

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:

IDAPA 11.03.01 - Rules Governing Alcohol Testing - Temporary and Proposed Rule (Docket No. 11-0301-1401);

IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council - Proposed Rule (Docket No. 11-1101-1403);

IDAPA 11.11.04 - Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers - Proposed Rule (Docket No. 11-1104-1401).

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 10/20/2014. 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 11/18/2014.

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.



Eric Milstead
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: Senior Legislative Research Analyst - Ryan Bush

DATE: September 30, 2014

SUBJECT: Idaho State Police

IDAPA 11.03.01 - Rules Governing Alcohol Testing - Temporary and Proposed Rule (Docket No. 11-0301-1401)

IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council - Proposed Rule (Docket No. 11-1101-1403)

IDAPA 11.11.04 - Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers - Proposed Rule (Docket No. 11-1104-1401)

(1) IDAPA 11.03.01 - Rules Governing Alcohol Testing - Temporary and Proposed Rule (Docket No. 11-0301-1401)

ISP Forensic Services (ISPFS) submits notice of temporary and proposed rulemaking at IDAPA 11.03.01 - Rules Governing Alcohol Testing. ISPFS states that this rule adds current standard operating procedures published by ISPFS for alcohol analysis and breath testing to administrative rule. These rules were previously part of standard operating procedure documents published by ISPFS. Specifically, this rulemaking does the following:

- (1) Defines terms;
- (2) Provides requirements for laboratory alcohol analysis and breath alcohol instrument training;
- (3) Provides rules for instrument performance verification and calibration;
- (4) Outlines operational standards and approval standards for alcohol laboratories;
- (5) Provides the requirements for performing blood alcohol testing including, but not limited to, who shall administer a test, procedures prior to and during administration of a test, standards for correlation between breath samples and a provision for instrument failure; and
- (6) Details the methods for testing in minor in possession and minor in consumption cases.

ISPFSS states that a temporary rule is necessary due to ongoing criminal cases and appeals in the Idaho judicial system to suppress blood alcohol results based on having the rules in the standard operating procedure documents rather than administrative rule. There is no fiscal impact associated with this rulemaking.

The proposed rule appears to be within the statutory authority granted to ISP in Section 67-2901, Idaho Code.

(2) IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council - Proposed Rule (Docket No. 11-1101-1403)

The Idaho State Police submits notice of proposed rulemaking at IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council (POST). This rulemaking does the following: 1) provides for home schooling and foreign education as acceptable education for an applicant; 2) provides for what documentation is required for proof of education; 3) leaves medical standards up to the employing agency; and 4) provides that applicants must be physically capable of passing all tasks and tests while attending a POST academy. ISP states that language was also added to reflect all of the different disciplines trained by POST.

ISP states that negotiated rulemaking was not conducted because the rule is simple in nature and affected parties were involved in the drafting of the rule. There is no fiscal impact associated with this rulemaking.

The proposed rule appears to be within the statutory authority granted to ISP in Section 19-5107, Idaho Code.

(3) IDAPA 11.11.04 - Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers - Proposed Rule (Docket No. 11-1104-1401)

The Idaho State Police submits notice of proposed rulemaking at IDAPA 11.11.04 - Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers. This rulemaking removes all language regarding standards for employment for correction officers and adult probation and parole officers in the areas of education, physical/medical and mental so that the standards now incorporate those in the Minimum Standards for Employment listed in 11.11.01.

ISP states that negotiated rulemaking was not conducted because the rule is simple in nature and affected parties were involved in the drafting of the rule. There is no fiscal impact associated with this rulemaking.

The proposed rule appears to be within the statutory authority granted to ISP in Section 19-5107, Idaho Code.

cc: Idaho State Police - Idaho State Police - POST
Teresa Baker

**IDAPA 11 - IDAHO STATE POLICE
ISP FORENSIC SERVICES**

11.03.01 - RULES GOVERNING ALCOHOL TESTING

DOCKET NO. 11-0301-1401

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 2, 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 67-2901, 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 15, 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:

This rule adds current standard operating procedures published by Idaho State Police Forensic Services (ISPFS) for alcohol analysis and breath testing to administrative rule. These rules have previously been part of the standard operating procedure documents published by ISPFS for use in court testimony.

The following procedures will be added to administrative rule:

- Breath alcohol instrument training requirements for operators and specialists;
- Breath alcohol instrument performance verification and calibration requirements and rules;
- Breath alcohol testing requirements and procedures;
- Alcohol laboratory approval and operational standards;
- Minor in possession/minor in consumption (MIP/MIC) testing methods; and
- Passive testing procedures.

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:

The need for the temporary rule change is due to ongoing criminal cases and appeals in the Idaho judicial system to suppress blood alcohol results based on the current process of having the rules governing breath alcohol testing in ISP Forensic Services' Standard Operating Procedure (SOP) rather than administrative rule. If the breath alcohol results are suppressed by the courts because of the current wording, DUI cases with breath test results would not be able to be prosecuted in Idaho. Not prosecuting DUI cases presents a significant public safety threat.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

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 there is no change to the process for alcohol testing, the change is merely adding the current standard operation procedure to administrative 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 Matthew Gamette, Director of Forensic

Services at (208) 884-7217.

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 22, 2014.

DATED this 29th Day of August, 2014.

