

7-14-2010

Fuchs v. State, Dept. of idaho State Police, Bureau of Alcohol Beverage Control Clerk's Record v. 1 Dckt. 37652

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Volume 1

IN THE **LAW CLERK**
SUPREME COURT
 OF THE
STATE OF IDAHO

DANIEL FUCHSPlaintiff/AppellantandSTATE OF IDAHO, ISPDefendant/Respondentand

Appealed from the District Court of the FIFTH
 Judicial District for the State of Idaho, in and
TWIN FALLS

for _____ County
G RICHARD BEVAN

Hon. _____ District Judge

BRIAN DONESLEY

Attorney X for Appellant

CHERYL MEADE

Attorney X for Respondent

FILED - COPY	
Filed this _____ day of _____, 20____	_____ Clerk
By _____	_____ Deputy
Supreme Court _____ Court of Appeals _____	

27652

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

DANIEL S. FUCHS,)	
	)	SUPREME COURT 37652-2010
Petitioner/Appellant,	)	DISTRICT COURT NO. CV 09-4185
	)	CV 09-3914
vs)	
)	
STATE OF IDAHO, DEPARTMENT OF)	
IDAHO STATE POLICE, BUREAU OF)	
ALCOHOL BEVERAGE CONTROL,)	
)	
<u>Respondent.</u>)	
DANIEL FUCHS,)	
)	
Plaintiff/Appellant,)	
)	
vs.)	
)	
STATE OF IDAHO, DEPARTMENT OF)	
IDAHO STATE POLICE, BUREAU OF)	
ALCOHOL BEVERAGE CONTROL,)	
)	
<u>Defendant/Respondent.</u>)	

CLERK'S RECORD ON APPEAL
Volume 1

Appeal from the District Court of the Fifth Judicial District
of the State of Idaho, in and for the County of Twin Falls

HONORABLE G. RICHARD BEVAN
District Judge

BRIAN DONESLEY
Attorney at Law
548 North Avenue H
P. O. Box 419
Boise, ID 83701-0419

ATTORNEY FOR APPELLANT

CHERYL MEADE
Deputy Attorney General
Idaho State Police
700 S. Stratford Dr.
Meridian, ID 83642

ATTORNEY FOR RESPONDENT

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	APER	AGUIRRE	Plaintiff: Fuchs, Daniel Appearance Brian N Donesley G. Richard Bevan
		AGUIRRE	Filing: L3 - Appeal or petition for judicial review or cross appeal or cross-petition from commission, board, or body to district court Paid by: Donesley, Brian N (attorney for Fuchs, Daniel) Receipt number: 9022250 Dated: 8/19/2009 Amount: \$88.00 (Credit card) For: Fuchs, Daniel (plaintiff) G. Richard Bevan
		AGUIRRE	Filing: Technology Cost - CC Paid by: Donesley, Brian N (attorney for Fuchs, Daniel) Receipt number: 9022250 Dated: 8/19/2009 Amount: \$3.00 (Credit card) For: Fuchs, Daniel (plaintiff) G. Richard Bevan
	PETN	AGUIRRE	Petition for Judicial Review G. Richard Bevan
8/20/2009	PETN	NIELSEN	Amended Petition for Judicial Review fax G. Richard Bevan
8/21/2009	ORDR	COOPE	Procedural Order Governing Judicial Review of Agency Action by District Court G. Richard Bevan
8/25/2009		NIELSEN	Petitioner's Statement of Issues for Judicial Review, Rule 84(d) IRCP G. Richard Bevan
9/4/2009	MOTN	NIELSEN	Motion for Consolidation: Rule 42(a), I.R.C.P. fax G. Richard Bevan
		NIELSEN	Petitioner's Supplemental Statement of Issues for Judicial Review, Rule 84(d),IRCP fax G. Richard Bevan
	MOTN	NIELSEN	Petitioner's Motion for Order of Stay I.R.C.P. 84 (m) G. Richard Bevan
9/8/2009		NIELSEN	Petitioner's Supplemental Statement of Issues for Judicial Review, Rule 84(d)IRCP G. Richard Bevan
	MOTN	NIELSEN	Motion for Consolidation: Rule 42 (a) , I.R.C.P. G. Richard Bevan
	MOTN	NIELSEN	Petitioner's Motion for Order of Stay I.R.C.P 84 (M) G. Richard Bevan
	MOTN	NIELSEN	(Alternative) Motion to Change Venue G. Richard Bevan
		NIELSEN	Respondent's Response to Amended Petition for Judicial Review and Motion to Dismiss for Failure to Exhaust Administrative Remedies G. Richard Bevan
9/10/2009	AFFD	COOPE	Affidavit of Robert Clements in Opposition to Plaintiff's Amended Petition for Judicial Review G. Richard Bevan
9/17/2009	ORDR	COOPE	Order for Consolidation G. Richard Bevan
9/21/2009	OBJC	NIELSEN	Petitioner's Objection to Respondent's Motion to Change Venue fax G. Richard Bevan
	MEMO	NIELSEN	Memorandum in Opposition to Respondent's Motion to Dismiss for Failure to Exhaust Administrative Remedies fax G. Richard Bevan

Daniel S. Fuchs vs. State Of Idaho, Department Of Idaho State Police,

Date	Code	User		Judge
9/22/2009		NIELSEN	Amended Certificate of Service fax	G. Richard Bevan
9/23/2009	OBJC	NIELSEN	Petitioner's Objection to Respondent's Motion to Change Venue	G. Richard Bevan
9/28/2009	REQU	NIELSEN	Request of Petitioner for Setting of Hearing fax	G. Richard Bevan
9/29/2009	REQU	NIELSEN	Request of Petitioner for Setting of Hearing	G. Richard Bevan
9/30/2009	HRSC	COOPE	Hearing Scheduled (Motion 11/02/2009 09:00 AM) for TRO, preliminary injunction and change venue	G. Richard Bevan
10/5/2009	NOHG	NIELSEN	Notice Of Hearing on Motions: 1. Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, I.R.C.P. 65 (a) 2. Respondent's (Alternative Motion to Change Venue	G. Richard Bevan
	NOSV	NIELSEN	Notice Of Service of Petitioner/Plaintiff's First Set of Interrogatories and Request for Production of Documents	G. Richard Bevan
	LETT	COOPE	Letter from Idaho State Police RE: Hearing by phone on November 2, 2009	G. Richard Bevan
10/28/2009	NOSV	NIELSEN	Notice Of Serving fax	G. Richard Bevan
11/2/2009	CMIN	COOPE	Court Minutes Hearing type: Motion TRO, Prelim Injunc & Change Venue Hearing date: 11/2/2009 Time: 09:24 AM Court reporter: Virginia Bailey Audio tape number: ct rm 1	G. Richard Bevan
	DCHH	COOPE	Hearing result for Motion held on 11/02/2009 09:00 AM: District Court Hearing Held Court Reporter: Virginia Bailey Number of Transcript Pages for this hearing estimated: for TRO, preliminary injunction and change venue	G. Richard Bevan
	HRSC	COOPE	Hearing Scheduled (Motion 12/14/2009 09:00 AM) Motion to dismiss	G. Richard Bevan
	CONT	COOPE	Continued (Motion 12/14/2009 10:30 AM) to dismiss	G. Richard Bevan
11/5/2009	ORDR	COOPE	Order RE: Preliminary Injunction	G. Richard Bevan
11/13/2009	NOHG	AGUIRRE	Notice Of Hearing	G. Richard Bevan
	OBJC	AGUIRRE	Objection to Order of Preliminary Injunction	G. Richard Bevan
11/16/2009	NAAR	SAVE	Notice and Agreement RE: Purchase of audio recordings of district and magistrate court proceedings.	G. Richard Bevan
11/23/2009	AFFD	PIERCE	Affidavit of Brian Donesley	G. Richard Bevan
	MEMO	PIERCE	Supplemental Memorandum in Opposition to Respondent's Motion to Dismiss for Failure to Exhaust Administrative Remedies.	G. Richard Bevan

Daniel S. Fuchs vs. State Of Idaho, Department Of Idaho State Police,

Date	Code	User		Judge
12/7/2009	MEMO	PIERCE	Respondent's Supplemental Memorandum in Support of Motion to Dismiss	G. Richard Bevan
12/8/2009	MEMO	PIERCE	Respondent's Supplemental Memorandum in Support of Motion to Dismiss	G. Richard Bevan
12/9/2009	MEMO	PIERCE	Supplemental Reply memorandum in Opposition to Respondent's Motion to Dismiss for Failure to Exhaust Administrative Remedies	G. Richard Bevan
12/10/2009	MISC	SCHORZMAN	Camera request from Times-News for 12.14.09 hearing GRANTED	G. Richard Bevan
12/14/2009	CMIN	COOPE	Court Minutes Hearing type: Motion top Hearing date: 12/14/2009 Time: 10:38 am Courtroom: District Courtroom #1 Court reporter: Virginia Bailey Minutes Clerk: Sharie Cooper Tape Number:	G. Richard Bevan
	DCHH	COOPE	Hearing result for Motion held on 12/14/2009 10:30 AM: District Court Hearing Held Court Reporter: Virginia Bailey Number of Transcript Pages for this hearing estimated: to dismiss	G. Richard Bevan
12/24/2009	MEMO	PIERCE	Second Supplemental Memorandum in Opposition to Respondent's Motion to Dismiss for Failure to Exhaust Administrative Remedies	G. Richard Bevan
1/5/2010	ORDR	COOPE	Order Amending Preliminary Injunction	G. Richard Bevan
1/8/2010	RSPN	PIERCE	Alcohol Beverage's Response to Daniel S. Fuchs' (Second) Supplemental Memorandum in Opposition to ABC's Motion to Dismiss	G. Richard Bevan
2/19/2010	CMIN	COOPE	Court Minutes Hearing type: Status Hearing date: 2/19/2010 Time: 8:43 am Courtroom: Court reporter: Virginia Bailey Minutes Clerk: Sharie Cooper Tape Number: ct rm 1 Brian Donesley for Petitioner Cheryl Meade for Respondent	G. Richard Bevan
3/2/2010	HRSC	COOPE	Hearing Scheduled (Hearing Scheduled 03/04/2010 03:00 PM)	G. Richard Bevan
	MEMO	PIERCE	Supplemental Memorandum Re: Consolidation Issues	G. Richard Bevan
	NOHG	COOPE	Notice Of Hearing	G. Richard Bevan
3/3/2010	LETT	COOPE	Letter from Brian Donesley	G. Richard Bevan
	MEMO	COOPE	Supplemental Memorandum RE: Consolidation Issues	G. Richard Bevan

Daniel S. Fuchs vs. State Of Idaho, Department Of Idaho State Police,

Daniel S. Fuchs vs. State Of Idaho, Department Of Idaho State Police,

Date	Code	User	Judge
3/4/2010	CMIN	COOPE	Court Minutes Hearing type: Status by phone Hearing date: 3/4/2010 Time: 2:57 pm Courtroom: Court reporter: Virginia Bailey Minutes Clerk: Sharie Cooper Tape Number: ct rm 1 Brian Donesley for Petitioner Cheryl Meade for Respondent
	DCHH	COOPE	Hearing result for Hearing Scheduled held on 03/04/2010 03:00 PM: District Court Hearing Held Court Reporter: Virginia Bailey Number of Transcript Pages for this hearing estimated:
3/10/2010	OPIN	COOPE	Memorandum Decision and Order Dismissing Petition for Judicial Review and Complaint for Declaratory and Injunctive Relief
	CDIS	COOPE	Civil Disposition/Judgment entered: entered for: State Of Idaho, Department Of Idaho State Police,, Defendant; Fuchs, Daniel S., Plaintiff. Filing date: 3/10/2010
3/17/2010	SCND	AIKELE	Scanned
4/19/2010	NTOA	COOPE	Notice Of Appeal
	APSC	COOPE	Appealed To The Supreme Court
4/22/2010		COOPE	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Brian Donesley Receipt number: 1011861 Dated: 4/22/2010 Amount: \$70.00 (Check)
		COOPE	Miscellaneous Payment: Record Covers For Appeals Paid by: Brian Donesley Receipt number: 1011861 Dated: 4/22/2010 Amount: \$30.00 (Check)
		COOPE	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Donesley, Brian N (attorney for Fuchs, Daniel S.) Receipt number: 1011863 Dated: 4/22/2010 Amount: \$101.00 (Check) For: Fuchs, Daniel S. (plaintiff)
	CCOA	COOPE	Clerk's Certificate Of Appeal
4/29/2010	MISC	COOPE	Alcohol Beverage's Request for Documents to be Included in the Clerk's Record I.A.R. 28
4/30/2010	CCOA	COOPE	Amended Clerk's Certificate Of Appeal
5/6/2010	NOTC	PIERCE	Petitioner/Plaintiff/Appellant's Notice of Non-Opposition to Request that documents be Included in the Clerks Record
5/12/2010	SCDF	COOPE	Supreme Court Document Filed- Document(s) Filed
	SCDF	COOPE	Supreme Court Document Filed- Clerk's Certificate Filed

Date: 5/20/2010

Fifth Judicial District Court - Twin Falls County

User: COOPE

Time: 10:18 AM

ROA Report

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Case: CV-2009-0003914 Current Judge: G. Richard Bevan

Daniel S. Fuchs vs. State Of Idaho, Department Of Idaho State Police,

Daniel S. Fuchs vs. State Of Idaho, Department Of Idaho State Police,

Date	Code	User		Judge
5/12/2010	SCDF	COOPE	Supreme Court Document Filed- Clerk's Record Due Date Set	G. Richard Bevan
	CCOA	COOPE	Second Amended Clerk's Certificate Of Appeal	G. Richard Bevan

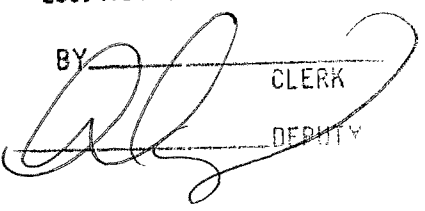
BRIAN DONESLEY ISB#2313

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Post Office Box 419
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Telephone (208) 343-3851
Facsimile (208) 343-4188

Attorney for Petitioner

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2009 AUG 19 PM 3:27

BY  CLERK

DEPUTY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS**

DANIEL S. FUCHS,

Petitioner,

v.

STATE OF IDAHO, Department of Idaho
State Police, Bureau of Alcohol Beverage
Control,

Respondent.

Case No. CV2009-3914

PETITION FOR JUDICIAL REVIEW

COMES NOW the Petitioner, DANIEL S. FUCHS, by and through his attorney of record, BRIAN DONESLEY, and hereby petitions the Fifth Judicial District Court for the State of Idaho for judicial review of the following: (a) the letter dated July 24, 2009, signed by Lt. Robert Clements, Bureau Chief, Bureau of Alcohol Beverage Control, which constituted a final agency action (attached hereto as **Exhibit A**); and (b) all other administrative actions before or by the Director of the Idaho State Police and/or the Bureau of Alcohol Beverage Control relating to Petitioner's priority applications for the following cities: Twin Falls, Sun Valley, Ketchum, Hailey, Idaho Falls, and Bellevue.

This Petition is commenced pursuant to and in accordance with Title 67, Chapter 52, Idaho Code, the Administrative Procedures Act.

PETITION FOR JUDICIAL REVIEW

Page 1 of 5

I.

JURISDICTION

Idaho Code §67-5270 provides in pertinent part that:

(1) Judicial review of agency action shall be governed by the provisions of this chapter...

(2) A person aggrieved by final agency action other than an order in a contested case is entitled to judicial review under this chapter if the person complies with the requirements of sections 67-5271 through 67-5279, Idaho Code.

In this instance, judicial review is now appropriate under the above provisions, because the July 24, 2009 letter removing Petitioner's name from the above-referenced priority lists and refunding his application fees is a final agency action. Petitioner shall demonstrate at the proof phase of this judicial proceeding, that if Respondent is allowed to remove Petitioner's name from the priority lists without due process of law, Petitioner shall suffer irreparable harm. Petitioner shall lose priority list positions that he has held since 1994. Once a Notice of License Availability is issued to a subsequent applicant from each priority list, Petitioner shall be permanently displaced from that priority list and shall lose a priority list position that has taken up to fifteen years to secure.

II.

REVIEW ISSUES

Petitioner seeks judicial review of all issues pertaining to the above including, but not limited to, each and all of the following:

1. Whether the July 24, 2009 letter and/or any other administrative actions before or by the Director of the Idaho State Police and/or the Bureau of Alcohol Beverage Control related to Petitioner's above-referenced priority applications were premised on errors of fact, law or procedure;

2. Whether the administrative actions constituted valid actions and proceedings or, instead, were legal nullities of no legal effect;

3. Whether, in particular, the July 24, 2009, letter was issued upon unlawful procedure, in violation of constitutional or statutory provisions and/or in excess of the statutory authority of the agency in that Respondent removed Petitioner's name from the priority lists in Twin Falls, Sun Valley, Ketchum, Hailey, Idaho Falls, and Bellevue, without notice, hearing or warning, all in

violation of Idaho Code §§ 67-5240 – 67-5242, *et seq.* in addition to basic requirements of due process.

4. Whether the administrative actions were based upon unlawful procedure, in violation of constitutional or statutory provisions and/or in excess of the statutory authority of the agency and in violation of the Idaho Administrative Procedures Act in that, by retroactively applying the March 6, 2007 amendment to IDAPA 11.05.01.013.04, which limited applicants to only one position at a time on each incorporated city priority list, to priority list applicants whose positions predated that amendment, Respondent has engaged in informal and/or unlawful retroactive rulemaking.

5. Whether the administrative actions were arbitrary, capricious and/or abuses of discretion, and constituted a 'taking' of a property interest without due process of law in violation of the United States and Idaho Constitutions.

6. Whether the administrative actions were arbitrary and unreasonable exercises of police power in violation of the United States and Idaho Constitutions.

7. Whether the administrative actions were arbitrary, capricious and/or abuses of discretion and/or constituted the agency acting in excess of its statutory authority, in that the July 24, 2009 letter did not constitute a recommended, preliminary or final orders following a § 67-5242 hearing, because there was no such hearing.

8. Whether the administrative actions were otherwise:

- (a) In violation of constitutional and/or statutory provisions;
- (b) Violated applicable law by refusing and failing to provide required due process, notice and hearing to which Petitioner was entitled by law;
- (c) In excess of the statutory authority of the agency;
- (d) Made upon unlawful procedure;
- (e) Not supported by substantial evidence on the record as a whole; and/or
- (f) Arbitrary, capricious or an abuse of discretion.

III.

CONCLUSION

WHEREFORE, it is respectfully requested that this Court declare that the July 24, 2009 is null and void and of no effect;

And further that this Court order that Respondent reinstate Petitioner on each of the above-referenced priority lists in the same place and order that he held prior to his unlawful removal from said priority lists;

And, further, that attorney fees and costs be granted to Petitioner pursuant to the provisions of Idaho law including, but not limited to, Idaho Code §§ 12-117, 121 and Rule 54(e) (1), I.R.C.P, and other applicable law..

DATED this 19 day of August, 2009.



Brian Donesley
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of August, 2009, I caused an accurate copy of the foregoing document to be delivered as noted below to:

Lawrence G. Wasden, Attorney General
Stephanie A. Altig, Deputy Attorney General
Idaho State Police
P.O. Box 700
Meridian, Idaho 83680-0700
Facsimile 208-884-7090

U.S. Mail _____
Hand Delivery _____
Facsimile X

Lt. Robert Clements, Bureau Manager
Alcohol Beverage Control
P.O. Box 700
Meridian, Idaho 83680-0700
Facsimile 208-884-7096

U.S. Mail _____
Hand Delivery _____
Facsimile X

Shannon Dearing
Shannon Dearing
Legal Assistant



Idaho State Police

Service since 1939



Colonel G. Jerry Russell
Director

July 24, 2009

C.L. "Butch" Otter
Governor

Daniel Fuchs
526 K Shoup Ave West
Twin Falls, ID 83301

Dear Mr. Fuchs;

We have recently reviewed the priority waiting list for incorporated city liquor licenses for the state of Idaho. The Idaho Administrative Procedures Act 11 Title 05 Chapter 01.013.04 discusses the limitations on the priority list specifically stating that "an applicant shall hold only one position at a time on each incorporated city priority list".

Daniel S. Fuchs appears on the priority list for the following cities; Twin Falls, Sun Valley, Ketchum, Hailey, Idaho Falls, and Bellevue numerous times. The fee for your priority applications, receipt numbers 7675, 7676, 7677, 7678, 7679, 7681, 7680, 7538, 7687, 7532, 7531, 7685, 7684, 7534, 7682, and 7692 for the above mentioned cities of dated June 2, 1994 - February 13, 1995 are being refunded based on the limitations described above. Enclosed is a check for the full amount of (\$5,175.00). Please contact our office if you have any questions.

Sincerely,

Lt. Robert Clements
Bureau Chief
Alcohol Beverage Control Bureau
Idaho State Police

P.O. Box 700, Meridian, Idaho 83680-0700

EQUAL OPPORTUNITY EMPLOYER

EXHIBIT

A

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2009 AUG 20 PM 2:26

BY _____ CLERK
_____ DEPUTY

BRIAN DONESLEY ISB#2313

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Facsimile (208) 343-4188

Attorney for Petitioner

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS**

DANIEL S. FUCHS,

Petitioner,

v.

STATE OF IDAHO, Department of Idaho
State Police, Bureau of Alcohol Beverage
Control,

Respondent.

Case No. CV 2009-3914

**AMENDED PETITION
FOR JUDICIAL REVIEW**

COMES NOW the Petitioner, DANIEL S. FUCHS, by and through his attorney of record, BRIAN DONESLEY, and hereby petitions the Fifth Judicial District Court for the State of Idaho for judicial review of the following: (a) the letter dated July 24, 2009, signed by Lt. Robert Clements, Bureau Chief, Bureau of Alcohol Beverage Control, which constituted a final agency action (attached hereto as **Exhibit A**); and (b) all other administrative actions before or by the Director of the Idaho State Police and/or the Bureau of Alcohol Beverage Control relating to Petitioner's priority applications for the following cities: Twin Falls, Sun Valley, Ketchum, Hailey, Idaho Falls, and Bellevue.

This Petition is commenced pursuant to and in accordance with Title 67, Chapter 52, Idaho Code, the Administrative Procedures Act.

AMENDED PETITION FOR JUDICIAL REVIEW

Page 1 of 5

I.
JURISDICTION

Idaho Code §67-5270 provides in pertinent part that:

(1) Judicial review of agency action shall be governed by the provisions of this chapter...

(2) A person aggrieved by final agency action other than an order in a contested case is entitled to judicial review under this chapter if the person complies with the requirements of sections 67-5271 through 67-5279, Idaho Code.

In this instance, judicial review is now appropriate under the above provisions, because the July 24, 2009 letter removing Petitioner's name from the above-referenced priority lists and refunding his application fees is a final agency action. Petitioner shall demonstrate at the proof phase of this judicial proceeding, that if Respondent is allowed to remove Petitioner's name from the priority lists without due process of law, Petitioner shall suffer irreparable harm. Petitioner shall lose priority list positions that he has held since 1994. Once a Notice of License Availability is issued to a subsequent applicant from each priority list, Petitioner shall be permanently displaced from that priority list and shall lose a priority list position that has taken up to fifteen years to secure.

Pursuant to I.C. § 67-5272, jurisdiction and venue are proper in the Fifth Judicial District in and for the County of Twin Falls as Petitioner reside in and operates his principal place of business in Twin Falls County. Further, jurisdiction is proper as the final agency pertains, in part, to Petitioner's position on the priority list for the City of Twin Falls.

II.
REVIEW ISSUES

Petitioner seeks judicial review of all issues pertaining to the above including, but not limited to, each and all of the following:

1. Whether the July 24, 2009 letter and/or any other administrative actions before or by the Director of the Idaho State Police and/or the Bureau of Alcohol Beverage Control related to Petitioner's above-referenced priority applications were premised on errors of fact, law or procedure;

2. Whether the administrative actions constituted valid actions and proceedings or, instead, were legal nullities of no legal effect;

3. Whether, in particular, the July 24, 2009, letter was issued upon unlawful procedure, in violation of constitutional or statutory provisions and/or in excess of the statutory authority of the agency in that Respondent removed Petitioner's name from the priority lists in Twin Falls, Sun Valley, Ketchum, Hailey, Idaho Falls, and Bellevue, without notice, hearing or warning, all in violation of Idaho Code §§ 67-5240 – 67-5242, *et seq.* in addition to basic requirements of due process.

4. Whether the administrative actions were based upon unlawful procedure, in violation of constitutional or statutory provisions and/or in excess of the statutory authority of the agency and in violation of the Idaho Administrative Procedures Act in that, by retroactively applying the March 6, 2007 amendment to IDAPA 11.05.01.013.04, which limited applicants to only one position at a time on each incorporated city priority list, to priority list applicants whose positions predated that amendment, Respondent has engaged in informal and/or unlawful retroactive rulemaking.

5. Whether the administrative actions were arbitrary, capricious and/or abuses of discretion, and constituted a 'taking' of a property interest without due process of law in violation of the United States and Idaho Constitutions.

6. Whether the administrative actions were arbitrary and unreasonable exercises of police power in violation of the United States and Idaho Constitutions.

7. Whether the administrative actions were arbitrary, capricious and/or abuses of discretion and/or constituted the agency acting in excess of its statutory authority, in that the July 24, 2009 letter did not constitute a recommended, preliminary or final orders following a § 67-5242 hearing, because there was no such hearing.

8. Whether the administrative actions were otherwise:

- (a) In violation of constitutional and/or statutory provisions;
- (b) Violated applicable law by refusing and failing to provide required due process, notice and hearing to which Petitioner was entitled by law;
- (c) In excess of the statutory authority of the agency;
- (d) Made upon unlawful procedure;
- (e) Not supported by substantial evidence on the record as a whole; and/or
- (f) Arbitrary, capricious or an abuse of discretion.

III.

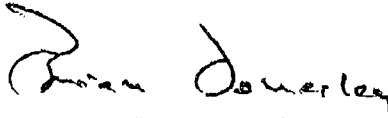
CONCLUSION

WHEREFORE, it is respectfully requested that this Court declare that the July 24, 2009 is null and void and of no effect;

And further that this Court order that Respondent reinstate Petitioner on each of the above-referenced priority lists in the same place and order that he held prior to his unlawful removal from said priority lists;

And, further, that attorney fees and costs be granted to Petitioner pursuant to the provisions of Idaho law including, but not limited to, Idaho Code §§ 12-117, 121 and Rule 54(e) (1), I.R.C.P, and other applicable law..

DATED this 20 day of August, 2009.



Brian Donesley
Attorney for Petitioner

CERTIFICATE OF SERVICE

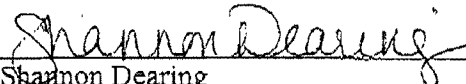
I HEREBY CERTIFY that on the 20th day of August, 2009, I caused an accurate copy of the foregoing document to be delivered as noted below to:

Lawrence G. Wasden, Attorney General
Stephanie A. Altig, Deputy Attorney General
Idaho State Police
P.O. Box 700
Meridian, Idaho 83680-0700
Facsimile 208-884-7090

U.S. Mail	_____
Hand Delivery	_____
Facsimile	<u> X </u>

Lt. Robert Clements, Bureau Manager
Alcohol Beverage Control
P.O. Box 700
Meridian, Idaho 83680-0700
Facsimile 208-884-7096

U.S. Mail	_____
Hand Delivery	_____
Facsimile	<u> X </u>



Shannon Dearing
Legal Assistant



Cornel G. Jerry Russell
Director

Idaho State Police

Service since 1939



C.L. "Burt" Otter
Governor

July 24, 2009

Daniel Fuchs
526 K Shoup Ave West
Twin Falls, ID 83301

Dear Mr. Fuchs:

We have recently reviewed the priority waiting list for incorporated city liquor licenses for the state of Idaho. The Idaho Administrative Procedures Act 11 Title 05 Chapter 01.013.04 discusses the limitations on the priority list specifically stating that "an applicant shall hold only one position at a time on each incorporated city priority list".

Daniel S. Fuchs appears on the priority list for the following cities; Twin Falls, Sun Valley, Ketchum, Hailey, Idaho Falls, and Bellevue numerous times. The fee for your priority applications, receipt numbers 7675, 7676, 7677, 7678, 7679, 7681, 7680, 7538, 7687, 7532, 7531, 7685, 7684, 7534, 7682, and 7692 for the above mentioned cities of dated June 2, 1994 - February 13, 1995 are being refunded based on the limitations described above. Enclosed is a check for the full amount of (\$5,175.00). Please contact our office if you have any questions.

Sincerely,

Lt. Robert Clements
Bureau Chief
Alcohol Beverage Control Bureau
Idaho State Police

P.O. Box 700, Meridian, Idaho 83680-0700

EQUAL OPPORTUNITY EMPLOYER

EXHIBIT

DISTRICT COURT
TWIN FALLS CO. IDHO
RICT OF THE
NE FALLS
2005 AUG 21 PM 1:47

BY _____
CLERK

CLERK
DEPUTY

Case No. CV 09-3914

Case No. CV 09-3914

PROCEDURAL ORDER GOVERNING JUDICIAL REVIEW OF AGENCY ACTION BY DISTRICT COURT

—

1
0 26

4. Preparation of Agency Record; Payment of Fees: Pursuant to *I.R.C.P.* 84(f), when the statute provides what shall be contained in the official record of the agency upon judicial review, the agency shall prepare the record as provided by statute. Otherwise, the documents listed in paragraph (3) of *I.R.C.P.* Rule 84(f) shall constitute the agency record for review. Petitioner shall pay all fees as required for preparation of the agency record in accordance with *I.R.C.P.* Rule 84(f)(4). The clerk of the agency in accordance with *I.R.C.P.* Rule 84(f)(5) shall lodge the record with the agency within 14 days of the filing of the Petition for Judicial Review. Any extension in time for preparation of the agency record shall be applied for by the agency to the district court.

5. Preparation of Transcript, Payment of Fee: The Court requires the provision of a written transcript prepared from the recorded or reported proceedings. It is the responsibility of the Petitioner (or Cross-Petitioner, as the case may be) to timely arrange and pay for preparation of all portions of the transcript reasonably necessary for review. Pursuant to *I.R.C.P.* 84(g), the responsible party shall contact the agency clerk to determine the estimated cost of the transcript, and pay the estimated cost in accordance with *I.R.C.P.* 84(g)(1)(A) or (2)(A) as the case may be. The transcript shall be lodged with the agency within 14 days of the filing of the petition for judicial review in accordance with *I.R.C.P.* 84(g)(1)(B), (C) or 84(g)(2)(B)(C) as the case may be. The transcriber may apply to the district court for an extension of time, for good cause shown.

6. Settlement of Transcript and Record. Pursuant to *I.R.C.P.* 84(j), and unless otherwise provided by statute, upon receipt of the transcript and upon completion of the record, the agency shall mail or deliver Notice of Lodging of Transcript and Record to all attorneys of record or parties appearing in person and to the district court. The parties shall have 14 days from the date of mailing of the notice to pick up a copy of the transcript and agency record and to object to the transcript or record. All fees for the preparation of the transcript and record shall be paid by the responsible party at or before the pick up of the agency record and transcript. Any objection to the record shall be determined by the agency within 14 days of receipt of the objection and the agency decision on the objection shall be included in the record on petition for review. Upon the failure of the party to object within 14 days, the transcript and record shall be deemed settled. Pursuant to *I.R.C.P.* 84(k), the settled record and transcript shall be lodged with the district court within 42 days of the service of the Petition for Judicial Review.

7. Augmentation of Record- Additional Evidence Presented to District Court- Remand to Agency to Take Additional Evidence: Pursuant to *I.R.C.P.* 84(l) the agency record and/or transcript on review may be augmented upon motion by a party within 21 days of the filing of the settled transcript and record in the manner prescribed by *I.A.R.* 30. The taking of additional evidence by the district court and/or agency on remand shall be governed by statute or *I.R.C.P.* 84(l).

8. Briefs and Memoranda: The petitioner's brief shall be filed with the clerk within 35 days after lodging of the transcript and record. The respondent's brief (cross-petitioner's brief) shall be filed within 28 days after service of petitioner's brief. The petitioner may file a reply brief within 21 days after service of respondent's brief.

The organization and content of briefs shall be governed by *I.A.R.* 35 and 36. Pursuant to *I.R.C.P.* 84(p) only one (1) original signed brief may be filed with the court; however, an additional copy of any brief will be plainly marked "Judge's copy" and will be provided for use by the court, mailed or delivered to the judge in chambers. Copies of all briefs shall be served on all parties.

9. **Extensions of Time:** Motions to extend the time for filing a brief shall be submitted in conformity with *I.A.R.* 34(e). All other requests for extension of time shall be submitted in conformity with *I.A.R.* 46.

10. **Motions:** All motions shall be submitted in conformity with *I.R.C.P.* 84(o) and shall be heard with out oral argument unless ordered by the Court.

11. **Oral Argument:** After all briefs have been filed, either party may set the matter for oral argument pursuant to *I.R.C.P.* 84(q). If neither party notices the matter for oral argument within 14 days of the filing of the last brief (or the time for filing briefs has expired) the Court will deem oral argument waived and the matter will be decided on the record, transcript and briefs. If the matter is set for oral argument, the form and order of argument shall be governed by *I.A.R.* 37.

