

Dear Senators LODGE, Guthrie, Stennett, and
Representatives CRANE, Armstrong, Gannon:

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 of the Idaho State Liquor Division (ZBR Chapter Rewrite, Fee Rule) -
Proposed Rule (Docket No. 15-1001-2201).

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 08/05/2022. 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 09/02/2022.

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 334-4854, or send a written request to the address on the
memorandum attached below.



Terri Kondeff
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 Drafting Attorney - Ryan Bush
DATE: July 19, 2022
SUBJECT: Office of the Governor - Idaho State Liquor Division

IDAPA 15.10.01 - Rules of the Idaho State Liquor Division (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule (Docket No. 15-1001-2201)

Summary and Stated Reasons for the Rule

The Idaho State Liquor Division submits notice of proposed rulemaking under IDAPA 15.10.01 - Rules of the Idaho State Liquor Division (ZBR Chapter Rewrite, Fee Rule). The Division states that it is updating its rules in order to comply with the Governor's Zero-Based Regulation executive order. Specifically, this chapter rewrite provides for policies and criteria for retail liquor stores, distillery distributing stations, and suppliers and for fees that may be charged by the Division.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted and notice was published in the April edition of the Idaho Administrative Bulletin. A public hearing on this rulemaking will be held on July 26 in Boise and via Zoom. There is no fiscal impact anticipated with this proposed rule, and no new fees or fee increases are being imposed.

Statutory Authority

The proposed rule appears to be within the statutory authority granted to the Division under Section 23-206, Idaho Code.

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

*** PLEASE NOTE ***

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Paul Headlee, Deputy Director Kristin Ford, Manager Keith Bybee, Manager April Renfro, Manager Glenn Harris, Manager
Legislative Services Office Research & Legislation Budget & Policy Analysis Legislative Audits Information Technology

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**IDAPA 15.10 – OFFICE OF THE GOVERNOR
IDAHO STATE LIQUOR DIVISION**

15.10.01 – RULES OF THE IDAHO STATE LIQUOR DIVISION

DOCKET NO. 15-1001-2201 (ZBR CHAPTER REWRITE, FEE RULE)

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 67-5220(1) and 67-5220(2), Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

<p>Tuesday, July 26, 2022 1:00 p.m. to 2:00 p.m. (MT)</p>
<p><i>In-person participation is available at:</i> ISLD Main Office, Jasper Room 1349 E. Beechcraft Ct. Boise, ID 83713</p> <p><i>Phone or virtual participation via Webex is available at:</i> Join Zoom Meeting Meeting ID: 819 5901 1435 Meeting Passcode: 470880</p>

The hearing site 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:

Under [Executive Order 2020-01, Zero-Based Regulation](#), the Idaho State Liquor Division is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. The rule changes are intended to perform a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter.

This pending fee rule adopts and publishes the following rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 15.10, rules of the Idaho State Liquor Division:

IDAPA 15.10

- 15.10.01, Rules of the Idaho State Liquor Division

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

This rulemaking does not impose a new fee or charge, or increase an existing fee or charge, beyond what has been previously submitted for review in the prior rules. IDAPA 15.10.01 Section 022 allows the following fees to be charged by the Division:

01. Cost Reimbursement. The Division may seek cost reimbursement, as determined by the Division, from 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 Supplier Representative.

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

03. Maximum Fee for Annual Supplier Representative Permit. There will be a maximum fee of fifty dollars (\$50) charged to Supplier Representatives each year for an annual permit.

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 as a result of this rulemaking:

This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2023 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 6, 2022 Idaho Administrative Bulletin, Vol. 22-4, pgs. 26-27.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tony Eldeen, Rules Review Officer/Business Analyst, at 208-947-9456.

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 July 27th, 2022.

DATED this 3rd day of June 2022.