Colonel Ralph W. Powell, Director
Idaho State Police
700 S. Stratford Drive
Meridian, ID 83642
(208) 884-7003 / (208) 884-7090

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 11-0301-1401
(Only those Sections being amended are shown.)**

010. DEFINITIONS AND ABBREVIATIONS.

01. Alcohol. "Alcohol" shall mean the chemical compounds of ethyl alcohol, methyl alcohol, or isopropyl alcohol. ~~(7-1-93)~~(9-2-14)T

02. Approved Vendor. "Approved vendor" shall mean a source/provider/manufacturer of an approved standard. (9-2-14)T

023. Blood Alcohol Analysis. "Blood alcohol analysis" shall mean an analysis of blood to determine the concentration of alcohol present. (7-1-93)

034. Breath Alcohol Analysis. "Breath alcohol analysis" shall mean an analysis of breath to determine the concentration of alcohol present. (7-1-93)

05. Breath Alcohol Test. "Breath alcohol test" shall mean a breath sample or series of separate breath samples provided during a breath testing sequence. (9-2-14)T

06. Breath Alcohol Testing Sequence. "Breath alcohol testing sequence" shall mean 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. (9-2-14)T

07. Breath Testing Certification Class. "Breath testing certification class" shall mean a department approved training class for prospective or uncertified breath alcohol Operators/Breath Testing Specialists. (9-2-14)T

08. Breath Testing Specialist (BTS). "Breath Testing Specialist" shall mean 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. (9-2-14)T

09. Calibration. "Calibration" shall mean 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. (9-2-14)T

10. Certificate of Analysis. “Certificate of analysis” shall mean 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 vendor and are traceable to N.I.S.T. standards. (9-2-14)T

11. Certificate of Instrument Calibration. “Certificate of instrument calibration” shall mean 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. (9-2-14)T

12. Changeover Class. “Changeover class” shall mean a training class for currently certified Operators during which the Operator is taught theory, operation, and proper testing procedure for a new make or model of instrument being adopted by their agency. Breath Testing Specialists complete BTS training that qualifies them to perform BTS duties related to the new make or model instrument. (9-2-14)T

0413. Department. “Department” shall mean the Idaho State Police. (7-1-93)

14. Evidentiary Test. “Evidentiary test” shall mean 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. (9-2-14)T

15. Idaho State Police Forensic Services (ISPFS). “Idaho State Police Forensic Services” shall mean 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 blood and breath alcohol testing programs in Idaho. (9-2-14)T

0516. Laboratory. “Laboratory” shall mean 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, or urine, or beverages for law enforcement purposes. (4-7-11)(9-2-14)T

17. MIP/MIC. “MIP/MIC” shall mean an abbreviation used to designate minor in possession or minor in consumption of alcohol. (9-2-14)T

18. Operator Certification. “Operator certification” shall mean the condition of having satisfied the training requirements for administering breath alcohol tests as established by the department. (9-2-14)T

19. Operator. “Operator” shall mean an individual certified by the department as qualified by training to administer breath alcohol tests. (9-2-14)T

20. Performance Verification. “Performance verification” shall mean a verification of the accuracy of the breath testing instrument utilizing a performance verification standard. Performance verification should be reported to three decimal places. While ISPFS uses the term performance verification, manufacturers and others may use a term such as “calibration check” or “simulator check.” (9-2-14)T

21. Performance Verification Standard. “Performance verification standard” shall mean an ethyl alcohol standard used for field performance verifications. The standard is provided or approved, or both, by the department. (9-2-14)T

0622. Proficiency Testing. “Proficiency testing” shall mean 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 laboratory to perform accurate analysis for alcohol concentration. (3-19-99)(9-2-14)T

0723. Quality Control. “Quality control” shall mean an analysis of referenced samples whose alcohol content is known, which is performed with each batch of urine or blood, vitreous humor, urine or beverage analysis to ensure that the laboratory’s determination of alcohol concentration is reproducible and accurate. (3-19-99)(9-2-14)T

24. Recertification Class. “Recertification class” shall mean a training class offered by the department for currently certified personnel, completion of which results in uninterrupted continuation of their BTO or BTS

status for an additional 2 years.

(9-2-14)T

0825. Urine Alcohol Analysis. “Urine alcohol analysis” shall mean an analysis of urine to determine the concentration of alcohol present. (7-1-93)

26. Waiting Period/Monitoring Period/Deprivation Period/Observation Period. “Waiting Period/Monitoring Period/Deprivation Period/Observation Period” shall mean individual titles used for the time period prior to administering a breath alcohol test, in which an officer monitors the test subject/individual. (9-2-14)T

011. ABBREVIATIONS (RESERVED)
There are no abbreviations or acronyms in this chapter. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

013. REQUIREMENTS FOR LABORATORY ALCOHOL ANALYSIS.

01. Laboratory. Any laboratory desiring to perform urine alcohol, vitreous humor, ~~or~~ blood alcohol, ~~or beverage~~ analysis shall meet the following standards: (3-19-99)(9-2-14)T

a. The laboratory shall 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; (7-1-93)(9-2-14)T

b. The laboratory shall 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; (7-1-93)(9-2-14)T

c. Specimens shall be maintained 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; (7-1-93)(9-2-14)T

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; (7-1-93)(9-2-14)T

e. The laboratory shall participate in approved proficiency testing and pass this proficiency testing according to standards set by the department. Failure to pass a proficiency test shall result in disapproval until the problem is corrected and a proficiency test is successfully completed; (7-1-93)

e. The laboratory shall participate in approved proficiency testing and pass this proficiency testing according to standards set by the department. Laboratories must participate in proficiency testing from a department approved provider at least once a calendar year. Approved providers include National Highway Transportation 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 ± 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 ~~disapproval until the problem is corrected and a proficiency test is successfully completed~~ immediate suspension of testing by an analyst or laboratory in the form of a written inquiry from the department. The test is graded as a unsuccessful when the mean results are outside the 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. (7-1-93)(9-2-14)T

f. For a laboratory performing blood, ~~or~~ urine, vitreous humor, or beverage analysis for alcohol ~~analysis~~, approval shall be awarded to the laboratory director or primary analyst responsible for that laboratory. 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; (3-19-99)(9-2-14)T

g. ~~Urine samples shall be collected in clean, dry containers.~~ 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. (7-1-93)(9-2-14)T