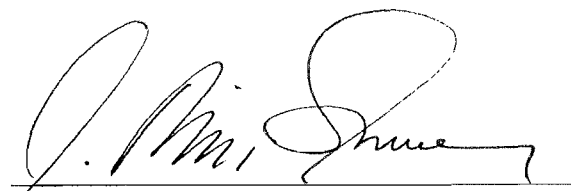
12. **Judgment or Decision.** The Court's decision will be by written memorandum which shall constitute the Judgment or Decision required by *I.R.C.P.* 84(t)(1).

13. **Attorneys Fees and Costs on Appeal:** Costs and attorneys fees on judicial review shall be claimed, objected to and fixed in accordance with *I.A.R.* 40 and 41, provided that only one original signed claim, objection or supporting or opposing affidavit need be filed.

14. **Remittitur:** If no notice of appeal to the Idaho Supreme Court is filed within forty-two (42) days after filing of the Court's written decision, the clerk shall issue a *remittitur* remanding the matter to the agency as provided in *I.R.C.P.* 84(t)(4).

15. **Failure to Comply:** Failure by either party to timely comply with the requirement of this Order or applicable provisions of the *Idaho Rules of Civil Procedure* or *Idaho Appellate Rules*, if applicable, shall be grounds for imposition of sanctions, including, but not limited to the allowance of attorneys fees, striking of briefs or dismissal of the appeal pursuant to *I.R.C.P.* 11 and 84(n) and *I.A.R.* 11.1 and 21.

DATED this 21 day of August, 2009.


G. Richard Bevan, District Judge

CERTIFICATE OF SERVICE

I, undersigned, hereby certify that on the 21 day of August, 2009, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

Brian Donesley
Attorney at Law
548 North Avenue H
P. O. Box 419
Boise, ID 83701-0419

☒ U.S. Mail
☐ Hand delivered
☐ Faxed
☐ Court Folder

Stephanie Altig
Deputy Attorney General
Idaho State Police
P. O. Box 700
Meridian, ID 83680-0700

☒ U.S. Mail
☐ Hand delivered
☐ Faxed
☐ Court Folder

Lt. Robert Clements
Bureau Manager
Alcohol Beverage Control
P. O. Box 700
Meridian, ID 83680-0700

☒ U.S. Mail
☐ Hand delivered
☐ Faxed
☐ Court Folder

CLERK OF THE COURT

By: Shawn Cooper

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2009 AUG 25 PM 2:10

BY _____
CLERK

DEPUTY

BRIAN DONESLEY ISB#2313

Attorney at Law
548 North Avenue H
Post Office Box 419
Boise, Idaho 83701-0419
Telephone (208) 343-3851
Facsimile (208) 343-4188

Attorney for Petitioner

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS**

DANIEL S. FUCHS,

Petitioner,

v.

STATE OF IDAHO, Department of Idaho
State Police, Bureau of Alcohol Beverage
Control,

Respondent.

Case No. CV 2009-3914

**PETITIONER'S STATEMENT OF
ISSUES FOR JUDICIAL REVIEW,
RULE 84(d), IRCP**

COMES NOW Petitioner, Daniel S. Fuchs, by and through his attorney, Brian Donesley,
and does provide the following Statement of Issues for Judicial Review in accordance with Rule
84(d), IRCP:

I.

The name of the Idaho State agency from which judicial review is sought is the
Department of Idaho State Police.

II.

The title of the District Court to which the petition is taken is: In the District Court of the

Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls.

III.

The agency action was summary. No case was opened before the agency. Hence, there is no heading, case caption, or other designation of the agency for the order and final action of the agency for which judicial review is sought.

IV.

There was no hearing or oral presentation before the agency recorded or reported.

V.

The issues on judicial review are as recited in the Petition for Judicial Review filed on August 21, 2009. To restate such issues is as follows:

1. Whether the July 24, 2009 letter and/or any other administrative actions before or by the Director of the Idaho State Police and/or the Bureau of Alcohol Beverage Control related to Petitioner's above-referenced priority applications were premised on errors of fact, law or procedure;
2. Whether the administrative actions constituted valid actions and proceedings or, instead, were legal nullities of no legal effect;
3. Whether, in particular, the July 24, 2009, letter was issued upon unlawful procedure, in violation of constitutional or statutory provisions and/or in excess of the statutory authority of the agency in that Respondent removed Petitioner's name from the priority lists in Twin Falls, Sun Valley, Ketchum, Hailey, Idaho Falls, and Bellevue, without notice, hearing or warning, all in violation of Idaho Code §§ 67-5240 – 67-5242, *et seq.* in addition to basic requirements of due process.
4. Whether the administrative actions were based upon unlawful procedure, in violation

of constitutional or statutory provisions and/or in excess of the statutory authority of the agency and in violation of the Idaho Administrative Procedures Act in that, by retroactively applying the March 6, 2007 amendment to IDAPA 11.05.01.013.04, which limited applicants to only one position at a time on each incorporated city priority list, to priority list applicants whose positions predated that amendment, Respondent has engaged in informal and/or unlawful retroactive rulemaking.

5. Whether the administrative actions were arbitrary, capricious and/or abuses of discretion, and constituted a 'taking' of a property interest without due process of law in violation of the United States and Idaho Constitutions.

6. Whether the administrative actions were arbitrary and unreasonable exercises of police power in violation of the United States and Idaho Constitutions.

7. Whether the administrative actions were arbitrary, capricious and/or abuses of discretion and/or constituted the agency acting in excess of its statutory authority, in that the July 24, 2009 letter did not constitute a recommended, preliminary or final orders following a § 67-5242 hearing, because there was no such hearing.

8. Whether the administrative actions were otherwise:

- (a) In violation of constitutional and/or statutory provisions;
- (b) Violated applicable law by refusing and failing to provide required due process, notice and hearing to which Petitioner was entitled by law;
- (c) In excess of the statutory authority of the agency;
- (d) Made upon unlawful procedure;
- (e) Not supported by substantial evidence on the record as a whole; and/or
- (f) Arbitrary, capricious or an abuse of discretion.

VI.

No transcript has been requested, as there were no proceedings to transcribe.

VII.

Service of the Petition for Judicial Review was made upon the Respondent's state agency on August 19, 2009, and service of the Amended Petition for Judicial Review was made upon the Respondent's state agency on August 20, 2009.

VIII.

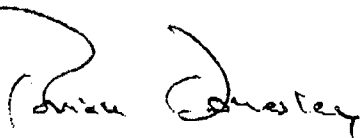
No estimated fee for preparation of the transcript has been paid, nor is none anticipated.

IX.

The clerk of the agency was requested on August 25, 2009, to provide an estimated fee for preparation of the agency record. No response has yet been received to that request.

The undersigned does hereby certify that the information contained herein is true and correct.

DATED this 25 day of August, 2009.



Brian Donesley
Attorney for Petitioner

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the 25th day of August, 2009, I caused an accurate copy of the foregoing document to be delivered as noted below to:

Lawrence G. Wasden, Attorney General
Stephanie A. Altig, Deputy Attorney General
Idaho State Police
P.O. Box 700
Meridian, Idaho 83680-0700
Facsimile 208-884-7090

U.S. Mail	_____
Hand Delivery	_____
Facsimile	<u> X </u>

Lt. Robert Clements, Bureau Manager
Alcohol Beverage Control
P.O. Box 700
Meridian, Idaho 83680-0700
Facsimile 208-884-7096

U.S. Mail	_____
Hand Delivery	_____
Facsimile	<u> X </u>


Shannon Dearing
Legal Assistant

BRIAN DONESLEY ISB#2313

Attorney at Law
548 North Avenue H
Post Office Box 419
Boise, Idaho 83701-0419
Telephone (208) 343-3851
Facsimile (208) 343-4188

Attorney for Petitioner

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2009 SEP -4 PM 2:02

BY CLERK

DEPUTY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS**

DANIEL S. FUCHS,

Petitioner,

v.

STATE OF IDAHO, Department of Idaho
State Police, Bureau of Alcohol Beverage
Control,

Respondent.

**MOTION FOR CONSOLIDATION:
Rule 42(a), I.R.C.P.**

CASE NO. CV 2009-3914

DANIEL S. FUCHS,

Petitioner,

v.

STATE OF IDAHO, Department of Idaho
State Police, Bureau of Alcohol Beverage
Control,

Respondent.

CASE NO. _____

COMES NOW, Petitioner Daniel S. Fuchs, by and through his attorney of record, Brian Donesley, and pursuant to Rule 42(a), I.R.C.P., hereby moves this Court for its Order for

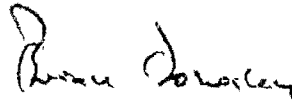
MOTION FOR CONSOLIDATION

Page 1 of 3

10 35

Consolidation of the above referenced actions, based upon the grounds and reasons of common questions of law and fact, economy to the Court and the parties, and that the interests of justice would best be served by such consolidation of these cases involving substantially common issues of fact and law between substantially the same parties.

DATED this 3 day of September, 2009.



Brian Donesley
Attorney for Plaintiff Daniel S. Fuchs

CERTIFICATE OF SERVICE

On this 4th day of September, 2009, I hereby certify that I served the above document on the addressee(s) indicated, by delivering the same to the following party(s) by method indicated below:

Lawrence G. Wasden, Attorney General
Office of Attorney General
700 W. Jefferson Street
P.O. Box 83720
Boise, ID 83720

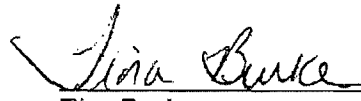
☒ U.S. Mail
☐ Hand-Delivered
☐ Overnight Mail
☐ Facsimile (334-2530)

Stephanie Altig, Deputy A.G.
Idaho State Police
700 S. Stratford Drive
Meridian, ID 83642-6202

☐ U.S. Mail
☒ Hand-Delivered
☐ Overnight Mail
☐ Facsimile (884-7090)

Robert Clements
Idaho State Police
700 S. Stratford Drive
Meridian, ID 83642-6202

☐ U.S. Mail
☒ Hand-Delivered
☐ Overnight Mail
☐ Facsimile (884-7096)



Tina Burke
Legal Assistant

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2009 SEP -4 PM 2:01

BY _____
CLERK
DEPUTY

BRIAN DONESLEY ISB#2313

Attorney at Law
548 North Avenue H
Post Office Box 419
Boise, Idaho 83701-0419
Telephone (208) 343-3851
Facsimile (208) 343-4188

Attorney for Petitioner

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS**

DANIEL S. FUCHS,

Petitioner,

v.

STATE OF IDAHO, Department of Idaho
State Police, Bureau of Alcohol Beverage
Control,

Respondent.

Case No. CV 2009-3914

**PETITIONER'S MOTION FOR ORDER
OF STAY**

I.R.C.P 84 (m)

COMES NOW Petitioner, Daniel S. Fuchs, by and through his attorney, Brian Donesley, and, pursuant to I.R.C.P. 84 (m), hereby moves this Court for its Order staying the Respondent, State of Idaho, Department of Idaho State Police, Bureau of Alcohol Beverage Control from any further agency action in the premises during the pendency of this Petition for Judicial Review. This Motion is made and based upon the following grounds:

As set forth in the Petition for Judicial Review, this action involves Respondent ISP/ABC's summary removal of Petitioner's position on retail alcohol beverage license priority lists in five Idaho cities, insofar as Petitioner's name appeared more than once (1) time on each

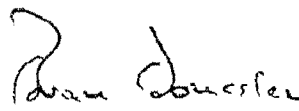
such list.

PETITIONER HEREBY MOVES for an order from this Court staying and prohibiting Respondent ISP/ABC from notifying succeeding applicants on the implicated priority lists or issuing licenses therefrom. A stay shall prevent further harm to Plaintiff, because his rights, privileges and legal interests attendant to his positions on the priority lists. Hence, the *status quo*, shall thereby be preserved. A stay shall protect the rights and legal interests of third parties, as well, because their places on the priority lists shall be preserved. Should Respondent ISP/ABC, continue to notify succeeding applicants of the availability of new licenses or issue licenses to them, such actions may be required to be undone. By contrast, there would be no harm to Respondent ISP/ABC, if this Court stays further agency action. ISP/ABC has no substantive stake in whether licenses are issued. It has no rights that would be affected.

Additionally, Petitioner has filed contemporaneously with this Motion, in District Court, Twin Falls County, a separate but related Complaint for Declaratory and Injunctive Relief, a Motion for Temporary Restraining Order and Preliminary Injunction. A Motion to Consolidate both cases has been filed likewise in each case.

This Court should issue its stay order prohibiting Defendant ISP/ABC from taking further agency action with respect to the affected priority lists, until this matter has been adjudicated.

DATED this 3 day of September, 2009.



Brian Donesley
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of September, 2009, I caused an accurate copy of the foregoing document to be delivered as noted below to:

Lawrence G. Wasden, Attorney General
Stephanie A. Altig, Deputy Attorney General
Idaho State Police
700 S. Stratford Drive
Meridian, Idaho 83642-6202
Facsimile 208-884-7090

U.S. Mail X
Hand Delivery
Facsimile

Lt. Robert Clements, Bureau Manager
Alcohol Beverage Control
700 S. Stratford Drive
Meridian, Idaho 83642-6202
Facsimile 208-884-7096

U.S. Mail
Hand Delivery
Facsimile X



Tina Burke
Legal Assistant

LAWRENCE G. WASDEN
Attorney General

CHERYL E. MEADE
Deputy Attorney General
Idaho State Police
700 S. Stratford Drive
Meridian, Idaho 83642
Telephone: (208) 884-7050
Facsimile: (208) 884-7090
Idaho State Bar No. 6200

Attorney for Respondent

DISTRICT COURT
TWIN FALLS COUNTY
FILED

2009 SEP -8 AM 11:08

[Signature]

CLERK

DEPUTY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS**

DANIEL S. FUCHS)	
)	
Petitioner,	)	Case No. CV- <i>09-3914</i>
)	
	)	RESPONDENT'S RESPONSE
	)	TO AMENDED PETITION
v.	)	FOR JUDICIAL REVIEW
	)	AND MOTION TO DISMISS
STATE OF IDAHO, Department of	)	FOR FAILURE TO EXHAUST
State Police, Bureau of Alcohol	)	ADMINISTRATIVE REMEDIES
Beverage Control,)	
)	
Respondent.)	
_____)	

COMES NOW, Cheryl E. Meade, Deputy Attorney General for the Idaho State Police, Alcohol Beverage Control ("ABC") and responds to Daniel Fuchs' ("Fuchs") Amended Petition for Judicial Review and moves this court to dismiss this matter based upon the following and the attached affidavit of Robert Clements:

I. FACTS

1. Fuchs applied for numerous retail liquor by the drink licenses between June 2, 1994 and February 13, 1995, in Blaine, Idaho Falls and Twin Falls Counties, to wit; in Blaine County, Fuchs remains on the Bellevue, Idaho priority list once and was issued a refund for a second

RESPONDENT'S RESPONSE TO AMENDED PETITION FOR JUDICIAL REVIEW AND
MOTION TO DISMISS FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

-1- 41

position on the list; Fuchs remains on the Hailey, Idaho priority list once and was issued a refund for a 2nd and 3rd position on the list; Fuchs remains on the Ketchum, Idaho priority list once and was issued a refund for a second and third position on the list; Fuchs remains on the Sun Valley, Idaho priority list once and was issued a refund for a second and third position on the list; Fuchs remains on the Idaho Falls, Idaho priority list once and was issued a refund for a second position on the list; Fuchs remains on the Twin Falls, Idaho priority list once and was issued a refund for a second, third, fourth, fifth, sixth, seventh and eighth position on the list. Agency Record 1.

2. In 2006, ABC began to promulgate administrative rules to be presented during the 2007 Idaho legislative session. Included in that effort, ABC amended the rule regarding the number of times an applicant could place their name on the priority list for each incorporated city. Agency Record 2, IDAPA Rule 11.05.01.013.04.

3. Input was sought by ABC from various interest groups through the rule-making process. Agency Records 3, 4, and 5.

4. In response to the interest groups' commentary, ABC made changes to the rules accordingly. Agency Record 6.

5. On August 11, 2006, ABC submitted a Proposed/Temporary Administrative Rules Form to the Idaho Division of Financial Management. Agency Record 7.

6. ABC continued to seek input from various interest groups. Brian Donesley, counsel for petitioner in the present case, attended these meetings. Agency Records 8 and 9.

7. On August 23, 2006, the Legislative Services Office issued a Memorandum concerning ABC's rule changes. Agency Record 10.

8. On September 12, 2006, Idaho State Police was notified that ABC's rules were reviewed by the subcommittee for both the Idaho Senate and House of Representatives. Agency Record 11.

9. On September 26, 2006, ABC sent a letter to Hans Schatz of Food Services of America regarding changes ABC made to its rules in response to the input received from Food Services and other interest groups. Agency Record 12.

10. On October 4, 2006, a Public Notice of Intent to Propose or Promulgate New or Changed Agency Rules was published. Agency Record 13.

10. On October 27, 2006, the Senate Judiciary & Rules Committee published the Notice of Rulemaking – Adoption of Pending Rule. Agency Record 14.

11. On January 22, 2007, the Idaho Lodging & Restaurant Association mailed a letter of support for ABC's pending rules to the Senate Judiciary & Rules Committee. Agency Record 15.

12. On January 23, 2007, the Idaho House Judiciary, Rules and Administration Committee (Smith Subcommittee) took up ABC's new rules for action. The Committee duly passed the rule as written. The same rule now at issue before this Court. Agency Record 16.

13. On January 24, 2007, the Idaho Senate Judiciary and Rules Committee took up ABC's new rules for action. The matter was scheduled for a vote for January 26, 2007. Agency Record 17.

14. On January 24, 2007, Brian Donesley sent a letter to ABC expressing concerns only as to the meaning of the rule in the context of an applicant's name (whether it be an individual person or a business) appearing more than once on a priority list. Agency Record 18.

15. On January 26, 2007, the Idaho Senate Judiciary and Rules Committee took up ABC's new rules for further discussion. The committee then voted and passed the rule at issue in this matter without further change. No "grandfather clause" was provided for in the rule as it was written. Agency Record 19.

16. On or about July 24, 2009 ABC, in accordance with IDAPA Rule 11.05.01.013.04, returned Fuchs' applications where his name appeared more than one time on each incorporated city priority list. Mr. Fuchs' money was returned to him for the numerous application fees he submitted. ABC, per its rule, allowed Fuchs to retain the highest place he held on each list mentioned above in paragraph number 1. Agency Records 1, 20 and 21.

17. This is only a partial Agency Record. No discovery has been conducted, nor have any depositions been taken.

II. APPLICABLE LAW AND ANALYSIS

The Idaho Supreme Court has held that generally the exhaustion doctrine implicates subject matter jurisdiction because a "district court does not acquire subject matter jurisdiction until all the administrative remedies have been exhausted." *Owsley v. Idaho Industrial Commission*, 141 Idaho 129 (2005) (citing *Fairway Dev. Co. v. Bannock County*, 119 Idaho 121 (1990)).

The standard of review on a motion to dismiss under IRCP 12(b)(1) is similar to a motion under IRCP 12(b)(6). Motions raising "facial challenges" to jurisdiction, the court looks only at the pleadings, and all inferences are viewed in favor of the non-moving party. *Owsley*, 141 Idaho at 133. However, there is a distinction between 12(b)(1) *facial* challenges and 12(b)(1) *factual* challenges. Facial challenges provide the non-movant the same protections as under a 12(b)(6) motion. Factual challenges, on the other hand, allow the court to go outside the pleadings without converting the motion into one for summary judgment. *Owsley*, 141 Idaho 129, 138 n.6 (2005), citing *Osborn v. United States*, 918 F.2d 724, 729 n.6 (8th Cir. 1990).

In support of this Motion to Dismiss, ABC has filed the Affidavit of Robert Clements for the purpose of demonstrating that IDAPA Rule 11.05.01.013.04 was promulgated according to statute, that there was no grandfather clause included or intended and that administrative proceedings were never sought by Fuchs in this matter. This administrative proceeding is a “contested case” under the APA (Idaho Code §67-5201(6)), but has not proceeded far enough to result in the issuance of an agency “order.” Fuchs has prematurely brought this action in District Court and has failed to exhaust his administrative remedies, which is why ABC’s motion is a facial challenge to subject matter jurisdiction.

III. ARGUMENT

A. Fuchs Failed to Exhaust the Administrative Procedure for Determining if ABC Correctly Applied IDAPA Rule 11.05.01.013.04.

Fuchs, by virtue of his application for a city priority list retail license for liquor-by-the-drink subjected himself to the Director of the Idaho State Police and his strict supervision, control, regulation, and enforcement pursuant to the provisions of Title 23, chapter 9 Idaho Code and the rules and regulations promulgated by the Director of the Idaho State Police.

Idaho Code §23-932 grants the Director of the Idaho State Police significant rule-making authority to publish such rules and regulations as the Director “may deem necessary for carrying out the provisions of this act and for the orderly and efficient administration thereof, ...” In addition to general rule-making authority under the statute, the Director is specifically “empowered and it is made his duty” to prescribe forms to be used in the administration of this act, the proof to be furnished, conditions to be observed in the issuance of licenses, and records to be kept.

The Director may prescribe, subject to the provisions of the act, the conditions and qualifications necessary to obtain a license, and make regulations respecting the sale and consumption of liquor in clubs, hotels and other places of business to licensees, including the conduct, management and equipment of premises licensed to sell liquor. The Director of the

Idaho State Police has promulgated such rules governing alcohol beverage control at IDAPA 11.05.01.

Idaho Code § 23-933, in very plain unequivocal terms, provides that the Director may suspend, revoke or refuse to renew a license issued for failure to comply with the provisions of the Idaho Code for the rules and regulations promulgated pursuant thereto. Any procedure for the suspension, revocation or **refusal to grant** or renew the license issued under the director's authority "shall be in accordance with the provisions of Chapter 52, Title 67, Idaho Code." (Emphasis added.)

Fuchs plainly failed to exhaust his administrative remedies when he did not seek an administrative review in accordance with the Idaho Administrative Procedures Act ("APA"). The procedural rules for Alcohol Beverage Control's administrative appeals are governed by the Rules of Administrative Procedure of the Attorney General, IDAPA 04.11.01 and IDAPA 11.05.01.003.

The Director of Idaho State Police has delegated his authority for licensing of establishments that sell alcoholic beverages as contained in Title 23, chapters 9, 10 and 13, Idaho Code, to the Alcohol Beverage Control Bureau, Idaho State Police. IDAPA 11.05.01.011.02. The APA establishes a comprehensive procedure which must be used by ABC as an executive branch of government with the authority to not grant a liquor license to an applicant. The exhaustion of administrative remedies doctrine is well established and followed by the Idaho Supreme Court. The doctrine is precisely described by the Idaho Court of Appeals in *Pounds v. Dennison*, 115 Idaho 381, 766 P.2d 1262 (Ct. App. 1988):

Where an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before the courts will act. Absent a statutory exception, the exhaustion of an administrative remedy is a prerequisite for resort to the courts. As a corollary to the exhaustion doctrine, the primary jurisdiction doctrine provides that if the claim or cause of action is within the special jurisdiction of the administrative tribunal, courts may act only to review the final administrative determination. *Fischer v. Sears, Roebuck and Co.*, 107 Idaho 197, 687 P.2d 587 (Ct.App.1984). If a court allows a suit to be maintained prior to such final determination, it interferes with the subject matter

jurisdiction of another tribunal. *County of Contra Costa v. State of California*, 177 Cal.App.3d 62, 222 Cal.Rptr. 750 (1986).

Pounds, 115 Idaho at 383 (Ct. App. 1988).

In the present case, not only does Idaho Code §23-933(1) specifically state that procedure to suspend, revoke, or refuse to renew a license shall be in accordance with the APA, the APA itself mandates that Fuchs must exhaust all administrative remedies before it may seek judicial review. Idaho Code §67-5271, "Exhaustion of administrative remedies," provides:

- (1) A person is not entitled to judicial review of an agency action until that person has exhausted all administrative remedies required in this chapter.
- (2) A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency action would not provide an adequate remedy.¹

The Idaho Supreme Court has recently reaffirmed its support and underlying policy considerations of the exhaustion doctrine. *Regan v. Kootenai County*, 140 Idaho 721, 100 P.3d 615 (2004); *Owsley v. Idaho Industrial Commission*, 141 Idaho 129, 106 P.3d 455 (2005). In the *Regan* case the Court explained:

The Idaho Administrative Procedure Act provides that "[a] person is not entitled to judicial review of an agency action until that person has exhausted all administrative remedies required in this chapter." I.C. § 67-5271. The doctrine of exhaustion requires that where an administrative remedy is provided by statute, relief must first be sought by exhausting such remedies before the courts will act. *McKart v. United States*, 395 U.S. 185, 193-95, 23 L. Ed. 2d 194, 89 S. Ct. 1657 (1969); *Pounds v. Denison*, 115 Idaho 381, 383, 766 P.2d 1262, 1264 (Ct.App.1988). No one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted. *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51, 82 L. Ed. 638, 58 S. Ct. 459 (1938).

Furthermore, the doctrine of exhaustion generally requires that the case run the full gamut of administrative proceedings before an application for judicial relief may be considered. *Palmer v. Board of County Comm'rs of Blaine County*, 117 Idaho 562, 565, 790 P.2d 343, 346 (1990) (citing *Grever v. Idaho Telephone Co.*,

¹ Even Fuchs points to this code provision in his Amended Petition as the correct authority for this Court to follow.

94 Idaho 900, 903, 499 P.2d 1256, 1259 (1972)). If a claimant fails to exhaust administrative remedies, dismissal of the claim is warranted. *See e.g. Bryant v. City of Blackfoot*, 137 Idaho 307, 313, 48 P.3d {100 P.3d 619} 636, 641 (2002). In *White v. Bannock County Commissioners*, 139 Idaho 396, 139 Idaho 396, 80 P.3d 332 (2003), this Court recently reaffirmed the policy considerations underlying the doctrine of exhaustion:

As we have previously recognized, important policy considerations underlie the requirement for exhausting administrative remedies, such as providing the opportunity for mitigating or curing errors without judicial intervention, deferring to the administrative process established by the Legislature and the administrative body, and the sense of comity for the quasi-judicial functions of the administrative body. *Id.* at 80 P.3d at 337-38 (citations omitted). Furthermore, “the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.” *Camp v. Pitts*, 411 U.S. 138, 142, 36 L. Ed. 2d 106, 93 S. Ct. 1241 (1973).

Regan, 140 Idaho at 724-725.

ABC is a bureau of the Idaho State Police and when, through the Director of the Idaho State Police, it suspends, revokes, or refuses to renew a license issued for any violation of or failure to comply with the provisions of Title 23, Chapter 9, Idaho Code, or the rules and regulations promulgated thereunder, the procedures for the suspension, revocation, or refusal to grant or renew licenses are to be held in accordance with the provisions of the APA.

There is no dispute in this case that Fuchs failed to exhaust his administrative remedies and that there is an adequate administrative remedy under Title 67, Chapter 52, and the Idaho Rules of Administrative Procedure, IDAPA 04.11.01. From a practical standpoint, the agency record has not been developed adequately enough to provide all the information this Court may need to consider on appeal. It may be that depositions and discovery are required on the part of ABC and to proceed without an adequate record is unfairly prejudicial.

In this case, a final agency order will not be issued on the subject of Fuchs’ position on the priority lists so named until proper notice, an administrative hearing and review, if applicable, under the APA has been completed. Then either party will have opportunity to seek judicial review of the final agency order. Idaho Code §67-5270(3).

B. Failure to Exhaust Administrative Remedies Deprives District Court of Subject Matter Jurisdiction

As set forth above, Fuchs has adequate administrative remedies under the APA prior to any final agency decision to not renew the liquor license at issue. ABC has direct statutory and administrative procedures under the APA and Rules of Administrative Procedure for which to seek redress, and ultimately seek judicial review in District Court.

Title 23, Chapter 9 of the Idaho Code gives the Director of the Idaho State Police *exclusive* jurisdiction of proceedings for the suspension, revocation, and refusal to grant/renew a license issued pursuant to that Chapter for any violation of or failure to comply with its provisions or the rules and regulations promulgated thereunder. Idaho Code §23-933.

Although the exhaustion doctrine by itself is a sufficient bases for the dismissal of claims for relief in District Court, it is a “subset of errors of ‘subject matter jurisdiction,’ and can also be brought under a 12(b)(1) motion.” *Owsley v. Idaho Industrial Commission*, 141 Idaho 129, 133, 106 P.3d 455, 460 (2005) (citing 5B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1350 (2004)).

Additionally, the doctrine of exhaustion requires that where an administrative remedy is provided by statute, relief must first be sought by exhausting such remedies before the courts will act. *Regan*, 140 Idaho 721, 724 (2004) (citations omitted). For cases under the strict application of the APA, Idaho Code §67-5271 mandates exhaustion. The doctrine of exhaustion generally requires that the case run the full gamut of administrative proceedings before an application for judicial relief may be considered. *Regan*, supra, at 724. If a claimant fails to exhaust administrative remedies, dismissal of the claim is warranted. *Regan*, supra, at 724. The Idaho Supreme Court has recognized exceptions to the rule in only two instances: (1) when the interests of justice so require, and (2) when the agency acted outside of its authority. *Regan*, supra, at 725.

Neither of those exceptions applies in this case. With respect to the first exception, Fuchs has not pled, nor is there anything to suggest, that a contested case proceeding under the APA

would not result in a fair adjudication of the issues. The second exception refers to an instance when the administrative agency would be acting outside its jurisdictional authority. In the context of this case, it is unequivocally clear that the type of relief Fuchs seeks falls squarely within Title 23, Chapter 9 and the rules and regulations promulgated thereunder, under the exclusive jurisdiction of the Director of the Idaho State Police.

In *Regan*, the Idaho Supreme Court analyzed two of its prior decisions in *Sierra Life Ins. Co. v. Granata*, 99 Idaho 624 (1978), and *Fairway Dev. Co. v. Bannock County*, 119 Idaho 121 (1990), in considering whether failure to exhaust administrative remedies applies to deprive the Court of subject matter jurisdiction. After reviewing those cases the Court stated:

The law embodied in the holdings clearly is that sometimes exhaustion is required and sometimes not. No court requires exhaustion when exhaustion will involve irreparable injury and when agency is palpably without jurisdiction; **probably every court requires exhaustion when the question presented is one within the agency's specialization and when the administrative remedy is as likely as the judicial remedy to provide the wanted relief.** In between extremes is a vast array of problems on which judicial action is variable and difficult or impossible to predict. (Emphasis added.)

Regan, supra, at 726 (citing *Sierra*, supra, at 627).

The Court went on to hold that since the question related to an interpretation of a zoning ordinance, “one within the zoning authority’s specialization” and “the administrative remedy is as likely as the judicial remedy to provide wanted relief,” failure to exhaust administrative remedies deprived the district court of subject matter jurisdiction. *Regan*, supra, at 726.

In the context of this case, the Director of the Idaho State Police is the administrative tribunal charged with enforcement of the provisions of Title 23, chapter 9, Idaho Code. By rule, the Director has delegated his authority for licensing establishments to ABC. IDAPA 11.05.01.011.02. As set forth above, ABC has mandatory administrative procedures under the APA prior to any final agency order refusing to grant Fuchs a liquor license.

The issue being asserted in Fuchs’ Complaint is an issue which the ISP/ABC not only has expertise and specialization, but is also exclusively charged with its enforcement. ABC has an

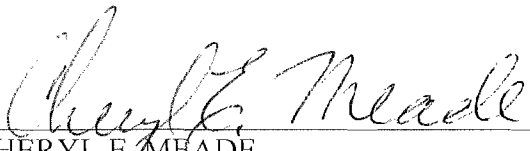
understanding of the administrative rules promulgated under Title 23, chapters 9, 10 and 13, and the requirements and criteria necessary for renewal of a liquor license. An agency charged with the duty of administering a statute is “impliedly clothed with the power to construe the law.” *Hamilton v. Reeder Flying Service*, 135 Idaho 568, 571, 21 P. 3d 890, 893 (2001) (citations omitted). “Great weight should be given to an agency’s interpretation of its own rules.” *Angstman v. City of Boise*, 128 Idaho 575, 578, 917 P. 2d 409, 412 (1996) (citations omitted). These administrative law cannons are obliterated if courts do not recognize and acknowledge the exhaustion of administrative remedies doctrine.

For these reasons, Fuchs’ failure to exhaust administrative remedies deprives the District Court of subject matter jurisdiction because “the district court does not acquire subject matter jurisdiction until all the administrative remedies have been exhausted.” *Fairway Dev. Co.*, 119 Idaho at 125.

IV. CONCLUSION

ABC respectfully requests that this Court find that Petitioner Daniel Fuchs has not exhausted his administrative remedies as required by the Idaho Administrative Procedures Act; that this Court dismiss his Petition for Judicial Review for lack of subject matter jurisdiction accordingly.

Dated this 4 day of September 2009.

