

Dear Senators LAKEY, Ricks, Burgoyne, and
Representatives CHANEY, Hartgen, Gannon:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the Idaho State Police:

IDAPA 11.10.01 - Rules Governing Idaho Public Safety and Security Information System (Fee Rule)
- Proposed Rule (Docket No. 11-1001-2201);

IDAPA 11.10.03 - Rules Governing the Sex Offender Registry - Proposed Rule (Docket No.
11-1003-2201).

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 10/31/2022. 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 11/28/2022.

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.



Terri Kondeff
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 12, 2022

SUBJECT: Idaho State Police

IDAPA 11.10.01 - Rules Governing Idaho Public Safety and Security Information System (Fee Rule) - Proposed Rule (Docket No. 11-1001-2201)

IDAPA 11.10.03 - Rules Governing the Sex Offender Registry - Proposed Rule (Docket No. 11-1003-2201)

(1) 11.10.01 - Rules Governing Idaho Public Safety and Security Information System (Fee Rule) - Proposed Rule (Docket No. 11-1001-2201)

Summary and Stated Reasons for the Rule

The Idaho State Police (ISP) submits notice of proposed rulemaking at IDAPA 11.10.01 - Rules Governing Idaho Public Safety and Security Information System (Fee Rule). The proposed fee rule increases the annual usage fee for the Idaho Law Enforcement Telecommunication System (ILETS). ISP states that the fee increase will provide additional funds to help support the ILETS system.

Negotiated Rulemaking / Fiscal Impact

ISP states that they conducted informal negotiated rulemaking by consulting with stakeholders and that stakeholders are aware of the proposed changes. There is no fiscal impact anticipated with this rulemaking.

Statutory Authority

The proposed fee rule appears to be within the statutory authority granted to ISP in Section 19-5203, Idaho Code.

(2) 11.10.03 - Rules Governing the Sex Offender Registry - Proposed Rule (Docket No. 11-1003-2201)

Summary and Stated Reasons for the Rule

The Idaho State Police (ISP) submits notice of proposed rulemaking at IDAPA 11.10.03 - Rules Governing the Sex Offender Registry. The proposed rule change provides for the expungement of records from the central registry for persons who are deceased.

Negotiated Rulemaking / Fiscal Impact

Paul Headlee, Deputy Director Legislative Services Office	Kristin Ford, Manager Research & Legislation	Keith Bybee, Manager Budget & Policy Analysis	April Renfro, Manager Legislative Audits	Glenn Harris, Manager Information Technology
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Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

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

ISP states that negotiated rulemaking was not conducted because no significant changes are being proposed. There is no fiscal impact anticipated with this rulemaking.

Statutory Authority

The proposed rule appears to be within the statutory authority granted to ISP in Section 18-8304, Idaho Code.

cc: Idaho State Police
Tecia Ferguson

***** 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 11 – IDAHO STATE POLICE
IDAHO PUBLIC SAFETY AND SECURITY INFORMATION SYSTEM**

11.10.01 – RULES GOVERNING IDAHO PUBLIC SAFETY AND SECURITY INFORMATION SYSTEM

DOCKET NO. 11-1001-2201 (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 Title 19, Chapter 52, Idaho Code, and Sections 19-5201 through 19-5204, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing will be held as follows:

Tuesday, October 25, 2022 1:00 p.m. to 2:00 p.m. MT
<i>In-person participation is available at:</i> Idaho State Police Headquarters 700 S Stratford Dr Meridian ID 83642

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 proposed rulemaking will provide additional funds to help support the Idaho ILETS System. The ILETS system is critical to law enforcement and public safety agencies across Idaho.

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

Percentage of Total ILETS Message Traffic	Annual Usage Fee Effective October 1, 2023
0 - .25 %	3,750
.26 - .50 %	7,500
.51 - .75 %	15,000
.76 - 1.0 %	24,000
1.01 - 1.50 %	32,500
1.51 – 2.0 %	48,750
2.01 – 5.0 %	69,625
> 5.01 %	98,939

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:

There is no negative fiscal impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, informal negotiated rulemaking was conducted with stakeholders. A formal notice was not published, however; ISP consulted with stakeholders regarding the proposed changes earlier this year. Stakeholders and others who will be impacted are aware of the proposed changes. ISP has scheduled a public hearing that will be held during the comment period.