02. Blood Collection. Blood collection shall be accomplished according to the following requirements: (7-1-93)

a. Blood samples shall be collected using sterile, dry syringes and hypodermic needles, or other equipment of equivalent sterility; (7-1-93)

b. The skin at the area of puncture 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; (7-1-93)

c. Blood specimens shall contain at least ten (10) milligrams of sodium fluoride per cubic centimeter of blood plus an appropriate anticoagulant. (4-4-13)

03. Results Blood Reported. The 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. (3-19-99)(9-2-14)T

04. Urine Collection. Urine samples shall be collected in clean, dry containers. (9-2-14)T

~~045.~~ **Urine Reported.** The results of analysis on urine 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. (3-19-99)(9-2-14)T

~~056.~~ **Records.** All records regarding proficiency tests, quality control and results shall be retained for three (3) years. (7-1-93)

014. REQUIREMENTS FOR PERFORMING BREATH ALCOHOL TESTING.

01. Instruments. Each breath testing instrument model shall be approved by the department and shall 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 004 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, for cause, remove a specific instrument by serial number from evidential testing and suspend or withdraw certification thereof.

~~(4-7-11)~~(9-2-14)T

02. Report. Each direct breath testing instrument shall report alcohol concentration as grams of alcohol per two hundred ten (210) liters of breath. (7-1-93)

03. Administration. Breath tests shall be administered in conformity with standards established by the department. 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. ~~(4-7-11)~~(9-2-14)T

a. The breath alcohol test must be administered by an operator (BTO or BTS) currently certified in the use of the instrument. (9-2-14)T

b. Prior to administering the observation period, any foreign objects/materials which have the potential to enter the instrument/breath tube or may present a choking hazard should be removed. If a foreign object/material (e.g. dental work, gum, chewing tobacco, food, piercing) is left in the mouth during the entirety of the fifteen (15) minute monitoring period, any potential external alcohol contamination should not interfere with the results of the subsequent breath alcohol tests. (9-2-14)T

c. Prior to evidentiary breath alcohol testing, the subject/individual should be observed for fifteen (15) minutes. The operator should be alert for any event that might influence the accuracy of the breath alcohol test. During the observation period the subject/individual should not be allowed to smoke, drink, eat, or belch/burp/vomit/regurgitate. (9-2-14)T

d. If mouth alcohol is suspected or indicated by the testing instrument, the operator should begin another fifteen (15) minute observation period before repeating the testing sequence. If during the observation period the subject/individual vomits or regurgitates material from the stomach into the breath pathway, the observation period should start over. If there is doubt as to the events occurring during the observation period (e.g. silent burp, belch, vomit, regurgitation), the officer should evaluate the instrument results for any indication of mouth alcohol. (9-2-14)T

e. A complete breath alcohol test includes two (2) valid breath samples taken during the testing procedure and preceded by air blanks. The subsequent breath samples performed with a portable breath testing instrument should be approximately two (2) minutes apart or more. If the subject/individual fails or refuses to provide a subsequent, adequate sample as requested by the operator, the single test result shall be considered valid. If only a single test result is used, then a fifteen (15) minute observation period must be observed. For hygienic reasons, the operator should use a new mouthpiece for each series of tests. (9-2-14)T

f. 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). If a subject/individual fails or refuses to provide a subsequent, adequate sample 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. (9-2-14)T

g. A third breath sample should be collected if the first two (2) two results differ by more than 0.02 g/210L alcohol. Unless mouth alcohol is indicated or suspected, it is not necessary to repeat the observation period prior to obtaining a third breath sample. (9-2-14)T

h. The results for subsequent breath samples should correlate within 0.02 g/210L alcohol to show consistent sample delivery, indicate the absence of RFL, and to indicate the absence of alcohol contamination in the subject/individual's breath pathway as a contributing factor to the breath results. (9-2-14)T

i. In the event of an instrument failure, the operator should attempt to utilize another instrument or have blood drawn. (9-2-14)T

04. Training. Each individual operator (BTO or BTS) shall demonstrate ~~that he has~~ sufficient training

to operate the instrument correctly. This shall be accomplished by successfully completing a training course approved by the department on each instrument model utilized by the operator. Officers must retrain periodically as required by the department. 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.
(7-1-93)(9-2-14)T

05. Performance Verification Checks. Each breath testing instrument shall be checked on a schedule established by the Department for accuracy with a simulator solution provided by or performance verification standard approved by the department. These Performance verification checks shall be performed according to a procedure established by the department and shall 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. (4-7-11)(9-2-14)T

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 portable instrument, multiple breath alcohol tests may be covered by a single performance verification.
(9-2-14)T

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 verification fails, the instrument shall be taken out of service. The instrument shall not be returned to service until it has been calibrated and certified by ISPFS. (9-2-14)T

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 verification fails, the instrument must be taken out of service. The instrument must not be returned to service until it has been calibrated and certified by ISPFS. (9-2-14)T

d. Performance verification checks must be within +/- 10% of the performance verification standard target value. (9-2-14)T

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 closed loop, recirculating system (e.g. the Intox 5000 series), the 0.08 performance verification standard should be replaced with fresh standard approximately every one hundred (100) verifications or every calendar month, whichever comes first. (9-2-14)T

f. A wet bath 0.20 performance verification standard should be replaced with fresh standard approximately every twenty-five (25) verifications. (9-2-14)T

g. Dry gas performance verification standards may be used continuously without replacement until the canister is spent or the expiration date is reached. (9-2-14)T

h. Performance verification standards should not be used beyond the expiration date. (9-2-14)T

