

Dear Senators MCKENZIE, Fulcher, Malepeai, and
Representatives LOERTSCHER, Crane, Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Office of the Governor - Idaho State Liquor Division:

IDAPA 15.10.01 - Rules Pertaining To The Rules of the Idaho State Liquor Division (Docket No.
15-1001-1101).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 10/25/2011. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/23/2011.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4845, or send a written request to the address or FAX
number indicated on the memorandum enclosed.



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate State Affairs Committee and the House State Affairs Committee
FROM: Principal Legislative Research Analyst - Eric Milstead
DATE: October 5, 2011
SUBJECT: Office of the Governor - Idaho State Liquor Division

IDAPA 15.10.01 - Rules Pertaining To The Rules of the Idaho State Liquor Division (Docket No. 15-1001-1101)

The Idaho State Liquor Division submits notice of proposed rulemaking at IDAPA 15.10.01 - Rules of the Idaho State Liquor Division. The agency notes that this docket represents the first time since 1997 that the Division's administrative rules have been revised. And, as the agency states, most of the changes appear to be principally "housekeeping" changes, updating certain language and deleting certain provisions. For example, it appears that the definition of the term "table wine" has been revised to more closely mirror changes to Idaho Code that were made during the 2003 Legislative Session. Similarly, other changes also appear to reflect changes in terminology over time.

The agency states that negotiated rulemaking was not conducted because of the simple nature of the rule-making.

The proposed rule appears to be authorized pursuant to section 23-206, Idaho Code.

cc: Office of the Governor - Idaho State Liquor Division
Jeffrey R. Anderson

IDAPA 15 - OFFICE OF THE GOVERNOR
IDAHO STATE LIQUOR DIVISION
15.10.01 - RULES OF THE IDAHO STATE LIQUOR DIVISION
DOCKET NO. 15-1001-1101
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 23-206(b), 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 October 19, 2011.

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:

The Idaho State Liquor Division needs to make numerous housekeeping revisions to its administrative rules in order to render the rules more accurately coinciding with long-standing agency business practices and procedures. The Liquor Division's administrative rules have not been revised since 1997. The Division desires to make changes in the definitions to more accurately reflect terminology used in ISLD day-to-day operations and make corresponding changes as subsequently referenced in the rules. ISLD also seeks to make numerous other changes in the rules to clarify ambiguous language, eliminate unnecessary terms and eliminate or modernize obsolete terms and language relating to its day-to-day business operations.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jeffrey R. Anderson, Director, (208) 947-9402.

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 October 26, 2011.

DATED this 29th day of August 2011.

Jeffrey R. Anderson, Director
Idaho State Liquor Division
1349 Beechcraft Court
P. O. Box 179001, Boise, ID 83717-9001
Phone: (208) 947-9402 / Fax: (208) 947-9401

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 15-1001-1101

000. LEGAL AUTHORITY.

These rules are adopted by the Director of the Idaho State Liquor Division pursuant to Section 23-206(b), Idaho Code, and are written in accordance with Article III, Sections 24 and 26, Idaho Constitution; and the Idaho Administrative Procedures Act. These rules relate to the sale of packaged ~~l~~liquor as defined in Subsection 004.09 of these rules, and to the general operations of the Idaho State Liquor Division. (3-20-97)()

001. TITLE AND SCOPE.

The title of this chapter is: IDAPA 15.10.01, "Rules of the Idaho State Liquor Division," Office of the Governor. These rules ~~are intended to~~ provide guidance ~~to persons doing business with~~ regarding operational aspects of the ~~Idaho State Liquor~~ Division and support and enforce applicable terms in the Idaho Liquor Act, Title 23, Idaho Code. Promulgation of new rules and revision of existing rules will be a continual process in accordance with the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code. (3-20-97)()

(BREAK IN CONTINUITY OF SECTIONS)

004. DEFINITIONS.

The following terms, whenever used in these rules, shall have the meanings ascribed thereto, unless the context in which they are used clearly requires otherwise. (3-20-97)

01. Bailment. A system of storing Supplier-owned inventory in state-operated Warehouses. The ~~control authority~~ Division holds the Liquor in trust until stock is needed at retail. (3-20-97)()

02. Central Office. The main business office and Warehouse of the Idaho State Liquor Division. (3-20-97)

03. Close Relative. A person related by blood or marriage within the second degree of kinship. (3-20-97)

04. Contract Store. Distributing Stations, as defined in Subsection 004.08 of these rules, whose Liquor inventory is owned by the state under an ~~contractual a~~greement. (3-20-97)()

