation hearing and respond to the allegations of violation of the conditions of parole, present witnesses, and present evidence. ()

c. The parolee may confront and cross-examine adverse witnesses who have given information on which the charges have been based unless it would subject such person to potential risk or harm as determined by the hearing officer. ()

d. The alleged parole violator is entitled to a verbal or written decision within twenty (20) days. When a verbal decision has been rendered at the conclusion of the hearing, such finding must be noted in the hearing officer's report. ()

i. Prior to a disposition hearing, the hearing officer will prepare a report of findings summarizing the violation hearing, to include testimony, and will make specific findings for each allegation. ()

e. **Disposition Hearing.** If finding of guilt was made on one (1) or more of the violations, the Commission will consider whether to reinstate the offender on parole on the same or modified conditions, or to revoke parole. The Commission will consider all options available and will state its reasoning if parole is revoked. The type of violations raised in the allegations and recommendations will determine the type of disposition hearing available to the alleged parole violator. ()

f. **Absentia Hearing.** The Commission can hold a disposition hearing without the alleged parole violator's appearance if the alleged parole violator has signed the proper document waiving the right to appear before the Commission, and the Commission accepts such a waiver. ()

07. Miscellaneous Hearing Information. ()

a. The Commission, through the Executive Director, shall designate the county, state, or other facility where the alleged parole violator shall be held. ()

b. The alleged parole violator can request a continuance of any hearing. The hearing officer, Executive Director, or the Commission will determine if the continuance will be granted. If a continuance is granted at the alleged parole violator's request, said request will constitute a waiver of any and all time limits involved. ()

08. Credit of Time on Parole. If parole is revoked, the time during which the offender was on parole from the parole release date to the arrest date on the agent's warrant or Commission warrant is not credited toward the sentence unless the Commission, in their discretion, chooses to credit the time in whole or in part per Idaho Code 20-1007. ()

a. Any time the offender is incarcerated on a parole agent's warrant and/or a Commission warrant will be credited toward the sentence, including discretionary jail time. ()

b. The offender will not receive credit for incarceration time if the incarceration was for a new crime and a Commission warrant was not served. ()

c. The offender must provide the hearing officer or the Executive Director with dates of incarceration and the location of the incarceration. ()

401. -- 449. (RESERVED)

450. COMMUTATIONS.

A Commutation may be considered for a person convicted of any misdemeanor or felony crime to modify a sentence imposed by the sentencing jurisdiction. ()

01. Petition. A petition must be submitted to initiate the process. Only forms approved by the Commission will be accepted and must be completed correctly per the instructions on the form. ()

a. The petition must contain the reason a modification of sentence is requested and the precise modification which is requested, such as the following. ()

i. Change a consecutive sentence to concurrent. ()

ii. Reduce the maximum length of sentence. ()

iii. Reduce the minimum fixed term of a sentence. ()

iv. Change a fixed sentence to indeterminate. ()

v. Change a sentence in any other manner not described. ()

b. The Commission may consider one (1) application from any one (1) person in any twelve (12) month period from the date of denial. ()

c. Petitions may be considered at any time by the Commission but are usually scheduled for consideration in the quarterly sessions in January, April, July, and October. ()

d. Petitions must be received no later than the first day of the month prior to the next designated quarterly hearing session for which the offender is applying. ()

e. Review or deliberation on the petition by the Commission will be conducted in executive session. ()

f. Any petition may be continued for additional information or for further consideration. ()

g. The petition is limited to no more than six (6) pages; the petition will not be considered if the document exceeds this number. ()

h. An alleged parole violator is not eligible to file a petition until the violation has been adjudicated. ()

i. The Commission will not consider a commutation for early discharge from parole in any case until the parolee has served at least one (1) year on parole as outlined in Section 20-1012, Idaho Code. ()

i. The Commission will not consider an early discharge for a parolee who has a sex crime or violent crime until one-third (1/3) of the remaining time from the parole release date to full term release date has been served on parole; or until ten (10) years have been served on parole on a life sentence for any crime. ()

ii. A parole officer, parole officer designee, or parole officer supervisor can petition the Commission to consider an early discharge upon reaching the timelines established in this section. ()

iii. If the parolee is permanently incapacitated or terminally ill, the Commission may consider and grant an early discharge from parole after one (1) year for any crime. ()