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: There are no documents incorporated by reference affected by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Leila McNeill, Phone, 208-884-7136, Fax, 208-884-7193 Email, Leila.McNeill@isp.idaho.gov.

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 26, 2022.

DATED this 30th day of August, 2022.

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

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 11-1001-2201
(Only Those Sections With Amendments Are Shown.)

018. USER ACCESS FEES.

01. Payment of Fees Required. Any agency that has signed a user agreement with ILETS to have direct terminal or system access to the network must pay access and usage fees as provided in Section 018. (3-23-22)

02. ILETS Network User Access Fees. The access fees approved by the Board and to be collected quarterly in advance by the department are as follows: (3-23-22)

a. An agency at the county or municipal level pays an annual access fee of five thousand, four hundred and twenty-five dollars (\$5,425). (3-23-22)

b. An agency at the state, federal, or tribal level pays an annual access fee of nine thousand dollars (\$9,000). (3-23-22)

03. Usage Fee. Any agency that has signed a user agreement with ILETS to have direct terminal or system access to the ILETS network pays quarterly a usage fee based on that agency's percentage of total annual messages sent and received by user agencies through the ILETS message switcher. The total percentage for an agency includes the message traffic generated by any other agency authorized to access ILETS through that agency's direct terminal or system access. (3-23-22)

a. The usage fee is assessed according to the following schedule:

Percentage of Total ILETS Message Traffic	Annual Usage Fee Effective October 1, 2014 2023
0 - .25 %	\$1,875 3,750
.26 - .50 %	\$3,750 7,500
.51 - .75 %	\$7,500 15,000
.76 - 1.0 %	\$15,000 24,000
1.01 - 1.50 %	\$22,500 32,500
1.51 – 2.0 %	\$33,750 48,750
2.01 – 5.0 %	\$50,625 69,625
> 5.01 %	\$75,939 98,939

(3-23-22)()

b. The department will conduct audits of ILETS message switcher traffic for even-numbered years to determine an agency’s annual usage fee. This fee is effective for two (2) years and begins with the quarterly statement beginning October 1 of odd-numbered years. (3-23-22)

c. If an agency discontinues direct terminal or system access to ILETS and acquires authorized access through another agency, the usage fee for the agency maintaining direct access will be adjusted to reflect the combined historical usage. (3-23-22)

d. A new agency approved for direct ILETS access that does not have historical usage will be assessed an interim usage fee by the department pending the next audit of ILETS message traffic. The department sets an interim fee based on the agency’s similarities to existing agencies with direct terminal or system access. An agency may appeal the interim usage fee set by the department to the ILETS Board. (3-23-22)

e. As operator of ILETS, the department, in lieu of payment of fees, provides direct and in-kind support of network operations. The Board reviews biennially the proportion of that support to the overall operating cost of the system. (3-23-22)

04. Billing and Payment. The department mails billing statements quarterly to all agencies with direct terminal or system access to ILETS. Payment of the fees is due by the first day of the month of each quarter (October 1, January 1, April 1, and July 1), unless it is a Saturday, a Sunday, or a legal holiday, in which event the payment is due on the first successive business day. (3-23-22)

05. Sanctions for Delinquency. Any user agency that becomes delinquent in payment of assessed fees is subject to sanctions under Section 028. (3-23-22)

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: Idaho State Police

Agency Contact: Leila McNeill **Phone:** 208-884-7136

Date: June 22, 2022

IDAPA, Chapter and Title Number and Chapter Name:

[11.10.01 Rules Governing Idaho Public Safety and Security Information System](#)

Fee Rule Status: Proposed Temporary

Rulemaking Docket Number: 11-1001-2201

STATEMENT OF ECONOMIC IMPACT:

For many years, ILETS usage fees have remained static, without any adjustments for increased costs associated with the network. While this has been beneficial for our users, the ILETS fund has been slowly decreasing as we have to use more reserve to pay our annual bills. The costs of technology have been rising and during the past two years have significantly increased. ISP staff constantly monitor the state of the ILETS fund and bring any concerning situations to the Board for review.

