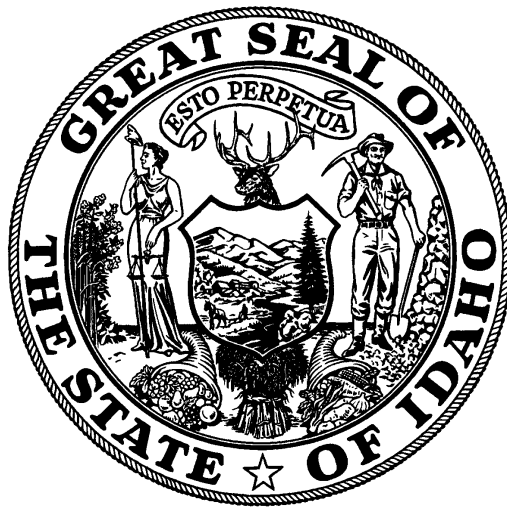


TEMPORARY RULES COMMITTEE RULES REVIEW BOOK

**Submitted for Review Before
Senate Judiciary & Rules Committee
68th Idaho Legislature
First Regular Session – 2025**



Prepared by:

*Office of the Administrative Rules Coordinator
Department of Administration*

January 2025

SENATE JUDICIARY & RULES COMMITTEE

ADMINISTRATIVE RULES REVIEW

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**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 TEMPORARY RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY 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

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

FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 11-1101-2401

(If extended, this temporary rule will be replaced by the pending rule promulgated under this same docket number on July 1, 2025.)

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)~~(6-7-24)T
- 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 21 – DIVISION OF VETERANS SERVICES
21.01.04 – RULES GOVERNING IDAHO STATE VETERANS CEMETERIES
DOCKET NO. 21-0104-2401
NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 10, 2024.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section(s) 65-108 and 65-202, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

This Temporary Rule will expand eligibility for interment at Idaho State Veterans Cemeteries to non-retiree Guard and Reservists who completed an enlistment of service honorably but are otherwise ineligible because they were never activated federally or did not complete enough service time to retire out of the Guard or Reserves.

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

The rule complies with a new federal law, PUBLIC LAW 117-103 THE CONSOLIDATED APPROPRIATIONS ACT FOR FISCAL YEAR 2022 (Burial Equity for Guards and Reserves Act) which expands eligibility for State Veterans Cemeteries to non-military retiree Guard and Reservists without risking eligibility for VA Construction Grants for State Veterans Cemeteries.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

This law expands eligibility for burial National Guard and Reservists but does not expand eligibility for VA burial benefits. These newly eligible individuals who wish to be buried in the State Veterans Cemetery will have to cover the cost (equivalent to the VA reimbursement/plot allowance benefit) themselves.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Kevin Wallior, 208-780-1308.

DATED this 24th day of April 2024.

Kevin R. Wallior
Management Assistant
Idaho Division of Veterans Services
351 N. Collins Road
Boise, ID 83702
Ph: 208-780-1308; fax: 208-780-1301
Email: kevin.wallior@veterans.idaho.gov

FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 21-0104-2401

(If extended, this temporary rule will be replaced by the pending rule promulgated under docket number 21-0104-2402 on July 1, 2025.)

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. ~~(3-23-22)~~ **(4-10-24)T**

(BREAK IN CONTINUITY OF SECTIONS)

~~002. INCORPORATION BY REFERENCE.~~

~~01. Incorporated Documents. These rules incorporate by reference the following: (3-23-22)~~

~~a. The full text of 38 CFR 38.620, dated July 1, 2001. (3-23-22)~~

~~b. 38 U.S.C.A. Section 2402, (2004 and Supp. 2004). (3-23-22)~~

~~c. 38 CFR 39.5(d), dated July 1, 2008. (3-23-22)~~

~~02. Document Availability. Copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-0001. (3-23-22)~~