02. Commutation Hearing. The scheduling of a hearing is at the complete discretion of the Commission; if a commutation hearing is scheduled, the Commission will determine the date of the hearing. ()

a. Notice of a commutation hearing will be published in a newspaper of general circulation at Boise, Idaho, at least once a week for four (4) consecutive weeks immediately prior to the hearing. ()

b. A copy of the notice of publication will be mailed to the prosecuting attorney of the county from which the petitioner was committed. ()

c. Victims of the offender will be notified when a hearing is scheduled. ()

d. Written notice of the hearing date, time, and location will be sent to the applicant at the address given on the application or as otherwise requested. ()

i. The Commission shall make such appearance mandatory, or may deny the commutation. ()

e. The decision and supporting documents regarding a commutation will be filed with the Secretary of State and the Executive Director will provide all notice that a commutation is granted consistent with Section 20-1018, Idaho Code. ()

03. Death Sentence. ()

a. Exceptions to the commutation petition page limit may be made by the Executive Director in cases of offenders under sentence of death. ()

b. At any time, the Commission may review a file, information, or interview an offender without activating the commutation process. ()

c. Commutation petitions must be initiated by the petitioner or his legal counsel. Legal counsel must provide verification that he has been retained by the petitioner or his family to prepare and submit the petition. ()

d. The Commission may elect to receive and consider a petition for a death penalty modification at any time. ()

451. -- 499. (RESERVED)

500. SELF-INITIATED PAROLE RECONSIDERATION.

01. Petition. An incarcerated offender making a request for reconsideration of parole denial must initiate the process by submitting an application. ()

a. The only acceptable form is the one provided by the Commission, and it must be signed by the offender and Department of Correction case manager. ()

b. The petition must be typed and completed correctly, per the instructions on the form, or it will not be considered. ()

c. The petition must state the reason reconsideration is requested and the circumstances that have changed since the last hearing. The offender must have had no disciplinary issues in the year prior to submitted the petition. ()

d. The Commission will consider one (1) application from the offender who was denied parole one (1) year after the initial decision. After the initial SIPR is heard, the Commission will consider applications once per year from the date of the initial SIPR denial. ()

e. Petitions must be received no later than the first day of the month prior to the next month's hearing session. ()

f. Review or deliberation on the petition by the Commission will be conducted in executive session.

- ()
- g.** Any petition may be continued for additional information or for further consideration. ()
- h.** The petitioner will be notified of the decision. ()
- i.** The petition is limited to four (4) pages; the petition will not be considered if the petition exceeds this number. ()
- 02. Hearing.** The scheduling of a hearing is at the complete discretion of the Commission. ()

501. -- 549. (RESERVED)

550. PARDON.

A pardon may be considered for a person convicted of any misdemeanor or felony crime. A pardon does not expunge or remove the crime from the applicant's criminal history. ()

01. General. An application for a pardon may not be considered until a period of time has elapsed since the applicant's discharge from custody as defined below. ()

a. Applications for pardon for non-violent and non-sex crimes may be submitted for consideration no sooner than five (5) years after the satisfaction of the sentence on the crime for which they are requesting a pardon. ()

b. Applications for pardon for violent or sex crimes or other crimes against a person may be submitted for consideration no sooner than ten (10) years after the satisfaction of the sentence on the crime for which they are requesting a pardon. ()

c. In addition to the provisions of (a) and (b), applications for pardon for vehicular manslaughter pursuant to Section 18-4006(3)(b), Idaho Code or driving under the influence, including any violation of Sections 18-8004, 18-8004C, 18-8005 or 18-8006, Idaho Code, may be submitted for consideration no sooner than fifteen (15) years after that date which the applicant pled guilty to or was found guilty of such a crime. ()

d. A pardon application will not be considered while an offender is incarcerated or on supervision. ()

e. The Commission will determine whether a hearing will be granted and the applicant will be notified of the decision in writing. ()

