

Dear Senators LODGE, Vick, Bock, and  
Representatives WILLS, Luker, Burgoyne:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the  
Idaho State Police - Peace Officer Standards and Training Council:

IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council (Docket No.  
11-1101-1401) - Temporary and Proposed Rule;

IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council (Docket No.  
11-1101-1402) - Proposed Rule.

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 08/22/2014. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 09/19/2014.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the  
memorandum attached below.



Jeff Youtz  
Director

# Legislative Services Office Idaho State Legislature

*Serving Idaho's Citizen Legislature*

## MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Judiciary & Rules Committee and the House Judiciary, Rules & Administration Committee

**FROM:** Principal Legislative Research Analyst - Brooke Brouman

**DATE:** August 05, 2014

**SUBJECT:** Idaho State Police - Peace Officer Standards and Training Council

IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council (Docket No. 11-1101-1401) - Temporary and Proposed Rule

IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council (Docket No. 11-1101-1402) - Proposed Rule

**(1) IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council (Docket No. 11-1101-1401) - Temporary and Proposed Rule:**

The Idaho State Police submits notice of temporary and proposed rulemaking relating to Rules of the Idaho Peace Officer Standards and Training Council. The temporary and proposed rule makes the following changes:

- (a) Requires misdemeanor probation officers and Idaho Department of Juvenile Corrections direct care staff to meet certain minimum standards for employment;
- (b) Requires that in situations where the POST Division Administrator may grant a waiver, but chooses not to, he must refer the application to the POST Council for its consideration;
- (c) Removes a citation to Black's Law Dictionary;
- (d) Specifies that an employment applicant may be rejected who has committed any unlawful act involving moral turpitude and removes examples of such acts; and
- (e) Makes it permissive, rather than mandatory, that an employment applicant be rejected who has unlawfully used any prescription drug or a legally obtainable controlled substance within the past three years.

The Council states that there is no negative fiscal impact to the state general fund as a result of this rule-making. The Council further states that negotiated rulemaking was not conducted because the rule is temporary, the rule is simple in nature and representatives of the affected interests were involved in the drafting and approval of the rule.

The Council's proposed rule is authorized pursuant to Section 19-5107, Idaho Code.

Mike Nugent, Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

**(2) IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council (Docket No. 11-1101-1402) - Proposed Rule:**

The Idaho State Police submits notice of proposed rulemaking relating to Rules of the Idaho Peace Officer Standards and Training Council. Specifically, the proposed rule adds a POST-certified instructor renewal requirement of eight hours of continuing instructor training every two years for instructors of topics related to defensive tactics, firearms and emergency vehicle operations.

The Council states that there is no negative fiscal impact to the state general fund as a result of this rulemaking. The Council further states that negotiated rulemaking was not conducted because the rule is simple in nature and representatives of the affected interests were involved in the drafting and approval of the rule.

The Council's proposed rule is authorized pursuant to Section 19-5107, Idaho Code.

cc: Idaho State Police - Idaho State Police - POST  
Amy Jordan

## IDAPA 11 - IDAHO STATE POLICE

### 11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

#### DOCKET NO. 11-1101-1401

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is June 5, 2014.

**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 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 August 20, 2014.

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:

The proposed rulemaking updates the list of disciplines trained and certified by POST that must meet the minimum standards for employment; adds language to clarify that the minimum standards for employment that may be waived by the POST Division Administrator shall either be waived by him or referred to the POST Council for consideration; removes a reference to Black's Law Dictionary; and clarifies provisions in reference to moral turpitude and drug use.

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

During the 2014 session, the Legislature approved POST Rule Docket 11-1101-1301 on the condition that a temporary rulemaking be submitted making slight modifications.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: NA

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is temporary, the rule is simple in nature, and representatives of the affected interests were involved in the drafting and approval of the rule.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Rory Olsen at (208) 884-7256.

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 August 27, 2014.

DATED this 9th day of July, 2014.

Kevin Johnson  
Interim POST Division Administrator  
Idaho State Police/Peace Officer Standards & Training  
700 S. Stratford Dr.  
Meridian, ID 83642  
Phone (208) 884-7251 / Fax (208) 884-7295

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 11-1101-1401  
(Only those Sections being amended are shown.)**

**050. MINIMUM STANDARDS FOR EMPLOYMENT.**

Every peace, county detention, juvenile detention, misdemeanor probation, and juvenile probation officer ~~shall~~ and Idaho Department of Juvenile Corrections direct care staff must meet the requirements in Sections 050 through 064~~5~~. In situations where the POST Division Administrator has the authority to grant a waiver, but chooses not to, he must refer the application to the POST Council for consideration. ~~(4-2-08)~~(6-5-14)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**054. CHARACTER.**

**01. Moral Turpitude.** The POST Council may take into consideration the commission of any act or offense involving moral turpitude to ensure an applicant is of good moral character and warrants the public trust. "Moral turpitude" is conduct that is contrary to justice, honesty, or morality. ~~BLACK'S LAW DICTIONARY 1030 (8th ed. 2004).~~ The purpose of this requirement is to prohibit persons who engage in dishonest, unprofessional, unethical, or immoral conduct from becoming law enforcement officers, and to protect against acts or conduct that might endanger the safety and welfare of the public. ~~(3-20-14)~~(6-5-14)T

**02. Applicant May Be Rejected.** An applicant may be rejected who has committed any unlawful act involving moral turpitude, even though the applicant has never been charged by a law enforcement agency for such act. ~~Such an act can include, but is not limited to, an act involving fraud, larceny, or the intent to harm persons. Such an act can also encompass certain sexual acts or sex-related acts, such as rape, sexual assault, lewd conduct with a child, sexual abuse of a child or vulnerable adult, child pornography, bestiality, video voyeurism, and prostitution.~~ ~~(3-20-14)~~(6-5-14)T

