

Dear Senators LAKEY, Lee, Burgoyne, and
Representatives CHANEY, Gannon:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Sexual Offender Management Board:

IDAPA 57.01.01 - Rules of the Sexual Offender Management Board (Fee Rule) - Proposed Rule
(Docket No. 57-0101-1901).

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 10/28/2019. 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 11/26/2019.

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 334-4854, 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: Principal Legislative Drafting Attorney - Ryan Bush

DATE: October 8, 2019

SUBJECT: Sexual Offender Management Board

IDAPA 57.01.01 - Rules of the Sexual Offender Management Board (Fee Rule) - Proposed Rule (Docket No. 57-0101-1901)

Summary and Stated Reasons for the Rule

The Sexual Offender Management Board submits notice of proposed rulemaking at IDAPA 57.01.01 - Rules of the Sexual Offender Management Board (Fee Rule). The proposed rule changes accomplish the following:

1. Revises how the Board hears contested cases;
2. Updates the documents that are incorporated by reference;
3. Clarifies how the Board processes public records requests;
4. Provides for a 60-day extension on continuing education requirements for psychosexual evaluators, sexual treatment providers, and polygraph examiners for a \$25 fee;
5. Removes the option of certification by conditional waiver;
6. Removes provisions relating to the disciplinary process and hearings; and
7. Provides for quality assurance for polygraph examiners.

Negotiated Rulemaking / Fiscal Impact

The Board states that negotiated rulemaking was not conducted because it was unlikely that a consensus would be reached. The Board states that it discussed these changes at its meetings, and public hearings are scheduled for October 11 and November 8 in Boise. There is no fiscal impact associated with this rulemaking.

Statutory Authority

The proposed fee rule appears to be within the statutory authority granted to the Board in Section 18-8314, Idaho Code.

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
www.legislature.idaho.gov

cc: Sexual Offender Management Board
Aileen Lucas

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 57 – SEXUAL OFFENDER MANAGEMENT BOARD
57.01.01 – RULES OF THE SEXUAL OFFENDER MANAGEMENT BOARD
DOCKET NO. 57-0101-1901 (FEE RULE)
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 18-8314, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

PUBLIC HEARINGS	
Friday, October 11, 2019 9:00 a.m. (MDT)	Friday, November 8, 2019 9:00 a.m. (MST)
299 N. Orchard Street Suite 110, Boise, ID 83706	

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 Sexual Offender Management Board is responsible for developing, advancing and overseeing sound sexual offender management policies and practices statewide. This rulemaking addresses proposed modifications to the Board’s standards and procedures related to certification of providers who conduct psychosexual evaluations, sex offender treatment and post-conviction sex offender polygraph examinations on adults and juveniles who have been convicted of or adjudicated for sexual offenses; and technical changes to standards-related forms. Specifically, the Board intends to adopt the “Idaho Rules of Administrative Procedure of the Attorney General,” IDAPA 04.11.01. Section 000 through 799 to govern contested cases brought before the Board. The Board is also removing references to compliance with IDAPA 06.01.01, “Rules of the Board of Correction,” when responding to public records requests. The Board will respond to all public record request in accordance with Title 74, Chapter 1, Idaho Code. This rulemaking removes the option of certification by conditional waiver as the Board believes there are sufficient paths available for practitioners to become certified without waiving any certification requirements. There is an option for certificate holders to seek a 60-day extension to submit proof of completing continuing education requirements upon renewal of certification. There will be a \$25 fee for this 60-day extension. Providers whose certification expires will be immediately removed from the SOMB’s official provider roster. This rulemaking will also change the renewal process by routing any required work product of the provider submitted with a renewal application to the quality assurance subcommittee rather than the certification subcommittee, allowing the renewal applications to be processed in a more timely manner. This process will not apply to those providers seeking initial certification, requests for changes in level of certification, reinstatement requests, or providers on monitoring status. Modifications are also being proposed regarding the quality assurance procedures for polygraph examiners. Also updates documents incorporated by reference.

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

There is an option for certificate holders to seek a 60-day extension to submit proof of completing continuing education requirements upon renewal of certification. There would be a \$25 fee for this 60-day extension. This fee is authorized pursuant to Section 18-8314, Idaho Code.