02. Application. A pardon application can be obtained from the Commission office or on the Commission website. ()

a. The application must be completed and returned to the Commission office. ()

i. The completed application must include the reasons why the pardon is requested. ()

ii. The applicant may attach letters of recommendation or other documents to support the request. ()

iii. The applicant must include copies of all court judgments and conviction documents, as well as police reports for each crime for which a pardon is requested. ()

iv. A pardon may be requested only once during a twelve-month (12) period from the date of denial unless otherwise stated by the Commission. ()

v. An application may not be considered if there is significant law enforcement contact since sentence or discharge. ()

b. Upon receipt of the completed application and required documentation, eligible applications will be reviewed by the Commission. The Commission may request an investigation of the applicant by Commission staff. The report will contain the following: ()

i. A criminal records check will be conducted to include any law enforcement contact since the release from supervision or incarceration. ()

ii. The applicant's employment history since discharge from supervision or incarceration. ()

iii. The applicant's willingness to fulfill the obligations of a law-abiding citizen, including family information, community involvement, volunteer service, hobbies, and related interests. ()

iv. The applicant's employment and education status, including any professional or vocational achievements, training, and any additional information as deemed necessary or appropriate. ()

v. Confirmation that all restitution and fines as ordered by the sentencing court are paid. ()

vi. An interview with the applicant may be conducted and a summary of the interview provided. Said interview may be conducted in person or by electronic means. ()

03. Hearing. The scheduling of a hearing is at the complete discretion of the Commission. If a pardon hearing is scheduled, the Commission will determine the date of the hearing. ()

a. Notice of a pardon hearing shall be published in a newspaper of general circulation at least once a week for four (4) consecutive weeks immediately prior to the hearing. ()

b. A copy of the publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. ()

c. Victims of the offender will be notified in writing when a hearing is scheduled. ()

d. Written notice of the hearing date, time, and location will be sent to the applicant at the address given on the application or as otherwise requested. ()

i The Commission shall make such appearance mandatory, or may deny the pardon. ()

e. The applicant will be given written notice of the decision and such notice will be sent to the last known address. ()

f. The decision and supporting documents regarding a pardon will be filed with the Secretary of State consistent with Section 20-1018, Idaho Code. ()

551. RESTORATION OF FIREARMS RIGHTS PURSUANT TO SECTION 18-310, IDAHO CODE.

01. General. An application for restoration of the civil right to ship, transport, possess, or receive a firearm may be considered upon final discharge under Section 18-310(2), Idaho Code. This is not a pardon for the conviction of a crime, nor is the applicant's criminal record expunged. ()

02. Application. An application may not be made until five (5) years after the date of final discharge of the crime for which they are requesting restoration of firearm rights. ()

a. An application may be obtained from the Commission office or on the Commission website. ()

b. The application must be the original and returned to the Commission office. ()

- i. The application must request the restoration of the right to ship, transport, possess, or receive a firearm under Section 18-310, Idaho Code. ()
- ii. The application must be in writing and legible. ()
- iii. All court convictions, judgment orders, including any dismissal documents, as well as police reports related to said convictions must accompany the application. ()
- iv. An application may be submitted once every twelve (12) months from the date of denial. ()
- v. The petition must state the reason for the request. ()
- vi. Review or deliberation on the petition will be conducted in executive session. ()
- vii. The Commission will determine whether a hearing will be granted and the applicant will be advised of the decision. ()
- viii. No applications will be considered for individuals who are incarcerated or on supervision. ()
- c. Upon receipt of the completed application and required documentation, eligible applications will be reviewed by the Commission. The Commission may request an investigation of the applicant by Commission staff. The report shall include, but not be limited to, the following: ()
 - i. A criminal records check will be conducted to include any law enforcement contact since release from supervision or incarceration. ()
 - ii. The applicant's employment history since the date of final discharge of the crime for which they are requesting restoration of firearm rights. ()
 - iii. The applicant's willingness to fulfill the obligations of a law-abiding citizen, including family information, community involvement, volunteer service, hobbies, and related interests. ()
 - iv. The applicant's employment and education status, including any professional or vocational achievements, training and any additional information as deemed necessary or appropriate. ()
 - v. Confirmation that all restitution and fines as ordered by the sentencing court have been paid. ()
 - vi. An interview with the applicant may be conducted and a summary of the interview provided. The interview may be conducted in person or by electronic means. ()
- 03. Hearing.** The scheduling of a hearing is at the complete discretion of the Commission. ()
 - a. If a hearing is scheduled, the Commission will determine the date of the hearing. ()
 - b. Any hearing may be continued for additional information. ()
 - c. Written notice of the hearing date, time, and location will be sent to the applicant at the address given on the application or as otherwise requested. ()
 - i. The Commission shall make such appearance mandatory or may deny the restoration of firearm rights. ()
 - d. The applicant will be given written notice of the decision and such notice will be sent to the last known address. ()
- 04. Authority to Grant.** The Commission has the full and final authority and discretion to grant

