

R82. Alcoholic Beverage Control, Administration.

R82-1. General.

R82-1-101. Scope and Effective Date.

These rules are adopted pursuant to section 32B-2-202 and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act. These rules shall govern the Department and all licensees and permittees of the Commission.

R82-1-102. Definitions.

Definitions of terms in the Act are used in these rules, except where the context of the terms in these rules clearly indicates a different meaning.

- (1) "Act" means the Alcoholic Beverage Control Act, Title 32B.
- (2) "Commission" means the Utah Alcoholic Beverage Control Commission.
- (3) "Department" or "DABC" means the Utah Department of Alcoholic Beverage Control.
- (4) "Director" means the director of the Department of Alcoholic Beverage Control.
- (5) "Dispensing System" means a dispensing system or device which dispenses liquor in controlled quantities not exceeding 1.5 ounces and has a meter which counts the number of pours served.
- (6) "Guest Room" means a space normally utilized by a natural person for occupancy, usually a traveler who lodges at an inn, hotel or resort.
- (7) "Manager" means, depending on the context, a:
 - (a) a person chosen or appointed to manage, direct, or administer the affairs of another person, corporation, or company;
 - (b) an individual chosen or appointed to direct, supervise, or administer the operations at a licensed business; or
 - (c) an individual who supervises the furnishing of an alcoholic product to another, regardless of the exact employment title that the person holds.
- (8) "Point of Sale" means that portion of a package agency, restaurant, limited restaurant, beer-only restaurant, airport lounge, on-premise banquet premises, reception center, recreational amenity on-premise beer retailer, tavern, single event permitted area, temporary special event beer permitted area, or public service special use permitted area that has been designated by the Department as an alcoholic beverage selling area. It also means that portion of an establishment that sells beer for off-premise consumption where the beer is displayed or offered for sale.
- (9) "Respondent" means a Department licensee, or permittee, or employee or agent of a licensee or permittee, or other entity against whom a letter of admonishment or notice of agency action is directed.
- (10) "section" or "subsection" refers to sections and subsections of the Utah Code.
- (11) "Staff" or "authorized staff member" means a person duly authorized by the director of the Department to perform a particular act.
- (12) "subpart" refers to subparagraphs of this rule.
- (13) "Utah Alcoholic Beverage Control Laws" means any Utah statutes, Commission rules and municipal and county ordinances relating to the manufacture, possession, transportation, distribution, sale, supply, wholesale, warehousing, and furnishing of alcoholic beverages.
- (14) "Warning Sign" means a sign no smaller than 8.5 inches high by 11 inches wide, clearly readable, stating: "Warning: drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child. Call the Utah Department of Health at (insert most current toll-free number) with questions or for more information" and "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah." The two warning messages shall be in the same font size but different font styles that are no smaller than 36 point bold. The font size for the health Department contact information shall be no smaller than 20 point bold.

R82-1-103. General Provisions.

- (1) This rule is adopted pursuant to Section 32B-2-202, which authorizes the Commission to act as the general policymaking body regarding alcoholic product in the state and to adopt rules accordingly.
- (2) The purpose of this rule is to provide administrative guidance to the Department and members of the public.
- (3) For purposes of this rule, "cash only" means:
 - (a) cash;
 - (b) certified check;
 - (c) bank draft;
 - (d) cashier's check; or
 - (e) United States Post Office money order.
- (4) The Department may assess the legal rate of interest provided in Sections 15-1-1 through 15-1-3 for any debt or obligation owed to the Department by a licensee, permittee, package agent, or any other person.
- (5) The Department will assess a \$20 charge for any dishonored check payable to the Department if returned for the following reasons:
 - (a) insufficient funds;
 - (b) refer to maker; or
 - (c) account closed.
- (6) Receipt of a check payable to the Department which is returned by the bank for any of the reasons listed in Subsection (4)(a) may result in the immediate suspension of the license, permit, or operation of the package agency of the person tendering the check until legal tender of the United States of America, certified check, bank draft, cashier's check, or United States post office money order is received at the Department offices, 1625 S. 900 West, Salt Lake City, Utah, plus the \$20 returned check charge. Failure to make good the returned check and pay the \$20 returned check charge within 30 days after the license, permit, or operation of the package agency is suspended, is grounds for revocation of the license or permit, or termination of the package agency contract, and the forfeiture of the licensee's, permittee's, or package agent's bond.
- (7) In addition to the remedies listed in Subsection (4)(b), the Department may require that the licensee, permittee, or package agent transact business with the Department on a cash-only basis. The determination of when to put a licensee, permittee, or package agency operator on cash-only basis and the length of the cash-only restriction shall be at the discretion of the Department and shall be based on the following factors:
 - (a) the dollar amount of the returned check;
 - (b) the number of returned checks;
 - (c) the length of time the licensee, permittee, or package agency operator has had a license, permit, or package agency with the Department;
 - (d) the time necessary to collect the returned check; and
 - (e) any other circumstances.

(8) A returned check received by the Department from or on behalf of an applicant for or holder of a single event permit or temporary special event beer permit may, at the discretion of the Department, require that the person or entity that applied for or held the permit be on cash-only basis for any future events requiring permits from the Commission.

(9) In addition to the remedies established in this rule, the Department may pursue any legal remedies to effect collection of any returned check.

(10) For purposes of the "Landed case cost" defined in Section 32B-2-304, the cost of the product includes a case handling markup determined by the Department.

(11) If a manufacturer and the Department have agreed to allow the manufacturer to ship an alcoholic beverage directly to a state store or package agency without being received and stored by the Department in the Department's warehouse, the manufacturer shall receive a credit equaling the case handling markup for the product that is not warehoused by the Department.

(12) The Department shall collect and remit the case handling markup as outlined in Section 32B-2-304.

(13) Pursuant to Section 32B-2-202, this rule authorizes the director to make internal Department policies in accordance with Section 32B-2-206 for Department duties as defined by Section 32B-2-204 for listing and delisting products to include a program to place orders for products not kept for sale by the Department.

R82-1-104. Advertising.

(1) This rule is made pursuant to subsection 32B-1-206(4) which authorizes the advertising of alcoholic product in this state under guidelines established by the Commission except to the extent prohibited by Title 32B.

(2) Definitions.

(a)(i) For purposes of this rule, "advertisement" or "advertising" includes any written or verbal statement, illustration, or depiction which is calculated to induce alcoholic beverage sales, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or other public display, public transit card, other periodical literature, publication or in a radio or television broadcast, or in any other media.

(ii) "Advertisement" or "advertising" does not mean:

(A) labels on products; or

(B) any editorial or other reading material in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any alcoholic beverage industry member or retailer, and which is not written by or at the direction of the industry member or retailer.

(b) For purposes of this rule, "minor" or "minors" shall mean persons under the age of 21 years.

(3) Application.

(a) This rule governs the regulation of advertising of alcoholic beverages sold within the state, except where the regulation of interstate electronic media advertising is preempted by federal law. This rule incorporates by reference the Federal Alcohol Administration Act, 27 U.S.C. 205(f), and Subchapter A, Parts 4, 5, 6 and 7 of the regulations of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury in 27 CFR 4 5, 6 and 7 (1993 Edition). These provisions shall regulate the labeling and advertising of alcoholic beverages sold within this state, except where federal statutes and regulations are found to be contrary to or inconsistent with the provisions of the statutes and rules of this state.

(b) 27 CFR 7.50 provides that federal laws apply only to the extent that the laws of a state impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in the state. This rule, therefore, adopts and incorporates by reference federal laws, previously referenced in subparagraph (a), relating to the advertising of malt beverage products.

(4) Current statutes and rules restricting the advertising, display, or display of price lists of liquor products by the Department, state stores, or type 1, 2 or 3 package agencies, as described in R82-2-301, are applicable.

(5) All advertising of liquor and beer by manufacturers, suppliers, importers, local industry representatives, wholesalers, permittees, and licensed retailers of such products, and type 4 and 5 package agencies as defined in R82-2-301 shall comply with the advertising requirements listed in subpart (6) of this rule.

(6) Advertising Requirements. Any advertising or advertisement authorized by this rule:

(a) may not violate any federal laws referenced in subpart (3) of this rule;

(b) may not contain any statement, design, device, or representation that is false or misleading;

(c) may not contain any statement, design, device, or representation that is obscene or indecent;

(d) may not refer to, portray or imply illegal conduct, illegal activity, abusive or violent relationships or situations, or anti-social behavior, except in the context of public service advertisements or announcements to educate and inform people of the dangers, hazards and risks associated with irresponsible drinking or drinking by persons under the age of 21 years;

(e) may not encourage over-consumption or intoxication, promote the intoxicating effects of alcohol consumption, or overtly promote increased consumption of alcoholic products;

(f) may not advertise any unlawful discounting practice such as "happy hour", "two drinks for the price of one", "free alcohol", or "all you can drink for \$...".

(g) may not encourage or condone drunk driving;

(h) may not depict the act of drinking;

(i) may not promote or encourage the sale to or use of alcohol by minors;

(j) may not be directed or appeal primarily to minors by:

(i) using any symbol, language, music, gesture, cartoon character, or childhood figure such as Santa Claus that primarily appeals to minors;

(ii) employing any entertainment figure or group that appeals primarily to minors;

(iii) placing advertising in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be minors, or placing advertising on the comic pages of magazines, newspapers, or other publications;

(iv) placing advertising in any school, college or university magazine, newspaper, program, television program, radio program, or other media, or sponsoring any school, college or university activity;

(v) using models or actors in the advertising that are or reasonably appear to be minors;

(vi) advertising at an event where most of the audience is reasonably expected to be minors; or

(vii) using alcoholic beverage identification, including logos, trademarks, or names on clothing, toys, games or game equipment, or other materials intended for use primarily by minors.

(k) may not portray use of alcohol by a person while that person is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination;

(l) may not contain claims or representations that individuals can obtain social, professional, educational, athletic, or financial success or status as a result of alcoholic beverage consumption, or claim or represent that individuals can solve social, personal, or physical problems as a result of such consumption;

(m) may not offer alcoholic beverages without charge;

(n) may not require the purchase, sale, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity; and

(o) may provide information regarding product availability and price, and factual information regarding product qualities, but may not imply by use of appealing characters or life-enhancing images that consumption of the product will benefit the consumer's health, physical prowess, sexual prowess, athletic ability, social welfare, or capacity to enjoy life's activities.

(7) Violations. A violation of this rule may result in any administrative penalties authorized by section 32B-3-205, and may result in the imposition of the criminal penalty of a class B misdemeanor pursuant to sections 32B-4-304 and -510.

R82-1-105. Label Approvals.

(1) Authority. This rule is pursuant to sections 32B-1-601 through 32B-1-608 which give the Commission the authority to adopt rules necessary to fully implement certain aspects of the Malted Beverages Act,

(2) Purpose.

(a) Pursuant to section 32B-1-604, a manufacturer may not distribute or sell in this state any malted beverage including beer, heavy beer, and flavored malt beverage unless the label and packaging of the beverage has been first approved by the Department.

(b) The requirements and procedures for applying for label and packaging approval are set forth in sections 32B-1-604 through 32B-1-606.

(c) This rule:

(i) provides supplemental procedures for applying for and processing label and package approvals;

(ii) defines the meaning of certain terms in the Malted Beverages Act; and

(iii) establishes the format of certain words and phrases required on the containers and packaging of certain malt beverages as required by section 32B-1-606.

(3) Application of Rule.

(a) A complete set of original labels for each size of container must accompany each application for label and packaging approval.

(i) This includes all band, strip, front and back labels appearing on any individual container.

(ii) Original containers will not be accepted.

(iii) If original labels cannot be obtained, the following will be accepted:

(A) color reproductions that are exact size; or

(B) a copy of the federal certificate of label approval (COLA) from the Department of Treasury, Tax and Trade Bureau Form TTB F5100.31 with the exact size label if printed in color.

(b) An application for approval is required for any revision of a previously approved label.

(c) A "revision" includes any changes to packaging that significantly modifies the notice that the product is an alcoholic beverage.

(d) An application for approval is not required for any changes to packaging that relates to subject matter other than the required notice that the product is an alcoholic beverage such as temporary seasonal or promotional themes.

(e) Pursuant to section 32B-1-606, a malt beverage that is packaged in a manner that is similar to a label or package used for a nonalcoholic beverage must bear a prominently displayed label or a firmly affixed sticker on the container that includes the statement "alcoholic beverage" or "contains alcohol". Any packaging of a flavored malt beverage must also prominently include, either imprinted on the packaging or imprinted on a sticker firmly affixed to the packaging the statement "alcoholic beverage" or "contains alcohol". The words in the statement must appear:

(i) in capital letters and bold type;

(ii) in a solid contrasting background;

(iii) on the front of the container and packaging;

(iv) in a format that is readily legible; and

(v) separate and apart from any descriptive or explanatory information.

(f) Pursuant to section 32B-1-606, the label on a flavored malt beverage container shall state the alcohol content as a percentage of alcohol by volume or by weight. The statement must appear:

(i) in capital letters and bold type;

(ii) in a solid contrasting background;

(iii) in a format that is readily legible; and

(iv) separate and apart from any descriptive or explanatory information.

R82-1-106. Alcohol Content.

(1) This rule is made pursuant to sections 32B-1-607, which authorizes the Commission to make rules implementing Part 6, and 32B-2-204, which authorizes the Department to make rules related to measuring the alcohol content of beer.

(2) Before November 1, 2019, a product complies with Title 32B and rules governing labeling if:

(a) the product is beer and if, after sampling, it is determined to contain no more than 3.35% alcohol by weight or 4.18% alcohol by volume; or

(b) the product is heavy beer and if, after sampling, it is determined to contain at least 3.82% alcohol by volume.

(3) On or after November 1, 2019, a product complies with Title 32B and rules governing labeling if:

(a) the product is beer and if, after sampling, it is determined to contain no more than 4.15% alcohol by weight or 5.18% alcohol by volume; or

(b) the product is heavy beer and if, after sampling, it is determined to contain at least 4.82% alcohol by volume.

R82-1-107. Department Training Programs.

(1) Authority and general purpose. This rule is pursuant to 32B-1-704, which requires that the Department to make rules to develop and implement the retail manager and violation training programs.

(2) Application of the rule.

(a) The requirements for the retail manager and violation training programs described in section 32B-1-704.

(b) The Department shall accurately identify each individual who takes and completes a training program by maintaining a database in which individual are identified by the last four digits of their social security number or another four-digit number that the individual chooses and can remember.

(c) The Department will administer a test to ensure an individual taking a training program is focused and actively engaged in the training material throughout the training program.

(d) The Department shall issue a certification card to each individual who has completed a training program. Each licensee shall keep a copy of the card on the licensed premise for each individual required to complete the training program.

(e) A fee of \$25 will be charged to each individual for participation in a training program to cover the Department's cost of providing the training program.

R82-1-208. Percentage Lease Agreements.

(1) The authority for this rule is Section 32B-1-208

(2) This rule establishes the following:

(a) the maximum percentage of revenue from alcohol sales a percentage lease agreement may require; and

(b) the procedure for submitting a percentage lease to the department.

(3) As used in this section, "Percentage lease" means the same as in Section 32B-1-208.

(4)(a) The maximum percentage of revenue from alcohol sales allowed in a percentage lease is 20 percent, whether that percentage is:

(i) described through a rent-sharing or profit-sharing agreement;

(ii) calculated in part on the gross sales or profits of the licensee, including profits from the sale of alcoholic beverages; or

(iii) described in the percentage lease in some other manner.

(b) Parties to a percentage lease must submit a copy to the department for review as part of the application for licensing.

(c) If during the review process the Department is unable to determine how alcohol sales in a percentage lease agreement are being shared, based on the language in the percentage lease agreement, the department staff shall return the lease agreement and license application, and the Commission may decline to act on the application.

(d) An applicant may resubmit a lease once the language in the lease is sufficiently clear for the Department to determine that no more than 20% of profits from the sale of alcoholic beverages will be distributed to a lessor.

(e) The lessor cannot control or acquire an ownership interest in the business of the lessee.

(f) An industry representative is prohibited from profit sharing and ownership of retail license operations.

R82-1-304. Background Checks for Resort Licensees.

(1) The authority for this rule is Subsection 32B-1-304(7).

(2) This rule describes what "engages in the management" of a resort means for purposes of determining which individuals must undergo a background check as part of the application process for a resort license.

(3) As used in this section, "Engages in the management of a resort licensee" means manages or controls:

(a) the daily operations of the business entity of the resort licensee; or

(b) the finances of the resort licensee.