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

There will not be any impact on the general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it was not likely that a consensus would be reached on the proposed changes to the certification standards affecting providers of sexual offender services. However, the review of the standards by the SOMB was listed as an agenda item for the board meetings when the standards were discussed, and no interested parties attended those meetings. Recognizing the impact these proposed changes may have on providers, the SOMB intends to solicit comments at future board meetings following publication of this rulemaking as indicated above.

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:

The Sexual Offender Management Board is legislatively mandated to establish standards, qualification and certification procedures for post-conviction psychosexual evaluations/evaluators; sexual offender treatment and the providers who offer these services; and post-conviction sexual offender polygraph examiners. The practice standards and certification qualifications established by the agency pursuant to Section 18-8314, Idaho Code, are incorporated by reference. The following documents incorporate by reference the most recent revised editions:

“Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices,” as revised, December 2019; “Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders” as revised, December 2019; “Required Format for Juvenile Psychosexual Evaluation Reports,” as revised, December 2019; and “Required Format for Adult Psychosexual Evaluation Reports,” as revised, December 2019. These documents can be found on the agency’s website: <http://somb.idaho.gov>.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nancy Volle at (208) 658-2002.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2019.

Dated this 3rd day of September, 2019.

Nancy Volle, Program Manager
Sexual Offender Management Board
1299 N. Orchard St., Ste. 110
Boise, ID 83706
Phone: (208) 658-2002
Fax: (208) 287-3322
Email: somb@idoc.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 57-0101-1901
(Only Those Sections With Amendments Are Shown.)

003. ADMINISTRATIVE APPEALS.

Due to the size of this board, the frequency and nature of its proceedings, it is in the best interests of the Board and those it serves to decline to adopt the majority of the procedures regarding contested cases in, IDAPA 04.11.01, The “Idaho Rules of Administrative Procedure of the Attorney General,” IDAPA 01.11.01, Sections 000 through 799; however, to the extent there is no conflict between the rules of the Board and the rules of the Attorney General, certain provisions of the rules of the Attorney General are adopted or are modified herein to reflect administrative practice before apply to contested cases of the Board. (3-20-14)(____)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (3-20-14)

01. “Bylaws and Constitution of the American Association of Police Polygraphists,” effective May, 2010, is herein incorporated by reference and is available from the American Association of Police Polygraphists, PO Box 657, Waynesville, Ohio 45068, website <http://www.policepolygraph.org/>. (3-20-14)

02. “Bylaws of the American Polygraph Association,” effective ~~September~~ March 2018, is herein incorporated by reference and is available from the American Polygraph Association, PO Box 8037, Chattanooga, Tennessee 37414, website <http://www.polygraph.org/>. (~~3-24-17~~)()

03. “Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices,” December 2017~~9~~ revision, is herein incorporated by reference and is available from the Board’s office and on the Board website, <http://somb.idaho.gov/>. (~~3-28-18~~)()

04. “Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders,” December 2017~~9~~ revision, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://somb.idaho.gov/>. (~~3-28-18~~)()

05. The Sexual Offender Management Board's “Required Format for Juvenile Psychosexual Evaluation Reports,” December 2016~~9~~ revision, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://somb.idaho.gov/>. (~~3-24-17~~)()

06. The Sexual Offender Management Board’s “Required Format for Adult Psychosexual Evaluation Reports,” December 2016~~9~~ revision, is herein incorporated by reference and is available from the Board’s office and on the Board’s website, <http://somb.idaho.gov/>. (~~3-24-17~~)()

(BREAK IN CONTINUITY OF SECTIONS)

006. PUBLIC RECORDS ACT COMPLIANCE.

01. Administrative Rules. The rules contained herein are promulgated pursuant to Title 67, Chapter 52, Idaho Code, and are public records. (3-20-14)

02. Public Records Requests. Requests for public information are processed in compliance with ~~IDAPA 06.01.01, “Rules of the Board of Correction”;~~ and the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (~~3-20-14~~)()

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Sexual Offender Management Board described in Section 18-8312, Idaho Code. (3-20-14)

02. Central Roster. A roster of evaluators, treatment providers and polygraph examiners, who meet the qualifications and are certified by the Board to conduct psychosexual evaluations, provide sexual offender treatment or conduct post-conviction sexual offender polygraphs. (3-20-14)