restoration of civil rights to ship, transport, possess, or receive a firearm under Section 18-310, Idaho Code, except as provided therein. ()

552. -- 599. (RESERVED)

600. REMISSION OF FINE OR PENALTY PURSUANT TO SECTION 20-1004, IDAHO CODE.

- 01. Request.** An application for remission of fine or penalty must be made to the Commission. ()
- a.** The application must be in writing. ()
- b.** The application must outline the reasons action is requested to remit such fine or penalty. ()
- c.** The applicant must submit a certified copy of the judgment or order assessing said fine or penalty. ()
- 02. Review.** The Commission will review the application to remit a fine or penalty. ()
- a.** The Commission will usually review such application on a month designated as a quarterly session. The review will be conducted by the full Commission. ()
- b.** The Commission will conduct such review in executive session. ()
- c.** Any application may be continued for further consideration or additional information. ()
- d.** The Commission will determine whether a hearing will be granted and the applicant will be notified of the decision in writing. ()
- 03. Hearing.** The scheduling of a hearing is at the complete discretion of the Commission. ()
- a.** If a hearing is scheduled, the Commission will determine the date of the hearing. ()
- b.** If a hearing is scheduled, notice of the hearing will be published in a newspaper of general circulation at Boise, Idaho, at least once a week for four (4) consecutive weeks immediately prior to the hearing. ()
- c.** A copy of the notice of publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. ()
- d.** Written notice of the hearing date, time, and location will be sent to the applicant at the last known address. ()
- i.** The Commission shall make such appearance mandatory or may deny the remission of fine or penalty. ()
- ii.** The Commission may continue the hearing to a later date for any reason. ()
- 04. Satisfaction of Judgment.** If the Commission determines that such fine or penalty is to be remitted, an official document of such action will be submitted to the clerk of the court where said fine or penalty was assessed, and this will constitute a satisfaction of the judgment. The decision and supporting documents regarding a remission of fine or penalty will be filed with the Secretary of State consistent with Section 20-1018 Idaho Code. ()

601. -- 799. (RESERVED)

800. FOREIGN NATIONAL TREATY TRANSFER PURSUANT TO SECTION 20-1014, IDAHO CODE.

An offender may be transferred upon request to a country of which the offender is a citizen or national if a treaty is in effect between that country and the United States. ()

01. Governors Authorization. Subject to the terms of a treaty and on behalf of the state of Idaho, the Governor has authorized the Commission to consent to transfers or exchanges of offenders and take any other action necessary to initiate the participation of the state in such treaty. ()

02. Request for Transfer. An offender may request a transfer to a foreign country when the offender meets the requirements enumerated below. The Commission will receive the request and relevant documents from the Department of Correction. The Commission may request additional information from the offender, any victims, the Department, or any other source the Commission deems appropriate. ()

a. The offender must be a citizen or national of the foreign country. ()

b. The United States and the foreign country must be parties to a treaty that provides for the transfer or exchange of convicted offenders. ()

c. The offender must not be serving a life sentence. ()

d. The offender cannot be less than two (2) years from his parole eligibility date. ()

e. The offender must meet the Department of Justice's guidelines for international transfer applications. ()