(4) An individual who engages in the management of a resort licensee shall undergo a background check as part of the application process for obtaining or renewing a resort license.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: October 27, 2020

Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-1-208; 32B-1-304(7)

R82. Alcoholic Beverage Control, Administration.

R82-2. Administration.

R82-2-101. Notice of Hearings.

(1) These rules are adopted pursuant to section 32B-2-202 regarding the administration of the Department and Commission. They shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act.

(2) Notice of hearings, other than disciplinary hearings. Public notice shall be made no less than 10 business days before to the day on which the hearing is scheduled to be held.

(3) The rule governing disciplinary hearings is R82-3-103.

R82-2-102. Emergency Meetings.

(1) Purpose. There may be times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Section 52-4-202 cannot be met. Pursuant to subsection 52-4-202(5), under such circumstances those notice requirements need not be followed but rather the "best notice practicable" shall be given.

(2) Authority. This rule is enacted under the authority of sections 63G-3-201 and 32B-2-202.

(3) Procedure. In addition to the requirements of subsection 52-4-202(5), in convening the meeting and voting in the affirmative to hold such an emergency meeting, the Commission shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the Commission to hold an emergency meeting to consider matters of an emergency or urgent nature.

R82-2-103. Electronic Meetings.

(1) Purpose. Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule establishes procedures for conducting Commission meetings by electronic means.

(2) Authority. This rule is enacted under the authority of sections 52-4-207, 63G-3-201 and 32B-2-202.

(3) Procedure. The following provisions govern any meeting at which one or more Commissioners appear telephonically or electronically pursuant to section 52-4-207:

(a) If one or more members of the Commission may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Commission not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to at least one newspaper of general circulation within the state or to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

(c) Notice of the possibility of an electronic meeting shall be given to the Commissioners at least 24 hours before the meeting. In addition, the notice shall describe how a Commissioner may participate in the meeting electronically or telephonically.

(d) When notice is given of the possibility of a commissioner appearing electronically or telephonically, any Commissioner may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Commission. At the commencement of the meeting, or at such time as any Commissioner initially appears electronically or telephonically, the Chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the Commission who are not at the physical location of the meeting shall be confirmed by the Chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Alcoholic Beverage Control, 1625 S. 900 West, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

R82-2-104. Utah Government Records and Access Management Act.

(1) Purpose. To provide procedures for access to government records of the Commission and the Department.

(2) Authority. The authority for this rule is subsections 63G-2-204(2)(d) and 63A-12-104 of the Government Records Access and Management Act (GRAMA).

(3) Requests for Access. Requests for access to government records of the Commission or the Department should be written and made to the executive secretary of the Commission or the records officer of the Department, as the case may be, at the following address: Department of Alcoholic Beverage Control, 1625 S. 900 West, P.O. Box 30408, Salt Lake City, Utah 84130-0408.

(4) Fees. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the Commission and the Department by contacting the appropriate official specified in paragraph (3) above. The Department may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed \$50 or if the requester has not paid fees from previous requests. Fees for duplication and compilation of a record may be waived under certain circumstances described in subsection 63G-2-203(4). Requests for this waiver of fees must be made to the appropriate official specified in subpart (3) of this rule.

(5) Requests for Access for Research Purposes. Access to private or controlled records for research purposes is allowed by section 63G-2-202(8). Requests for access to these records for research purposes may be made to the appropriate official specified in paragraph (3) above.

(6) Intellectual Property Rights. Whenever the Commission or Department determines that it owns an intellectual property right to a portion of its records, it may elect to duplicate and distribute, or control any materials, in accordance with the provisions of section 63G-2-201(10). Decisions affecting records covered by these rights will be made by the appropriate official specified in subpart (3) of this rule. Any questions regarding the duplication and distribution of materials should be addressed to that individual.

(7) Requests to Amend a Record. An individual may contest the accuracy or completeness of a document pertaining to him pursuant to section 63G-2-603. The request should be made to the appropriate official specified in subpart (3) of this rule.

(8) Time Periods Under GRAMA. The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R82-2-105. Americans with Disabilities Act Grievance Procedures.

(1) Authority and Purpose.

(a) This rule is made under authority of sections 32B-2-202 and 63G-3-201. As required by 28 CFR 35.107, the Department of Alcoholic Beverage Control, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended.

(b) The purpose of this rule is to implement the provisions of 28 CFR 35 which in turn implements Title II of the Americans with Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the Department because of a disability.

(2) Definitions.

(a) "ADA Coordinator" means the employee assigned by the executive director to investigate and facilitate the prompt and equitable resolution of complaints filed by qualified persons with disabilities. The ADA Coordinator may be a representative of the Department of Human Resource Management assigned to the Department.

(b) "Department" means the Department of Alcoholic Beverage Control.

(c) "Designee" means an individual appointed by the executive director or a director to investigate allegations of ADA non-compliance in the event the ADA Coordinator is unable or unwilling to conduct an investigation for any reason, including a conflict of interest. A designee does not have to be an employee of the Department; however, the designee must have a working knowledge of the responsibilities and obligations required of employers and employees by the ADA.

(d) "Director" means the head of the division of the Department affected by a complaint filed under this rule.

(e) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(f) "Executive Director" means the executive director of the Department.

(g) "Major life activities" include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, and working. A major life activity also includes the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(h) "Qualified Individual" means an individual who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department. A "qualified individual" is also an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires.

(3) Filing of Complaints.

(a) Any qualified individual may file a complaint alleging noncompliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.

(b) Qualified individuals shall file their complaints with the Department's ADA Coordinator, unless the complaint alleges that the ADA Coordinator was non-compliant, in which case qualified individuals shall file their complaints with the Department's designee.

(c) Qualified individuals shall file their complaints within 90 days after the date of the alleged noncompliance to facilitate the prompt and effective consideration of pertinent facts and appropriate remedies; however, the Executive Director has the discretion to direct that the grievance process be utilized to address legitimate complaints filed more than 90 days after alleged noncompliance.

(d) Each complaint shall:

(i) include the complainant's name and address;

(ii) include the nature and extent of the individual's disability;

(iii) describe the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and date of the alleged violation;

(iv) describe the action and accommodation desired; and

(v) be signed by the complainant or by his or her legal representative.

(e) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(f) If the complaint is not in writing, the ADA coordinator or designee shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

(g) By the filing of a complaint or a subsequent appeal, the complainant authorizes necessary parties to conduct a confidential review all relevant information, including records classified as private or controlled under the Government Records Access and Management Act, subsection 63G-2-302(1)(b) and section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), and relevant information otherwise protected by statute, rule, regulation, or other law.

(4) Investigation of Complaints.

(a) The ADA coordinator or designee shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in (3)(d) and subpart (g) of this rule if it is not made available by the complainant.

(b) The ADA coordinator or designee may seek assistance from the Attorney General's staff, and the Department's human resource and budget staff in determining what action, if any, should be taken on the complaint. The ADA coordinator or designee may also consult with the director of the affected division in making a recommendation.

(c) The ADA coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any recommendation that would:

(i) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(ii) require facility modifications; or

(iii) require reassignment to a different position.

(5) Recommendation and Decision.

(a) Within 15 working days after receiving the complaint, the ADA coordinator or designee shall recommend to the director what action, if any, should be taken on the complaint. The recommendation shall be in writing or in another accessible format suitable to the complainant.

(b) If the ADA coordinator or designee is unable to make a recommendation within the 15 working day period, the complainant shall be notified in writing, or in another accessible format suitable to the complainant, stating why the recommendation is delayed and what additional time is needed.

(c) The director may confer with the ADA coordinator or designee and the complainant and may accept or modify the recommendation to resolve the complaint. The director shall render a decision within 15 working days after the director's receipt of the recommendation from the ADA coordinator or designee. The director shall take all reasonable steps to implement the decision. The director's decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

(6) Appeals.

(a) The complainant may appeal the director's decision to the executive director within 10 working days after the complainant's receipt of the director's decision.

(b) The appeal shall be in writing or in another accessible format reasonably suited to the complainant's ability.

(c) The executive director may name a designee to assist on the appeal. The ADA coordinator and the director's designee may not also be the executive director's designee for the appeal.

(d) In the appeal the complainant shall describe in sufficient detail why the decision does not effectively address the complainant's needs.

(e) The executive director or designee shall review the ADA coordinator's recommendation, the director's decision, and the points raised on appeal before reaching a decision. The executive director may direct additional investigation as necessary. The executive director shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:

(i) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(ii) require facility modifications; or

(iii) require reassignment to a different position.

(f) The executive director shall issue a final decision within 15 working days after receiving the complainant's appeal. The decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

(g) If the executive director or designee is unable to reach a final decision within the 15 working day period, the complainant shall be notified in writing, or by another accessible format suitable to the complainant, why the final decision is being delayed and the additional time needed to reach a final decision.

(7) Record Classification.

(a) Records created in administering this rule are classified as "protected" under subsections 63G-2-305(9), (22), (24), and (25).

(b) After issuing a decision under subpart (5) or a final decision upon appeal under subpart (6), portions of the record pertaining to the complainant's medical condition shall be classified as "private" under subsection 63G-2-302(1)(b) or "controlled" under section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), at the option of the ADA coordinator.

(c) The written decision of the division director or executive director shall be classified as "public," and all other records, except controlled records under subpart (7)(b), classified as "private."

(8) Relationship to Other Laws. This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the state Anti-Discrimination Complaint Procedures, sections 34A-5-107 and 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR 35.170 through 28 CFR 35.178; or

(c) any other Utah or federal law that provides equal or greater protection for the rights of individuals with disabilities.

R82-2-106. Sales Restrictions on Products of Limited Availability and Rare, High Demand Products.

(1) Authority and Purpose. This rule is pursuant to sections 32B-1-103, which requires that alcoholic product control be operated as a public business using sound management principles, and 32B-2-202, which authorizes the Department to control liquor merchandise inventory. Some alcoholic beverage products are of very limited availability from their manufacturers and suppliers to retailers including the Department. When the Department perceives that customer demand for these limited products may exceed the Department's current and future stock levels, the Department, as a public agency, may place restrictions on their sales to ensure their fair distribution to all consumers. This also encourages manufacturers and suppliers to continue to provide their products to the Department. This rule establishes the procedure for allocating rare, high demand products and products of limited availability.

(2) Application of Rule.

(a) The purchasing and wine divisions of the Department shall identify those products that are of limited availability and designate them as "Limited /Allocated Status" ("L Status") items. The products shall be given a special "L Status" product code designation.

(b) "L Status" products on the Department's price list, in stock, or on order, do not have to be sold on demand. Their sales to the general public and to licensees and permittees may be restricted. The purchasing and wine divisions of the Department may issue system-wide restrictions directing the allocation of such products which may include placing limits on the number of bottles sold per customer.

(c) Signs noting this rule shall be posted in state stores and package agencies that carry "L Status" products.

(3) The Department may make policies governing procedures for the fair distribution of rare, high demand products, including policies for a drawing, when the director determines a special procedure is appropriate.

R82-2-107. Criminal History Background Checks.

(1) Authority. This rule is pursuant to:

(a) the Commission's powers and duties under section 32B-2-202 to set policy by written rules that establish criteria and procedures for granting, denying, suspending, or revoking permits, licenses, and package agencies;

(b) Sections 32B-1-301 through 32B-1-307 that prohibit certain persons who have been convicted of certain criminal offenses from being employed by the Department or from holding or being employed by the holder of an alcoholic beverage license, permit, or package agency;

(c) Sections 32B-1-301 through 32B-1-307 that allow for the Department to require criminal history background check reports on certain individuals; and

(d) Section 32B-1-102, which authorizes the Commission to define terms.

(2) As used in this rule, a "crime involving moral turpitude" means a crime means a crime that involves actions done knowingly contrary to justice, honesty, or good morals. It is also described as a crime that is "malum in se" as opposed to "malum prohibitum" - actions that are immoral in themselves regardless of being punishable by law as opposed to actions that are wrong only since they are prohibited by statute. A crime of moral turpitude ordinarily involves an element of falsification or fraud or of harm or injury directed to another person or another's property. For purposes of this rule, crimes of moral turpitude may include crimes involving controlled substances, illegal drugs, and narcotics.

(3) Purpose. This rule:

(a) establishes the circumstances under which a person identified in the statutory sections enumerated in Subparagraph (1)(b), must submit to a background check to show the person meets the qualifications of those statutory sections as a condition of employment with the Department, or as a condition of the Commission granting a license, permit, or package agency to an applicant for a license, permit, or package agency; and

(b) establishes the procedures for the filing and processing of criminal history background checks.

(4) Application of Rule.

(a)(i) Except to the extent provided in Subparagraphs (3)(a)(ii),(iii), and (iv), a person identified in Subparagraph (1)(b) shall consent to a criminal background check by Utah Bureau of Criminal Identification, Department of Public Safety ("B.C.I.") and the Federal Bureau of Investigation ("F.B.I").

(ii) A person identified in Subparagraph (1)(b) who submitted a criminal background check on or after July 1, 2015 shall not be required to submit to a background check if the Department can confirm that the individual has maintained a regulatory or employment relationship as outlined in the Department's privacy risk mitigation strategy required by subsection 32B-1-307(4)(iv)(b).

(iii) An applicant for an event permit under Title 32B, Chapter 9 shall not be required to submit to a background check if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense.

(iv) An applicant for employment with benefits with the Department shall be required to submit to a background check if the Department has made the decision to offer the applicant employment with the Department.

(b) An application that requires background checks(s) may be included on a Commission meeting agenda, and may be considered by the Commission for issuance of a license, permit, or package agency if:

(i) the applicant has completed all requirements to apply for the license, permit, or package agency other than the Department receiving the required criminal history background report(s);

(ii) the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in Subparagraph (1)(b) that would disqualify the applicant from applying for and holding the license, permit, or package agency;

(iii) the applicant has submitted to a background check in a form acceptable to the Department; and

(iv) the applicant stipulates in writing that if a criminal history background report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the Department.

(c) The Commission may issue a license, permit, or package agency to an applicant that has met the requirements of Subparagraph (3)(b), and the license, permit, or package agency shall be valid during the period the B.C.I. and F.B.I. is processing the criminal history background report(s).

(d) Upon the Department's receipt of the criminal history background report(s):

(i) if there is no disqualifying criminal history, the license, permit, or package agency shall continue for the balance the license or permit period, or the package agency contract period; or

(ii) if there is a disqualifying criminal history, Department staff shall:

(A) inform the licensee, permittee, or package agency and ask them to either surrender the license or remove the individual with the disqualifying criminal history from their position; and

(B) if the licensee, permittee, or package agency does not comply with subpart (4)(d)(ii) of this rule, issue an order to show cause and the Commission may enter an order accepting a surrender or an order revoking the license, permit, or package agency, depending on the circumstances.

(e) In the case of a license or permit, if the statutory deadline for renewing the license or permit occurs before receipt of criminal history background report(s), the licensee or permittee may file for renewal of the license or permit subject to meeting all of the requirements in Subparagraphs (3)(b) through (e).

(f) An applicant for employment with benefits with the Department that requires a background check may be conditionally hired by the Department before receipt of the report if:

(i) the applicant attests in writing that he or she is not aware of any criminal conviction that would disqualify the applicant from employment with the Department;

(ii) the applicant has submitted to a background check in a form acceptable to the Department; and

(iii) the applicant stipulates in writing that if a criminal history background report shows a criminal conviction that would disqualify the applicant from employment with the Department, the applicant shall terminate his or her employment with the Department.

(5) Failure to comply with this rule or statutory requirements governing background check information is a basis for the Department to issue an Order to Show Cause.

R82-2-108. Duties of Commission Subcommittees.

(1) This rule is made pursuant to section 32B-2-201.5 and shall govern the duties of the two Commission subcommittees, Compliance Licensing and Enforcement Subcommittee and the Operations and Procurement Subcommittee.

(2) The Compliance Licensing and Enforcement Subcommittee will review and discuss items related to compliance, licensing and enforcement and make recommendations to the full Commission on those items.

(3) The Operations and Procurement Subcommittee will review and discuss items related to operations and procurement and make recommendations to the full Commission on those items.

(4) If a quorum of the full Commission is present, the subcommittee may act on all agenda action items.

(5) A subcommittee quorum is all four standing members.

R82-2-201. Liquor Returns, Refunds and Exchanges.

(1) Purpose. This rule establishes guidelines for accepting liquor returns, refunds and exchanges by a state store or a package agency.

(a) The authority for this rule is 32B-2-202, which authorizes the Department to control liquor merchandise inventory in the state.

(2) Application of Rule.

