

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. 11-1104-1501

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 21, 2015.

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:

Fingerprint requirements were updated to reflect current Bureau of Criminal Identification requirements; "shall" changed to "will" and "must" pursuant to direction in Rule Writer's Manual; no certification is ever reactivated, so the language was corrected to reflect recertification; the Physical Agility Testing was deleted from the challenge requirements to enhance agencies' ability to hire retired officers from other states; firearms qualification was added to the correction officer challenge requirements, as this is a required job task for correction officers; added decertification investigation language where missing to make the language identical to other similar sections.

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 Victor McCraw at (208) 884-7251.

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 28, 2015.

DATED this 28th Day of August, 2015.

Victor R. McCraw
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. 11-1104-1501
(Only Those Sections With Amendments Are Shown.)

036. CRIMINAL RECORD.

01. Fingerprints. The applicant must be fingerprinted on ~~two (2) copies of~~ the standard FBI Applicant fingerprint ~~form~~ card, and a search made of local, state, and national fingerprint files to disclose any criminal record. The original copies of all records check results must be retained by the POST Council. (4-11-06)()

02. Conviction. The term “conviction” includes: (4-11-06)

a. Any conviction in a federal, tribal, state, county, or municipal court; (4-11-06)

b. A voluntary forfeiture of bail, bond, or collateral deposited to secure a defendant’s appearance in court as final disposition; (4-11-06)

c. The payment of a fine; (4-11-06)

d. A plea of guilty, nolo contendere; or (4-11-06)

e. A finding of guilt regardless of whether the sentence is imposed, suspended, deferred, or withheld, and regardless of whether the plea or conviction is set aside or withdrawn, or the case or charge is dismissed, or the record expunged under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the setting aside of the plea or conviction, or dismissal of the case or charge, or expungement of the record is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the plea, finding of guilt, or conviction. (4-11-06)

03. Misdemeanor Conviction. A misdemeanor conviction of any federal, state, or local crime may be grounds for rejection of the applicant. (4-11-06)

a. An applicant must be rejected who has been convicted of any misdemeanor sex crime, crime of deceit, or drug offense unless the conviction occurred more than five (5) years prior to application and the applicant’s agency head files a written request for review with the POST Council. In the case of a willful concealment or petit theft conviction, the applicant may be accepted upon approval of the POST Division Administrator. The Division Administrator will have the discretion to refer the application to the POST Council. In all other cases, the POST Council must review the application and determine whether the individual will be certifiable as a correction officer in the state of Idaho. (4-11-06)

b. An applicant with any other misdemeanor conviction will be accepted upon approval of their agency head provided the conviction occurred more than two (2) years prior to application and the applicant’s agency head submits written documentation that, with knowledge of the facts and circumstances concerning the offense or violation, he approves the applicant. If the conviction occurred during the two (2) years immediately preceding application, the POST Council must review the application and determine whether the individual will be certifiable as a correction officer in the state of Idaho. (4-11-06)

04. Felony Conviction. An applicant must be rejected who has been convicted of any felony crime, the punishment for which could have been imprisonment in a federal or state penal institution. For the purpose of this rule, a felony conviction will continue to be considered a felony conviction regardless of whether the conviction is later reduced to a misdemeanor conviction under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the reduction is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the felony conviction. No waivers will be granted by the POST Council, except where, since the time of the conviction, the crime for which the defendant was convicted has, by statute, been reduced to a misdemeanor or decriminalized in the jurisdiction where the conviction occurred. In such cases, the POST Council

must review the application and determine whether the individual will be certifiable as a correction officer in the state of Idaho. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

051. LAPSE OF CORRECTION OFFICER CERTIFICATION.

The certification of any correction officer ~~shall~~ **will** be considered lapsed if the officer does not serve as a correction officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified correction officer who remains in an administrative duty assignment with the Idaho Department of Correction ~~shall~~ **will** retain their POST certification provided they do not leave employment with the Idaho Department of Correction and satisfy the continuing training requirement of at least twenty (20) hours per year. The three-year period provided herein ~~shall~~ **will** be tolled during any time period that a correction officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. (~~4-4-13~~)()

01. Three to Five Years. A correction officer who has been out of full-time correction officer status from three (3) to five (5) years and who wants to ~~reactivate certification shall~~ **be recertified must** meet the following POST requirements: (~~4-4-13~~)()

- a. Submit a POST Certification Correction Challenge Packet; (4-11-06)
- b. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- c. Pass the following tests administered by a POST Training Specialist: (4-11-06)
 - i. The POST correction certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; ~~and~~ (~~4-11-06~~)()
 - ii. The POST ~~Correction Officer Physical Agility Test~~ **Firearms Qualification Course**; and (~~4-11-06~~)()
- d. Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)

02. Over Five Years. A correction officer who has been out of full-time correction officer status for over five (5) years ~~shall~~ **must** attend the POST Basic Correction Academy or a POST-certified private prison contractor's correction officer training program to ~~reactivate certification~~ **be recertified**. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time correction officer status, the officer was engaged in an occupation requiring correction officer training, skill, and experience. This evidence ~~shall~~ **must** be submitted with a POST Certification Correction Challenge Packet. Upon receiving a waiver, the officer ~~shall~~ **must** meet the following POST requirements: (~~4-4-13~~)()

- a. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- b. Pass the following tests administered by a POST Training Specialist: (4-11-06)
 - i. The POST correction certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; ~~and~~ (~~4-11-06~~)()
 - ii. The POST ~~Correction Officer Physical Agility Test~~ **Firearms Qualification Course**; and (~~4-11-06~~)()
- c. Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)

