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**IDAPA 11
TITLE 05
Chapter 01**

11.05.01 - RULES GOVERNING ALCOHOL BEVERAGE CONTROL

000. LEGAL AUTHORITY.

The Director of the Department of Law Enforcement has general rulemaking authority to prescribe rules and regulations for alcohol beverage enforcement, pursuant to Sections 23-932, 23-946(b), 23-1330 and 23-1408, Idaho Code. (1-1-94)

001. TITLE AND SCOPE.

Unless a specific reference herein limits application of a rule to a particular kind of alcoholic beverage, these rules apply to and implement Idaho Code Sections for liquor (Title 23, Chapter 9, Idaho Code), beer (Title 23, Chapter 10, Idaho Code), and wine (Title 23, Chapter 13, Idaho Code). (7-1-93)

002. -- 003. (RESERVED).

004. 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 shall constitute the licensed premises. (7-1-93)

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 shall be 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. (1-1-94)

04. 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, where individually priced meals are prepared and regularly served to the public, primarily for on-premise consumption. The establishment must also have a dining room or rooms, and the number, and type of employees normally used in the preparing, cooking and serving of meals. The establishment must be able to demonstrate to the satisfaction of the Director, through recordkeeping, that no more than fifty percent (50%) of the gross revenues from the sale of food and beverages is derived from the sale of alcoholic beverages. (5-11-99)T

05. Stock Transfer. For the purposes of Section 23-908(4), Idaho Code, the sale or exchange of stock in a closely held corporation holding a license shall be deemed a transfer of the license. However, the sale or exchange of shares in a family corporation among family members, shall not be deemed a transfer. (5-11-99)T

005. -- 010. (RESERVED).

011. GENERAL PROVISIONS.

01. Repeal Of Prior Rules. The Director intends to promulgate a uniform and consistent set of alcoholic beverage rules. Accordingly, all rules adopted before the effective date of this chapter (Sections 000 through 021), which concern or involve the licensing of alcoholic beverages, specifically rules 1-L; 2-L; 3-L; 4-L; 6-L; 10-L; 11-L; 1-B; 2-B; 3-B; 5-B; 6-B; 7-B; 9-B; 11.05.A,1.0; 11.05.A,1.1; and 11.05.A,1.2, are hereby repealed and declared null and void. (7-1-93)

02. Delegation Of Authority To License Alcoholic Beverages. The Director hereby delegates his authority for the licensing of establishments which sell alcoholic beverages, as contained in Title 23, Chapters 9, 10, and 13, Idaho Code, to the, Alcohol Beverage Control Bureau, Department of Law Enforcement. All applications and

inquiries concerning alcoholic beverage licenses must be directed to the Alcohol Beverage Control Bureau at P.O. Box 700, Meridian, Idaho 83680. The Alcohol Beverage Control Bureau shall provide forms for all applications and inquiries. Provided, however, that nothing contained herein shall interfere with the Director's supervisory authority for alcoholic beverage licensing. (Section 67-2901(4), Idaho Code). (3-31-95)

012. TRANSFER OF ALCOHOLIC BEVERAGE LICENSES.

01. Transfer Of License Subject To Sanctions. The Director of the Department of Law Enforcement may deny the transfer of an alcoholic beverage license which is subject to possible disqualification, revocation or suspension under the provisions of Title 23, Chapters 9, 10, and 13, Idaho Code, or these rules, when an action has been filed to such effect before the Department of Law Enforcement pursuant to Sections 23-933, 23-1037 or 23-1331, Idaho Code. (7-1-93)

