

Dear Senators MCKENZIE, Davis, Stennett, and
Representatives LOERTSCHER, Batt, 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.
15-1001-1401).

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 08/01/2014. 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 08/29/2014.

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 334-4834, or send a written request to the address on the
memorandum attached below.



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate State Affairs Committee and the House State Affairs Committee
FROM: Deputy Division Manager - Eric Milstead
DATE: July 15, 2014
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. 15-1001-1401)

The Idaho State Liquor Division, Office of the Governor, has submitted temporary and proposed rule-making at IDAPA 15.10.01 - Rules of the Idaho State Liquor Division. The Division describes the temporary and proposed rule as clarifying "the ongoing authority for, and practice of, manufacturers of distilled spirits to provide limited retail sales of manufactured distilled spirits products to consumers in light of the new authority to offer sample tasting consumption on the premises of the distillery/distributing station."

We note that the temporary and proposed rule establishes a new term and definition for the term "Distillery Distributing Station." (Section 004.10.) The temporary and proposed rule also provides a section of rule governing "distillery distributing stations." (Section 012.) That new section governs "sample testing," which was authorized by the Legislature during the 2014 Legislative Session via Senate Bill 1335. That same new section also governs retail sales at "distillery distributing stations." (Section 012.02.)

Further, we find that the term "distillery distributing station" is not defined in Idaho Code nor does it appear in any other context in Idaho Code. Because the temporary and proposed rule establishes, defines and governs a new term that is not found in Idaho Code, it may be appropriate for the Legislature to consider authorizing that term in statute, if it wishes to do so.

The Division states that negotiated rulemaking was not conducted due to the passage of Senate Bill 1335 which permits manufacturers of distilled spirits to offer sample tastings in accordance with Idaho Code and that there exists a need for a temporary rule due to the fact that the new law took effect July 1, 2014. The Division does note, however, that "some informal communication and discussion will be advantageous to the Division and stakeholder manufacturers" and the Division anticipates that such discussion will take place.

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. 15-1001-1401

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2014.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. 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 June 18, 2014.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Idaho distilleries have been increasing in number over the last decade. These manufacturers of distilled spirits desire to promote their product in the most responsible and best way possible, and this includes a desire to sell bottles of manufactured product purchased from the Division at retail to tourists visiting the distillery. Idaho law provides for exclusive sale of bottled "alcoholic liquor" (distilled spirits) within the state of Idaho by the Idaho State Liquor Division. Therefore, in order to allow for this practice, the Division contracts with interested distillery manufacturers, in essence, making them limited contract stores/distributing stations for purposes of retail sale of their product to on-premises tourists. With the passage of SB 1335 (section 23-509A, Idaho Code) allowing on-premises sample tasting, there is a potential conflict/ambiguity with section 23-313, Idaho Code, which prohibits consumption on the premises of contract stores/distributing stations.

This temporary and proposed rulemaking simply clarifies the ongoing authority for, and practice of, manufacturers of distilled spirits to provide limited retail sales of manufactured distilled spirits products to consumers in light of the new authority to offer sample tasting consumption on the premises of the distillery/distributing station.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The Idaho Legislature has passed SB 1335 (New Section 23-509A, Idaho Code), effective July 1, 2014, which allows manufacturers of distilled spirits to offer sample tastings in accordance with the statute. It has been determined that a temporary rulemaking is necessary, effective July 1, 2014, in order to clarify the ongoing authority for, and practice of, manufacturers of distilled spirits to provide limited retail sales of manufactured liquor products to Idaho consumers in light of the new authority to offer sample tasting consumption on premises.

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Idaho Legislature has passed SB 1335 (New Section 23-509A, Idaho Code), effective July 1, 2014, which allows manufacturers of distilled spirits to offer sample tastings in accordance with the statute. It has been determined that a temporary rulemaking is necessary, effective July 1, 2014, in order to clarify the ongoing authority for, and practice of, manufacturers of distilled spirits to provide limited retail sales of manufactured liquor products to Idaho consumers in light of the new authority to offer sample tasting consumption on premises. With the rather expedited need for the rulemaking and the short time available, formal negotiated rulemaking is not feasible,

but it is recognized that some informal communication and discussion will be advantageous to the Division and stakeholder manufacturers and such communication is anticipated.

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: NA

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 25, 2014.

DATED this 9th day of May, 2014.