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 will not invalidate any tests where Section 18-8004C, Idaho Code, is not applicable. A performance verification with a 0.20 standard does not need to be performed within twenty-four (24) hours of an evidentiary breath test in excess of 0.20 g/210L alcohol. (9-2-14)T

j. Temperature of the wet bath simulator 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 valid. (9-2-14)T

- k.** An agency may run additional performance verification standard levels at their discretion. (9-2-14)T
- 06. Records.** Operators must document and retain test results (i.e. written log, printout, or electronic database). All records regarding maintenance and results shall be retained for three (3) years. ISPFS is not responsible for storage of documentation not generated by ISPFS. ~~(3-19-99)~~(9-2-14)T
- 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. (4-7-11)
- 08. Standards.** Premixed alcohol simulator solutions shall be from an approved vendor and explicitly approved in writing by the department before distribution within Idaho. Dry gas standards from ISO 17025:2005 certified providers are explicitly approved by the department for use in Idaho without evaluation by the department. (9-2-14)T
- 09. MIP/MIC.** The presence or absence of alcohol is the determining factor in the evidence in an MIP/MIC case. 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. (9-2-14)T
- a.** Fifteen (15) minute observation period: The monitoring/observation period is not required for the MIP/MIC procedure. (9-2-14)T
- b.** The breath alcohol test must be administered by an operator currently certified in the use of that instrument. (9-2-14)T
- c.** The instrument used must be 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. (9-2-14)T
- 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. (9-2-14)T
- e.** A complete breath alcohol test includes two (2) valid breath samples taken from the subject and preceded by an air blank. The subsequent breath samples do not need to be consecutive samples from the same subject. The individual breath samples should be approximately 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. (9-2-14)T
- 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 observation 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 an observation period. (9-2-14)T
- g.** The operator should manually log test results and/or retain printouts for possible use in court. (9-2-14)T
- h.** The instrument must not be in passive mode for the testing of subjects for evidential purposes. (9-2-14)T
- i.** The passive mode of testing using the Lifeloc FC20 or ASIII should be used for testing liquids or containers of liquid for the presence or absence of alcohol. (9-2-14)T

IDAPA 11 - IDAHO STATE POLICE

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

DOCKET NO. 11-1101-1403

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 October 15, 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 adds language to address home schooling and foreign education, and clarifies what documentation is required as proof of education. The medical standards are being left up to the employing agencies, and language added to indicate applicants must be physically capable of passing all requirements while attending the academy or they will be disenrolled. Language was added to reflect all of the different disciplines trained by POST.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

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 October 22, 2014.

DATED this 25th Day of August, 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. 11-1101-1403
(Only those Sections being amended are shown.)

010. DEFINITIONS.

- 01. Act.** Title 19, Chapter 51, of the Idaho Code. (4-5-00)
- 02. Adult Probation and Parole Officer.** Any employee of the Idaho Department of Correction who is responsible for the supervision of offenders on probation or parole. (3-30-07)
- 03. Agency.** A law enforcement agency which is a part of or administered by the state or any political subdivision thereof and which is responsible for the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; a juvenile detention center; a juvenile probation department; the Idaho Department of Correction; or a private prison contractor of the State Board of Correction that is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the facility. (4-2-08)
- 04. Agency Head.** A chief of police of a city, sheriff of a county, or chief administrator of any law enforcement agency of the state of Idaho or any political subdivision thereof who is responsible for the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; the chief administrator of a juvenile detention center; the chief administrator of a juvenile probation department; the director of the Idaho Department of Correction; or the chief administrator of a private prison contractor of the State Board of Correction that is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the facility. (4-2-08)
- 05. Applicant.** Any person applying to participate in a POST training program or applying for POST certification. (4-2-08)
- 06. Basic Adult Probation and Parole Academy.** A basic course of instruction for Adult Probation and Parole Officers as recognized by POST Council. (4-2-08)
- 07. Basic Correction Academy.** A basic course of instruction for Correction Officers as recognized by POST Council. (4-2-08)
- 08. Basic Detention Academy.** A basic course of instruction for Detention Officers as recognized by POST Council. (4-2-08)
- 09. Basic Juvenile Detention Academy.** A basic course of instruction for Juvenile Detention Officers as recognized by POST Council. (4-2-08)
- 10. Basic Juvenile Probation Academy.** A basic course of instruction for Juvenile Probation Officers as recognized by POST Council. (4-2-08)
- 11. Basic Patrol Academy.** A basic course of instruction for Patrol Officers as recognized by POST Council. (4-2-08)
- 12. College Credit.** A unit of work towards a baccalaureate or vocational degree accepted by a college or university of higher education accredited by the Northwest Association of Schools and Colleges or other equivalent POST-accepted U.S. regional accrediting agency. (7-1-93)()
- 13. Correction Officer.** Any employee of an Idaho Department of Correction facility or private prison contractor of the State Board of Correction who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the correction facility. (3-30-07)

14. Correction Standards and Training Council. An advisory group to the POST Council that is comprised of members from academia and law enforcement agencies. The purpose of the Correction Standards and Training Council is to advise POST Council in the planning, development, and operation of the Basic Correction Academy and the Basic Adult Probation and Parole Academy. (4-2-08)

