

# **PENDING FEE RULES**

## **COMMITTEE RULES**

### **REVIEW BOOK**

**Submitted for Review Before**  
**Senate Judiciary & Rules Committee**  
**63rd Idaho Legislature**  
**Second Regular Session**



*Prepared by:*

*Office of the Administrative Rules Coordinator  
Department of Administration*

*January 2016*

***SENATE JUDICIARY & RULES COMMITTEE***

***ADMINISTRATIVE RULES REVIEW***

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**IDAPA 11 - IDAHO STATE POLICE  
ALCOHOL BEVERAGE CONTROL BUREAU**

**11.05.01 - RULES GOVERNING ALCOHOL BEVERAGE CONTROL**

**DOCKET NO. 11-0501-1501**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2016 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee 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 fee rule and a statement of any change between the text of the proposed rule and the text of the pending fee rule with an explanation of the reasons for the change:

This pending fee rule defines “growler” and provides the procedures for the sale and transportation of “growlers” within the state of Idaho and creates a “growler” endorsement for retail alcohol licenses.

There are no changes to the pending fee rule and it is being adopted as originally proposed. The original text of the proposed rule was published in the October 7, 2015 Idaho Administrative Bulletin, [Vol. 15-10, pages 138–139](#).

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 23-932, Idaho Code.

A fee will be charged to alcohol licensees that wish to sell growlers to purchase tamperproof tape to seal a growler at the time it is filled and before it leaves the licensed premise. The tamperproof tape will be provided by ISP Alcohol Beverage Control for \$20 per box. This \$20 fee will cover all expenses of ABC in procuring the tamperproof tape and shipping it to licensees.

Licensees that choose to engage in the sale of growlers will bear the costs as a user fee as it is tied to the number of growlers that are sold by each licensee.

Each box of tamperproof tape will contain approximately 210 three inch strips. Each growler will only require one strip of tamperproof tape to secure the seal. Each strip of tape will cost an alcohol retailer approximately nine cents (\$.09) per growler.

**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:

Adoption of this rule with the fee for licensees to purchase tamperproof tape will be revenue neutral. The fee is expected to cover the cost of the tape and shipping to licensees.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending fee rule, contact Capt. Russell Wheatley, Idaho State Police Alcohol Beverage Control (208) 884-7060 or [abc@isp.idaho.gov](mailto:abc@isp.idaho.gov) and reference Docket Number 11-0501-1501.

DATED this 24th day of November, 2015.

Colonel Ralph W. Powell, Director  
Idaho State Police  
700 S. Stratford Dr., Meridian, ID 83642  
Tel: (208) 884-7003 / Fax: (208) 884-7090

**THE FOLLOWING NOTICE WAS PUBLISHED WITH  
THE TEMPORARY AND PROPOSED FEE RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2015.

**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 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 October 21, 2015.

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:

This rule creates a “growler” endorsement for retail alcohol licenses. A “growler” is a refillable container used to transport beer or wine that is sold to a consumer at retail and does not have a factory seal. This temporary rule defines “growler” and provides the procedures for the sale and transportation of “growlers” within the state of Idaho. Without a seal, growlers are open containers and, as such, are a violation of Section 23-505(2), Idaho Code.

This rule provides for a tamper-proof tape to be affixed to the growler at the time of the refill purchase. The tape will be available from Idaho State Police Alcohol Beverage Control, it will be tamper-proof and will be consistent for all licensees.

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

A fee will be charged to alcohol licensees that wish to sell growlers to purchase tamper-proof tape to seal a growler at the time it is filled and before it leaves the licensed premise. The tamper-proof tape will be provided by ISP Alcohol Beverage Control for twenty dollars (\$20) per box. This twenty dollar (\$20) fee will cover all expenses of ABC in procuring the tamper-proof tape and shipping it to licensees.

Licensees that choose to engage in the sale of growlers will bear the costs as a user fee as it is tied to the number of growlers that are sold by each licensee.

Each box of tamper-proof tape will contain approximately 210 three inch strips. Each growler will only require one strip of tamper-proof tape to secure the seal. Each strip of tape will cost an alcohol retailer approximately nine cents (\$.09) per growler refill.

**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:

Adoption of this rule with the fee for licensees to purchase tamper-proof tape will be revenue neutral. The fee is expected to cover the cost of the tape and shipping to licensees.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the stakeholders in the industry were consulted in the drafting of this rule.

**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 proposed rule, contact Capt. Russell Wheatley, Idaho State Police Alcohol Beverage Control (208) 884-7060 or [abc@isp.idaho.gov](mailto:abc@isp.idaho.gov) and reference **Docket Number 11-0501-1501**.

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 October 28, 2015.

DATED this 28th Day of August, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 11-0501-1501**

**015. GROWLERS.**

**01. Growler Defined.** A growler is a refillable container, securely-covered, between seven hundred fifty (750) ml/twenty-five point three (25.3) ounces and one (1) gallon/one hundred twenty-eight (128) ounces, used to transport beer or wine that has been sold to a consumer at retail. ( )

**02. Filling of Growlers.** A growler may be filled by a retailer licensed for the sale of beer or wine pursuant to Section 23-1010 or 23-1307, Idaho Code, a winery licensed pursuant to Section 23-1307, Idaho Code, or brewery licensed pursuant to Section 23-1003(d), or 23-1003(e), Idaho Code, that has obtained a growler endorsement on the face of the license issued by the Director. A growler must be filled by an employee of a licensed retailer, winery, or brewery pursuant to Section 23-943, Idaho Code, and shall not be filled by members of the public. 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. ( )

**03. Sales and Consumption of Growlers.** Growler sales are for consumption off the premises of a retailer, winery, or brewery pursuant to Sections 23-1010, 23-1307, 23-1003(d), and 23-1003(e), Idaho Code. Consumption of the content of a growler on a licensed premises is unlawful. ( )

**04. Security of Growler Contents.** A growler is not a factory sealed container. A growler must be sealed at the point of sale with tamper-proof tape. Tamper-proof tape shall be in the form of a label prescribed and supplied by the Director for a fee of twenty dollars (\$20) per box. This seal must be affixed to the growler and overlap at least one (1) side of the cap or seal of the growler. A growler that has an opening other than what can be sealed with a cap and tamper-proof tape is considered an "open container" pursuant to Section 23-505, Idaho Code. 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. ( )

**05. Fees.** The Director shall deposit assessed fees into the alcohol beverage control fund established in Section 23-940, Idaho Code. The Alcohol Beverage Control Bureau may, as deemed necessary, expend moneys to cover the costs for the uses identified in Section 015.04 of these rules. ( )

**0156. -- 020. (RESERVED)**