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 TEMPORARY RULE AND THE PROPOSED TEXT OF
DOCKET NO. 15-1001-1401
(Only those Sections being amended are shown.)**

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 Division holds the Liquor in trust until stock is needed at retail. (3-29-12)

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 Agreement. (3-29-12)

05. Delisting. The process of discontinuing any product offered for sale resulting in the product's removal from the Division's Product Line. The decision to retain or delist a product rests solely with the Director. (3-29-12)

06. Director. The chief executive officer of the Division. (3-29-12)

- 07. Division.** The Idaho State Liquor Division. (3-20-97)
- 08. Distressed Liquor.** Liquor which is not in its original state of packaging. (3-20-97)
- 09. Distributing Station.** A privately owned business that sells Liquor. It operates under an Agreement with the Division pursuant to Title 23, Chapter 3, Idaho Code. Distributing Stations may also be termed Contract Stores. (3-29-12)
- 10. Distillery Distributing Station.** A privately owned business that holds a permit issued by the Alcohol and Tobacco Tax and Trade Bureau (TTB), a manufacturer's license pursuant to Section 23-507, Idaho Code, and sells Liquor to retail customers pursuant to a Special Distributor Agreement with the Division in accordance with Title 23, Chapter 3, Idaho Code. Distillery Distributing Stations are "manufacturers of distilled spirits" under Section 23-509A, Idaho Code. Distillery Distributing Stations may also be termed Contract Stores for purposes of retail sales of Liquor within the state of Idaho. (7-1-14)T
- ~~101.~~ **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)
- ~~142.~~ **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)
- ~~123.~~ **Listing (Listed).** Liquor that is carried or approved to be carried in the Division's Product Line. (3-20-97)
- ~~134.~~ **Political Office.** A public office for which partisan politics is a basis for nomination, election, or appointment. (3-20-97)
- ~~145.~~ **Price Quotation.** Written verification of detailed product information submitted to the Division by Suppliers. (3-29-12)
- ~~156.~~ **Product Line.** Items offered for sale by the Division. (3-29-12)
- ~~167.~~ **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. (3-29-12)
- ~~178.~~ **Retail Store.** Any State Store or Distributing Station. (3-20-97)
- ~~189.~~ **Samples.** Liquor furnished by the liquor industry to Supplier Representatives for the purpose of promoting the product. (3-29-12)
- ~~1920.~~ **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)
- ~~201.~~ **Special Distributor (Distributor).** A private business owner authorized to operate a Distributing Station. A Special Distributor is not a state employee. (3-20-97)
- ~~242.~~ **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)
- ~~223.~~ **Special Order.** Any item not regularly offered as part of the Division's Product Line. (3-29-12)
- ~~234.~~ **State Store.** A Retail Store that sells Liquor. It is operated by state employees under the direct supervision of the Division. (3-20-97)

245. **Supplier.** Any manufacturer, rectifier, importer, wholesaler or Supplier of Liquor, Wine, or related products offered for sale by the Division. (3-29-12)

256. **Supplier Representative.** An individual, company, or entity authorized to represent a Supplier in the state of Idaho. A Supplier Representative may be an individual, a group of individuals operating as a brokerage firm or may be a direct employee of the Supplier. A Liquor Supplier Representative must obtain an annual Supplier Representative permit from the Division. (3-29-12)

267. **Warehouse.** The main Division distribution center and satellite distribution points operated by the Division. (3-29-12)

278. **Wine.** Alcoholic beverages defined in Section 23-1303, Idaho Code. (3-29-12)

289. **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)

(BREAK IN CONTINUITY OF SECTIONS)

012. DISTILLERY DISTRIBUTING STATIONS.

01. Sample Tasting. Distillery Distributing Stations may offer sample tastings on the premises of its distillery in accordance with Section 23-509A, Idaho Code. (7-1-14)T

02. Retail Sales. Distillery Distributing Stations may sell Liquor manufactured on premises of such distillery to customers outside the state of Idaho in accordance with Section 23-507, Idaho Code. Distillery Distributing Stations may sell Liquor manufactured on the premises that is purchased from the Division to customers on the premises of its distillery in accordance with and pursuant to a Special Distributor Agreement with the Division. The Special Distributor Agreement shall include governing terms and conditions for retail sale of Liquor manufactured on the premises within the state of Idaho in accordance with Title 23, Chapter 3, Idaho Code, and applicable rules of the Division governing retail sale operations. (7-1-14)T

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)

0134. 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. (3-29-12)

01. 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. (3-29-12)

02. Permits Are Not Transferable. Permits are not transferable and will automatically terminate on suspension, revocation, sale, lease, or transfer of the liquor license. (3-29-12)

0145. -- 019. (RESERVED)