03. Hearing. The full Commission may review a transfer request that meets all the requirements under the law in a hearing. ()

a. The Commission may require the offender's appearance or may make a final decision based upon the materials with the request and other information which is available. The offender is not entitled to be personally present, to have counsel, to present witnesses or evidence, or to have any particular evidence considered. ()

b. The Commission may continue the hearing to a later date for any reason. The Commission will schedule the application for review during a scheduled hearing session at a time and place of its choosing. ()

04. Decision. ()

a. The offender is not entitled to appeal the Commission's decision. ()

b. The offender may reapply two (2) years from the date of denial by either the Governor or the Commission. ()

05. Approval of Transfer Request. If the Commission approves the transfer request, the request packet is sent to the Department of Justice for consideration and approval. Once the Department of Justice approves the transfer, the offender is under the jurisdiction of the Department of Justice. ()

801. -- 999. (RESERVED)

IDAPA 57 – SEXUAL OFFENDER MANAGEMENT BOARD

DOCKET NO. 57-0101-2100F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2022 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 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 rule and the text of the pending fee rule with an explanation of the reasons for the change.

This pending fee rule adopts and publishes the following rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 57, rules of the Sexual Offender Management Board:

IDAPA 57

- 57.01.01, *Rules Governing the Sexual Offender Management Board.*

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rulemaking was published in the October 20, 2021, Special Edition of the Idaho Administrative Bulletin, [Vol. 21-10SE, pages 5080-5095](#).

FEE SUMMARY: The following identifies the fee or charge imposed or increased through this rulemaking:

This rulemaking does not impose a new fee or charge, or increase an existing fee or charge, beyond what has been previously submitted for review in the prior rules. A specific description of the fees or charges being imposed pursuant to Section 18-8314, Idaho Code, is listed below:

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.

Twenty-five dollars (\$25) for a 60-day continuing education (CEU) extension. 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.

Twenty-five dollars (\$25) for a 60-day continuing education (CEU) extension.

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 FY2022 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) 605-4782.

Dated this 22nd day of December, 2021.

Nancy Volle, SOMB Program Manager
Sexual Offender Management Board
1299 N Orchard St Ste#110
Boise, ID 83706
Phone: (208) 605-4782
somb@idoc.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS PROPOSED RULE

AUTHORITY: In compliance with Sections 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: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rulemaking publishes the following rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 57, rules of the Sexual Offender Management Board:

IDAPA 57

- 57.01.01, *Rules Governing the Sexual Offender Management Board.*

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules.

- 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 application and thirty dollars (\$30) for annual certification renewal applications for entry-level provisional/supervised psychosexual evaluators and provisional/supervised sexual offender treatment providers.
- Twenty-five dollars (\$25) for 60-day continuing education (CEU) extension.

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 FY2022 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 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 proposed rule attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nancy Volle at (208) 605-4782 or nvolle@idoc.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 October 20, 2021.

THE FOLLOWING IS THE TEXT OF OMNIBUS PENDING FEE DOCKET NO. 57-0101-2100F
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IDAPA 57 – SEXUAL OFFENDER MANAGEMENT BOARD

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. ()

001. SCOPE.

01. Scope. These rules provide procedures for the Sexual Offender Management Board to: ()

a. Establish certified evaluator, sexual offender treatment provider and post conviction sexual offender polygraph examiner qualifications; ()

b. Establish standards for psychosexual evaluations and sexual offender treatment programs based on current and evolving best practices; ()

c. Approve, issue, renew, deny, suspend, revoke, restrict or otherwise monitor a certification; ()

d. Establish fees for initial and renewal certification; ()

e. Establish procedures for standards and qualification quality assurance; and ()

f. Establish standard protocols for sexual offender management, assessment and classification. ()

002. (RESERVED)

003. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: ()

01. The American Association of Police Polygraphists “Standards and Principles,” © AAPP 2018 v.14.110, is herein incorporated by reference and is available from the American Association of Police Polygraphists, PO Box 657, Waynesville, Ohio 45068, website <https://www.americanassociationofpolicepolygraphists.org/web/public/standards>. ()