15. Council. The Idaho Peace Officer Standards and Training Council. (4-2-08)

16. County Detention Officer. An employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates. (4-5-00)

17. Crime of Deceit. Any offense described in Section 18-1301 et seq., Idaho Code, (Bribery), Section 18-1401 et seq. (Burglary), Sections 18-1901 (Fictitious Stock Subscription), 18-1902 (Exhibition of False Papers to Public Officers), 18-1903 (Use of False Name in Prospectus), 18-1904 (Illegal Dividends and Reductions of Capital), 18-1905 (Falsification of Corporate Books), 18-1906 (Fraudulent Reports by Officers), 18-2202(1) (Computer Crime), 18-2302 (False Swearing as to Qualifications as Voter), 18-2304 (Procuring Illegal Votes), 18-2305 (Intimidation, Corruption and Frauds), 18-2306 (Illegal Voting or Interference with Election), 18-2307 (Attempting to Vote When Not Qualified or to Repeat Voting), 18-2309 (Officers Attempting to Change Result), 18-2310 (Forging or Counterfeiting Returns), 18-2311 (Adding to or Subtracting From Votes), 18-2316 (Tampering with Certificates of Nomination or Ballots), 18-2320 (Bribery of Electors), Section 18-2401 et seq. (Theft), Section 18-2601 et seq. (Falsifying Evidence -- Offering Forged or Fraudulent Documents in Evidence), Section 18-2701 et seq. (Bribery of Executive Officers), Sections 18-3105 (False Statement by Commission Merchant, Broker, Agent, Factor or Consignee to Principal or Consignor), 18-3106 (Drawing Check Without Funds -- Drawing Check With Insufficient Funds -- Prima Facie Evidence of Intent -- Standing of Person Having Acquired Rights -- Probation Conditions), 18-3123 (Forgery of a Financial Transaction Card), 18-3124 (Fraudulent Use of a Financial Transaction Card), 18-3125 (Criminal Possession of Financial Transaction Card and FTC Forgery Devices), 18-3125A (Unauthorized Factoring of Credit Card Sales Drafts), 18-3126 (Misappropriation of Personal Identifying Information), 18-3127 (Receiving or Possessing Fraudulently Obtained Goods or Services), 18-3201 (Officer Stealing, Mutilating or Falsifying Public Records), 18-3202 (Private Person Stealing, Mutilating or Falsifying Public Records), 18-3203 (Offering False or Forged Instrument for Record), 18-3204 (False Certificates or Other Instruments from Officers), 18-3206 (Mutilating Written Instruments), Section 18-3601 et seq. (Forgery), Sections 18-4616 (Defacing Marks on Logs or Lumber), 18-4617 (Stealing Rides on Trains), 18-4621 (Stealing Electric Current -- Tampering with Meters), 18-4622 (Stealing Electric Current -- Accessories Liable as Principals), 18-4624 (Taken or Converted Merchandise as Theft), 18-4626 (Willful Concealment of Goods, Wares or Merchandise -- Defense for Detention), 18-4630 (Illegal Use of Documents), 18-4701 (Alteration of Bills), 18-4702 (Alteration of Enrolled Copies), 18-4703 (Offering Bribes to Legislators), 18-4704 (Legislators Receiving Bribes), Section 18-5401 et seq. (Perjury), Section 18-6501 et seq. (Robbery), Sections 18-8201 (Money Laundering and Illegal Investment -- Penalty -- Restitution), 41-293 (Insurance Fraud), 41-294 (Damage to or Destruction of Insured Property), 41-1306 (False Financial Statements), 49-228 (Receiving or Transferring Stolen Vehicles), 49-231 (Farm Implements -- Purchasing or Selling When Identifying Number Altered or Defaced a Felony), 49-232 (Fraudulent Removal or Alteration of Numbers Prohibited), 49-518 (Altering or Forging Certificate -- Stolen Cars -- Destroying or Altering Engine or Decal Number -- Use of Fictitious Name -- Fraud), or any attempt, conspiracy or solicitation to commit any of the foregoing offenses, or any racketeering offense under Section 18-7801 et seq., Idaho Code, in which any of the foregoing offenses constitutes at least one (1) of the predicate acts, or any other crime defined in the Idaho Code involving any form of theft or including fraudulent intent as an element, or an offense equivalent to any of the foregoing in any other jurisdiction. (4-2-08)

18. Direction. Direction, at its broadest term, allows an employing agency to utilize a Level II reserve officer to work under the immediate presence and direction of a full-time peace officer of the same agency. This does not allow a Level II reserve officer to operate alone in his official capacity. He shall be under direct observation and control of the agency's full-time peace officer. (3-29-12)

19. Field Training. Training in which an individual receives formal instruction on the job for special and defined purposes. (7-1-93)

20. Full Time. Employment of one hundred sixty (160) hours or more per month for ninety (90) consecutive calendar days. (4-2-08)

~~21. **High School.** A school accredited as a high school by the Department of Education of the state in which the high school is located, or a school accredited as a high school by the recognized regional accreditation body, or a school accredited as a high school by the State University of the state in which the school is located.~~
(7-1-93)

221. In-Service Training. Training designed to refresh or add to an individual's capabilities to do the task to which they are or may be assigned. (4-2-08)

~~232. **Juvenile Detention Center.** A juvenile detention facility that is part of or administered by the county or any political subdivision thereof and is responsible for the safety, care, protection, and monitoring of juvenile offenders.~~
(4-2-08)

~~243. **Juvenile Detention Officer.** Any employee of a juvenile detention center who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center.~~
(4-2-08)

~~254. **Juvenile Probation Officer.** Any employee of a juvenile probation department who is responsible for preparing social history reports to the court, making recommendations regarding conditions of probation, and the supervision of juvenile offenders' compliance with court orders.~~
(4-2-08)

