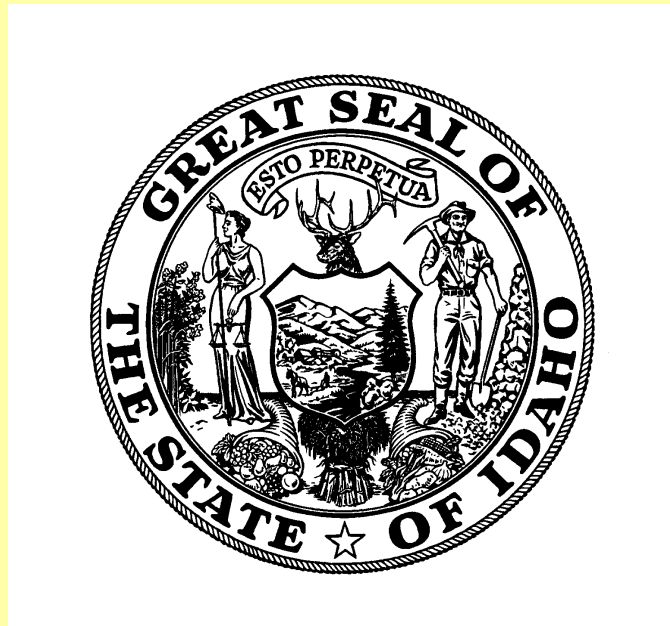


# **PENDING RULES COMMITTEE RULES REVIEW BOOK**

Submitted for Review Before  
**House Judiciary, Rules &  
Administration Committee**

**68th Idaho Legislature  
First Regular Session – 2025**



*Prepared by:*

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

*January 2025*

**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

**ADMINISTRATIVE RULES REVIEW**

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**IDAPA 11 – IDAHO STATE POLICE  
STATE FORENSIC LABORATORY**

**11.03.01 – RULES GOVERNING ALCOHOL TESTING**

**DOCKET NO. 11-0301-2401 (ZBR CHAPTER REWRITE)**

**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-2901, Idaho Code.

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

Based on feedback from stakeholders during the negotiated and proposed rulemaking process, the Idaho State Police State Forensic Laboratory made changes to the pending rule.

To better clarify parts of the rule, definitions were added for some key terms.

Language was added to clarify the instrumentation, certification, and testing procedures used by the Idaho State Police Forensic Services Laboratories.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 2nd, 2024, Idaho Administrative Bulletin, [Vol. 24-10, pages 191-199](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by a concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: There are no fees associated with this rulemaking.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year: There is no fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Matthew Gamette, (208) 884-7217, email: [matthew.gamette@isp.idaho.gov](mailto:matthew.gamette@isp.idaho.gov)

DATED this 6th day of December, 2024.

Lt. Colonel Russ Wheatley  
Chief of Staff  
Idaho State Police  
700 S Stratford Drive  
Meridian ID 83642  
[Russ.Wheatley@isp.idaho.gov](mailto:Russ.Wheatley@isp.idaho.gov)

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 67-2901, Idaho Code.

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

**11.03.01 – Rules Governing Alcohol Testing**

**Thursday, October 3rd, 2024 – 10:00 a.m. (MT)**  
**Idaho State Police, District 3**  
**700 S Stratford Drive**  
**Meridian, ID 83642**

**[Virtual Link](#)**

**Dial in by Phone: 1-872-215-6990 Conference ID 485 988 928#**

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:

These rules are being presented for authorization as part of the Idaho State Police’s plan to review each rule every five years. The goal is to perform a comprehensive review of and update, streamline, and modernize these rules consistent with the Governor’s [Executive Order 2020-01: Zero Based Regulation](#). The Idaho State Police intends to carefully consider all changes presented by the public and may propose certain changes so long as they are consistent with the rules’ stator authority and the Governor’s Executive Order.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There are no fees associated with this rulemaking.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: N/A.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 7, 2024, Idaho Administrative Bulletin, [Vol. 24-8, p 40](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Matthew Gamette, (208) 884-7217, email – [matthew.gamette@isp.idaho.gov](mailto:matthew.gamette@isp.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2024.

DATED this 23rd day of August, 2024.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 11-0301-2401

Italicized red text that is *double underscored* indicates amendments to the proposed text as adopted in the pending rule.

