

MINUTES  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

**DATE:** Wednesday, January 15, 2020

**TIME:** 1:30 P.M.

**PLACE:** Room EW42

**MEMBERS:** Chairman Chaney, Acting Vice Chairman Monks, Representatives Kerby, Amador (Malek), Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/  
EXCUSED:** None

**GUESTS:** Charlie Spencer, Leila McNeill, Gill Gardiner, Brad Doty, Scott Hanson, Matthew Gamette, ISP; Cheryl Rambo, Patrick Denton, DAG-ISP; Jeremy Johnston, ISP Forensics; Brad Johnson, Idaho P.O.S.T.; Tom Arkoosh, IACDL; Holly Koole Rebholtz, IPAA;

**Chairman Chaney** called the meeting to order at 1:31 p.m.

**DOCKET NO. 11-0000-1900:** **Major Charlie Spencer**, Rules Review Officer, Idaho State Police (ISP), presented Omnibus **Docket No. 11-0000-1900**. Major Spencer stated this docket encompasses seven chapters and each was previously reviewed and approved by the Legislature. As directed under the Red Tape Reduction Act, seven pages of rules and 2,734 words were removed. He explained most of the reduction involved removal of office addresses, business hours, written interpretation sections and public record act compliance sections. ISP did not receive any requests for public comment or hearings. Major Spencer briefly reviewed each chapter under this docket and stated there were no substantive changes.

In answer to a question from the Committee, **Major Spencer** stated the new law that requires vehicles to yield to accidents along highways is helpful, but officers and first responders are still at great risk.

For the record, no one indicated a desire to testify.

**MOTION:** **Rep. Wintrow** made a motion to approve **Docket No. 11-0000-1900**. **Motion carried by voice vote.**

**DOCKET NO. 11-0301-1901:** **Matthew Gamette**, Lab Director, Idaho State Police Forensic Services, presented **Docket No. 11-0301-1901**. Mr. Gamette stated that in addition to eliminating things that were obsolete, outdated or unnecessary, this rule updated and clarified the number and types of breath samples required to be considered a valid test for court purposes. There were no public comments submitted, and there were no requests for public hearings.

In answer to questions from the Committee, **Mr. Gamette** explained there are two breath analyzing instruments approved for use in Idaho, and both are on the Federal Register. ISP Forensic Services oversees officer training to ensure the proper use of the instruments.

**Tom Arkoosh**, Idaho Association of Criminal Defense Attorneys, testified by stating there is concern about changes in the rules as they relate to the monitoring and observation periods for evidentiary breath alcohol testing and the elimination of the 15 minute monitoring period if there two tests. He stated it is assumed the change occurred to prevent the exclusion of the test in testimony if someone fails to watch the subject for 15 minutes. Rather than solving the problem, he stated it may create bigger problems that will lead to increased litigation.

**Jeremy Johnston**, Discipline Leader, Idaho State Police Forensic Laboratory, responded to the testimony by explaining there are different terms often used synonymously in court for the 15 minute monitoring period. The purpose of the change was to clarify and define the terminology specifically as it relates to the 15 minute pretest period. The rule now defines this as the 15 minute monitoring period. A 15 minute observation period commences simultaneously during the monitoring period prior to a breath test. If two valid breath samples are collected, they are considered as a scientific objective measurement, and therefore, the subjective observations are not necessary for the evidentiary record.

In answer to a question from the Committee, **Mr. Arkoosh** stated that burping or regurgitating into the machine can invalidate the test and this can only be determined with observation. Therefore, he does not see a need for the change.

**MOTION:** **Rep. Gannon** made a motion to approve **Docket No. 11-0301-1901**. Speaking to the motion, Rep. Gannon stated he is sure ISP wants to make sure the rule functions properly and if there is a problem with the process ISP will come back to correct the rule in the future. **Motion carried by voice vote.**

**DOCKET NO. 11-0000-1900F:** **Major Charlie Spencer**, Idaho State Police, presented the Omnibus Fee **Docket No. 11-0000-1900F**. Major Spencer explained there are two chapters in this docket and each existed previously and were approved by the Legislature. This docket eliminated three pages and 634 words and involved removal of office addresses, business hours, written interpretation sections and public record act compliance sections. Major Spencer briefly reviewed each chapter under this docket and stated no one submitted public comment or requested a public hearing.

In answer to questions from the Committee about **chapter 11.05.01**, **Major Spencer** stated the delegation of authority outlined in the rule has not changed. He deferred to **Captain Brad Doty**, Idaho State Police Bureau Chief of Alcohol Control, to respond to questions from the Committee. Captain Doty clarified it is state law, not this rules docket, that requires non-profits to secure a permit when including alcohol in gift baskets. This applies to all alcohol except beer and wine. He explained the transfer of liquor licenses is also governed by law and not rule.

In answer to questions about **chapter 11.10.02**, **Major Spencer** stated the agency's criminal history records are agency records, not court records.

For the record, no one indicated a desire to testify.

**MOTION:** **Rep. Monks** made a motion to approve **Docket No. 11-0000-1900F**. **Motion carried by voice vote.**

**DOCKET NO. 11-1001-1900F:** **Leila McNeil**, Criminal Identification Bureau Chief, Idaho State Police, presented the Omnibus Fee **Docket No. 11-1001-1900F**. She explained that the Idaho Public Safety and Security Information System, or ILETS, connects all Idaho law enforcement agencies to state and federal criminal history databases. It allows officers access to critical information necessary to perform their duties. This rule was previously reviewed and approved by the Legislature. She stated one page of rules was eliminated; however there were no substantive changes.

For the record, no one indicated a desire to testify.

**MOTION:** **Rep. Troy** made a motion to approve **Docket No. 11-1001-1900F**. **Motion carried by voice vote.**

**DOCKET NO. 11-1101-1900F:** **Brad Johnson**, Division Administrator, Idaho State Police, Peace Officer Standards and Training (POST) Council, presented the Omnibus Fee **Docket No. 11-1101-1900F**. Mr. Johnson stated that efforts to update these rules began nearly two years ago at the direction of the POST Council. He highlighted a few specific changes that include: consolidating six sets of rules into one; standardizing terms; standardizing requirements across disciplines for certification, training, renewing certification and challenging certification; eliminating discretionary disqualifiers for certification by removing ambiguity and subjectivity; and updating and adding definitions to improve clarity.

For the record, no one indicated a desire to testify.

**MOTION:** **Rep. Zollinger** made a motion to approve **Docket No. 11-1101-1900F**. **Motion carried by voice vote.**

**ADJOURN:** There being no further business to come before the Committee, the meeting adjourned at 2:29 p.m.

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Representative Chaney  
Chair

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Wendy Carver-Herbert  
Secretary