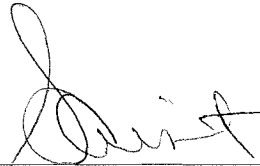


CHERYL E. MEADE
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of September, 2009, I caused to be served a true and correct copy of the foregoing RESPONDENT'S RESPONSE TO AMENDED PETITION FOR JUDICIAL REVIEW AND MOTION TO DISMISS FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES in the above-referenced matter by US Mail addressed to the following:

TO: BRIAN DONESLEY
ATTORNEY AT LAW
P.O. BOX 419
BOISE, ID 83701-0419



Susan Saint
Administrative Assistant

FUTURE LIQUOR

County	City		Receipt	Date	Fee
1 Ada	Boise	Todd Mason	4983	9/17/1993	\$375.00
2 Ada	Boise	Carmen C Cserna	7418	11/19/1993	\$375.00
3 Ada	Boise	Larry Asin	7440	12/17/1993	\$375.00
4 Ada	Boise	Neville and Neville LTD	7449	1/3/1994	\$375.00
5 Ada	Boise	Michael G Morfitt	7494	3/8/1994	\$375.00
6 Ada	Boise	Thomas Burwell	7511	4/20/1994	\$375.00
7 Ada	Boise	Edgar and Elaine Redman	7557	8/5/1994	\$375.00
8 Ada	Boise	Sue Ellen Caldwell-Matheson	7572	8/31/1994	\$375.00
9 Ada	Boise	Vicki Gibson	7588	9/29/1994	\$375.00
10 Ada	Boise	Northwest Beanery Inc	7626	12/20/1994	\$375.00
11 Ada	Boise	Sizzling Platter Inc	7963	6/7/1995	\$375.00
12 Ada	Boise	Gary Keith Crane	7978	7/24/1995	\$375.00
13 Ada	Boise	Michael McGuinness	8012	9/20/1995	\$375.00
14 Ada	Boise	Stanley T Boyd	8064	1/10/1996	\$375.00
15 Ada	Boise	Timothy Ray Marlow Sr	8073	1/22/1996	\$375.00
16 Ada	Boise	Sharon Borton	2102	2/21/1996	\$375.00
17 Ada	Boise	State Street Saloon	2111	2/29/1996	\$375.00
18 Ada	Boise	Michael Kolb	2133	4/2/1996	\$375.00
19 Ada	Boise	Richard & Mary Kelly	2159	6/5/1996	\$375.00
20 Ada	Boise	Anna Shank	2212	10/9/1996	\$375.00
21 Ada	Boise	M Terrell Jones	2218	10/16/1996	\$375.00
22 Ada	Boise	Patricia J Kolb	2273	1/22/1997	\$375.00
23 Ada	Boise	Tom Allegrezza	2279	1/27/1997	\$375.00
24 Ada	Boise	Margeret Allegrezza	2280	1/27/1997	\$375.00
25 Ada	Boise	Jeffery Weigle	2317	2/19/1997	\$375.00
26 Ada	Boise	R John Insinger	2333	3/5/1997	\$375.00
27 Ada	Boise	Robert J Insinger	2334	3/5/1997	\$375.00
28 Ada	Boise	Susan Insinger	2335	3/5/1997	\$375.00
29 Ada	Boise	Tina M Insinger	2339	3/12/1997	\$375.00
30 Ada	Boise	Patti Milos	2343	3/17/1997	\$375.00
31 Ada	Boise	Kathryn Varrati	2378	4/25/1997	\$375.00
32 Ada	Boise	Rhino LLC	2381	4/28/1997	\$375.00
33 Ada	Boise	Shay Ward Enterprises	2394	5/15/1997	\$375.00
34 Ada	Boise	Randy & Tricia Callies	3816	7/3/1997	\$375.00
35 Ada	Boise	David Harvey	3830	7/29/1997	\$375.00
36 Ada	Boise	David Wilcox	3842	8/19/1997	\$375.00
37 Ada	Boise	Brian O Brady	3844	8/21/1997	\$375.00
38 Ada	Boise	Laurie Samuelson	3935	12/26/1997	\$375.00
39 Ada	Boise	George Dubois	3997	3/18/1998	\$375.00
40 Ada	Boise	Michael Eddy	9023	4/21/1998	\$375.00
41 Ada	Boise	John A Klonick	9050	6/1/1998	\$375.00
42 Ada	Boise	John A Klonick refund 7/27	9051	6/1/1998	
43 Ada	Boise	Wenfred LLC	9079	7/28/1998	\$375.00
44 Ada	Boise	Anderco Properties Inc	9084	7/31/1998	\$375.00
45 Ada	Boise	Creighton Cogdill	9966	6/9/1999	\$375.00
46 Ada	Boise	Thomas Schindele	9972	6/16/1999	\$375.00
47 Ada	Boise	Jayne K Schindele	9976	6/22/1999	\$375.00
48 Ada	Boise	Brian Donesley	9985	7/22/1999	\$375.00
49 Ada	Boise	Brian Donesley refund 7/27	9998	7/22/1999	
50 Ada	Boise	Debbie Gilliland	7133	11/24/1999	\$375.00
51 Ada	Boise	Liza M Goul	7253	1/18/2001	\$375.00

FUTURE LIQUOR

County	City		Receipt	Date	Fee
52 Ada	Boise	Bobby J Showers	7267	3/5/2001	\$375.00
53 Ada	Boise	Todd Mathew Asin	267	8/2/2001	\$375.00
54 Ada	Boise	Jim Spittle	269	8/2/2001	\$375.00
55 Ada	Boise	Chadron J Vassar	301217	3/26/2002	\$375.00
56 Ada	Boise	Connie Auth	301269	4/18/2002	\$375.00
57 Ada	Boise	Renee Reimer & Larry Johnstone	6946	8/19/2002	\$375.00
58 Ada	Boise	Don L Wilcox	6991	9/11/2002	\$375.00
59 Ada	Boise	Kevin Ames LLC	6220	1/8/2003	\$375.00
60 Ada	Boise	A'a LLC	7055	11/20/2003	\$375.00
61 Ada	Boise	Kevin Ames LLC refund 7/27	1017	12/31/2003	
62 Ada	Boise	Howard Wasserstein	9056	2/10/2004	\$375.00
63 Ada	Boise	Jaysen M Desaro	9128	3/1/2004	\$375.00
64 Ada	Boise	Hoyle Investment	9255	4/16/2004	\$375.00
65 Ada	Boise	Eric J Sullivan	9384	6/7/2004	\$375.00
66 Ada	Boise	Michelle R Cash	9455	6/30/2004	\$375.00
67 Ada	Boise	Sayonara Inc	9522	7/29/2004	\$375.00
68 Ada	Boise	Jeremy Courtney	9627	9/27/2004	\$375.00
69 Ada	Boise	David Krick	9643	9/30/2004	\$375.00
70 Ada	Boise	Ann E. Reed & Rick W. Reed	9774	12/3/2004	\$375.00
71 Ada	Boise	Ann E. Reed & Rick W. Reed refund 7	9775	12/3/2004	
72 Ada	Boise	Juan Carlos Tijerina	9804	12/14/2004	\$375.00
73 Ada	Boise	Roger W. Wood	47	3/31/2005	\$375.00
74 Ada	Boise	Micheal L. Scott	318	7/15/2005	\$375.00
75 Ada	Boise	Hoyle Investment	364	7/28/2005	
76 Ada	Boise	Hoyle Investment	365	7/28/2005	
77 Ada	Boise	Scott and Amanda Suci	379	8/3/2005	\$375.00
78 Ada	Boise	Scott and Amanda Suci refund 7/27	382	8/3/2005	
79 Ada	Boise	Brian Boesinger	442	8/25/2005	\$375.00
80 Ada	Boise	John Chalfant	649	1/30/2006	\$375.00
81 Ada	Boise	Dr. Donna L. Peterson	660	1/31/2006	\$375.00
82 Ada	Boise	Hoyle Investment refund 7/27	673	2/27/2006	
83 Ada	Boise	Hoyle Investment refund 7/27	674	2/27/2006	
84 Ada	Boise	Hoyle Investment refund 7/27	675	2/27/2006	
85 Ada	Boise	Summit Hotel Properties LLC	715	4/10/2006	\$375.00
86 Ada	Boise	Sinvestments LLC	749	11/7/2006	\$375.00
87 Ada	Boise	LDG Ventures LLC	776	2/5/2007	\$375.00
88 Ada	Boise	Catfish LLC	778	2/8/2007	\$375.00
89 Ada	Boise	Aladdin's Egyptian Restaurant Inc	911	4/12/2007	\$375.00
90 Ada	Boise	Ruth M. Salinas	925	5/17/2007	\$375.00
91 Ada	Boise	Wm. L. & Judy L. Knight	973	9/27/2007	\$375.00
92 Ada	Boise	Chela's Fresh Mexican Cuisine LLC	998	12/24/2007	\$375.00
93 Ada	Boise	Jay M. Henry/Krista L. Grisell	524	5/2/2008	\$375.00
94 Ada	Boise	Jade Stacey & Ryan Higley	18405	10/24/2008	\$375.00
95 Ada	Boise	Cindy Romey	20219	2/24/2009	\$375.00
96 Ada	Boise	Sunray Café Inc	22859	7/10/2009	\$375.00
97 Ada	Boise				
98 Ada	Boise				

County	City	Name	Receipt	Date	Fee
1 Ada	Eagle	Daniel Hardee	7158	1/26/2000	\$375.00

FUTURE LIQUOR

County	City		Receipt	Date	Fee
2 Ada	Eagle	Barry Marcus	7159	1/26/2000	\$375.00
3 Ada	Eagle	Dan Hardee	7160	1/27/2000	\$375.00
4 Ada	Eagle	Michael Christian	7161	1/27/2000	\$375.00
5 Ada	Eagle	Aric & Leslie Scantling	7173	3/23/2000	\$375.00
6 Ada	Eagle	Shird's Inc	7175	3/27/2000	\$375.00
7 Ada	Eagle	Connie Auth	301272	4/18/2002	\$375.00
8 Ada	Eagle	Don L Wilcox	6990	9/11/2002	\$375.00
9 Ada	Eagle	Jim Spittle	6253	1/17/2003	\$375.00
10 Ada	Eagle	APP LLC	9239	4/13/2004	\$375.00
11 Ada	Eagle	Hoyle Investment	9249	4/16/2004	\$375.00
12 Ada	Eagle	Michelle M Dobaran	9434	6/24/2004	\$375.00
13 Ada	Eagle	Ann E Reed and Rick W. Reed	9776	12/3/2004	\$375.00
14 Ada	Eagle	Juan Carlos Tijerina	9805	12/14/2004	\$375.00
15 Ada	Eagle	Kimbell Gourley	9892	1/26/2005	\$375.00
16 Ada	Eagle	Antonio and Josefina Roque	133	4/27/2005	\$375.00
17 Ada	Eagle	Ms. Thanawan Tarijaroen	187	5/18/2005	\$375.00
18 Ada	Eagle	Hoyle Investment refund 7/27	362	7/28/2005	
19 Ada	Eagle	Hoyle Investment refund 7/27	363	7/28/2005	
20 Ada	Eagle	Scott and Amanda Suci	384	8/3/2005	\$375.00
21 Ada	Eagle	Scott and Amanda Suci refund 7/27	385	8/3/2005	
22 Ada	Eagle	Dr. Donna L. Peterson	661	1/31/2006	\$375.00
23 Ada	Eagle	Chicago Connection	668	2/2/2006	\$375.00
24 Ada	Eagle	Chicago Connection refund 7/27	667	2/2/2006	
25 Ada	Eagle	Hoyle Investment refund 7/27	678	2/27/2006	
26 Ada	Eagle	Hoyle Investment refund 7/27	679	2/27/2006	
27 Ada	Eagle	Hoyle Investment refund 7/27	680	2/27/2006	
28 Ada	Eagle	William J Cooper	717	5/10/2006	\$375.00
29 Ada	Eagle	Sinvestments LLC	750	11/7/2006	\$375.00
30 Ada	Eagle	Catfish LLC	779	2/8/2007	\$375.00
31 Ada	Eagle	Daniel Jeffrey Stein	793	2/27/2007	\$375.00
32 Ada	Eagle	Steve Cooper	937	6/8/2007	\$375.00
33 Ada	Eagle	Priority LLC	948	6/13/2007	\$375.00
34 Ada	Eagle	PBCE Inc	18273	10/20/2008	\$375.00
35 Ada	Eagle	David and Lauren Ianniciello	18383	10/20/2008	\$375.00
36 Ada	Eagle				
37 Ada	Eagle				

County	City	Name	Receipt	Date	Fee
1 Ada	Garden City	Illusions LLC	3876	10/14/1997	\$375.00
2 Ada	Garden City	Michael Eddy	9018	4/21/1998	\$375.00
3 Ada	Garden City	Priority LLC	695	3/29/2006	\$375.00
4 Ada	Garden City	James M. Neill	800	2/28/2007	\$375.00
5 Ada	Garden City	Visual Arts Collective LLC	959	8/2/2007	\$375.00
6 Ada	Garden City				
7 Ada	Garden City				
8 Ada	Garden City				
9 Ada	Garden City				

County	City	Name	Receipt	Date	Fee
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FUTURE LIQUOR

County	City		Receipt	Date	Fee
1 Ada	Kuna	Salvador Sanchez	301436	5/6/2002	\$375.00
2 Ada	Kuna	MEM LLP	6300	2/4/2003	\$375.00
3 Ada	Kuna	Larry Asin	7415	8/6/2003	\$250.00
4 Ada	Kuna	Hoyle Investment	9251	4/16/2004	\$375.00
5 Ada	Kuna	Michelle Dobaran	9436	6/24/2004	\$375.00
6 Ada	Kuna	Mallard Fund LLC	9545	8/13/2004	\$375.00
7 Ada	Kuna	Kimbell D. Gourley	81	4/12/2005	\$375.00
8 Ada	Kuna	Hoyle Investment refund 7/27	346	7/28/2005	
9 Ada	Kuna	Hoyle Investment refund 7/27	347	7/28/2005	
10 Ada	Kuna	Scott & Amanda Suci	398	8/5/2005	\$375.00
11 Ada	Kuna	Jayne Bick, Kirsten Bick, Andrew Bick	642	1/25/2006	\$375.00
12 Ada	Kuna	John Chalfant	651	1/30/2006	\$375.00
13 Ada	Kuna	John Chalfant refund 7/27	652	1/30/2006	
14 Ada	Kuna	Chicago Connection LLC	669	2/2/2006	\$375.00
15 Ada	Kuna	Hoyle Investment refund 7/27	683	2/27/2006	
16 Ada	Kuna	Hoyle Investment refund 7/27	684	2/27/2006	
17 Ada	Kuna	Al & Val Investments LLP	694	3/27/2006	\$375.00
18 Ada	Kuna	Priority LLC	696	3/29/2006	\$375.00
19 Ada	Kuna	Julie Anne Investment LLP	732	9/13/2006	\$375.00
20 Ada	Kuna	Sinvestments LLC	755	11/7/2006	\$375.00
21 Ada	Kuna	Daniel Jeffrey Stein	795	2/27/2007	\$375.00
22 Ada	Kuna	Susan Kelly, Kendall Kelly, Ross Mess	921	5/10/2007	\$375.00
23 Ada	Kuna				
24 Ada	Kuna				
25 Ada	Kuna				
26 Ada	Kuna				
27 Ada	Kuna				
28 Ada	Kuna				

County	City	Name	Receipt	Date	Fee
1 Ada	Meridian	Steve Spiteri	9875	1/24/2005	\$375.00
2 Ada	Meridian	Hoyle Investment	360	7/28/2005	\$375.00
3 Ada	Meridian	Hoyle Investment refund 7/27	361	7/28/2005	
4 Ada	Meridian	Scott and Amanda Suci	383	8/3/2005	\$375.00
5 Ada	Meridian	Scott and Amanda Suci refund 7/27	395	8/4/2005	
6 Ada	Meridian	John Chalfant	650	1/30/2006	\$375.00
7 Ada	Meridian	Dr. Donna L. Peterson	659	1/31/2006	\$375.00
8 Ada	Meridian	Rose Beebe	662	2/1/2006	\$375.00
9 Ada	Meridian	Connie Auth	663	2/1/2006	\$375.00
10 Ada	Meridian	Chicago Connection LLC	666	2/2/2006	\$375.00
11 Ada	Meridian	Chicago Connection LLC refund 7/27	665	2/2/2006	
12 Ada	Meridian	Chicago Connection LLC refund 7/27	664	2/2/2006	
13 Ada	Meridian	Hoyle Investment refund 7/27	685	2/27/2006	
14 Ada	Meridian	Hoyle Investment refund 7/27	686	2/27/2006	
15 Ada	Meridian	Hoyle Investment refund 7/27	687	2/27/2006	
16 Ada	Meridian	Rocio Maria Pedraza	693	3/27/2006	\$375.00
17 Ada	Meridian	Michelle M Dobaran	7102	4/17/2006	\$375.00
18 Ada	Meridian	Schmidle Inc	734	9/13/2006	\$375.00
19 Ada	Meridian	Sinvestments LLC	752	11/7/2006	\$375.00

FUTURE LIQUOR

County	City		Receipt	Date	Fee
20 Ada	Meridian	Roger and Katie Domen	770	1/22/2007	\$375.00
21 Ada	Meridian	Zamzows Holdings LLC	773	2/2/2007	\$375.00
22 Ada	Meridian	Catfish LLC	780	2/8/2007	\$375.00
23 Ada	Meridian	Rocio Maria Pedraza refund 8/4	789	2/16/2007	
24 Ada	Meridian	Daniel Jeffrey Stein	799	2/27/2007	\$375.00
25 Ada	Meridian	Priority LLC	949	6/13/2007	\$375.00
26 Ada	Meridian	Chadwick Investments LLC	964	8/14/2007	\$375.00
27 Ada	Meridian	Steven D. Docker	977	10/18/2007	\$375.00
28 Ada	Meridian	Limelight LLC	501	1/28/2008	\$375.00
29 Ada	Meridian	Michelle Cash	531	5/22/2008	\$375.00
30 Ada	Meridian	Firehouse Pub & Grill	17091	8/8/2008	\$375.00
31 Ada	Meridian	Primeland Investment Group LLC	17959	10/1/2008	\$375.00
32 Ada	Meridian	MeTime Coffeehouse Inc	18209	10/15/2008	\$375.00
33 Ada	Meridian	David and Lauren Ianniciello	18404	10/20/2008	\$375.00
34 Ada	Meridian	Jade Stacy & Ryan Higley	18407	10/24/2008	\$375.00
35 Ada	Meridian	Michael McGuinness	23134	7/30/2009	\$375.00
36 Ada	Meridian				
37 Ada	Meridian				
38 Ada	Meridian				

County	City	Name	Receipt	Date	Fee
1 Ada	Star	Patricia J Kolb	3941	1/2/1998	\$250.00
2 Ada	Star	Billie Troyer Daniels	3944	1/12/1998	\$250.00
3 Ada	Star	Lillian Marcum	3981	3/4/1998	\$250.00
4 Ada	Star	Geoff Fawcett	9210	3/31/2004	\$250.00
5 Ada	Star	Hoyle Investment	9252	4/16/2004	\$250.00
6 Ada	Star	Fly Boys Inc	9477	7/8/2004	\$250.00
7 Ada	Star	Don L Wilcox	9510	7/23/2004	\$250.00
8 Ada	Star	Kimbell Gourley	9891	1/26/2005	\$250.00
9 Ada	Star	Antonio and Josefina Roque	148	5/3/2005	\$250.00
10 Ada	Star	Michael Eddy	161	5/5/2005	\$250.00
11 Ada	Star	Rocio Maria Pedroza	201	5/23/2005	\$250.00
12 Ada	Star	Hoyle Investment refund 7/27	359	7/28/2005	
13 Ada	Star	Scott and Amanda Suci	381	8/3/2005	\$250.00
14 Ada	Star	Joe, Janis and Heather Vinson	387	8/3/2005	\$250.00
15 Ada	Star	John Chalfant	656	1/30/2006	\$250.00
16 Ada	Star	Hoyle Investment refund 7/27	692	2/27/2006	
17 Ada	Star	Hoyle Investment refund 7/27	691	2/27/2006	
18 Ada	Star	Priority LLC	697	3/29/2006	\$250.00
19 Ada	Star	Sinvestments LLC	751	11/7/2006	\$250.00
20 Ada	Star	Catfish LLC	781	2/8/2007	\$375.00
21 Ada	Star	Daniel Jeffrey Stein	797	2/27/2007	\$375.00
22 Ada	Star	Mongol LLC	938	6/13/2007	\$250.00
23 Ada	Star	Live Oak Financial Inc	526	5/7/2008	\$375.00
24 Ada	Star				
25 Ada	Star				
26 Ada	Star				

FUTURE LIQUOR

County	City	Receipt	Date	Fee
County Total				\$66,375.00

County	City	Name	Receipt	Date	Fee
1 Adams	Council	Ryan Carson	9936	2/7/2005	\$250.00
2 Adams	Council	Priority LLC	698	3/29/2006	\$250.00
3 Adams	Council				
4 Adams	Council				

County	City	Name	Receipt	Date	Fee
1 Adams	New Meadows	Michael McLaughlin	301426	5/2/2002	\$150.00
2 Adams	New Meadows	Jayne Bick, Kirsten Bick, Andrew Bick	644	1/25/2006	\$150.00
3 Adams	New Meadows	Priority LLC	699	3/29/2006	\$150.00
4 Adams	New Meadows	Sinvestments LLC	756	11/7/2006	\$150.00
5 Adams	New Meadows	Douglas Lampman	912	4/16/2007	\$150.00
6 Adams	New Meadows				
7 Adams	New Meadows				

County Total				\$1,250.00
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County	City	Name	Receipt	Date	Fee
1 Bannock	Lava Hot Springs	Amelia Kelson	19148	11/4/1975	\$150.00
2 Bannock	Lava Hot Springs	Jon Barrett	19275	2/13/1976	\$150.00
3 Bannock	Lava Hot Springs	Richard & Jacqueline Price	19993	8/15/1977	\$150.00
4 Bannock	Lava Hot Springs	Freda Rock for Nick Koseris	1859	2/8/1978	\$150.00
5 Bannock	Lava Hot Springs				
6 Bannock	Lava Hot Springs				
7 Bannock	Lava Hot Springs				
8 Bannock	Lava Hot Springs				

County	City	Name	Receipt	Date	Fee
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FUTURE LIQUOR

County	City		Receipt	Date	Fee
1 Bannock	Pocatello	David Wilker	18886	3/20/1975	\$375.00
2 Bannock	Pocatello	Donald Peters	18897	4/1/1975	\$375.00
3 Bannock	Pocatello	Louis Pejovich	18949	5/5/1975	\$375.00
4 Bannock	Pocatello	Veterans of Foreign War #735	18956	5/13/1975	\$375.00
5 Bannock	Pocatello	Willard Wood	18990	6/6/1975	\$375.00
6 Bannock	Pocatello	Rodney Carlson	19125	10/14/1975	\$375.00
7 Bannock	Pocatello	Selvy Trujillo	19264	2/6/1976	\$375.00
8 Bannock	Pocatello	Vernon Thomas Anderson	19269	2/9/1976	\$375.00
9 Bannock	Pocatello	Virgil M & Katherine A Young	19273	2/13/1976	\$375.00
10 Bannock	Pocatello	Richard & Jacqueline Price	19694	12/15/1976	\$375.00
11 Bannock	Pocatello	SI Family Restaurants Inc	1611	8/8/1977	\$375.00
12 Bannock	Pocatello	Bruce Hanson	3270	7/24/1980	\$375.00
13 Bannock	Pocatello	Sizzling Platter	2347	3/20/1997	\$375.00
14 Bannock	Pocatello	Can Kun Tan	3863	9/25/1997	\$375.00
15 Bannock	Pocatello	Brent Thompson	115	4/22/2005	\$375.00
16 Bannock	Pocatello	John C. Arvas	724	8/9/2006	\$375.00
17 Bannock	Pocatello	Priority LLC	947	6/13/2007	\$375.00
18 Bannock	Pocatello				
19 Bannock	Pocatello				
20 Bannock	Pocatello				

County Total **\$6,975.00**

County	City	Name	Receipt	Date	Fee
1 Bear Lake	Montpelier	David Wilker	29784	3/14/1977	\$375.00
2 Bear Lake	Montpelier	Leon H Smith	4312	12/15/1981	\$250.00
3 Bear Lake	Montpelier				
4 Bear Lake	Montpelier				
5 Bear Lake	Montpelier				
6 Bear Lake	Montpelier				
7 Bear Lake	Montpelier				
8 Bear Lake	Montpelier				

County Total **\$625.00**

County	City	Name	Receipt	Date	Fee
1 Bingham	Blackfoot	Merlin Howard	19056	8/13/1975	\$375.00
2 Bingham	Blackfoot	Jeroldine Wilkes	19142	10/27/1975	\$375.00
3 Bingham	Blackfoot	Richard Price	19693	12/15/1975	\$375.00
4 Bingham	Blackfoot	Terry Shepherd	2369	11/21/1978	\$375.00

FUTURE LIQUOR

County	City		Receipt	Date	Fee
5 Bingham	Blackfoot	Priority LLC	946	6/13/2007	\$375.00
6 Bingham	Blackfoot				
7 Bingham	Blackfoot				
8 Bingham	Blackfoot				
9 Bingham	Blackfoot				

County	City	Name	Receipt	Date	Fee
1 Bingham	Firth				
2 Bingham	Firth				
3					
4					

County Total \$1,875.00

County	City	Name	Receipt	Date	Fee
1 Blaine	Bellevue	Robert & Alberta Guffy	19114	9/18/1975	\$150.00
2 Blaine	Bellevue	John Andros	6929	2/15/1991	\$250.00
3 Blaine	Bellevue	Daniel Fuchs	7691	2/14/1995	\$250.00
4 Blaine	Bellevue	Daniel Fuchs refund 7/27	7692	2/14/1995	\$250.00
5 Blaine	Bellevue	Priority LLC	945	6/13/2007	\$250.00
6 Blaine	Bellevue	Double D Bellevue Inc	974	10/1/2007	\$250.00
7 Blaine	Bellevue				
8 Blaine	Bellevue				
9 Blaine	Bellevue				
10 Blaine	Bellevue				

County	City	Name	Receipt	Date	Fee
1 Blaine	Hailey	Dale Donnelly	18279	8/23/1973	\$250.00
2 Blaine	Hailey	Andrew J & Thomala K Kopral	4884	2/22/1983	\$250.00
3 Blaine	Hailey	Daniel Fuchs	7534	6/3/1994	\$375.00
4 Blaine	Hailey	Daniel Fuchs refund 7/27	7535	6/3/1994	\$375.00
5 Blaine	Hailey	Daniel Fuchs refund 7/27	7682	2/14/1995	\$375.00
6 Blaine	Hailey	Rhino LLC	2383	4/28/1997	\$375.00
7 Blaine	Hailey	Randy & Tricia Callies	3815	7/3/1997	\$375.00
8 Blaine	Hailey				
9 Blaine	Hailey				
10 Blaine	Hailey				
11 Blaine	Hailey				
12 Blaine	Hailey				

County	City	Name	Receipt	Date	Fee
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FUTURE LIQUOR

County	City		Receipt	Date	Fee
1 Blaine	Ketchum	Steven Emerson Clayton	17990	11/3/1972	\$250.00
2 Blaine	Ketchum	Edgar Redman	19055	8/11/1975	\$250.00
3 Blaine	Ketchum	Carl Curtis	4991	4/18/1983	\$250.00
4 Blaine	Ketchum	William Bishop	7504	2/18/1987	\$375.00
5 Blaine	Ketchum	Robert & Ardith Rickbeil	7505	2/23/1987	\$375.00
6 Blaine	Ketchum	Margaret Wayne	8081	11/15/1988	\$375.00
7 Blaine	Ketchum	Daniel Fuchs	7531	6/3/1994	\$250.00
8 Blaine	Ketchum	Daniel Fuchs refund 7/27	7532	6/3/1994	
9 Blaine	Ketchum	Daniel Fuchs refund 7/27	7533	6/3/1994	
10 Blaine	Ketchum	Rhino LLC	2380	4/28/1997	\$375.00
11 Blaine	Ketchum	David Harvey	3831	7/29/1997	\$375.00
12 Blaine	Ketchum	David Wilcox	3843	8/19/1997	\$375.00
13 Blaine	Ketchum				
14 Blaine	Ketchum				
15 Blaine	Ketchum				
16 Blaine	Ketchum				
17 Blaine	Ketchum				
18 Blaine	Ketchum				
19 Blaine	Ketchum				
20 Blaine	Ketchum				
21 Blaine	Ketchum				
22 Blaine	Ketchum				

County	City	Name	Receipt	Date	Fee
1 Blaine	Sun Valley	John Andros	4316	12/17/1981	\$150.00
2 Blaine	Sun Valley	Steven Clayton	7506	2/23/1987	\$150.00
3 Blaine	Sun Valley	Daniel Fuchs	7531	6/3/1994	\$150.00
4 Blaine	Sun Valley	Daniel Fuchs refund 7/27	7532	6/3/1994	
5 Blaine	Sun Valley	Daniel Fuchs refund 7/27	7533	6/3/1994	
6 Blaine	Sun Valley	Rebecca Lynn Munger	9946	5/7/1999	\$150.00
7 Blaine	Sun Valley	Cactus MB LLC	240	7/16/2001	\$375.00
8 Blaine	Sun Valley				
9 Blaine	Sun Valley				
10 Blaine	Sun Valley				
11 Blaine	Sun Valley				
12 Blaine	Sun Valley				
13 Blaine	Sun Valley				
14 Blaine	Sun Valley				
15 Blaine	Sun Valley				
16 Blaine	Sun Valley				
17 Blaine	Sun Valley				

County Total

\$7,000.00

County	City	Name	Receipt	Date	Fee
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FUTURE LIQUOR

County	City		Receipt	Date	Fee
1 Boise	Crouch	Earl & Fay Livingston	2455	1/29/1979	\$150.00
2 Boise	Crouch	Mongol LLC	939	6/13/2007	\$150.00
3 Boise	Crouch				
4 Boise	Crouch				
5 Boise	Crouch				

County	City	Name	Receipt	Date	Fee
1 Boise	Horseshoe Bend	Ronald Thomas	7448	12/30/1993	\$150.00
2 Boise	Horseshoe Bend	Loraine Roberts	7619	12/7/1994	\$150.00
3 Boise	Horseshoe Bend	John Chalfant	657	1/30/2006	\$150.00
4 Boise	Horseshoe Bend				

County	City	Name	Receipt	Date	Fee
1 Boise	Idaho City	Ruth A L Cleir	19830	4/12/1977	\$150.00
2 Boise	Idaho City	David & Patricia Maybury	7981	7/27/1995	\$150.00
3 Boise	Idaho City	Randy & Tricia Callies	3817	7/3/1997	\$150.00
4 Boise	Idaho City				
5 Boise	Idaho City				
6 Boise	Idaho City				
7 Boise	Idaho City				

County Total					\$1,200.00
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County	City	Name	Receipt	Date	Fee
1 Bonner	Clarkfork	Dan Taylor	638	1/3/2006	\$150.00

County	City	Name	Receipt	Date	Fee
1 Bonner	Hope	Misty Cay Cushman	7303	5/26/2000	\$150.00
2 Bonner					
3 Bonner					
4 Bonner					

County	City	Name	Receipt	Date	Fee
1 Bonner	Ponderay	Dragon Inn Corporation	5491	4/12/1984	\$150.00
2 Bonner	Ponderay	Slates Inc	4000	3/24/1998	\$150.00
3 Bonner	Ponderay	Dan Taylor	637	1/3/2006	\$150.00
4 Bonner	Ponderay	Jeff & Wendy Sater	785	2/15/2007	\$150.00
5 Bonner					

FUTURE LIQUOR

County	City	Receipt	Date	Fee
6 Bonner				

County	City	Name	Receipt	Date	Fee
1 Bonner	Sandpoint	Dag Grudem & Donald McCanlies	2771	8/22/1979	\$375.00
2 Bonner	Sandpoint	Ralph Hefley & Randy Marston	2909	11/20/1979	\$375.00
3 Bonner	Sandpoint	Daniel S Fuchs	7690	2/14/1995	\$375.00
4 Bonner	Sandpoint	Brian Donesley	9991	7/22/1999	\$375.00
5 Bonner	Sandpoint	Daniel Maddox	7058	11/21/2003	\$375.00
6 Bonner	Sandpoint				
7 Bonner	Sandpoint				
8 Bonner	Sandpoint				
9 Bonner	Sandpoint				

County Total	\$2,775.00
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County	City	Name	Receipt	Date	Fee
1 Bonneville	Idaho Falls	Margaret Jean Linkowski	18746	4/2/1990	\$375.00
2 Bonneville	Idaho Falls	Daniel Fuchs	7686	2/14/1995	\$375.00
3 Bonneville	Idaho Falls	Daniel Fuchs refund 7/27	7687	2/14/1995	\$375.00
4 Bonneville	Idaho Falls	Sizzling Platter Inc	2348	3/20/1997	\$375.00
5 Bonneville	Idaho Falls	Puerto Vallarta	2399	6/9/1997	\$375.00
6 Bonneville	Idaho Falls	Samuel R. Long	479	9/14/2005	\$375.00
7 Bonneville	Idaho Falls	Mongol LLC	943	6/13/2007	\$375.00
8 Bonneville	Idaho Falls	Robert Utterbeck	979	10/22/2007	\$375.00
9 Bonneville	Idaho Falls	Teton Peaks Investment Co LLC	980	10/22/2007	\$375.00
10 Bonneville	Idaho Falls	Laurence Reinhart	981	10/22/2007	\$375.00
11 Bonneville	Idaho Falls	Debra Reinhart	988	11/5/2007	\$375.00
12 Bonneville	Idaho Falls	Iron Mule Saloon LLC	989	11/9/2007	\$375.00
13 Bonneville	Idaho Falls	Humberto Ponce	997	12/10/2007	\$375.00
14 Bonneville	Idaho Falls	Travis Guse		3/23/2009	\$375.00
15 Bonneville	Idaho Falls	George Reinhart	21182	4/3/2009	\$375.00
16 Bonneville	Idaho Falls	Jason Reinhart	21184	4/3/2009	\$375.00
17 Bonneville	Idaho Falls				
18 Bonneville	Idaho Falls				
19 Bonneville	Idaho Falls				