11.03.01 – RULES GOVERNING ALCOHOL TESTING

**000. LEGAL AUTHORITY.**

The Director of the Idaho State Police has general rulemaking authority to prescribe rules and regulations for alcohol testing, pursuant to Section 67-2901, Idaho Code. (3-23-22)

**001. SCOPE.**

**01. Scope.** The rules relate to the governance and operation of the Alcohol Testing Program. (3-23-22)

**002. INCORPORATION BY REFERENCE.**

The following are incorporated by reference in this chapter of rules: (3-23-22)

**01. Conforming Products List of Evidential Breath Measurement Devices (revised 11/2/2017).** This document is available on the Internet at <https://www.gpo.gov/fdsys/pkg/FR-2017-11-02/pdf/2017-23869.pdf>. (3-23-22)

**003. -- 009. (RESERVED)**

**010. DEFINITIONS AND ABBREVIATIONS.**

**01. Alcohol.** The chemical compounds of ethyl alcohol, methyl alcohol, or isopropyl alcohol. (3-23-22)

~~**02. Approved Vendor.** A source/provider/manufacturer of an approved standard. (3-23-22)~~

~~**032. Blood-Alcohol Analysis.** An analysis of breath, blood, or urine to determine the concentration of alcohol present. (3-23-22)( )~~

~~**04. Breath Alcohol Analysis.** An analysis of breath to determine the concentration of alcohol present. (3-23-22)~~

~~**053. Breath Alcohol Test.** A breath sample or series of separate breath samples provided during a breath testing sequence(s). (3-23-22)~~

~~**06. Breath Alcohol Testing Sequence.** A sequence of events as determined by the Idaho State Police Forensic Services, which may be directed by the instrument, the Operator, or both, and may consist of air blanks, performance verification, internal standard checks, and breath samples. (3-23-22)~~

~~**074. Breath Testing Specialist (BTS).** An operator who has completed advanced training approved by the department and are certified to perform routine instrument maintenance, teach instrument operation skills, proctor proficiency tests for instrument Operators, and testifying as an expert on alcohol physiology and instrument function in court. (3-23-22)~~

~~**085. Calibration.** A set of laboratory operations which establish under specified conditions, the relationship between values indicated by a measuring instrument or measuring system, or values represented by a material, and the corresponding known values of a measurement. (3-23-22)~~

**096. Certificate of Analysis.** A certificate stating the standards used for performance verification have been tested and approved for use by the ISPFS or are manufactured by an ISO 17025:2005, 17025:2017, (or equivalent standard) vendor and are traceable to N.I.S.T. standards. (3-23-22)

**107. Certificate of Instrument Calibration.** A certificate stating that an individual breath alcohol testing instrument has been evaluated by the ISPFS and found to be suitable for forensic alcohol testing. The certificate bears the signature of the calibration analyst at Idaho State Police Forensic Services, and the effective date of the instrument approval. (3-23-22)

**108. Department.** The Idaho State Police. (3-23-22)

**1209. Deprivation Period.** A minimum time period of fifteen (15) minutes immediately prior to evidentiary breath alcohol testing during which the subject/individual is not to be allowed to smoke, drink, or eat substances containing alcohol. (3-23-22)( )

**1310. Evidentiary Test.** A blood, breath, or urine test performed on a subject/individual for potential evidentiary or legal purposes. A distinction is made between evidentiary testing and non-quantitative screening/monitoring. (3-23-22)( )

**1411. Idaho State Police Forensic Services (ISPFS).** A division of the Idaho State Police. ISPFS is dedicated to providing forensic science services to the criminal justice system of Idaho. ISPFS is the administrative body for the alcohol testing programs in Idaho. (3-23-22)

**1512. Laboratory.** The place at which specialized devices, instruments and methods are used by trained personnel to measure the concentration of alcohol in samples of blood, vitreous humor, urine, or beverages for law enforcement purposes. (3-23-22)

**16. MIP/MIC.** ~~An abbreviation used to designate minor in possession or minor in consumption of alcohol.~~ (3-23-22)

**173. Monitoring Period.** A minimum time period of fifteen (15) minutes immediately prior to evidentiary breath alcohol testing. The monitoring period consists of a mandatory deprivation period and discretionary observation period. The observation period becomes mandatory if the numeric results from only a single breath sample are used. (3-23-22)

**184. Observation Period.** The time period running concurrently with the deprivation period in which the officer(s) should be observing the subject/individual, and any belch/burp/vomit/regurgitation should be noted by the operator(s). The officer(s) should be in a position, either physically or remotely, to be able to ~~use their available senses to~~ detect the aforementioned events. (3-23-22)( )

**195. Operator Certification.** ~~The condition of having satisfied the t~~ Training requirements for administering breath alcohol tests as established by the department. (3-23-22)( )

**2016. Operator.** An individual certified by the department as qualified ~~by~~ after completion of Breath Test Operator or Breath Test Specialist training to administer breath alcohol tests. (3-23-22)( )

**2417. Performance Verification.** ~~A verification of the a~~ Accuracy check of the breath testing instrument utilizing a performance verification standard. ~~Performance verification should be~~ reported to three (3) decimal places. ~~While ISPFS uses the term performance verification, manufacturers and others may use a term such as~~ Synonymous with terms "calibration check" or "simulator check." (3-23-22)( )

**2218. Performance Verification Standard.** An ethyl alcohol standard used for field performance verifications. The standard is provided or approved, or both, by the department. (3-23-22)

**2319. Proficiency Testing.** A periodic analysis ~~of blood, urine, or other liquid specimen(s) whose alcohol content is unknown to the testing laboratory,~~ to evaluate the capability of ~~that~~ a laboratory to perform accurate

analysis for alcohol concentration.