05. Delisting. The process of discontinuing any product offered for sale resulting in the product's removal ~~of liquor~~ from the Division's Product Line. The decision to retain or delist a product rests solely with the Director. (3-20-97)()

~~2506.~~ **Director.** The chief executive officer of the ~~Idaho State Liquor~~ Division. (3-20-97)()

~~067.~~ **Division.** The Idaho State Liquor Division. (3-20-97)

~~078.~~ **Distressed Liquor.** Liquor which is not in its original state of packaging. (3-20-97)

~~089.~~ **Distributing Station.** A privately owned business that sells Liquor. It operates under an ~~contractual a~~greement with the Division pursuant to Title 23, Chapter 3, Idaho Code. Distributing Stations may also be termed Contract Stores ~~or private stores.~~ (3-20-97)()

~~0910.~~ **Liquor.** Liquor controlled by the Division shall have the definition ascribed to it by Section 23-105, Idaho Code, excluding certain beers as defined in Section 23-1002, Idaho Code, and certain Wines as defined in Section 23-1303, Idaho Code. (3-20-97)

Codified Subsection 004.10 has been moved and renumbered to Subsection 004.25

11. Licensee. Person authorized to sell beer or Wine by the drink or by the bottle, Liquor by the drink, or any combination thereof. (3-20-97)

12. **Listing (Listed).** Liquor that is carried or approved to be carried in the Division's Product Line. (3-20-97)
13. **Political Office.** A public office for which partisan politics is a basis for nomination, election, or appointment. (3-20-97)
14. **Price Quotation.** Written verification of detailed product information submitted to the Division by ~~vendors~~ Suppliers. (3-20-97)()
- ~~15. **Private Store.** Distributing station whose inventory is owned by the station's Special Distributor. (3-20-97)~~
16. **Product Line.** ~~Liquor which is kept in continual inventory and sold~~ Items offered for sale by the Division. (3-20-97)()
17. **Promotional Samples.** Liquor furnished by the liquor industry to local representatives for the purpose of promoting the product which must be attached to another Liquor product in the liquor store as a value added promotion. (3-20-97)
18. **Retail Store.** Any State Store or Distributing Station. (3-20-97)
19. **Samples.** Liquor furnished by the liquor industry to ~~local~~ Supplier ~~Representatives~~ for the purpose of promoting the product. (3-20-97)()
20. **Shortage.** Any amount of cash or Liquor less than the true balance as maintained by the Central Office. Liquor Shortages shall be based on current retail value. (3-20-97)
21. **Special Distributor (Distributor).** A private business owner authorized to operate a Distributing Station. A Special Distributor is not a state employee. (3-20-97)
22. **Special Distributor Agreement (Agreement).** The contract signed by a Special Distributor acknowledging the conditions and terms for operation of a Distributing Station in accordance with Idaho Code and the rules of the Division. (3-20-97)
23. **Special Order.** Any item not ~~carried in~~ regularly offered as part of the Division's Product Line. (3-20-97)()
24. **State Store.** A Retail Store that sells Liquor. It is operated by state employees under the direct supervision of the Division. (3-20-97)
25. **Vendor Supplier.** Any manufacturer, rectifier, importer, wholesaler or Supplier of alcoholic Liquor, Wine, or related products offered for sale by the Division. (3-20-97)()
- ~~25. **Liquor Industry Supplier Representative.** An individual, company, or entity authorized to represent a vendor Supplier in the state of Idaho. ~~This~~ A Supplier Representative may be an individual, a group of individuals operating as a broker~~age-~~ firm or may be an direct employee of ~~a vendor~~ the Supplier. A Liquor Supplier Representative must obtain an annual Supplier Representative permit from the Division. (3-20-97)()~~
26. **Warehouse.** The main Division distribution center and satellite distribution points operated by the Division. ()
27. **Wine (Table Wine).** Alcoholic beverages defined in Sections ~~23-105(c) and~~ 23-1303(a), Idaho Code. (3-20-97)()
28. **Wine Gallon.** The liquid measure equivalent to the volume of two hundred thirty-one (231) cubic inches or one hundred twenty-eight (128) ounces. (3-20-97)

005. -- 009. (RESERVED)

010. RETAIL STORES.

01. **Site Location.** Based on the criteria set forth in this section and in accordance with Sections 23-301 and 23-302, Idaho Code, the Division will select an appropriate Retail Store site to adequately serve the community. (3-20-97)

~~a. State stores will generally be established in larger cities of the state where sales volume cost justifies adequate profitable operation. (3-20-97)~~

