

Dear Senators DARRINGTON, Vick, Bock, and
Representatives WILLS, Luker, Burgoyne:

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

IDAPA 11.03.01 - Rules Governing Alcohol Testing (Docket No. 11-0301-1201);

IDAPA 11.05.01 - Rules Governing Alcohol Beverage Control (Docket No. 11-0501-1101).

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 12/04/2012. 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 01/02/2013.

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 334-4845, or send a written request to the address on the
memorandum attached below.



Jeff Youtz
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 - Brooke Murdoch

DATE: November 14, 2012

SUBJECT: Idaho State Police

IDAPA 11.03.01 - Rules Governing Alcohol Testing (Docket No. 11-0301-1201)

IDAPA 11.05.01 - Rules Governing Alcohol Beverage Control (Docket No. 11-0501-1101)

(1) The Idaho State Police submits notice of proposed rulemaking at IDAPA 11.03.01 - Rules Governing Alcohol Testing. The proposed rulemaking requires that blood specimens contain at least ten milligrams of sodium fluoride per cubic centimeter of blood plus an appropriate anticoagulant.

The proposed rule is within the authority granted to the Idaho State Police in Section 67-2901, Idaho Code.

(2) The Idaho State Police submits notice of proposed rulemaking at IDAPA 11.05.01 - Rules Governing Alcohol Beverage Control. The proposed rule makes the following changes:

- (a) Defines multipurpose arena;
- (b) Requires multipurpose arena facilities to apply annually for an endorsement on its alcohol beverage license and provides requirements for obtaining such endorsement;
- (c) Provides operating and notice requirements and restrictions for multipurpose arenas; and
- (d) Prohibits minors from entering, remaining or loitering in an establishment where drinking alcohol is the predominant activity, including those that provide entertainment and whose primary source of revenue comes from the sale of alcoholic beverages for consumption on the premises.

The Idaho State Police states that negotiated rulemaking was not conducted because representatives of the affected parties were involved in drafting and approving the proposed rule.

Section 010.04 of the rule, on pages 32-33, defines "Multipurpose Arena," which includes a requirement that any such facility be annually endorsed by the director and provides criteria for obtaining and maintaining such endorsement. The proposed rule further specifies that if a premises licensed as a multipurpose arena subsequently ceases to meet the qualifications of a multipurpose arena, then the restrictions contained in Section

23-943, Idaho Code, which prohibit persons under specified ages from entering, remaining in or loitering at certain licensed places, shall apply.

Section 23-944(3), Idaho Code, provides that "it shall not be unlawful for, nor shall section 23-943, Idaho Code, be construed to restrict, any person under the age of twenty-one (21) years from entering or being...in any...multipurpose arena...notwithstanding that such premises or any portion thereof may be licensed for the sale of liquor by the drink, wine or beer for consumption on the premises or that such products are dispensed and served and consumed therein; provided, that the person under the age of twenty-one (21) years is attending a lawful activity, show, exhibition, performance or event on the premises...."

The term multipurpose arena is not defined in statute nor is there a statutory requirement that any such facility obtain a license endorsement in order to be subject to the exception contained in Section 23-944(3), Idaho Code. Notably, there is a statutory definition for "restaurant" contained in Section 23-942(c), Idaho Code, as well as an endorsement requirement contained in Section 23-946, Idaho Code, relating to premises operating as restaurants. Restaurants, like multipurpose arenas, are included as an exception listed in Section 23-944, Idaho Code. Given that this type of license endorsement is provided in statute for restaurants, there is a question as to whether the Legislature intends to grant the Idaho State Police the authority to establish an endorsement requirement for multipurpose arenas through rulemaking.