(a) Unsaleable Product. Unsaleable product includes product that is spoiled, leaking, contains foreign matter, or is otherwise defective. The Department will accept for refund or exchange liquor merchandise that is unsaleable subject to the following conditions and restrictions:

(i) Returns of unsaleable merchandise are subject to approval by the store manager or package agent to verify that the product is indeed defective.

(ii) The product must be returned within a reasonable time of the date of purchase. Discontinued products may not be returned. Vintages of wine that are not currently being retailed by the Department may not be returned.

(iii) No refunds shall be given for wines returned due to spoilage such as corkiness, oxidation, and secondary fermentation, or due to the customer's unfamiliarity with the characteristics of the product. Such wines may only be exchanged for another bottle of the same product. Wine will not be accepted for refund or exchange if the return is a result of improper extraction of the cork.

(b) Saleable Product. Store managers and package agents are authorized to accept saleable returned merchandise from licensees, single event permit holders, convention groups, and individual customers, subject to the following conditions and restrictions:

(i) Returns of saleable merchandise are subject to approval by the store manager or package agent. The customer may receive a refund or exchange of product for the return. Large returns will be accepted from licensees, single event permittees, convention groups and other organizations only if prior arrangements have been made with the store manager.

(ii) Returns should be made within a reasonable amount of time from the date of purchase, and all returned merchandise must be in good condition. Returns of \$50 or more shall not be accepted without a receipt. Therefore, it is necessary for cashiers to print a receipt for all purchases of \$50 or more. Signs should be posted at each cash register informing customers of this requirement. Merchandise shall be refunded at the price paid by the customer, or the current price, whichever is lower.

(iii) Wine and beer, due to their perishable nature and susceptibility to temperature changes, should be accepted back with caution. These products can only be returned if the store manager has personal knowledge of how they have been handled and stored.

(iv) If the total amount of the return is more than \$500, the store manager or package agent shall fill out a Returned Merchandise Acknowledgment Receipt (LQ-45), and submit a copy to the office. A refund check will be processed at the office and mailed to the customer. Customers need to be informed that it generally takes three to six weeks to process payment.

(v) If the total value of the returned merchandise is more than \$1,000, a 10% restocking fee shall be charged on the total amount.

(c) Unreturnable Products. The following items may not be returned:

(i) All limited item wines - wines that are available in very limited quantities.

(ii) Any products that have been chilled, over-heated, or label damaged.

(iii) Outdated, including not listed on the Department's product/price list, and discontinued products.

(iv) Merchandise purchased by catering services.

(d) A cash register return receipt shall be completed for each product return. The following information must be on the receipt: the customer's name, address, telephone number, driver's license number, and signature. The cashier must attach the receipt to the cash register closing report.

R82-2-202. Payment for Liquor.

(1) Accepting Licensee Payments: Pursuant to subsection 32B-5-303(1)(c), this rule requires that payments collected by the Department from licensees for the purchase of liquor come from the licensee and authorizes the Department to make internal Department policies in accordance with subsections 32B-2-206(1), (2) and (5) for the acceptance of payments for liquor.

R82-2-203. State Store Hours.

(1) Authority and purpose: As authorized by subsection 32B-2-503(5)(b), this rule establishes the days and hours for state stores operations.

(2) Authorized days of operation: State stores may not operate on any day prohibited by subsection 32B-2-503(5)(a).

(3) Authorized hours of operation: Pursuant to subsection 32B-2-202(1)(b) and (k) and in accordance with subsection 32B-2-206(1) and (2), this rule authorizes the director to set hours of operations for each state store and establish internal Department policies for sales during operational hours based on the following factors:

(a) the locality of the store;

(b) tourist traffic;

(c) demographics;

(d) population to be served;

(e) customer demand in the area;

(f) whether the store is designed for licensee sales; and

(g) budgetary constraints.

R82-2-204. Industry Members in State Stores.

An industry member, as defined in 32B-4-702, shall be limited to the customer areas of a state store except as follows:

(1) An industry member may be allowed in the storage area of a state store with the approval of the store manager for the limited purpose of stocking the industry member's own products; and

(2) An industry member may be allowed in the office or other suitable area of a state store with the approval of the store manager for the purpose of discussing the industry member's products.

R82-2-205. Store Site Selection.

(1) This rule is made pursuant to section 32B-2-202, which requires that criteria and procedures be established for determining the location of a state store.

Before the commission establishes a new state store, the Operations and Procurement Subcommittee will:

(a) determine the feasibility of a new site;

(b) weigh options;

(c) consider the investigation and recommendation of the Department as outlined in section 32B-2-502; and

(d) make its recommendation to the Commission.

R82-2-301. Types of Package Agencies.

(1) This rule is made pursuant to section 32B-2-202, which authorizes the Commission to make rules governing package agencies.

(2) Package agencies are retail liquor outlets operated by private persons under contract with the Department for the purpose of selling packaged liquor from facilities other than state liquor stores for off premise consumption. Package agencies are classified into five types:

(a) Type 1 - A package agency under contract with the Department which is operated in conjunction with a resort environment (e.g., hotel, ski lodge, summer recreation area).

(b) Type 2 - A package agency under contract with the Department which is in conjunction with another business where the primary source of income to the operator is not from the sale of liquor.

(c) Type 3 - A package agency under contract with the Department, which is not in conjunction with another business, but is in existence for the main purpose of selling liquor.

(d) Type 4 - A package agency under contract with the Department which is located within a facility approved by the Commission for the purpose of selling and delivering liquor to tenants or occupants of specific rooms which have been leased, rented, or licensed within the same facility. A type 4 package agency shall not be open to the general public. A type 4 package agency may also sell liquor other than in a sealed container (i.e. by the drink) as part of room service.

(e) Type 5 - A package agency under contract with the Department which is at a manufacturing facility that has been granted a manufacturing license by the Commission.

- (3) The Commission may grant type 4 package agency privileges to a type 1 package agency.

R82-2-302. Advertising, Promotion, and Listing of Products.

(1) Authority. This rule is made pursuant to section 32B-1-206, which authorizes the Commission to make rules regarding how the Department or a package agency may advertise an alcoholic product.

(2) A package agency may not advertise alcoholic beverages except:

(a) a Type 1 package agency, as described in R82-2-301, may provide informational signs on the premises of the hotel or resort directing persons to the location of the hotel's or resort's Type 1 package agency;

(b) a Type 2 package agency, as described in R82-2-301, may provide informational signs on the premises of its business directing persons to the location of the Type 2 package agency within the business; and

(c) a Type 5 package agency, as described in R82-2-301, may advertise the location of the winery, distillery, or brewery and the Type 5 package agency, and may advertise the alcoholic beverage products produced by the winery, distillery, or brewery and sold at the Type 5 package agency under the guidelines of R82-1-104 for advertising alcoholic beverages.

(3) A package agency may not display price lists in windows or showcases visible to passersby except:

(a) a Type 1 package agency, as described in R82-2-301, may provide a price list in each guest room of the hotel or resort containing the code, number, brand, size and price of each item it carries for sale at the Type 1 package agency;

(b) a Type 4 package agency, as described in R82-2-301, may provide a price list of the code number, brand, size, and price of each item it carries for sale to the tenants or occupants of the specific leased, rented, or licensed rooms within the facility; and

(c) a Type 5 package agency, as described in R82-2-301, may provide a price list on the premises of the winery, distillery, or brewery, authorized tasting room, and at the entrance of the Type 5 package agency of the code, number, brand, size, and price of each liquor item it carries for sale at the Type 5 package agency.

R82-2-303. Non-Consignment Inventory.

(1) This rule is adopted pursuant to Section 32B-2-202, which authorizes the Commission to make rules governing package agencies.

(2) Type 1, 4 and 5 package agencies shall be on a non-consignment inventory status where the package agency owns the inventory.

R82-2-304. Application for a Package Agency.

(1) This rule is made pursuant to section 32B-2-202, which authorizes the Commission to make rules governing package agencies and the process to issue a new package agency.

(2) No application for a package agency will be included on the agenda of a monthly Commission meeting for consideration for issuance of a package agency contract until:

(a) the applicant has first met all requirements of sections 32B-1-304 through 32B-1-307 and the requirements of sections 32B-2-602 and 32B-2-604 have been met; and

(b) the Department has inspected the package agency premise.

(3)(a) All application requirements of subpart (1)(a) of this rule must be filed with the Department no later than the 10th day of the month in order for the application to be included on that month's Commission meeting agenda.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the 10th day of the month will not be considered by the Commission that month, but will be included on the agenda of the Commission meeting the following month.

R82-2-305. Evaluation Guidelines of Package Agencies.

(1) This rule is made pursuant to section 32B-2-202, which authorizes the Commission to make rules governing package agencies and the process to issue a new package agency.

(2) The Commission, after considering information from the applicant for the package agency and from the Department, shall determine whether the package agency shall be classified and operated as a Type 1, 2, 3, 4, or 5 package agency.

(3) After a package agency has been classified and issued, a package agent or the Department may request that the Commission approve a change in the classification of the package agency. Information shall be forwarded to aid in its determination. If the Commission determines that the package agency should be reclassified, it shall approve the request.

(4) Type 2 and 3 package agencies shall:

(a) serve a population of at least 6,000 people comprised of both permanent residents and tourists; and

(b) not be established or maintained within a one-mile radius of another type 2 or 3 package agency unless it can be clearly demonstrated that it is in the best interest of the state to establish and maintain the outlet at that location.

(5)(a) The Department shall report to the Commission on package agency operations as a regular agenda item at each monthly Commission meeting.

(b) Any significant issues with respect to the operations of a particular package agency shall also be reported to the Commission.

(c) Recommended closure by the Department of a package agency due to payment delinquencies over 30 working days, significant inventory shortages, or any other significant operational deficiencies shall be calendared for the Commission's consideration at its next regular monthly meeting or at a special meeting.

R82-2-306. Operational Restrictions.

(1) This rule is made pursuant to section 32B-2-202, which authorizes the Commission to make rules governing package agencies.

(2) Hours of Operation.

(a) Type 1, 2, and 5 package agencies may operate from 10:00 a.m. until 12:00 midnight, Monday through Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the Department. Type 2 agencies shall be open for business at least seven hours a day, five days a week, except where closure is otherwise required by law. Type 5 package agencies may, in the discretion of the package agent, be open as early as 8:00 a.m. for sales to licensees with the approval of the Department. Type 5 package agencies may also be open on Sundays and state and federal holidays if the package agency is located at a manufacturing facility licensed by the Commission and the manufacturing facility holds a full-service restaurant license, a limited-service restaurant license, or a beer-only restaurant license.

(b) Type 3 package agencies may operate from 10:00 a.m. until 10:00 p.m., Monday through Saturday, but may remain closed on Mondays in the discretion of the package agent. However, the actual operating hours may be less in the discretion of the package agent with the approval of the Department, provided the package agency operates at least seven hours a day.

(c) Type 4 package agencies may operate from 10:00 a.m. until 1:00 a.m., Monday through Friday, and 10:00 a.m. until 12:00 midnight on Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the Department. A Type 4 package agency in a resort that is licensed under Title 32B, Chapter 8, may operate 24 hours a day, Monday through Sunday to provide room service to the room of a guest of the resort.

(d) Any change in the hours of operation of any package agency requires prior Department approval, and shall be submitted in writing by the package agent to the Department.

(e)(i) A package agency shall not operate on a Sunday or legal holiday except to the extent authorized by section 32B-2-605, which allows the following to operate on a Sunday or legal holiday:

(A) a package agency located in certain licensed wineries, breweries, and distilleries; and

(B) a package agency held by a resort that is licensed under Title 32B, Chapter 8 that does not sell liquor in a manner similar to a state store which is limited to a Type 4 package agency.

(ii) If a legal holiday falls on a Sunday, the following Monday will be observed as the holiday by a Type 2 and 3 package agency.

(3) Size of Outlet. The retail selling space devoted to liquor sales in a type 2 or 3 package agency must be at least one hundred square feet.

(4) Inventory Size. Type 2 and 3 package agencies must maintain at least fifty code numbers of inventory at a retail value of at least five thousand dollars and must maintain a representative inventory by brand, code, and size.

(5) Access to General Public. Type 1, 2, and 3 package agencies must be easily accessible to the general consuming public.

(6) Purchase of Inventory. All new package agencies, at the discretion of the Department, will purchase and maintain their inventory of liquor.

R82-2-307. Type 5 Package Agencies.

(1) This rule is made pursuant to section 32B-2-202, which authorizes the Commission to make rules governing package agencies, as well as sections 32B-2-504, 32B-2-605, and 32B-5-303.

(2) Purpose. A type 5 package agency is for the limited purpose of allowing a winery, distillery, or brewery to sell at its manufacturing location the packaged liquor product it actually produces to the general public for off-premise consumption. This rule establishes guidelines and procedures for type 5 package agencies.

(3) Authority.

(4) Application of Rule.

(a) The package agency must be located at a manufacturing facility that has been granted a manufacturing license by the Commission. For purpose of this rule, a manufacturing facility includes the parcel of land and, where applicable, building(s) leased or owned by the manufacturing licensee immediately surrounding the manufacturing premise.

(b) The package agency may only sell products produced by the manufacturing licensee and may not carry the products of other alcoholic beverage manufacturers. For the purpose of this rule, products produced by the manufacturing licensee include products that would be assessed tax for sale as determined by 27 CFR Parts 19, 24 and 25.

(c)(i) The product produced by the manufacturing licensee and sold in the type 5 package agency need not be shipped from the winery, distillery, or brewery to the Department and then back to the package agency.

(ii) The bottles for sale at a Type 5 package agency may be moved directly from the manufacturer's storage area to the package agency, provided that proper record-keeping is maintained in a form and manner as required by the Department.

(d) Records required by the Department shall be kept current and available to the Department for auditing purposes for at least three years.

(e) The package agency shall submit to the Department a completed monthly sales report which specifies the variety and number of bottles sold from the package agency in a form and manner as required in the package agency contract.

(d) Direct deliveries to licensees are prohibited. Products must be purchased and picked up by the licensees or their staff at the Type 5 package agency. Sales to the manufacturer's retail licenses may be transported from the manufacturer's storage area directly to the retail licensed premise provided that a record is maintained showing a sale from the type 5 package agency to the retail licensee at the retail price.

(e) The type 5 package agency shall sell products at a price fixed by the Commission and follow the same laws, rules, policies, and procedures applicable to other package agencies as to the retail price of products.

(f) The days and hours of sale of the type 5 package agency shall be in accordance with section 32B-2-605 and R82-2-306.

R82-2-308. Consignment Inventory Package Agencies.

(1) This rule is made pursuant to section 32B-2-202, which authorizes the Commission to make rules governing package agencies.

(2) Purpose. At the discretion of the Department, liquor may be provided by the Department to a Type 2 and Type 3 package agency for sale on consignment pursuant to subsection 32B-2-605(5). This rule provides the procedures for such consignment sales.

(3) Application of the Rule.

(a) Consignment Inventory.

(i) The initial amount of consignment inventory furnished to the package agency shall be established by the Department's audit manager.

(ii) The consignment inventory amount shall be posted to the Department's accounting system as "Consignment Inventory Account."

(iii) The consignment inventory amount shall be stated in the Department's contract with the package agency.

(iv) Any adjustment to the consignment inventory amount shall be done through the use of a transfer, shipment, or payment of money. A copy of the transfer, adjusting shipment, or evidence of payment shall be included in the package agency's file.

(v) The consignment inventory amount may be adjusted from time to time based on the package agency's monthly average sales. Any adjustment shall be made by a properly executed amendment to the Department's contract with the package agency.

(b) Payments.

(i) All agencies receiving shipments or transfers are required to have an ACH (Automated Clearing House) payment system set up with the Department.

(ii) Statements showing all unpaid debts and unapplied credits will be generated and mailed to the agencies on the 20th or the next available working day of each month. It is the agent's responsibility to review the statement and contact the Department with any discrepancies prior to due date of payment.

(iii) Agents will remit payment to the Department on the 19th or next available working day of the following month after the last statement was generated. Payment will be for the statement total. Payment will be automatically drawn through the ACH process on the due date unless prior arrangements have been made between the agent and the Department.

(iv) Insufficient funds, returned checks, and unpaid balances from a previous statement are all past due. The Department may assess the legal rate of interest on the amount owed and the package agency may be referred to the Commission for possible termination of the contract and closure.

(v) All delivery discrepancies shall be resolved through the use of the LQ9 form. Debits or credits shall be issued based on proper completion and submission of the LQ9 form to the Department. Payment shall be made in accordance with the package agency's statement by the due date whether or not any discrepancies have been resolved.