(3-23-22)( )

~~24.20. Quality Control. An analysis of referenced samples whose alcohol content is known, which is performed with each batch of blood, vitreous humor, urine or beverage analysis to ensure that the laboratory's determination of alcohol concentration is reproducible and accurate.~~

(3-23-22)( )

~~25. Urine Alcohol Analysis. An analysis of urine to determine the concentration of alcohol present.~~

(3-23-22)

21. Testing Sequence. A sequence of events as determined by the Idaho State Police Forensic Services, which may be directed by the instrument, the Operator, or both, and may consist of air blanks, performance verification, internal standard checks, and breath samples.

( )

011. – 012. (RESERVED)

### 013. REQUIREMENTS FOR LABORATORY ALCOHOL ANALYSIS.

**01. Laboratory.** Any laboratory desiring to perform urine alcohol, vitreous humor, blood alcohol, or beverage analysis shall meet the following standards: (3-23-22)

**a.** Prepare and maintain a written procedure governing its method of analysis, including guidelines for quality control and proficiency testing. A copy of the procedure shall be provided to ISPFS for initial approval. Whenever procedure, protocol, or method changes (however named) are adopted by a laboratory, a copy of the update with the changes clearly indicated shall be approved by ISPFS before implementation; (3-23-22)

**b.** Provide adequate facilities and space for the procedure used. The laboratory alcohol related functions shall be subject to an assessment by either an accrediting body or the department each calendar year, and the results from the annual audit shall be submitted to the department. The assessment shall be at the expense of the laboratory; (3-23-22)

**c.** Maintain specimens in a limited access and secure storage area prior to analysis. A chain of custody shall be maintained while the evidence is in the laboratory; (3-23-22)

**d.** All instrumentation, equipment, reagents and glassware necessary for the performance of the chosen procedure shall be on hand or readily available on the laboratory premises. Instrument maintenance documentation shall be available for review by the department; (3-23-22)

**e.** Participate in approved proficiency testing ~~and pass this proficiency testing~~ according to standards set by the department. Laboratories must ~~participate in~~ pass proficiency testing from a department approved provider at least once a calendar year. Approved providers include National Highway Traffic Safety Administration (NHTSA) and Collaborative Testing Services (CTS). Each test consists of at least four (4) blood samples spiked with an unknown concentration of ethyl alcohol, and possibly other volatiles, for qualitative determination. Participating laboratories ~~must obtain proficiency tests from approved providers and~~ are responsible for all costs associated with ~~obtaining and analyzing~~ such tests. Results from proficiency tests must be submitted by the due date to the test provider and ISPFS. Results not submitted to a test provider within the allowed time do not qualify as a proficiency test. An alcohol concentration range is determined from the target value and  $\pm 3.0$  standard deviations as provided by the proficiency test provider. Reported values must fall within this range. If a laboratory determines more than one (1) alcohol value for a given sample, the mean value of results will be submitted and evaluated. Upon satisfactory completion of an approved proficiency test, a certificate of approval will be issued by the department to the participating laboratory. Approval to perform legal blood alcohol determinations is continued until the results of the next proficiency test are reviewed and notification is sent to the respective laboratory by ISPFS. Failure to pass a proficiency test shall result in immediate suspension of testing by an analyst or laboratory in the form of a written inquiry from the department. The test is graded as unsuccessful when the mean results are outside the established tolerance range ~~established from the accepted mean values~~. The laboratory shall have thirty (30) calendar days to respond to the department inquiry. The department shall notify the laboratory within fourteen (14) calendar days regarding corrective action steps necessary to lift the testing suspension, or the department may issue a written revocation. The department shall not lift a proficiency testing related suspension or revocation until a successful



proficiency test has been completed by the individual analyst or laboratory. (3-23-22)( )

~~f. For a laboratory performing blood, urine, vitreous humor, or beverage analysis for alcohol, approval shall be~~ **Laboratory approval is** awarded to the laboratory ~~director~~ **manager** or ~~primary~~ analyst responsible for that laboratory ~~correct test performance~~. The responsibility for the correct performance of tests in that laboratory rests with that person; however, the duty of performing such tests may be delegated to any person designated by such ~~director or primary analyst~~. The department may ~~temporarily~~ suspend or ~~permanently~~ revoke ~~the approval of a laboratory or analyst if the listed~~ requirements are not met. The department will issue the suspension or revocation in writing to the laboratory ~~director or primary analyst responsible~~; (3-23-22)( )