~~b. Special distributors will generally be contracted in the smaller cities of the state. However, special distributors who meet or exceed Division operating expectations, and whose sales volume has grown to exceed minimum state store sale thresholds, will not be denied a special distributor agreement because of their larger size of operation. (Sections 23-301 and 23-302, Idaho Code.) (3-20-97)~~

02. **Site Selection Criteria.** The following criteria will be used in selecting a location for a new Retail Store. (3-20-97)

a. Public acceptability of location in accordance with Sections 23-301 and 23-302, Idaho Code. (3-20-97)

b. Location and suitability of premises. (3-20-97)

c. Lease amount may not be the sole determining factor in site selection; final selection will be determined at the discretion of the Director. (3-20-97)

d. Compliance with local zoning. (3-20-97)

03. **Customer Refunds and Exchanges.** No cash refunds will be authorized without prior approval of the Director or his authorized agent. (3-20-97)

a. Liquor may be exchanged for other Liquor of the same or higher price upon approval of the store manager and presentation of a valid receipt. (3-20-97)

b. Liquor brought in for exchange or refund must have been purchased in Idaho through the Division and must have the official Idaho seal as prescribed by the Division. (3-20-97)

c. A re-shelving charge may be assessed on all returned items in accordance with Section 23-311, Idaho Code. (3-20-97)

04. **Disabled Customers.** Appropriate special services, in accordance with the Americans with Disabilities Act, will be provided to disabled customers. (3-20-97)

05. **Special Orders.** Customers seeking Liquor not carried in the Division's Product Line may place a Special Order for such Liquor. (3-20-97)

a. The order must be picked up in total within one (1) week's time after notification by the store manager. Orders not picked up within one (1) week following such notification are subject to forfeiture of deposit and the Liquor may be placed on the shelf for sale. (3-20-97)

b. Order cancellations will be honored if done within seven (7) calendar days from the date the order was placed and, if the cancellation is accepted by the ~~vendor~~ **Supplier**. (3-20-97)()

c. A deposit or a percentage of the order price, as specified by the Director, may be required before a Special Order is placed. (3-20-97)

d. If the Liquor is not available within ninety (90) days, a customer may request a deposit refund if the cancellation is accepted by the ~~vendor~~ **Supplier**. (3-20-97)()

06. Prices. All prices will be in accordance with the published price list set by the Director in accordance with Section 23-207(h), Idaho Code. (3-20-97)

07. Distressed Liquor. Price adjustments can be made on Distressed Liquor with the approval of the Director or his authorized agent. (3-20-97)

08. Hours and Days of Operation. ~~Standard Retail~~ Store hours **and days of business operation** shall be ~~from 11 a.m. to 7 p.m. Monday through Saturday and shall be set by the Director~~ in accordance with Section 23-307, Idaho Code. ~~Special hours of operation may be adjusted as approved by the Director or his authorized agent.~~ (3-20-97)()

09. Customer Response Cards. Each store will have customer response cards for customers to use when filing comments or complaints. These cards will be pre-addressed to the Division. The Director or his authorized agent shall investigate all comments and promptly respond to the customer. (3-20-97)

10. Audits. Designated Division personnel shall perform periodic inspections of all Retail Stores. Such inspections may be on an unannounced basis and may include physical inventory counts with the assistance of the store manager or authorized agent to assess the suitability of inventory levels and product mix and other evaluation procedures. (3-20-97)

11. Admission to State Store. To protect the assets of a State Store, to enhance the safety of Division personnel and the public, and to aid in the performance of the Division's duties, State Store personnel may refuse a person entry into a State Store, may require a person to leave a State Store, or may take other actions as are appropriate to cause the removal of a person from a State Store where such person's presence in the State Store is disrupting performance of the Division's duties or is inconsistent with the Division's charge to curtail the intemperate use of alcoholic beverages. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

~~**012. PRIVATE STORES.**
Private stores will be allowed when the Director finds it to be in the public's best interest. Existence of these stores will be limited to extraordinary circumstances.~~ (3-20-97)

~~**013.**~~ **CONTRACT STORES.**

01. Fiduciary Responsibility. Any and all unremitted monies collected by the Contract Store are held in trust for the Division, and upon their receipt by the Contract Store, are assigned to the Division in accordance with Section 23-401, Idaho Code. (3-20-97)