(c) Transfers.

(i) Transfers, up or down, shall be adjusted to the package agency's next payment due the department.

(ii) Transfer in will add to the amount owed to the Department on the next check due to the Department.

(iii) Transfer out will subtract from the amount owed to the Department on the next check due to the Department.

(d) Credit and Debit Card Credits.

(i) Credit for credit and debit cards processed at the package agency will be posted to the package agency's statement.

(ii) It is the agent's responsibility to mail in their settlement report and individual receipts to the Department in order to receive credit.

(e) Audits.

(i) Any package agency that is on a consignment contract shall keep a daily log of sales.

(ii) The auditing division shall audit the package agency at least twice each fiscal year.

(iii) The package agency is subject to a Department audit at any time.

R82-2-309. Type 4 Package Agency Room Service - Mini-Bottle/187 ml Wine Sales.

(1)(a) Authority and Purpose. Pursuant to section 32B-2-303, the Department may not purchase or stock alcoholic beverages in containers smaller than 200 milliliters, except as otherwise allowed by the Commission.

(b) The Commission hereby allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine as one form of room service sales by Type 4 package agencies located in hotels and resorts.

(c) The conditions outlined in this section are imposed to ensure that these smaller bottle sales are limited to patrons of sleeping rooms and are not offered to the general public.

(2) Application of Rule.

(a) The Department will not maintain a regular inventory of distilled spirits and wine in the smaller bottle sizes, but will accept special orders for these products from a Type 4 package agency. Special orders may be placed with the Department's purchasing division, any state store, or any Type 2 or 3 package agency.

(b) The Type 4 package agency must order in full case lots and all sales are final.

(c) If the hotel or resort has a Type 1 package agency with Type 4 privileges, the smaller bottle sized products must be stored in a secure area separate from the Type 1 package agency inventory.

(d) Sale and use of alcohol in the smaller bottle sizes is restricted to providing one form of room service to guests in sleeping rooms in the hotel or resort, and may not be used for other purposes, or be sold to the general public.

(e) Failure of the Type 4 package agency to strictly adhere to the provisions of this rule is grounds for the Department to terminate its contract with the Type 4 package agency.

R82-2-310. Type 4 Package Agency Room Service - Dispensing.

(1) This rule is made pursuant to section 32B-2-202, which authorizes the Commission to make rules governing package agencies.

(2) A Type 4 package agency that sells liquor other than in a sealed container, i.e. by the drink, as part of room service, shall dispense liquor in accordance with section 32B-5-304 and R82-5-104, Liquor Dispensing Systems.

(3) A Type 4 package agency located in a hotel or resort facility that has a retail license or sublicense may provide room service of liquor in other than a sealed container through the dispensing outlet of the retail license or sublicense under the following conditions:

(a) point of sale control systems must be implemented that will record the amounts of alcoholic beverage products sold by the retail license or sublicense on behalf of the Type 4 package agency;

(b) the alcoholic beverage product cost must be allocated to the Type 4 package agency on at least a quarterly basis pursuant to the record keeping requirements of section 32B-5-302;

(c) dispensing of alcoholic beverages from a retail license or sublicense location may not be made at prohibited hours pertinent to that license or sublicense type; and

(d) a Type 4 package agency held by a resort or hotel licensee that operates seven days a week, 24 hours per day, must have a separate dispensing outlet for use during the times that a sublicense is not allowed to sell liquor.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: October 27, 2020

Authorizing, and Implemented or Interpreted Law: 32B-2-202

R82. Alcoholic Beverage Control, Administration.

R82-3. Disciplinary Actions and Enforcement.

R82-3-101. Definitions.

As used in this part:

(1) "Decision Officer" means a person who has been appointed by the Commission or the director of the Department of Alcoholic Beverage Control to preside over the prehearing phase of all disciplinary actions, and, in all cases not requiring an evidentiary hearing.

(2) "Disciplinary Action" means the process by which violations of the Act and these rules are charged and adjudicated, and by which administrative penalties are imposed.

(3) "Hearing Officer" means a person who has been appointed by the Commission or the director to preside over evidentiary hearings in disciplinary actions, and who is authorized to issue written findings of fact, conclusions of law, and recommendations to the Commission for final action.

(4) "Letter of Admonishment" is a written warning issued by a decision officer to a respondent who is alleged to have violated the Act or these rules.

(5) "Respondent" means a Department licensee, or permittee, or employee or agent of a licensee or permittee, or other entity against whom a letter of admonishment or notice of agency action is directed.

(6) "Violation Report" means a written report from any law enforcement agency or authorized Department staff member alleging a violation of the Alcoholic Beverage Control Act or rules of the Commission by a Department licensee, or permittee, or employee or agent of a licensee or permittee or other entity.

R82-3-102. Violation Schedule.

(1)(a) Authority. This rule is pursuant to sections 32B-2-202 and 32B-3-101 through 207, which authorize the Commission to establish criteria and procedures for imposing sanctions against licensees and permittees as well as their officers, employees, and agents who violate statutes and Commission rules relating to alcoholic beverages.

(b) For purposes of this rule, holders of certificates of approval are also considered licensees.

(c) The Commission may revoke or suspend the licenses or permits, and may impose a fine against a licensee or permittee in addition to or in lieu of a suspension.

(d) The Commission also may impose a fine against an officer, employee or agent of a licensee or permittee.

(e) Violations are adjudicated under procedures contained in sections 32B-3-101 to -207 and disciplinary hearings under R82-3-103.

(2) General Purpose. This rule establishes a schedule setting forth a range of penalties which may be imposed by the Commission for violations of the alcoholic beverage laws. It shall be used by Department decision officers in processing violations, and by hearing officers in charging violations, in assisting parties in settlement negotiations, and in recommending penalties for violations. The schedule shall be used by the Commission in rendering its final decisions as to appropriate penalties for violations.

(3) Application of Rule.

(a) This rule governs violations committed by all Commission licensees and permittees and their officers, employees and agents except single event permittees. Violations by single event permittees and their employees and agents are processed under sections 32B-9-204 and -305.

(b) This rule does not apply to situations where a licensee or permittee fails to maintain the minimum qualifications provided by law for holding a license or permit. These might include failure to maintain a bond or insurance, or a conviction for a criminal offense that disqualifies the licensee or permittee from holding the license or permit. These are fundamental licensing and permitting requirements and failure to maintain fundamental licensing and permitting requirements may result in immediate suspension or forfeiture of the license or permit. Such failures are administered by issuance of an order to show cause requiring the licensee or permittee to provide the Commission with proof of qualification to maintain their license or permit, as outlined in R82-3-104.

(c) If a licensee or permittee has not received a letter of admonishment, as defined in R82-3-101, or been found by the Commission to be in violation of the Act or Commission rules for a period of 36 consecutive months, its violation record shall be expunged for purposes of determining future penalties sought. The expungement period shall run from the date the last offense was finally adjudicated by the Commission.

(d) In addition to the penalty classifications contained in this rule, the Commission may:

(i) upon revocation of a license or permit, take action to forfeit the bond of any licensee or permittee;

(ii) prohibit an officer, employee or agent of a licensee or permittee from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any Commission licensee or permittee for a period determined by the Commission;

(iii) order the removal of a manufacturer's, supplier's or importer's products from the Department's sales list and a suspension of the Department's purchase of those products for a period determined by the Commission if the manufacturer, supplier, or importer directly committed the violation, or solicited, requested, commanded, encouraged, or intentionally aided another to engage in the violation; and

(iv) require a licensee to have a written responsible alcohol service plan as provided in R82-3-107.

(e) When the Commission imposes a fine or administrative costs, it shall establish a date on which the payment is due. Failure of a licensee or permittee or its officer, employee or agent to make payment on or before that date shall result in the immediate suspension of the license or permit or the suspension of the employment of the officer, employee or agent to serve, sell, distribute, manufacture, wholesale, warehouse or handle alcoholic beverages with any licensee or permittee until payment is made. Failure of a licensee or permittee to pay a fine or administrative costs within 30 days of the initial date established by the Commission shall result in the issuance of an order to show cause why the license or permit should not be revoked and the licensee's or permittee's compliance bond forfeited. The Commission shall consider the order to show cause at its next regularly scheduled meeting.

(f) Violations of any local ordinance are handled by each individual local jurisdiction.

(4) Penalty Schedule. The Department and Commission shall follow these penalty range guidelines:

(a) Minor Violations. Violations of this category are lesser in nature and relate to basic compliance with the laws and rules. If not corrected, they are sufficient cause for action. Penalty range: Verbal warning from law enforcement or Department compliance officer(s) to revocation of the license or permit or up to a \$25,000 fine or both. A record of any letter of admonishment shall be included in the licensee's or permittee's and the officer's, employee's or agent's violation file at the Department to establish a violation history.

(i) First occurrence involving a minor violation: the penalty shall range from a verbal warning from law enforcement or Department compliance officer(s), which is documented to a letter of admonishment to the licensee or permittee and the officer, employee or agent involved. Law enforcement or Department compliance officer(s) shall notify management of the licensee or permittee when verbal warnings are given.

(ii) Second occurrence of the same type of minor violation: a written investigation report from law enforcement or Department compliance officer(s) shall be forwarded to the Department. The penalty shall range from a \$100 to \$500 fine for the licensee or permittee, and a letter of admonishment to a \$25 fine for the officer, employee or agent.

(iii) Third occurrence of the same type of minor violation: a one- to five-day suspension of the license or permit and employment of the officer, employee or agent, and/or a \$200 to \$500 fine for the licensee or permittee and up to a \$50 fine for the officer, employee or agent.

(iv) More than three occurrences of the same type of minor violation: a six day suspension to revocation of the license or permit and a six to 10-day suspension of the employment of the officer, employee or agent, or a \$500 to \$25,000 fine for the licensee or permittee and up to a \$75 fine for the officer, employee or agent, or both a suspension to revocation and fine.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension or the monetary penalties for each of the charges in their respective categories, or both. If other minor violations are discovered during the same investigation, a verbal warning shall be given for each violation on a first occurrence. If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(b) Moderate Violations. Violations of this category demonstrate a general disregard for the laws or rules. Although the gravity of the acts are not viewed in the same light as in the serious and grave categories, they are still sufficient cause for action. Penalty range: Written investigation report from law enforcement or Department compliance officer(s) shall be forwarded to the Department on the first occurrence. The penalty shall range from a letter of admonishment to revocation of the license or permit or up to a \$25,000 fine and a combination of penalties.

(i) First occurrence involving a moderate violation: a written investigation report from law enforcement or Department compliance officer(s) shall be forwarded to the Department. The penalty shall range from a letter of admonishment to a \$1000 fine for the licensee or permittee, and a letter of admonishment to a \$50 fine for the officer, employee or agent.

(ii) Second occurrence of the same type of moderate violation: a three to 10-day suspension of the license or permit and a three to 10-day suspension of the employment of the officer, employee or agent, and/or a \$500 to \$1000 fine for the licensee or permittee and up to a \$75 fine for the officer, employee or agent.

(iii) Third occurrence of the same type of moderate violation: a 10 to 20 day suspension of the license or permit and a 10 to 20 day suspension of the employment of the officer, employee or agent, and/or a \$1000 to \$2000 fine for the licensee or permittee and up to a \$100 fine for the officer, employee or agent.

(iv) More than three occurrences of the same type of moderate violation: a 15 day suspension to revocation of the license or permit and a 15 to 30 day suspension of the employment of the officer, employee or agent, and/or a \$2000 to \$25,000 fine for the licensee or permittee and up to a \$150 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension or the sum of the monetary penalties for each of the charges in their respective categories or both.

(vi) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(c) Serious Violations. Violations of this category directly or indirectly affect or potentially affect the public safety, health and welfare, or may involve minors. Penalty range: Written investigation report from law enforcement or Department compliance officer(s) shall be forwarded to the Department on the first occurrence. The penalty shall range from a five-day suspension to revocation of the license or permit or up to a \$25,000 fine or both.

(i) First occurrence involving a serious violation: written investigation report from law enforcement or Department compliance officer(s) shall be forwarded to the Department. The penalty shall range from a five to 30 day suspension of the license or permit and a five to 30 day suspension of the employment of the officer, employee or agent, and/or a \$500 to \$3000 fine for the licensee or permittee and up to a \$300 fine for the officer, employee or agent.

(ii) Second occurrence of the same type of serious violation: a 10 to 90-day suspension of the license or permit and a 10 to 90-day suspension of the employment of the officer, employee or agent, and/or a \$1000 to \$9000 fine for the licensee or permittee and up to a \$350 fine for the officer, employee or agent.

(iii) More than two occurrences of the same type of serious violation: a 15 day suspension to revocation of the license or permit and a 15 to 120 day suspension of the employment of the officer, employee or agent, and/or a \$9000 to \$25,000 fine for the licensee or permittee and up to a \$700 fine for the officer, employee or agent.

(iv) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(v) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(d) Grave Violations. Violations of this category pose or potentially pose, a grave risk to public safety, health and welfare, or may involve lewd acts prohibited by Title 32B, fraud, deceit, willful concealment or misrepresentation of the facts, exclusion of competitors' products, unlawful tied house trade practices, commercial bribery, interfering or refusing to cooperate with authorized officials in the discharge of their duties, unlawful importations, or industry supplying liquor to persons other than the Department and military installations. Penalty range: Written investigation report from law enforcement or Department compliance officer(s) shall be forwarded to the Department on the first occurrence. The penalty shall range from a ten-day suspension to revocation of the license or permit and/or up to a \$25,000 fine.

(i) First occurrence involving a grave violation: written investigation report from law enforcement or Department compliance officer(s) shall be forwarded to the Department. The penalty shall range from a 10-day suspension to revocation of the license or permit and a 10 to 120 day suspension of the employment of the officer, employee or agent, and/or a \$1000 to \$25,000 fine to the licensee or permittee and up to a \$300 fine for the officer, employee or agent.

(ii) More than one occurrence of the same type of grave violation: a fifteen day suspension to revocation of the license or permit, and a 15 to 180 day suspension of the employment of the officer, employee or agent or a \$3000 to \$25,000 fine for the licensee or permittee and up to a \$500 fine for the officer, employee or agent, or both suspension and fine.

(iii) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension or the sum of the monetary penalties for each of the charges in their respective categories or both.

(iv) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(e) The following table summarizes the penalty ranges contained in this subpart of the rule for licensees and permittees.

TABLE

Violation Degree and Frequency	Warning		Fine \$ Amount	Suspension No. of Days	Revoke License
	Verbal	Written			
Minor					
1st	X	X			
2nd			100 to 500		
3rd			200 to 500	1 to 5	
Over 3			500 to 25,000	6 to	X
Moderate					
1st		X	to 1,000		
2nd			500 to 1,000	3 to 10	
3rd			1,000 to 2,000	10 to 20	
Over 3			2,000 to 25,000	15 to	X
Serious					
1st			500 to 3,000	5 to 30	
2nd			1,000 to 9,000	10 to 90	
Over 2			9,000 to 25,000	15 to	X
Grave					
1st			1,000 to 25,000	10 to	X
Over 1			3,000 to 25,000	15 to	X

(f) The following table summarizes the penalty ranges contained in this subpart of the rule for officers, employees or agents of licensees and permittees.

TABLE

Violation Degree and Frequency	Warning		Fine \$ Amount	Suspension No. of Days
	Verbal	Written		
Minor				
1st	X	X		
2nd		X	to 25	
3rd			to 50	1 to 5
Over 3			to 75	6 to 10
Moderate				
1st		X	to 50	
2nd			to 75	3 to 10
3rd			to 100	10 to 20
Over 3			to 150	15 to 30
Serious				
1st			to 300	5 to 30
2nd			to 350	10 to 90
Over 2			to 700	15 to 120
Grave				
1st			to 300	10 to 120
Over 1			to 500	15 to 180

(5) Aggravating and Mitigating Circumstances. The Commission and hearing officers may adjust penalties within penalty ranges based upon aggravating or mitigating circumstances.

(a) Mitigating circumstances include:

- (i) no prior violation history;
- (ii) good faith effort to prevent a violation;
- (iii) existence of written policies governing employee conduct;

(iv) extraordinary cooperation in the violation investigation that shows the licensee or permittee and the officer, employee or agent of the licensee or permittee accepts responsibility; and

(v) there was no evidence that the investigation was based on complaints received or on observed misconduct of others, but was based solely on the investigating authority creating the opportunity for a violation.