**g02. Appeal.** *Reinstatement after revocation requires completed corrective action of any items listed on the revocation documentation issued by the department. Documentation of corrective actions taken to address the nonconformities shall be submitted to the department for review. Once the department is satisfied that the laboratory is in compliance with all requirements, the department will issue written approval for the resumption of testing by that laboratory or analyst. A laboratory may appeal a suspension or revocation to the Director of the department.* (3-23-22)( )

**023. Blood Collection.** *Blood collection shall be accomplished according to the following requirements:* (3-23-22)

~~a04. Blood s~~ **04. Blood s** ~~amples. s~~ **Shall be collected using sterile, dry syringes and hypodermic needles, or other equipment of equivalent sterility;** (3-23-22)( )

~~b.g. The skin at the area of~~ **area** shall be ~~cleansed thoroughly and~~ disinfected with an aqueous ~~solution of a~~ nonvolatile antiseptic. Alcohol or phenolic solutions shall not be used as a skin antiseptic; (3-23-22)( )

~~e.b. Blood specimens shall contain at least ten (10) milligrams of sodium fluoride per cubic centimeter of blood plus an~~ **appropriate** anticoagulant. (3-23-22)( )

**035. Blood Reported.** ~~The r~~ **Results** of analysis ~~on blood~~ for alcohol concentration shall be reported in units of grams of alcohol per one hundred (100) cubic centimeters of whole blood. (3-23-22)( )

**046. Urine Collection.** Urine samples shall be collected in clean, dry containers. (3-23-22)

**057. Urine Reported.** ~~The results of analysis on urine~~ **Results** for alcohol concentration shall be reported in ~~units of~~ grams of alcohol per sixty-seven (67) milliliters ~~of urine. Results of alcohol analysis of urine specimens shall be accompanied by a warning statement about the questionable value of urine alcohol results, with a warning about the questionable value of urine alcohol results.~~ (3-23-22)( )

**068. Records.** All records regarding proficiency tests, quality control and results shall be retained for three (3) years. (3-23-22)

#### 014. REQUIREMENTS FOR PERFORMING BREATH ALCOHOL TESTING.

**01. Instruments.** ~~Each breath testing i~~ **Instrument models incorporated by reference in Section.02.01 of this rule** shall be approved by the department ~~and be listed in the "Conforming Products List of Evidential Breath Measurement Devices" published in the Federal Register by the United States Department of Transportation as incorporated by reference in Section 002 of this rule. The department will maintain a list of benchtop and portable instruments approved for evidentiary testing use in Idaho. Each individual~~ breath testing instrument must be certified by the department. The department may **revoke instrument approval**; for cause, ~~remove a specific instrument by serial number from evidential testing and suspend or withdraw certification thereof.~~ (3-23-22)( )

**02. Report.** Each direct breath testing instrument shall report alcohol concentration as grams of alcohol per two hundred ten (210) liters of breath. (3-23-22)

**03. Administration.** ~~Breath tests shall be administered in conformity with standards established by the~~



~~department~~ Breath tests must be administered by a certified operator and follow department standards. Standards shall be developed for each type of breath testing instrument used in Idaho, and such standards shall be issued in the form of Idaho administrative rules, ISPFs analytical methods, and ISPFs standard operating procedures.

(3-23-22)(    )

~~a. The breath alcohol test must be administered by an operator (BTO or BTS) currently certified in the use of the instrument.~~

(3-23-22)

**ba.** Prior to administering the monitoring period, any foreign objects/materials which have the potential to enter the instrument/breath tube or may present a choking hazard (e.g. gum, chewing tobacco, food) should be removed.

(3-23-22)

**eb.** The operator shall administer a monitoring period prior to evidentiary testing.

(3-23-22)

**ec.** If mouth alcohol is suspected or indicated by the testing instrument, the operator shall ~~begin another fifteen (15) minute~~ restart another fifteen (15) minute monitoring period if repeating the testing sequence. If during the monitoring period the subject/individual vomits or regurgitates material from the stomach into the breath pathway, the monitoring period should start over. If there is doubt as to the events occurring during the monitoring period (~~e.g. silent burp, belch, vomit, regurgitation~~), the operator should evaluate the instrument results for any indication of mouth alcohol.

(3-23-22)(    )

**ed.** A complete breath alcohol test includes two (2) valid breath samples, preceded by air blanks, taken ~~during the testing procedure and preceded by air blanks. The breath samples performed with a portable breath testing instrument should be approximately at least~~ two (2) minutes apart ~~or more~~. If the subject/individual fails or refuses to provide two (2) adequate samples as requested by the operator, ~~the test result of a single adequate sample result~~ shall be considered a valid. ~~If a single test result is used, then test only if~~ the observation ~~criteria of the monitoring period (observation period) is mandatory~~ has been met. For hygienic reasons, the operator should use a new mouthpiece for each subject/individual tested.

