

Dear Senators LODGE, Nonini, Burgoyne, and
Representatives WILLS, DAYLEY, Gannon:

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

IDAPA 11.05.01 - Alcohol Beverage Control Bureau - Proposed Rule (Docket No. 11-0501-1401).

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 09/22/2015. 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 10/20/2015.

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 334-4834, or send a written request to the address on the memorandum attached below.



Eric Milstead
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 Research Analyst - Ryan Bush

DATE: September 2, 2015

SUBJECT: Idaho State Police

IDAPA 11.05.01 - Alcohol Beverage Control Bureau - Proposed Rule (Docket No. 11-0501-1401)

The Idaho State Police (ISP) submits notice of proposed rulemaking at IDAPA 11.05.01 - Alcohol Beverage Control Bureau. The rule provides a definition for the term "actual use" in regards to a liquor-by-the-drink license. The definition gives criteria for "actual use" that includes display of the license, hours that the business is open to the public and number of drinks sold.

The ISP states that negotiated rulemaking was conducted and notice was published in the October 2014 Idaho Administrative Bulletin, Vol. 14-10, page 183. There is no fiscal impact associated with this rulemaking.

The proposed rule appears to be within the statutory authority granted to the ISP in sections 23-901 and 23-932, Idaho Code.

cc: Idaho State Police
Teresa Baker

**IDAPA 11 - IDAHO STATE POLICE
ALCOHOL BEVERAGE CONTROL BUREAU**

11.05.01 - RULES GOVERNING ALCOHOL BEVERAGE CONTROL

DOCKET NO. 11-0501-1401

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 Sections 23-901, 23-392, 23-1330 and 23-1408, 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 September 16, 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:

Provide a definition for the term "Actual Use" as it pertains to an alcohol license and establishes criteria which define the minimum standards for placing a newly issued or transferred license into use for purposes of clarification and compliance.

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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, page 183](#).

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 Capt. Russell Wheatley, Idaho State Police Alcohol Beverage Control (208) 884-7060 or abc@isp.idaho.gov and reference Docket Number 11-0501-1401.

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 September 23, 2015.

DATED this 5th Day of August, 2015.

Colonel Ralph W. Powell
Director
Idaho State Police
700 S. Stratford Drive
Meridian, ID 83642
TEL: (208) 884-7003
FAX: (208) 884-7090

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-0501-1401
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

01. Licensee. Any person who has received a license from the Director under any of the provisions of Title 23, Chapters 9, 10 or 13, Idaho Code. (7-1-93)

02. Licensed Premises. Any premises for which a license has been issued under any of the provisions of Title 23, Chapters 9, 10 or 13, Idaho Code. All areas included on the floor plan submitted to the Director with the licensee's application for a license constitute the licensed premises. In the event of loss or move of the physical licensed premises, the licensee has ninety (90) days to secure and occupy a new premises in which to display the license. All licenses must be prominently displayed in a suitable premises and remain in actual use by the licensee and available for legitimate sales of alcoholic beverages by the drink. An additional sixty (60) days may be granted by the Director, upon petition by the license holder. (3-6-07)

a. Actual Use. A liquor-by-the-drink license is in actual use when all of the following requirements are satisfied: ()

i. The license must be prominently displayed in a premise that is suitable for carrying on the business of selling liquor-by-the-drink. ()

ii. Except as provided in Section 23-908(4), Idaho Code, the business using the license must be open to the public with liquor-by-the-drink available for sale and consumption therein for at least twenty (20) hours per week, and the hours of sale must occur during the times specified in Section 23-927, Idaho Code. ()

iii. The business must make at least twenty (20) sales of liquor-by-the-drink per week. ()

03. New Licenses. For purposes of Section 23-908(4), Idaho Code, a "new license" is one that has become available as an additional license within a city's limits under the quota system after July 1, 1980. The requirement of Section 23-908(4), Idaho Code, that a new license be placed into actual use by the licensee and remain in use for at least six (6) consecutive months is satisfied if the licensee makes actual sales of liquor by the drink during at least eight (8) hours per day, no fewer than six (6) days per week. (3-6-07)

04. Multipurpose Arena. (4-4-13)

a. For purposes of Section 23-944(3), Idaho Code, a Multipurpose Arena is a: (4-4-13)

i. Publicly or privately owned or operated arena, coliseum, stadium, or other facility where sporting events, concerts, live entertainment, community events, and other functions are presented for a ticketed price of admission or one whose premises are leased for private events such as receptions; (4-4-13)

ii. Facility that is licensed to sell liquor by the drink at retail for consumption upon the premises; and (4-4-13)

iii. Facility that has been endorsed by the director. (4-4-13)

b. A Multipurpose Arena facility must apply annually for an endorsement on its alcohol beverage license. (4-4-13)