03. Certificate Holder. A person who has been approved by the Board and certified as meeting qualifications to conduct or assist in the conduct of psychosexual evaluations, provide sexual offender treatment or conduct post conviction sexual offender polygraphs. (3-20-14)

04. Certified Evaluator. Either a psychiatrist licensed by this state pursuant to Title 54, Chapter 18, Idaho Code, or a master's or doctoral level mental health professional licensed by this state pursuant to Title 54, Chapters 23, 32, or 34, Idaho Code. The evaluator shall have by education, experience, and training, expertise in the assessment and treatment of sexual offenders, ~~shall~~ meet the qualifications, and ~~shall~~ be approved by the Board to perform psychosexual evaluations in this state, as described in Section 18-8314, Idaho Code. A person meeting this definition may be certified by the Board as either a senior/approved certified evaluator or an associate/supervised certified evaluator. (3-20-14)()

05. Certified Post Conviction Sex Offender Polygraph Examiner. A polygraph examiner who has received specialized post conviction sexual offender testing training, and who is certified by the Board to conduct post conviction sexual offender polygraph examinations as ordered or required by the court, Idaho Department of Correction, or Idaho Commission for Pardons and Parole. A person meeting this definition may be certified by the Board as either a senior/approved post conviction sexual offender polygraph examiner or an associate/supervised post conviction sexual offender polygraph examiner. (3-24-17)

06. Certified Treatment Provider. A person who has been certified by the Board as meeting qualifications to provide sexual offender treatment as ordered by the court, Idaho Department of Correction, Idaho Commission for Pardons and Parole, or Idaho Department of Juvenile Corrections. Such person shall be licensed by this state or another state or jurisdiction as a psychiatrist, or a master's or doctoral level mental health professional, and who has by education, experience and training, expertise in the treatment of sexual offenders. A person meeting this definition may be certified by the Board as either a senior/approved sex offender treatment provider or an associate/supervised sex offender treatment provider. (3-20-14)

07. Client. An adult or juvenile receiving services from a person certified by the Board pursuant to Section 18-8314, Idaho Code. (4-11-15)

08. Established Standards. The "Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices" and the "Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders" as referenced in Section 004 of these rules and established pursuant to Section 18-8314, Idaho Code. (4-11-15)

09. Provisional/Supervised Psychosexual Evaluator. A person with limited clinical experience and specialized training, who may be licensed or is working toward licensure as a psychiatrist or master's or doctoral level mental health professional, who is authorized by the Board to assist with the conduct of psychosexual evaluations under the clinical supervision of a senior/approved psychosexual evaluator. A person with a provisional/supervised psychosexual evaluator certificate is not considered to be a certified evaluator as defined in Section 18-8303, Idaho Code or for the purposes of conducting a psychosexual evaluation in accordance with Section 18-8316, Idaho Code. Certification approval is specific to adult or juvenile clients. (3-24-17)

10. Provisional/Supervised Sex Offender Treatment Provider. A person with limited clinical experience and specialized training, who may be licensed or is working toward licensure as a psychiatrist or master's or doctoral level mental health professional, who is authorized by the Board to provide sexual offender treatment under the clinical supervision of a senior/approved sex offender treatment provider. Certification approval is specific to adult or juvenile clients. (3-24-17)

11. Psychosexual Evaluation. A comprehensive evaluation and assessment specifically addressing a person's sexual development, sexual deviancy, sexual history and risk of re-offense. A psychosexual evaluation for the purpose of these rules is conducted post conviction, as ordered by the court pursuant to Section 18-8316, Idaho Code, or Title 20, Chapter 5, Idaho Code, by a person who has been certified by the Board. (4-11-15)

12. Quality Assurance. Processes established by the Board to review psychosexual evaluations and sexual offender treatment procedures to assure minimum standards and certificate holder qualifications are met. All quality assurance reviews will be conducted under the direction of the Board. (3-20-14)

13. Sexual Offender. A person adjudicated or convicted of an offense as listed in Section 18-8304, Idaho Code, or a substantially equivalent offense under the laws of another state, territory, commonwealth, or other jurisdiction of the United States including tribal courts and military courts; or who has been adjudicated or convicted

of a sexual offense-related crime. (4-11-15)