03. Over Eight Years. A correction officer who has been out of full-time correction officer status for over eight (8) years ~~shall~~ **must** attend the POST Basic Correction Academy or a POST-certified private prison contractor's correction officer training program to be recertified. No waiver of this requirement ~~shall~~ **will** be granted by the Council. (4-4-13)()

(BREAK IN CONTINUITY OF SECTIONS)

054. CHALLENGING THE BASIC CORRECTION ACADEMY.

Any correction officer presently appointed by the Idaho Department of Correction or by a private prison contractor of the State Board of Correction who, within the last five (5) years, has been employed and certified or commissioned by another state or the federal government as a correction officer or a student who has satisfactorily completed a Basic Correction Academy equivalent to the Idaho POST Basic Correction Academy within the last three (3) years will be eligible for certification in the state of Idaho without attending the Basic Correction Academy, provided the officer: (4-11-06)

01. Submission of Challenge Packet. Submits a POST Certification Correction Challenge Packet to POST Council, which must include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience; (4-11-06)

~~02.~~ **Discloses Decertification Information.** ~~Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof: ()~~

~~023.~~ **Passes Required Tests.** Passes the following tests administered by a POST Training Specialist: (4-11-06)

a. The POST correction certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; ~~and~~ (4-11-06)()

b. The POST ~~Correction Officer Physical Agility Test~~ **Firearms Qualification Course**; and (4-11-06)()

~~034.~~ **Completes Probationary Period.** Completes his probationary period as required by Subsection 053.01. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

062. LAPSE OF ADULT PROBATION AND PAROLE OFFICER CERTIFICATION.

The certification of any adult probation and parole officer ~~shall~~ **will** be considered lapsed if the officer does not serve as an adult probation and parole officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified adult probation and parole officer who remains in an administrative duty assignment with the Idaho Department of Correction ~~shall~~ **will** retain their POST certification provided they do not leave employment with the Idaho Department of Correction and satisfy the continuing training requirement of at least twenty (20) hours per year. The three-year period provided herein ~~shall~~ **will** be tolled during any time period that an adult probation and parole officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. (4-4-13)()

01. Three to Five Years. An adult probation and parole officer who has been out of full-time adult probation and parole officer status from three (3) to five (5) years and who wants to ~~reactivate certification shall be~~ **recertified must** meet the following POST requirements: (4-4-13)()

a. Submit a POST Certification Adult Probation and Parole Challenge Packet; (4-11-06)

- b.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- c.** Pass the following tests administered by a POST Training Specialist: (4-11-06)
- i.** The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; (4-2-08)
- ii.** The POST Firearms Qualification Course; and (~~4-2-08~~)()
- iii.** ~~The POST Adult Probation and Parole Officer Physical Agility Test; and~~ (~~4-11-06~~)
- d.** Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)
- 02. Over Five Years.** An adult probation and parole officer who has been out of full-time adult probation and parole officer status for over five (5) years shall must attend the POST Basic Adult Probation and Parole Academy to ~~reactivate certification~~ be recertified. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time adult probation and parole officer status, the officer was engaged in an occupation requiring adult probation and parole officer training, skill, and experience. This evidence shall must be submitted with a POST Certification Adult Probation and Parole Challenge Packet. Upon receiving a waiver, the officer shall must meet the following POST requirements: (~~4-4-13~~)()
- a.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- b.** Attend and pass Idaho POST-certified courses in Arrest Techniques and Practical Problems; (4-11-06)
- c.** Pass the following tests administered by a POST Training Specialist: (4-11-06)
- i.** The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; (4-2-08)
- ii.** The POST Firearms Qualification Course; and (~~4-2-08~~)()
- iii.** ~~The POST Adult Probation and Parole Officer Physical Agility Test; and~~ (~~4-11-06~~)
- d.** Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)
- 03. Over Eight Years.** An adult probation and parole officer who has been out of full-time adult probation and parole officer status for over eight (8) years shall must attend the POST Basic Adult Probation and Parole Academy to be recertified. No waiver of this requirement shall will be granted by the Council. (~~4-4-13~~)()

(BREAK IN CONTINUITY OF SECTIONS)

065. CHALLENGING THE BASIC ADULT PROBATION AND PAROLE ACADEMY.

Any adult probation and parole officer presently appointed by the Idaho Department of Correction who, within the last five (5) years, has been employed and certified or commissioned by another state or the federal government as an adult probation and parole officer or a student who has satisfactorily completed a Basic Adult Probation and Parole Academy equivalent to the Idaho POST Basic Adult Probation and Parole Academy within the last three (3) years will be eligible for certification in the state of Idaho without attending the Basic Adult Probation and Parole Academy, provided the officer: (4-11-06)

- 01. Submission of Challenge Packet.** Submits a POST Certification Adult Probation and Parole

Challenge Packet to POST Council, which must include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience; (4-11-06)

02. **Discloses Decertification Information.** Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ()

023. **Attends and Passes POST-Certified Courses.** Attends and passes Idaho POST-certified courses in Arrest Techniques and Practical Problems; (4-11-06)

034. **Passes Required Tests.** Passes the following tests administered by a POST Training Specialist: (4-11-06)

a. The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; (4-2-08)

b. The POST Firearms Qualification Course; and (4-2-08)

~~**c.** The POST Adult Probation and Parole Officer Physical Agility Test. (4-2-08)~~

045. **Completes Probationary Period.** Completes his probationary period as required by Subsection 064.01 of these rules. (4-11-06)