~~265. **Juvenile Training Council.** An advisory group to the POST Council that is composed of the Director of the Department of Juvenile Corrections, a Magistrate, a county Juvenile Detention Director, a county Chief Probation Officer, a county Commissioner, a county Clerk, and a county Sheriff. The purpose of the Juvenile Training Council is to advise POST Council in the planning, development, and operation of the Juvenile Detention and Juvenile Probation Academies.~~
(4-2-08)

~~276. **Law Enforcement Profession.** As used in agreements authorized pursuant to Section 19-5112, Idaho Code, means an employee of a police or law enforcement agency that is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; an employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates; an employee of a juvenile detention center that is part of or administered by the county or any political subdivision thereof and who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center; an employee of a county juvenile probation department who is responsible for preparing social history reports to the court, making recommendations regarding conditions of probation, and the supervision of juvenile offenders' compliance with court orders; an employee of an Idaho Department of Correction facility or private prison contractor of the State Board of Correction who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the correction facility; or an employee of the Idaho Department of Correction who is responsible for the supervision of offenders on probation or parole.~~
(4-2-08)

~~287. **Manual.** This book of Rules as adopted by the Idaho Peace Officer Standards and Training Council.~~
(4-5-00)

~~298. **Part Time.** Employment of less than one hundred sixty (160) hours per month for ninety (90) consecutive calendar days.~~
(4-2-08)

~~309. **Part-Time Juvenile Detention Officer.** Any employee of a juvenile detention center that is part of or administered by the county or any political subdivision thereof and who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center, and does not meet the definition of "employee" as defined in Section 59-1302, Idaho Code.~~
(4-2-08)

~~340. **Peace Officer.** Any employee of a police or law enforcement agency which is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision. "Peace officer" also means an employee of a police or law enforcement agency of a federally recognized Indian tribe who has satisfactorily completed the peace officer standards and training academy and has been deputized by a sheriff of a county or a chief of police of a city of the state of Idaho.~~
(4-5-00)

- 321.** POST. The Idaho Peace Officer Standards and Training Program. (7-1-93)
- 332.** POST Basic Training Academy. The Basic Adult Probation and Parole Academy, the Basic Correction Academy, the Basic Detention Academy, the Basic Juvenile Detention Academy, the Basic Juvenile Probation Academy, or the Basic Patrol Academy. (4-2-08)
- 343.** Prosecutor. A city prosecuting attorney, city assistant prosecuting attorney, county prosecuting attorney, county deputy prosecuting attorney, attorney general, deputy attorney general, United States attorney, or assistant United States attorney. (4-2-03)
- 354.** Qualified Instructor. Any person certified by the Idaho POST Council as being competent to teach in a Council-approved school. (4-2-08)
- 365.** Reserve Peace Officer. An individual assigned by an agency to perform the duties of a peace officer on a part-time basis. All reserve officers shall be under supervision as set forth in these rules unless they hold a current Part-Time Basic certificate. (4-2-08)
- 376.** School. Any school, college, university, academy, or local training program which offers law enforcement training and includes within its meaning the combination of course curriculum, instructors and facilities, or any training session as certified by POST. (7-1-93)
- 387.** School Director or Coordinator. An individual charged with the responsibility of conducting a training school under the provisions of the Act. (7-1-93)
- 398.** Specification. A description of a requirement supplementing a section of the Rules. (7-1-93)
- 4039.** Supervision. Supervision allows the employing agency to utilize a Level I reserve officer to work by himself without the immediate presence or direction of a full-time peace officer, but acting under the overall on-duty supervision of an on-duty, full-time peace officer. This may allow a Level I reserve officer to work alone in his jurisdiction, without immediate oversight of an agency full-time peace officer, as long as there were another full-time peace officer of the agency working at the same time to provide supervision of the Level I reserve officer's activities. (3-29-12)
- 410.** Temporary. Employment of less than ninety (90) consecutive calendar days. (7-1-93)
- 421.** Trainee. An officer participating in any POST approved training program. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

052. EDUCATION.

The applicant shall be a high school graduate or have earned a GED certificate. (4-2-08)

01. ~~Documentation~~ **Acceptable Education.** ~~Proof of education shall not have been mutilated, altered, or damaged, and shall be in the form of a photocopy of one (1) of the following~~ **The applicant must:** (4-7-11)()

a. ~~High school diploma~~ **Be a high school graduate from a school accredited as a high school at the time of graduation by the Department of Education of the state in which the high school is located;** (4-2-08)()

b. ~~GED certificate~~ **Be a high school graduate from a school accredited as a high school at the time of graduation by the recognized regional accreditation body;** (4-2-08)()

c. ~~High school transcript that indicates the date of graduation~~ **Have passed GED testing;** (4-7-11)()

d. ~~GED test report form~~ Have successfully completed a high school equivalency program and obtained a state-issued certificate; or (4-7-11)()

e. ~~High school equivalency certificate; or~~ Have successfully completed a minimum of fifteen (15) academic credits at a U.S. regionally-accredited college. The six (6) POST-accepted regional accreditation agencies are: (4-7-11)()

i. Middle States Association of Schools and Colleges; ()

ii. New England Association of Schools and Colleges; ()

iii. North Central Association of Colleges and Schools (the Higher Learning Commission); ()

iv. Northwest Association of Colleges and Universities; ()

v. Southern Association of Colleges and Schools; and ()

vi. Western Association of Schools and Colleges. ()

f. ~~Official college transcript indicating the successful completion of a minimum of fifteen (15) academic credits.~~ (4-7-11)