14. Sexual Offender Classification Board. A board in effect from 1998 to 2011 that determined whether a sexual offender should be designated as a violent sexual predator; set certified evaluator qualifications and standards; and administered an evaluator certification process. (3-20-14)

15. Supervision. (3-20-14)

a. For purposes of clinical practice supervision for associate/supervised psychosexual evaluator or associate/supervised sex offender treatment provider certification, supervision is generally considered as face-to-face direct contact, documented teleconferencing, or interactive video conferencing with a Board-approved supervisor using a ratio of one (1) hour of clinical supervision for every twenty (20) hours of direct service provided; or (3-20-14)

b. For purposes of clinical practice supervision for provisional/supervised psychosexual evaluator or provisional/supervised treatment provider certification, supervision is considered as continual face-to-face direct contact with a Board-approved supervisor for the first two hundred fifty (250) hours of direct service provided followed by face-to-face direct contact with a Board-approved supervisor using a ratio of one (1) hour of clinical supervision for every fifteen (15) hours of direct service provided; or (3-24-17)

c. For purposes of supervision for associate/supervised post conviction sexual offender polygraph examiners, supervision is generally considered as face-to-face direct contact with a Board-approved supervisor during conduct of the supervisee's first five (5) PCSOT polygraphs followed by review by a Board-approved supervisor of one (1) PCSOT polygraph for every five (5) PCSOT polygraphs conducted by the supervisee. Such review shall include chart and report review. (3-24-17)

16. Treatment. For purposes of certification eligibility the provision of face-to-face individual, group, or family therapy with a person who has been investigated by law enforcement or child protective services for commission of a sexual offense, or who has been adjudicated or convicted of a sexual offense or sexual offense-related crime. Treatment must be directly relevant to the client's sexually offending behavior. (3-20-14)

17. Violent Sexual Predator. A person who was designated as a violent sexual predator by the Sexual Offender Classification Board where such designation has not been removed by judicial action or otherwise. (3-20-14)

011. ABBREVIATIONS.

01. APA. The American Polygraph Association. (3-24-17)

~~**02. DSM.** The "Diagnostic and Statistical Manual of Mental Disorders," published by the American Psychiatric Association. (3-20-14)~~

~~**03. IDOC.** The Idaho Department of Correction. (3-20-14)~~

~~**04. IDJC.** The Idaho Department of Juvenile Corrections. (4-11-15)~~

~~**052. PCSOT.** "Post conviction sexual offender testing" is specialized instruction beyond the basic polygraph training for the purpose of specific polygraph testing of post convicted sexual offenders. (3-24-17)~~

~~**063. SOCB.** The Sexual Offender Classification Board. (3-20-14)~~

~~**074. SOMB.** The Sexual Offender Management Board. (3-20-14)~~

(BREAK IN CONTINUITY OF SECTIONS)

101. CONTINUING EDUCATION FOR PSYCHOSEXUAL EVALUATORS AND SEXUAL OFFENDER TREATMENT PROVIDERS.

To maintain certification as a psychosexual evaluator or sexual offender treatment provider, a certificate holder must receive continuing education in the field of sexual abuse. (3-20-14)

01. Senior/Approved and Associate/Supervised Certification Levels. A psychosexual evaluator or sexual offender treatment provider who is certified at a senior/approved or an associate/supervised level must receive a minimum of forty (40) hours of specialized continuing education in the form of formal conferences, symposia, seminars, workshops or on-line training over the course of the two-year period prior to each renewal period as set forth in the established standards issued by the Board. A certificate holder not meeting the continuing education requirements may formally petition the SOMB for a sixty-day extension to submit proof of meeting continuing education requirements. (3-20-14)()

02. Provisional/Supervised Certification Level. A provisional/supervised psychosexual evaluator or sexual offender treatment provider must receive a minimum of twenty (20) hours of specialized continuing education in the form of formal conferences, symposia, seminars, workshops or on-line training annually as set forth in the established standards issued by the Board. A certificate holder not meeting the continuing education requirements may formally petition the SOMB for a sixty-day extension to submit proof of meeting continuing education requirements. (3-20-14)()

102. -- 14951. (RESERVED)

~~150. REQUEST FOR CONDITIONAL WAIVER.~~

~~**01. Conditional Waiver.** The Board may consider an applicant's request for a time limited conditional waiver for deficiencies in experience and specialized training qualifications as set forth in the established standards issued by the Board. (3-24-17)~~

