

## IDAPA 11 – IDAHO STATE POLICE

### Alcohol Beverage Control

#### 11.05.01 – Rules Governing Alcohol Beverage Control

##### **Who does this rule apply to?**

*Licensees and general public members who visit a licensed premises.*

##### **What is the purpose of this rule?**

*This rule establishes requirements to become a licensed premises to sell alcohol, to acquire, maintain, and/or transfer licenses, establishes a priority list for the acquisition of licenses, defines conduct of licensed premises, and defines age restriction requirements.*

##### **What is the legal authority for the agency to promulgate this rule?**

*This rule implements the following statutes passed by the Idaho Legislature:*

Alcoholic Beverages -

Penal Provisions:

- [Section 23-616, Idaho Code](#) – Alcohol Without Liquid Device — Powdered Alcohol

Retail Sales of Liquor by the Drink:

- [Section 23-932, Idaho Code](#) – Director to Make Regulations — Furnish Forms and Records
- [Section 23-946\(b\), Idaho Code](#) – Statement Made by Licensees of Premises Operated as Restaurants — Endorsement Upon License

County Option Kitchen and Table Wine Act:

- [Section 23-1330, Idaho Code](#) – Rules and Regulations by Director

Hospitality Cabinets:

- [Section 23-1408, Idaho Code](#) – Director to Promulgate Rules

##### **Who do I contact for more information on this rule?**

Idaho State Police

Alcohol Beverage Control

Monday through Friday, 8:00 a.m. to 5:00 p.m. /

Lobby Monday through Friday, 8:00 a.m. to 4:30 p.m.

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## 11.05.01 – RULES GOVERNING ALCOHOL BEVERAGE CONTROL

### 000. LEGAL AUTHORITY.

The Director of the Idaho State Police 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. (3-23-22)

### 001. SCOPE.

The rules relate to the governance and operation of Alcohol Beverage Control. 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). (3-23-22)

### 002. -- 009. (RESERVED)

### 010. DEFINITIONS.

**01. Actual Use.** Actual use constitutes when a liquor license is issued to a licensee and legitimate sales of liquor by the drink are being made on a weekly basis. (4-10-24)T

**02. Associated.** A license is associated with a business or entity if such license is owned or leased by the business pursuant to Section 23-903(16)(c), or an incorporated municipal liquor license operated by a person whether owned or through a lease entered into prior to July 1, 2023. (4-10-24)T

**03. Business or Entity.** Is defined the same as a Person in Section 23-902(13), Idaho Code, for the purposes of Section 23-903(16)(c), Idaho Code. (4-10-24)T

**04. Business.** Business means any operation to carry out the normal day to day activities to exercise the privilege of holding a liquor license and operating a premises, as defined in Section 23-902(15), Idaho Code, for the purposes of Section 23-903(16)(d), Idaho Code. (4-10-24)T

**05. 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. (4-10-24)T

**06. Multipurpose Arena.** (3-23-22)

**a.** For purposes of Section 23-944(3), Idaho Code, a Multipurpose Arena is a: (3-23-22)

**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; (3-23-22)

**ii.** Facility that is licensed to sell liquor by the drink at retail for consumption upon the premises; and (3-23-22)

**iii.** Facility that has been endorsed by the director. (3-23-22)

**b.** A Multipurpose Arena facility must apply annually for an endorsement on its alcohol beverage license. (3-23-22)

**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. (3-23-22)

**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 contain all of the following elements: (3-23-22)

- 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; (3-23-22)
  - ii. The ratio of alcohol service staff and security staff to the size of the audiences at events where alcohol is being served; (3-23-22)
  - iii. Training provided to staff who serve, regulate, or supervise the service of alcohol; (3-23-22)
  - iv. The facility's policy on the number of alcoholic beverages that will be served to an individual patron during one (1) transaction; (3-23-22)
  - 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 (3-23-22)
  - vi. Diagrams and designation of alcohol service areas for each type of event category with identified restrictions of minors. (3-23-22)
- 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 showing 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. (3-23-22)
- 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. (3-23-22)
- 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, apply and the posting of signs as provided for in Section 23-945, Idaho Code, is 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. (3-23-22)
- 07. 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: (3-23-22)
- a.** Permanently fixed from the premises ceiling to the premises floor. (3-23-22)
  - b.** Made or constructed of solid material such as glass, wood, metal or a combination of those products. (3-23-22)
  - c.** Designed to prevent an alcoholic beverage from being passed over, under or through the structure. (3-23-22)
  - d.** All partitions must be approved by the Director. (3-23-22)
- 08. 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. (3-23-22)
- 09. 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: (3-23-22)