02. The American Polygraph Association “Standards of Practice,” effective August 23, 2019, and “Code of Ethics,” effective September 1, 2015, are herein incorporated by reference and are available from the American Polygraph Association, PO Box 8037, Chattanooga, Tennessee 37414, website <https://www.polygraph.org>. ()

03. “Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices,” October 2020 revision, is herein incorporated by reference and is available from the Board’s office and on the Board website, <https://somb.idaho.gov/>. ()

04. “Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders,” October 2020 revision, is herein incorporated by reference and is available from the Board's office and on the Board's website, <https://somb.idaho.gov/>. ()

004. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Sexual Offender Management Board described in Section 18-8312, Idaho Code. ()

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. ()

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. ()

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. ()

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. ()

07. Client. An adult or juvenile receiving services from a person certified by the Board pursuant to Section 18-8314, Idaho Code. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

15. Supervision. ()

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 ()

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 ()

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. ()

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. ()

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. ()

011. ABBREVIATIONS.

01. APA. The American Polygraph Association. ()

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. ()

03. SOCB. The Sexual Offender Classification Board. ()

04. SOMB. The Sexual Offender Management Board. ()

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. ()

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. ()

021. BOARD 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. ()

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. ()

- a.** Certification approval is specific to adult or juvenile clients. ()
- b.** A certificate holder may be separately approved to provide services to both adult and juvenile clients. ()

02. Certification Requirements. Minimum requirements for certification as a psychosexual evaluator include criteria, requirements, and expectations in the following categories: ()

- a.** Formal educational requirements; ()
- b.** Professional licensure requirements; ()
- c.** Clinical experience requirements; ()
- d.** Specialized training requirements; and ()
- e.** Continuing education and professional development requirements. ()

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: ()

01. Senior/Approved Psychosexual Evaluator. ()

- 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. ()
- 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 ()
- c.** Has conducted a minimum of nine (9) psychosexual evaluations within the three (3) years preceding an initial application for certification at this level. ()

02. Associate/Supervised Psychosexual Evaluator. ()

- 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. ()

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; ()

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 ()

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. ()

03. Provisional/Supervised Psychosexual Evaluator. ()

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; ()

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; ()

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. ()

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. ()

a. Certification approval is specific to adult or juvenile clients. ()

b. A certificate holder may be separately approved to provide services to both adult and juvenile clients. ()

02. Certification Requirements. Minimum requirements for certification as a sexual offender treatment provider include criteria, requirements, and expectations in the following categories: ()

a. Formal educational requirements; ()

b. Professional licensure requirements; ()

c. Clinical experience requirements; ()

d. Specialized training requirements; and ()

e. Continuing education and professional development requirements. ()

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: ()

01. Senior/Approved Sexual Offender Treatment Provider. ()

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 ()

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. ()

02. Associate/Supervised Sexual Offender Treatment Provider. ()

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. ()

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 ()

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. ()

03. Provisional/Supervised Sexual Offender Treatment Provider. ()

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 ()

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. ()

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. ()

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: ()

01. Sexually Abusive Behavior. Contemporary research regarding the etiology of sexually abusive behavior; ()

02. Offending Behavior. Research-identified risk factors for the development and continuation of sexually abusive/offending behavior; ()

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; ()

04. Specific Risk Assessment Tools. Research-supported, sex offender-specific risk assessment tools; and ()

05. Deviant Sexual Arousal and/or Interests. Physiological assessment of deviant sexual arousal and/or interests. ()

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. ()

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. ()

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)

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

02. Certification Requirements. Minimum requirements for certification as a sexual offender treatment provider include criteria and requirements in the following categories: ()

- a. Educational requirements; ()
- b. Experience requirements; ()
- c. Specialized training requirements; and ()
- d. Continuing education and professional development requirements. ()

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. ()

01. Senior/Approved Post Conviction Sexual Offender Polygraph Examiner. ()

a. Has graduated from an APA-accredited polygraph school; ()