~~**02. Duration.** A conditional waiver is limited to a period of two (2) years. Conditional waivers may not be extended or renewed after the third year. (3-20-14)~~

~~**03. Frequency.** A conditional waiver request shall only be considered one (1) time each for: (3-24-17)~~

~~**a.** An initial certification application for psychosexual evaluator and sexual offender treatment provider applicants at the senior/approved or associate/supervised level; (3-24-17)~~

~~**b.** A renewal certification application for psychosexual evaluator and sexual offender treatment provider applicants at the senior/approved or associate/supervised level; (3-24-17)~~

~~**c.** A renewal certification application for post conviction sexual offender polygraph examiner applicants at the senior/approved level; and (3-24-17)~~

~~**d.** A person certified as an associate/supervised post conviction sexual offender polygraph examiner who, after the two-year (2) time limitation at this status has expired, does not meet qualifications for advancement to post conviction sexual offender polygraph examiner certification at the senior/approved level. (3-24-17)~~

~~**151. (RESERVED)**~~

(BREAK IN CONTINUITY OF SECTIONS)

155. APPLICATION FOR CHANGE IN CERTIFICATION LEVEL.

Application for change in certification level shall be on a form provided by the Board and ~~shall be~~ submitted with the required supporting documentation and applicable renewal application processing fee: (3-20-14)()

01. Advance to Senior/Approved Level of Certification Application Fee. A non-refundable renewal application fee payable to the Board in the amount of fifty dollars (\$50) provided that the application is submitted

three hundred sixty-five (365) days or more after the most recent effective certification date. The application fee shall be waived if submission is within three hundred sixty-five (365) days from the most recent effective certification date. (3-20-14)

02. Advance to Associate/Supervised Level of Certification Application Fee. A non-refundable renewal application fee payable to the Board in the amount of thirty dollars (\$30) provided that the application is submitted three hundred sixty-five (365) days or more after the most recent effective certification date. The application fee shall be waived if submission is within three hundred sixty-five (365) days from the most recent effective certification date. (3-20-14)

03. Change to a Less Independent Level of Certification Application Fee. A non-refundable renewal application fee payable to the Board in the amount of fifty dollars (\$50) provided that the application is submitted three hundred sixty-five (365) days or more after the most recent effective certification date. The application fee shall be waived if submission is within three hundred sixty-five (365) days from the most recent effective certification date. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

231. CONTINUING EDUCATION FOR POST CONVICTION SEXUAL OFFENDER POLYGRAPH EXAMINERS.

To maintain certification as a post conviction sexual offender polygraph examiner, a certificate holder must receive a minimum of thirty (30) hours of continuing education related to the field of polygraphy in the form of formal conferences, symposia, seminars, or workshops over the course of the two-year period prior to each renewal period as set forth in the established standards issued by the Board. A certificate holder not meeting the continuing education requirements may formally petition the SOMB for a sixty-day extension to submit proof of meeting continuing education requirements. (3-24-17)()

(BREAK IN CONTINUITY OF SECTIONS)

331. EXPIRATION AND RENEWAL OF CERTIFICATION.

No certification shall be renewed, except as follows: (3-20-14)

01. Renewal. At least thirty (30) days prior to the expiration of a certification, a certificate holder shall apply for renewal of the certification on forms provided by the Board for the applicant's area of practice and client population, if applicable, accompanied by documentation as outlined in the established standards issued by the Board and a renewal certification application fee made payable to the Board. (4-11-15)

02. Removal from the Roster. A certificate holder who has not renewed his certification shall be removed from the central roster ~~thirty (30) days after his certification has expired.~~ (3-20-14)()

03. Renewal After Certification Expiration. A certificate holder whose certification has expired may reapply at any time for certification as follows: (3-20-14)

a. A certificate holder whose certification has been expired for less than three hundred sixty-five (365) days may reapply following the certification renewal process as referenced in Subsection 331.01 of these rules. (3-20-14)

b. A certificate holder whose certification has been expired for three hundred sixty-five (365) days or longer may reapply for certification following the initial certification process as referenced in Section 330 of these rules. (3-20-14)