Tony Eldeen
Rules Review Officer/Business Analyst
1349 E. Beechcraft Ct.
Boise, ID, 83716
208-947-9456

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 15-1001-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

15.10.01 – RULES OF THE IDAHO STATE LIQUOR DIVISION

000. LEGAL AUTHORITY.

Section 23-206(b), Idaho Code. ()

001. TITLE AND SCOPE.

These rules govern operational aspects of the Division and support the Idaho Liquor Act, Title 23, Idaho Code. ()

002. DEFINITIONS.

The following terms apply: ()

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. ()

02. Close Relative. A person related by blood or marriage within the second degree of kinship. ()

03. Delisting. The process of discontinuing any product offered for sale resulting in the product's removal from the Division's Product Line. ()

04. Director. Chief executive officer of the Division. ()

05. Division. Idaho State Liquor Division. ()

06. 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. ()

07. Distillery Distributing Station. A privately owned business that holds a permit issued by the Alcohol and Tobacco Tax and Trade Bureau (TTB), an Idaho manufacturer's license, and sells Liquor to retail customers. Distillery Distributing Stations are manufacturers of distilled spirits under Section 23-509A, Idaho Code. They may also be termed Contract Stores. ()

08. Liquor. Liquor controlled by the Division has 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. ()

09. Licensee. Person authorized to sell beer or Wine by the drink or by the bottle, Liquor by the drink, or any combination thereof. ()

10. Listing (Listed). Liquor that is carried or approved to be carried in the Division's Product Line. ()

11. Political Office. A public office for which partisan politics is a basis for nomination, election, or appointment. ()

12. Product Line. Items offered for sale by the Division. ()

13. Promotional Samples. Liquor furnished by the liquor industry to local representatives for the purpose of promoting the product that are attached to another Liquor product in the liquor store as a value-added promotion. ()

14. Retail Store. Any State Store or Distributing Station. ()

15. Samples. Liquor furnished by the liquor industry to Supplier Representatives for the purpose of promoting the product. ()

16. Shortage. Any amount of cash or Liquor less than the true balance as maintained by the Central ()

Office. Liquor Shortages are based on current retail value. ()

17. Special Distributor. A private business owner authorized to operate a Distributing Station. A Special Distributor is not a state employee. ()

18. 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. ()

19. State Store. A Retail Store that sells Liquor. It is operated by state employees under the direct supervision of the Division. ()

20. Supplier. Any manufacturer, rectifier, importer, wholesaler or Supplier of Liquor, Wine, or related products offered for sale by the Division. ()

21. 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. ()

22. Warehouse. The main Division distribution center and satellite distribution points. ()

23. Wine. Alcoholic beverages defined in Section 23-1303, Idaho Code. ()

24. Wine Gallon. The liquid measure equivalent to the volume of two hundred thirty-one (231) cubic inches or one hundred twenty-eight (128) ounces. ()

003. -- 009. (RESERVED)

010. RETAIL STORES.

01. Retail Site Location. Per Sections 23-301 and 23-302, Idaho Code, the Division will select appropriate Retail Store site to serve the community. ()

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

a. Public acceptability per Sections 23-301 and 23-302, Idaho Code. ()

b. Location suitability of premises. ()

c. Lease amount will not be the sole determining factor. Final selection will be determined at the discretion of the Director. ()

d. Compliance with local zoning. ()

03. Customer Refunds and Exchanges. Customer refunds and exchanges will be allowed only with approval from the Director or his authorized agent. ()

04. Audits. Designated personnel will perform periodic inspections of all Retail Stores. Such inspections may be on an unannounced basis and include physical inventory counts. ()

05. Admission to State Store. Division personnel may refuse entry or take actions as are appropriate to cause the removal of a person from a State Store premises where such person is disrupting performance of the Division's duties or is inconsistent with the Division's charge to curtail the intemperate use of alcoholic beverages. ()

