

IDAPA 11 – IDAHO STATE POLICE

11.11.01 - RULES GOVERNING THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-1401

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section 19-5107, Idaho Code.

METHOD OF PARTICIPATION: Interested persons wishing to participate in the negotiated rulemaking must respond to this notice by contacting the undersigned either in writing, by email, or by calling the phone number listed below. To participate, responses must be received by August 20, 2014.

Should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at the address listed below.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary and made available on the agency website.

Failure of interested persons to respond to this notice of intent or the lack of a sufficient number of responses to this notice of intent may result in the discontinuation of further informal proceedings. In either event the agency shall have sole discretion in determining the feasibility of scheduling and conducting informal negotiated rulemaking and may proceed directly to formal rulemaking if proceeding with negotiated rulemaking is deemed infeasible.

Interested persons may participate in the process through attendance at meetings or by sending comments by mail or email to the contact person and address identified below. Refer to the web site listed in the contact information section for information on the date, time, and location of any meetings that are scheduled.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

The purpose of this rulemaking is to document that provisions that may be waived by the POST Division Administrator, but are not, shall be referred to the POST Council for consideration; and further clarifies provisions in reference to character and drug use.

CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this negotiated rulemaking, contact Rory Olsen, 884-7256. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Idaho Peace Officer Standards and Training Council web site at the following web address: <http://www.post.idaho.gov>

All written comments must be directed to the undersigned and must be delivered on or before August 20, 2014. Comments may be emailed to rory.olsen@post.idaho.gov or mailed to Rory Olsen, 700 S. Stratford Dr., Meridian, ID 83642.

June 24, 2014

Rory Olsen, Acting POST Division Administrator

Idaho State Police
Peace Officer Standards & Training
700 S. Stratford Drive
Meridian, Idaho 83642
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**IDAPA 11
TITLE 11
CHAPTER 01**

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

050. MINIMUM STANDARDS FOR EMPLOYMENT.

Every peace, county detention, juvenile detention, and juvenile probation, Idaho Department of Juvenile Corrections direct care staff, and misdemeanor probation officer shall meet the requirements in Sections 050 through 0645. In situations where the POST Division Administrator has the authority to grant a waiver, but chooses not to, he shall refer the application to the POST Council for consideration. (4-2-08)(3-31-14)T

(BREAK IN CONTINUITY OF SECTIONS)

054. CHARACTER.

01. Moral Turpitude. The POST Council may take into consideration the commission of any act or offense involving moral turpitude to ensure an applicant is of good moral character and warrants the public trust. "Moral turpitude" is conduct that is contrary to justice, honesty, or morality. ~~BLACK'S LAW DICTIONARY 1030 (8th ed. 2004).~~ The purpose of this requirement is to prohibit persons who engage in dishonest, unprofessional, unethical, or immoral conduct from becoming law enforcement officers, and to protect against acts or conduct that might endanger the safety and welfare of the public. (3-20-14)(3-31-14)T

02. May Be Rejected. An applicant may be rejected who has committed any unlawful act involving moral turpitude, even though the applicant has never been charged by a law enforcement agency for such act. ~~Such an act can include, but is not limited to, an act involving fraud, larceny, or the intent to harm persons. Such an act can also encompass certain sexual acts or sex-related acts, such as rape, sexual assault, lewd conduct with a child, sexual abuse of a child or vulnerable adult, child pornography, bestiality, video voyeurism, and prostitution.~~ (3-20-14)(3-31-14)T

03. May Be Accepted. If an applicant committed any unlawful act involving moral turpitude, the applicant may be accepted upon approval of the POST Division Administrator, provided the applicant's agency head, with knowledge of the facts and circumstances concerning the act, recommends approval. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (3-20-14)(3-31-14)T

055. DRUG USE.

01. Marijuana. An applicant shall be rejected who has used marijuana: (3-20-14)

a. Within the past three (3) years; (3-20-14)

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; or (3-20-14)

c. On a regular, confirmed basis within the past five (5) years. (3-20-14)

d. This prohibition includes use of cannabis, hashish, hash oil, and THC in both synthetic and natural forms. (3-20-14)(3-31-14)T

02. Other Controlled Substances. An applicant shall be rejected who has illegally used any Schedule

I through Schedule VI controlled substance, as defined in Sections 37-2705 through 37-2713A, Idaho Code, excluding marijuana: (3-20-14)

a. Within the past five (5) years; (3-20-14)

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; or (3-20-14)

c. On more than a minimal and experimental basis during the applicant's lifetime. (3-20-14)

03. Prescription Drugs. An applicant ~~shall~~ may be rejected who has unlawfully used any prescription drug or a legally obtainable controlled substance ~~in a manner for which it was not intended~~ within the past three (3) years. (3-20-14)(3-31-14)T

04. Drug Trafficking, Manufacturing, and Related Offenses. Subject to the rules above regarding use of controlled substances, an applicant shall be rejected who has violated any provision of: (3-20-14)

a. The Idaho Uniform Controlled Substances Act, Section 37-2701 et seq., Idaho Code, including, but not limited to, the illegal sale or manufacture of a controlled substance or conspiring to illegally sell or manufacture a controlled substance; or (3-20-14)

b. A comparable statute of another state or country. (3-20-14)

c. Provided, however, that the POST Division Administrator may waive any misdemeanor conviction for violation of the Idaho Uniform Controlled Substances Act. When considering whether to grant such a waiver, the POST Division Administrator shall have the discretion to refer the application to the POST Council. (3-20-14)

05. Juvenile Drug Offense Convictions. Any misdemeanor conviction of a drug offense prosecuted pursuant to Title 18, Chapter 15, Idaho Code, or a comparable statute of another state or country, shall not be a basis for rejection of an applicant. However, an applicant may be rejected who has been convicted of a felony drug offense prosecuted pursuant to Title 18, Chapter 15, Idaho Code. If an applicant has been convicted of such a felony drug offense, the applicant may be accepted upon approval of the POST Division Administrator, provided the applicant's agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (3-20-14)