332. FEES.

The following non-refundable application processing fees are established by the Board: (3-20-14)

- 01. Initial Certification.** Application processing fees for initial certification ~~shall be~~ are: (3-20-14)()
- a.** Senior/Approved Psychosexual Evaluator, Treatment Provider, or Post Conviction Sexual Offender Polygraph Examiner – Seventy-five dollars (\$75). (3-24-17)
 - b.** Associate/Supervised Psychosexual Evaluator, Treatment Provide, or Post Conviction Sexual Offender Polygraph Examiner – Seventy-five dollars (\$75). (3-24-17)
 - c.** Provisional/Supervised Psychosexual Evaluator or Treatment Provider – Fifty dollars (\$50). (3-20-14)
- 02. Renewal Certification.** Application processing fees for renewal certification ~~shall be~~ are: (3-20-14)()
- a.** Senior/Approved Psychosexual Evaluator, Treatment Provider, or Post Conviction Sexual Offender Polygraph Examiner – Fifty dollars (\$50). (3-24-17)
 - b.** Associate/Supervised Psychosexual Evaluator, Treatment Provider, or Post Conviction Sexual Offender Polygraph Examiner – Fifty dollars (\$50). (3-24-17)
 - c.** Provisional/Supervised Psychosexual Evaluator or Treatment Provider – Thirty dollars (\$30). (3-20-14)
- 03. Change in Certification Level.** Application processing fees for a change in certification level ~~shall be~~ are as referenced in Section 155 of these rules. (3-20-14)()
- 04. Continuing Education Extension.** Application processing fee for a request for an extension of time to complete continuing education requirements is twenty-five dollars (\$25). ()

333. CERTIFICATION PERIOD.

Provided that the certificate holder continues to meet the criteria for certification and such certification has not been suspended, revoked, otherwise restricted or placed on voluntary inactive status, the effective period for certification is as follows: (3-20-14)

- 01. Senior/Approved Psychosexual Evaluator or Treatment Provider.** Certification shall remain in effect for two (2) years. Certification renewal shall typically occur during the certificate holder's month of birth two (2) years following initial certification and every two (2) years thereafter, ~~unless extended by conditional waiver.~~ (3-24-17)()
- 02. Associate/Supervised Psychosexual Evaluator or Treatment Provider.** Certification shall remain in effect for two (2) years. Certification renewal shall typically occur during the certificate holder's month of birth two (2) years following initial certification and every two (2) years thereafter, ~~unless extended by conditional waiver.~~ (3-24-17)()
- 03. Provisional/Supervised Psychosexual Evaluator or Treatment Provider.** Certification shall remain in effect for one (1) year. Certification renewal shall typically occur during the certificate holder's month of birth one (1) year following initial certification and annually thereafter. Certification at the provisional/supervised level is limited to a period of three (3) years, at which time the certificate holder must meet minimum requirements for upgrade to the associate/supervised level to be eligible for certification renewal. (3-20-14)
- 04. Senior/Approved Post Conviction Sexual Offender Polygraph Examiner.** Certification shall remain in effect for two (2) years. Certification renewal shall typically occur during the certificate holder's month of birth two (2) years following initial certification and every two (2) years ~~thereafter unless extended by conditional waiver.~~ (3-24-17)()
- 05. Associate/Supervised Post Conviction Sexual Offender Polygraph Examiner.** Certification

shall remain in effect for two (2) years from the certificate holder's month of birth following initial certification. Thereafter, the certificate holder must meet minimum requirements for upgrade to the senior/approved level to be eligible for certification renewal, ~~unless extended by conditional waiver.~~ (3-24-17)()

(BREAK IN CONTINUITY OF SECTIONS)

387. DISCIPLINARY PROCESS.

The disciplinary process may be initiated as a result of a complaint received by the Board or a quality assurance review, or be based upon a review of information submitted to the Board during the certification process, monitoring process or while under formal probation. ~~The Board must provide the applicant or certificate holder with notice of intent to deny, suspend, revoke, restrict or otherwise monitor certification, and the right to appeal.~~ (3-20-14)()

~~01. Notification. The Board shall notify the applicant or certificate holder of the Board's intended action in writing using certified mail.~~ (3-20-14)

~~02. Notice Contents. The notice shall:~~ (3-20-14)