011. DISTRIBUTING STATIONS.

- 01. Term of Agreement.** A specified period as determined at the discretion of the Director. ()
- 02. Transfer of Agreement.** An Agreement is a personal privilege and is not considered property nor is it assignable or transferable. ()
- 03. Agreement Evaluations.** Periodic evaluations Agreements, will be conducted to ensure uniform and appropriate criteria pursuant to Section 23-302, Idaho Code. These criteria are applicable to the replacement of an existing Distributing Station and to the establishment of new Distributing Station. ()
- 04. Acceptance of Applications.** Applications for Distributing Stations are accepted only in response to public notices. Unsolicited applications may not be held on file pending future openings. ()
- 05. Applicant Selection.** The selection for a Distributing Station will be made by the Director in accordance with Section 23-304, Idaho Code. The Director reserves the right to refuse to select any and all applicants. Applicant selection will be based on the following criteria: ()
- a.** Public acceptability in accordance with Section 23-302, Idaho Code. ()
 - b.** Location and suitability of premises. ()
 - c.** An applicant who has been convicted of, or has pled guilty to, a felony or a crime of moral turpitude (an element of which is dishonesty or fraud) under the laws of any jurisdiction will not be allowed to operate a Distributing Station. ()
 - d.** An applicant may not be a Close Relative of, or have a partnership or other close business relationship with any person employed by the Division who has the responsibility for establishing, approving, or influencing policies of the Division. ()
 - e.** An applicant may be a spouse, child, employee, blood relative, relative through marriage, or business associate of the retiring or deceased Distributor. ()
 - f.** Distributing Stations will not be established in a business that has a license to sell Liquor, Wine or beer by the drink. ()
 - g.** If an existing Distributing Station is sold, the purchaser may, at the sole and absolute discretion of the Division, continue to operate the Distributing Station under comparable terms and conditions applied to the previous Special Distributor. ()
- 06. General Operational Obligations.** Special Distributors will: ()
- a.** Furnish an adequate premises that is kept clean and sanitary at all times. ()
 - b.** Not hold a partisan state elected political office. He cannot be a Close Relative of, or be in a business partnership with a person in a partisan state elected Political Office. ()
 - c.** Not present his views as being representative of the views of the Division and not attempt to politically influence customers in any manner. ()
 - d.** Only sell Liquor received from the Division. ()
 - e.** Only sell Liquor at prices set by the Division in accordance with Section 23-207(g), Idaho Code. ()
 - f.** Not deliver Liquor off premise without explicit authorization of the Director. ()
- 07. Days and Hours of Operation.** ()

- a. The Distributor will not exceed the maximum legal selling hours as set by the Director. ()
- 08. Fiduciary Responsibility.** All unremitted monies collected in trust for the Division are assigned to the Division in accordance with Section 23-401, Idaho Code. ()
- 09. Liquor Shortage.** The Distributor must pay the retail value of any Shortage immediately after receipt of the request for payment from the Division showing its calculation of the Shortage. ()
- a. If the Distributor disputes Liquor or cash Shortages, he may request a hearing before the Director. ()
- b. Any payment made by the Distributor for Liquor shortages may be refunded in whole or in part if the Distributor's position is upheld by the Director. ()
- 10. Compensation.** The compensation paid by the Division to the Special Distributor represents full payment for all services provided by the Distributor. Such compensation will be uniformly applied statewide in accordance with Section 23-305, Idaho Code. ()
- 11. Voluntary Agreement Termination.** ()
- a. The Distributor will allow reasonable time for the Division to conduct a final inventory audit and to remove all Liquor. ()
- b. The sale of the Distributor's business to any other party, the forfeiture of the business to a lien holder, or the foreclosure upon the business will be considered voluntary Agreement termination. ()
- 12. Agreement Termination Procedure.** ()
- a. The Division will notify the distributor by email, certified mail or personal delivery, specifying the reasons. ()
- b. The Division may notify the Distributor that he is immediately suspended pending final determination of the proposed termination. At the time of notification, the Division reserves the right to conduct a final audit and remove all Division property pending a final determination. ()
- c. The Distributor may request a hearing on the proposed termination by notifying the Division in writing within seven (7) days of receiving the termination notice. ()
- d. Upon termination of this agreement, the Division will: ()
- i. Remove all property owned by them; ()
- ii. Cease compensation as of the termination date. ()
- 012. DISTILLERY DISTRIBUTING STATIONS.**
- 01. Sample Tasting.** May be conducted in accordance with Section 23-509A, Idaho Code. ()
- 02. Retail Sales.** 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. ()
- 013. -- 019. (RESERVED)**
- 020. STORE CONVERSIONS.**
The Division reserves the right at any time to convert a State Store to a Distributing Station or to convert a

Distributing Station to a State Store. This right will not be arbitrarily applied. ()

021. SUPPLIERS.

01. Obligations. Suppliers will conform to the requirements of the Tax and Trade Bureau of the U.S. Department of Treasury. ()

02. 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 is under the direction of the Division. ()

a. It is a violation of Sections 23-203(a), 23-203(b) and 23-207(d), Idaho Code, for any Supplier or other party to ship Liquor into the state of Idaho for purposes not authorized by the Director. ()

b. The Division reserves the right to select the mode of transportation for all Liquor within the state of Idaho. ()