c. To receive a Multipurpose Arena endorsement under this Section will require the facility to have food available including, but not limited to, hamburgers, sandwiches, salads, or other snack food. The director may also restrict the type of events at a Multipurpose Arena facility at which beer, wine, and liquor by the drink may be

served. The director will also consider the seating accommodations, eating facilities, and circulation patterns in such a facility, and other amenities available at a Multipurpose Arena facility before the director will endorse the license. (4-4-13)

d. A licensee that applies for a Multipurpose Arena endorsement must submit with the application an operating/security plan to the director and the local law enforcement agency for review and approval. Once approved, the plan remains in effect until the licensee requests a change or the director determines that a change is necessary due to demonstrated problems or conditions not previously considered or adequately addressed in the original plan. The plan must be submitted in a format designated by the director and must contain all of the following elements: (4-4-13)

i. How the Multipurpose Arena facility will prevent the sale and service of alcohol to persons under twenty-one (21) years of age and those who appear to be intoxicated; (4-4-13)

ii. The ratio of alcohol service staff and security staff to the size of the audiences at events where alcohol is being served; (4-4-13)

iii. Training provided to staff who serve, regulate, or supervise the service of alcohol; (4-4-13)

iv. The facility's policy on the number of alcoholic beverages that will be served to an individual patron during one (1) transaction; (4-4-13)

v. A list of event type/categories to be held in the facility at which alcohol service is planned, along with a request for the level of alcohol service at each event; and (4-4-13)

vi. Diagrams and designation of alcohol service areas for each type of event category with identified restrictions of minors. (4-4-13)

e. Prior to the first of each month, the licensee must provide a schedule of events for the upcoming month to the director and local law enforcement office. This schedule must show the date and time of each event during which alcohol service is planned. The licensee must notify the director and local law enforcement at least twenty-four (24) hours in advance of any events where alcohol service is planned that were not included in the monthly schedule. (4-4-13)

f. To prevent persons who are under twenty-one (21) years of age or who appear intoxicated from gaining access to alcohol, the director may require that an operating plan include additional mandatory requirements if it is determined that the plan does not effectively prevent violations of liquor laws and regulations, particularly those that prevent persons under twenty-one (21) years of age or who are apparently intoxicated from obtaining alcohol. (4-4-13)

g. If premises, licensed as a Multipurpose Arena, subsequently ceases to meet the qualifications of a Multipurpose Arena, the restrictions contained in Section 23-943, Idaho Code, shall apply and the posting of signs as provided for in Section 23-945, Idaho Code, shall be required. The licensee shall advise the director, by mail, that his premises no longer constitute a Multipurpose Arena, so that the license may be modified accordingly. (4-4-13)

05. Partition. A partition, as used in Section 23-944 Idaho Code, is defined as a structure separating the place from the remainder of the premises. Access through the structure to the place will be controlled to prevent minors from entering the place. The structure must be: (3-6-07)

a. Permanently fixed from the premises ceiling to the premises floor. (3-6-07)

b. Made or constructed of solid material such as glass, wood, metal or a combination of those products. (3-6-07)

c. Designed to prevent an alcoholic beverage from being passed over, under or through the structure. (3-6-07)

d. All partitions must be approved by the Director. (3-6-07)

06. Place. For the purposes of Section 23-943, Idaho Code, “Place” as defined by Section 23-942(b), for a one (1) room restaurant without a barrier or partition, refers to the immediate bar area wherein there is seating alongside a counter or barrier that encloses bar supplies and equipment that are kept, and where alcoholic beverages are mixed, poured, drawn or served for consumption. (3-6-07)

07. Restaurant. The term Restaurant, as defined by Section 23-942(c), Idaho Code, is further defined as an establishment maintained, advertised and held out to the public as primarily a food eating establishment, where individually priced meals are prepared and regularly served to the public, primarily for on-premises consumption. The establishment must also have a dining room or rooms, kitchen and cooking facilities for the preparation of food, and the number, and type of employees normally used in the preparing, cooking and serving of meals. Primarily as defined for the purposes of Section 010, also includes that the licensee must show to the director the following: (3-6-07)

a. An established menu identifying the individually priced meals for consumption; (3-20-04)

b. Food service and preparation occurs on the premises by establishment employees; (3-20-04)

c. Stoves, ovens, refrigeration equipment or such other equipment usually and normally found in restaurants are located on the premises of the establishment; (3-20-04)

d. The licensee must demonstrate to the satisfaction of the Director, through appropriate business records, that the establishment is advertised and held out to the public as primarily a food eating establishment, or that at least forty percent (40%) of the establishments consumable purchases are derived from purchases of food and non-alcoholic beverages. (3-20-04)

08. Stock Transfer. For the purposes of Section 23-908, Idaho Code, the sale or exchange of stock in a closely held corporation holding a license is deemed a transfer of the license. However, the sale or exchange of shares in a family corporation among family members, is not a transfer. (3-6-07)