(3-23-22)(    )

**fe.** ~~The operator has the discretion to end breath testing, repeat breath testing, or request a blood draw at any point during the testing process as the circumstances require (including but not limited to lack of sample correlation, lack of subject participation or cooperation, subject is incoherent or incapable of following instructions, subject incapacitation).~~ Operators may end testing, repeat testing, or request a blood draw as needed. If a subject/individual fails or refuses to provide adequate samples as requested by the operator, the results obtained are ~~still~~ considered valid, provided the failure to supply the ~~requested~~ samples was the fault of the subject/individual and not the operator.

(3-23-22)(    )

**gf.** A third Additional breath samples shall, when possible, be collected if the ~~first two (2)~~ results differ by more than 0.02 g/210L alcohol. Unless mouth alcohol is indicated or suspected, it is not necessary to repeat the monitoring period prior to obtaining ~~a third additional~~ breath samples.

(3-23-22)(    )

**hg.** ~~The results for~~ breath samples results should correlate within 0.02 g/210L alcohol to show consistent sample delivery, indicate the absence of RFI, and to indicate the absence of alcohol contamination in the subject/individual's breath pathway as a contributing factor to the breath results.

(3-23-22)(    )

**ih.** In the event of an instrument failure, the operator should attempt to utilize another instrument or have blood drawn.

(3-23-22)

**04. Training.** Each ~~individual~~ operator (~~BTO or BTS~~) shall ~~demonstrate sufficient training to operate the instrument correctly. This shall be accomplished by~~ successfully ~~completing complete~~ a training course approved by the department on each instrument model ~~utilized by the operator used~~. Operator certifications ~~issued after July 1, 2013~~ are valid for two (2) ~~calendar~~ years from the course completion date. The department may revoke ~~individual operator (BTO/BTS) certification for cause.~~

(3-23-22)(    )

**05. Performance Verification Checks.** Each ~~breath testing~~ instrument shall be checked for accuracy with an approved performance verification standard ~~approved by the department~~. Performance verification checks

shall be performed ~~and documented~~ according to a procedure established by the department ~~and be documented~~. The official time and date of the performance verification is the time and date recorded on the printout, or the time and date recorded in the log. (3-23-22)(\_\_\_\_)

a. A performance verification check shall occur within twenty-four (24) hours before or after an evidentiary test. ~~The benchtop instrument requires a performance verification check as part of the testing sequence. On the For~~ portable instruments, multiple breath alcohol tests may be covered by a single performance verification. (3-23-22)(\_\_\_\_)

b. A performance verification on a portable instrument consists of two (2) samples at either the 0.08 or 0.20 level. Both samples must be run with the same performance verification standard. Three (3) attempts at obtaining an acceptable performance verification are allowed. Troubleshooting measures may be employed during this process. If the ~~third performance~~ verifications fails, the instrument shall be taken out of service and not be returned to service until it has been calibrated and certified by ISPFs. (3-23-22)(\_\_\_\_)

c. A performance verification acquired during a breath testing sequence on an approved benchtop instrument consists of one (1) sample at either the 0.08 or 0.20 level. A performance verification acquired outside the breath testing sequence on an approved benchtop instrument consists of two (2) samples at either the 0.08 or 0.20 level. Three (3) attempts at obtaining an acceptable performance verification are allowed. Troubleshooting measures may be employed during this process. If the ~~third performance~~ verifications fails, the instrument must be taken out of service and not be returned to service until it has been calibrated and certified by ISPFs. (3-23-22)(\_\_\_\_)

d. Performance verification checks must be within +/- 10% of the ~~performance verification~~ standard's target value. (3-23-22)(\_\_\_\_)

e. A wet bath 0.08 ~~performance verification~~ standard should be replaced with fresh standard approximately every twenty-five (25) verifications or every calendar month, whichever comes first. ~~For a e~~ Closed loop, recirculating system (e.g. the Intox 5000 series), the 0.08 ~~performance verification~~ standard should be replaced with fresh standards approximately every one hundred (100) verifications or every calendar month, whichever comes first. (3-23-22)(\_\_\_\_)

f. ~~A w~~Wet bath 0.20 ~~performance verification~~ standards should be replaced with fresh standard approximately every twenty-five (25) verifications. (3-23-22)(\_\_\_\_)

g. Dry gas ~~performance verification~~ standards may be used continuously ~~without replacement~~ until the canister is spent or the expiration date is reached ~~expired~~. (3-23-22)(\_\_\_\_)

h. ~~Performance verification s~~Standards should not be used beyond the expiration date. (3-23-22)(\_\_\_\_)