02. Death Or Incapacity Of Licensee. In the event of the incapacity, death, receivership, bankruptcy, or assignment for the benefit of creditors of a licensee, his guardian, executor, administrator, receiver, trustee in bankruptcy, or assignee for benefit of creditors may, upon written authorization from the Alcohol Beverage Control Bureau, continue the business of the licensee on the licensed premises for the duration of the license or until the business is terminated. Any person operating the licensed premises under this regulation must submit a signed agreement that he will assume all of the responsibilities of the licensee for operation of the premises in accordance with law. A person operating licensed premises under the regulation must demonstrate to the satisfaction of the Alcohol Beverage Control Bureau that he is qualified to hold an alcoholic beverage license. A guardian, executor, administrator, receiver, trustee in bankruptcy, or assignee for benefit of creditors may renew or transfer a license so held, in the same manner as other licensees, subject to the approval of the Alcohol Beverage Control Bureau. (Sections 23-908(1), 23-1005A, and 23-1317, Idaho Code). (3-31-95)

03. Authorization To Transfer And Assignment Of Privilege to Renew. Any person applying to renew a liquor license who was not the licensee at the applicable premises for the preceding year, must submit with the application to renew, a written Authorization to Transfer and Assignment of Privilege to Renew signed by the current licensee. (7-1-93)

04. Temporary Permits. When application for transfer of an alcoholic beverage license has been made, the Alcohol Beverage Control Bureau, in its discretion, may authorize issuance of a temporary permit during the review of the application, during which time the applicant for transfer may conduct business as a temporary permit holder. The permit holder, in accepting the temporary permit, shall be responsible for complying with all statutes and rules pertinent to the sale of alcoholic beverages. Sanctions against such permit holder, whether civil, administrative, or criminal shall lie, and acceptance of the permit shall constitute a waiver of any defenses by permit holder based upon the fact that the permit holder is not, technically, a licensee. The Alcohol Beverage Control Bureau may withdraw a temporary permit it has issued pursuant to this rule at any time without hearing or notice. (3-31-95)

05. Product Replacement And Credit. Any beer or wine products removed from the licensed retailer's premises by a wholesaler/distributor for quality control or public health shall not be considered to be a violation of Section 23-1033 or 23-1325, Idaho Code, which prohibit aid to the retailer or of Sections 23-1031 or 23-1326, Idaho Code, which prohibit extension of credit to a retailer, if: (8-1-95)

- a. The packages or kegs are replaced with identical product and quantity; or (8-1-95)
- b. In the instance of replacement of a partial keg of beer or wine, a credit is given for the value of the unused portion which shall be redeemed on subsequent alcoholic beverage purchases by the retailer; or (8-1-95)
- c. In the instance of removal of product for which the identical product or quantity thereof is not immediately available to the wholesaler/distributor at the time of removal of the product, a credit is given. The credit shall be redeemed on subsequent alcoholic beverage purchases by the retailer; or (8-1-95)
- d. In the case of a licensed establishment which is in operation no less than two (2) months and no more than nine (9) months of each year, prior to its period of closure, it is apparent that product will become outdated or spoiled before the date of re-opening, a wholesaler/distributor may remove product from the retailer's premises and may give a credit to the retailer. Such credit shall be redeemed on subsequent alcoholic beverage purchases by the

same retailer. (8-1-95)

e. Credit given to a retailer, as authorized herein, shall be given for the amount paid by the retailer at the time of purchase of the product being removed by the wholesaler/distributor. (8-1-95)

06. Expiration Of Licenses. When a county has, pursuant to Sections 23-927 and/or 23-1012, Idaho Code, passed an ordinance extending the hours of sale of liquor and/or beer to two o'clock a.m. (2:00 a.m.), all liquor and/or beer licenses in that county shall expire at two o'clock a.m. (2:00 a.m.), on January 1st of the year following their issuance. (Section 23-908(1), Idaho Code). (7-1-93)

07. Maintenance Of Keg Receipts. A licensee shall retain a copy of all completed keg receipts required by Section 23-1018, Idaho Code, for a period of six (6) months. (7-1-93)