02. Home Schooling. Applicants who were home schooled must provide documentation of having passed GED testing. ()

03. Foreign Education. Applicants who were educated outside the U.S. must provide documentation of having passed GED testing or provide an evaluation from an evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or Association of International Credential Evaluators, Inc. (AICE) showing the applicant's education meets or exceeds the U.S. requirements for high school graduation. ()

04. Documentation. Proof of education must not have been mutilated, altered, or damaged, and must be in the form of a photocopy of one (1) of the following: ()

a. High school diploma that indicates the date of graduation; ()

b. High school transcript that indicates the date of graduation; ()

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

d. State-issued high school equivalency certificate; ()

e. Official college transcript from a POST-accepted U.S. regionally-accredited college indicating the successful completion of a minimum of fifteen (15) academic credits; or ()

f. Official evaluation of foreign education by a member of the National Association of Credential Evaluation Services (NACES) or Association of International Credential Evaluators, Inc. (AICE) showing the applicant's education meets or exceeds the U.S. requirements for high school graduation. ()

(BREAK IN CONTINUITY OF SECTIONS)

060. PHYSICAL - MEDICAL.

01. Requirements. (7-1-93)

~~a. Hearing. The applicant shall have unaided or aided hearing between zero (0) and twenty five (25)~~

~~decibels for each ear at the frequencies of five hundred (500) Hz, one thousand (1000) Hz, two thousand (2000) Hz, and three thousand (3000) Hz. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of an audiologist or ear, nose, and throat physician that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (4-7-11)~~

~~**b.** Vision. (7-1-93)~~

~~**i.** The applicant shall possess binocular coordination that does not manifest diplopia; depth of proficiency of a minimum of one (1) minute of arc at twenty (20) feet; peripheral vision shall be binocularly two hundred (200) degrees laterally with sixty (60) degrees upward and seventy (70) degrees downward. There shall be no pathology of the eye; applicant shall possess a minimum seventy percent (70%) proficiency on a color discrimination test. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (4-7-11)~~

~~**ii.** The applicant shall have uncorrected vision in each eye of no weaker than twenty/two hundred (20/200) with the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but shall have the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). A full eye examination shall be administered by an optometrist or ophthalmologist to any applicant who wears glasses whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or weaker. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (4-7-11)~~

~~**e.** Disease/Condition. The applicant shall be free from any impediments of the senses of sight, hearing, taste, smell, and touch; physically sound; well developed physically and in possession of his extremities; free from any physical defects, chronic or organic diseases, organic or functional conditions, or emotional or mental instabilities which may tend to impair efficient performance of duty or which might endanger the lives of others or the life of the officer. Waiver of the above may be considered by the Council upon the applicant's demonstration that the deficiency does not jeopardize or impair his ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. (4-7-11)~~

~~**da.** Agency Physical Readiness Test. To determine the applicant's physical capability, a physical readiness test based upon the job requirements of the appointing agency shall must be administered by the appointing agency to each applicant. (4-7-11)()~~

~~**b.** Physical Capability Requirement. The applicant must be physically capable of passing all physically demanding tasks and tests while attending any Idaho POST Academy or any academy equivalent program approved by the POST Council. Any applicant who fails a required physical test while attending an Idaho POST Academy will be disenrolled from the academy and provided the option to attend a future academy session. ()~~

~~**02.** Procedures. (7-1-93)~~

~~**a.** A POST Council approved medical history form shall be supplied by each applicant to the examining physician. The medical history shall include information on past and present diseases, injuries and operations. (4-7-11)~~

~~**b.** A medical examination shall be administered by a licensed physician or his designee to determine if~~

~~the applicant is free from any physical, emotional, or mental condition which might adversely affect the applicant's ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The physician shall record his findings on the appropriate form and shall note thereon any past or present physical defects, diseases, injuries, operations or conditions of an abnormal or unusual nature, or indications of mental or emotional instability. A medical examination shall remain valid for one (1) year unless extended by the POST Division Administrator under extraordinary conditions and for good cause shown.~~ (3-27-13)

061. MENTAL EXAMINATION.

01. Requirement. Where a question of emotional stability or disorder is indicated by ~~the~~ physician's ~~report~~ or the background investigation, a thorough evaluation ~~shall~~ **must** be made by a licensed psychiatrist or clinical psychologist to determine if the applicant is free from any emotional or mental condition which might adversely affect the applicant's ability to perform the duties of a peace, detention, juvenile detention, ~~or~~ juvenile probation, ~~correction, adult probation and parole, juvenile corrections, or misdemeanor probation~~ officer. (4-2-08)()

02. Procedure. During the interview, the examining psychiatrist or psychologist ~~shall~~ **must** evaluate the applicant sufficiently to assess those symptoms of a degree that would impair the effective performance of duty. The results of the examination ~~shall~~ **must** be recorded and that record or a summary of recommendations ~~shall~~ **must** be forwarded to the appointing authority for review. (3-15-02)()

IDAPA 11 - IDAHO STATE POLICE

11.11.04 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR CORRECTION OFFICERS AND ADULT PROBATION AND PAROLE OFFICERS

DOCKET NO. 11-1104-1401

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 October 15, 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:

The Minimum Standards for Employment for Correction Officers and Adult Probation and Parole Officers are now identical to all other disciplines in the area of education and physical - medical, so the duplicative language was removed and the applicant referred to the Minimum Standards for Employment listed in 11.11.01.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

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 October 22, 2014.

DATED this 25th Day of August, 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. 11-1104-1401
(Only those Sections being amended are shown.)