- a. An established menu identifying the individually priced meals for consumption; (3-23-22)
- b. Food service and preparation occurs on the premises by establishment employees; (3-23-22)
- c. Stoves, ovens, refrigeration equipment or such other equipment usually and normally found in restaurants are located on the premises of the establishment; (3-23-22)
- 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 establishment's consumable purchases are derived from purchases of food and non-alcoholic beverages. (3-23-22)

**10. 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. (3-23-22)

**11. Transfer.** Any change to a person as defined in Section 23-902(13), Idaho Code, who owns, operates, or leases an alcohol beverage license as a privilege granted by ABC except the transfer conditions set forth in Section 23-903(16), Idaho Code. (4-10-24)T

**011. GENERAL PROVISIONS.**

**01. 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, Idaho State Police. All applications and inquiries concerning alcoholic beverage licenses must be directed to the Alcohol Beverage Control Bureau. The Alcohol Beverage Control Bureau provides forms for all applications and inquiries. Nothing contained herein interferes with the Director's supervisory authority for alcoholic beverage licensing. (Section 67-2901(4), Idaho Code). (3-23-22)

**02. Authority to Stagger the Renewal of Licenses to Sell Alcohol.** For the purposes of Sections 23-908, 23-1010 and 23-1316, Idaho Code, the Director may adjust the renewal month to accommodate population increases. Renewal months vary by county and are available on the Alcohol Beverage Control website. (3-23-22)

**03. Premises Loss. License Display, and Actual Use Requirement.** (4-10-24)T

a. In the event of loss or move of the physical licensed premises, the licensee has one hundred eighty (180) days to secure and occupy a new premises in which to display the license. An additional sixty (60) days may be granted by ABC, upon petition by the license holder. (4-10-24)T

b. All licenses must be prominently displayed in suitable premises and remain in Actual Use. (4-10-24)T

**012. TRANSFER OF ALCOHOLIC BEVERAGE LICENSES.**

**01. Transfer of License Subject to Sanctions.** The Director of the Idaho State Police 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 Idaho State Police pursuant to Sections 23-933, 23-1037 or 23-1331, Idaho Code. (3-23-22)

**02. Events Not Implicating the One Transfer Law Restriction.** (4-10-24)T

a. In addition to Section 23-903(16) Idaho Code, any transfer of a license pursuant to Section 23-908(5)(a),(b),(d), and (e), Idaho Code, or the transfer of a license pursuant to Section 23-950, Idaho Code, or any

other governmental entity acting under its authority to transfer a license. (4-10-24)T

**b.** When any of the events occur pursuant to Sections 23-908(5)(a),(b), (d), and (e) and 23-903(16)(a) and (b), Idaho Code, a person must apply with ABC pursuant to Section 23-905, Idaho Code. (4-10-24)T

**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. (3-23-22)

**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, is 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 lies with the permittee, and acceptance of the permit constitutes 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. (3-23-22)

**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 are not 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: (3-23-22)

**a.** The packages or kegs are replaced with identical product and quantity; or (3-23-22)

**b.** In the instance of replacement of a partial keg of beer or wine, a credit to be redeemed on subsequent alcoholic beverage purchases by the retailer is given for the value of the unused portion; or (3-23-22)

**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 (3-23-22)

**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. (3-23-22)

**e.** Credit is given to a retailer for the amount paid by the retailer at the time of purchase of the product being removed by the wholesaler/distributor. (3-23-22)