~~a. State the basis for the intended action;~~ (3-20-14)

~~b. May suggest means by which the matter might be remedied; and~~ (3-20-14)

~~c. Provide the applicant or certificate holder notice of the right to a hearing in the matter.~~ (3-20-14)

388. RESPONSE TO NOTICE OF INTENDED ACTION.

~~The applicant or certificate holder shall have not more than thirty (30) days from the date on which the Board's notice of intended action is served upon him to request a hearing with the Board. The written request shall include documentation supporting the applicant or certificate holder's argument refuting the Board's intended action and a requested remedy.~~ (3-20-14)

~~01. Failure to Respond. The board shall issue a final order imposing formal disciplinary action if the applicant or certificate holder fails to respond to the Board's notice of intended action or request a hearing within the designated time frame.~~ (3-20-14)

~~02. Petition for Reconsideration. A petition for reconsideration may be filed by an applicant or certificate holder who failed to respond or request a hearing within the required time frame.~~ (3-20-14)

389. HEARING.

~~Hearings in contested cases shall be conducted by a hearing officer appointed by the Board as outlined in the established standards issued by the Board.~~ (3-20-14)

~~01. Recommended Order. All decisions by the hearing officer are considered to be a recommended order and will be reviewed by the Board prior to the issuance of a final order or remanded back to the hearing officer for further consideration.~~ (3-20-14)

~~02. Response to Recommended Order. Within twenty one (21) days of the service of the recommended order, any party may submit in writing to the Board to support or take exceptions to any part of the recommended order and file briefs in support of the party's position on any issue in the proceeding. The request must identify all legal and factual bases of disagreement with the recommended order. A review by the Board will be conducted as outlined in the established standards issued by the Board.~~ (3-20-14)

~~03. Resolution without a Hearing. Any contested case may be resolved without a hearing on the merits of the notice of intended action by stipulation, settlement, motion to dismiss, summary judgment, default, withdrawal, or for lack of jurisdiction. The hearing officer must dismiss a request for hearing that is not filed within the time limits set forth in these rules.~~ (3-20-14)

~~390. FINAL ORDER.~~

~~The Board will issue a final order or notice of remand within sixty (60) days of the service of the recommended order, unless a review of the recommended order was filed.~~ (3-20-14)

~~391. APPEAL TO DISTRICT COURT~~

~~Any person aggrieved by a final order issued by the Board in a contested case may appeal to district court pursuant to Section 67-5270, Idaho Code, and IDAPA 04.11.01., "Idaho Rules of Administrative Procedure of the Attorney General," Sections 790 through 799.~~ (3-20-14)

392~~88~~. -- 399. (RESERVED)

400. QUALITY ASSURANCE.

Policies for technical review and quality assurance of psychosexual evaluation reports and sexual offender treatment services and polygraph examinations are outlined in the established standards issued by the Board. ~~The Board shall develop a quality assurance process for review of post conviction sexual offender polygraph examinations.~~ (3-20-14)()

PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

Department or Agency: Sexual Offender Management Board

Agency Contact: Nancy Volle Phone: 685-2002

Date: 9/10/2019

IDAPA, Chapter and Title Number and Chapter Name:

IDAPA 57, Sexual Offender Management Board, Chapter 57.01.01 Rules of the Sexual Offender Management Board

Fee Rule Status: Proposed Temporary

Rulemaking Docket Number: 57-0101-1901

STATEMENT OF ECONOMIC IMPACT:

The Sexual Offender Management Board (SOMB) assesses application processing fees for each of the provider types that it certifies. These provider types include 3 classifications (senior, associate and provisional) of adult and juvenile psychosexual evaluators; 3 classifications (senior, associate and provisional) of adult and juvenile sex offender treatment providers; and 2 classifications (senior and associate) of post-conviction sex offender polygraph examiners (PCSOT). The certification application processing fee rates already in effect are:

Initial Senior and Associate Evaluator or Treatment Provider Certification	\$75
Initial Senior and Associate PCSOT Polygraph Examiner Certification	\$75
Biennial Senior and Associate Evaluator or Treatment Provider Renewal	\$50
Biennial Senior and Associate PCSOT Polygraph Examiner Renewal	\$50
Initial Provisional Evaluator or Treatment Provider Certification	\$50
Annual Provisional Evaluator or Treatment Provider Renewal	\$30

The SOMB received \$3175 in certification application processing fees in Fiscal Year 2019. This will not be a typical yearly revenue amount as \$1125 in deposits was from initial provider certification applications. In the future, this group of applicant certifications will be subject to biennial certification renewals at a reduced fee. The SOMB began certifying sex offender treatment providers for adult clients and post-conviction sex offender polygraph examiners in 2014. Certification of adult psychosexual evaluators initially began in 2005. The majority of the state's providers of each of these services are now certified by the SOMB.