(b) Aggravating circumstances include:

- (i) prior warnings about compliance problems;
- (ii) prior violation history;
- (iii) lack of written policies governing employee conduct;
- (iv) multiple violations during the course of the investigation;
- (v) efforts to conceal a violation;
- (vi) intentional nature of the violation;
- (vii) the violation involved more than one patron or employee;
- (viii) the violation involved a minor and, if so, the age of the minor; and

(ix) whether the violation resulted in injury or death.

(6) Violation Grid. Any proposed substantive change to the violation grid that would establish or adjust the degree of seriousness of a violation shall require rulemaking in compliance with title 63G-3, the Utah Administrative Rulemaking Act. A violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public inspection in the Department's administrative office. A copy will be provided upon request at reproduction cost. It is entitled "Alcoholic Beverage Control Commission Violation Grid" (January 2012 edition) and is incorporated by reference as part of this rule.

R82-3-103. Disciplinary Hearings.

(1) General Provisions.

(a) This rule is promulgated pursuant to section 32B-2-202 and shall govern the procedure for disciplinary actions under the jurisdiction of the Commission. Package agencies are expressly excluded from the provisions of this rule, and are governed by the terms of the package agency contract.

(b) Liberal Construction. Provisions of this rule shall be liberally construed to secure just, speedy and economical determination of all issues presented in any disciplinary action.

(c) Emergency Adjudication Proceedings. The Department or Commission may issue an order on an emergency basis without complying with the Utah Administrative Procedures Act in accordance with the procedures outlined in section 63G-4-502.

(d) Utah Administrative Procedures Act. Proceedings under this rule shall be in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act (UAPA), and sections 32B-3-102 through 32B-3-207.

(e) Penalties.

(i) This rule shall govern the imposition of any penalty against a Commission licensee, permittee, or certificate of approval holder, an officer, employee or agent of a licensee, permittee, or certificate of approval holder, and a manufacturer, supplier or importer whose products are listed in this state.

(ii) Penalties may include a letter of admonishment, imposition of a fine, the suspension or revocation of a Commission license, permit, or certificate of approval, the requirement that a licensee have a written responsible alcohol service plan as provided in R82-3-107, the assessment of costs of action, an order prohibiting an officer, employee or agent of a licensee, permittee, or certificate of approval holder, from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any Commission licensee, permittee, or certificate of approval holder for a period determined by the Commission, the forfeiture of bonds, an order removing a manufacturer's, supplier's or importer's products from the Department's sales list and a suspension of the Department's purchase of those products for a period determined by the Commission, and an order removing the products of a certificate of approval holder from the state approved sales list, and a suspension of the purchase of the products in the state.

(iii) Department administrative costs are the hourly pay rate plus benefits of each Department employee involved in processing and conducting the adjudicative proceedings on the violation, an hourly charge for Department overhead costs, the amount billed to the Department by an independent contractor for services rendered in conjunction with an adjudicative proceeding, and any additional extraordinary or incidental costs incurred by the Department. The Commission may also assess additional costs if a respondent fails to appear before the Commission at the final stage of the adjudicative process. Department overhead costs are calculated by taking the previous year's total Department expenditures less staff payroll charges expended on violations, dividing it by the previous year's total staff hours spent on violations, and multiplying this by a rate derived by taking the previous year's total staff payroll spent on violations to the previous year's total payroll of all office employees. The overhead cost figure shall be recalculated at the beginning of each fiscal year.

(f) Perjured Statements. A hearing officer, in the course of conducting a hearing, may swear in witnesses. Any person who makes any false or perjured statement in the course of a disciplinary action is subject to criminal prosecution under section 32B-4-504.

(g) Service. Service of any document shall be satisfied by service personally or by certified mail upon any respondent, or upon any officer or manager of a corporate or limited liability company respondent, or upon an attorney for a respondent, or by service personally or by certified mail to the last known address of the respondent or any of the following:

(i) Service personally or by certified mail upon any employee working in the respondent's premises; or

(ii) Posting of the document or a notice of certified mail upon a respondent's premises; or

(iii) Actual notice. Proof of service shall be satisfied by a receipt of service signed by the person served or by a certificate of service signed by the person served, or by certificate of service signed by the server, or by verification of posting on the respondent's premises.

(h) Filing of Pleadings or Documents. Filing by a respondent of any pleading or document shall be satisfied by timely delivery to the Department office, 1625 S. 900 West, Salt Lake City, or by timely delivery to P. O. Box 30408, Salt Lake City, Utah 84130-0408.

(i) Representation. A respondent who is not a corporation or limited liability company may represent himself in any disciplinary action or may be represented by an agent duly authorized by the respondent in writing, or by an attorney. A corporate or limited liability company respondent may be represented by a member of the governing board of the corporation or manager of the limited liability company, or by a person duly authorized and appointed by the respondent in writing to represent the governing board of the corporation or manager of the limited liability company, or by an attorney.

(j) Hearing Officers.

(i) The Commission or the director may appoint hearing officers to receive evidence in disciplinary proceedings, and to submit to the Commission orders containing written findings of fact, conclusions of law, and recommendations for Commission action.

(ii) If fairness to the respondent is not compromised, the Commission or director may substitute one hearing officer for another during any proceeding.

(iii) A person who acts as a hearing officer at one phase of a proceeding need not continue as hearing officer through all phases of a proceeding.

(iv) Nothing precludes the Commission from acting as hearing officer over all or any portion of an adjudication proceeding.

(v) At any time during an adjudicative proceeding the hearing officer may hold a conference with the Department and the respondent to:

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence;

(D) expedite the proceedings; or

(E) facilitate discovery, if a formal proceeding.

(k) Definitions. The definitions found in section 32B-1-102 and Title 63G, Chapter 4 apply to this rule.

(l) Computation of Time. The time within which any act shall be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or state or federal holiday, in which case the next business day shall count as the last day.

(m) Default.

(i) The hearing officer may enter an order of default against a respondent if the respondent in an adjudicative proceeding fails to attend or participate in the proceeding.

(ii) The order shall include a statement of the grounds for default, and shall be mailed to the respondent and the Department.

(iii) A defaulted respondent may seek to have the default order set aside according to procedures outlined in the Utah Rules of Civil Procedure.

(iv) After issuing the order of default, the Commission or hearing officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the respondent in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting respondent.

(2) Pre-adjudication Proceedings.

(a) Staff Screening. Upon receipt of a violation report, a decision officer of the Department shall review the report, and the alleged violator's violation history, and in accordance with R82-3-102, determine the range of penalties which may be assessed should the alleged violator be found guilty of the alleged violation.

(b) Letters of Admonishment. Because letters of admonishment are not "state agency actions" under section 63G-4-102, no adjudicative proceedings are required in processing them, and they shall be handled in accordance with the following procedures:

(i) If the decision officer of the Department determines that the alleged violation does not warrant an administrative fine, or suspension or revocation of the license, permit, or certificate of approval, or action against an officer, employee or agent of a licensee, permittee, or certificate of approval holder, or against a manufacturer, supplier or importer of products listed in this state, a letter of admonishment may be sent to the respondent.

(ii) A letter of admonishment shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) The alleged violation, together with sufficient facts to put a respondent on notice of the alleged violations and the name of the law enforcement agency or staff member making the report;

(D) Notice that a letter of admonishment may be considered as a part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent; and

(E) Notice that a rebuttal is permitted under these rules within 10 days of service of the letter of admonishment.

(F) Notice that the letter of admonishment is subject to the approval of the Commission.

(iii) A copy of the law enforcement agency or Department staff report shall accompany the letter of admonishment. The decision officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iv) A respondent may file a written rebuttal with the Department within 10 days of service of the letter of admonishment. The rebuttal shall be signed by the respondent, or by the respondent's authorized agent or attorney, and shall set forth in clear and concise terms:

(A) the case number assigned to the action;

(B) the name of the respondent; and

(C) any facts in defense or mitigation of the alleged violation, and a brief summary of any attached evidence. The rebuttal may be accompanied by supporting documents, exhibits, or signed statements.

(v) If the decision officer is satisfied, upon receipt of a rebuttal, that the letter of admonishment was not well taken, it may be withdrawn, and the letter and rebuttal shall be expunged from the respondent's file. Letters of admonishment so withdrawn shall not be considered as a part of the respondent's violation history. If no rebuttal is received, or if the decision officer determines after receiving a rebuttal that the letter of admonishment is justified, the matter shall be submitted to the Commission for final approval. Upon Commission approval, the letter of admonishment, together with any written rebuttal, shall be placed in the respondent's Department file and may be considered as part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent. If the Commission rejects the letter of admonishment, it may either direct the decision officer to dismiss the matter or may direct that an adjudicative proceeding be commenced seeking a more severe penalty.

(vi) At any time before the Commission's final approval of a letter of admonishment, a respondent may request that the matter be processed under the adjudicative proceeding process.

(c) Commencement of Adjudicative Proceedings.

(i) Alleged violations shall be referred to a hearing officer for commencement of adjudicative proceedings under the following circumstances:

(A) the decision officer determines during screening that the case does not fit the criteria for issuance of a letter of admonishment under subpart (2)(b)(i) of this rule;

(B) a respondent has requested that a letter of admonishment be processed under the adjudicative proceeding process; or

(C) the Commission has rejected a letter of admonishment and directed that an adjudicative proceeding be commenced seeking a more severe penalty.

(ii) All adjudicative proceedings shall commence as informal proceedings.

(iii) At any time after commencement of informal adjudicative proceedings, but before the commencement of a hearing, if the Department determines that it will seek administrative fines exceeding \$3000, a suspension of the license, permit or certificate of approval for more than 10 days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the hearing officer shall convert the matter to a formal adjudicative proceeding.

(iv) At any time before a final order is issued, a hearing officer may convert an informal proceeding to a formal proceeding if conversion is in the public interest and does not unfairly prejudice the rights of any party.

(3) The Informal Process.

(a) Notice of agency action.

(i) Upon referral of a violation report from the decision officer for commencement of informal adjudicative proceedings, the hearing officer shall issue and sign a written "notice of agency action" which shall set forth in clear and concise terms:

(A) The names and mailing addresses of all persons to whom notice is being given by the hearing officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the Department;

- (B) The Department's case number;
 - (C) The name of the adjudicative proceeding, "DABC vs. (insert name of the respondent)";
 - (D) The date that the notice of agency action was mailed;
 - (E) A statement that the adjudicative proceeding is to be conducted informally according to the provisions of this rule and sections 63G-4-202 and 63G-4-203 unless a hearing officer converts the matter to a formal proceeding pursuant to subparts (2)(c)(iii) or (iv) of this rule, in which event the proceeding will be conducted formally according to the provisions of this rule and sections 63G-4-204 to -209;
 - (F) The date, time and place of any prehearing conference with the hearing officer;
 - (G) A statement that a respondent may request a hearing for the purpose of determining whether the violation(s) alleged in the notice of agency action occurred, and if so, the penalties that should be imposed;
 - (H) A statement that a respondent who fails to attend or participate in any hearing may be held in default;
 - (I) A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;
 - (J) A statement of the purpose of the adjudicative proceeding and questions to be decided including:
 - (I) the alleged violation, together with sufficient facts to put the respondent on notice of the alleged violation and the name of the law enforcement agency or Department staff member making the violation report; and
 - (II) the penalty sought, which may include assessment of costs under section 32B-3-205 if the respondent is found guilty of the alleged violation, and forfeiture of any compliance bond on final revocation, if revocation is sought by the Department;
 - (K) Any violation history of the respondent which may be considered in assessing an appropriate penalty should the respondent be found guilty of the alleged violation; and
 - (L) The name, title, mailing address, and telephone number of the hearing officer.
- (ii) A copy of the law enforcement agency or staff report shall accompany the notice of agency action. The hearing officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.
 - (iii) The notice of agency action and any subsequent pleading in the case shall be retained in the respondent's Department file.
 - (iv) The notice of agency action shall be mailed to each respondent, any attorney representing the Department, and, if applicable, any law enforcement agency that referred the alleged violation to the Department.
 - (v) The hearing officer may permit or require pleadings in addition to the notice of agency action. All additional pleadings shall be filed with the hearing officer, with copies sent by mail to each respondent and to the Department.
 - (vi) Amendment to Pleading. The hearing officer may, upon motion of the respondent or the Department made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice a respondent or the Department shall be disregarded.
 - (vii) Signing of Pleading. Pleadings shall be signed by the Department or respondent, or their authorized attorney or representative, and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he or she has read the pleading and that he or she has taken reasonable measures to assure its truth.
- (b) The Prehearing Conference.
 - (i) The hearing officer may hold a prehearing conference with the respondent and the Department to encourage settlement, clarify issues, simplify the evidence, or expedite the proceedings.
 - (ii) All or part of any adjudicative proceeding may be stayed at any time by a written settlement agreement signed by the Department and respondent or their authorized attorney or representative, and by the hearing officer. The stay shall take effect immediately upon the signing of the settlement agreement, and shall remain in effect until the settlement agreement is approved or rejected by the Commission. No further action shall be required with respect to any action or issue so stayed until the Commission has acted on the settlement agreement.
 - (iii) A settlement agreement approved by the Commission shall constitute a final resolution of all issues agreed upon in the settlement. No further proceedings shall be required for any issue settled. The approved settlement shall take effect by its own terms and shall be binding upon the respondent and the Department. Any breach of a settlement agreement by a respondent may be treated as a separate violation and shall be grounds for further disciplinary action. Additional sanctions stipulated in the settlement agreement may also be imposed.
 - (iv) If the settlement agreement is rejected by the Commission, the action shall proceed in the same posture as if the settlement agreement had not been reached, except that all time limits shall have been stayed for the period between the signing of the agreement and the Commission rejection of the settlement agreement.
 - (v) If the matter cannot be resolved by settlement agreement, the Department shall notify the respondent and the hearing officer whether it will seek administrative fines exceeding \$3000, a suspension of the license, permit or certificate of approval for more than 10 days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s).
 - (vi) If the Department does not seek administrative fines exceeding \$3000, a suspension of the license, permit, or certificate of approval for more than 10 days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), any hearing on the matter shall be adjudicated informally.
 - (vii) If the Department does seek administrative fines exceeding \$3000, a suspension of the license, permit, or certificate of approval for more than 10 days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the hearing officer shall convert the matter to a formal adjudicative proceeding, and any hearing on the matter shall be adjudicated formally. The Department may waive the formal adjudicative proceeding requirement that the respondent file a written response to the notice of agency action.
- (c) The Informal Hearing.
 - (i) The hearing officer shall notify the respondent and Department in writing of the date, time and place of the hearing at least 10 days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be granted by the hearing officer for good cause shown. Failure by a respondent to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations, and the right to the hearing. The hearing officer shall proceed to prepare and serve on respondent an order pursuant to R82-3-103.
 - (ii) All hearings shall be presided over by the hearing officer.
 - (iii) The respondent named in the notice of agency action and the Department shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply, however, the hearing officer:
 - (A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;
 - (B) shall exclude evidence privileged in the courts of Utah;
 - (C) shall recognize presumptions and inferences recognized by law;
 - (D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document;

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the Commission, and of technical or scientific facts within the Commission's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his or her experience, technical competence, and specialized knowledge to evaluate the evidence.

(iv) All testimony shall be under oath.

(v) Discovery is prohibited.

(vi) Subpoenas and orders to secure the attendance of witnesses or the production of evidence shall be issued by the hearing officer when requested by a respondent or the Department, or may be issued by the hearing officer on his or her own motion.

(vii) A respondent shall have access to information contained in the Department's files and to material gathered in the investigation of respondent to the extent permitted by law.

(viii) Intervention is prohibited.

(ix) The hearing shall be open to the public, provided that the hearing officer may order the hearing closed upon a written finding that the public interest in an open meeting is clearly outweighed by factors enumerated in the closure order. The hearing officer may take appropriate measures necessary to preserve the integrity of the hearing.

(x) Record of Hearing. The hearing officer shall cause an official record of the hearing to be made, at the Department's expense, as follows:

(A) the record of the proceedings may be made by means of an audio or video recorder or other recording device at the Department's expense.

(B) the record may also be made by means of a certified shorthand reporter employed by the Department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the Department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the Department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his or her own expense, may have a person approved by the Department, prepare a transcript of the hearing, subject to any restrictions that the Department is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the Department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The Department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xi) The hearing officer may grant continuances or recesses as necessary.

(xii) Order of presentation. Unless otherwise directed by the hearing officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) the Department; (2) respondent; (3) rebuttal by the Department.

(xiii) Time limits. The hearing officer may set reasonable time limits for the presentations described above.

(xiv) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a respondent or the Department indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the hearing officer when in the public interest.