We also note that Section 021.01 of the rule, on page 34, prohibits minors from entering, remaining or loitering "in any licensed establishment where drinking alcohol is the predominant activity, or where an environment is created in which drinking alcohol appears to be the predominant activity. This includes an establishment that provides entertainment and whose primary source of revenue comes from the sale of alcoholic beverages for consumption on the premises...." There may be a question as to whether such rule provisions are consistent with Section 23-944(4), Idaho Code, which permits persons under the age of 21 to enter and be "upon any licensed winery notwithstanding that such premises or any portion thereof may also be licensed for the sale of beer or wine for consumption on the premises or that wine is dispensed and served and consumed therein."

Aside from the above comments and questions, the proposed rule is within the authority granted to the Idaho State Police in Sections 23-932 and 23-946, Idaho Code.

cc: Idaho State Police
Col. G. Jerry Russell, Director
Lt. Bob Clements & Matthew Gamette

IDAPA 11 - IDAHO STATE POLICE
11.03.01 - RULES GOVERNING ALCOHOL TESTING
DOCKET NO. 11-0301-1201
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 67-2901, 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 November 21, 2012.

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:

Clarifies that blood samples need to only contain a minimal concentration of sodium fluoride. The tubes in the ISP Blood Alcohol kits are prepared so that if they are filled, the sodium fluoride concentration will be ten (10) milligrams of sodium fluoride per cubic centimeter of blood. If the blood tube is not all the way full, the concentration of sodium fluoride in the tube will be greater. Having a larger concentration of sodium fluoride in the tube (due to a smaller blood collection) makes no difference because the sodium fluoride is a preservative and has no effect on the testing. Regardless of the amount of blood in the tube, there will be an adequate amount of sodium fluoride to preserve the blood sample appropriately.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because there is no change to the intent of the rule; the amending language removes ambiguity of interpretation regarding amount of sodium fluoride required for alcohol testing.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Matthew Gamette, ISPFS Quality Manger, 884-7217 or matthew.gamette@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 November 28, 2012.

DATED this 25th day of October, 2012.

Col. G. Jerry Russell, Director
Idaho State Police
700 S. Stratford Dr.
Meridian, ID 83642
Phone: 208-884-7003
Fax: 208-884-7090

Pursuant to Section 67-5221(1), Idaho Code, this docket is being published as a proposed rule.

This docket has been previously published as a temporary rule.
The temporary effective date is November 1, 2011.

The original text of the temporary rule was published in the Idaho Administrative Bulletin,
Volume 12-1, January 4, 2012, pages 45 and 46.

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-0301-1201

013. REQUIREMENTS FOR LABORATORY ALCOHOL ANALYSIS.

01. Laboratory. Any laboratory desiring to perform urine alcohol or blood alcohol analysis shall meet the following standards: (3-19-99)

a. The laboratory shall prepare and maintain a written procedure governing its method of analysis, including guidelines for quality control and proficiency testing; (7-1-93)

b. The laboratory shall provide adequate facilities and space for the procedure used; (7-1-93)

c. Specimens shall be maintained in a secure storage area prior to analysis; (7-1-93)

d. All equipment, reagents and glassware necessary for the performance of the chosen procedure shall be on hand or readily available on the laboratory premises; (7-1-93)

e. The laboratory shall participate in approved proficiency testing and pass this proficiency testing according to standards set by the department. Failure to pass a proficiency test shall result in disapproval until the problem is corrected and a proficiency test is successfully completed; (7-1-93)

f. For a laboratory performing blood or urine alcohol analysis, approval shall be awarded to the laboratory director or primary analyst responsible for that laboratory. The responsibility for the correct performance of tests in that laboratory rests with that person; however, the duty of performing such tests may be delegated to any person designated by such director or primary analyst; (3-19-99)

g. Urine samples shall be collected in clean, dry containers. (7-1-93)

02. Blood Collection. Blood collection shall be accomplished according to the following requirements: (7-1-93)

a. Blood samples shall be collected using sterile, dry syringes and hypodermic needles, or other equipment of equivalent sterility; (7-1-93)

b. The skin at the area of puncture shall be cleansed thoroughly and disinfected with an aqueous solution of a nonvolatile antiseptic. Alcohol or phenolic solutions shall not be used as a skin antiseptic; (7-1-93)

c. Blood specimens shall contain at least ten (10) milligrams of sodium fluoride per cubic centimeter of blood plus an appropriate anticoagulant. (~~7-1-93~~) ()