This rulemaking impacts only providers needing additional time to meet their continuing education requirements at the time of renewal. The certification application fees will remain the same for each classification. This \$25 continuing education extension fee would be assessed at the time of renewal upon the provider's request for an extension. The new fee would account for staff time spent processing the extension request, developing new forms and tracking/monitoring the compliance of the provider at the end of the extension period. The number of individuals

seeking additional time for continuing education requirements is unknown. Currently the SOMB has 9 providers who are on conditional waiver status for lack of continuing education purposes.

Certification fees are deposited into a dedicated fund to assist with miscellaneous costs associated with the certification process and SOMB-sponsored professional development offerings for certificate holders. Section 18-8314, Idaho Code provides the SOMB with statutory authorization for collection of certification processing fees, at rates of not to exceed \$150 for each initial and each renewal certification. This proposed renewal fee and extension fee combined do not exceed the statutory limit of the maximum \$150 annual renewal fee.

No additional costs to the SOMB, state or other entities are anticipated to implement the proposed changes.

INCORPORATION BY REFERENCE SYNOPSIS

In compliance with Section 67-5223(4), Idaho Code, the following is a synopsis of the differences between the materials previously incorporated by reference in this rule that are currently of full force and effect and newly revised or amended versions of these same materials that are being proposed for incorporation by reference under this rulemaking.

The following agency of the state of Idaho has prepared this synopsis as part of the proposed rulemaking for the chapter cited here under the docket number specified:

STATE AGENCY NAME
IDAPA 57.01.01 - Rules of the Sexual Offender Management Board
Proposed Rulemaking - Docket No. 57-0101-1901

(Include a brief description that explains the differences between the version of the materials or documents that are currently incorporated by reference and the materials or documents that are being proposed for adoption in this rulemaking.)

The following is the list of rules that the SOMB is requesting be Incorporated by Reference:

02. "Bylaws of the American Polygraph Association" effective March 2018. Changes to the APA bylaws do not impact the SOMB rulemaking, they are simply being recognized as an updated version.

03. "Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices" December 2019. Currently, the SOMB Adult Standards and Guidelines allow for a one-time, 2-year conditional waiver for providers who do not meet certain certification criteria. The Standards and Guidelines are amended consistent with the new rulemaking eliminating the conditional waiver option and offering providers a 60-day extension to complete required continuing education upon receipt of a \$25 processing fee. This rulemaking also eliminates mentoring of provisional level evaluators by associate level evaluators. The amendments also incorporate the rulemaking provision to adopt the "Idaho Rules of Administrative Procedure of the Attorney General," IDAPA 04.11.01, Sections 000-799, for contested cases before the Board to have a process that is consistent with the contested case process before most professional licensing boards. Other amendments include consolidating the application and fees sections currently contained in each practice area of standards to one centralized location, and provides for immediate removal of a provider from the central roster who has not renewed their certification, without having to wait 30 days. Finally, these standards are being amended to add quality assurance guidelines to polygraph examination.

04. “Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders” December 2019. The amendments to the SOMB Juvenile Standards and Guidelines are identical to the amendments to the SOMB Adult Standards and Guidelines above.

05. The Sexual Offender Management Board’s “Required Format for Juvenile Psychosexual Evaluation Reports” December 2019. The amendments to this form incorporate the proposed rulemaking to update the term “risk variables” to “risk factors,” require evaluators to provide interpretations of a client’s test results, and present that information in a format that is easy to read and understand.

06. The Sexual Offender Management Board’s “Required Format for Adult Psychosexual Evaluation Reports” December 2019. The amendments to the Required Format for Adult Psychosexual Evaluation Reports are identical to the amendments to the Required Format for Juvenile Psychosexual Evaluation Reports above.