It has become clear to the Board that an increase to annual usage fees is necessary. The costs of technology show no signs of reducing or even slowing. Technology and network servicing costs will continue to rise and the ILETS Board feels it is necessary to take this step now to avert a critical need in the near future.

This is a change to the existing fee schedule in the administrative rule, not a new rule or section. The ILETS Board has determined that the fees currently being collected from system users is not sufficient to sustain the fund over time. In order to legally collect higher fees, the administrative rule must be changed.

This change will impact the ILETS dedicated fund only. The increased fees paid by the users of the system will generate approximately an additional \$514,000 annually. This will ensure the ILETS system can be kept at a current technology level and provide access to all local, state, tribal and federal law enforcement agencies in the state. ILETS provides critical information to law enforcement for both public and officer safety through access to other state's driver information along with federal information at NCIC, the Interstate Identification Index, and other federal databases. Negatively, each agency with direct access to the system will be responsible for an increased annual payment to the fund. The proposed cost schedule is included in the rule documentation to show the increase to each agency. All agencies have been informed of the proposed change.

IDAPA 11 – IDAHO STATE POLICE
11.10.03 – RULES GOVERNING THE SEX OFFENDER REGISTRY
DOCKET NO. 11-1003-2201
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 Title 13, Chapter 83, Idaho Code, and Sections 18-8301 through 18-8331, 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 19, 2022.

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 change is to reinstate a rule section required by 18-8305(2) Idaho Code which requires rules for expunging records of persons who are deceased.

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

There are no fees associated with this rule.

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:

No fiscal impact.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because no comments were received from stakeholders and no significant changes are being proposed.

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: There are no documents incorporated by reference affected by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Leila McNeill, Phone, 208-884-7136, Fax, 208-884-7193 Email, Leila.McNeill@isp.idaho.gov.

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 26, 2022.

DATED this 26th day of August, 2022.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1003-2201
(Only Those Sections With Amendments Are Shown.)

000. LEGAL AUTHORITY.

~~The Idaho State Police has authority to make rules to implement the sex offender central registry pursuant to~~ Title 18, Chapter 83, Idaho Code, Sections 18-8301 through 18-8331. ~~(3-23-22)~~()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

The terms defined in Section 67-3001, Idaho Code, ~~will have the same meaning in these rules. In addition, apply as~~ ~~do~~ the following terms ~~have the meanings set forth below:~~ (3-23-22)()

~~01. Central Registry. The state-level records system containing information, photographs and fingerprints relating to persons required to register as a sex offender under Title 18, Chapters 83 and 84, Idaho Code.~~ (3-23-22)

021. Substantially Equivalent. Any sex offense related crime, regardless of whether a felony or misdemeanor, that consists of similar elements defined in Title 18 of the Idaho Criminal Code. It does not mean exactly the same, nor exactly identical to. (3-23-22)

032. Working Days. Each day except Saturday, Sunday, or a legal state holiday. (3-23-22)

(BREAK IN CONTINUITY OF SECTIONS)

012. SEX OFFENDER CENTRAL REGISTRY -- ADMINISTRATION.

01. Central Registry Established. ~~Pursuant to Title 18, Chapter 83, Idaho Code, the department establishes a sex offender central registry in +~~ The bureau of criminal identification. ~~The bureau~~ is responsible for administration of the central registry pursuant to the requirements ~~set forth~~ in Title 18, Chapters 83 and 84, Idaho Code and these rules. (3-23-22)()

02. Forms. The following forms and procedures will be used to provide notice to and collect information from persons required to register as a sex offender ~~pursuant to Title 18, Chapters 83 and 84, Idaho Code.~~ (3-23-22)()

a. “Idaho Sex Offender Registry Form-:” ~~This three (3) page form~~ notifies an offender of register requirements and collects from an offender information required for registration or any change of address or status, as required by statute. (3-23-22)()

b. “Idaho Sex Offender Registry Homeless - Location Verification Form-:” ~~This one (1) page form~~ is used during ~~weekly~~ ~~bi-weekly~~ reporting to collect from an offender the information required when the offender does not provide a physical address at the time of registration. (3-23-22)()