County	City	Name	Receipt	Date	Fee
1 Bonneville	Irwin	Randy Huskey	7912	3/23/1995	\$150.00
2 Bonneville	Irwin	The Lodge at Palisades Creek	777	2/5/2007	\$150.00
3 Bonneville	Irwin				
4 Bonneville	Irwin				
5 Bonneville	Irwin				

FUTURE LIQUOR

County	City	Receipt	Date	Fee
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County Total				\$5,925.00
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County	City	Name	Receipt	Date	Fee
1 Camas	Fairfield	Joseph M Cullen Jr	2176	7/17/1996	\$150.00
2 Camas	Fairfield	Gary D Babbitt & Carl F Bianchi	2203	9/27/1996	\$150.00
3 Camas	Fairfield	Mark Stewart	2260	1/8/1997	\$150.00
4 Camas	Fairfield	Robert & Linda Myrland	3822	7/9/1997	\$150.00
5 Camas	Fairfield	Gavin Morrison	727	9/1/2006	\$150.00
6 Camas	Fairfield				
7 Camas	Fairfield				

County Total				\$750.00
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County	City	Name	Receipt	Date	Fee
1 Canyon	Caldwell	Zamzow Holdings LLC	769	1/22/2007	\$375.00
2 Canyon	Caldwell	Daniel Jeffrey Stein	798	2/27/2007	\$375.00
3 Canyon	Caldwell				
4 Canyon	Caldwell				
5 Canyon	Caldwell				

County	City	Name	Receipt	Date	Fee
1 Canyon	Nampa	Chicago Connection LLC	671	2/2/2006	\$375.00
2 Canyon	Nampa	Chicago Connection LLC refund 7/27	670	2/2/2006	
3 Canyon	Nampa	Hoyle Investment	688	2/27/2006	\$375.00
4 Canyon	Nampa	Hoyle Investment refund 7/27	689	2/27/2006	
5 Canyon	Nampa	Hoyle Investment refund 7/27	690	2/27/2006	
6 Canyon	Nampa	Priority LLC	701	3/29/2006	\$375.00
7 Canyon	Nampa	Schmidle Inc	735	9/13/2006	\$375.00
8 Canyon	Nampa	Edward & Phong Smith	742	10/12/2006	\$375.00
9 Canyon	Nampa	Sinvestments LLC	753	11/7/2006	\$375.00
10 Canyon	Nampa	Catfish LLC	782	2/8/2007	\$375.00
11 Canyon	Nampa	Rocio Maria Pedraza	788	2/16/2007	\$375.00
12 Canyon	Nampa	Daniel Jeffrey Stein	794	2/27/2007	\$375.00
13 Canyon	Nampa	Ruth M. Salinas	927	5/17/2007	\$375.00
14 Canyon	Nampa	Steven D. Docker	976	10/18/2007	\$375.00
15 Canyon	Nampa	Columbians of Nampa	520	4/3/2008	\$375.00
16 Canyon	Nampa	Jade Stacey & Ryan Higley	18406	10/24/2008	\$375.00
17 Canyon	Nampa	Jalapeno's LLC	18907	12/3/2008	\$375.00
18 Canyon	Nampa	Tuan & Khuong Pham	23388	8/14/2009	\$375.00

FUTURE LIQUOR

County	City	Receipt	Date	Fee
19 Canyon	Nampa			

County	City	Name	Receipt	Date	Fee
1 Canyon	Notus	Jose Reyes	716	4/28/2006	\$150.00
2 Canyon	Notus				
3 Canyon	Notus				

County	City	Name	Receipt	Date	Fee
1 Canyon	Parma	Hoyle Investment	9253	4/16/2004	\$250.00
2 Canyon	Parma	Shawn D. Agenbroad	916	4/30/2007	\$250.00
3 Canyon	Parma				
4 Canyon	Parma				

County Total					\$7,025.00
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County	City	Name	Receipt	Date	Fee
1 Caribou	Soda Springs	Scott D. & Shauna L. Bevins	18679	8/22/1974	\$250.00
2 Caribou	Soda Springs	Micheal Duckworth	19597	9/29/1976	\$375.00
3 Caribou	Soda Springs				
4 Caribou	Soda Springs				
5 Caribou	Soda Springs				

County Total					\$625.00
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County	City	Name	Receipt	Date	Fee
1 Cassia	Albion	Carma Cagle	296863	3/4/2002	\$150.00
2 Cassia	Albion				
3 Cassia	Albion				

County Total					\$150.00
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County	City	Name	Receipt	Date	Fee
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FUTURE LIQUOR

County	City	Receipt	Date	Fee
1 Clark	Dubois			
2 Clark	Dubois			
3 Clark	Dubois			
County Total				\$0.00

County	City	Name	Receipt	Date	Fee
1 Clearwater	Elk River				
2 Clearwater	Elk River				
3 Clearwater	Elk River				
County Total					\$0.00

County	City	Name	Receipt	Date	Fee
1 Custer	Challis	Donna Butts	3070	2/29/1980	\$150.00
2 Custer	Challis	Elsie L Smith	3736	5/4/1981	\$150.00
3 Custer	Challis	Lawrence F Andrus	4039	7/14/1981	\$150.00
4 Custer	Challis				
5 Custer	Challis				
6 Custer	Challis				

County	City	Name	Receipt	Date	Fee
1 Custer	Stanley				
2 Custer	Stanley				
3 Custer	Stanley				
4 Custer	Stanley				
County Total					\$450.00

County	City	Name	Receipt	Date	Fee
1 Elmore	Mountain Home	Ruth Salinas	926	5/17/2007	\$375.00
2 Elmore	Mountain Home				
3 Elmore	Mountain Home				
4 Elmore	Mountain Home				

FUTURE LIQUOR**County City****Receipt Date Fee****County Total****\$375.00**

County	City	Name	Receipt	Date	Fee
1 Freemont	Ashton	Boyd Mauer	7418	1/9/1985	\$250.00
2 Freemont	Ashton				
3 Freemont	Ashton				
4 Freemont	Ashton				
5 Freemont	Ashton				

County	City	Name	Receipt	Date	Fee
1 Freemont	Island Park	Robert & Linda Myrland	3821	7/9/1997	\$150.00
3 Freemont	Island Park	Tracy Reglin	748	11/6/2006	\$150.00
4 Freemont	Island Park	Priority LLC	944	6/13/2007	\$150.00
5 Freemont	Island Park				

County	City	Name	Receipt	Date	Fee
1 Freemont	St. Anthony	BJ Holdings LLC	904	3/22/2007	\$250.00
2 Freemont	St. Anthony				
3 Freemont	St. Anthony				
4 Freemont	St. Anthony				

County Total**\$950.00**

County	City	Name	Receipt	Date	Fee
1 Gem	Emmett	Creighton Cogdill	9967	6/9/1999	\$375.00

FUTURE LIQUOR

County	City		Receipt	Date	Fee
2 Gem	Emmett	Hoyle Investment	9247	4/16/2004	\$375.00
3 Gem	Emmett	Hoyle Investment refund 7/27	355	7/28/2005	
4 Gem	Emmett	Kimbell Gourley	542	10/5/2005	\$375.00
5 Gem	Emmett	Jayne Bick, Kirsten Bick, Andrew Bick	641	1/25/2006	\$375.00
6 Gem	Emmett	John Chalfant	655	1/30/2006	\$375.00
7 Gem	Emmett	Hoyle Investment refund 7/27	682	2/27/2006	
8 Gem	Emmett	Hoyle Investment refund 7/27	682	2/27/2006	
9 Gem	Emmett	Schmidle Inc	732	9/13/2006	\$375.00
10 Gem	Emmett	Cherry Bowl II LLC	963	8/13/2007	\$375.00
11 Gem	Emmett				

County Total \$2,625.00

SUBTOTAL \$106,950.00

County	City	Name	Receipt	Date	Fee
1 Gooding	Hagerman	Mark Bolduc	7567	1/15/1988	\$150.00
2 Gooding	Hagerman	Schmidle Inc	731	9/13/2006	\$150.00
3 Gooding	Hagerman				
4 Gooding	Hagerman				
5 Gooding	Hagerman				

County	City	Name	Receipt	Date	Fee
1 Gooding	Wendell	James Yost	19705	12/23/1976	\$250.00
2 Gooding	Wendell	Betty Mitchell	2474	2/7/1979	\$250.00
3 Gooding	Wendell				
4 Gooding	Wendell				

County Total \$800.00

County	City	Name	Receipt	Date	Fee
1 Idaho	Whitebird	Robert Taylor	19193	12/4/1975	\$150.00
2 Idaho	Whitebird				

FUTURE LIQUOR

County	City
3 Idaho	Whitebird

Receipt	Date	Fee
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County Total		\$150.00
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County	City	Name	Receipt	Date	Fee
1 Jerome	Jerome	Green Beckstead Sligar Stanley	3628	2/13/1981	\$375.00
2 Jerome	Jerome	Magic Five	7928	4/10/1995	\$375.00
3 Jerome	Jerome	Paul & Beth Smith	639	1/17/2006	\$375.00
4 Jerome	Jerome	Edward & Phong Smith	745	10/12/2006	\$375.00
5 Jerome	Jerome				
6 Jerome	Jerome				

County Total		\$1,500.00
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County	City	Name	Receipt	Date	Fee
1 Kootenai	Athol	Jimmy Baker	7061	1/28/1992	\$150.00
2 Kootenai	Athol	White Pine Country Café Inc	6410	3/18/2003	\$150.00
3 Kootenai	Athol				
4 Kootenai	Athol				
5 Kootenai	Athol				

County	City	Name	Receipt	Date	Fee
1 Kootenai	Coeur d'Alene	Freda Rock for Nick Koseris	2120	3/4/1996	\$375.00
2 Kootenai	Coeur d'Alene	Freda Rock for Nick Koseris refund 7/2	2121	3/4/1996	\$375.00
3 Kootenai	Coeur d'Alene	Mary Robb	3942	1/5/1998	\$375.00
4 Kootenai	Coeur d'Alene	Donald Smock	9019	4/21/1998	\$375.00
5 Kootenai	Coeur d'Alene	Donald Evans	9815	10/14/1998	\$375.00
6 Kootenai	Coeur d'Alene	Emmett Sullivan	9859	12/22/1998	\$375.00
7 Kootenai	Coeur d'Alene	TCA Holdings LLC	9881	3/12/1999	\$375.00
8 Kootenai	Coeur d'Alene	David & Connie Praino	9894	4/6/1999	\$375.00
9 Kootenai	Coeur d'Alene	Hatchet Inc	9964	6/2/1999	\$375.00
10 Kootenai	Coeur d'Alene	Brian Donesley		3/29/2006	\$375.00
11 Kootenai	Coeur d'Alene	Thomas Fisher	7121	10/15/1999	\$375.00
12 Kootenai	Coeur d'Alene	Tortilla Inc	7374	10/5/2000	\$375.00
13 Kootenai	Coeur d'Alene	Lorah & Mary Skerrett	7262	2/21/2001	\$375.00
14 Kootenai	Coeur d'Alene	Phillip Roderick	7	11/13/2001	\$375.00
15 Kootenai	Coeur d'Alene	Cadillac Jakes Inc	99	12/10/2001	\$375.00
16 Kootenai	Coeur d'Alene	Ruben Briseno	296739	1/15/2002	\$375.00
17 Kootenai	Coeur d'Alene	Hoyle Investment	354	7/28/2005	\$375.00
18 Kootenai	Coeur d'Alene	TTS Inc	672	2/27/2006	\$375.00

FUTURE LIQUOR

County	City		Receipt	Date	Fee
19 Kootenai	Coeur d'Alene	Daniel Jeffrey Stein	796	2/27/2007	\$375.00
20 Kootenai	Coeur d'Alene	Amador, Glasser & Chavez Inc.	914	4/23/2007	\$375.00
21 Kootenai	Coeur d'Alene	Mongol LLC	942	6/13/2007	\$375.00
22 Kootenai	Coeur d'Alene	Norm Thomson	954	7/23/2007	\$375.00
23 Kootenai	Coeur d'Alene	Ramos Barajas CDA	978	10/22/2007	\$375.00
24 Kootenai	Coeur d'Alene	GVD Hospitality Management Services	22592	6/22/2009	\$375.00
25 Kootenai	Coeur d'Alene				
26 Kootenai	Coeur d'Alene				
27 Kootenai	Coeur d'Alene				

County	City	Name	Receipt	Date	Fee
1 Kootenai	Harrison	Rick Carr	273	6/27/2005	\$150.00
2 Kootenai	Harrison	D2T LLC	561	10/14/2005	\$150.00
3 Kootenai	Harrison				
4 Kootenai	Harrison				
5 Kootenai	Harrison				

County	City	Name	Receipt	Date	Fee
1 Kootenai	Hayden	Monte Hess	1020	1/2/2004	\$375.00
2 Kootenai	Hayden	Café Du Mason LLC	9979	2/25/2005	\$375.00
3 Kootenai	Hayden	Hoyle Investment	353	7/28/2005	\$375.00
4 Kootenai	Hayden	The McMahon Co	646	1/26/2006	\$375.00
5 Kootenai	Hayden	Priority LLC	704	3/29/2006	\$375.00
6 Kootenai	Hayden				
7 Kootenai	Hayden				

County	City	Name	Receipt	Date	Fee
1 Kootenai	Huetter	Tammi Rae Hofacker	5898	5/27/2003	\$150.00
2 Kootenai	Huetter				
3 Kootenai	Huetter				

County	City	Name	Receipt	Date	Fee
1 Kootenai	Post Falls	Thomas Fisher	7183	4/10/2000	\$375.00
2 Kootenai	Post Falls	Ruben Briseno	296737	1/14/2002	\$375.00
3 Kootenai	Post Falls	Moon's Mongolian Grill Inc	9353	5/24/2004	\$375.00
4 Kootenai	Post Falls	Kimbell D. Gourley	80	4/12/2005	\$375.00
5 Kootenai	Post Falls	Joni Rena Clevenger	236	6/6/2005	\$375.00
6 Kootenai	Post Falls	The McMahon Co	645	1/26/2006	\$375.00

FUTURE LIQUOR

County	City		Receipt	Date	Fee
7 Kootenai	Post Falls	Raci Erden	792	2/22/2007	\$375.00
8 Kootenai	Post Falls				
9 Kootenai	Post Falls				

County	City	Name	Receipt	Date	Fee
1 Kootenai	Rathdrum	O'Malley's Inc refund 8/14	9036	5/4/1998	
2 Kootenai	Rathdrum	John R House and David V Corbeill	9927	2/3/2005	\$375.00
3 Kootenai	Rathdrum	Sandra K Nelson	159	5/5/2005	\$375.00
4 Kootenai	Rathdrum	Joni Rena Clevenger	597	11/7/2005	\$375.00
5 Kootenai	Rathdrum	McNamara Holdings, LLC	972	9/18/2007	\$375.00
6 Kootenai	Rathdrum				
7 Kootenai	Rathdrum				

County	City	Name	Receipt	Date	Fee
1 Kootenai	Spirit Lake	Kelly Chadderdon	910	4/12/2007	\$250.00
2 Kootenai					
3 Kootenai					

County Total					\$15,625.00
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County	City	Name	Receipt	Date	Fee
1 Latah	Bovill	Lloyd L Hall	19456	6/8/1976	\$150.00
2 Latah	Bovill				
3 Latah	Bovill				
4					
5					
6					

County	City	Name	Receipt	Date	Fee
1 Latah	Juliaetta	James M & Sue E Ryan	7444	8/26/1985	\$150.00
2 Latah	Juliaetta				
3 Latah	Juliaetta				

County	City	Name	Receipt	Date	Fee
1 Latah	Kendrick	Carol Strom	525	5/6/2008	\$150.00
2 Latah	Kendrick				

FUTURE LIQUOR

County	City	Receipt	Date	Fee
3 Latah	Kendrick			

County	City	Name	Receipt	Date	Fee
2 Latah	Moscow	Barry Tassler issued 8/12/09	4944	7/19/1993	
3 Latah	Moscow	Brian Donesley	9988	7/22/1999	\$375.00
4 Latah	Moscow	Phillip Roderick	8	11/13/2001	\$375.00
5 Latah	Moscow	D. Brian Jordan	296819	2/12/2002	\$375.00
6 Latah	Moscow	Katie Pring/ Kathryn S Pring	9602	9/15/2004	\$375.00
7 Latah	Moscow	D. Brian Jordan refund 7/27	466	9/2/2005	
8 Latah	Moscow	Alyssa Morrisette	480	9/14/2005	\$375.00
9 Latah	Moscow	Shelley L Bennett Inc	757	11/30/2006	\$375.00
10 Latah	Moscow	Matthew C. Becker	516	3/24/2008	\$375.00
11 Latah	Moscow				

County	City	Name	Receipt	Date	Fee
1 Latah	Potlatch				
2 Latah	Potlatch				

County Total	\$3,075.00
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County	City	Name	Receipt	Date	Fee
1 Lemhi	Salmon	Paul Chartrand	18108	10/8/2008	\$250.00
2 Lemhi	Salmon				

County Total	\$250.00
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County	City	Name	Receipt	Date	Fee
1 Lewis	Kamiah	Benjamin Willard Rourk	19954	7/21/1977	\$150.00
2 Lewis	Kamiah				
3 Lewis	Kamiah				

County	City	Name	Receipt	Date	Fee
1 Lewis	Winchester				
2 Lewis	Winchester				

FUTURE LIQUOR**County City****Receipt Date Fee****County Total****\$150.00****County City****Name****Receipt Date Fee**

1 Lincoln Shoshone
 2 Lincoln Shoshone
 3 Lincoln Shoshone

County Total**\$0.00****County City****Name****Receipt Date Fee**

1 Minidoka Paul Shawn Travis Lester
 2 Minidoka Paul
 3 Minidoka Paul
 4 Minidoka Paul

23516 8/20/2009 \$150.00

County Total**\$150.00****County City****Name****Receipt Date Fee**

1 NezPerce	Lewiston	Rapon Investments Inc	18544	5/3/1974	\$375.00
2 NezPerce	Lewiston	Freda Rock for Nick Koseris	1893	2/27/1978	\$375.00
3 NezPerce	Lewiston	S I Family Restaurants Inc	2396	12/7/1978	\$375.00
4 NezPerce	Lewiston	Robert & Linda Myrland	3824	7/9/1997	\$375.00
5 NezPerce	Lewiston				
6 NezPerce	Lewiston				
7 NezPerce	Lewiston				
8 NezPerce	Lewiston				
9 NezPerce	Lewiston				
10 NezPerce	Lewiston				
11 NezPerce	Lewiston				

County Total**\$1,500.00****County City****Name****Receipt Date Fee**

FUTURE LIQUOR

County	City	Name	Receipt	Date	Fee
1 Oneida	Malad City	Gary F Sheperd	8390	11/16/1990	\$250.00
2 Oneida	Malad City				
3					
4					

County Total					\$250.00
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County	City	Name	Receipt	Date	Fee
1 Owyhee	Homedale	Lori Rasmussen	9862	12/30/1998	\$250.00
2 Owyhee	Homedale	Donna Marose	729	9/8/2006	\$250.00
3 Owyhee	Homedale				

County	City	Name	Receipt	Date	Fee
1 Owyhee	Marsing	Ron & Phyllis McDonnell	3226	6/19/1980	\$150.00
2 Owyhee	Marsing				
3 Owyhee	Marsing				

County Total					\$650.00
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County	City	Name	Receipt	Date	Fee
1 Payette	Fruitland	Louis & Glenda Sather	20927, 209	3/18/2009	\$375.00
2 Payette	Fruitland				
3 Payette	Fruitland				
4 Payette	Fruitland				
5 Payette	Fruitland				

County	City	Name	Receipt	Date	Fee
1 Payette	New Plymouth	David Lee Posey	725	8/8/2006	\$250.00
2 Payette	New Plymouth				
3 Payette	New Plymouth				
4 Payette	New Plymouth				

County	City	Name	Receipt	Date	Fee
1 Payette	Payette	Katherine Dodson	772	1/25/2007	\$375.00

FUTURE LIQUOR

County	City		Receipt	Date	Fee
2 Payette	Payette	Boomerang Saloons LLC	784	2/13/2007	\$375.00
3 Payette	Payette	Michael Haines	905	3/30/2007	\$375.00
4 Payette	Payette	Barbara A. Sinclair	913	4/20/2007	\$375.00
5 Payette	Payette				
6 Payette	Payette				

County Total **\$2,125.00**

County	City	Name	Receipt	Date	Fee
1 Power	American Falls	ABC Frances Meyer & Jo Zean Weikui	19123	10/9/1975	\$250.00
2 Power	American Falls	Walter Scott Rudeen	737	9/18/2006	\$375.00
3 Power	American Falls				

County Total **\$625.00**

County	City	Name	Receipt	Date	Fee
1 Shoshone	Kellogg	Thomas Branch	18822	11/24/2008	\$250.00

County	City	Name	Receipt	Date	Fee
1 Shoshone	Pinehurst				
2 Shoshone	Pinehurst				

County Total **\$250.00**

County	City	Name	Receipt	Date	Fee
1 Teton	Victor	ODH Corporation	7971	7/10/1995	\$150.00
2 Teton	Victor	Randy & Tricia Callies	3818	7/3/1997	\$150.00
3 Teton	Victor	Hoyle Investment	352	7/28/2005	\$150.00
4 Teton	Victor	Priority LLC	708	3/29/2006	\$150.00
5 Teton	Victor	George N. Gillett III	790	2/20/2007	\$150.00
6 Teton	Victor	Mongol LLC	941	6/13/2007	\$150.00
7 Teton	Victor				
8 Teton	Victor				
9 Teton	Victor				
10 Teton	Victor				

County	City	Name	Receipt	Date	Fee
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FUTURE LIQUOR

County	City		Receipt	Date	Fee
1 Teton	Driggs	Patrick Sullivan	9470	7/6/2004	\$250.00
2 Teton	Driggs	The Grand Ole Grill LLC	9660	10/4/2004	\$150.00
3 Teton	Driggs	Hoyle Investment	351	7/28/2005	\$150.00
4 Teton	Driggs	Jayne Bick, Kirsten Bick, Andrew Bick	643	1/25/2006	\$150.00
5 Teton	Driggs	Priority LLC	709	3/29/2006	\$150.00
6 Teton	Driggs	George N. Gillett III	791	2/20/2007	\$150.00
7 Teton	Driggs	Eric Achee	909	4/12/2007	\$150.00
8 Teton	Driggs	Mongol LLC	940	6/13/2007	\$150.00
9 Teton	Driggs	Chad Marlowe	970	8/27/2007	\$250.00
10 Teton	Driggs	Little Ave LLC	504	1/31/2008	\$250.00
11 Teton	Driggs				
12 Teton	Driggs				
13 Teton	Driggs				
14 Teton	Driggs				

County	City	Name	Receipt	Date	Fee
1 Teton	Tetonia	Scott Kauf	507	9/25/2005	\$150.00
2 Teton	Tetonia	Chad Marlowe	966	8/15/2007	\$150.00
3 Teton	Tetonia				
4 Teton	Tetonia				
5 Teton	Tetonia				
County Total					\$3,000.00

County	City	Name	Receipt	Date	Fee
1 Twin Falls	Buhl	ABC Cal Harper	19246	1/22/1976	\$375.00
2 Twin Falls	Buhl				
3 Twin Falls	Buhl				
4 Twin Falls	Buhl				
5 Twin Falls	Buhl				
6 Twin Falls	Buhl				

County	City	Name	Receipt	Date	Fee
1 Twin Falls	Hansen	ABC L James Koutnick Enterprises	19141	6/30/1975	\$150.00
2 Twin Falls	Hansen				
3 Twin Falls	Hansen				

County	City	Name	Receipt	Date	Fee
1 Twin Falls	Kimberly	Mary Ann Brady	6124	11/19/2002	\$250.00
2 Twin Falls	Kimberly	Paul & Beth Smith	640	1/17/2006	\$250.00
3 Twin Falls	Kimberly	Edward & Phong Smith	744	10/12/2006	\$250.00

FUTURE LIQUOR

County	City	Receipt	Date	Fee
4 Twin Falls	Kimberly			
5 Twin Falls	Kimberly			
6 Twin Falls	Kimberly			

County	City	Name	Receipt	Date	Fee
1 Twin Falls	Twin Falls	Daniel Fuchs	7537	6/3/1994	\$375.00
2 Twin Falls	Twin Falls	Daniel Fuchs refund 7/27	7538	6/3/1994	
3 Twin Falls	Twin Falls	Edgar & Elaine Redman	7558	8/5/1994	\$375.00
4 Twin Falls	Twin Falls	Daniel Fuchs refund 7/27	7676	2/14/1995	
5 Twin Falls	Twin Falls	Daniel Fuchs refund 7/27	7675	2/14/1995	
6 Twin Falls	Twin Falls	Daniel Fuchs refund 7/27	7677	2/14/1995	
7 Twin Falls	Twin Falls	Daniel Fuchs refund 7/27	7678	2/14/1995	
8 Twin Falls	Twin Falls	Daniel Fuchs refund 7/27	7679	2/14/1995	
9 Twin Falls	Twin Falls	Daniel Fuchs refund 7/27	7680	2/14/1995	
10 Twin Falls	Twin Falls	Daniel Fuchs refund 7/27	7681	2/14/1995	
11 Twin Falls	Twin Falls	Magic Five	7927	4/10/1995	\$375.00
12 Twin Falls	Twin Falls	Freda Rock for Nick Koseris	2113	3/4/1996	\$375.00
13 Twin Falls	Twin Falls	Freda Rock for Nick Koseris refund 7/2	2114	3/4/1996	
14 Twin Falls	Twin Falls	Freda Rock for Nick Koseris refund 7/2	2115	3/4/1996	
15 Twin Falls	Twin Falls	Sizzling Platter Inc	2349	3/20/1997	\$375.00
16 Twin Falls	Twin Falls	David Harvey	3832	7/29/1997	\$375.00
17 Twin Falls	Twin Falls	William L and Margery R Gress	1337	6/19/2002	\$375.00
18 Twin Falls	Twin Falls	Hoyle Investment	348	7/28/2005	\$375.00
19 Twin Falls	Twin Falls	Samir Saltaga	372	8/1/2005	\$375.00
20 Twin Falls	Twin Falls	Dario Saltaga	373	8/1/2005	\$375.00
21 Twin Falls	Twin Falls	Sid Lezamiz	374	8/1/2005	\$375.00
22 Twin Falls	Twin Falls	Troy Willie	535	10/4/2005	\$375.00
23 Twin Falls	Twin Falls	Troy Willie refund 7/27	536	10/4/2005	
24 Twin Falls	Twin Falls	Max & Darla Humphries	712	4/5/2006	\$375.00
25 Twin Falls	Twin Falls	9 Beans & A Burrito Inc	720	6/26/2006	\$375.00
26 Twin Falls	Twin Falls	Team Bowladrome	907	4/9/2007	\$375.00
27 Twin Falls	Twin Falls	Snyder Winery, LLC	541	7/10/2008	\$375.00
28 Twin Falls	Twin Falls				
29 Twin Falls	Twin Falls				
30 Twin Falls	Twin Falls				
31 Twin Falls	Twin Falls				

County Total **\$7,275.00**

County	City	Name	Receipt	Date	Fee
1 Valley	Cascade	Dave Howard	19063	8/18/1975	\$150.00
2 Valley	Cascade	Lillian Marcum	19845	4/21/1977	\$150.00
3 Valley	Cascade	Ronald James Troy	8255	1/24/1990	\$250.00
4 Valley	Cascade	Michael Ostling	8332	6/1/1990	\$250.00
5 Valley	Cascade	Gary Keenan	7010	10/10/1991	\$250.00
6 Valley	Cascade	Janis & Tyris Ogawa	7083	3/13/1992	\$150.00
7 Valley	Cascade	Brian Donesley	9986	7/22/1999	\$250.00
8 Valley	Cascade	Edmond & Karen Gaiennie	6970	8/28/2002	\$250.00

FUTURE LIQUOR

County	City		Receipt	Date	Fee
9 Valley	Cascade	Don L Wilcox	6992	9/11/2002	\$250.00
10 Valley	Cascade	Geoff Fawcett	9209	3/31/2004	\$250.00
11 Valley	Cascade	Michelle Debaran	9435	6/24/2004	\$250.00
12 Valley	Cascade	Hoyle Investment	349	7/28/2005	\$250.00
13 Valley	Cascade				
14 Valley	Cascade				

County	City	Name	Receipt	Date	Fee
1 Valley	Donnelly	Long Valley Saloon Inc	6901	12/19/1990	\$150.00
2 Valley	Donnelly	Valbru Inc	6903	12/21/1990	\$150.00
3 Valley	Donnelly	Michael J Eddy	9021	4/21/1998	\$150.00
4 Valley	Donnelly	Rebecca Lynn Munger	9945	5/7/1999	\$150.00
5 Valley	Donnelly	Merton Logue	9955	5/19/1999	\$150.00
6 Valley	Donnelly	Delbert Johnson	301306	6/4/2002	\$150.00
7 Valley	Donnelly	Edmond & Karen Gaiennie	6969	8/28/2002	\$150.00
8 Valley	Donnelly	Don L Wilcox	6993	9/11/2002	\$150.00
9 Valley	Donnelly	J Brent Wilde	9208	3/31/2004	\$150.00
10 Valley	Donnelly	Hoyle Investment	9250	4/16/2004	\$150.00
11 Valley	Donnelly	Michelle Dobaran	9433	6/24/2004	\$150.00
12 Valley	Donnelly	Randy & Tricia Callies	9480	8/21/2004	\$150.00
13 Valley	Donnelly	Michael McGuinness refund 8/5	9760	11/23/2004	
14 Valley	Donnelly	Monica Tway	9779	12/3/2004	\$150.00
15 Valley	Donnelly	Hoyle Investment	350	7/28/2005	
16 Valley	Donnelly	Scott and Amanda Suci	380	8/3/2005	\$150.00
17 Valley	Donnelly	Priority LLC	711	3/29/2006	\$150.00
18 Valley	Donnelly	Sinvestments LLC	755	11/7/2006	\$150.00
19 Valley	Donnelly				
20					

County	City	Name	Receipt	Date	Fee
1 Valley	McCall	Brass Inc	2789	8/28/1979	\$250.00
2 Valley	McCall	Rebecca Batt	2790	8/29/1979	\$250.00
3 Valley	McCall	Robert Farber	3582	1/14/1981	\$250.00
4 Valley	McCall	Larry & Deanna Richey	4550	6/8/1982	\$250.00
5 Valley	McCall	Edgar Redman	8353	7/18/1990	\$250.00
6 Valley	McCall	Norman Keith Simpson	4955	8/10/1993	\$250.00
7 Valley	McCall	Richard Morfitt	7503	4/4/1994	\$250.00
8 Valley	McCall	Rhino LLC	2379	4/28/1997	\$250.00
9 Valley	McCall	Romano's Restaurant LLC	7257	2/1/2001	\$250.00
10 Valley	McCall	McCall Ale House LLC	6931	8/7/2002	\$250.00
11 Valley	McCall	John Chalfant	658	1/30/2006	\$250.00
12 Valley	McCall	Schmidle Inc	736	9/13/2006	\$250.00
13 Valley	McCall				
14 Valley	McCall				

FUTURE LIQUOR**County City****Receipt Date Fee****County Total \$8,100.00****County City****Name****Receipt Date Fee**

1	Washington	Weiser	M Fitzpatrick & M Angelos	2580	4/21/1979	\$375.00
2	Washington	Weiser	Debbie Perryman	2169	6/28/1996	\$375.00
3	Washington	Weiser				
4	Washington	Weiser				
5	Washington	Weiser				

County Total \$750.00**SUBTOTAL \$46,225.00****GRAND TOTAL****\$153,175.00**

IDAPA 11
TITLE 05
CHAPTER 01

 **DRAFT**

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.

01. **Title.** These rules shall be cited as IDAPA 11.05.01, "Rules Governing Alcohol Beverage Control". (2-20-01)

02. **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). (2-20-01)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (2-20-01)

003. ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the Attorney General, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". (2-20-01)

004. MAILING ADDRESS AND OFFICE HOURS.

The mailing address is Idaho State Police, Bureau of Alcohol Beverage Control, P.O. Box 700, Meridian, ID 83680-0700. Office hours are Monday through Friday, 8 a.m. to ~~5 p.m.~~ 4:30 p.m. (2-20-01)

005. PUBLIC RECORDS AVAILABILITY.

Public Records are available during normal working hours for inspection and copying at the Idaho State Police, Bureau of Alcohol Beverage Control, 700 South Stratford Drive, Meridian, ID 83680-0700. (2-20-01)

006. -- 009. (RESERVED).

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 shall 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. An additional sixty (60) days may be granted by the Director, upon petition by the license holder. All licenses must be prominently displayed in the premises and be kept in actual use by the licensee and remain in actual use by the licensee and available for legitimate sales of alcoholic beverages by the

drink during at least eight (8) hours per day, no fewer than six (6) days per week.

(x-x-06)

03. Multipurpose Arena. For the purposes of 23-944(3) Idaho Code, a multipurpose arena is defined as a premise with securely fastened spectator type seating, encompassing a stage or arena, which sole purpose is for community events or sports competition.

