

Store Sample Tasting Events

Distilled Spirits Supplier Indemnification and Insurance Requirements

WHEREAS, Idaho Code §§23-313 and 23-314 authorize sample tastings in Idaho State Liquor Division (ISLD) retail stores by distilled spirits suppliers;

WHEREAS, the ISLD Director has issued correspondence to all suppliers and representatives setting forth requirements that must be adhered to for all in-store consumer tasting events in accordance with express conditions set forth at Idaho Code §23-314, said correspondence dated June 2020, and attached hereto, as Exhibit A; and

WHEREAS, Idaho Code §23-314(12) expressly provides that it is the responsibility of the distilled spirits supplier to conduct sample tastings in accordance with the provisions of Idaho Code §23-314 and that the ISLD retail store shall not incur liability arising from a right of action directly resulting from consumption of liquor authorized by §23-314;

THEREFORE, and in accordance with these provisions, the undersigned Distilled spirits supplier hereby acknowledges and agrees to the following indemnification and insurance coverage requirements:

1. Indemnification: Distilled spirits supplier shall indemnify, defend and save harmless the State of Idaho and the ISLD, its officers, agents, and employees, from and against all liability, claims, damages, losses, expenses, actions, attorney fees, and suits whatsoever, including injury or death of others or any employee of distilled spirits supplier or any subcontractor that arise in whole or in part from the negligent or wrongful acts or omissions of distilled spirits supplier, its employees, agents or subcontractors that arise in connection with performance of sample tasting events at ISLD retail stores or that arise from a failure to comply with any state, federal or local statute, law, act, regulation, or rule.

a) Upon receipt of the State of Idaho and the ISLD's tender of indemnity and defense, distilled spirits supplier shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense for the State of Idaho and the ISLD, to begin fulfilling its obligation to indemnify, defend, and save harmless the State of Idaho and the ISLD. Distilled spirits supplier's indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of the State of Idaho and the ISLD under this Contract. However, if it is determined by a final judgment that the State of Idaho and the ISLD's negligent act or omission is the sole proximate cause of a suit or claim, the State of Idaho and the ISLD shall not be entitled to indemnification from distilled spirits supplier with respect to such suit or claim, and the State of Idaho and the ISLD, in its discretion, may reimburse distilled spirits supplier for reasonable defense costs attributable to the defense provided by any Special Deputy Attorney General appointed pursuant to section 1(b).

b) Any legal defense provided by distilled spirits supplier to the State of Idaho and the ISLD under this section must be free of any conflicts of interest, even if retention of separate legal counsel for the State of Idaho and the ISLD is necessary. Any attorney appointed to represent the State of Idaho and the ISLD must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code Sections 67-1401(13) and 67-1409(1).

2. Insurance: distilled spirits supplier shall, for the duration of the Contract, maintain in effect all insurance as required herein and comply with all limits, terms and conditions stipulated therein. Policies shall provide, or be endorsed to provide, all required coverage. Prior to conducting or participating in any sample tasting at an ISLD retail store, distilled spirits supplier must provide certificate(s) or certified endorsement(s), as applicable, of the insurance required. distilled spirits supplier shall not conduct or participate in any sample tasting event at an ISLD retail store until evidence of all required insurance is provided to ISLD.

Insurance (except Worker's Compensation) required by this section (a) (ii)-(iv), below, shall, as applicable, name the State of Idaho and the ISLD as an additional named insured, to the extent of the liabilities assumed by distilled spirits supplier, or loss payee, as the State of Idaho and the ISLD's interests may apply. All insurance shall be with insurers rated A-VII or better in the latest Bests Rating Guide and in good standing and authorized to transact business in Idaho. The coverage provided by such policies shall be primary to any coverage of the State of Idaho and the ISLD on and shall provide that the insurance afforded applies separately to each insured against whom a claim is made, except with respect to the limitation of liability. All required policies shall require thirty (30) days' notice to the State of Idaho and the ISLD, by certified or registered mail, return receipt requested, prior to any cancellation, refusal to renew or any material change in the nature or extent of the coverage provided. If any of the liability insurance required is arranged on a "claims made" basis, "tail coverage" will be required for a duration of twenty-four (24) months after the most recent sample tasting event conducted by distilled spirits supplier. distilled spirits supplier shall be responsible for furnishing certification of "tail coverage" or continuous "claims made" liability coverage for twenty-four (24) months following the most recent sample tasting event conducted by distilled spirits supplier. Continuous "claims made" coverage will be acceptable in lieu of "tail coverage" provided the retroactive date is on or before the first sample tasting event conducted by distilled spirits supplier. distilled spirits supplier waives all rights against the State of Idaho and the ISLD and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the required policies. Policies may contain deductibles but such deductibles shall not be deducted from any damages due to the State of Idaho and the ISLD.

By requiring insurance herein, the State of Idaho and the ISLD does not represent that coverage and limits will necessarily be adequate to protect distilled spirits supplier and such coverage and limits shall not be deemed as a limitation on distilled spirits supplier's liabilities under the indemnities granted to the State of Idaho and the ISLD.

- a) distilled spirits supplier shall maintain the following insurance in amounts not less than the following:
- i) Worker's Compensation Insurance in amounts as required statute. Employer's liability with a liability limit of \$500,000 per Accident, \$500,000 Disease, \$1,000,000 Disease, Policy Limit.
 - ii) Automobile Liability including non-owned and hired with a liability limit of \$1,000,000 per occurrence.
 - iii) Commercial General Liability (CGL) and, if necessary, commercial umbrella or excess liability with a limit of not less than \$1,000,000 each occurrence/\$1,000,000 annual aggregate, if defense is outside the limits. If defense is inside the limits, the limit must be \$2,000,000 each occurrence, and \$2,000,000 aggregate.
 - iv. Liquor Liability with a liability limit of \$2,000,000 per occurrence against potential claims by third parties arising out of the serving of such.