03. Photographs and Fingerprints. (3-23-22)

a. An offender’s photograph will be in color. The sheriff will forward a copy of the photograph with tagging information so it may easily be located by registry staff in the department of transportation photo database. Photographs submitted to the central registry will be a copy of the new photographs taken at the time of each registration. From collected registration fees, the sheriff will pay to the state the cost of photography materials

lawfully required by a state agency or department. (3-23-22)

b. The sheriff will also submit the required fingerprints and palmprints for each registrant, in a manner prescribed by the department, either by manual card or electronic submission each registration. (3-23-22)

04. Notification to Local Law Enforcement. Lists of all offenders registered within a county are available on the sex offender registry web site. The bureau will notify the appropriate county law enforcement agency with jurisdiction any time the bureau becomes aware of a change of status or change of residence of a registered sex offender; and of a registered offender's intent to reside in an agency's jurisdiction. (3-23-22)

05. Notification to Other Jurisdictions. Within one (1) working day of receiving notification that a registered sex offender is moving to another jurisdiction, the bureau will notify the receiving jurisdiction's designated sex offender registration agency of the move by mail or electronic means. (3-23-22)

06. Expungement of Central Registry Information. (3-23-22)

a. Upon receipt of a certified copy of a death certificate or official government documentation recording the death of a person registered with the central registry, the bureau will expunge all records concerning the person from the central registry. ()

b. Upon receipt of a duly attested copy of a pardon issued by the governor or official pardoning body of the jurisdiction where the conviction was entered and then reported to the central registry, the bureau will expunge all records concerning the conviction from the central registry. If the pardoned person has no other conviction requiring registration, the bureau will expunge all references concerning the person from the central registry. (3-23-22) ()

c. Upon receipt of a duly attested document from a court clerk that a conviction previously reported to the central registry has been reversed by the court of conviction, the bureau will expunge all records concerning the conviction from the central registry, provided that the person has no other conviction requiring registration. (3-23-22)

d. Expungement of a record will not occur in cases where a court has ordered a dismissal for a withheld judgment. (3-23-22)

e. Pursuant to Section 18-8310(5), Idaho Code, if a person is exempted from the registration requirement by court order, the bureau will expunge all records and references concerning the offender from the central registry. (3-23-22)

f. "Any periods of supervised release, probation, or parole" in Section 18-8310(1)(a), Idaho Code, means those periods resulting from the underlying conviction requiring registration. ()

07. Determination of Substantially Equivalent or Similar Crime. (3-23-22)

a. A person convicted of a sex offense in another jurisdiction and who moves to, works in, or becomes a student in Idaho may be required to register as a sex offender in Idaho pursuant to Title 18, Chapters 83 or 84, Idaho Code. (3-23-22)

b. The bureau shall determine if a person's out-of-jurisdiction conviction is substantially equivalent or similar to an Idaho sex related offense, as defined by Idaho's Criminal Code, for the purposes of requiring a person to register in Idaho. (3-23-22)

c. The bureau may make all substantially equivalent determinations using the police report (of the incident related to the sex offense), indictment or information or other lawful charging document, judgment or order (of sex offense conviction), psychosexual evaluation report, and order of probation. (3-23-22)

d. If a person seeks a substantially equivalent determination by the bureau before moving to, working in, or becoming a student in Idaho, that person shall provide a completed application and attach certified copies of all above-named documents to the bureau. (3-23-22)

- e. The bureau shall issue a substantially equivalent determination within sixty (60) days upon receipt of a completed application and the required documents. (3-23-22)
- f. The bureau's determination is a declaratory ruling as defined by Chapter 52, Title 67, Idaho Code. (3-23-22)
- g. Judicial review of the bureau's determination will be made in accordance with Chapter 52, Title 67, Idaho Code. (3-23-22)