(x-x-06)

03.04. 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)

05. Partition. A partition, as used in 23-944, Idaho Code is defined as a structure separating the place from the remainder of the premise. Access through the structure to the place will be controlled to prevent minors from entering the place. The structure will be:

- a. Permanently fixed to the premise floor.
- b. Made or constructed of solid material such as glass, wood, metal or a combination of those products.
- c. Designed to prevent an alcoholic beverage from being passed over, under or through the structure.

All partitions must be approved by the Director.

(x-x-06)

06. Place. For the purposes of section 23-943, Idaho Code, "Place" as defined by section 23-942(b), Idaho Code, for a restaurant, as defined in these rules, with a bar and non-enclosed bar room, will refer to the immediate bar area wherein there is seating along side 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. Posting of signs are required at the bar to restrict minors from the place as required in 23-945, Idaho Code.

(x-x-06)

04. 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-premise 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:

(3-20-04)

- 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)

05.08. 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 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. (3-13-02)

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, Idaho State Police. 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)

03. 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. The following table sets out the notification months and renewal months established to renew licenses to sell alcohol:

Renewal Notices	County	Renewal Month
January	Kootenai	1-Mar
January	Benewah	1-Mar
February	Ada	1-May
March	Ada	1-May
April	Canyon	1-Jun
April	Owyhee	1-Jun
April	Payette	1-Jun
May	Twin Falls	1-Jul
May	Gooding	1-Jul
May	Camas	1-Jul
May	Lincoln	1-Jul
May	Jerome	1-Jul
June	Cassia	1-Aug

June	Minidoka	1-Aug
June	Butte	1-Aug
June	Blaine	1-Aug
June	Power	1-Aug
July	Lemhi	1-Sep
July	Custer	1-Sep
July	Boise	1-Sep
July	Valley	1-Sep
August	Elmore	1-Oct
August	Clark	1-Oct
August	Fremont	1-Oct
August	Jefferson	1-Oct
August	Madison	1-Oct
August	Teton	1-Oct
August	Bonneville	1-Oct
September	Bingham	1-Nov
September	Bannock	1-Nov
September	Caribou	1-Nov
September	Oneida	1-Nov
September	Franklin	1-Nov
September	Bear Lake	1-Nov
October	Boundary	1-Dec
October	Bonner	1-Dec
October	Shoshone	1-Dec
November	Adams	1-Jan
November	Gem	1-Jan
November	Washington	1-Jan

December	Latah	1-Feb
December	Nez Perce	1-Feb
December	Idaho	1-Feb
December	Lewis	1-Feb
December	Clearwater	1-Feb
Renewal Notices	Certs of Approval	Renewal Month
November	Out of State	1-Jan

(5-3-03)

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. (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 Idaho State Police 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 shall be limited to place their name only once 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 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" 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)(x-x-06)

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, requires 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 or place and must be clearly visible from the exterior approached to such premises or place. (7-1-93)(x-x-06)

02. Counterfeit Or Altered Age Documents. If alcoholic beverage licensees, their employees, or agents ~~confiscate~~ receive age identification documents which have been lost or voluntarily surrendered, 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 within 15 days from the date they were received, found, or voluntarily surrendered. When identification documents are presented to a licensee, their employees, or agents that appear to be mutilated, altered, or fraudulent, they shall contact law enforcement and/or refuse service. (x-x-06) (3-31-95)

022. -- 999. (RESERVED).

Harvey, Nichole

From: Harvey, Nichole

Sent: Wednesday, July 19, 2006 10:06 AM

To: Alison Tate (E-mail); Ashley Thompson; Bill Nary (E-mail); Bill Roden; Bob Stowe (E-mail); Bonnie Bertram; Brian Ballard (E-mail); Brian Donesley (E-mail); Cheryl Brown (E-mail); Chief Cliff Hayes; Clay Larkin; Clements, Robert; Dave Bibeau (E-mail); Denise Rogers; Dyke Nally; Ed Bird; Erik McLaughlin; Gary Bates (E-mail); Greg Nelson; Hans Schatz; Harvey, Nichole; Jenny Grunke (E-mail); John Larson; John May; John Sanders (E-mail); Kevin Settles; Leon Duce; Louie Howard (E-mail); Louis B. Christensen; Melinda Nielsen; Mike Fitzgerald; Nyle C. Fullmer; Pam Eaton; Representative Snodgrass; Representative Stan Bastian; Rod Nielsen; Ron Lundquist; Scott Pugrud; Scott Turlington; Senator Skip Brandt (E-mail); Shawn D. Larsen; Stan Bastian (E-mail)

Subject: Please save the date

Hello all. The next Ad Hoc Group meeting is scheduled for August 16th at 10:00 a.m. in the Idaho State Police Cafeteria Round Room. As a reminder, please send your comments regarding the draft rule changes for IDAPA rules by July 31, 2006. Thanks in advance.

Nichole Harvey
Alcohol Beverage Control Bureau
Idaho State Police

1/24/2007

tabbles 00 89
3

Meeting Minutes
July 18, 2006
Ad Hoc Group Meeting, Alcohol Beverage Control

Attendees:

Lt. Robert Clements, ABC
Nichole Harvey, ABC
Jenny Grunke, DAG/ISP
Ann Cronin
Sen. Skip Brandt
Kevin Settles
Brian Ballard
Hans Schatz
Pam Eaton
Scott Pugrud
Ed Bird
Denise Rogers
Woody Richards
Leon Duce
John Larsen
Cheryl Brown

Introductions

The ILRA and the ILBA have developed a rough draft outline identifying key discussion points for legislative changes. The outline will be presented at their next meeting for their members to discuss and then will be offered to the Ad Hoc Group.

For the purpose of organization and group focus Brian Ballard and Hans Schatz have agreed to act as disinterested moderators for the group.

The key philosophies/basic structures of the outline include:

- A. The development of a liquor license control board (hereafter referred to as "Board").
- B. Currently there is no vehicle for licenses in unincorporated areas
- C. Licensing and enforcement should be separate
- D. Guidelines for leased liquor licenses

For discussion purposes, the key points of the outline were given and are as follows:

1. Determine and define qualifications to hold liquor licenses
2. Quota system, no changes with the exception of the Future Liquor License Waiting list
3. Waiting list: applicants must qualify and submit a preliminary business plan, increased fee (\$1000.00), non-refundable
4. New Incorporated liquor licenses: increase the time line (more defined process for time extensions with approval process by the "Board")
5. Specialty licenses (new types of licenses would be approved by the "Board")
6. Define what can and cannot occur with inactive licenses with a short time-line (4 months) to put the license back into use. If the license cannot be put into use, it must be sold or forfeited to the ABC Bureau.

One of the key discussion points between the two groups (ILBA and ILRA) has been how to make liquor licenses available who need them and how to protect license owners who lease their licenses.

A more defined penalty schedule within the code for violations and some of the discretionary authority removed from ABC was discussed.

Bob Clements had some questions about the perceived benefit of separating licensing and enforcement duties. He explained that the ABC agency is similar to other agencies that have both regulatory and licensing functions.

The IRLA and ILBA have a meeting scheduled (July 31, 2006) in order to fine-tune the key points before they introduce the concept to the AD Hoc Group.

If the Ad Hoc Group can agree on all points, then we can move ahead with the drafting process and lobbyists. After the points have been identified and agreed upon, we need to determine who will draft legislation that will encompass the group's goals.

Draft rule changes were handed out to the members for comment. Suggestions and comments need to be submitted to ABC no later than July 31, 2006.

A meeting of date of August 16, 2006 is set for the next group meeting.

FOOD SERVICES OF AMERICA

31 July 2006

To: Lt. Robert Clements
Alcohol Beverage Control
P.O. Box 700
Meridian, ID 83680

From: Hans Schatz
Food Services of America
1495 N. Hickory Ave.
Meridian, ID 83642

Re: Administrative Rule Changes

Lt. Clements:

Below are the suggestions for change from the Idaho Lodging and Restaurant Association, the Idaho Licensed Beverage Association, and the Idaho Retailers Association to IDAPA 11, Title 05, Chapter 01:

11.05.01.10-02 – We are concerned that a minimum time required to operate a license per day/week is not necessary and may create hardship for some current owners. We think that we understand and agree with the intent, to make sure they are using the license and hope to deal with this through the group that is reviewing liquor licensing. Based upon that work, we ask that you eliminate any requirements for minimum hours of service.

11.05.01.10-06 – We would suggest adding the definition of place “unless bar seating is the only type of seating at the premises”. This will accommodate smaller places that serve alcohol and do not have traditional seating. Our concern is primarily for businesses in rural areas that offer burgers & beer.

11.05.01.13-04 – Adding the term “at a time” or “per license received” after: An applicant shall be limited to place their name only once. As it reads now, we are afraid that you could not get a second license if you opened a second location or sold your original license and wanted to start again.

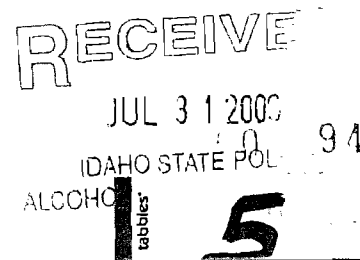
Please feel free to contact me with any questions that may arise as a result of our suggestions.

CC: Pam Eaton, Kevin Settles, Denise Rogers, Scott Pugnud

1495 N. Hickory Ave.
Meridian, Idaho 83642
208-384-8400
Toll Free 1-800-372-1515

P.O. Box 839
Meridian, Idaho 83680-0839

www.fsafood.com



**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~~ 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.

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There are no written interpretations of these rules. (2-20-01)

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Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the Attorney General, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". (2-20-01)

004. MAILING ADDRESS AND OFFICE HOURS.

The mailing address is Idaho State Police, Bureau of Alcohol Beverage Control, P.O. Box 700, Meridian, ID 83680-0700. ~~Office-Lobby~~ hours are Monday through Friday, 8:00 a.m. to 5:4:30 p.m. (2-20-04)

005. PUBLIC RECORDS AVAILABILITY.

Public Records are available during normal working hours for inspection and copying at the Idaho State Police, Bureau of Alcohol Beverage Control, 700 South Stratford Drive, Meridian, ID 83680-0700. (2-20-01)

006. -- 009. (RESERVED).

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03. Multipurpose Arena. For the purposes of 23-944(3), Idaho Code, a multipurpose arena is defined as a

premises with permanent and securely fastened spectator type seating of a minimum capacity of one thousand (1,000), encompassing a stage or arena which sole purpose is for community events or sports competition.

04. 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)

04.05. Partition. A partition, as used in IC 23-944, 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:

- a. Permanently fixed from the premises ceiling to the premises floor.
- b. Made or constructed of solid material such as glass, wood, metal or a combination of those products.
- c. Designed to prevent an alcoholic beverage from being passed over, under or through the structure.

All partitions must be approved by the Director.

06. Place. For the purposes of section 23-943, Idaho Code, "Place" as defined by section 23-942(b), for a one-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.

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-premise 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:

(3-20-04)

- 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)

05.08. 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 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. (3-13-02)

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, Idaho State Police. 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)

03. 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. The following table sets out the notification months and renewal months established to renew licenses to sell alcohol:

Renewal Notices	County	Renewal Month
January	Kootenai	1-Mar
January	Benewah	1-Mar
February	Ada	1-May
March	Ada	1-May
April	Canyon	1-Jun
April	Owyhee	1-Jun
April	Payette	1-Jun
May	Twin Falls	1-Jul
May	Gooding	1-Jul
May	Camas	1-Jul
May	Lincoln	1-Jul
May	Jerome	1-Jul
June	Cassia	1-Aug
June	Minidoka	1-Aug
June	Butte	1-Aug
June	Blaine	1-Aug
June	Power	1-Aug
July	Lemhi	1-Sep

July	Custer	1-Sep
July	Boise	1-Sep
July	Valley	1-Sep
August	Elmore	1-Oct
August	Clark	1-Oct
August	Fremont	1-Oct
August	Jefferson	1-Oct
August	Madison	1-Oct
August	Teton	1-Oct
August	Bonneville	1-Oct
September	Bingham	1-Nov
September	Bannock	1-Nov
September	Caribou	1-Nov
September	Oneida	1-Nov
September	Franklin	1-Nov
September	Bear Lake	1-Nov
October	Boundary	1-Dec
October	Bonner	1-Dec
October	Shoshone	1-Dec
November	Adams	1-Jan
November	Gem	1-Jan
November	Washington	1-Jan
December	Latah	1-Feb
December	Nez Perce	1-Feb
December	Idaho	1-Feb
December	Lewis	1-Feb
December	Clearwater	1-Feb

Renewal Notices	Certs of Approval	Renewal Month
November	Out of State	1-Jan

(5-3-03)

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. (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~~ the first of the month 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)~~ 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 ~~sixty (60)~~ ninety (90) 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 shall only hold 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 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" 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, 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. (7-1-93)

015. -- 020. (RESERVED).

021. AGE RESTRICTION REQUIREMENTS.

01. — Over/under Clubs. Minors shall not enter, remain or loiter in any licensed establishment that sells alcohol by the drink except for those premises listed in Idaho Code Section 23-944.

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 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)

~~0203.~~ **Counterfeit or Altered Age Documents.** If alcoholic beverage licensees, their employees, or agents ~~confiscate~~ receive age identification documents which have been lost or voluntarily surrendered ~~that appear to be mutilated, altered, or fraudulent~~, they shall deliver ~~them~~ the documents to an agent or investigator of the Alcohol Beverage Control Bureau or to other law enforcement officials within 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 shall contact law enforcement and/or refuse service.

(3-31-95)

022. -- 999. (RESERVED).

Proposed/Temporary Administrative Rules Form

Agency Name: Idaho State Police - Alcohol Beverage Control	STARs Agency Code: 330	Phone Number: (208) 884-7080
Contact Person: Lt. Bob Clements		FAX Number: (208) 884-7098
Statutory Authority for the rule making (Idaho Code, Federal Statute or Regulation): Idaho Codes 23-901, 23-932, 23-948		
Title, Chapter, and Possible Docket (IDAPA) Number: IDAPA 11-06-01-010		
This Rule Is: <input checked="" type="checkbox"/> Proposed <input type="checkbox"/> Temporary Effective Date:		
If Temporary Rule: <input type="checkbox"/> Necessary to protect the public health, safety, or welfare; or <input type="checkbox"/> Compliance with deadlines in amendments to governing law or federal programs; or <input type="checkbox"/> Conferring a benefit.		
If this is a temporary rule which imposes a fee or charge, provide justification as described in Idaho Code 67-5228(2):		
Provide a fiscal impact statement, both positive and negative, by fund source for all programs affected: There is no fiscal impact associated with this change.		
Need for Proposed Rule Change: Rules need to be added and/or changed to provide licensees with more specific information upon which to make business decisions and to allow more consistent enforcement of Title 23 Alcohol Beverage Code.		
Proposed Rule Changes (Summary Only): Clarifies definitions or proposes various new definitions such as "Licensed Premises", "Multi Purpose Arena", "Partition", and "Place", and provides restrictions on "Over/Under Clubs", providing additional information to licensees to ensure compliance with regulations and allow more consistent enforcement of alcohol beverage laws. Amends the confiscation of counterfeit or altered age documents to be consistent with statutory authority.		
Interest Group(s) or Citizens Affected: All businesses licensed to sell alcoholic beverages Idaho Lodging and Restaurant Association Idaho Licensed Beverage Association Idaho Retailers Association Law enforcement agencies. MADD		
(DFM's Use Only)		
DFM Analyst Comments: <div style="text-align: center; font-size: 1.5em; font-weight: bold;">RECEIVED</div>		
Received Date: AUG 11 2006	Internal Admin. Rule No. 479	
DFM Analyst Signature: 	Approved: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Reviewed Date: 8/14/06
Policy Advisor Signature: 	Approved: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Reviewed Date: 8/14/06

Please return to: Division of Financial Management, Statehouse Room 122
 PO Box 83720 Boise, Idaho 83720-0022
 E-Mail: info@dfm.state.id.us

AUG 14 2006

IDAHO STATE POLICE
 ALCOHOL
 7

Meeting Minutes
August 16, 2006
Ad Hoc Group Meeting, Alcohol Beverage Control

Attendees:

Lt. Robert Clements, ABC
Nichole Harvey, ABC
Jenny Grunke, DAG/ISP
Kevin Settles
Brian Ballard
Hans Schatz
Scott Pugrud
Ed Bird
Denise Rogers
Woody Richards
Leon Duce
John Larsen
Bill Nary
Cheryl Brown
Brian Donesley

Introductions

The ILRA and the ILBA handed out the "Key Points" position paper that has been agreed on by both groups. It was offered to the AD Hoc Group to refine the points to ultimately developed legislation.

1. Qualifications for holding a license or to maintain a place on the waiting list:
Discussion: Clarification on who is controlling and receiving the license (same person).
2. Quota System:
Discussion: No changes
3. Waiting List:
Discussion: Question presented. Those who are presently on the list, will they remain qualified? Intention is to make all priority applicants qualify to be on the waiting list and pay the \$1000.00 fee. Question presented: What is the expectation of those people who have been waiting on the list with respect to the fee? There will be a cost incurred by the state to maintain the list. Fee is not set in stone and could be changed to fit the needs of the group. Intention is to "trim" the list and remove those people

who do not have the intent to open a business. Business plan requirement may be unreasonable because it is subjective and may be limiting the list to those persons who are already in the business by these requirements. By making the priority applicants respond to the agency, it will hold them accountable and shift the responsibility from ABC. Consensus is to take the process after the corporate model for reporting changes. Suggestion was made to raise the fee substantially. By raising the fees it will separate the people and businesses that are serious about opening businesses from those who are speculating and using the list as an investment tool.

4. New Incorporated City Liquor License:

Discussion: Main point is to keep illegitimate businesses from qualifying for liquor licenses (e.g. closet bars, storage units' etc.). After six (6) months the license is fully transferable through lease or sale. This will require a statutory change. This may serve the cities interest in getting licenses operational. Better parameters for leasing have been developed by the IRLA and ILBA group. Question was asked, "Should there be a waiting list?" Perhaps a lottery or auction system is a better idea. The proposal is to turn the waiting list into a tool instead of an impediment to help pre-qualify businesses and individuals for liquor licenses.

5. Specialty Liquor License:

Discussion: Approval of specialty licenses would lie with the License Authority. Delegate the role of specialty licenses to the committee (License Authority) instead of the legislature. License would be maintained if the specialty use (qualifications) remains, ownership is transferable.

6. Criteria for Inactivation of Licenses:

Discussion: Suggestion was to let the market take care of the problem. Licenses must be operated or they are lost or returned the state for reissue. This is a temporary inactivation for health issues and temporary closures due to loss of lease, fire (hardships). This is currently available with IDAPA rule, 90 and 60-day rule.

7. Leasing of Licenses:

Discussion: ABC currently does not recognize "ownership" in the sense that a license is not a piece of property. License is a privilege not a property right; therefore there is no due process. The concern that a license will be lost based on a lessee's bad judgment, there is no protection for license "owners".

8. Fines and Suspension:

Discussion: Suggested that there be provisions for a civil settlement without the imposition of administrative proceedings. Compliance checks, negotiations and penalties would not change, but it would shift to the Licensing Authority in order to make the associations (ILBA and ILRA) more comfortable.

It was suggested to break up into groups and tackle each element. If the group is willing to buy the concept yet maybe not every detail, then the group is ready to move ahead and begin the process of drafting legislation.

Cheryl Brown (City of Meridian) and Bill Nary (City of Meridian) will begin drafting legislation to bring to the group in order to come up with a final product. Cheryl will e-mail the group with drafts. It was suggested that a sub-committee be formed in order to work on the different phases of this project.

Funding is definitely an issue and there may be the need for statutory changes and also determining funding sources. The scope of the umbrella needs to be defined and it be determined who and what will be housed under this concept.

The second draft of proposed IDAPA rule changes were handed out; any suggestions or comments are due by August 28, 2006

A meeting of date of September 6, 2006 is set for the next group meeting.

Meeting Minutes
September 6, 2006
Ad Hoc Group Meeting, Alcohol Beverage Control

Attendees:

Lt. Robert Clements, ABC
Jenny Grunke, DAG/ISP
Nichole Harvey, ABC
Ron Lundquist
Kevin Settles
Lewis Howard
Scott Pugrud
Denise Rogers
Bill Roden
Rod Nielsen
John Larsen
Cheryl Brown
Brian Donesley

Introductions

At the August 16th group meeting Bill Nary and Cheryl Brown stated that they would begin drafting legislation to enact the changes decided on by the Ad Hoc Group. In the meantime, a legislative interim liquor license committee has been formed and will be co-chaired by Rep. Snodgrass. The City of Meridian had a meeting with Rep. Snodgrass and at this time the writing of legislation has been put on hold. It was decided that handing pre-written legislation to the interim liquor committee was in poor taste. Instead, the group will continue to work on rough draft legislation and changes without putting it into legislative format.

How do we proceed at this point? It is important to continue to move forward and work on the issues. Snodgrass has offered the group an opportunity to present our ideas in front of the interim legislative committee.

A suggestion was made that Rep. Snodgrass could authorize someone from legislative council to work with our group in order to give us a final product. Donesley volunteered to work with legislative council to help dial in the points.

It was determined that this meeting would be used to strategize what is needed to present to the interim committee meeting. It is important to present cohesive package to the legislative committee.

It was determined that we would work on organizing the position paper in order to present our ideas in front of the legislature.

1. Qualifications for holding a license or to maintain a place on the waiting list:

There was the question of the word "ownership" of licenses, because the state does not recognize ownership in a liquor licenses. The terms would be interested party, lessee and lessor.

2. Quota System:

No changes

3. Waiting List:

Qualifications to be on the waiting list: purpose was to trim the list of those people with ill intentions and those who are speculators. In recent years the list has begun to "trim" itself because of more stringent requirements in putting licenses to use by ABC. Need to clearly define the "operating period". It was proposed to let the market regulate the list with the laws of supply and demand. The fee should be substantially more money than it is now (\$1000.00) and non-refundable. The idea of an annual renewal fee was discussed. Background check will be required for priority list applicants. Suggestion was made to educate potential applicants on the front end with an informational pamphlet discussing the requirements of placing a liquor license. The concept of a business plan was removed. It is important to note that some of the issues the group is trying to resolve is identified in the proposed IDAPA rule changes submitted this year. There was a question of the word "applicant" in the IDAPA Rule.

A meeting of date of September 15, 2006 is set for the next group meeting.



Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

Jeff Youtz
Director

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Judiciary and Rules Committee and the House Judiciary, Rules and Admin. Committee

FROM: Research & Legislation Staff - Katharine Gerrity, Principal Legal Analyst KAG

DATE: August 23, 2006

SUBJECT: Idaho State Police

IDAPA 11.05.01 - Rules Governing Alcohol Beverage Control

The Idaho State Police (ISP) submits notice of proposed rule at IDAPA 11.05.01 - Rules Governing Alcohol Beverage Control. According to the Department, the purpose of the rule is to add and modify rules governing display of licenses to provide licensees with a specific period of time following loss or move of a licensed premise in which to secure and occupy a new premise and display the alcohol beverage license. The Department also notes that definitions have been added to clarify vague or conflicting references and some sections are updated to reflect changes in licensing practices. Although negotiated rulemaking was not conducted, the Department indicates that associations representing affected parties were consulted in the drafting of the rule.

We have a number of comments and suggestions relating to this proposed rule.

- ◆ In section 000, parentheticals should be added for an effective date. This suggestion also applies to numerous sections throughout the proposed rule and the entire rule should be reviewed for that particular revision.
- ◆ In section 003, the effective date should be stricken and parentheticals added for a new effective date. This suggestion also applies to numerous sections throughout the proposed rule and the entire rule should be reviewed for that particular revision.
- ◆ In section 010.03, the word "Section" should precede the Idaho Code citation (refer to the citation format found in existing language in section 010.04 of the proposed rule). This suggestion also applies to numerous sections throughout the proposed rule and the entire rule should be reviewed for that particular revision.

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Ray Ineck, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

- ◆ The Committees should be aware that the proposed rule defines a number of terms (such as “multipurpose areas,” “partition,” and “place”) used in Chapter 9, Title 23, Idaho Code, that are not specifically defined in the statute (pages 1 and 2 of the proposed rule). In addition, time limits relating to priority lists and applicants seeking licenses have been extended (page 6 of the proposed rule).
- ◆ In subsection 021.03, the word “surrenders,” appearing as the last word of the first sentence, should be changed to “surrendered.”
- ◆ Throughout the proposed rule, the word “shall” has been replaced by the word “is” or by the word “must.” We recommend that the Department consult the Rule Writer’s Manual (page 59) in that “shall” is generally the preferred term of use, although, in some instances, “must” is acceptable “if action is intended to be condition precedent to the accrual of some right or privilege.” (*See* Rule Writer’s Manual, page 59)

The Idaho State Police have rule making authority pursuant to Sections 23-932, 23-946, 23-1330, and 23-1408, Idaho Code.

cc: Idaho State Police -Lt. Col. Kevin Johnson & Lieutenant Bob Clements



Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

Jeff Youtz
Director

September 12, 2006

Lt. Colonel Kevin Johnson
Deputy Director
Idaho State Police
PO Box 700
Meridian, ID 83680-0700

Dear Lt. Colonel Johnson:

The Senate and House Subcommittees for review of administrative rules have reviewed the proposed changes to the Idaho State Police rules:

**IDAPA 11.05.01 Rules Governing Alcohol Beverage Control
(Docket #11-0501-0601)**

No meeting will be held, and we are pleased to report that no objections will be filed.

Sincerely yours,

Katharine A. Gerrity
Principal Legal Analyst

KAG/ca

cc: Lt. Bob Clements

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Ray Ineck, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

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Tel: 208
www.legisla

tabbles

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CK Gen



Colonel R. Dan Charboneau
Director

Idaho State Police

Service since 1939



James E. Risch
Governor

September 26, 2006

Hans Schatz
Food Services of America
1495 N. Hickory Ave.
Meridian, ID 83642

Re: Alcohol Beverage Control Proposed Administrative Rule Changes

Dear Mr. Schatz:

I apologize for the delay in sending this letter. However, I would like to thank you, the Idaho Lodging and Restaurant, Idaho Licensed Beverage Association, and Idaho Retailers Association for the participation and review of our proposed rules.

We incorporated several comments and suggestions for change that you listed in your letter to ABC. The proposed ABC rules have been submitted with the changes, and copies of the drafted rules have been sent to your association members.

Thanks again for the participation and comments in the rule drafting process.

Sincerely,

Lt. Bob Clements, Bureau Chief
Alcohol Beverage Control Bureau

COPY

LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

The written comment deadline is October 25, 2006, unless otherwise listed.

Temp & Prop indicates the rule is both temporary and proposed.

** Indicates that a public hearing has been scheduled.

IDAPA 01 - BOARD OF ACCOUNTANCY

PO Box 83720, Boise, ID 83720-0002

01-0101-0601, Idaho Accountancy Rules. Updates incorporations by reference; changes name of accrediting body to the "Northwest Commission on Colleges and Universities"; changes "fee" to "fine" to clarify penalty for regulatory non-compliance.

IDAPA 02 - DEPARTMENT OF AGRICULTURE

PO Box 790, Boise, ID 83701

02-0104-0601, Rules Governing the Idaho Preferred Promotion Program. Adds a section requiring Department approval of use of logo on packaging and printed materials; and changes the symbol from Idaho Preferred™ to Idaho Preferred® because the name and logo have completed the trademark process and are now registered marks.

***02-0602-0602, Rules Pertaining to the Idaho Commercial Feed Law.* (Temp & Prop) Updates the label requirements for pet foods to be consistent with the AAFCO uniform label requirements for pet foods; clarifies that viable noxious weed seed found in a feed is an adulterant.

02-0622-0601, Noxious Weed Rules. (Temp & Prop) Amends noxious weed list and creates sub-lists; designates articles capable of disseminating noxious weeds; provides for cleaning and disinfecting of articles capable of dissemination of noxious weed propagules; deletes reference to Special Management Zone; adds penalty section and buffer zone allowance for counties.

02-0631-0601, Noxious Weed Free Forage and Straw Certification Rules. Updates title of the National standard used for field inspection procedures; removes obsolete sections; adds definitions; addresses forage cube certification; upgrades distribution requirements; and corrects a reference to the Idaho Noxious Weed Law.

***02-0633-0601, Organic Food Products Rules.* Updates incorporation by reference section; changes registration and certification deadlines; increases registration fees; establishes a late registration fee; caps the organic gross sales fee graduated scale; requires outside certifying agencies and their Idaho clients to register with Department.

IDAPA 07 - DIVISION OF BUILDING SAFETY

1090 E. Watertower St., Meridian, ID 83642

07-0104-0601, Rules Governing Electrical Specialty Licensing. (Temp & Prop) Clarifies that only journeyman and apprentice electricians, employed by an electrical contractor, may install electrical wiring, equipment and apparatus in modular structures.

07.05.01, Rules of the Public Contractors License Board.

07-0501-0602, Increases the fee cap rate for public works contractor and construction manager licenses.

07-0501-0603, (Temp & Prop) Allows for a "guarantor" to pledge assets to small contractors to allow them to qualify for licensure when the assets of the contracting entity on its own are insufficient to qualify.

IDAPA 08 - STATE BOARD OF EDUCATION

PO Box 83720-0037, Boise, ID 83720-0037

08-0111-0601, *Out-of-State Institutions, In-State Non-Accredited Institutions, and Correspondence or Private Courses*. Repeal of chapter.

08-0111-0602, *Registration of Postsecondary Educational Institutions and Proprietary Schools*. (Temp & Prop) Clarifies that postsecondary institutions must register to ensure they are legitimate degree granting institutions and that proprietary schools are legitimate and establishes criteria for evaluating these institutions.

08.02.03, Rules Governing Thoroughness

08-0203-0604 - Includes the subgroup of LEP students in the definition of "at-risk youth" so they will have access to additional acceleration services to assist them not only in their English language acquisition but also will increase their ability to participate fully in the classroom.

**08-0203-0605 - Increases total number of credits required for high school graduation to 46 credits starting with the 2013 graduating class; increases math requirements to 6 credits and science requirements to 6 credits; requires students to take the ACT, SAT, or COMPASS test in the 11th grade, and to complete a Senior Project; and requires all school districts to provide at least one Advanced Opportunity for all students.

08-0203-0606 - (Temp & Prop) Revises the English language development standards; establishes the Limited English Proficiency Program Accountability Plan; and establishes ISAT and IELA cut scores.

IDAPA 11 - IDAHO STATE POLICE

PO Box 700, Meridian, ID 83680-0700

11-0501-0601, *Rules Governing Alcohol Beverage Control*. Provides licensees with a specific time period following loss or move of a licensed premise to secure and occupy a new premise and display the alcohol beverage license; adds definitions to clarify references to Idaho Code; and updates licensing practices.

11-1001-0601, *Rules Governing ILETS – Idaho Law Enforcement Teletypewriter System*. Changes chapter name; changes fees charged for access and usage of the Idaho Public Safety and Security Information System to all agencies, local, state, and federal, by 25% beginning on 10/1/07.

11-1101-0601, *Rules of the Idaho Peace Officers Standards and Training Council*. Defines "Correction Officer" and "Adult Probation and Parole Officer" as law enforcement professions as it pertains to the two-year agreement so people working in those capacities get credit for time served; allows students attending the vocational law enforcement programs to be eligible for waivers for "uncharacterized" or "general under honorable conditions" discharges from military service and give the POST Executive Director the authority to waive these; adds language to prevent decertified officers from obtaining future POST certification with the exception of Correction Officers; adds the Law Enforcement Code of Ethics; clarifies that peace officer, county detention officer, and communications specialist experience must be with a duly authorized law enforcement agency to count toward peace officer and detention officer certification; clarifies the qualifications for the Supervisor certificate; and establishes the POST Hearing Board.

11-1102-0601, *Rules of the Idaho Peace Officers Standards and Training Council for Juvenile Detention Officers*. Adds a county clerk to the Juvenile Training Council.

11-1103-0601, *Rules of the Idaho Peace Officers Standards and Training Council for Juvenile Probation Officers*. Adds a county clerk to the Juvenile Training Council.

11-1104-0601, *Rules of the Idaho Peace Officers Standards and Training Council for Correction Officers and Adult Probation and Parole Officers*. Extends the voluntary certification option for correction officers from 2008 to 2010 and for adult probation and parole officers from 2007 to 2009.

IDAPA 12 - DEPARTMENT OF FINANCE

PO Box 83720, Boise, ID 83720-0031

12-0110-0601, Rules Pursuant to the Idaho Residential Mortgage Practices Act. Amends agency access information and updates the references to the documents incorporated by reference.

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

PO Box 25, Boise, Idaho 83707

13-0104-0601, Rules Governing Licensing. (Temp & Prop) Amends eligibility requirements for a Disabled Person License; adopts eligibility requirements and permit conditions to implement the new "children with special needs big game permit/tag"; clarifies outfitter allocation process and the Handicapped Archery Permit rule to address equipment concerns of handicapped archers; deletes the Southeast Idaho Nonresident Deer License/Tag rule because it is now a controlled hunt.

13-0105-0601, Fishing Contests. (Temp & Prop) Allows additional fishing contests on planted trout; clarifies certain definitions, and makes clerical corrections and updates.

13-0108-0601, Rules Governing the Taking of Big Game Animals in the State of Idaho. (Temp & Prop) Simplifies the understanding of weapon type opportunities; addresses concerns of handicapped archers; implements new outfitter allocation; addresses elk depredations in eastern Idaho; adds an additional unit (Unit 69) to the Motor Vehicle Restriction Rule; lengthens the controlled hunt application period for deer, elk, antelope, and fall black bear; and clarifies and corrects hunt descriptions.