**03. Applicant May Be Accepted.** If an applicant committed any unlawful act involving moral turpitude, the applicant may be accepted upon approval of the POST Division Administrator, provided the applicant's agency head, with knowledge of the facts and circumstances concerning the act, recommends approval. ~~The POST Division Administrator shall have the discretion to refer the application to the POST Council.~~ ~~(3-20-14)~~(6-5-14)T

**055. DRUG USE.**

- 01. Marijuana.** An applicant ~~shall~~ must be rejected who has used marijuana: (3-20-14)
- a.** Within the past three (3) years; (3-20-14)
  - 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; or (3-20-14)
  - c.** On a regular, confirmed basis within the past five (5) years. (3-20-14)

d. This prohibition includes use of cannabis, hashish, hash oil, and THC in both synthetic and natural forms. ~~(3-20-14)~~(6-5-14)T

**02. Other Controlled Substances.** An applicant shall must be rejected who has illegally used any Schedule I through Schedule VI controlled substance, as defined in Sections 37-2705 through 37-2713A, Idaho Code, excluding marijuana: ~~(3-20-14)~~(6-5-14)T

a. Within the past five (5) years; (3-20-14)

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; or (3-20-14)

c. On more than a minimal and experimental basis during the applicant's lifetime. (3-20-14)

**03. Prescription Drugs.** An applicant shall may be rejected who has unlawfully used any prescription drug or a legally obtainable controlled substance in a manner for which it was not intended within the past three (3) years. ~~(3-20-14)~~(6-5-14)T

**04. Drug Trafficking, Manufacturing, and Related Offenses.** Subject to the rules above regarding use of controlled substances, an applicant shall must be rejected who has violated any provision of: ~~(3-20-14)~~(6-5-14)T

a. The Idaho Uniform Controlled Substances Act, Section 37-2701 et seq., Idaho Code, including, but not limited to, the illegal sale or manufacture of a controlled substance or conspiring to illegally sell or manufacture a controlled substance; or (3-20-14)

b. A comparable statute of another state or country. (3-20-14)

c. Provided, however, that the POST Division Administrator may waive any misdemeanor conviction for violation of the Idaho Uniform Controlled Substances Act. ~~When considering whether to grant such a waiver, the POST Division Administrator shall have the discretion to refer the application to the POST Council.~~ ~~(3-20-14)~~(6-5-14)T

**05. Juvenile Drug Offense Convictions.** Any misdemeanor conviction of a drug offense prosecuted pursuant to Title 18, Chapter 15, Idaho Code, or a comparable statute of another state or country, shall not be a basis for rejection of an applicant. However, an applicant may be rejected who has been convicted of a felony drug offense prosecuted pursuant to Title 18, Chapter 15, Idaho Code. If an applicant has been convicted of such a felony drug offense, the applicant may be accepted upon approval of the POST Division Administrator, provided the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. ~~The POST Division Administrator shall have the discretion to refer the application to the POST Council.~~ ~~(3-20-14)~~(6-5-14)T

## IDAPA 11 - IDAHO STATE POLICE

### 11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-1402

#### NOTICE OF RULEMAKING - 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 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 August 20, 2014.

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 rulemaking establishes a requirement for POST-certified instructors of Defensive Tactics, Firearms, and Emergency Vehicle Operations to update their training to remain current in their field of expertise by completing eight (8) hours of continuing instructor training every two years on use-of-force law, liability, and other instructor training specific to their topic area.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: NA

**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 resulting from this rulemaking: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature and representatives of the affected interests were involved in the drafting and approval of the rule.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Rory Olsen at (208) 884-7256.

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 August 27, 2014.

DATED this 10th day of July, 2014.

Kevin Johnson  
Interim POST Division Administrator  
Idaho State Police/Peace Officer Standards & Training  
700 S. Stratford Dr.  
Meridian, ID 83642  
Phone (208) 884-7251  
Fax (208) 884-7295

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1101-1402  
(Only those Sections being amended are shown.)

256. RENEWAL.

**01. Notification.** At the end of the certification period, the POST Council ~~shall~~ **will** send notification to the instructor, provided the instructor still meets the qualifications for instructor certification. ~~(4-2-03)~~( )

**02. Requirements.** To renew the certification, the instructor ~~shall~~ **must** submit the following to POST Council: ~~(4-2-03)~~( )

**a.** A teaching log indicating the instruction of at least one (1) class during the last certification period; (4-2-03)

**b.** An updated lesson plan, if any changes have been made since it was last submitted; and (4-2-03)

**c.** A firearms qualification score sheet witnessed by a current POST-certified firearms instructor other than the renewing instructor. The qualification course ~~shall~~ **must** be the POST Council-approved course pertinent to the topic the instructor is certified to teach. This requirement applies only to POST-certified firearms instructors who are renewing their firearms instructor certification. ~~(4-7-11)~~( )

**d.** Instructors ~~shall~~ **must** meet recertification requirements in compliance with Council and applicable industry standards. ~~(4-7-11)~~( )

**e.** In addition to the above subsections, instructors of topics related to Defensive Tactics, Firearms, and Emergency Vehicle Operations must complete a minimum of eight (8) hours of continuing instructor training every two (2) years, to include use of force law, liability, and further instructor training specific to the knowledge and skills to teach in the certified instructional topic area. ( )

**ef.** Conducted Energy Device instructors ~~shall~~ **must** submit proof of successful completion of the manufacturer's recertification requirements for each Conducted Energy Device they are POST-certified to instruct. ~~(4-7-11)~~( )