

Dear Senators LAKEY, Foreman, Wintrow, and
Representatives SKAUG, Scott, Gannon:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Idaho State Police - Idaho State Police - POST:
IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council - Temporary and Proposed Rule (Docket No. 11-1101-2401).

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 07/29/2024. 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 08/26/2024.

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: July 11, 2024

SUBJECT: Idaho State Police - Idaho State Police - POST

IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council - Temporary and Proposed Rule (Docket No. 11-1101-2401)

Summary and Stated Reasons for the Rule

The Idaho State Police submit notice of temporary and proposed rulemaking at IDAPA 11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council (Docket No. 11-1101-2401). This temporary and proposed rule corrects a punctuation error that led to a misapplication of the rule regarding the use of marijuana by law enforcement applicants.

Negotiated Rulemaking / Fiscal Impact

The Idaho State Police state that negotiated rulemaking was not conducted because it is a simple change and not considered substantive. There is no anticipated fiscal impact with this rulemaking.

Statutory Authority

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

cc: Idaho State Police - Idaho State Police - POST
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.

Paul Headlee, Deputy Director Matt Drake, Manager Keith Bybee, Manager April Renfro, Manager Norma Clark, Manager
Legislative Services Office Research & Legislation Budget & Policy Analysis Legislative Audits Information Technology

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**IDAPA 11 – IDAHO STATE POLICE
PEACE OFFICER STANDARDS AND TRAINING COUNCIL**

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

DOCKET NO. 11-1101-2401

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 7, 2024.

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(s) 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 July 17, 2024.

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:

When the rule was changed in 2021, it included adding the additional language to Subsection 11.11.01.055.03 addressing illegally purchasing or illegally possessing marijuana as disqualifying conduct. As published, there were no commas added to provide the context and meaning as intended by the POST Council in making the change. The intent was to disqualify an applicant who has used, illegally purchased, or illegally possessed marijuana within one year of application. Without the commas the meaning is changed to only preclude using illegally purchased or illegally possessed marijuana. This is counter to the intent of the POST Council in adding the language to address illegally purchasing or illegally possessing marijuana, in addition to its use within a year of application. The addition of the two commas corrects this error.

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

This temporary rule change is needed to protect the public health, safety, or welfare because as currently written, it allows applicants who have used marijuana within one year of application to qualify for certification if such use was other than marijuana that was illegally purchased or illegally possessed. This is contrary to disqualifying an applicant for any marijuana use within one year of application, as has been in the rule for many years and is still intended by the POST Council.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Not applicable.

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: Not applicable.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a minor change to correct a simple oversight and is not considered substantive.

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: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Brad Johnson, 208-884-7251.

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 July 24, 2024.

DATED this 6th day of June, 2024

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

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 11-1101-2401**

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

055. INELIGIBILITY BASED UPON PAST CONDUCT.

An applicant is ineligible to attend a basic training academy and for certification under the following circumstances. (3-31-22)

- 01. Criminal Conviction.** An applicant is ineligible if he was convicted of: (3-31-22)
 - a.** A felony, if the applicant was eighteen (18) years old or older at the time of conviction; (3-31-22)
 - b.** A misdemeanor Driving Under the Influence offense(s) within two (2) years immediately preceding application, or two or more (2) misdemeanor Driving Under the Influence offenses within five (5) years immediately preceding application; (3-31-22)
 - c.** A misdemeanor crime involving domestic violence, if the relevant law enforcement discipline requires the applicant to possess a firearm in the course of their duty, or if the conviction occurred within 5 years immediately preceding application; (3-31-22)
 - d.** A misdemeanor crime of deceit, as defined in these rules, or a misdemeanor sex offense, if the conviction occurred within five (5) years immediately preceding application; (3-31-22)
 - e.** A misdemeanor drug-related offense, if the conviction occurred within one (1) year immediately preceding application. (3-31-22)
- 02. Driver's License.** An applicant is ineligible if he does not possess a valid driving license from the applicant's state of residence and is unable to qualify for an Idaho driver's license, except for the following disciplines: (3-31-22)
 - a.** Correction Officers; (3-31-22)
 - b.** Emergency Communications Officers. (3-31-22)
- 03. Marijuana.** An applicant is ineligible if he used, illegally purchased, or illegally possessed marijuana, cannabis, hashish, hash oil, or THC in synthetic and natural forms, whether charged or not, if such use occurred: ~~(3-31-22)~~(6-7-24)T

- a. Within one (1) year immediately preceding application; (3-31-22)
- b. While employed as a law enforcement officer, in a prosecutorial position, or in a position of public safety, regardless of when the use occurred. (3-31-22)

04. Violations of Idaho Controlled Substances Act. An applicant is ineligible if he, while eighteen (18) years old or older, violated any provision of the Idaho Uniform Controlled Substances Act, Section 37-2701 et seq., Idaho Code, whether charged or not, that constitutes a felony, or of a comparable statute of another state or country, if the violation occurred: (3-31-22)

- a. Within three (3) years immediately preceding application; (3-31-22)
- b. While employed as a law enforcement officer, in a prosecutorial position, or in a position of public safety, regardless of when the illegal use occurred. (3-31-22)

05. Use of Prescription or Other Legally Obtainable Controlled Substance. An applicant is ineligible if he unlawfully used any prescription drug or a legally obtainable controlled substance within the past three (3) years, unless: (3-31-22)

- a. The applicant was under the age of eighteen (18) at the time of using the controlled substance; or (3-31-22)
- b. An immediate, pressing, or emergency medical circumstance existed to justify the use of a prescription controlled substance not specifically prescribed to the person. (3-31-22)

06. Military Discharge. An applicant is ineligible if he received a “dismissal,” “bad conduct discharge” (BCD), “dishonorable discharge” (DD), or administrative discharge of other than honorable (OTH) from military service. (3-31-22)

07. Decertification or Denial of Certification. An applicant is ineligible if he has been denied certification; his certification is suspended in another state or jurisdiction, denied, revoked or applicant is not able to obtain certification in another state or jurisdiction; or his basic certificate has been revoked by the Council in this state or the responsible licensing agency in any other issuing jurisdiction, unless the denial or revocation has been rescinded by the Council or by the responsible licensing agency of the issuing jurisdiction. (3-31-22)