13-0109-0601, Rules Governing the Taking of Game Birds in the State of Idaho. (Temp & Prop) Requires the wearing of hunter orange when hunting on Wildlife Management Areas where pheasants are stocked.

13-0111-0601, Rules Governing Fish. (Temp & Prop) Changes address biological issues and angler desires.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

PO Box 83720, Boise, ID 83720-0036

16-0208-0601, Vital Statistics Rules. Changes align the Department's disinterment rules with the amended statute and make other minor clarifications.

16.03.04, Rules Governing the Food Stamp Program

16-0304-0601 - Excludes one vehicle per adult family member in the Food Stamp household when determining eligibility.

16-0304-0602 - (Temp & Prop) Simplifies income calculations for self-employment and child support income; simplifies work requirements and sanctions for non-compliance; excludes additional military combat pay; amends definitions; aligns time lines with federal requirements.

16.03.05, Rules Governing Eligibility for Aid to the Aged, Blind and Disabled

***16-0305-0603* - (Temp & Prop) Sets the criteria for determining how a working disabled individual's income and resources will be calculated to establish Medicaid eligibility.

***16-0305-0604* - (Temp & Prop) Establishes a method for the distribution of the annual cost of living adjustment increase to the basic allowance and the allowance for rent, utilities, and food.

16-0305-0606 - Requires Medicare-eligible individuals to enroll in Medicare as a condition of eligibility for Idaho Medicaid.

16.03.08, Rules Governing Temporary Assistance for Families in Idaho.

16-0308-0601 - Excludes one vehicle per adult family member in a TAFI household when determining eligibility.

16-0308-0602 - (Temp & Prop) Changes will help meet and assist work participants in improving work skills and training needed to be successful in obtaining jobs.

***16-0318-0602, Medicaid Cost-Sharing.* (Temp & Prop) Implements cost-sharing provisions of Section 56-209n, Idaho Code, to help individuals with disabilities be eligible for Medicaid while working.

16-0601-0601, Rules Governing Family and Children's Services. Makes guardianship assistance consistent with stature; utilizes "best practices" for implementing child protection rules and adoption rules for out-of-state adoptions, home studies, support, supervision, and limits on state-funded adoption and guardianship assistance; modifies "Professional Foster Care" requirements; and delete references to discontinued community programs.

16-0602-0601, Rules Governing Child Care Licensing. Requires that additional safety devices and barriers be in place to protect young children living in licensed foster homes and children's residential care facilities with swimming pools, hot tubs, ponds or other bodies of water on the property; removes requirement for automatic fingerprinting and criminal history background checks of young adults in foster homes or residential care facilities when they stay in the same home or facility after turning 18, unless he moves away from the home and returns; updates adoption rules to address the Multiethnic Placement Act that prohibits the delay or denying placement of any child on the basis of race, color or national origin.

****16-0606-0601, Developmental Disabilities Family Support and In-Home Assistance.** New chapter provides funding for services and equipment to help individuals with developmental disabilities continue to live with their families, prevent institutionalization, improve access to community supports, use existing resources efficiently, and obtain enhanced care; adds a new less costly grievance procedure option as an alternative to the more formal appeals process.

16.06.12, Rules Governing the Idaho Child Care Program.

16-0612-0601 - Chapter repeal.

16-0612-0602 - Chapter rewrite increases current income limits to 150% of the Federal Poverty Guidelines of 2005; updates co-payment rates; adds requirement for post-secondary students to work in order to be eligible for child care benefits and limits the time they can receive child care benefits to 2 years.

IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

PO Box 83720, Boise, ID 83720-0041

17-0206-0601, Employers Reports. Reconciles conflicting time periods by changing the second time period to 15 days from 10 days; extends the reporting time period to 120 days to allow sureties sufficient time to capture data they are required to submit on the Summary of Payments; allows auditing of total and permanent benefit payments within a time frame that allows useful feedback to be given and corrections made.

****17-0208-0602, Miscellaneous Provisions.** Clarifies that the fee schedule does not apply to hospitals and substitutes an alternative method to compute fees for hospitals; reduces the number of conversion factors used for physician fees; and it allows health care providers to be fully paid after going through a dispute resolution process.

IDAPA 18 - DEPARTMENT OF INSURANCE

PO Box 83720, Boise, ID 83720-0043

18-0127-0601, Self-Funded Employee Health Care Plans. (Temp & Prop) Implements House Bill 822 by outlining requirements for employer sponsored self-funded health plans including information that must be submitted to the Department to register the plan and requirements for maintaining and reporting reserves and surplus.

18-0128-0601, Governmental Self-Funded Employee Health Care Plans. (Temp & Prop) New chapter implements House Bill 825 for registering, funding and operating self-funded health plans offered by public entities and created through joint powers agreements.

IDAPA 19 - IDAHO BOARD OF DENTISTRY

PO Box 83720, Boise, ID 83720-0021

19.01.01, Rules of the Idaho State Board of Dentistry.

19-0101-0602 - Changes physical office address.

19-0101-0603 - Proposes to create and issue an extended access dental hygiene restorative license endorsement and outlines requirements for such licensure.

19-0101-0604 - Current Rule 40 of the Administrative Rules of the Board of Dentistry contains a number of subsections that identify behavior that constitutes unprofessional conduct on the part of a dentist or dental hygienist. A violation of any provision in Rule 40 may provide a basis for taking disciplinary action against a dental or dental

hygiene license. The Board of Dentistry proposes to amend existing Rule 40.18 to clarify the fact that unprofessional conduct not only includes the violation of a law governing dentistry but also includes the violation of any law pertaining to or affecting a person's fitness to practice dentistry. For example, many criminal laws do not govern the practice of dentistry, but a conviction for criminal conduct may pertain to or affect a person's fitness to practice dentistry.

IDAPA 22 - IDAHO BOARD OF MEDICINE

PO Box 83720, Boise, ID 83720-0058

22-0104-0601, Rules of the Board of Medicine for Registration of Supervising and Directing Physicians. Adds definitions; provides for the duties and responsibilities of supervising physicians of medical personnel providing cosmetic treatments, including at those locations that are remote or non-medical; describes training requirements and outlines scope of cosmetic treatments.

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

1109 Main St., Ste 220, Boise, ID 83702

24-0301-0601, Rules of the State Board of Chiropractic Physicians. Updates the version of reference guidelines for peer review standards.

****24-0401-0601, Rules of the Idaho Board of Cosmetology.** (Temp & Prop) Corrects contact information; redefines hospital grade; defines "patron"; includes examiner qualifications with board qualifications; adds haircutter category to fee schedule; changes exam fees to allow for administration by third party; sets requirements for exam and theory exam criteria for haircutters; adds haircutter credit toward cosmetology license; changes reexamination eligibility; sets minimum hours for clinical services on patrons; and establishes rules for schools teaching haircutting.

24-0501-0601, Rules of the Board of Drinking Water and Wastewater Professionals. Requires applicants to take and pass the exam within one year in order to keep applications current.

24-0701-0601, Rules of the Idaho State Board of Landscape Architects. Increases original license fee and annual renewal fee to \$150.

24-0901-0601, Rules of the Board of Examiners of Nursing Home Administrators. (Temp & Prop) Allows for a masters degree as part of experience/education requirements for licensure by endorsement.

24-1001-0601, Rules of the State Board of Optometry. Revises exam requirements and length of work experience required for endorsement; revises continuing education to include observation and the use of excess hours; updates the code of ethics; and revises contents of prescriptions.

24-1201-0601, Rules of the Idaho State Board of Psychologist Examiners. Updates contact information; increases fee for renewal of licenses and service extender applications.

24-1301-0601, Rules of the Physical Therapy Licensure Board. (Temp & Prop). New chapter provides definitions; defines supervision; establishes application process; sets fees, disciplinary penalties, and standards for continuing education; and provides a code of ethics.

24-1401-0601, Rules of the State Board of Social Work Examiners. Clarifies credentials to be filed; allows for termination of inactive files after 24 months of no contact; and deletes Clinical Practice Exemption and Independent Practice rules.

24-1501-0601, Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists. Updates incorporation by reference pertaining to ethics; clarifies and revises counselor and therapist supervisor requirements; clarifies qualifications for clinical professional counselors; and adds national credential registry for endorsement qualifications.

24-1701-0601, Rules of the Idaho State Board of Acupuncture. Updates contact information for the Board; and reduces the original license fee and the annual renewal fee to \$200 per license.

24-1801-0601, Rules of the Real Estate Appraiser Board. Updates contact information; clarifies education required to include courses approved by AQB; changes education effective dates to 1/1/08 for most licenses; allows board meeting attendance to count toward continuing education credits.

24-1901-0601, Rules of the Board of Examiners of Residential Care Facility Administrators. Adds scope of practice; and increases license application and provisional/temporary permits fees.

IDAPA 27 -- BOARD OF PHARMACY

PO Box 83720, Boise, ID 83720-0067

27-0101-0603, Rules of the Idaho State Board of Pharmacy. Requires licensed pharmacies to submit the same theft loss information to the Board that they now submit to the DEA.

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

PO Box 83720, Boise, ID 83720-0074

31-1101-0601, Safety and Accident Reporting Rules for Utilities Regulated by the PUC. Adopts the 2007 Edition of the National Electrical Safety Code (NESC) that is incorporated by reference.

IDAPA 33 - IDAHO REAL ESTATE COMMISSION

PO Box 83720, Boise, ID 83720

33.01.01, Rules of the Idaho Real Estate Commission.

33-0101-0602 - (Temp & Prop) Establishes a mechanism by which a designated broker can access and review the electronically-kept continuing education records of the sales associates currently licensed with that broker.

33-0101-0603 - (Temp & Prop) Expands and amends list of topics approved for continuing education credits.

IDAPA 35 - IDAHO STATE TAX COMMISSION

PO Box 36, Boise, ID 83722-0410

35.01.01, Idaho Income Tax Administrative Rules

35-0101-0601, Numerous changes conform to statutory changes; adds table for income tax brackets and rates for calendar year 2006; clarifies the addback for state and local income and sales taxes when limitations are imposed in computing the federal itemized deduction amount; changes holding period for real property to 12 months; clarifies time period that an interest in income of a pass-through entity must be met; modifies the calculation of the proration percentage; gives the Tax Commission authority to require an alternative method for determining Idaho source income of a partnership when the apportionment formula does not fairly represent the extent of the business activity in Idaho; clarifies that a corporation that is protected by federal Public Law 86-272 is exempt from the corporate income tax, including the minimum tax; addresses the modifications to the other state's adjusted gross income and tax required when computing the credit for taxes paid to another state; allows information returns to be submitted through electronic filing; clarifies that taxpayers whose business activities in Idaho are protected under Public Law 86-272 are not required to pay the permanent building fund tax; new rule addresses the Idaho Small Employer Investment Tax Credit.

****35-0101-0602,** Addresses dividends from real estate investment trusts and regulated investment companies; clarifies that insurance companies are included in the combined report, but their tax is deducted from the tax liability computed for the unitary group if paying the Idaho premium tax.

35.01.02, Sales Tax Administrative Rules

35-0102-0601, Adds required sections to rule; removes tax on sales of intrastate charter flights; sheriff's offices are assigned a seller's permit number and must file returns quarterly; clarifies that "transporting freight or passengers for hire" means providing transportation services to the public and not just to related parties; state that discount memberships are intangible and their sale is not taxable; clarifies that no tax is due on complimentary items given away when a purchase of tangible personal property is required as long as the sale of the item purchased is taxable; clarifies that an Idaho resident who forms an LLC in another state for the primary purpose of purchasing one or more motor vehicles does not qualify for the nonresident exemption. clarifies that credit will be given against any Idaho use tax due for local sales taxes paid in Alaska if the goods are then brought to Idaho.

35-0102-0602, adds a provision that 50% of the sales price is presumed to be subject to tax when services and

software are not separately stated.

35-0106-0601, Hotel/Motel Room Tax Administrative Rules. Removes references to the 4% Greater Boise Auditorium District tax rate.

35-0109-0601, Idaho Kitchen and Table Wine Tax Administrative Rules. Adds definition of "wine direct shipper"; wine direct shippers are required by statute to remit wine tax and collect use tax on their sales of wine to Idaho residents; clarifies that wine direct shippers are required to post a surety bond or some other acceptable form of security in the same manner as in-state wineries and wine distributors; wine direct shippers are required to obtain a wine tax reporting number in the same manner as in-state wineries and wine distributors; states what information is required on a wine tax return.

35-0110-0601, Idaho Cigarette and Tobacco Products Tax Administrative Rules. Clarifies that shippers who are not licensed tobacco products distributors must pay the tobacco tax; requires distributors to obtain a copy of the owner's tribal identification card or a certificate of tribal ownership when selling to an enrolled tribal member or an Indian tribe.

35-0201-0601, Idaho Tax Commission Administration and Enforcement Rules. Establishes a formula for calculating the yearly interest rate applied to deficiencies of tax and refunds; corrects the calculation of penalties when a taxpayer qualifies for an extended due date, but files the return before such date; deletes the requirement that an offer of compromise include a remittance in the amount of the offer; changes references.

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

PO Box 7129, Boise ID 83707-1129

39-0222-0601, Rules Governing Mileage Use Fee Administration. Recognizes a new method of fee payments, based on registration and permit fees; addresses quarterly reporting requirements, installment payments, refunds, delinquent or non-payment of fees, suspension or revocation of a customer account and methods of payment.

39-0345-0601, Rules Governing Sale of No Longer Useful or Usable Real Property. (Temp & Prop) Allows local government entities to acquire surplus ITD property, for other than transportation purposes, at a negotiated price, up to the appraised value, expressly for public purposes, with sales proceeds to the State Highway Account.

39-0362-0601, Rules Governing Logo Signs. Updates incorporation by reference documents.

39-0364-0601, Rules Governing Tourist Oriented Directional Signs. Updates incorporation by reference documents.

39-0407-0601, Rules Governing Aerial Search And Rescue of Lost Aircraft and Airmen. Places the coordination of search and rescue under the direction and supervision of the Chief of the Bureau of Homeland Security while requiring aerial search and rescue operations be coordinated by the Idaho Transportation Department, Division of Aeronautics.

IDAPA 41 - PUBLIC HEALTH DISTRICTS

2195 Ironwood Ct., Coeur d'Alene, ID 83814

41-0101-0601, Rules of Panhandle Health District 1. Expands Institutional Controls Program to include OU-3 (Coeur d'Alene River Basin) because remediation is taking place in OU-3 of the Bunker Hill Superfund site cleanup; clarifies sewage disposal systems standards and procedures; clarifies existing rules regarding critical materials on the Rathdrum Prairie Aquifer; corrects outdated references to the Department of Health and Welfare; adds required sections.

IDAPA 46 - BOARD OF VETERINARY MEDICAL EXAMINERS

2270 Old Penitentiary Rd., Boise, ID 83707

46-0101-0601, Rules of the State of Idaho Board of Veterinary Medicine. Changes reflect current practices and clarify processes and procedures; revises continuing education requirements; updates practice standards; clarifies the code of conduct; establishes a timeframe for the filing of complaints.

IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION

PO Box 83720, Boise, ID 83720-0037

****47-0102-0601, Rules and Minimum Standards Governing Extended Employment Services.** (Temp & Prop) Establishes IDVR as the agency with the authority to administer Extended Employment Services programs statewide.

IDAPA 48 - GRAPE GROWERS AND WINE PRODUCERS COMMISSION

117 North 9th Ave., Suite 2, Caldwell ID 83605

48-0101-0601, Rules of the Idaho Grape Growers and Wine Producers Commission. (Temp & Prop) New chapter imposes a tax and late fee penalties for failure to timely pay tax on grape growers and producers.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

1410 N. Hilton, Boise, ID 83706-1255

****58-0101-0603, Rules for the Control of Air Pollution in Idaho.** Proposes to opt out of, or not participate in, the federal cap and trade program for H_g emissions from EGUs and proposes to prohibit the construction of any EGU with H_g emissions.

Please refer to the Idaho Administrative Bulletin, **October 4, 2006, Volume 06-10** for notices and text of all rulemakings, public hearing schedules, Governor's executive orders, and agency contact information.

Issues of the Idaho Administrative Bulletin can be viewed at the county law libraries or online.

To view the Bulletin or Code or for information on purchasing the Bulletin and other rules publications, visit our website at www.idaho.gov/adm/adminrules/ or call (208) 332-1820 or write the Dept. of Administration, Office of Administrative Rules, 650 W. State St., Room 100, Boise, ID 83720-0306.

IDAPA 11 - IDAHO STATE POLICE

11.05.01 - RULES GOVERNING ALCOHOL BEVERAGE CONTROL

DOCKET NO. 11-0501-0601

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 23-932, 23-946(b), 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 6, 2006.

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:

Rules governing display of licenses need to be added and/or changed to provide licensees with a specific period of time following loss or move of a licensed premise, in which to secure and occupy a new premise and display the alcohol beverage license. Definitions are added to clarify vague or conflicting references in Idaho Code, and some sections are updated to reflect changes in licensing practices.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

No fee is imposed or increased by these rules changes.

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:

No fiscal impact is anticipated from these rules changes.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because associations representing affected parties were consulted in the drafting of these rules changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lieutenant Bob Clements, Idaho State Police Alcohol Beverage Control, (208) 884-7060 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 September 13, 2006.

DATED this 16th day of August, 2006.

Colonel R. Dan Charboneau, Director
Idaho State Police
700 W. Stratford Drive
P.O. Box 700, Meridian, ID 83680-0700
(208) 884-7000 / (208) 884-7090 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0501-0601

SENATE JUDICIARY & RULES COMMITTEE

IDAPA 11 - IDAHO STATE POLICE

11.05.01 - RULES GOVERNING ALCOHOL BEVERAGE CONTROL

DOCKET NO. 11-0501-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 23-932, 23-946(b), 23-1330 and 23-1408, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 4, 2006 Idaho Administrative Bulletin, Vol. 06-10, pages 126 through 132.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lieutenant Bob Clements, Idaho State Police Alcohol Beverage Control, (208) 884-7060 or Robert.Clements@isp.idaho.gov.

DATED this 27th day of October, 2006.

THIS NOTICE WAS PUBLISHED WITH THE 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 23-932, 23-946(b), 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 6, 2006.

SENATE JUDICIARY & RULES COMMITTEE

IDAHO STATE POLICE
Rules Governing Alcohol Beverage Control**Docket No. 11-0501-0601**
PENDING RULE

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:

Rules governing display of licenses need to be added and/or changed to provide licensees with a specific period of time following loss or move of a licensed premise, in which to secure and occupy a new premise and display the alcohol beverage license. Definitions are added to clarify vague or conflicting references in Idaho Code, and some sections are updated to reflect changes in licensing practices.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because associations representing affected parties were consulted in the drafting of these rules changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lieutenant Bob Clements, Idaho State Police Alcohol Beverage Control, (208) 884-7060 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 September 13, 2006.

DATED this 16th day of August, 2006.

Colonel R. Dan Charboneau, Director
Idaho State Police
700 W. Stratford Drive
P.O. Box 700, Meridian, ID 83680-0700
(208) 884-7000 / (208) 884-7090 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.

SENATE JUDICIARY & RULES COMMITTEE

IDAHO STATE POLICE Rules Governing Alcohol Beverage Control

Docket No. 11-0501-0601
PENDING RULE

The Director of the ~~Department of Law Enforcement~~ 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. (1-1-94)()

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter ~~shall be~~ are governed by the rules of administrative procedure of the Attorney General, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (2-20-01)()

004. MAILING ADDRESS AND OFFICE HOURS.

The mailing address is Idaho State Police, Bureau of Alcohol Beverage Control, P.O. Box 700, Meridian, ID 83680-0700. ~~Office~~ Lobby hours are Monday through Friday, 8 a.m. to 5 4:30 p.m. (2-20-01)()

(BREAK IN CONTINUITY OF SECTIONS)

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 ~~shall~~ 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. (3-20-04)()

03. **Multipurpose Arena.** For the purposes of Section 23-944(3), Idaho Code, a multipurpose arena is defined as a premises with permanent and securely fastened spectator type seating of a minimum capacity of one thousand (1,000), encompassing a stage or arena which sole purpose is for community events or sports competition. ()

034. **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~~ is satisfied if the licensee makes actual sales of liquor by the drink during at least eight (8)

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hours per day, no fewer than six (6) days per week.

(1-1-94)()

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:

()

a. Permanently fixed from the premises ceiling to the premises floor. ()

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

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

d. All partitions must be approved by the Director. ()

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. ()

047. 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: (3-20-04)()

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)

058. Stock Transfer. For the purposes of Section 23-908, Idaho Code, the sale or

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exchange of stock in a closely held corporation holding a license ~~shall be~~ is deemed a transfer of the license. However, the sale or exchange of shares in a family corporation among family members, ~~shall~~ is not ~~be deemed~~ a transfer. (3-13-02)()

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, Idaho State Police. 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~~ provides 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)()

03. 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. The following table sets out the notification months and renewal months established to renew licenses to sell alcohol:

Renewal Notices	County	Renewal Month
January	Kootenai	1-Mar
January	Benewah	1-Mar
February	Ada	1-May
March	Ada	1-May
April	Canyon	1-Jun
April	Owyhee	1-Jun
April	Payette	1-Jun
May	Twin Falls	1-Jul
May	Gooding	1-Jul
May	Camas	1-Jul
May	Lincoln	1-Jul
May	Jerome	1-Jul
June	Cassia	1-Aug

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Renewal Notices	County	Renewal Month
June	Minidoka	1-Aug
June	Butte	1-Aug
June	Blaine	1-Aug
June	Power	1-Aug
July	Lemhi	1-Sep
July	Custer	1-Sep
July	Boise	1-Sep
July	Valley	1-Sep
August	Elmore	1-Oct
August	Clark	1-Oct
August	Fremont	1-Oct
August	Jefferson	1-Oct
August	Madison	1-Oct
August	Teton	1-Oct
August	Bonneville	1-Oct
September	Bingham	1-Nov
September	Bannock	1-Nov
September	Caribou	1-Nov
September	Oneida	1-Nov
September	Franklin	1-Nov
September	Bear Lake	1-Nov
October	Boundary	1-Dec
October	Bonner	1-Dec
October	Shoshone	1-Dec
November	Adams	1-Jan
November	Gem	1-Jan
November	Washington	1-Jan
December	Latah	1-Feb
December	Nez Perce	1-Feb
December	Idaho	1-Feb
December	Lewis	1-Feb
December	Clearwater	1-Feb
Renewal Notices	Certs of Approval	Renewal Month
November	Out of State	1-Jan

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(5-3-03)

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. (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~~ 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 ~~shall~~ lies with the permittee, and acceptance of the permit ~~shall~~ 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. (~~3-31-95~~)()

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~~ are 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)

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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 ~~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 is 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~~ the first of the month of the year following their issuance. (Section 23-908(1), Idaho Code). (7-1-93)(____)

07. **Maintenance of Keg Receipts.** ~~A~~ Licensees 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~~ maintains a priority list of applicants for those cities in which no incorporated city liquor license is available. A separate list ~~shall be~~ 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 ~~shall be~~ is determined by the earliest application, each succeeding application ~~shall be~~ is 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~~ 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 ~~shall be~~ is offered to the next applicant in priority. An applicant accepting the license shall have a

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period of ~~ninety~~ one hundred eighty (9180) 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 ~~sixty ninety~~ (690) 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 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 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 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" ~~shall~~ 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. (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~~ must 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~~ must permit an inspection of the licensee's premises. Any inspection performed pursuant to this rule ~~shall~~ 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 ~~shall be~~ 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. (7-1-93)()

015. -- 020. (RESERVED).

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021. AGE RESTRICTION REQUIREMENTS.

01. Over/Under Clubs. Minors shall not enter, remain or loiter in any licensed establishment that sells alcohol by the drink except for those premises listed in Section 23-944, Idaho Code. ()

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

03. Counterfeit or Altered Age Documents. If alcoholic beverage licensees, their employees, or agents ~~confiscate~~ receive age identification documents ~~that appear to be mutilated, altered, or fraudulent~~ which have been lost or voluntarily surrendered, they shall deliver ~~them~~ 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. (3-31-95)()

Idaho Lodging & Restaurant Association

Idaho Retailers Association

January 22, 2007

RE: Docket No. 11-0501-0601 – Rules Governing Alcohol Beverage Control

Honorable Members of the Senate Judiciary & Rules Committee,

The Idaho Lodging and Restaurant Association (ILRA) and the Idaho Retailers Association (IRA) both support the rule from Alcohol Beverage Control (ABC) – Docket No. 11-0501-0601.

When this rule was first drafted, Lieutenant Bob Clements distributed a copy to the ILRA, IRA and the Idaho Licensed Beverage Association (ILBA). A joint letter from all three associations was submitted with concerns and suggested changes. ABC addressed the comments that were expressed, thus resulting in the rule you have in front of you today.

Please consider approving this rule. It clarifies good operating standards and is good for the liquor license industry.

Thank you for your consideration in this matter.

Sincerely,

Pam Eaton
Executive Director, ILRA
President/CEO, IRA
870-8312 – cell phone
pameaton@idahoretailers.org

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE
SMITH SUBCOMMITTEE

DATE: January 23, 2007

TIME: 2:40 p.m.

PLACE: Room 404

MEMBERS: Chairman Smith(24), Representatives Wills, Luker, Boe, Ruchti

**ABSENT/
EXCUSED:** None

GUESTS: Please see attached sign-in sheets

MINUTES: Chairman Smith called the meeting to order, saying all Administrative Rules received by the committee would be reviewed in the order that they have been listed on the agenda.

DOCKET 05-0102-0601: Nancy Bishop was recognized to explain the **Rules on Secure Juvenile Detention Facilities**. Ms. Bishop said the changes are extensive, but very minor in nature. The proposed changes are needed to clarify certain practices, update definitions and use accordingly throughout the chapter, and remove redundancies. The changes offer uniformity in all areas.

Representative Boe questioned why the language on page 5, section 04 was stricken and new language added which gives the department the authority to enter into contracts with private providers for confinement of juvenile offenders. Ms. Bishop replied that the new language is needed to allow the department to enter into private contracts.

Steve Jett, director of the Southwest Idaho Juvenile Detention Center, said this pending rule deals only with detention centers.

MOTION: Representative Wills moved **to recommend to the full committee that Docket 05-0102-0601 be approved. Motion carried by voice vote.**

DOCKET 11-0501-0601 Lt. Bob Clements was recognized to explain the **Rule Governing Alcohol Beverage Control**. The purpose of the pending rules are to provide rules governing the display of licenses to provide licensees with a specific period of time following loss or a move of a licensed location in which to secure and occupy a new premises and display the alcohol beverage license. Also, definitions are added to clarify vague or conflicting references in Idaho Code, and some sections are updated to reflect changes in licensing practices.

Language is added to clarify what an acceptable partition is. The rules provide that an applicant shall hold only one position at a time on each incorporated city priority list.

Lt. Clements said that venues which sell alcoholic beverages to minors are in attendance, cause serious problems. Mind

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all meet on the dance floor and often minors in these situations find access to alcohol.

Language has been drafted to resolve situations where licenses are issued which are not being used. There have also been instances of new licenses being used illegally, which is a felony.

Representative Luker questioned the definition of a "Multipurpose Arena" and how the number of 1,000 minimum capacity was reached. The response was that 1,000 seemed to be a reasonable number compared to other facilities. Representative Luker questioned the materials mentioned in the building of a partition, saying there were other materials that could also be used. The response was that the language was only trying to present guidelines. This is simply an attempt to keep alcoholic beverages out of the hands of minors.

The Chairman asked if this rule has already been reviewed by the Senate. Lt. Clements said it has been partially reviewed. The review will continue on Wednesday, January 24.

CON:

Paul Thornton was recognized to give his testimony. Mr. Thornton said he is the owner of Bravo Entertainment. Bravo Entertainment is the largest concert promoter in the northwest, and produces live entertainment events from clubs to amphitheaters in 19 states. Mr. Thornton said he was speaking mainly about the Big Easy Concert House in downtown Boise.

Bravo has always operated the Big Easy Concert House and Restaurant in the same way it runs larger arena events. The security staff is abundant and well trained. All employees are vigorously trained in providing the safest environment possible for the patrons. The Big Easy has never been issued a single citation of noncompliance and has never received a single infraction from the Alcohol Beverage Control.

Mr. Thornton said the language of the pending rule is too limiting and will cause problems. Also, fixed seating is not the answer. The number 1,000 is an arbitrary number. There are many language problems. The pending rule needs to have more thought put into it. Bravo Entertainment would like to be involved in drafting better language.

Representative Luker asked about the capacity of the Big Easy and how alcoholic beverages were currently kept away from minors. The response was that all minors' hands are marked with large black x's upon admittance which won't easily wash off. Security monitors the minors at all times and the bartenders are very careful not to serve them alcohol. The capacity in the Big Easy is 1200.

CON:

Denise Rogers was recognized. Ms. Rogers said she is the Executive Director for the Idaho Licensed Beverage Association. The Association finds the language in the rules to be ambiguous and confusing. It is very important that the rules be written clearly so that any logical person can understand them.

There are ambiguous terms used which are subject to interpretation, such as "suitable premise", "actual use", and "legitimate sales". There is also

concern regarding the limitations on price lists. Changing the section to allow an applicant to hold only one position at a time on each city list is discriminatory and unnecessary. The Idaho Licensed Beverage Association is willing to work with the Alcohol Beverage Control to rewrite the rules in a more clear and concise manner.

PRO: Germaine Galloway with the Boise Police Department was recognized. Officer Galloway said places like the Big Easy make it very difficult to combat underage drinking. When you have a place that on certain nights becomes a bar, some minors will find a way to drink alcohol.

PRO: Pam Eaton, Executive Director of Idaho Lodging & Restaurant Association and President/CEO of the Idaho Retailers Association, said both associations support the rules from Alcohol Beverage Control. The rules clarify good operating standards.

Representative Wills spoke in favor of the pending rule, saying it is a start in tightening some of the rules of society and it will help provide a safe environment for our youth.

MOTION: Representative Wills moved to recommend to the full committee that **Docket 11-0501-0601 be approved.**

SUBSTITUTE MOTION: Representative Luker moved to recommend to the full committee that **Docket 11-0501-0601 be approved with the exception of Section 010.03, defining Multipurpose Arena, which the subcommittee recommends be rejected. Voice vote was taken with 4 voting in favor of the Substitute Motion and 1 against. Substitute Motion carried.**

DOCKET 11-1101-0601: Director Jeff Black was recognized to explain this **pending rule of the Idaho Peace Officer Standard Training Council.** This rule adds definitions for "correction officer" and "adult probation and parole officer." It adds correction and adult probation and parole officers to the definitions of law enforcement profession as it pertains to the 2-year agreement so people working in those capacities get credit for time served.

It adds the Law Enforcement Code of Ethics to the rules and clarifies that peace officer, county detention officer and communications specialist experience must be with a duly authorized law enforcement agency in order to count toward peace officer and detention officer certification. It also gives the POST Executive Director the authority to waive minor hearing deficiencies and the authority to waive "uncharacterized" and "general under honorable conditions" military discharges. Finally, it clarifies the qualifications for the supervisor certificate and establishes the POST Hearing Board.

MOTION: Representative Luker moved to recommend to the full committee that **Docket 11-1101-0601 be approved. Motion carried by voice vote.**

DOCKET 11-1102-0601: Director Black was recognized to explain the **Rules of Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers.** This pending rule reflects the addition of a county clerk to the

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 24, 2007

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, and Kelly

MEMBERS ABSENT/ EXCUSED: Senator Burkett

GUESTS: See the attached sign-in sheet

CONVENED: **Chairman Darrington** called the meeting to order at 1:30 p.m.

DOCKET NO. 11-1001-0601 **Rules Governing the ILETS.**

MOTION: **Senator Davis** spoke with representatives from his district and they are not opposed to the fee increases by ILETS; therefore, he made a motion to accept Docket No. 11-1001-0601. The motion was seconded by **Senator Lodge**. The motion carried by **voice vote**.

DOCKET NO. 11-0501-0601 **Rules Governing Alcohol Beverage Control. Lt. Bob Clements**, State Police Alcohol Beverage Control Bureau mentioned that the committee had heard the rules on Monday and asked for any specific questions.

Senator Richardson asked what was relevant about the figure of 1,000 fixed seats for the proposed definition of multi-purpose arenas. **Mr. Clements** said the Bureau looked at the language and the intent when the legislation was passed with the term "multi-purpose arena" and that it was to have an exception for minors. Since the legislative history refers specifically to the Bank of America Center, Idaho Center and Nampa Civic Center, they reduced the figure to 1,000 to be reasonable for smaller facilities. **Mr. Clements** explained that parents were concerned about their children being in an over/under establishment. Over/under clubs is a name for clubs that combine over 21 year olds, who are allowed to be in bars, with under age individuals. He also mentioned it was a drain for law enforcement wherever these facilities are, statewide and nationwide. **Senator Kelly** asked how these facilities can operate with all ages in attendance. **Mr. Clements** said some facilities claim to be a restaurant, but advertise more as a nightclub. These facilities sometimes have different entrances for adults and minors, wristbands, or different cups for adults than minors.