03. Title to Liquor, Wines and Related Products. Title to Product Line items passes from the Supplier to the Division when the product is accepted, unless Product Line items are delivered directly to Bailment status. ()

a. The Division reserves the right to conduct quality tests or inspect products. ()

b. The Division reserves the right to reject any Product Line item that does not conform to requirements. ()

c. In the event the Division rejects any delivery, ownership remains with the Supplier. It is the Supplier's responsibility to remove or relocate any refused products. ()

04. Product Returns. Products Line Items may be returned to Suppliers by the Division in accordance with the Tax and Trade Bureau of the U.S. Department of Treasury regulations. ()

05. New Listings. New Listings will be added at the discretion of the Director pursuant to Sections 23-203 and 23-207, Idaho Code. ()

06. Delisting. Delistings are at the discretion of the Director pursuant to Sections 23-203 and 23-207, Idaho Code. ()

07. Resident Supplier Representatives. All Suppliers doing business with the Division will have resident representation. A resident Supplier Representative cannot have been convicted of any felony. ()

08. Supplier Representative Permits. Supplier Representatives will obtain a permit from the Division to conduct business at any State Store or Distributing Station. ()

a. Permits will not be issued to any retail licensee or a distributor of beer or Wine. ()

b. Supplier Representatives may represent more than one (1) Supplier without additional permit fees. ()

09. Samples. Samples are limited to twenty (20) Wine Gallons per month and the sizes of Samples are that which are permitted by federal regulation or statute. ()

10. Promotional Samples. Promotional Samples are limited to fifty (50) ml size bottles unless specified otherwise by the Director. ()

11. Contact With Licensees. No Supplier Representative, or anyone acting in that capacity, will deliver any Liquor, Wine, or beer sold by the Division to a Licensee's place of business, other than Samples of items that are not carried in that Licensee's Product Line. ()

12. Liquor Displays. The Division regulates all Retail Store Liquor displays. ()

13. Violations. Any Supplier Representative, or anyone acting in that capacity, who violates Title 23, Idaho Code, or any rule of the Division, may 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 Supplier Representative permit. ()

022. SCHEDULE OF FEES.

The following fees may be charged by the Division. ()

01. Cost Reimbursement. The Division may seek cost reimbursement, as determined by the Division, from 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 Supplier Representative. ()

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

03. Maximum Fee for Annual Supplier Representative Permit. There will be a maximum fee of fifty dollars (\$50) charged to Supplier Representatives each year for an annual permit. ()

023. -- 030. (RESERVED)

031. STATE STORES SOLICITATION AND PROMOTIONAL PRESENTATIONS.

No school, church, fraternal, civic, political or charitable organization or individual is allowed to solicit for donations or advertise for any purpose on State Store premises. ()

032. -- 999. (RESERVED)

PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

Department or Agency: Idaho State Liquor Division

Agency Contact: Jeffrey R. Anderson, Director Phone: 208-947-9402

Date: June 03, 2022

IDAPA, Chapter and Title Number and Chapter Name:

IDAPA 15.10.01, Rules of the Idaho State Liquor Division

Fee Rule Status: X Proposed Temporary

Rulemaking Docket Number: 15-1001-2201

STATEMENT OF ECONOMIC IMPACT:

The following is a specific description of the fees or charges allowed by IDAPA 15.10.01 Section 022. These rules are authorized pursuant to Section(s) 23-206(b), Idaho Code.

022.01 Cost Reimbursements for Incurred Expenses. The Division may seek cost reimbursement from Supplier Representatives for miscellaneous expenses incurred by the Division. This fee rule is unchanged from the previous year's temporary fee rule. The fees raised from this rule were \$0 in FY19 - FY22 and were \$13,500 in FY18 for cost reimbursements related to a supplier trade show.

022.02 Fees for Samples. There is a maximum fee of \$25 per case charged to Supplier Representatives for Samples. These fees are unchanged from the previous year's temporary fee rule. This fee rule enables the Division to recoup administrative and freight expenses it incurs to provide to our suppliers cases of sample product from within our warehouse. Suppliers use these samples for sales promotion purposes. These fees amount to approximately \$9,000 per year and are considered to be cost neutral.

022.03 Supplier Representative Permits. There is maximum fee of fifty dollars \$50 charged to Supplier Representatives each year for a permit. These fees are unchanged from the previous year's temporary fee rule. These fees allow the Division to recoup the administrative expenses of issuing the permits and amount to approximately \$5,000 per year. They are considered to be cost neutral