**06. Expiration of Licenses.** When a county or city 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 expire at two a.m. (2 a.m.), on the first of the renewal month of the year following their issuance. (Section 23-908(1), Idaho Code). (3-23-22)

**07. Maintenance of Keg Receipts.** Licensees shall retain a copy of all completed keg receipts required by Section 23-1018, Idaho Code, for a period of six (6) months. (3-23-22)

**08. Application of 23-905(7).** Transfers made under Section 23-905(7), Idaho Code, are subject to the conditions set forth in Section 23-903(16)(c), Idaho Code. (4-10-24)T

**09. Application of 23-908(4).** Transfers made under Section 23-908(4), Idaho Code, are subject to the conditions set forth in Section 23-903(16)(c), Idaho Code. (4-10-24)T

**10. Continuous Operation Facilities Licenses.** An existing license issued under Section 23-903(8),

Idaho Code, before July 1, 2028, may be renewed annually and may be transferable through sale or lease. (4-10-24)T

**013. PRIORITY LISTS.**

**01. Priority Lists for Incorporated City Liquor Licenses.** The Alcohol Beverage Control Bureau maintains a priority list of applicants for those cities in which no incorporated city liquor license is available. A separate list is 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 is determined by the earliest application, each succeeding application is placed on the list in the order received. (3-23-22)

**02. Written Notification.** When an incorporated city liquor license becomes available Alcohol Beverage Control offers 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 is offered to the next applicant in priority. An applicant accepting the license shall have a period of one hundred eighty (180) 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 Idaho State Police may extend the time period in which to complete the necessary requirements for a period not to exceed ninety (90) days. (3-23-22)

**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 end 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 will be dropped from the priority list, the deposit refunded, and the license offered to the applicant appearing next on the list. (3-23-22)

**04. Limitations on Priority Lists.** An applicant shall hold only one position at a time on each incorporated city priority list. An applicant must be able to demonstrate to the Director the ability to place an awarded license into actual use as required by Section 23-908(4), Idaho Code and these rules. 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" means 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. (3-23-22)

**05. Priority Lists Where Licenses Are Available.** The Alcohol Beverage Control Bureau will 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. (3-23-22)

**014. CONDUCT OF LICENSED PREMISES.**

Upon request of an agent of the Director, a licensee, or anyone acting on his behalf, must produce any records required to be kept pursuant to Title 23, Chapters 9, 10, or 13, Idaho Code, and permit the agent of the Director or peace officer to examine them and permit an inspection of the licensee's premises. Upon request of a peace officer, a licensee, or anyone acting on his behalf, must permit an inspection of the licensee's premises. Any inspection performed pursuant to this rule must 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 is a violation of this rule. A violation of this rule, federal or state law or local code or ordinance may subject the licensee to administrative sanctions pursuant to Sections 23-933, 23-1037 and 23-1331, Idaho Code. (3-23-22)

**015. -- 020. (RESERVED)**

**021. AGE RESTRICTION REQUIREMENTS.**

**01. Over/Under Clubs.** Minors cannot enter, remain or loiter in any licensed establishment that sells alcoholic beverages by the drink, 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. (3-23-22)

**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 be clearly visible from the exterior approached to such premises. (3-23-22)

**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. (3-23-22)

**022. AGE RESTRICTION REQUIREMENTS FOR LICENSED MOVIE THEATERS - WHEN MINORS PERMITTED.**

**01. Minors Prohibited.** Persons under twenty-one (21) years of age are prohibited from entering or being in any movie theater licensed to sell alcoholic beverages during the time alcohol is available for sale or consumption in the movie theater. Age restriction signs must be posted as outlined in Subsection 021.02 of these rules at all times alcoholic beverages are sold, served or consumed in the movie theater. (3-23-22)

**02. Minors Permitted.** Any person under twenty-one (21) years of age is permitted in a movie theater licensed to sell alcoholic beverages and no age restriction posting is required at any time when all alcohol is secured, locked up and not available for sale or consumption. (3-23-22)

**03. Exemption.** Nothing in this rule applies to any movie theater that qualifies under Section 23-944(7), Idaho Code. (3-23-22)

**023. -- 999. (RESERVED)**