Paul Thorton, owner of Bravo Entertainment which owns the Big Easy

Concert House reiterated that his facility entertains more people than the population of Boise, the Taco Bell Arena and the Idaho Center. He said they were not a bar, never considered themselves a bar, and run security as if it's an arena or amphitheater show. **Mr. Thornton** said the Big Easy had never had an infraction or been cited for a minor drinking. **Mr. Thornton** feels the rule pertaining to the multi-purpose arena would affect only a facility which doesn't have 1,000 fixed seats such as the Idaho Botanical Gardens, the Basque Center, and the Power House Events Center. He doesn't have a problem with the intentions of this rule, just the language. He claims there are better ways to handle this, but the response from Lt. Clements has been that he doesn't have enough law enforcement officers.

Mr. Thornton stressed that the Big Easy is an entertainment facility and more people attend their facility than anywhere in the state. He said they are also a full restaurant with regular service hours 5 to 7 days a week and at least 5 hours a day. They have also done private parties for major corporations in the area. He also thinks the partition language is a problem in this rule because it says floor to ceiling, which would be impossible for a showroom. He has suggested to Lt. Clements that the Spokane facility with its barriers has never been a problem. He believes this is a hastily written rule that can only hurt the industry and wipe out the entertainment coming through this valley. He questioned the "1000 fixed seats" theory because there were no studies or case cites that show how fixed seating prevents minors from drinking versus an open atmosphere. His recommendation was that the multi-purpose and partition issues were really a statute issue and should not be in the rules. He emphasized that The Big Easy had done many fund raisers for various charitable organizations.

Senator Kelly asked if his mention of no citations or infractions referred to his business, employees, inside, or outside. **Mr. Thornton** replied that they had never been cited for having a minor drinking. **Senator Lodge** asked if any activity on the outside of his facility might blemish his record. **Mr. Thornton** replied that the outside of any facility was a tough environment because they don't lease that space. Their insurance would not cover the outside; however, they did ask for the right to patrol that property with security. **Senator Lodge** asked if she would be able to drop in his facility to eat or was it only open for specific activities. **Mr. Thornton** replied that she could. **Senator Kelly** asked if there was a music event at the facility, was it open for any age person to go in the same room where adults were buying and drinking alcohol. **Mr. Thornton** said that some record labels that are paying for the bands and comedians to appear won't play any room that doesn't have an all-age format. **Senator Lodge** asked how many musical events they would have for 18 or 21 and under. **Mr. Thornton** replied probably 80 percent (80%).

Vice Chairman Richardson said that we would not take a vote until Friday and asked if there was anyone that would like to speak in favor of the rule change.

Mike Fitzgerald is the owner of Table Rock Brew Pub and Grill which is

about two blocks from The Big Easy. He is also Vice Chairman for the Idaho Lodge & Restaurant Association which sent a letter in support of this rule which has been distributed to the Committee members. Mr. Thornton has spoken of the many fund-raisers they have done. Mr. Fitzgerald said he only has a problem with the underage events and that they are a nightmare and have been since they opened. His parking lot is inundated with ticket stubs from the Big Easy and other trash that must be cleaned up by his employees. While he thinks The Big Easy is a great thing, it's the over/under that is detrimental for the near-by area and downtown. Another area of concern is in recruiting conventions to come to this town to spend money. One of the top three questions is about safety. He has received feedback from groups who have been here about the very young, Goth-looking kids that were going to a concert at The Big Easy. This will affect the income that we are trying to attract to our city.

Vice Chairman Richardson then called on **Brian Donesley** to testify. **Senator Darrington** suggested that if we could get this issue resolved, we might on Friday approve the rules except for 010.03 on Multipurpose Arena and that we not act on that. If the House has disallowed that particular paragraph, they will send us a Resolution. When we receive that Resolution, we must cast a vote in favor of the Resolution or defeat the Resolution. Lt. Clements confirmed that the House approved the rule except for the multi-purpose definition.

Senator Kelly asked if that was the full committee of the House Judiciary & Rules. Lt. Clements said it was the sub-committee. **Senator Darrington** said that it must go to the full committee. The meeting continued with the testimony of Brian Donesley.

Brian Donesley, an attorney, has issue with 013.01 on page 50 and 013.04 on page 51 of the ISP Rules Governing Alcohol Beverage Control. He explained that the issue was the waiting list and he offered to pass around to members the priority list for liquor licenses to peruse. The priority list is first in time, first in line and ISP's complaint is that persons have more than one place on a waiting list within a city. This rule change addresses that. These lists only pertain to cities where licenses are available. The concept of a quota system involves the decision as to the method of distribution of these licenses. The rule in 013.01 is being changed from "shall be maintained" to "is maintained." That means the mandate to maintain a license goes away.

Mr. Donesley then referred the committee to 013.04 which he stated now provides limitations on the list. He would ask that we keep the mandatory nature of the list for now and eliminate the phrase "applicant shall hold only" unless "applicant" is defined more clearly. An applicant can be an individual or someone with a defined interest in some other legal entity. This must be applied fairly or there could be some kind of equal protection problem under the law. He believes this could be fixed by being re-written.

Vice Chairman Richardson suggested that with the time constraints and the many people signed up to testify, we must postpone continued testimony on the ABC Rules until Friday's meeting.

S 1012

Relating to the Uniform Foreign Country Money Judgments Recognition Act.

Rex Blackburn, Uniform Tax Commissioner, explained that this was a revision to existing law in Idaho and deals with the recognition of foreign jurisdictions. This act would make uniform from state to state within the United States the rules under which those states would recognize a foreign country money judgment.

Senator Davis asked if we had uniform commissions in our partnering countries, Canada and Mexico, and are they adopting a similar type of legislation that would allow us to enforce our judgments. **Mr. Blackburn** said both Mexico and Canada had uniform law commissions. He said there are reciprocal enforcement provisions between Mexico and the United States and the United States and Canada as a matter of treaty.

Senator McKague wondered why there was a need for this and asked if there were judgments currently. **Mr. Blackburn** replied that in order to enforce a judgment from a country other than that country, they require that the country from which the judgment was issued also recognize their judgment. It facilitates the process to have this recognition. He further stated that these judgments are not a common occurrence, but they do occur and it has been recognized that uniform laws have been needed since the 1960s.

Senator Davis said that one of the purposes of the Uniform Law Commission is to try and minimize federal encroachment and allow state participation.

MOTION:

A motion was made by **Senator Kelly** to send S 1012 to the Senate Floor with a do pass recommendation. The motion was seconded by **Senator Jorgenson** and passed by **voice vote**. **Senator McKague** voted no.

S 1016

Relating to Management of Institutional Funds.

Mike Brassey, Uniform Law Commissioner, explained that this statute replaces the existing Idaho law and the old uniform law that relates to the same subject and covers the same people. This statute addresses how charitable corporations and governments that hold charitable funds invest in spending those funds.

MOTION:

Senator Jorgenson made a motion to send S 1016 to the Senate Floor with a do pass recommendation. **Senator Richardson** seconded the motion. The motion passed by **voice vote**.

S 1013

Relating to the Uniform Assignment of Rents Act.

Dale Higer, Uniform Law Commissioner, explained that this Act seeks to bring consistency to commercial real property transactions by establishing a comprehensive model for the creation, perfection, and enforcement of security interests in rents derived from real estate.

Senator Davis commented that this legislation provides the protection

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donesleylaw@qwest.net

January 24, 2007

Lt. Robert Clements
Bureau Chief
Alcohol Beverage Control Bureau
Idaho State Police
P.O. Box 700
Meridian, Idaho 83680-0700
By facsimile to 884-7096

Re: Proposed Rules Governing Alcohol Beverage Control – IDAPA 11.05.01

Dear Lt. Clements:

In preparation for the Senate Judiciary and Rules Committee review of proposed rules scheduled for this date, and as a courtesy, I am providing the following questions for your review:

IDAPA 11.05.01.013 at 01, addresses "Priority Lists for Incorporated City Liquor Licenses."

- By changing the mandatory "shall maintain a priority list of applicants for those cities in which no incorporated city liquor license is available...." to the present tense "is maintained," is it the intention of ISP that such lists not be required to be maintained? If so, what method shall be used to determine to whom to issue a liquor license when one becomes available within an incorporated city?
- At .04. relating to "Limitations on Priority Lists," does the limitation to "An applicant shall hold only one position at a time on each incorporated city priority list...." apply to other than individual names, for example to corporations, limited liability companies, partnerships or other legal entities in which an individual person has an interest, whether controlling or not? What criteria shall be used to justify such distinction? What would stop "Joe Jones" from filing any number of applications on behalf of different entities which "Joe Jones" actually controls to dominate a given priority list? And is it fair to eliminate "Joe Jones" from the list

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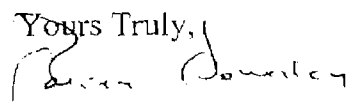
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except once, while allowing "Sam Smith" to own numerous corporations or LLCs separately appearing repeatedly without application of this limitation? Further, is it fair to eliminate persons whose names have remained on priority lists, in some cases for many years, and allow others to file repeated applications under corporate or LLC identities without limitation, in effect substituting those in line with those wanting to cut to the head of the list?

- I understand that the "quota system" for issuance of State liquor licenses has been thought by some archaic and that it should be abolished. In ad hoc meetings held with representatives of the industry and interested persons over the past year, the opinion has been stressed by some that the "waiting list" is unfair by allowing other than business operators or those who "actually intend" to operate retail liquor sales businesses to obtain liquor licenses, in some cases for the purpose of sale for profit. How does this differ from any business person investing in an opportunity? What mechanism is proposed, if any, to substitute for the first in line method of many decades?
- If "XYZ Corporation," a nationwide operator of high-end food and beverage hospitality services, with intentions of opening several restaurants in an Idaho community cannot appear on a waiting list more than once, does this not support the need for a waiting list under the quota system and, hence, undercut the expressed bias against the waiting list and the quota system, especially in light of the failure to designate any replacement method for determining who might receive a license, other than first in line?

Thank you for your consideration.

Yours Truly,



Brian Donesley

BD/hp



MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 26, 2007

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED: None

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2007 legislative session, after which it will be retained in the Legislative Library (Basement E).

CONVENED: **Chairman Darrington** called the meeting to order at 1:30 p.m

MINUTES: **Senator Hill** made a motion to approve the minutes of the January 22nd meeting as written. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

APPOINTMENTS **State Board of Corrections** reappointed **Jay Nielsen** and appointed **Robin Sandy** to their board.

Jay Nielsen said that it's been a very trying time the last 6 months because the agency has been in a great state of flux, with 3 different directors in a short time. Mr. Nielsen explained the real problem is the employees not knowing where they are going to be. Things are really smoothing out. They take on 30 to 40 prisoners a month and need to scramble to find other places for prisoners.

Chairman Darrington's observation from the past is that not enough information has been shared with the board as appropriate. **Mr. Nielsen** feels that's a fact. **Mr. Nielsen** gets a letter or e-mail at least twice a week, keeping him informed.

Robin Sandy, State Board of Corrections, thanked the committee for her appointments. **Ms. Sandy** explained that things are moving in the right direction and employees are feeling very good. They are seeing cooperation with the Judges and Crime and Parole Board.

Chairman Darrington asked if **Ms. Sandy** was alarmed by a 62% parole rate. **Ms. Sandy** assured the committee she was not concerned about that rate because Idaho has one of the lowest revocation rates in the Nation.

Senator Hill asked for any goals or improvements **Ms. Sandy** might

0.155

MOTION: **Senator Lodge** made a motion to send RS 16718 to print. The motion was seconded by **Senator Jorgenson**. The motion passed by **voice vote**.

RS 16720 **Relating to Uniform Probate Code.** **Mr. Aldridge** explained this RS removes contrary language and conforms the statutes to the practice of serving notices , pleadings, motions, and so forth, under the Idaho Probate Code for conservatorship and guardianships.

MOTION: **Vice Chairman Richardson** made a motion to send RS 16720 to print. **Senator Lodge** seconded the motion.

Senator Davis felt when this RS surfaces again it needs a little bit more explaining, since it deals with some pretty significant rights, and questions whether service by mail is the right method. The motion passed by **voice vote**.

RS 16715 **Relating to Trusts.** **Mr. Aldridge** said that Section One of this bill sets forth the authority of the Trust Advisor and expands the possible powers that a Trust Protector can hold. Section Two deals with spendthrifts trusts. Section Three provides clarification for consistency within Section Two and Three. Section Four defines the term "settlor" which is often used in the probate code.

MOTION: A motion was made by **Senator Davis** to move RS 16715 to print. The motion was seconded by **Vice Chairman Richardson**. The motion carried by **voice vote**.

Docket No. **PENDING RULE - Idaho State Police**
11-0501-0601

Chairman Darrington pointed out two areas of concern, one being on page 45, 010.03 regarding the definition of multipurpose arena, and the second on page 50, 013, regarding priority lists.

Continuation of Committee hearing and voting on Rules Governing Alcohol Beverage Control.

Susan Hazelton, Executive Director of Family Advocate Program spoke in opposition of this rule. **Ms. Hazelton** explained she has had several successful fund raising events at the Big Easy Concert House.

Jermaine Galloway, Boise Police Department supports this rule. He explained the issues with clubs which allow all ages. He pointed out there are more problems with violence and alcohol related issues at certain events. **Senator Jorgenson** asked if **Mr. Galloway** was here with the authority of the Boise Police Department. **Mr. Galloway** explained, he was asked by the Chief because he organizes many of the alcohol compliance checks and alcohol related enforcement in Boise. **Senator Kelly** asked why more problems appear in clubs with mixed ages. **Mr. Galloway** responded he wasn't exactly sure why.

Denise Rogers, Executive Director of Idaho License Beverage Association (ILBA), spoke in connection to the quota system/priority list 156

referred to by Brian Donesley at Wednesday's meeting. 25 years ago Alcohol Beverage Control (ABC) tried to do away with the waiting list, refunds were processed to everyone on the list, attorneys got involved and it was required for Alcohol Beverage Control (ABC) to reestablish that list. This last year an ad hoc committee of industry interests met at ABC facilities. **Ms. Rogers** said it became clear in these meetings by discussions of Lt. Clements and Officers of the Idaho Lodging and Restaurant Association (ILRA) that they wanted to do away with quota system and priority list in order to make those licenses available to their constituents, however, no other alternative system was proposed. At the last meeting held January 8, 2007 it was concluded there should be no changes to the quota system. **Ms. Rogers** believes this rule does not make sense. In conclusion, ILBA agrees with Mr. Donesley's comments presented to the committee on Wednesday.

Tom Dater, a local businessman representing himself, spoke in opposition to this rule. **Mr. Dater** is concerned with the multipurpose arena issue and the implications this rule would have statewide. Don't penalize existing venues, give them grandfather clauses.

Julie Kilgrow, Executive and Artistic Director for Opera Idaho, spoke against this rule. **Ms. Kilgrow** said this rule would hurt non-profit organizations out there trying to find different venues for holding fund raisers.

Viki Dater, representing the Shakespeare Festival, and non-profit organizations, spoke in opposition to 11-0501-0601. **Ms. Dater** would like a definition of fixed seat. She stated the Big Easy is the first venue any non-profit agency thinks about using, because they consider it a theater.

Senator Davis wanted it clear that the legislature doesn't write these rules. These are rules, from the executive branch that are brought to us, we have two choices, we can accept them as written or reject them.

Sandi McFadden, Associate Pastor of Cathedral of the Rockies, First United Methodist Church spoke in opposition of this rule. They have a worship service at the Big Easy.

Jay Gustavsen, Partner in the Law Firm of Davison and Copple, which represents Bravo Entertainment and Big Easy believes this rule targets one entity, the Big Easy. For three years Lt. Clements has targeted the Big Easy. Agents have been in the bar trying to catch underage drinking. Apparently a meeting was set up with an Agent from ABC and Managers of the Big Easy, the Agent let himself in the back door and was taking pictures. **Mr. Gustavsen** says this is harassment and discrimination. He believes open discussion between Police, Legislature, and ABC needs to take place. If these regulations go forward as proposed, the Big Easy will be shut down.

Terra Bourguiguen, Chairman of Highland Elementary School Art Auction spoke in support of the Big Easy. She explained how the Big Easy donated their facility for the school's art auction last year. They 157

generated \$10,000 more than previous years.

Dean Hansen, General Manager of Big Easy Concerts, stated he's proud of what he does at the Big Easy in regard to fund raising. He has heard several members of the Boise Police Force, including Officer Galloway, talk to the Big Easy security director, and comment that they are a model for alcohol control in Boise, Idaho. **Mr. Hansen** feels this rule needs public conversation.

Bob Rosenthal, General Manager of Journal Broadcast Group, said they have six radio stations in the Treasure Valley and do a lot of work with the Big Easy. He spoke in opposition to the language of this rule. He would like to speak on behalf of the charitable organizations and the good work being done at the Big Easy. His company had a staff party at the Big Easy, and they refused to serve alcohol to people who did not have a valid identification.

Jodi Peterson, Director of Advertising for Boise Coop said her job is to help raise monies for non-profits in our community. She stated she couldn't do it without the Big Easy. She believes this rule is poorly written and the Boise Coop stands firmly behind The Big Easy.

Ryan Rodriguez, representing himself and a grass-roots group of people said without the help of the Big Easy, awareness would not have arose for Childhood Leukemia, and he could not have raised funds for medical treatment incurred by his son. He also felt the security at the Big Easy was sufficient.

Matt Roos, Accountant and Director of Contemporary Music Ministry at First United Methodist, Cathedral of the Rockies, spoke about the generosity of the Big Easy for providing worship space, and on-line access for ticket sales. On a personal level he has attended concerts there with his children and felt completely safe.

Brian Donesley, Attorney, spoke regarding regulations defining the term "place," which is a bar room. The Big Easy had eroded from down the alley with no glass you can see through, no exterior advertising, speak easy kind of thing, unseen, unheard. In 1947, when alcohol was first licensed by the drink, those were statutory requirements. Now, that it has evolved into where we don't have to have walls, what is a place? A premise is a building that the place is in. Kids are never allowed in the place, but they can be in the building which is the premise with a restaurant certificate. The bottom line is to keep kids out of bars.

Lt. Robert Clements felt compelled to clarify some misguided issues. Mr. Thorton is not a bad person. All he has done for the community is appreciated. The ABC is not picking on the Big Easy. Business has changed and industry has grown. The exception that was put into the restrictions of minors in 2000, listed multipurpose arenas and that referred to the Bank of America Center, the Idaho Center and places similar to that. However, there is no definition so how do they regulate that? **Mr. Clements** explained the intent is to find a place that is a true multipurpose

arena, such as the Bank of America Center and the Idaho Center. He believes the Big Easy is not holding themselves out as a family restaurant. He said as far as the Shakespeare Festival goes, there is an exception for minors to be present in theaters. **Mr. Clements** said in the last six months they have had undercover folks from the Boise Police Department in the Big Easy, and on two occasions minors have had adults buy alcohol for them. Two weeks ago, when the Men of Las Vegas were at the Big Easy, undercover Boise Police Officers, staff from ABC and minors witnessed more prohibited simulated sexual acts than could be counted. A minor with the X on her hand was served an alcoholic drink by a server of the Big Easy. **Mr. Clements** noted that five years ago ABC received a complaint from a mother who worked in the Governor's office. She said her fifteen-year-old was a victim of a lewd and lascivious case where she met up with a 25-26 year-old that was drinking. The ABC is trying to alleviate public safety problems with minors being in the same atmosphere of a bar.

Mr. Clements noted the age for gang members is 14 to 23 years, and the over-under clubs nationwide do attract that age bracket. The Big Easy is a bar atmosphere and an option would be to post no one under 21 permitted. Have a nice bar and all the concerts you want for adults, or take the option of not serving alcohol and have all-age concerts. ABC is not against non-profits. There are places such as the Rose Room which is non-licensed where you can get a catering permit for special functions. Minors are allowed under a catering permit. You could go to the Grove or places that specialize in hosting different types of events. **Mr. Clements** said somebody needs to decide what they want to be. He is concerned about public safety. It's not just about the Big Easy, but also the Grail up north, the Edge of Beach in Moscow, JD and Friends, and Boogies.

Senator Hill asked if there have been violations at the Big Easy. **Mr. Clements** explained that ABC has been evaluating their restaurant endorsement and gathering up information. During the last six to eight months, on two occasions underage people received alcohol from adults in the facility. Two weeks ago there was multiple violations of simulated sexual acts, when the Men of Las Vegas were there and minors were served alcoholic beverages from a waiter of the Big Easy.

Senator Jorgenson finds it hard to compare the Grail with Big Easy. As Vice President of the North Idaho Opera, he would have never held any fund raisers at the Grail. He can't help wondering if dealing with the Grail has had unintended consequences. **Mr. Clements** assured the committee that is not the case. He explained he was aware of the Big Easy and the problems with minors before he ever encountered the problems with the Grail. The Grail rose to a higher level of priority and they had to be dealt with in that order.

Chairman Darrington asked for a comment on the quota system. **Mr. Clements** explained the quota was creating quite a dilemma. There are problems with economic development where businesses want to come in and get liquor licenses. They cannot do that unless they buy the privilege from someone. Over the years, as more and more people get on the

waiting list, they've found people who pay \$800.00 a year for the state's privilege, and there is a requirement they cannot transfer for two years. They've also found people getting licenses who are not actually in the business as certified on their applications and therefore committing a felony.

Paul Thorton, owner of Bravo Entertainment/Big Easy finds it interesting that this rule has been referred to as the Big Easy rule. **Mr. Thorton** feels they have been targeted even though some of the biggest venues will also be affected. **Mr. Thorton** also wanted to make it clear that the Big Easy has never been cited. He said his accounting manager wanted to quit because of the harassment they have taken to meet the restaurant rule. **Mr. Thorton** expressed how cautious they are when there is an over/under night.

MOTION: **Senator Darrington** made a motion to approve rules of ABC, Docket No. 11-0501-0601 in total with the exception of 010.03 (multi-purpose arena). The motion was seconded by **Senator Lodge**.

Senator Darrington explained his motion is not to disapprove 010.03, but to approve all the rest and not speak to 010.03. If the House sends a resolution to disapprove then the committee will act on that resolution. There was a short discussion on this procedure.

Senator Davis noted he was still struggling with 013.04, the limitations on priority lists. He is hesitant to accept this section.

SUBSTITUTE MOTION: **Senator Davis** made a substitute motion to accept the ABC rules, Docket No. 11-0501-0601 in total except that we formally reject 010.03. The motion was seconded by **Senator Burkett**.

The results for the Substitute Motion are as follows: Senators voting Aye were Darrington, Richardson, Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly. Substitute motion passes.

ADJOURNMENT There being no further business **Chairman Darrington** adjourned the meeting at 3:05 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary



Colonel G. Jerry Russell
Director

Idaho State Police

Service since 1939



C.L. "Butch" Otter
Governor

July 24, 2009

Daniel Fuchs
526 K Shoup Ave West
Twin Falls, ID 83301

Dear Mr. Fuchs;

We have recently reviewed the priority waiting list for incorporated city liquor licenses for the state of Idaho. The Idaho Administrative Procedures Act 11 Title 05 Chapter 01.013.04 discusses the limitations on the priority list specifically stating that "an applicant shall hold only one position at a time on each incorporated city priority list".

Daniel S. Fuchs appears on the priority list for the following cities; Twin Falls, Sun Valley, Ketchum, Hailey, Idaho Falls, and Bellevue numerous times. The fee for your priority applications, receipt numbers 7675, 7676, 7677, 7678, 7679, 7681, 7680, 7538, 7687, 7532, 7531, 7685, 7684, 7534, 7682, and 7692 for the above mentioned cities of dated June 2, 1994 – February 13, 1995 are being refunded based on the limitations described above. Enclosed is a check for the full amount of (\$5,175.00). Please contact our office if you have any questions.

Sincerely,

Lt. Robert Clements
Bureau Chief
Alcohol Beverage Control Bureau
Idaho State Police

P.O. Box 700, Meridian, Idaho 83680-0700

EQUAL OPPORTUNITY EMPLOYER

0 162



REFUNDS ABC FY 2009

DATE TO FSO:

7/20/09

Warrant #:

25035897

LICENSEE NAME

BUSINESS NAME

MAILING ADDRESS

AMOUNT

ACCT #

SUSP REC #

PREM #

REFUND REASON

Today's Date

Daniel Fuchs

Future Liquor Refunds

526 K Shoup Ave West
Twin Falls, ID 83301

5,175.00

3301000

7675

Fut Liq Refund

7/10/2009

7/20/09
7/20/09
7/20/09
7/20/09

Mailed

7/23/09

00163

July 2009

Future Liquor

June Future Liquor Suspense Ending Balance 174,500.00
Adjustments:

Add

Sunray Café Inc Boise 7/10/09 375.00
Mike McGuinness rec 23134 Meridian 7/30/09 375.00

Remove

Dan Fuchs refund Twin Falls rec 7675 (375.00)
Dan Fuchs refund Twin Falls rec 7676 (375.00)
Dan Fuchs refund Twin Falls rec 7677 (375.00)
Dan Fuchs refund Twin Falls rec 7678 (375.00)
Dan Fuchs refund Twin Falls rec 7679 (375.00)
Dan Fuchs refund Twin Falls rec 7680 (375.00)
Dan Fuchs refund Twin Falls rec 7681 (375.00)
Dan Fuchs refund Twin Falls rec 7538 (375.00)
Dan Fuchs refund Idaho Falls rec 7687 (375.00)
Dan Fuchs refund Sun Valley rec 7532 (150.00)
Dan Fuchs refund Sun Valley rec 7531 (150.00)
Dan Fuchs refund Ketchum rec 7685 (250.00)
Dan Fuchs refund Ketchum rec 7684 (250.00)
Dan Fuchs refund Hailey rec 7535 (375.00)
Dan Fuchs refund Hailey rec 7682 (375.00)
Dan Fuchs refund Bellevue rec 7692 (250.00)
Hoyle Investment refund Boise rec 675 (375.00)
Hoyle Investment refund Boise rec 674 (375.00)
Hoyle Investment refund Boise rec 673 (375.00)
Hoyle Investment refund Boise rec 364 (375.00)
Hoyle Investment refund Boise rec 365 (375.00)
Hoyle Investment refund Eagle rec 362 (375.00)
Hoyle Investment refund Eagle rec 363 (375.00)
Hoyle Investment refund Eagle rec 680 (375.00)
Hoyle Investment refund Eagle rec 679 (375.00)
Hoyle Investment refund Eagle rec 678 (375.00)
Hoyle Investment refund Kuna rec 684 (375.00)
Hoyle Investment refund Kuna rec 683 (375.00)
Hoyle Investment refund Kuna rec 347 (375.00)
Hoyle Investment refund Kuna rec 346 (375.00)
Hoyle Investment refund Meridian rec 686 (375.00)
Hoyle Investment refund Meridian rec 685 (375.00)
Hoyle Investment refund Meridian rec 687 (375.00)
Hoyle Investment refund Meridian rec 361 (375.00)
Hoyle Investment refund Star rec 691 (250.00)
Hoyle Investment refund Star rec 692 (250.00)
Hoyle Investment refund Star rec 359 (250.00)
Hoyle Investment refund Nampa rec 689 (375.00)
Hoyle Investment refund Nampa rec 688 (375.00)
Hoyle Investment refund Emmett rec 355 (375.00)
Hoyle Investment refund Emmett rec 682 (375.00)
Hoyle Investment refund Emmett rec 681 (375.00)
John Klonick refund Boise rec 9051 (150.00)
Brian Donesley refund Boise rec 9998 (375.00)

10 165

Kevin Ames refund Boise rec 1017	(375.00)
Ann & Rick Reed refund Boise rec 9775	(375.00)
Chicago Connection LLC refund Meridian rec 665	(375.00)
Chicago Connection LLC refund Meridian rec 664	(375.00)
Chicago Connection LLC refund Eagle rec 667	(375.00)
Chicago Connection LLC refund Nampa rec 661	(375.00)
Scott & Amanda Suciu refund Eagle rec 385	(375.00)
Scott & Amanda Suciu refund Meridian rec 395	(375.00)
Scott & Amanda Suciu refund Boise rec 382	(375.00)
D. Brian Jordan refund Moscow rec 466	(375.00)
John Chalfant refund Kuna rec 652	(375.00)
Troy Willie refund Twin Falls rec 535	(375.00)
Freda Rock refund Twin Falls rec 2113	(375.00)
Freda Rock refund Twin Falls rec 2114	(375.00)
Freda Rock refund Coeur d'Alene rec 2121	(375.00)
Irene Wregglesworth refund Boise rec 7417	(375.00)

July Future Liquor Suspense	<u>153,800.00</u>	
July Future Liquor List Report Ending Balance	153,800.00	
Adjusted July Future Liquor List	153,800.00	0.00

Reconciliation to STARS

STARS July Ending Balance
Adjustments:

July 31, 2009 deposit will show in August STARS

STARS Correct Balance

ABC June Ending Balance	189,090.30
-------------------------	------------

July Ins

Refunds from Suspense

July Outs

<u>189,090.30</u>	(189,090.30)
-------------------	--------------

700 166

October 2008

Future Liquor

September Future Liquor Suspense Ending Balance 192,000.00
Adjustments:

Add

Primeland Investment Group LLC Meridian 10/1 17959	375.00
Paul Chartrand Salmon 10/8 18108	250.00
MeTime Coffeehouse Inc Meridian 10/15 18209	375.00
PBCE Inc Eagle 10/20 18273	375.00
David & Lauren Ianniciello 10/24 Eagle 18383	375.00
David & Lauren Ianniciello 10/24 Meridian 18404	375.00
Jade Stacey & Ryan Higley 10/24 Boise 18405	375.00
Jade Stacey & Ryan Higley 10/24 Meridian 18407	375.00
Jade Stacey & Ryan Higley 10/24 Nampa 18406	375.00

Remove

REFUNDS

Coltra Inc Rathdrum 3891 10/7/08	(250.00)
Wachko LLC Pinehurst 1431 10/7/08	(250.00)
John Chalfant Caldwell 0648 10/7/08	(375.00)
John Chalfant Nampa 0654 10/7/08	(375.00)
Perry Woodward Dubois 4836 10/7/08	(150.00)
William Roe Jr Meridian 9300 10/7/08	(375.00)
The Mallard Fund Meridian 9546 10/7/08	(375.00)
Larry Asin Star 3923 10/7/08	(250.00)
Matthew Hail Driggs 969 10/8/08	(250.00)
Matthew Hail Tetonia 967 10/8/08	(150.00)
Priority LLC Caldwell 700 10/8/08	(375.00)
Priority LLC Twin Falls 710 10/8/08	(375.00)
Priority LLC Council 698 10/8/08	(250.00)
Priority LLC Parma 702 10/8/08	(250.00)
Priority LLC Couer d'Alene 703 10/8/08	(375.00)
Priority LLC Fruitland 707 10/8/08	(250.00)
Priority LLC Homedale 706 10/8/08	(250.00)
Priority LLC Malad 705 10/8/08	(250.00)
Brian Donesley Horseshoe Bend 9995 10/8/08	(150.00)
Brian Donesley Idaho City 9990 10/8/08	(150.00)
Brian Donesley Fairfield 9994 10/8/08	(150.00)
Brian Donesley Jerome 9989 10/8/08	(375.00)
Brian Donesley Lewiston 9987 10/8/08	(375.00)
Brian Donesley Caldwell 9997 10/8/08	(375.00)
John Chalfant Nampa 0653 10/29/08	(375.00)

October Future Liquor Suspense	188,125.00
--------------------------------	------------

October Future Liquor List Report Ending Balance	188,125.00
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Adjusted October Future Liquor List	188,125.00	0.00
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Reconciliation to STARS

STARS October Ending Balance	252,226.40
------------------------------	------------

60 187

Adjustments:

No Sales Journal created or posted for 9/4/08 total amount \$250. (250.00)

Bank deposited wrong amount on 10/23/08 .90 short on the
deposit ticket. Need a credit from bank for .90 (STARS reflects
the correct amount) 0.90

October 31, 2008 deposit will show in November STARS 5,588.00

STARS Correct Balance 257,565.30

ABC September Ending Balance 261,257.30

October Ins 38,418.00

Refunds from Suspense (7,275.00)
Asin, Mallard, Roe, Woodward, Chalfant[3], Wachko, Coltra,
Donesley[7], Priority[7], Hail[2], Seusse

October Outs (34,835.00)

257,565.30 -

2. I make this affidavit based on my personal knowledge and regularly kept business records of the Idaho State Police, Bureau of Alcohol Beverage Control.

3. I am a Lieutenant and the Bureau Chief of the Bureau of Alcohol Beverage Control of the Idaho State Police, and have served in this capacity for over seven and one-half years.

4. I have over 27 years of law enforcement experience, 23 years with the Idaho State Police and 4 years with the Valley County Sheriff's Department.

5. I spent several years as an Accident Reconstructionist for Idaho State Police, several years as a Hazardous Materials Specialist, and several years as the Sergeant for the Commercial Vehicle Safety/Hazardous Materials Section of the Idaho State Police.

6. I have approximately 16 years experience with complex business regulations, including the commercial vehicle industry, hazardous materials and waste regulations and alcohol beverage laws.

7. Prior to my law enforcement career and between my law enforcement employment with the Valley County Sheriff's Department and the Idaho State Police, I worked in grocery store management in McCall, Idaho, involved with retail sales of alcoholic beverages and complying with Idaho alcohol beverage law.

8. This case involves an IDAPA Rule promulgated by ABC to regulate the placement of persons on the various priority lists for the State's municipalities.

9. Fuchs' name appeared on the priority list for the counties of Bonneville, Blaine and Twin Falls for a total of 22 times.

10. In July of 2006, ABC began the process to promulgate a rule to deal with the issue of persons placing their names on the priority lists in such a manner. The rule at issue in this case

was also promulgated to deal with issues of licensees involved in alleged acts of hidden ownership, i.e. unlawful transfers of liquor licenses, in violation of I.C. §23-908(4).