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

010. DEFINITIONS.

01. Administrator. The Administrator of the Idaho Division of Veterans Services or his designee. (3-23-22)

02. Applicant. The individual requesting interment, disinterment or reinterment of a qualified person. (3-23-22)

03. Armed Forces Member. A member or former member of the armed forces of the United States, the reserve component of the armed forces of the United States, the reserve officers training corps of the United States, or the armed forces of an ally of the United States who is eligible for burial in national cemeteries pursuant to 38 CFR 38.620 and 38 U.S.C. Section 2402. (3-23-22)

04. Cemetery. Idaho State Veterans Cemeteries authorized pursuant to Section 65-108, Idaho Code. (3-23-22)

05. Committal Service. A gathering of one (1) or more individuals prior to interment or reinterment. (3-23-22)

06. Cremains. Cremated human remains. (3-23-22)

- ~~07.~~ ~~**Designated Interpretive Trail.**~~ ~~A public recreational trail designated by a sign or marker.~~ ~~(3-23-22)~~
- ~~087.~~ **Disinterment.** The removal of human remains from their place of interment. (3-23-22)
- ~~098.~~ **Division.** The Idaho Division of Veterans Services. (3-23-22)
- ~~409.~~ **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. (3-23-22)
- ~~140.~~ **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)); ~~or a member or former member of the reserve component of the armed forces of the United States; the reserve officers training corps of the United States; or members of the Army National Guard or Air National Guard who completed at least one (1) term of enlistment, or officers who completed at least four (4) years of service.~~ ~~(3-23-22)~~(4-10-24)T
- ~~121.~~ **Reinterment.** The interment of previously interred human remains. (3-23-22)
- ~~132.~~ **Unremarried Spouse.** An individual who is the surviving spouse of a deceased armed forces member and who has not remarried. (3-23-22)
- ~~143.~~ **USDVA.** The United States Department of Veterans Affairs. (3-23-22)

(BREAK IN CONTINUITY OF SECTIONS)

- 024. FEES FOR INTERMENT, DISINTERMENT, REINTERMENT, AND MEMORIAL.**
The Administrator shall charge the following fees: (3-23-22)
- 01. Interment.** (3-23-22)
- 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 persons eligible for USDVA reimbursement.~~ ~~(3-23-22)~~(4-10-24)T
- b.** ~~In An~~ ~~addition al~~ ~~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 a casket burial at~~ an interment site not containing a pre-placed crypt. ~~(3-23-22)~~(4-10-24)T
- c.** ~~For interments ineligible for a USDVA provided marker, the Administrator shall charge:~~ ~~(4-10-24)T~~
- i.** ~~\$400 for the cost of a Casket/Upright Marker; or~~ ~~(4-10-24)T~~
- ii.** ~~\$250 for all other Interment/Memorial Marker types.~~ ~~(4-10-24)T~~
- 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. (3-23-22)
- 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. (3-23-22)

04. Memorial Marker. A fee of two hundred fifty dollars (~~\$200~~250) to order, install, and provide perpetual care of a furnished flush granite marker to commemorate ~~an eligible deceased Veteran~~ a qualified person whose remains have not been recovered or identified, were buried at sea, donated to science, or cremated and the remains scattered. ~~(3-23-22)~~(4-10-24)T

(BREAK IN CONTINUITY OF SECTIONS)

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. (3-23-22)

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. (3-23-22)

03. Grave Markers. Grave markers issued by the USDVA are approved as follows: (3-23-22)

a. Graves – Upright granite markers. (3-23-22)

b. Interments in an area reserved for the interment of cremains in the soil – Flush granite markers. (3-23-22)

c. Interment of cremains in a structure reserved for the interment of cremains – Granite niche markers. (3-23-22)

~~**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. (3-23-22)~~

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 TEMPORARY RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY 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(s) 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.

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

FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 50-0101-2401

(If extended, this temporary rule will be replaced by the pending rule promulgated under this same docket number on July 1, 2025.)

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)(7-1-24)T

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)