DISTILLED SPIRITS SUPPLIER: _____

Acknowledged and Agreed by: _____

Name:

Title:

EXHIBIT A

ISLD DIRECTOR CORRESPONDENCE DATED JUNE 2020



Brad Little

Executive Office of the Governor

Jeffrey R. Anderson

GOVERNOR

SUBJECT: State Store Sample Tasting Events

To: All Suppliers and Representatives

FROM: Jeff Anderson, Director

FROM: Jeff Anderson, Director

During the 2020 legislative session, the Idaho Legislature passed and Governor Brad Little signed H575 into law, authorizing sample tastings in state retail stores beginning July 1, 2020. The store tasting opportunity puts spirits closer to parity with beer and wine for the purpose of disseminating product information.

Sponsors of store tasting events may offer product tastings to educate consumers while they visit Idaho State Liquor Stores. Store sample tasting events will be conducted at times when most convenient for the public, such as Thursday and Friday evenings in the 5:00 p.m. to 7:00 p.m. time frame; and Saturday afternoon from 2:00 p.m. to 4:00 p.m.

The following requirements have been established and must be adhered to for all store sample tasting events. Suppliers and their Representatives are responsible to relay all information in accordance with the provisions outlined in Idaho code 23-314 to any persons contracted on their behalf.

Who may conduct a product tasting?

- Distilled Spirits Supplier or its Representative may conduct store sample tasting events at the discretion of the Director.

- “Sampling Specialist” is defined as any person twenty-one (21) years of age or older and may not be an employee of the Division.

May State employees participate or assist the sponsor in the tasting event?

- State Liquor store employees shall not pour, dispense or serve tastings to the public; nor shall they encourage consumer participation in the event.
- Idaho State Liquor Division employees shall not consume alcoholic beverages.

What are the general rules of operation for a tasting event?

- Distilled Spirits Supplier or its Representative must obtain approval from the ISLD in order to conduct a store sample tasting event at least thirty (30) days prior to the date of the proposed event.
- Prior to the store sample tasting event, Suppliers or their Representatives must demonstrate evidence of liability insurance in an amount to be determined by the Division and sign and submit an Idaho State Liquor Division Indemnity Against Liability form to the ISLD for record. The signed form and certificate of insurance will be kept on file for a period of 1 Year.
- Prior to the store sample tasting event, suppliers or its representatives must submit the tasting request form to StoreTastings@liquor.idaho.gov, with a list of products to be available to consumers, date of event, time of event, person(s) conducting the event, supplies needed, supplies provided, POS materials to be handed out and requested store locations.
- No alcoholic beverages may be served to persons under the age of twenty-one (21) years, visibly intoxicated persons, or habitual drunkards.
- Only one (1) vendor may conduct a sample store tasting event at any one time.
- Samples shall be served in a specifically identified area within the retail store. Such areas were designed such that the person conducting the tasting can observe and control persons in the area to ensure that no persons under twenty-one (21) years of age or visibly intoxicated persons possess or consume alcohol.
- Customers must remain in the roped off tasting area until they have finished consuming the sample.

Is there a maximum time limit for store sample tasting events?

- The duration of a store sample tasting event is limited to a maximum of two (2) consecutive hours.

How are products acquired for use in a store sample tasting event?

- Products used during the store sample tasting event must be purchased from the Idaho State liquor division, and all taxes for such distilled spirits shall be paid by the manufacturer of the distilled spirits.
- Spirits used during a store sample tasting event must be dispensed from original containers prepared by the manufacturer with labels visible to the consumer.

How many products may be available for sampling at any one tasting event?

- The maximum number of products allowed shall not exceed (10) ten.

How much alcohol may be served to any one (1) consumer at a tasting event?

- Only one-quarter ($\frac{1}{4}$) ounce of alcoholic liquid may be served to any one (1) consumer for each product tasted. A sample may be mixed with another alcoholic liquor or nonalcoholic beverage. No consumer shall be furnished more than three (3) one-quarter ($\frac{1}{4}$) ounce of alcoholic liquid in any 24-hour period.

Items to be provided by the Supplier or its Representative in conjunction with a tasting event?

- Food, such as cheese and crackers, are encouraged to be provided by the sampling specialists during the store sample tasting event.
- The supplier, representative or sampling specialist is responsible for providing all supplies and equipment associated with a store sample tasting event, including, but not limited to, ice buckets, dump buckets, water glasses, tasting containers, extension cords, napkins and table coverings, etc....

How should sampling specialists dispose of unused portions of opened alcohol containers and empty containers?

- At the conclusion of the store sample tasting event, sampling specialists must remove any unused product from the premises.
- Sampling Specialist shall dispose of all empty alcohol containers.
- Unused product, bottles or containers shall not be furnished to employees of the Idaho State Liquor Division.

Where can the forms and documents referenced in this document be found?

- The following resources can be found at [Liquor.idaho.gov/Liquor Laws/Store Tasting events](http://Liquor.idaho.gov/Liquor%20Laws/Store%20Tasting%20events)
 - a) Insurance requirements and Indemnification forms.
 - b) Tasting events request forms.
 - c) Training documents for sampling specialists.

All other state and federal laws and regulations governing liquor must be observed during in-store tasting events.