11. IDAPA Rule 11.05.01.013.04 was passed by both the Idaho House and Senate in January 2006, after public hearings and comment were taken, in accordance with the Idaho Administrative Procedures Act.

12. Current counsel for Fuchs participated in an Ad Hoc committee in 2006 that was working to rewrite the Liquor Control Act. During those meetings, copies of ABC's rule changes were passed around for discussion. Counsel for Fuchs had an opportunity to seek a change in the rule at the time and failed to do so.

13. Counsel for Fuchs seemed primarily concerned with the rule at issue affecting persons who were also a member of an LLC, corporation or other business entity.

14. The rule as was written did not allow for persons on the list(s) at the time to have so-called grandfather rights to a position on the list.

15. ABC began removing applicants from municipal priority lists, whose names appeared more than once.

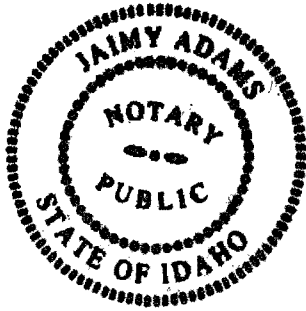
DATED this 04 day of SEPTEMBER 2009.

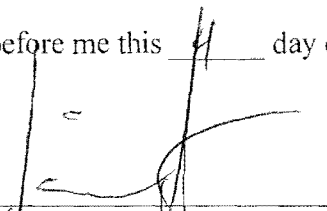


ROBERT CLEMENTS

STATE OF IDAHO)
) ss.
County of Ada)

SUBSCRIBED AND SWORN to before me this 4 day of September 2009.





Notary Public for Idaho
Commission Expires 8/7/12

AFFIDAVIT OF ROBERT CLEMENTS IN SUPPORT OF STATE'S RESPONSE AND
MOTION TO DISMISS PETITIONER'S AMENDED PETITION FOR JUDICIAL REVIEW

1

BRIAN DONESLEY ISB#2313

Attorney at Law
548 North Avenue H
Post Office Box 419
Boise, Idaho 83701-0419
Telephone (208) 343-3851
Facsimile (208) 343-4188

2009 SEP 17 AM 11:26

BY CLERK
 DEPUTY

Attorney for Petitioner

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS**

DANIEL S. FUCHS,

Petitioner,

v.

STATE OF IDAHO, Department of Idaho
State Police, Bureau of Alcohol Beverage
Control,

Respondent.

**ORDER FOR CONSOLIDATION:
Rule 42(a), I.R.C.P.**

CASE NO. CV 2009-3914

DANIEL S. FUCHS,

Petitioner,

v.

STATE OF IDAHO, Department of Idaho
State Police, Bureau of Alcohol Beverage
Control,

Respondent.


CASE NO. CV 2009-4185

THE PETITIONER/PLAINTIFF Daniel S. Fuchs, having come before the Court on September 4, 2009, and having moved that the above-referenced actions be consolidated,

pursuant to Rule 42 (a), I.R.C.P., and Respondent/Defendant having appeared and pled before the Court on September 10, 2009, agreeing in "Defendant's Objection to Plaintiff's Motion for Restraining Order and Preliminary Injunction and Stipulation to Consolidate Cases" at Section III, p.6, that such cases may be consolidated, and the Court having reviewed the records and pleadings contained herein, and good cause appearing,

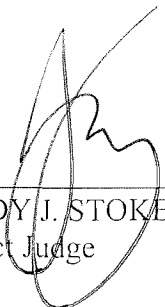
IT IS ORDERED that Case No. CV 2009-3914 before the Honorable Richard G. Bevan and Case No. CV 2009-4185 before the Honorable Randy J. Stoker shall be and is consolidated, such consolidated case to be identified as Case No. CV 2009-3914 for all purposes before this Court hereafter.

DATED this 12 day of September, 2009.



RICHARD G. BEVAN
District Judge

DATED this 17 day of September, 2009.



RANDY J. STOKER
District Judge

CERTIFICATE OF SERVICE

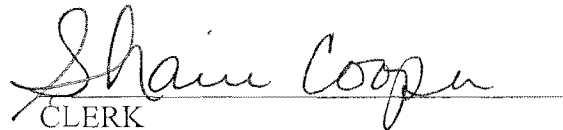
On this 17 day of September, 2009, I hereby certify that I served the above document on the addressee(s) indicated, by delivering the same to the following party(s) by method indicated below:

Brian Donesley
Attorney at Law
P.O. Box 419
Boise, Idaho 83701-0419

☒ U.S. Mail
☐ Hand-Delivered
☐ Overnight Mail
☐ Facsimile (334-2530)

Cheryl E. Meade, Deputy A.G.
Idaho State Police
700 S. Stratford Drive
Meridian, ID 83642-6202

☒ U.S. Mail
☐ Hand-Delivered
☐ Overnight Mail
☐ Facsimile (884-7090)


CLERK

BRIAN DONESLEY ISB#2313

Attorney at Law

548 North Avenue H

Post Office Box 419

Boise, Idaho 83701-0419

Telephone (208) 343-3851

Facsimile (208) 343-4188

2009 SEP 21 PM 4:35

BY _____

Attorney for Petitioner

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS**

DANIEL S. FUCHS,**Petitioner,**

v.

STATE OF IDAHO, Department of Idaho
State Police, Bureau of Alcohol Beverage
Control,

Respondent.**CASE NO. CV 2009-3914****(Consolidated with Case No. CV 2009-4185)**

**MEMORANDUM IN OPPOSITION TO
RESPONDENT'S MOTION TO
DISMISS FOR FAILURE TO EXHAUST
ADMINISTRATIVE REMEDIES**

DANIEL S. FUCHS,**Plaintiff,**

v.

STATE OF IDAHO, Department of Idaho
State Police, Bureau of Alcohol Beverage
Control,

Defendant.

COMES NOW, Petitioner Daniel S. Fuchs ("Fuchs"), by and through his attorney of record, Brian Donesley, and opposes Respondent State of Idaho, Department of Idaho State Police, Bureau of Alcohol Beverage Control's ("ISP") *Motion to Dismiss for Failure to Exhaust Administrative Remedies*:

I. INTRODUCTION

Fuchs filed his Petition for Judicial Review challenging ISP's retroactive application of ISP Rule, IDAPA 11.05.01.013.04, relating to priority waiting lists for the issuance of new liquor licenses. ISP amended the rule in 2007, such that any single applicant could only have his or her name listed only once on any incorporated city priority list. Fuchs had placed his name more than once on priority lists for the cities of Twin Falls, Sun Valley, Ketchum, Hailey, Idaho Falls and Bellevue in 1994 and 1995. On July 24, 2009, applying IDAPA 11.05.01.013.04 retroactively, ISP summarily removed all but one listing in Fuchs' name from the priority lists for these cities, without notice, without hearing and without opportunity to object to the final agency action. Consequently, Fuchs filed his Petition for Judicial Review and then a *Complaint for Declaratory and Injunctive Relief*.¹

ISP alleges that Fuchs failed to exhaust his administrative remedies. While the general rule is that the parties must exhaust administrative remedies, exceptions are: when the interests of justice require; and, when the agency acted outside its authority. And, courts provide litigants the opportunity to challenge the validity of an agency rule in District Court, rather than requiring exhaustion of administrative remedies.

¹ Fuchs filed the Petition for Judicial Review in Case No. 09-3914. Fuchs filed the Complaint for Declaratory and Injunctive Relief in Case No. 09-4185. This Court ordered the consolidation of these cases on September 17, 2009.

The exceptions to the exhaustion requirement apply here. Fuchs is challenging the validity of an agency rule. Further, ISP retroactively misapplied a rule retroactively to an applicant on priority lists for sixteen years the final agency action is in violation of an Idaho statute. I.C. § 73-101 provides, "No part of these compiled laws is retroactive, unless expressly so declared." As there is nothing in IDAPA 11.05.01.0134.04 that suggests it is to be retroactively applied, ISP acted outside its authority.

Further, Fuchs filed his *Complaint for Declaratory and Injunctive Relief*, pursuant to I.C. § 67-5278, alleging that the retroactive application of this rule interfered with or impaired his legal rights or privileges. ISP has removed Fuchs' name from the priority lists. It is notifying succeeding applicants of the availability of new licenses², despite having been told of the imminent filing of the pending action. *Affidavit of Brian Donesley in Support of Plaintiff's Motion for Restraining Order and Preliminary Injunction* filed in Consolidated Case No. CV 2009-4185 (hereinafter "*Affidavit of Brian Donesley*"). This final agency action was unlawful. This Court should deny ISP's Motion to Dismiss for Failure to Exhaust Administrative Remedies.

II. STATEMENT OF FACTS

Fuchs refers this Court to the *Complaint for Declaratory and Injunctive Relief* and the *Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction* for his statement of the facts.

² Contemporaneously with the *Complaint for Declaratory and Injunctive Relief*, Fuchs filed a *Motion for Temporary Restraining Order and Preliminary Injunction*, because he shall suffer immediate and irreparable harm, if ISP is not enjoined from continuing to notify succeeding applicants of new licenses or actually issuing new licenses, until this matter is adjudicated.

III. FUCHS IS NOT REQUIRED TO EXHAUST ADMINISTRATIVE REMEDIES, OR THERE REMAIN NONE TO EXHAUST

While the general rule is that a party must exhaust administrative remedies before seeking judicial relief, there are exceptions to that rule: when the interests of justice so require; and, when the agency acted outside its authority. *Regan v. Kootenai County*, 140 Idaho 721, 725 (2004). Both exceptions apply in this case.

It is in the interests of justice that this Court adjudicate this matter now. Fuchs' legal interests, as well as the legal interests of third parties, are being impaired by ISP's actions. And, further and continuing harm is threatened. ISP continues to notify succeeding applicants of licenses that are available. *Affidavit of Daniel Fuchs in Support of Plaintiff's Motion for Restraining Order and Preliminary Injunction* filed in Consolidated Case No. CV 2009-485 (hereinafter "*Affidavit of Daniel Fuchs*").

And, ISP's action, a retroactive application of an agency rule, violates I.C. § 73-101. By applying a rule in a manner which violates a statute, the agency acts outside its authority. An agency may not substitute its judgment for that of the legislature to enlarge or diminish provisions of a legislative act:

In the absence of valid statutory authority, an administrative agency may not, under the guise of regulation, substitute its judgment for that of the legislature or exercise its sublegislative powers to modify, alter, enlarge or diminish provisions of a legislative act that is being administered.

Roeder Holdings, Inc. v. Ada County, 136 Idaho 809, 813 (2002).

Fuchs is not required to exhaust administrative remedies, before seeking judicial review and declaratory and injunctive relief from this Court. As stated in *Arnzen v. State*, 123 Idaho 899, 906, 854 P.2d 242, 249 (1993):

While as a general rule administrative remedies should be exhausted before resort is had to the courts to challenge the validity of administrative acts, such rule is not absolute and will be departed from where the interests of justice so require, and the rule does not apply unless the administrative agency acts within its authority. This Court has consistently followed this rule.... In relaxing the doctrine of exhaustion this Court held that the rule will be departed from under certain circumstances, first, where the interests of justice so require and secondly, where the agency acts outside its authority.

The interests of justice require that this Court permit this matter to proceed without first requiring Fuchs to exhaust administrative remedies. ISP's July 24, 2009 letter, informing Fuchs that his name had been removed from the relative priority lists, was final agency action and order, subject to judicial review within the meaning of I.C. § 67-5270. As set forth in the *Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction* and the *Affidavit of Daniel Fuchs* and *Affidavit of Brian Donesley*, ISP has since notified succeeding applicants of the availability of new licenses. It threatens continuing and irreparable harm to Fuchs and others and aggravates the harm. When ISP notifies succeeding applicants of the availability to them of new licenses, and each time it issues a license, it creates conflicting obligations and legal requirements. As discussed hereinbelow, the number of liquor licenses and the procedures for qualifying are strictly regulated by statute. Delays caused by a return to the administrative agency would compound problems and create a situation which would make impossible Fuchs' remedies, hence rendering the seeking of recourse futile. This Court should retain this matter and enjoin ISP from further actions, until this matter is adjudicated.

Moreover, ISP's removal of Fuchs' name from the priority lists was contrary to law, and therefore, outside the agency's authority. Exceeding statutory authority, ISP's July 24, 2009 action and letter constituted retroactive application of law. IDAPA 11.05.01.013.04 was amended in 2007, limiting applicants to only one position on any city priority list. But, Fuchs had applied for and remained on the priority lists since 1994. I.C. § 73-101 prohibits retroactive application of laws, unless expressly provided and requires that "no part of these compiled laws is retroactive, unless expressly so declared." "In the absence of an express declaration of legislative intent that a statute apply retroactively, it will not be so applied." *State v. Daicel Chemical Industries, Ltd.*, 141 Idaho 102, 105 (2005) (quoting *Gailey v. Jerome County*, 113 Idaho 430, 432 (1987)). "An application is deemed retrospective if it affects substantive rights." *Myers v. Vermaas*, 114 Idaho 85, 87 (Ct. App. 1988). "Among the rights characterized as substantive are those which are 'contractual or vested' in nature." *Id.* (Internal citations omitted).

The Idaho Supreme Court has long held that a party need not exhaust his administrative remedies, when the party is seeking to enjoin an agency acting outside its authority in a manner contrary to law. In *Bohemian Breweries v. Kohler*, 80 Idaho 438 (1958), the Court did not require the brewery to exhaust its remedies and upheld the district court's injunction against the Commissioner of Law Enforcement:

The threatened action of the Commissioner in this case would cause the brewery irreparable injury in loss of capital investment, money, business earnings and good will. It follows that in a case such as this, where the charge made by the administrative agency does not show a violation of any of the provisions of the law regulating the business of the plaintiff, and consequently does not state any grounds for the contemplated revocation or suspension of its license, a court of equity will interfere by injunction to protect the litigant where it is made to appear that irreparable injury will result from further pursuit of the administrative process. By reason of the facts stated, the Commissioner (administrative

agency) would have no authority to revoke or suspend the license of the brewery and such attempted proceedings can be attacked in the manner here alleged.

Bohemian Brewery, 80 Idaho at 446.

Moreover, *Peterson v. City of Pocatello*, 117 Idaho 234 (App.) is instructive. ISP relies heavily upon *Pounds v. Denison*, 115 Idaho ____, which is distinguished in *Peterson*. While ISP asserts *Pounds* for the general rule "in the context of agency personnel matters," (*Peterson* at 236), it does not provide the Court's explanation of the circumstances in which a court may circumvent the general rule. The Idaho Supreme Court citing *Grever v. Idaho Telephone Co.*, 94 Idaho 900, 903, 499 P.2d 1256, 1259 (1972) provides:

Illustrative of the circumstances which require an exception to the exhaustion doctrine include: (1) where resort to administrative procedures would be futile; (2) where the aggrieved party is challenging the constitutionality of the agency's actions or of the agency itself; or (3) where the aggrieved party has no notice of the initial administrative decision or no opportunity to exercise the administrative review procedures. *McConnell v. City of Seattle*, 44 Wash.App. 316, 722 P.2d 121, 124 (1986)

Further, "determining whether the exception should apply is a question of law on which we will exercise free review," citing *Estate of Friedman v. Pierce Co.*, 51 Wash.App. 176, 752 P.2d 936, 938 (1988).

In *Peterson*, there was a city ordinance which provided for "an independent investigation by the [city] commission," including a "full evidentiary hearing, including the power to subpoena witnesses, to compel the attendance of city employees, to gather physical evidence and records, and to examine all evidence and witnesses presented." *Peterson* chose not to engage such administrative process which was available to him before the decision to terminate his employment would become final. The distinction in the present case is clear. Mr. Fuchs' name was stricken from the lists without notice or opportunity for hearing of any kind. The final

agency action resulted in a final order. The only recourse is to district court. For ISP now to allege that Mr. Fuchs must seek redress before the same administrative agency which has so flagrantly violated his rights under the APA for process required by Idaho statutes is to promote futility. Moreover, Mr. Fuchs had challenged the constitutionality of the agency's actions and was given no opportunity to exercise *administrative* review procedures. There is no basis for ISP's contentions in this regard. The only review is before this Court.

IV. IMMEDIATE AND IRREPARABLE HARM

Here, as in *Bohemian Brewery*, ISP's actions, if left unchecked, would cause Fuchs irreparable harm. As set forth in the *Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction*, Fuchs shall lose of the benefit of years of waiting his turn on priority lists to be issued new licenses and the prospective economic and business interests involved. ISP is now notifying succeeding applicants of the availability of those new licenses which should be offered to Fuchs. Once a new license is issued to another, revocation of the license, so that it might be issued to Fuchs, would be extremely difficult. There are complex procedures and requirements for the issuance of liquor licenses in Idaho under a strict quota system. See I.C. § 23-901, 903, 904 et seq.. There are exceptions to the quota system, but none apply to the priority or waiting lists for city licenses. Only so many licenses are authorized, one per 1500 population. I.C. § 23-903. Once a license were issued to a third party, in violation of Fuchs' legal interests on the lists before the unlawful actions of ISP to remove his name, there could not be issued another license until the population quota were met. And, Fuchs' economic and business interests would be further impaired by the delays which may result in having to wait further for years before another license may become available. In the meantime, his

competitive circumstances shall have been impaired substantially by his competition having gained advantages by having received the license which should have been made available to Fuchs first, in accordance with his standing on the lists superior to those of third persons. ISP may not summarily revoke a license issued to the third party without harming such third party, which could cause a multiplicity of actions before this Court, on grounds similar to those which Fuchs is asserting. Damage to any such third person are foreseeable, such as investments in building the businesses around these liquor licenses which are substantial. Fuchs' legal interests are being irreparably harmed, and justice requires that ISP be enjoined.

**V. A POSITION ON A PRIORITY LIST QUALIFIES AS AN INTEREST
"SUBSTANTIVE" OR "CONTRACTUAL OR VESTED IN NATURE".**

That a position on a priority list qualifies as an interest "substantive" or "contractual or vested in nature," *BHA Investments, Inc. v. State*, 138 Idaho 348 (2003); *Weller v. Hopper*, 85 Idaho 386 (1963), is demonstrated by IDAPA Rule 11.05.01.013.04 itself. In the original and amended versions of the rule, *inter vivos* transfers were prohibited. But an applicant may assign a place on a priority list by devise or bequest in a valid will. That place on a list becomes a part of the applicant's estate at his or her death:

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." 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.

IDAPA 11.05.01.013.04.

The "property right" analysis, though not essential to this case, is well considered in the law, despite Idaho Court dicta that a liquor license is not "property." The cases referred to by

ISP are obsolete, having been based on prior law, which subsequently has been amended to provide, for example, transferability, and taxation of transfers yet failing even to distinguish "property" from "legal rights or privileges" as referred to in I.C. § 67-5278 and in constitutional due process contexts.

The Fourteenth Amendment to the U.S. Constitution provides that:

No state shall ... deprive any person of life, liberty, or property,
without due process of law. U.S. Const. amend. XIV, § 1.

The Idaho Supreme Court has held that the right to conduct a business is a property interest protected by the Fifth and Fourteenth Amendment of the U.S. Constitution. *Coeur d'Alene Garbage v. City of Coeur d'Alene*, 114 Idaho (1988). Further, it has recognized the existence of a property right in liquor licenses, as relates to third parties as a result of Idaho's laws on liquor licenses providing "attributes of value and assignability." *BHA Investments, Inc. v. State*, 138 Idaho 348 (2003); *Weller v. Hopper*, 85 Idaho 386 (1963).

In *License to Sell, Constitutional Protection Against State or Local Government Regulation of Liquor Licensing*, 22 Hastings Const. L.Q. 441 (1994-1995), Professor Saxer explained that there are four indicators or attributes of a liquor license which delineate its property characteristics: the right to obtain; the right to alienate; the right to renew; and, the state's right to revoke. 22 Hastings Const. L.Q. at 447.

The presence of any of these four attributes indicates the existence of a sufficient property interest necessary to accord liquor licenses due process protection. *Id.* at 456.

As discussed below, all four attributes are present in Idaho law and practice with respect to Idaho licenses.

1. **Right to Obtain.** When the state sets forth specific criteria to grant a license, due process rights are created. *Atlanta Bowling Ctr., v. Allen*, 389 F. 2d 713, 716 (5th Cir. 1968);

Bayview-Lofberg's Inc., v. City of Milwaukee, 710 F. Supp. 1267, 1269 (E.D. Wisc. 1989). Moreover, "the most 'property-like' licenses" are those issued in states that set an arbitrary and inflexible limit in the number issued and in those licenses issued in states which specify substantive criteria identifying when a license must be granted. Saxer, 22 Hastings Const. L.Q. at 449.

[D]ue to the limitations respecting the number and location of liquor establishments and the conditions under which the license is issued, a liquor license has come to have the quality of property. *Keaton v. State*, 173 So. 2d 673, 676 (Fla. 1965).

In Idaho, precise criteria governs when and how the Director, Idaho State Police, must issue licenses. There is an inflexible and arbitrary number of licenses allowed.

2. **The Right to Alienate.** The second attribute that indicates that a liquor license involves property rights is the right of a licensee to alienate the license to others by transfer, assignment or bequest. There is no question that Idaho liquor licensees may transfer licenses to third parties, if they do so in compliance with Idaho Code § 23-908 and other applicable law. See *BHA Investments, Inc. v. State*, 138 Idaho 348 (2003); *Weller v. Hopper*, 85 Idaho 386 (1963).

A liquor license will constitute property within the meaning of federal law if the license has a beneficial value for its holder and is sufficiently transferable. *Kimura v. Battley*, 969 F.2d 806, 811 (9th Cir. 1992).

3. **The Right to Renew.** While a renewal application is required under Idaho law, licenses are summarily renewed, further providing the licenses the attribute of property. This is typical of other jurisdictions. The Michigan Supreme Court explained:

[T]he statutory scheme for renewal of liquor licenses is geared to permit renewal of licenses to take place as a matter of course . . . the nature of an understanding exists that once a license is granted a licensee will be permitted to operate for more than one year. *Bundo v. Walled Lake*, 238 N.W. 2d 154, 161 (Mich. 1976).

See also, Perry v. Sindermann, 408 U.S. 593, 601 (1972) (one may have a legitimate claim of entitlement to contract, which may arise whether expressed or implied).

4. **The Right to Revoke.** The level of procedural protection required at a revocation hearing is a strong indication of whether the interest is a vested property interest. *Saxer*, 22 Hastings Const. L.Q. at 456. Idaho licensees are guaranteed due process protection under the Idaho Administrative Procedure Act, Idaho Code § 67-5201 *et seq.*, and the Rules of Administrative Procedure of the Attorney General, IDAPA 04.11.01 *et seq.*

All four criteria of a property right are met in Idaho law. While the Idaho Supreme Court has observed in *dicta* that a liquor license may not be a property right between the licensee and the state, state law does not end the analysis. Federal courts require due process protection and construe the holding of a liquor license as a property interest. *Hoo Chung v. Base*, No. 86-C-3012, 1987 Dist. LEXIS 11859 at 9. (N.D. Ill. Dec. 17, 1987) (stating that, although Illinois law defines a license as a privilege and not a property right, "... federal constitutional law determines whether ..." the Due Process Clause applies). Furthermore, since the Idaho Supreme Court has recognized the "attributes of value" inherent in Idaho liquor licenses, it has acknowledged property rights, even if it has not declared that a liquor license under modern statutes and practices, is property".

The property characteristics of Idaho licenses and the real "attributes of value" of the licenses issued under the current statutory scheme are fairly clear. This value is derived, in part, from the limit on the number of permitted licenses.

[T]he right to exclude others ... is one of the most essential sticks in the bundle of rights that are commonly characterized as property. *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309,

2316 (1994) (*quoting Kaiser Aetna v. United States*, 444 U.S. 176 (1979)).

Current quota licensees have made substantial investments in procurement of and reliance upon the value of their licenses.

The legal interests created by the priority lists are substantial. The interests can be inherited. One cannot be arbitrarily displaced on the lists. For example, ISP could not reshuffle the order of the applicants or place a later applicant ahead of a prior one, if it so wished. An applicant's place on the priority lists is, consequently, a substantive interest, and ISP's retroactive application of the IDAPA rule impairs that substantive interest and violates I.C. § 73-101.

Putting aside arguments whether a liquor license constitutes "property," which engenders a citizen's rights to due process, prior notice and fair hearing on constitutional grounds, state or federal, controlling in this case is the Idaho Administrative Procedures Act, I.C. § 67-5201(12), which states by definition:

"Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons.

An "Order" invokes process in "contested cases." See I.C. § 67-5201(6). I.C. §67-5241 through 5255 define procedures required by the agency.

Also, I.C. § 67-5254, pertains to agency actions against licensees, which provides that an agency shall take no action against a license.

... unless the agency first gives notice and an opportunity for an appropriate contested case in accordance with the provisions of this chapter or other statute.

(See I.C. § 67-5201(10) for APA definition of "License.")

This provision applies to all matters under the purview of the jurisdiction of the Department of Idaho States Police pertaining to licenses still, and again, a "License" is not required to trigger such required process under the "contested case provisions" of the APA.

Notwithstanding, I.C. § 67-5246, as to final orders, at subsection (8), provides that an agency may take "immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code." However, in the Order there is no reference to that code section or to protecting the public interest.

In short, a final order issued, exhausting the administrative process without ISP providing notice or hearing, no opportunity to challenge its actions. There remains no available administrative review. That train already left the station.

This Court should deny ISP's *Motion to Dismiss* and permit this action to proceed.

VI. I.C. § 67-5278 PROVIDES THAT A PARTY MAY SEEK DECLARATORY JUDGMENT REGARDING THE VALIDITY OF AN AGENCY RULE

In the *Complaint for Declaratory and Injunctive Relief*, Fuchs seeks a declaration that an IDAPA rule is void as applied retroactively to Petitioner. Sought is an injunction preventing ISP from taking action impairing Mr. Fuchs' legal interests. ISP, retroactively, has applied the IDAPA rule to interfere with and impair Fuchs' legal rights and privileges. Consequently, Fuchs' *Petition for Judicial Review* and his *Complaint for Declaratory and Injunctive Relief* are properly before this Court.

The Idaho Legislature specifically provided that parties may seek a declaratory judgment against an agency, alleging that agency rules interfere with or impair rights:

The validity or applicability of a rule may be determined in an action for declaratory judgment in the district court, if it is alleged that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the petitioner.

I.C. § 67-5278.

In *Asarco v. State*, 138 Id 719 (2003), the Idaho Supreme Court explained that, while the general rule is that a contestant must first exhaust administrative remedies by filing a complaint in District Court, “There is an exception for declaratory judgments regarding agency rules.” 138 Id. 725 (citing I.C. §§ 67-5278(1), (3)). In *Asarco*, the Supreme Court held that declaratory judgment was proper, because the mining companies were challenging the validity of a rule and, more importantly, the State was already applying the rule in an unlawful manner:

The Mining Companies sought a declaratory judgment from the state district court regarding the validity of the TMDL as a rule. Further, it is undisputed that at least two of the Mining Companies’ NPDES permits were modified by EPA as a result of the TMDL causing the Mining Companies to decrease their effluent limitations at a cost.

Asarco at 725.

Here, like in *Asarco*, Fuchs is challenging the validity of the IDAPA rule. ISP amended IDAPA Rule 11.05.01.013.04 in 2007, such that any applicant could only place his or her name on one priority list at a time. In 2009, ISP sent Fuchs a letter informing him that all but one listing of his name on the relevant priority list had been removed and summarily refunded his money. ISP was removing positions on the lists that Fuchs had placed long before 2007, as early as 1993. This violates I.C. § 73-101.

Furthermore, in *Asarco*, the Supreme Court noted that the agency in that case was already acting upon the rule, thereby “causing the Mining Companies to decrease their effluent limitations at a cost,” hence to suffer economic harm. *Asarco*, 138 Idaho at 725. Here, likewise, ISP summarily removed Fuchs’ name from the list and is now notifying succeeding applicants of the availability of new licenses to them, which was rightfully first to be offered to Fuchs off the lists.

Similarly, in *McKuskey v. Canyon County*, 123 Idaho 657 (1993), the Idaho Supreme Court rejected the County's exhaustion argument. The plaintiff was challenging the validity of the zoning ordinance. There was no administrative proceeding to exhaust:

The trouble with Canyon County's argument is that McCuskey is not seeking a review of any pre-1979 administrative decisions. He is seeking a determination of how his land is zoned. *Accordingly, there are no administrative procedures to exhaust.*

McCuskey, 123 Idaho at 661 (emphasis added).

Here, Fuchs is seeking a determination from the Court that the rule, at least to the extent that ISP seeks to enforce it retroactively, is invalid. There are no administrative procedures to exhaust. The damage has already been done and shall be compounded, unless the agency is enjoined from further action while this matter is adjudicated.

VII. THIS COURT HAS JURISDICTION

Finally, ISP has argued that the exhaustion doctrine deprives this Court of subject matter jurisdiction, (*Respondent's Response to Amended Petition for Judicial Review and Motion to Dismiss and Failure to Exhaust Administrative Remedies* at 9, fn. 3. The Idaho Supreme Court rejected this argument in *Bohemian Breweries*:

Bohemian Breweries, 80 Idaho at 447.

As in *Bohemian Breweries*, Fuchs faces irreparable harm, if ISP is not enjoined. As in *Asarco* and *McCuskey*, Fuchs seeks a declaration of the validity of an agency rule. Here, as above, the agency is interfering with and impairing Plaintiff's legal interests and privileges. There is no administrative process left to exhaust. This Court should deny ISP's Motion to Dismiss.

VIII. CONCLUSION

Fuchs' allegations fall within the exceptions to the exhaustion doctrine. ISP is acting outside its agency authority by retroactively applying a rule in violation of I.C. § 73-101 and by attempting to expand its authority beyond the limits of the legislative act in doing so. No administrative process remains to Plaintiff, after the final agency action and order. If it did, it would be futile, as the decision had been made, and any remedy has been lost in the process, due to the continuing offering and/or issuing of the licenses to others. Moreover, since Fuchs has filed his *Complaint for Declaratory and Injunctive Relief*, challenging the validity of that rule, this Court has subject matter jurisdiction.

This Court should deny ISP's Motion to Dismiss.

DATED this 21st day of September, 2009.




Brian Donesley
Attorney for Petitioner Daniel S. Fuchs

CERTIFICATE OF SERVICE

On this 21st day of September, 2009, I hereby certify that I served the above document on the addressee(s) indicated, by delivering the same to the following party(s) by method indicated below:

Cheryl Meade, Deputy A.G.
Idaho State Police
700 S. Stratford Drive
Meridian, ID 83642-6202

☐ U.S. Mail
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DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2009 NOV -5 PM 5:21

BY _____ CLEAR

sc DEPUTY

Attorney for Petitioner

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS**

DANIEL S. FUCHS,

Petitioner,

v.

STATE OF IDAHO, Department of Idaho
State Police, Bureau of Alcohol Beverage
Control,

Respondent.

CASE NO. CV 2009-3914

**Consolidated with Case No. CV 2009-
4185**

**ORDER RE: PRELIMINARY
INJUNCTION**

DANIEL S. FUCHS,

Plaintiff,

v.

STATE OF IDAHO, Department of Idaho
State Police, Bureau of Alcohol Beverage
Control,

Defendant.

THIS MATTER HAVING COME BEFORE THE COURT on November 2, 2009, and
the Parties having stipulated and agreed that a Preliminary Injunction may be issued by this

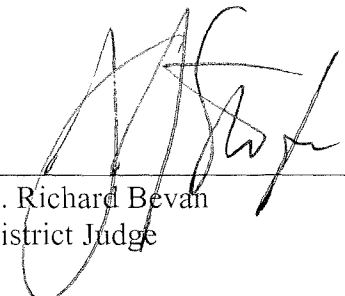
Court enjoining Defendant Idaho State Police, Alcohol Beverage Control, from notifying third parties of the availability of retail alcohol beverage licenses, and/or from issuing any licenses to third parties from the priority lists for the cities of Twin Falls, Sun Valley, Ketchum, Hailey and Bellevue, Idaho, and from continuing any other administrative proceedings or actions pertaining to Defendant regarding the priority lists for these cities.

ACCORDINGLY, THIS COURT'S PRELIMINARY INJUNCTION SHALL AND HEREBY DOES ISSUE enjoining Defendant Idaho State Police, Alcohol Beverage Control, from notifying third parties of the availability of retail alcohol beverage licenses, and/or from issuing any licenses to third parties from the priority lists for the cities of Twin Falls, Sun Valley, Ketchum, Hailey and Bellevue, Idaho, and from continuing any other administrative proceedings or actions pertaining to Defendant regarding the priority lists for these cities, and restoring the *status quo* pertaining to the parties prior to Defendant's removal of Plaintiff's name from the priority lists, except for one (1) listing for such each of above-designated five (5) cities.

Furthermore, either party may notice for hearing a motion to reconsider, vacate or amend this Preliminary Injunction in the future.

It is so ORDERED.

DATED this 5 day of November, 2009.



G. Richard Bevan
District Judge

CERTIFICATE OF SERVICE

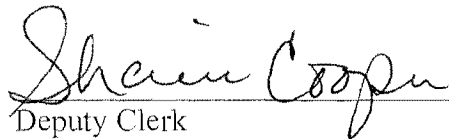
On this 5 day of November, 2009, I hereby certify that I served the above document on the addressees indicated, by delivering the same to the following parties by method indicated below:

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Deputy Clerk