02. Liquor Shortage. The Contract Store must pay the monetary value of any Shortage to the Division immediately after receipt of the request for payment from the Division showing its calculation of the Shortage. (3-20-97)

a. If the Contract Store disputes the existence, amount of, or responsibility for Liquor or cash Shortages, the Contract Store may request a hearing before the Director. (3-20-97)

b. Any payment made by the Contract Store for Liquor Shortages may be refunded in whole or in part if the Contract Store's position is upheld by the Director. (3-20-97)

03. Compensation. For Contract Store, compensation will be the gross profit allowance set by the Division. Compensation will vary based on sales volume. (3-20-97)

0143. SALES TO LICENSEES.

To be eligible to purchase Liquor at discount (Section 23-217, Idaho Code) a Licensee shall obtain a no cost purchase order permit from any State Store or Distributing Station. (3-20-97)()

01. Valid Permit Term. The permit shall remain valid only as long as the permit holder is an authorized Licensee as defined in Section 23-902(e), Idaho Code. (3-20-97)()

02. Permits Are Not Transferable. Permits are not transferable and will automatically terminate on suspension, revocation, sale, lease, or transfer of the liquor license. (3-20-97)()

0154. -- 019. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

021. VENDORS SUPPLIERS.

01. Price Quotations. All vendors Suppliers must submit a Liquor Price Quotation, on forms prescribed by the Division, for every item they have Listed with the Division. (3-20-97)()

a. All Price Quotations must be submitted to the Division by certified mail or electronic transmission. (3-20-97)

b. Price change quotations must be submitted sixty (60) days in advance of any price changes. (3-20-97)

02. Warranties. Vendor Supplier warranties will conform to the requirements of the Bureau of Alcohol, Tobacco and Firearms Tax and Trade Bureau of the Internal Revenue Service. (3-20-97)()

03. Liquor Shipments. Pursuant to Sections 23-203(a), 23-203(b) and 23-207(d), Idaho Code, all Liquor transported into the state of Idaho shall be under the direction of the Division. (3-20-97)

a. Such Liquor shall be transported directly to, and only to, the Division's Warehouse. (3-20-97)

b. It is a violation of Sections 23-203(a), 23-203(b) and 23-207(d), Idaho Code, for any vendor Supplier or other party to ship Liquor into the state of Idaho for purposes not authorized by the Director, or to any location other than the Division's Warehouse. (3-20-97)()

c. The Division reserves the right to select the mode of transportation for all Liquor within the state of Idaho. (3-20-97)

04. Title to Liquor, Wines and Related Products. The title to liquor Product Line items delivered to the Division passes from the vendor Supplier to the Division when the Division accepts the liquor product, unless Product Line items are delivered directly to Bailment status. (3-20-97)()

a. Liquor The Division reserves the right to conduct quality tests, or to inspect products directly ordered or withdrawn from Bailment will be received subject to the right of the Division to make tests and inspections thereof at any time. (3-20-97)()

b. The Division reserves the right at any time to reject any liquor Product Line item if, upon tests and inspections, the liquor it does not conform to requirements. (3-20-97)()

c. Upon rejection by In the event the Division rejects any delivery, ownership of such property shall automatically vest with products refused will remain with the vendor or transportation company depending upon circumstances and cause of rejection Supplier. It shall be the Supplier's responsibility to remove or relocate any refused products. (3-20-97)()

05. **Liquor Product Returns.** Liquor, Wine, or related products may be returned to ~~vendors~~ Suppliers by the Division, in full or partial cases, for “ordinary and ~~un~~usual commercial reasons” in accordance with the ~~Bureau of Alcohol, Tobacco and Firearms~~ Tax and Trade Bureau of the Internal Revenue Service regulations. (3-20-97)()

a. The ~~vendor~~ Supplier shall immediately reimburse the Division the full invoice cost plus an additional amount, fixed by the Division, as reimbursement for the Division’s expense in shipping to and from its stores and Warehouse. (3-20-97)()

06. **New Listings.** New Listings shall be added at the discretion of the Director pursuant to Sections 23-203 and 23-207, Idaho Code. (3-20-97)

a. For new products to be considered, Vendors Suppliers must submit Price Quotations sixty (60) days in advance of any price change in order to have their product considered for listing and other requested information as shown in the Division’s Listing procedure. (3-20-97)()

b. New Listings will be given one (1) year from the time of Listing to attain a minimum quota as set by the Division. (3-20-97)

07. **Delisting.** Delistings shall be at the discretion of the Director pursuant to Sections 23-203 and 23-207, Idaho Code. (3-20-97)

a. All items Listed with the Division must maintain a minimum quota in order to insure continued distribution Listing in Idaho. (3-20-97)()

b. A list of minimum quotas by class is available upon request from the Division. (3-20-97)