(xv) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the hearing officer may, in his or her discretion, permit a respondent and the Department to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the hearing officer.

(d) Disposition.

(i) Hearing officer's Order; Objections.

(A) Within a reasonable time after the close of the hearing, the hearing officer shall issue a signed order in writing that includes the following:

(I) the decision;

(II) the reasons for the decision;

(III) findings of facts;

(IV) conclusions of law;

(V) recommendations for final Commission action; and

(VI) notice that a respondent or the Department having objections to the hearing officer's order may file written objections with the hearing officer within 10 days of service of the order, setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful or not supported by the evidence.

(B) The order shall be based on the facts appearing in the Department's files and on the facts presented in evidence at the informal hearing. Any finding of fact that was contested may not be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence. The order shall not recommend a penalty more severe than that sought in the notice of agency action, and in no event may it recommend administrative fines exceeding \$3000, a suspension of the license, permit, or certificate of approval for more than 10 days, or a revocation of the license, permit, or certificate of approval.

(C) A copy of the hearing officer's order shall be promptly mailed to the respondent and the Department.

(D) The hearing officer shall wait 10 days from service of his or her order for written objections, if any. The hearing officer may then amend or supplement his or her findings of fact, conclusions of law, and recommendations to reflect those objections which have merit or which are not disputed.

(E) Upon expiration of the time for filing written objections, the order of the hearing officer and any written objections timely filed, shall be submitted to the Commission for final consideration.

(F) The hearing officer or presiding officer may grant a motion to file a late objection for good cause or excusable neglect.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular Commission meeting for consideration by the Commission. Copies of the order, together with any objections filed shall be forwarded to the Commission, and the Commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The Commission shall be deemed a substitute hearing officer for this final stage of the informal adjudicative proceeding pursuant to section 63G-4-103. This stage is not considered a "review of an order by an agency or a superior agency" under sections 63G-4-301 and -302.

(C) No additional evidence shall be presented to the Commission. The Commission may, in its discretion, permit the respondent and the Department to present oral presentations.

(D) After the Commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to section 32B-3-204(4) and subsection 63G-4-203(1)(i) containing:

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

(V) action ordered by the Commission and effective date of the action taken; and

(VI) notice of the right to seek judicial review of the order within 30 days from the date of its issuance in the district court in accordance with sections 63G-4-401, -402, -404, and -405 and 32B-3-207.

(E) The Commission may adopt in whole or in part, any portion(s) of the initial hearing officer's order.

(F) The order shall be based on the facts appearing in the Department's files and on the facts presented in evidence at the informal hearing.

(G) The order shall not impose a penalty more severe than that sought in the notice of agency action, and in no event may it impose administrative fines exceeding \$3000, a suspension of the license, permit, or certificate of approval for more than 10 days, or a revocation of the license, permit, or certificate of approval.

(H) The Commission, after it has rendered its final decision and order, may direct the Department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the Commission.

(I) A copy of the Commission's order shall be promptly mailed to the parties.

(e) Judicial Review.

(i) Any petition for judicial review of the Commission's final order must be filed within 30 days from the date the order is issued.

(ii) Appeals from informal adjudicative proceedings shall be to the district court in accordance with sections 63G-4-402, 63G-4-404, and -63G-4-405, and 32B-3-207.

(4) The Formal Adjudicative Process.

(a) Conversion Procedures. If a hearing officer converts an informal adjudicative proceeding to a formal adjudicative proceeding pursuant to subparts (2)(c)(iii) or (iv) of this rule:

(i) the hearing officer shall notify the parties that the adjudicative proceeding is to be conducted formally according to the provisions of this rule and sections 63G-4-204 to -209;

(ii) the case shall proceed without requiring the issuance of a new or amended notice of agency action; and

(iii) the respondent shall be required to file a written response to the original notice of agency action within 30 days of the notice of the conversion of the adjudicative proceeding to a formal proceeding, unless this requirement is waived by the Department. Extensions of time to file a response are not favored, but may be granted by the hearing officer for good cause shown. Failure to file a timely response shall waive the respondent's right to contest the matters stated in the notice of agency action, and the hearing officer may enter an order of default and proceed to prepare and serve his or her final order pursuant to subpart (4)(e). The response shall be signed by the respondent, or by an authorized agent or attorney of the respondent, and shall set forth in clear and concise terms:

(A) the case number assigned to the action;

(B) the name of the adjudicative proceeding, "DABC vs. (insert name of respondent)";

(C) the name of the respondent;

(D) whether the respondent admits, denies, or lacks sufficient knowledge to admit or deny each allegation stated in the notice of agency action, in which event the allegation shall be deemed denied;

(E) any facts in defense or mitigation of the alleged violation or possible penalty;

(F) a brief summary of any attached evidence. Any supporting documents, exhibits, signed statements, transcripts, etc., to be considered as evidence shall accompany the response;

(G) a statement of the relief the respondent seeks; and

(H) a statement summarizing the reasons that the relief requested should be granted;

(iv) In addition to Subsections (4)(a)(i), (ii), and (iii), if the hearing officer converts an informal adjudicative proceeding to a formal adjudicative proceeding, the hearing officer may:

(A) permit or require pleadings in addition to the notice of agency action and the response, with all additional pleadings being filed with the hearing officer and copies sent by mail to each party; and

(B) upon motion of the responsible party made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice any of the parties shall be disregarded.

(vi) Pleadings shall be signed by the party or the party's attorney and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth;

(b) Intervention.

(i) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the hearing officer. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

(A) the Department's case number;

(B) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceedings or that the petitioner qualifies as an intervenor under any provision of law; and

(C) a statement of the relief that the petitioner seeks from the agency;

(ii) Response to Petition. Any party to a proceeding into which intervention is sought may make an oral or written response to the petition for intervention. The response shall state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted. The response must be presented or filed at or before the hearing.

(iii) Granting of Petition. The hearing officer shall grant a petition for intervention if the hearing officer determines that:

(A) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(B) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

(iv) Order Requirements.

(A) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

(B) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

(C) The hearing officer may impose conditions at any time after the intervention.

(D) If it appears during the course of the proceeding that an intervenor has no direct or substantial interest in the proceeding and that the public interest does not require the intervenor's participation, the hearing officer may dismiss the intervenor from the proceeding.

(E) In the interest of expediting a hearing, the hearing officer may limit the extent of participation of an intervenor. Where two or more intervenors have substantially like interests and positions, the hearing officer may at any time during the hearing limit the number of intervenors who will be permitted to testify, cross-examine witnesses or make and argue motions and objections.

(c) Discovery and Subpoenas.

(i) Discovery. Upon the motion of a party and for good cause shown that it is to obtain relevant information necessary to support a claim or defense, the hearing officer may authorize the manner of discovery against another party or person, including the staff, as may be allowed by the Utah Rules of Civil Procedure.

(ii) Subpoenas. Subpoenas and orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the hearing officer when requested by any party, or may be issued by the hearing officer on his or her own motion.

(d) The Formal Hearing.

(i) Notice. The hearing officer shall notify the parties in writing of the date, time, and place of the hearing at least 10 days in advance of the hearing. The hearing officer's name, title, mailing address, and telephone number shall be provided to the parties. Continuances of scheduled hearings are not favored, but may be granted by the hearing officer for good cause shown. Failure to appear at the hearing after notice has been given shall be grounds for default and shall waive both the respondent's right to contest the allegations, and the respondent's right to the hearing. The hearing officer shall proceed to prepare and serve on respondent his or her order pursuant to R82-3-103(4)(e).

(ii) Public Hearing. The hearing shall be open to all parties. It shall also be open to the public, provided that the hearing officer may order the hearing closed upon a written finding that the public interest in an open hearing is clearly outweighed by factors enumerated in the closure order. The hearing officer may take appropriate measures necessary to preserve the integrity of the hearing.

(iii) Rights of Parties. The hearing officer shall regulate the course of the hearings to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions, present evidence, argue, respond, conduct cross-examinations, and submit rebuttal evidence.

(iv) Public Participation. The hearing officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(v) Rules of Evidence. Technical rules of evidence shall not apply. Any reliable evidence may be admitted subject to the following guidelines. The hearing officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document.

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his or her experience, technical competence, and specialized knowledge to evaluate the evidence.

(vi) Oath. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

(vii) Order of presentation. Unless otherwise directed by the hearing officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) agency; (2) respondent; (3) intervenors (if any); (4) rebuttal by agency.

(viii) Time limits. The hearing officer may set reasonable time limits for the presentations described above.

(ix) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the hearing officer when in the public interest.

(x) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the hearing officer may, in his or her discretion, permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the hearing officer.

(xi) Record of Hearing. The hearing officer shall cause an official record of the hearing to be made, at the agency's expense, as follows:

(A) The record may be made by means of an audio or video recorder or other recording device at the Department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the Department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the Department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the Department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his or her own expense, may have a person approved by the Department prepare a transcript of the hearing, subject to any restrictions that the agency is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the Department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The Department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xii) Failure to appear. Inexcusable failure of the respondent to appear at a scheduled evidentiary hearing after receiving proper notice constitutes an admission of the charged violation. The validity of any hearing is not affected by the failure of any person to attend or remain in attendance pursuant to subsections 32B-3-203(3)(b) and (c).

(e) Disposition.

(i) Hearing officer's Order; Objections.

(A) Within a reasonable time of the close of the hearing, or after the filing of any post-hearing papers permitted by the hearing officer, the hearing officer shall sign and issue a written order that includes the following:

(I) the findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R82-3-103(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) recommendations for final Commission action. The order shall not recommend a penalty more severe than that sought in the notice of agency action; and

(VI) notice that a respondent or the Department having objections to the hearing officer's order may file written objections with the hearing officer within 10 days of service of the order setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful, or not supported by the evidence.

(B) A copy of the hearing officer's order shall be promptly mailed to the parties.

(C) The hearing officer shall wait 10 days from service of his or her order for written objections, if any. The hearing officer may then amend or supplement his or her findings of fact, conclusions of law, and recommendations to reflect those objections which have merit and which are not disputed.

(D) Upon expiration of the time for filing written objections, the order of the hearing officer and any written objections timely filed, shall be submitted to the Commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular Commission meeting for consideration by the Commission. Copies of the order, together with any objections filed by the respondent, shall be forwarded to the Commission, and the Commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The Commission shall be deemed a substitute hearing officer for this final stage of the formal adjudicative proceeding pursuant to subsections 63G-4-103(1)(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under sections 63G-4-301 and -302.

(C) No additional evidence shall be presented to the Commission. The Commission may, in its discretion, permit the parties to present oral presentations.

(D) After the Commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to subsections 32B-3-204(4) and 63G-4-208(1) that includes:

(I) findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R82-3-103(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action and the respondent is considered in default;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) action ordered by the Commission and effective date of the action taken. The order shall not impose a penalty more severe than that sought in the notice of agency action;

(VI) notice of the right to file a written request for reconsideration within 10 days of the service of the order;

(VII) notice of the right to seek judicial review of the order within 30 days of the date of its issuance in the court of appeals in accordance with sections 32B-3-207 and 63G-4-403, -404, -405.

(E) The Commission may adopt in whole or in part, any portion(s) of the initial hearing officer's order.

(F) The Commission may use its experience, technical competence and specialized knowledge to evaluate the evidence.

(G) The Commission, after it has rendered its final decision and order, may direct the Department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the Commission.

(H) A copy of the Commission's order shall be promptly mailed to the parties.

(I) A respondent having objections to the order of the Commission may file, within 10 days of service of the order, a request for reconsideration with the Commission, setting forth the particulars in which the order is unfair, unreasonable, unlawful, or not supported by the evidence. If the request is based upon newly discovered evidence, the petition shall be accompanied by a summary of the new evidence, with a statement of reasons why the respondent could not with reasonable diligence have discovered the evidence before the formal hearing, and why the evidence would affect the Commission's order.

(J) The filing of a request for reconsideration is not a prerequisite for seeking judicial review of the Commission's order.

(K) Within 20 days of the filing of a request for reconsideration, the Commission may issue or cause to be issued a written order granting the request or denying the request in whole or in part. If the request is granted, it shall be limited to the matter specified in the order. Upon reconsideration, the Commission may confirm its former order or vacate, change or modify the same in any particular, or may remand for further action. The final order shall have the same force and effect as the original order.

(L) If the Commission does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered denied.

(f) Judicial Review.

(i) Respondent may file a petition for judicial review of the Commission's final order within 30 days from the date the order is issued.

(ii) Appeals from formal adjudicative proceedings shall be to the Utah Court of Appeals in accordance with sections 63G-4-403, -404, 405 and 32B-3-207.

R82-3-104. Orders to Show Cause.

(1)(a) When a licensee or permittee fails to maintain the fundamental, minimum qualifications provided by law for holding a license or permit, the Department shall issue an Order to Show Cause to the licensee or permittee.

(b) A failure to maintain fundamental, minimum qualifications includes but is not limited to a failure to maintain insurance or a bond, a failure to notify the Department regarding a change of ownership as described in section 32B-5-310, a failure to maintain records showing the

appropriate amount of food sales for the license type, or a conviction for a criminal offense that disqualifies the licensee or permittee from holding the license or permit.

(2) The Order to Show Cause shall require the licensee or permittee to provide the Commission with proof that the licensee or permittee maintains the minimum qualifications to hold the license or permit.

(3) An Order to Show Cause issued by the Department shall:

(a) identify the time and place that a hearing on the Order to Show Cause shall be conducted;

(b) identify the qualification or qualifications that the licensee or permittee is alleged to have failed to maintain; and

(c) be sent to the address on file of the licensee or permittee via certified mail no later than 10 calendar days before the day on which the hearing described in (3)(a) is scheduled to be held.

(4) If a licensee or permittee provides the Department with proof that the licensee or permittee maintains the minimum qualifications to hold the license or permit before the scheduled hearing, the Department shall notify the chair of the Commission and the Commission may:

(a) cancel the hearing;

(b) remove the Order to Show Cause from the hearing agenda; or

(c) require the licensee or permittee to attend the hearing and provide the Commission with proof of minimum qualifications.

(5) If a licensee or permittee fails to provide the Commission with proof that the licensee or permittee maintains the minimum qualifications to hold the license or permit at a scheduled hearing, the Commission shall suspend or revoke the license or permit or hold the hearing on the order to show cause until the next Commission meeting.

(6) Orders to Show Cause issued pursuant to this rule are not required to comply with the Administrative Procedures Act or R82-3-103.

R82-3-105. Consent Calendar Procedures.

(1) Authority. This rule is pursuant to the Commission's authority to establish procedures for suspending or revoking permits, licenses, and package agencies under subsections 32B-2-202(1)(c) and (e), and the Commission's authority to adjudicate violations of Title 32B in accordance with subsections 32B-2-202(1)(p), 32B-3-204(4), and 205(1).

(2) Purpose. This rule establishes a consent calendar procedure for handling letters of admonishment issued and settlement agreements proposed pursuant to R82-3-103 that meet the following criteria:

(a) Uncontested letters of admonishment where no written objections have been received from the respondent; and

(b) Settlement agreements except those where the respondent is allowed to present further argument to the Commission under the terms of the settlement agreement.

(3) Application of the Rule.

(a) A consent calendar may be utilized by the Commission at their meetings to expedite the handling of letters of admonishment and settlement agreements that meet the criteria of subpart (2) of this rule.

(b) Consent calendar items shall be briefly summarized by Department staff or the assistant attorney general assigned to the Department. The summary shall describe the nature of the violations and the penalties sought.

(c)(i) The Commission shall be furnished in advance of the meeting a copy of each letter of admonishment and settlement agreement on the consent calendar and any documents essential for the Commission to make an informed decision on the matter.

(ii) If the case involves anything unusual or out of the ordinary, it shall be highlighted on the letter of admonishment or settlement agreement and shall be noted by the Department staff person or assistant attorney general during the summary of the case.

(iii) Settlement agreements on the consent calendar shall include specific proposed dates for the suspension of any license or permit, and for payment of any fines or administrative costs.

(d) If the case involves a serious or grave violation as defined in R82-3-102, the licensee or permittee, absent good cause, shall be in attendance at the Commission meeting. The licensee or permittee shall be present not to make a presentation, but to respond to any questions from the Commission. Individual employees of a licensee or permittee are not required to be in attendance at the Commission meeting.

(e) Any Commissioner may have an item removed from the consent calendar if the Commissioner feels that further inquiry is necessary before reaching a final decision. In the event a Commissioner elects to remove an item from the consent calendar, and the licensee or permittee is not in attendance, the matter may be rescheduled for the next regular Commission meeting. Otherwise, the action recommended by Department staff or the assistant attorney general presenting the matter shall be approved by unanimous consent of the Commission.