033. EDUCATION.

The applicant ~~shall be a high school graduate or have earned a GED (General Education Development) certificate must meet the requirements as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Section 052.~~ (4-2-08)()

~~01. Documentation. Proof of education shall not have been mutilated, altered, or damaged, and shall be in the form of a photocopy of one (1) of the following:~~ (4-7-11)

- ~~a. High school diploma;~~ (4-2-08)
- ~~b. GED certificate;~~ (4-2-08)
- ~~c. High school transcript that indicates the date of graduation;~~ (4-7-11)
- ~~d. GED test report form;~~ (4-7-11)
- ~~e. High school equivalency certificate; or~~ (4-7-11)
- ~~f. Official college transcript indicating the successful completion of a minimum of fifteen (15) academic credits.~~ (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

039. PHYSICAL -- MEDICAL.

01. Requirements. ~~The applicant must meet the requirements as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Section 060.~~ (4-11-06)()

~~a. Hearing. The applicant shall have unaided or aided hearing between zero (0) and thirty (30) decibels for each ear at the frequencies of one thousand (1000) Hz and two thousand (2000) Hz; and unaided or aided hearing between zero (0) and fifty (50) decibels for each ear at the frequency of three thousand (3000) Hz. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of an audiologist or ear, nose, and throat physician that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a correction officer. The POST Division Administrator shall have the discretion to refer the application to the POST Council.~~ (4-7-11)

~~b. Vision. The applicant shall have uncorrected vision in each eye of no weaker than twenty/two hundred (20/200) with the strong eye corrected to twenty/thirty (20/30) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but shall have the strong eye corrected to twenty/thirty (20/30) and the weaker eye corrected to twenty/sixty (20/60). A full eye examination shall be administered by an optometrist or ophthalmologist to any applicant who wears glasses whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or weaker. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a correction officer. The POST Division Administrator shall have the discretion to refer the application to the POST Council.~~ (4-7-11)

~~e. Disease/Condition. The applicant shall be free from any impediments of the senses of sight,~~

~~hearing, taste, smell, and touch; physically sound; well developed physically and in possession of his extremities; free from any physical defects, chronic or organic diseases, organic or functional conditions, or emotional or mental instabilities which may tend to impair efficient performance of duty or which might endanger the lives of others or the life of the officer. Waiver of Subsection 039.01.c. may be considered by the Council upon the applicant's demonstration that the deficiency does not jeopardize or impair his ability to perform the duties of a correction officer.~~ (4-7-11)

~~d. Physical Readiness Test. The applicant shall pass the POST Physical Readiness Test for Correction Officers.~~ (4-7-11)

~~02. Procedures.~~ (4-11-06)

~~a. A POST Council approved medical history form shall be supplied by each applicant to the examining physician. The medical history shall include information on past and present diseases, injuries and operations.~~ (4-7-11)

~~b. A medical examination shall be administered by a licensed physician or his designee to determine if the applicant is free from any physical, emotional, or mental condition which might adversely affect the applicant's ability to perform the duties of a correction officer. The physician shall record his findings on the appropriate form or letter and shall note thereon, for evaluation by the appointing authority, any past or present physical defects, diseases, injuries, operations or conditions of an abnormal or unusual nature, or indications of mental or emotional instability. A medical examination shall remain valid for one (1) year unless extended by the POST Division Administrator under extraordinary conditions and for good cause shown.~~ (4-4-13)

040. MENTAL EXAMINATION.

~~01. Requirement. Where a question of emotional stability or disorder is indicated by the physician's report or the background investigation, a thorough evaluation must be made by a licensed psychiatrist or clinical psychologist to determine if the applicant is free from any emotional or mental condition which might adversely affect the applicant's ability to perform the duties of a correction officer. The applicant must meet the requirements as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Section 061.~~ (4-11-06)()

~~02. Procedure. During the interview, the examining psychiatrist or psychologist must evaluate the applicant sufficiently to assess those symptoms of a degree that would impair the effective performance of duty. The results of the examination must be recorded and that record or a summary of recommendations must be forwarded to the appointing authority for review.~~ (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

061. MINIMUM STANDARDS FOR EMPLOYMENT FOR ADULT PROBATION AND PAROLE OFFICERS.

Every adult probation and parole officer ~~shall~~ **must** meet the minimum standards for employment as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Sections 050 through 065, ~~with the exception of hearing, vision, and physical agility.~~ (4-7-11)()

~~01. Hearing. An applicant for adult probation and parole officer certification shall have unaided or aided hearing between zero (0) and twenty five (25) decibels for each ear at the frequencies of one thousand (1000) Hz, two thousand (2000) Hz, and three thousand (3000) Hz. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of an audiologist or ear, nose, and throat physician that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of an adult probation and parole officer. The POST Division Administrator shall have the discretion to refer the application to the POST Council.~~ (4-7-11)

~~02. Vision.~~ (4-11-06)

~~**a.** An applicant for adult probation and parole officer certification shall possess binocular coordination that does not manifest diplopia; depth of proficiency of a minimum of one (1) minute of arc at twenty (20) feet; peripheral vision shall be binocularly two hundred (200) degrees laterally with sixty (60) degrees upward and seventy (70) degrees downward. There shall be no pathology of the eye; applicant shall possess a minimum of seventy percent (70%) proficiency on a color discrimination test. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of an adult probation and parole officer. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (4-7-11)~~

~~**b.** The applicant shall have uncorrected vision in each eye of no weaker than twenty/two hundred (20/200) with the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but shall have the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). A full eye examination shall be administered by an optometrist or ophthalmologist to any applicant who wears glasses whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or weaker. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of an adult probation and parole officer. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (4-7-11)~~

~~**03. Physical Readiness Test.** An applicant for adult probation and parole officer certification shall pass the POST Physical Readiness Test for Adult Probation and Parole officers. (4-7-11)~~