08. **Resident Supplier Representatives.** All ~~vendors~~ Suppliers doing business with the Division shall have resident representation. (3-20-97)()

a. Vendors Suppliers shall be limited to five ten (510) representatives, one (1) of whom must be a resident of Idaho, who will be designated the primary Supplier Representative. (3-20-97)()

b. One (1) Idaho A resident Supplier Representative shall be designated as the primary representative and shall be the direct representative of that vendor cannot have been convicted of any felony. (3-20-97)()

c. In the event that the primary Idaho resident Supplier Representative position becomes vacant, it must be filled within sixty (60) days. (3-20-97)()

09. **Supplier Representative Permits.** ~~Resident~~ Supplier Representatives must obtain an annual permit from the Division. (3-20-97)()

a. Permits must be renewed January 1st of each year. (3-20-97)

b. Permits will not be issued to any holder of a bartender’s permit, retail licensee, a distributor of restaurant or bar supplies, a distributor of beer or Wine, or to a food wholesaler. (3-20-97)

c. Supplier Representatives may represent more than one (1) ~~vendor~~ Supplier without additional permit fees. (3-20-97)()

10. **Facility Visitations.** ~~Vendor~~ Supplier Representatives, or anyone acting in that capacity, must obtain prior approval from the Director or his authorized agent to conduct business at any State Store or Distributing Station. Visits to the Division are to be confined to the Central Office area only, unless otherwise approved by the Director or his authorized agent. (3-20-97)

11. **Samples.** Samples shall be limited to ten (10) Wine Gallons per month and the sizes of Samples shall be that which are permitted by federal regulation or statute. (3-20-97)

12. **Promotional Samples.** Promotional Samples shall be limited to fifty (50) ml size bottles unless specified otherwise by the Director. (3-20-97)

13. **Contact With Licensees.** No ~~vendor~~ **Supplier** Representative, or anyone acting in that capacity, shall deliver any Liquor, Wine, or beer sold by the Division to a Licensee's place of business, other than Samples. (3-20-97)()

a. Such Samples shall be limited to sizes permitted by federal regulation or statute. (3-20-97)

b. Such Samples shall be only those items not carried in that Licensee's Product Line. (3-20-97)

14. **Liquor Displays.** The Division will regulate all Retail Store Liquor displays. (3-20-97)

a. No ~~vendor~~ **Supplier** Representative shall be permitted to interfere with product displays. (3-20-97)()

b. Any ~~vendor~~ **Supplier**-owned display material may be discarded if not picked up within thirty (30) days after termination of the display period. (3-20-97)()

15. **Advertising.** Advertising in all Retail Stores will be in accordance with Section 23-607, Idaho Code. If an industry member is doubtful as to whether a proposed advertisement is in compliance with the provisions of these rules, a specimen of the proposed advertisement may be submitted to the Director of the Division for approval prior to publication. (3-20-97)

16. **Violations.** Any ~~vendor~~ **Supplier** Representative, or anyone acting in that capacity, who violates Title 23, Idaho Code, or any rule of the Division, shall thereby subject the manufacturer's, wholesaler's or Distributor's products to removal from the Division's Product Line or; the Director, at his discretion, may suspend (temporarily or permanently) their ~~liquor industry~~ **Supplier** Representative permit. (3-20-97)()

022. SCHEDULE OF FEES.

The following fees may be charged by the Division. (3-20-97)

01. **Cost Reimbursement.** The Division may seek cost reimbursement, as determined by the Division, from ~~liquor~~ **Supplier** Representatives for mailing, shipping, or other expenses incurred by the Division to distribute information or displays to liquor stores at the request of a ~~liquor~~ **Supplier** Representative. (3-20-97)()

02. **Maximum Fee for Samples.** There will be a maximum fee of twenty-five dollars (\$25) per case charged to ~~liquor~~ **Supplier** Representatives for Samples. (3-20-97)()

03. **Maximum Fee for Annual **Supplier Representative** Permit.** There will be a maximum fee of fifty dollars (\$50) charged to ~~liquor~~ **Supplier** Representatives each January for an annual permit. (3-20-97)()

023. -- 030. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

032. WINES.

~~Table w~~ Wines may be sold in any State Store or Distributing Station at the discretion of the Director pursuant to Section 23-1305, Idaho Code. All rules of the Division applicable to Liquor are also applicable to ~~table~~ Wines and beer sold by the Division. (3-20-97)()