(f) All consent calendar items shall be approved in a single motion at the conclusion of the presentation of the summary.

(g) All fines and administrative costs associated with a consent calendar item shall be paid on or before the day of the Commission meeting unless otherwise provided by order of the Commission.

R82-3-106. Commission Declaratory Orders.

(1) Authority. As required by section 63G-4-503, and as authorized by section 32B-2-202, this rule provides the procedures for the submission, review, and disposition of petitions for Commission declaratory orders on the applicability of statutes administered by the Commission and Department, rules promulgated by the Commission, and orders issued by the Commission.

(2) Petition Procedure.

(a) Any person or government agency directly affected by a statute administered by the Commission, a rule promulgated by the Commission, or an order issued by the Commission may petition for a declaratory order.

(b) The petitioner shall file the petition with the Commission's executive secretary.

(3) Petition Form. The petition shall:

(a) be clearly designated as a request for a declaratory order;

(b) identify the statute, rule, or order to be reviewed;

(c) describe the situation or circumstances giving rise to the need for the declaratory order, or in which applicability of the statute, rule, or order is to be reviewed;

(d) describe the reason or need for the applicability review;

(e) identify the person or agency directly affected by the statute, rule, or order;

(f) include an address and telephone number where the petitioner can be reached during regular workdays; and

(g) be signed by the petitioner.

(4) Petition Review and Disposition.

- (a) The Commission shall:
 - (i) review and consider the petition;
 - (ii) prepare a declaratory order stating:
 - (A) the applicability or non-applicability of the statute, rule, or order at issue;
 - (B) the reasons for the applicability or non-applicability of the statute, rule, or order; and
 - (C) any requirements imposed on the Department, the petitioner, or any person as a result of the declaratory order;
 - (iii) serve the petitioner with a copy of the order.
- (b) The Commission may:
 - (i) interview the petitioner;
 - (ii) hold an informal adjudicative hearing to gather information before making its determination;
 - (iii) hold a public information-gathering hearing on the petition;
 - (iv) consult with Department staff, the Attorney General's Office, other government agencies, or the public; and
 - (v) take any other action necessary to provide the petition adequate review and due consideration.

R82-3-107. Responsible Alcohol Service Plan.

(1) Authority. This rule is pursuant to the Commission's powers and duties under sections 32B-1-102, 32B-2-202, 32B-5-201 and 202 to act as a general policymaking body on the subject of alcoholic beverage control; set policy by written rules that establish criteria and procedures for suspending or revoking licenses; and prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule requires a licensee to provide a Responsible Alcohol Service Plan ("RASP") with their initial application, upon renewal if the RASP has had a substantial change, or if the licensee has been found by the Commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21.

(3) Definitions.

(a) "Intoxication" and "intoxicated" are as defined in section 32B-1-102(48).

(b) "Licensed Business" is a person or business entity licensed by the Commission to sell, serve, and store alcoholic beverages for consumption on the premises of the business.

(c) "Manager" means a person chosen or appointed to manage, direct, supervise, or administer the operations at a licensed business, regardless of the person's title.

(d) "Responsible Alcohol Service Plan" or "Plan" means a written set of policies and procedures of a licensed business that outline measures that will be taken by the business to prevent employees of the licensed business from:

- (i) over-serving alcoholic beverages to customers;
- (ii) serving alcoholic beverages to customers who are actually, apparently, or obviously intoxicated; and
- (iii) serving alcoholic beverages to persons under the age of 21.

(e) "Server" means an employee who actually makes available, serves to, or provides an alcoholic beverage to a customer for consumption on the business premises.

(f) "Supervisor" means an employee who, under the direction of a manager or owner, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the business.

(4) Application of Rule.

(a)(i) The Commission may direct that a licensed business that has been found by the Commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, submit to the Department a Responsible Alcohol Service Plan.

(ii) The licensee thereafter shall, at a minimum, maintain a RASP as a condition of continued licensing and relicensing by the Commission.

(b) Any RASP at a minimum shall:

- (i) outline the policies and procedures of the licensed business to:
 - (A) prevent over-service of alcohol;
 - (B) prevent service of alcohol to persons who are intoxicated;
 - (C) prevent service of alcohol to persons under the age of 21;
 - (D) provide alternate transportation options for problem customers; and
 - (E) deal with hostile customers;

(ii) require that all managers, supervisors, servers, security personnel, and others who are involved in the sale, service or furnishing of alcohol, agree to follow the policies and procedures of the Plan;

(iii) require adherence to the Plan as a condition of employment;

(iv) require a commitment by management to monitor employee compliance with the Plan;

(v) require periodic training sessions on the house policies and procedures in the Plan, and on the techniques of responsible service of alcohol taught in the Alcohol Training and Education Seminar required by 62A-15-401, such as:

- (A) identifying legal forms of ID, checking ID, and recognizing fake ID;
- (B) identifying persons under the age of 21;
- (C) discussing the legal definition of intoxication;
- (D) identifying behavioral signs of intoxication;
- (E) discussing techniques for monitoring and controlling consumption such as:
 - (1) drink counting;
 - (2) slowing down alcohol service;
 - (3) offering food or nonalcoholic beverages; and
 - (4) cutting off alcohol service;

(F) discussing third party or "dram shop" liability for the unlawful service of alcohol to intoxicated persons and persons under the age of 21 as outlined in Title 32B, Chapter 15; and

(G) discussing the potential criminal, civil and administrative penalties for over-serving alcohol, selling, serving, or otherwise furnishing alcohol to persons who are intoxicated, or to persons who are under the age of 21.

(c) The licensed business may choose to include in the Plan incentives for those employees who deserve special recognition for their responsible service of alcohol.

(d) The Plan shall be available on the premises of the licensed business so as to be accessible to all employees of the licensed business who are involved in the sale, service or furnishing of alcohol.

(e) The Plan shall be available on the premises of the licensed business for inspection by representatives of the Commission, the Department and by law enforcement officers.

(f) Any licensed business that fails to submit to the Department a Plan as directed by the Commission pursuant to subpart (4)(a) of this rule, or to have a Plan available for inspection as required by subpart (4)(e), shall be subject to the immediate suspension or revocation of its current license, and shall not be granted a renewal of its license by the Commission.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: February 25, 2020

Authorizing, and Implemented or Interpreted Law: 32B-2-202

R82. Alcoholic Beverage Control, Administration.

R82-4. Criminal Offenses and Procedure.

R82-4-101. Age Verification.

- (1) Authority. Sections 32B-1-401, 32B-1-404, 32B-1-405, 32B-1-407 and 32B-4-411.
- (2) Purpose.
 - (a) Section 32B-1-407 requires applicable licensees to verify proof of age of persons who appear to be 35 years of age or younger either by an electronic age verification device, or an acceptable alternate process established by Commission rule.
 - (b) This rule:
 - (i) establishes the minimum technology specifications of electronic age verification devices;
 - (ii) establishes the procedures for recording identification that cannot be electronically verified; and
 - (iii) establishes the security measures that must be used by the applicable licensee to ensure that information obtained is used only to verify proof of age and is not disclosed to others except to the extent authorized by Title 32B, Alcoholic Beverage Control Act.
 - (3) Application of Rule.
 - (a) An electronic age verification device:
 - (i) shall contain:
 - (A) the technology of a magnetic stripe card reader;
 - (B) the technology of a two-dimensional ("2d") stack symbology card reader; or
 - (C) an alternate technology capable of electronically verifying the proof of age;
 - (ii) shall be capable of reading:
 - (A) a valid state issued driver's license;
 - (B) a valid state issued identification card;
 - (C) a valid military identification card; and
 - (D) a valid passport;
 - (iii) shall have a screen that displays no more than:
 - (A) the individual's name;
 - (B) the individual's age;
 - (C) the number assigned to the individual's proof of age by the issuing authority;
 - (D) the individual's the birth date;
 - (E) the individual's gender; and
 - (F) the status and expiration date of the individual's proof of age; and
 - (iv) shall have the capability of electronically storing the following information for seven days (168 hours):
 - (A) the individual's name;
 - (B) the individual's date of birth;
 - (C) the individual's age;
 - (D) the expiration date of the proof of age identification card;
 - (E) the individual's gender; and
 - (F) the time and date the proof of age was scanned.
 - (b) An alternative method of verifying an individual's proof of age when proof of age cannot be scanned electronically:
 - (i) shall include a record or log of the information obtained from the individual's proof of age including the following information:
 - (A) the type of proof of age identification document presented;
 - (B) the number assigned to the individual's proof of age document by the issuing authority;
 - (C) the expiration date of the proof of age identification document;
 - (D) the date the proof of age identification document was presented;
 - (E) the individual's name; and
 - (F) the individual's date of birth.
 - (c) Any data collected either electronically or otherwise:
 - (i) may be used by the licensee, and employees or agents of the licensee, solely for the purpose of verifying an individual's proof of age;
 - (ii) may be acquired by law enforcement, or other investigative agencies for any purpose under sections 32B-6-406 - 407;
 - (iii) may not be retained by the licensee in a data base for mailing, advertising, or promotional activity;
 - (iv) may not be retained to acquire personal information to make inappropriate personal contact with the individual; and
 - (v) shall be retained for a period of seven days from the date on which it was acquired, after which it must be deleted.
 - (d) Any person who still questions the age of the individual after being presented with proof of age, shall require the individual to sign a statement of age form as provided under section 32B-1-405.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: February 25, 2020

Authorizing, and Implemented or Interpreted Law: 32B-2-202

R82. Alcoholic Beverage Control, Administration.

R82-5. General Retail License Provisions.

R82-5-101. Definitions.

- (1) This rule is adopted pursuant to Sections 32B-1-102 and 32B-2-202.
- (2) As used in this rule:
 - (a) "Dispensing System" means a system or device which dispenses liquor in controlled quantities not exceeding 1.5 ounces and has a meter which counts the number of pours served.
 - (b) "Resort facility" is a publicly or privately owned or operated commercial recreational facility or area:
 - (i) that is designed primarily to attract and accommodate people to a recreational or sporting environment;
 - (ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;
 - (iii) that has adequate kitchen or culinary facilities on the premises to provide complete meals; and
 - (iv) that has at least 1500 square feet of function space consisting of meeting or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the Commission shall have the authority to waive the minimum function space size requirements.
 - (c) "Sports center" is a publicly or privately owned or operated facility:
 - (i) that is designed primarily to attract people to and accommodate people at sporting events;
 - (ii) that has a fixed seating capacity for more than 2,000 persons;
 - (iii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;
 - (iv) that has adequate kitchen or culinary facilities on the premises of the sports center to provide complete meals; and
 - (v) that has at least 2500 square feet of function space consisting of meeting or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the Commission shall have the authority to waive the minimum function space size requirements.
 - (d) "Convention center" is a publicly or privately owned or operated facility:
 - (i) the primary business or function of which is to host conventions, conferences, and food and beverage functions under a banquet contract;
 - (ii) that has adequate kitchen or culinary facilities on the premises of the convention center to provide complete meals; and
 - (iii) that is in total at least 30,000 square feet.

R82-5-102. Licensing, Ownership, and Transfer of License.

- (1) This rule is adopted pursuant to Section 32B-5-310, which authorizes the Department to make rules governing requirements for interim alcoholic beverage management agreements.
- (2) Licenses are issued to persons. A licensee must communicate any contemplated action or transaction that may alter an organizational structure or ownership interest of the person to whom a license is issued to the Department so staff may ensure there is no violation of Section 32B-5-310.
- (3) An interim alcoholic beverage management agreement is required if a buyer will be performing the day-to-day operations of the business before the Commission approves the transfer of the license from seller to buyer.
- (4)(a) Before a retail licensee enters into an interim alcoholic beverage management agreement, it shall provide the proposed interim alcoholic beverage management agreement to the Department for its approval.
- (b) The Department shall create a checklist of information that an interim alcoholic beverage management agreement must contain.
- (c) The Department shall review a proposed interim alcoholic beverage management agreement and, no later than 15 business days after the day on which the agreement is received by the Department:
 - (i) approve the interim alcoholic beverage management agreement if it contains all the necessary information; or
 - (ii) return the proposed interim alcoholic beverage management agreement to the licensee, if the agreement is lacking in information or specificity, with guidance on how to remedy any errors or omissions.
- (5) Once an interim alcoholic beverage management agreement is approved by the Department, the seller may allow the buyer to use their license to purchase alcoholic product from the Department, but revenue from the sale of alcohol during the transition period must be retained by the seller, less the cost of reimbursing the buyer for the cost of the alcoholic product paid to the Department.
- (6) The seller must maintain the required bond, insurance, and business license during the transition period, as these are statutory requirements to hold a license, but the buyer may agree to reimburse the seller for any necessary costs incurred to maintain the bond, insurance, and business license.
- (7) Nothing in this rule authorizes a licensee to close business without approval from the Department or Commission, as required by statute.

R82-5-103. Application.

- (1) No license or sublicense application will be included on the agenda of a monthly Commission meeting for consideration for issuance of a license until:
 - (a) The applicant has first met all requirements of sections 32B-1-304 and 32B-5-201 through 207; and
 - (b) the Department has inspected the applicant's premise(s).
- (2)(a) All application requirements of subpart (1)(a) of this rule must be filed with the Department no later than the 10th day of the month in order for the application to be included on that month's Commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of subpart (1)(a) must be filed on the next business day after the 10th day of the month.
 - (b) An incomplete application will be returned to the applicant.
 - (c) A completed application filed after the deadline in subpart (2)(a) of this rule will not be considered by the Commission that month, but will be included on the agenda of the Commission meeting the following month.
- (3) Subpart (1)(a) of this rule does not preclude the Commission from considering an application for conditional licensure, pursuant to section 32B-5-205.
 - (4)(a) Applicants may apply for a Master Full-Service Restaurant or Master Limited Service Restaurant License, as defined by sections 32B-6-206 and 32B-6-306 so long as five or more locations are indicated as sublicenses on the application.
 - (b) The five or more locations described in subpart (4)(a) of this rule must be owned by the same person or entity.
 - (c) Locations that do not already have a full or limited service restaurant license must meet all requirements for licensing as a full service or limited service restaurant under subpart (1) of this rule.

(d) Once the master license is granted, the licensee may add additional locations by filing an application approved by the Department demonstrating that the location meets all application requirements under subpart (1) of this rule.

(5) If an applicant has at any time been denied a license or permit based on the locality within which the proposed licensed premises is located, no further application from the applicant pertaining to the same premises or building location shall be considered unless the applicant submits a report evidencing a substantial change in the circumstances that previously caused the denial, of an application.

(6) If an applicant has at any time been denied a license or permit based on the person's ability to manage and operate a retail license of the type for which the person is applying, no further application from the applicant shall be considered unless the applicant submits a report evidencing a substantial change in the circumstances that previously caused the denial, of an application.

(7) If an applicant has at any time been denied a license based on the nature or type of retail operation of the proposed retail licensee, no further application shall be considered for that license type unless the applicant submits a report evidencing a substantial change in the circumstances that previously caused the denial, of an application.

(8) If an applicant has at any time been denied a license or permit based on any other factor the Commission considers necessary, the Commission may, in its discretion determine under what circumstances in which a further application will be considered.

(9) The Commission may prescribe a time period between the denial and hearing a request for further application.

R82-5-104. Liquor Dispensing Systems.

(1) This rule is made pursuant to sections 32B-5-301, which requires retail licensees and retail licensee staff to comply with rules made by the Commission regarding general operational requirements of a retail licensed establishment, and 32B-5-304, which requires the Department to approve a liquor dispensing system.

(2) Purpose. This rule describes the minimum requirements for a liquor dispensing system, which is required by section 32B-5-304, and how the Department approves a liquor dispensing system.

(3)(a) A licensee may not install or use any system for the automated mixing or dispensing of spirituous liquor unless the dispensing system has been approved by the Department.

(b) After the Department's approval, a licensee may only change its dispensing system with prior approval by the Department.

(4) A dispensing system may be approved by the Department if it meets the following minimum requirements:

(a) dispenses spirituous liquor in calibrated quantities not to exceed 1.5 ounces;

(b) has a meter which counts the number of pours dispensed; and

(c) the margin of error of the system for a one ounce pour size cannot exceed 1/16 of an ounce or two milliliters.

(5) Types of systems. Dispensing systems may be of various types, including: gun, stationary head, tower, insertable spout, ring activator or similar method.

(6) Licensee Responsibility.