i. If Section 18-8004C, Idaho Code, ~~(excessive alcohol concentration)~~ is applicable, ~~then~~ a 0.20 performance verification must be run and ~~results~~ documented once per calendar month. Failure to perform ~~a 0.20 performance verification this~~ will not invalidate any tests where Section 18-8004C, Idaho Code, is not applicable. A ~~performance verification with a 0.20 standard~~ performance verification does not need to be performed within twenty-four (24) hours of an evidentiary breath test in excess of 0.20 g/210L alcohol. (3-23-22)(\_\_\_\_)

j. ~~Temperature of the w~~Wet bath simulator ~~temperature~~ shall be between thirty-three point five degrees Celsius (33.5°C) and thirty-four point five degrees Celsius (34.5°C) ~~in order for the performance verification results to be for~~ valid results. (3-23-22)(\_\_\_\_)

k. An agency may run additional performance verification ~~standard~~ levels at their discretion. (3-23-22)(\_\_\_\_)

06. **Records.** Operators must document and retain test results (i.e. written log, printout, or electronic database). ~~All records regarding and maintenance and results shall be retained records~~ for three (3) years. ISPFs is not responsible for ~~storage of documentation not generated by ISPFs~~ storing non-ISPFs documentation. (3-23-22)(\_\_\_\_)

07. **Deficiencies.** Failure to meet ~~any of the conditions listed~~ in Sections 013 and 014. ~~Any laboratory or breath testing instrument may be disapproved for failure to meet one (1) or more of the requirements listed in Sections 013 and 014, and approval may be withheld until the deficiency is corrected.~~ lead to disapproval of any laboratory or breath testing instrument until corrected. (3-23-22)(    )

08. **Standards.** ~~Premixed alcohol simulator solutions shall~~ An approved standard shall be from ~~an approved vendor~~ a source, provider, or manufacturer of an approved standard and explicitly approved ~~in writing~~ by the department ~~before distribution within Idaho.~~ Dry gas s Standards from ISO ~~17025:2005~~ 17034 (or equivalent) certified providers are ~~explicitly approved by the department for use in Idaho~~ without department evaluation ~~by the department.~~ (3-23-22)(    )

09. **MIP/MIC** Minor in Possession or Minor in Consumption (MIP/MIC). ~~The p~~ Presence or absence of alcohol ~~is the determining factor in~~ determines the evidence in ~~an~~ MIP/MIC cases. The instrumentation used in obtaining the breath sample is often the same instrumentation utilized for acquiring DUI evidence. The different standard of evidence requires different standards for the procedure. The administration of a MIP/MIC breath test should follow section 14.03 with the following exceptions: (3-23-22)(    )

a. ~~Fifteen (15) minute monitoring period: The monitoring period is not required for the MIP/MIC procedure.~~ A fifteen (15) minute monitoring period is required before retesting if mouth alcohol is suspected. (3-23-22)(    )

b. ~~The breath alcohol test must be administered by an operator currently certified in the use of that instrument.~~ (3-23-22)

c. ~~The instrument used must be initially certified by ISPFS. The instrument only needs to be initially certified by ISPFS. Initial certification shows that the instrument responds to alcohols and not to acetone. The instrument does not need to be checked regularly or periodically with any of the 0.08 or 0.20 standard.~~ (3-23-22)(    )

d. ~~The officer should have the individual being tested remove all loose foreign material from their mouth before testing. False teeth, partial plates, or bridges installed or prescribed by a dentist or physician do not need to be removed to obtain a valid test. The officer may allow the individual to briefly rinse their mouth out with water prior to the breath testing. Any alcohol containing material left in the mouth during the entirety of the breath test sampling could contribute to the results in the breath testing sequence.~~ (3-23-22)(    )

e. ~~A complete breath alcohol test includes two (2) valid breath samples taken from the subject and preceded by an air blank. The breath samples do not need to be consecutive samples from the same subject. The individual breath samples should be approximately taken at least two (2) minutes apart or more. A deficient or insufficient sample does not automatically invalidate a test sample. The operator should use a new mouthpiece for each individual.~~ (3-23-22)(    )

f. ~~A third breath sample is required if the first two (2) results differ by more than 0.02 g/210L alcohol. In the event that all three (3) samples fall outside the 0.02 g/210L alcohol correlation, and testing indicates or the officer suspects mouth alcohol, they must administer a fifteen (15) minute monitoring period and then retest the subject. If mouth alcohol is not suspected or indicated by the test results, then the officer may retest the subject without administering a monitoring period.~~ (3-23-22)

g. ~~The operator should manually log test~~ document results and/or retain printouts for possible use in court. (3-23-22)(    )

h. ~~The instrument must not be in passive mode for the testing of an evidentiary subjects for evidential purposes but should only be used for testing liquids for the presence of alcohol.~~ (3-23-22)(    )

i. ~~The passive mode of testing using the Lifeloc FC20 or ASH should be used for testing liquids or containers of liquid for the presence or absence of alcohol.~~ (3-23-22)(    )

015. -- 999. (RESERVED)

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

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

**DOCKET NO. 11-1101-2401**

**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1, 2025, in the year of the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

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

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

When the rule was changed in 2021, it included adding the additional language to Subsection 11.11.01.055.03 address illegally purchasing or illegally possessing marijuana as disqualifying conduct. As published, there were no commas added to provide the context and meaning as intended by the POST Council in making the change. The intent was to disqualify an applicant who has used, illegally purchased, or illegally possessed marijuana within one year of application. Without the commas the meaning is changed to only preclude using illegally purchased or illegally possessed marijuana. This is counter to the intent of the POST Council in adding the language to address illegally purchasing or illegally possessing marijuana, in addition to its use within a year of application. The addition of the two commas corrects this error.