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 ()

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; ()

02. Associate/Supervised Post Conviction Sexual Offender Polygraph Examiner. ()

a. Has graduated from an APA-accredited polygraph school; ()

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 ()

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. ()

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-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. ()

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: ()

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; ()

b. Be knowledgeable of statutes and scientific data relevant to specialized sexual offender evaluation and sexual offender treatment; ()

c. Be familiar with the statutory requirements for assessments and reports for the courts, pursuant to Section 18-8316, Idaho Code; ()

- d. Be committed to community protection and safety; ()
- e. Provide services in a manner that ensures humane and ethical treatment of clients; ()
- 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; ()
- g. Avoid relationships with clients that may constitute a conflict of interest, impair professional judgment and risk exploitation; and ()
- h. Have no sexual relationships with any client. ()

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: ()

- 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; ()
- b. Adhere to the standards and guidelines specific to post conviction sexual offender testing as promulgated by the APA; ()
- 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 003 of these rules; ()
- d. Avoid relationships with clients that may constitute a conflict of interest, impair professional judgment and risk exploitation; ()
- e. Have no sexual relationships with any client; ()
- f. Take factors such as age, mental capacity and co-occurring mental health concerns into consideration when utilizing polygraphy with juvenile offenders; ()
- g. Be committed to community protection and safety; and ()
- h. Provide services in a manner that ensures humane and ethical treatment of clients. ()

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. ()

331. EXPIRATION AND RENEWAL OF CERTIFICATION.

No certification shall be renewed, except as follows: ()

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. ()

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: ()

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. ()

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. ()

332. FEES.

The following non-refundable application processing fees are established by the Board: ()

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). ()

b. Associate/Supervised Psychosexual Evaluator, Treatment Provide, or Post Conviction Sexual Offender Polygraph Examiner – Seventy-five dollars (\$75). ()

c. Provisional/Supervised Psychosexual Evaluator or Treatment Provider – Fifty dollars (\$50). ()

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). ()

b. Associate/Supervised Psychosexual Evaluator, Treatment Provider, or Post Conviction Sexual Offender Polygraph Examiner – Fifty dollars (\$50). ()

c. Provisional/Supervised Psychosexual Evaluator or Treatment Provider – Thirty dollars (\$30). ()

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: ()

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. ()

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. ()

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. ()

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. ()

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, indicating: ()

- a. The certificate holder's name; ()
 - b. The certificate holder's business address and telephone number; ()
 - c. Whether the certificate holder is certified or approved by conditional waiver; ()
 - d. The category and applicable level of certification; ()
 - e. The expiration date of the certification or conditional waiver; ()
 - f. Whether the certificate holder is approved to provide services to adult or juvenile clients, or both; ()
- and
- g. Current formal disciplinary action imposed on a certificate holder by the Board. ()

02. Availability. A copy of the central roster may be obtained from the Board or on the Board's website. ()

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: ()

- a.** Failure to meet or maintain the minimum eligibility criteria and qualifications for certification; ()
- 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; ()
- c.** Misrepresentation of current level or designation of certification, or practicing outside the scope or current level or designation of certification; ()
- d.** Failure to comply with Section 18-8316, Idaho Code, any portion of this chapter, or the established standards issued by the Board; ()
- 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; ()
- 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; ()
- 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; ()
- h.** Engaging in conduct that departs from the established standards issued by the Board; ()
- 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; ()
- 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 ()
- 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. ()

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. ()

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. ()

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; ()

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; ()

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; ()

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; ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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,” found in the Idaho Sexual Offender Management Board Standard and Guidelines for Adult Sexual Offender Management Practices incorporated by reference in Subsection 003.03 of these rules. ()

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,” found in the Idaho Sexual Offender Management Board Standard and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders incorporated by reference in Subsection 003.04 of these rules. ()

03. Testing. The evaluator shall utilize testing instrumentation and assessment measures as outlined in the established standards issued by the Board. ()

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. ()

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 follow the established standards issued by the Board. ()

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 follow the established standards issued by the Board. ()

501. -- 999. (RESERVED)