03. Results. The results of analysis on blood for alcohol concentration shall be reported in units of grams of alcohol per one hundred (100) cubic centimeters of whole blood. (3-19-99)

04. Reported. The results of analysis on urine for alcohol concentration shall be reported in units of

grams of alcohol per sixty-seven (67) milliliters of urine. Results of alcohol analysis of urine specimens shall be accompanied by a warning statement about the questionable value of urine alcohol results. (3-19-99)

05. Records. All records regarding proficiency tests, quality control and results shall be retained for three (3) years. (7-1-93)

IDAPA 11 - IDAHO STATE POLICE

11.05.01 - RULES GOVERNING ALCOHOL BEVERAGE CONTROL

DOCKET NO. 11-0501-1101

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, 23-932, 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 November 21, 2012.

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 rule provides a definition of "Multipurpose Arena" currently listed in Section 23-943, Idaho Code, clarifies existing rules providing additional information for licensees to ensure compliance with regulations and allow more consistent enforcement of alcohol beverage laws. This rule provides specific circumstances when minors are permitted or prohibited, considering modern business concepts and the specific types of establishments. This rule also protects public safety by restricting minors from primarily drinking establishments, regulating "over/under" clubs.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because representatives of the affected parties 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lt. Bob Clements 208-884-7062 or Robert.clements@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 November 28, 2012.

DATED this 26th day of October, 2012.

Colonel G. Jerry Russell
Idaho State Police
700 S. Stratford Dr.
Meridian, ID 83642
Phone: (208) 884-7003
Facsimile: (208) 884-7090

Pursuant to Section 67-5221(1), Idaho Code, this docket is being published as a proposed rule.

This docket has been previously published as a temporary rule.
The temporary effective date is July 6, 2011.

The original text of the temporary rule was published in the Idaho Administrative Bulletin,
Volume 11-7, July 6, 2011, pages 38 through 41.

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-0501-1101

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)

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. ()

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

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; ()

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

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

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

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. ()

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: ()

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; ()

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

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

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

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 ()

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

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. ()

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. ()

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. ()

045. 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)

056. 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)

067. 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)

078. 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)

(BREAK IN CONTINUITY OF SECTIONS)

021. AGE RESTRICTION REQUIREMENTS.

01. Over/Under Clubs. Minors shall not enter, remain or loiter in any licensed establishment that sells alcoholic beverages by the drink, ~~except for those premises listed in Section 23-944, Idaho Code.~~ or where drinking alcohol is the predominant activity, or where an environment is created in which drinking alcohol appears to be the predominant activity. This includes an establishment that provides entertainment and whose primary source of revenue comes from the sale of alcoholic beverages for consumption on the premises, or cover charges, or both. (3-6-07)()

02. Posting of Age Restriction Signs. Sections 23-945 and 23-1026, Idaho Code, require every alcoholic beverage licensee to post an age restriction sign. Such sign must contain the following words in lettering of at least one (1) inch in height: "Admittance of persons under twenty-one (21) years of age prohibited by law." Such sign must be placed conspicuously over or on the door of each entrance to the licensed premises and must be clearly visible from the exterior approached to such premises. (3-6-07)

03. Counterfeit or Altered Age Documents. If alcoholic beverage licensees, their employees, or agents receive age identification documents which have been lost or voluntarily surrendered, they shall deliver the documents to an agent or investigator of the Alcohol Beverage Control Bureau or to other law enforcement officials within fifteen (15) days from the date they were received, found or voluntarily surrenders. When identification documents that appear to be mutilated, altered or fraudulent are presented to a licensee, their employees or agents, they must contact law enforcement and/or refuse service. (3-6-07)