There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 03, 2024, Idaho Administrative Bulletin, [Vol. 24-7, pages 74-76](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: N/A

**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: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Director Brad Johnson, Idaho Peace Officer Standards and Training, (208) 884-7251, [brad.johnson@post.idaho.gov](mailto:brad.johnson@post.idaho.gov).

DATED this 23rd day of August, 2024.

Colonel Bill Gardiner, Director  
Idaho State Police  
700 S Stratford Drive  
Meridian ID 83642  
(208) 884-7004

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

**EFFECTIVE DATE:** The effective date of the temporary rule is June 7, 2024.

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 17, 2024.

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

When the rule was changed in 2021, it included adding the additional language to Subsection 11.11.01.055.03 addressing illegally purchasing or illegally possessing marijuana as disqualifying conduct. As published, there were no commas added to provide the context and meaning as intended by the POST Council in making the change. The intent was to disqualify an applicant who has used, illegally purchased, or illegally possessed marijuana within one year of application. Without the commas the meaning is changed to only preclude using illegally purchased or illegally possessed marijuana. This is counter to the intent of the POST Council in adding the language to address illegally purchasing or illegally possessing marijuana, in addition to its use within a year of application. The addition of the two commas corrects this error.

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

This temporary rule change is needed to protect the public health, safety, or welfare because as currently written, it allows applicants who have used marijuana within one year of application to qualify for certification if such use was other than marijuana that was illegally purchased or illegally possessed. This is contrary to disqualifying an applicant for any marijuana use within one year of application, as has been in the rule for many years and is still intended by the POST Council.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: Not applicable.

**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: Not applicable.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a minor change to correct a simple oversight and is not considered substantive.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Brad Johnson, 208-884-7251.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 24, 2024.

DATED this 6th day of June, 2024

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1101-2401**

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

**055. INELIGIBILITY BASED UPON PAST CONDUCT.**

An applicant is ineligible to attend a basic training academy and for certification under the following circumstances. (3-31-22)

- 01. Criminal Conviction.** An applicant is ineligible if he was convicted of: (3-31-22)
- a.** A felony, if the applicant was eighteen (18) years old or older at the time of conviction; (3-31-22)
- b.** A misdemeanor Driving Under the Influence offense(s) within two (2) years immediately preceding application, or two or more (2) misdemeanor Driving Under the Influence offenses within five (5) years immediately preceding application; (3-31-22)
- c.** A misdemeanor crime involving domestic violence, if the relevant law enforcement discipline requires the applicant to possess a firearm in the course of their duty, or if the conviction occurred within 5 years immediately preceding application; (3-31-22)
- d.** A misdemeanor crime of deceit, as defined in these rules, or a misdemeanor sex offense, if the conviction occurred within five (5) years immediately preceding application; (3-31-22)
- e.** A misdemeanor drug-related offense, if the conviction occurred within one (1) year immediately preceding application. (3-31-22)
- 02. Driver's License.** An applicant is ineligible if he does not possess a valid driving license from the applicant's state of residence and is unable to qualify for an Idaho driver's license, except for the following disciplines: (3-31-22)
- a.** Correction Officers; (3-31-22)
- b.** Emergency Communications Officers. (3-31-22)
- 03. Marijuana.** An applicant is ineligible if he used, illegally purchased, or illegally possessed marijuana, cannabis, hashish, hash oil, or THC in synthetic and natural forms, whether charged or not, if such use occurred: ~~(3-31-22)~~ ( )
- a.** Within one (1) year immediately preceding application; (3-31-22)
- b.** While employed as a law enforcement officer, in a prosecutorial position, or in a position of public safety, regardless of when the use occurred. (3-31-22)
- 04. Violations of Idaho Controlled Substances Act.** An applicant is ineligible if he, while eighteen (18) years old or older, violated any provision of the Idaho Uniform Controlled Substances Act, Section 37-2701 et seq., Idaho Code, whether charged or not, that constitutes a felony, or of a comparable statute of another state or country, if the violation occurred: (3-31-22)