013. PRIORITY LISTS.

01. Priority Lists For Incorporated City Liquor Licenses. The Alcohol Beverage Control Bureau shall maintain a priority list of applicants for those cities in which no incorporated city liquor license is available. A separate list shall be maintained for each city. A person, partnership, or corporation desiring to be placed on a priority list shall file a completed application for an incorporated city liquor license, accompanied by payment of one-half (1/2) of the annual license fee. Such application need not show any particular building or premises upon which the liquor is to be sold, nor that the applicant is the holder of any license to sell beer. Priority on the list shall be determined by the earliest application, each succeeding application shall be placed on the list in the order received. (3-31-95)

02. Written Notification. When an incorporated city liquor license becomes available Alcohol Beverage Control shall offer it in writing to the applicant whose name appears first on the priority list. If the applicant does not notify the Alcohol Beverage Control Bureau in writing within ten (10) days of receipt of the notice of his intention to accept the license, the license shall be offered to the next applicant in priority. An applicant accepting the license shall have a period of ninety (90) days from the date of receipt of Notice of License Availability in which to complete all requirements necessary for the issuance of the license. Provided, however, that upon a showing of good cause the Director of the Department of Law Enforcement may extend the time period in which to complete the necessary requirements for a period not to exceed sixty (60) days. (3-31-95)

03. Refusal To Accept Offer Of License Or Failure To Complete Application For License. An applicant refusing a license offered under this rule or an applicant who fails to complete his application may have his name placed at the bottom of the priority list upon his request. Should the applicant holding first priority refuse or fail to accept the license or to complete the application within the time specified, the applicant shall be dropped from the priority list, the deposit refunded, and the license offered to the applicant appearing next on the list. (7-1-93)

04. Limitations On Priority Lists. An applicant for a place on an incorporated city liquor license priority list may not execute an inter vivos transfer or assignment of his place on the priority lists. For the purposes of this rule, "inter vivos transfer or assignment" shall mean the substitution of any individual; partnership; corporation, including a wholly owned corporation; organization; association; or any other entity for the original applicant on the waiting list. An attempt to assign inter vivos a place on an incorporated city liquor license priority list shall result in the removal of the name of the applicant from the lists. An applicant, however, may assign his or her place on an alcoholic liquor license priority list by devise or bequest in a valid will. A place on an incorporated city liquor license priority list becomes part of an applicant's estate upon his or her death. (7-1-93)

05. Priority Lists Where Licenses Are Available. The Alcohol Beverage Control Bureau shall not maintain a list for a city in which a liquor license is available, nor for a city that does not permit retail sale of liquor. If, prior to the promulgation of this rule, the Alcohol Beverage Control Bureau has maintained a priority list for any such city, the list shall be abolished and all license fees returned to the respective applicants. (3-31-95)

014. CONDUCT OF LICENSED PREMISES.

Upon request of an agent of the Director, a licensee, or anyone acting on his behalf, shall produce any records required to be kept pursuant to Title 23, Chapters 9, 10, or 13, Idaho Code, and shall permit the agent of the Director or peace officer to examine them and shall permit an inspection of the licensee's premises. Upon request of a peace officer, a licensee, or anyone acting on his behalf, shall permit an inspection of the licensee's premises. Any

inspection performed pursuant to this rule shall occur during the licensee's regular and usual business hours. The failure to produce such records or to permit such inspection on the part of any licensee shall be a violation of this rule. A violation of this rule may subject the licensee to administrative sanctions pursuant to Sections 23-933, 23-1037 and 23-1331, Idaho Code. (7-1-93)

015. -- 020. (RESERVED).

021. AGE RESTRICTION REQUIREMENTS.

01. 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 shall 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 shall 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. (7-1-93)

02. Counterfeit Or Altered Age Documents. If alcoholic beverage licensees, their employees, or agents confiscate age identification documents that appear to be mutilated, altered, or fraudulent, they shall deliver them to an agent or investigator of the Alcohol Beverage Control Bureau or to other law enforcement officials. (3-31-95)

022. -- 999. (RESERVED).

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