- a.** Within three (3) years immediately preceding application; (3-31-22)
- b.** While employed as a law enforcement officer, in a prosecutorial position, or in a position of public safety, regardless of when the illegal use occurred. (3-31-22)
- 05. Use of Prescription or Other Legally Obtainable Controlled Substance.** An applicant is ineligible if he unlawfully used any prescription drug or a legally obtainable controlled substance within the past three (3) years, unless: (3-31-22)
- a.** The applicant was under the age of eighteen (18) at the time of using the controlled substance; or (3-31-22)
- b.** An immediate, pressing, or emergency medical circumstance existed to justify the use of a prescription controlled substance not specifically prescribed to the person. (3-31-22)
- 06. Military Discharge.** An applicant is ineligible if he received a “dismissal,” “bad conduct discharge” (BCD), “dishonorable discharge” (DD), or administrative discharge of other than honorable (OTH) from military service. (3-31-22)
- 07. Decertification or Denial of Certification.** An applicant is ineligible if he has been denied certification; his certification is suspended in another state or jurisdiction, denied, revoked or applicant is not able to obtain certification in another state or jurisdiction; or his basic certificate has been revoked by the Council in this state or the responsible licensing agency in any other issuing jurisdiction, unless the denial or revocation has been rescinded by the Council or by the responsible licensing agency of the issuing jurisdiction. (3-31-22)



**IDAPA 50 – COMMISSION OF PARDONS AND PAROLE**  
**50.01.01 – RULES OF THE COMMISSION OF PARDONS AND PAROLE**  
**DOCKET NO. 50-0101-2401**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-Eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 20-1004(3), Idaho Code.

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

This rule is being adopted to address the enhancements created by House Bill 600 (passed during the 2023-2024 legislative session) regarding felony offenses of Idaho Code Section 18-918 *Domestic Violence* and Idaho Code Section 18-923 *Attempted Strangulation*.

There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 2, 2024, Idaho Administrative Bulletin, [Vol. 24-10, pages 467-469](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

There are no fees associated with the rule.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There are no impacts to the State General Fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance regarding technical questions concerning this pending rule, contact:

Mary Schoeler  
208.334.2520

DATED this 28th day of October, 2024.

Christine Starr  
Executive Director  
Commission of Pardons and Parole  
3056 Elder St.  
Boise, ID 83705  
Phone (208) 334-2520  
Fax (208) 334-3501

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2024.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 20-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2024.

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

This rule is being adopted due to the change in law and the passing of H.B. 600. This changes the time frame in which a person convicted of Assault and Battery and Attempted Strangulation can apply for a pardon.

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

This rule is being adopted due to the change in the law during the 2023-2024 legislative session.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There will be no negative impact on the state General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the change in the law.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and 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 on or before October 23, 2024.

DATED this 1st day of July, 2024.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 50-0101-2401**

**50.01.01 – RULES OF THE COMMISSION OF PARDONS AND PAROLE**

**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. (7-1-24)

**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. (7-1-24)

**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. (7-1-24)

**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. (7-1-24)

**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, felony Domestic Violence, pursuant to Section 18-918, Idaho Code, Attempted Strangulation pursuant to Section 18-923, 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. (7-1-24)(      )

**d.** A pardon application will not be considered while an offender is incarcerated or on supervision. (7-1-24)

**e.** The Commission will determine whether a hearing will be granted and the applicant will be notified of the decision in writing. (7-1-24)

**02. Application.** A pardon application can be obtained from the Commission office or on the Commission website. (7-1-24)

**a.** The application must be completed and returned to the Commission office. (7-1-24)

**i.** The completed application must include the reasons why the pardon is requested. (7-1-24)

**ii.** The applicant may attach letters of recommendation or other documents to support the request. (7-1-24)

**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. (7-1-24)

**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. (7-1-24)

**v.** An application may not be considered if there is significant law enforcement contact since sentence or discharge. (7-1-24)

**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: (7-1-24)

i. A criminal records check will be conducted to include any law enforcement contact since the release from supervision or incarceration. (7-1-24)

ii. The applicant's employment history since discharge from supervision or incarceration. (7-1-24)

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. (7-1-24)

iv. The applicant's employment and education status, including any professional or vocational achievements, training, and any additional information as deemed necessary or appropriate. (7-1-24)

v. Confirmation that all restitution and fines as ordered by the sentencing court are paid. (7-1-24)

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. (7-1-24)

**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. (7-1-24)

**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. (7-1-24)

**b.** A copy of the publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. (7-1-24)

**c.** Victims of the offender will be notified in writing when a hearing is scheduled. (7-1-24)

**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. (7-1-24)

i. The Commission shall make such appearance mandatory, or may deny the pardon. (7-1-24)

**e.** The applicant will be given written notice of the decision and such notice will be sent to the last known address. (7-1-24)

**f.** The decision and supporting documents regarding a pardon will be filed with the Secretary of State consistent with Section 20-1018, Idaho Code. (7-1-24)