(a) The licensee is responsible for verifying that the system, when initially installed, meets the specifications which listed in subpart (1) of this rule. Once installed, the licensee shall maintain the dispensing system to ensure that it continues to meet the approved specifications. Failure to maintain the system may be grounds for suspension or revocation of the licensee's liquor license.

(7) Operational restrictions.

(a) The system must be calibrated to pour a quantity of spirituous liquor not to exceed 1.5 ounces.

(b)(i) Voluntary consent is given that representatives of the Department, State Bureau of Investigation, or any law enforcement officer shall have access to any system for inspection or testing purposes.

(ii) A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any system for verification and analysis.

(c) Spirituous liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Spirituous liquor bottles in use with a remote storage alcoholic beverage dispensing system, defined in R82-5-105, which has been approved by the Department must be in a locked storage area identified on the licensee's floorplan. Any other primary spirituous liquor not in service must remain unopened. There shall be no opened primary spirituous liquor bottles at a dispensing location that are not affixed to an approved dispensing device.

(d) The dispensing system and spirituous liquor bottles attached to the system must be locked or secured in such a place and manner as to preclude the dispensing of spirituous liquor at times when liquor sales are not authorized by law.

(e) All dispensing systems and devices must:

(i) avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle;

(ii) not dispense from or utilize containers other than original liquor bottles; and

(iii) prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed.

(f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The Commission adopts federal regulations 27 CFR 31.201 and 26 USC Section 5301 and incorporates them by reference.

(g) Each licensee shall keep daily records for each dispensing outlet as follows:

(i) a list of brands of liquor dispensed through the dispensing system;

(ii) the number of portions of liquor dispensed through the dispensing system determined by the calculated difference between the beginning and ending meter readings and/or as electronically generated by the recording software of the dispensing system;

(iii) number of portions of liquor sold; and

(iv) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances.

(v) The records described in subpart (4)(g) of this rule must be made available for inspection and audit by the Department or law enforcement.

(h) Licensees shall display in a prominent place on the premises a list of the types and brand names of spirituous liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both.

(i) All dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the Department may:

(i) require the alteration or removal of any system; and

(ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.

R82-5-105. Multiple-Licensed Facility Storage and Service.

(1) For the purposes of this rule:

(a) "premises" as defined in section 32B-1-102 shall include the location of any licensed restaurant, limited restaurant, beer-only restaurant, bar, or on-premise beer retailer operated or managed by the same person or entity that are located within the same building or complex, and any similar sublicense located within the same building of a resort license or hotel license under Title 32B, Chapter 8. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in section 32B-1-102 shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount sold in each outlet.

(d) "remote storage alcoholic beverage dispensing system" means a dispensing system where the alcoholic product is stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:

(a) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location;

(b) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly or quarterly basis pursuant to the record keeping requirements of section 32B-5-302;

(c) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;

(d) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;

(e) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;

(f) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.

(3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following:

(a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive Department approval of the location;

(b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers; and

(c) the common storage area may be located on the premises of one of the licensed liquor establishments.

R82-5-106. Order and Return Procedures.

The following procedures shall be followed when a licensee orders liquor from or returns liquor to any state liquor store, package agency, or Department satellite warehouse:

(1)(a) The licensee must place the order in advance to allow Department personnel sufficient time to assemble the order.

(b) The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order.

(c) The order shall include the business name of the licensee, Department licensee number, and list the products ordered specifying each product by code number and quantity.

(d) If the licensee utilizes the services of a liquor transporter, as described in section 32B-17-201, the licensee shall provide that information when the licensee places the order.

(2)(a) The licensee shall allow at least four hours for Department personnel to assemble the order for pick-up.

(b) When the order is complete, the licensee will be notified by phone and given the total cost of the order.

(c) The licensee may pay for the product with any form of legal tender.

(d) The Department may make policies governing acceptable forms of payment, consistent with this rule.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the Department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

(iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds \$1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(c) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R82-5-107. Identification.

(1) This rule is made pursuant to section 32B-5-301. The purpose of this rule is to ensure that an individual who sells, dispenses, or provides alcoholic beverages is easily identifiable to a member of the public, Department staff, or law enforcement.

(2) Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by

any peace officer, or representative of the Department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R82-5-108. Menus and Price Lists.

(1) Authority. This rule is made pursuant to sections 32B-2-206, 32B-2-202 and 32B-5-305. The purpose of this rule is to provide consumers with information and prevent discounting of alcohol or unlawful promotions.

(2) Contents of Alcoholic Beverage Menu.

(a)(i) Each licensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all liquor, mixed drinks, wine, beer, and heavy beer.

(ii) The list or menu described in subpart (2)(a)(i) of this rule shall include any charges for the service of packaged wines or heavy beer.

(b) A printed menu, master beverage price list, or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(c) Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(d) A licensee or employee of a licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R82-5-109. Sale of Alcoholic Beverages by Licensees to Patrons.

(1) Authority. This rule is made pursuant to sections 32B-6-205, 32B-6-305, 32B-6-406 and 407, 32B-6-505, 32B-6-605, 32B-6-706, 32B-6-805, 32B-6-905, and Title 32B, Chapters 8a and 8b.

(2)(a) A licensee that is required to maintain a percentage of food sales by statute shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, and food, as relevant to the licensee. These records shall be available for inspection and audit by representatives of the Department and maintained for a period of three years.

(b) If any inspection or audit discloses that the sales of food are less than statutorily required for any quarterly period or that a variety of food is not available for sale, depending on the requirements of the license, the Department shall immediately notify the licensee and may put the licensee on a probationary status and closely monitor the licensee's compliance with statutory requirements during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the Department that of the licensee's food sales or food availability meet or exceed the required levels.

(c) Failure of the licensee to provide satisfactory proof of the required food percentage or availability of a variety of food for sale after notification, as described in subpart (2)(b) of this rule, may result in issuance of an order to show cause by the Department to determine why the license should not be revoked by the Commission, as described in R82-3-104.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: October 27, 2020

Authorizing, and Implemented or Interpreted Law: 32B-2-202

R82. Alcoholic Beverage Control, Administration.

R82-6. Specific Retail Provisions.

R82-6-101. General Provisions.

Reserved.

R82-6-201. Restaurants – Grandfathered Bar Structures

(1) Authority. This rule is made pursuant to the general authority described in section 32B-1-102; the authority to make rules regarding full restaurants in sections 32B-6-202 and 32B-6-205; the authority to make rules regarding limited restaurants in sections 32B-6-302 and 32B-6-305; and the authority to make rules regarding for beer only restaurants found in section 32B-6-905.

(2) The purpose of this rule is to define terms for full service, limited, and beer only restaurant licenses as required by Title 32B, Chapter 6.

(3) Definitions.

(a) "Actively engaged in the construction of the restaurant" means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "Remodels the grandfathered bar structure" means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "Remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to subsection 32B-5-303(3), the licensee must first apply for and receive approval from the Department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the Department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

(e) "remodels the grandfathered bar structure or dining area" for purposes of subsection 32B-6-205.3(4)(a)(ii) means that:

(i) the grandfathered bar structure or dining area has been altered or reconfigured to:

(A) extend the length of the existing bar structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons from the dining area.

(f) "remodels the grandfathered bar structure or dining area" does not:

(i) preclude making cosmetic changes or enhancements to the existing bar structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(g) Pursuant to subsection 32B-5-303(3), the licensee must first apply for and receive approval from the Department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage, dispensing, or consumption area must first be reviewed and approved by the Department to determine whether it is:

(i) an acceptable use of an existing bar structure or dining area; or

(ii) a remodel of a "grandfathered bar structure or dining area".

R82-6-202. Restaurants – Alcoholic Flavorings.

(1) Authority. This rule is made pursuant to the authority described in section 32B-1-102 and the authority to make rules regarding full restaurants in sections 32B-6-202 and 32B-6-205; the express authority to make rules regarding limited restaurants in sections 32B-6-302 and 32B-6-305; and the express authority to make rules regarding for beer only restaurants found in section 32B-6-905.

(2) Purpose. The purpose of this rule is to clarify the use of alcoholic products in food production.

(3) Restaurant licensees may use alcoholic products as in beverages only during the authorized selling hours under the restaurant liquor license.

(4) Alcoholic product flavoring may be used in the preparation of food items at any time if plainly and conspicuously labeled "cooking flavoring."

(5) No licensee employee under the age of 21 years may handle alcoholic product flavorings except when engaged in food preparation.

(6) Nothing in this rule authorizes a finished food product to contain alcohol in excess of 0.5% alcohol by volume, which would render it an alcoholic product subject to Title 32B.

R82-6-301. Reserved.

Reserved.

R82-6-401. Bars – Bar Licensing.

(1)(a) At the time the Commission grants a bar establishment license the Commission must designate whether the bar establishment qualifies to operate as an equity, fraternal, or bar based on criteria in sections 32B-6-404 and 405.

(b) After any bar establishment license is granted, a bar establishment may request that the Commission approve a change in the bar establishment's classification in writing supported by evidence to establish that the bar establishment qualifies to operate under the new class designation based on the criteria in sections 32B-6-404 and 405.

(c) The Department shall conduct an investigation for the purpose of gathering information and making a recommendation to the Commission as to whether or not the request should be granted. The information shall be forwarded to the Commission to aid in its determination.

(d) If the Commission determines that the bar establishment has provided credible evidence to establish that it meets the statutory criteria to operate under the new class designation, the Commission shall approve the request.

R82-6-402. Bars -- Membership Fees and Monthly Dues.

(1) Authority. This rule is pursuant to the Commission's powers and duties under section 32B-2-202 general licensing procedures and section 32B-6-405 for issuing an equity or fraternal bar establishment licenses, which authorizes the Commission to refuse to issue a license if the bylaws are not reasonable and consistent with the purpose of the type of license.

(2) Purpose. This rule furthers the intent of section 32B-6-407 that equity and fraternal clubs operate in a manner that preserves the concept that they are private and not open to the general public.

(3) Application of Rule.

(a) Each equity and fraternal club shall establish in its by-laws membership application fees and monthly membership dues in amounts determined by the club.

(b) An equity or fraternal club, its employees, agents, or members, or any person under a contract or agreement with the club, may not, as part of an advertising or promotional scheme, offer to pay or pay for membership application fees or membership dues in full or in part for a member of the general public.

R82-6-403. Bars -- Minors in Lounge or Bar Areas.

(1) Pursuant to subsection 32B-6-406(5), a minor may not be admitted into, use, or be on the premises of any lounge or bar area of an equity, or fraternal bar establishment. A minor may not be on the premises of a bar license except to the extent allowed under section 32B-6-406.1, and may not be admitted into, use, or be on the premises of any lounge or bar area of a bar license.

(2) "Lounge or bar area" includes:

(a) the bar structure as defined in section 32B-1-102(7);

(b) any area in the immediate vicinity of the bar structure where the sale, service, display, and advertising of alcoholic beverages is emphasized; or

(c) any area that is in the nature of or has the ambience or atmosphere of a bar, parlor, lounge, cabaret or night club.

R82-6-404. Bars -- Sexually Oriented Entertainers and Stage Approvals.

(1) Authority. This rule is pursuant to sections 32B-1-501 through 32B-1-506, which prescribe the attire and conduct of sexually-oriented entertainers in premises regulated by the Commission and require them to appear or perform only in a tavern or bar and only upon a stage or in a designated area approved by the Commission.

(2) Purpose. This rule establishes guidelines used by the Commission to approve stages and designated performance areas in a tavern or bar where sexually oriented entertainers may appear or perform in a state of seminudity.

(3) Definitions.

(a) "Seminude", "seminudity, or "state of seminudity" means a state of dress as defined in section 32B-1-102.

(b) "Sexually-oriented entertainer" has the same meaning as that term is defined in section 32B-1-102.

(4) Application of Rule.

(a) A sexually oriented entertainer may appear or perform seminude only on the premises of a tavern or bar.

(b) A tavern or bar licensee, or an employee, independent contractor, or agent of the licensee shall not allow:

(i) a sexually oriented entertainer to appear or perform seminude except in compliance with the conditions and attire and conduct restrictions of sections 32B-1-502 through 32B-1-506;

(ii) a patron to be on the stage or in the performance area while a sexually oriented entertainer is appearing or performing on the stage or in the performance area; and

(iii) a sexually-oriented entertainer to appear or perform seminude except on a stage or in a designated performance area that has been approved by the Commission.

(c) Stage and designated performance area requirements.

(i) The following shall submit for Commission approval a floorplan containing the location of any stage or designated performance area where sexually-oriented entertainers appear or perform:

(A) an applicant for a tavern or bar license from the Commission who intends to have sexually-oriented entertainment on the premises;

(B) a current tavern or bar licensee of the Commission that did not have sexually-oriented entertainment on the premises when application was made for the license or permit, but now intends to have such entertainment on the premises; or

(C) a current tavern or bar licensee of the Commission that has sexually-oriented entertainment on the premises, but has not previously had the stage or performance area approved by the Commission.

(ii) The Commission may approve a stage or performance area where sexually-oriented entertainers may perform in a state of seminudity only if the stage or performance area:

(A) is horizontally separated from the portion of the premises on which patrons are allowed by a minimum of three (3) feet, which separation shall be delineated by a physical barrier or railing that is at least three (3) feet high from the floor;

(B) is configured so as to preclude a patron from:

(I) touching the sexually-oriented entertainer;

(II) placing any money or object on or within the costume or the person of any sexually-oriented entertainer;

(III) is configured so as to preclude a sexually-oriented entertainer from touching a patron; and

(IV) conforms to the requirements of any local ordinance of the jurisdiction where the premise is located relating to distance separation requirements between sexually-oriented entertainers and patrons that may be more restrictive than the requirements of subparts (4)(c)(i) and (ii) of this rule.

(iii) The person applying for approval of a stage or performance area shall submit with their application:

(A) a diagram, drawn to scale, of the premises of the business including the location of any stage or performance area where sexually-oriented entertainers will appear or perform;

(B) a copy of any applicable local ordinance relating to distance separation requirements between sexually-oriented entertainers and patrons; and

(C) evidence of compliance with any such applicable local ordinance.

R82-6-501. Airport Lounge -- Reserved.

Reserved.

R82-6-601. On Premise Banquet -- On-Premise Banquet License Room Service - Mini-Bottle 187 ml Wine Sales.

(1) Purpose. Pursuant to section 32B-2-303, the Department may not purchase or stock spirituous liquor in containers smaller than 200 milliliters, except as otherwise allowed by the Commission. The Commission hereby allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine as one form of room service sales by on-premise banquet licensees located in hotels and resorts. The following conditions are imposed to ensure that these smaller bottle sales are limited to registered guests of sleeping rooms and are not offered to the general public.

(2) Application of Rule.

(a) The Department will not maintain a regular inventory of distilled spirits and wine in the smaller bottle sizes, but will accept special orders for these products from an on-premise banquet licensee. Special orders may be placed with the Department's purchasing division, any state store, or any Type 2 or 3 package agency.

(b) The on-premise banquet licensee must order in full case lots and all sales are final.

(c) Sale and use of alcohol in the smaller bottle sizes is restricted to providing one form of room service to guests in sleeping rooms in the hotel or resort, and may not be used for other banquet catering services, kept in a minibar, or be sold to the general public.

(d) Failure of the on-premise banquet licensee to strictly adhere to the provisions of this rule is grounds for the Department to take disciplinary action against the on-premise banquet licensee.

R82-6-602. On Premise Banquet -- Reporting Requirement for Banquet Licensees.

(1) The authority for this rule is Subsections 32B-6-605(3)(a) and 32B-6-605(4)(a).

(2) This rule establishes:

(a) the notice that an on-premise banquet licensee or sublicensee must give to the Department in advance of a scheduled banquet event so that the Commission, the Department, or law enforcement officers may conduct a random inspection of a banquet to monitor compliance with the alcoholic beverage control laws; and

(b) the records to be maintained by an on-premise banquet licensee and sublicensee.

(3) An on-premise banquet licensee and an on-premise banquet sublicensee shall provide the Department advance notice of scheduled banquets in an electronic format at least fourteen days prior to the scheduled event or immediately upon booking events with less than fourteen days until the scheduled event. The electronic advance notice must include the following information for each event:

(a) the name of the host;

(b) the specific location;

(c) the dates;

(d) the beginning and ending times;

(e) the number of attendees expected to attend;

(f) the designation as either a private event or a privately sponsored event, including the specific type of event; and

(g) for banquet events with an anticipated attendance of over 500 people, the control measures that will be implemented to prevent:

(i) minors from obtaining alcohol;

(ii) overconsumption of alcohol;

(iii) the general public or an uninvited guest from entering a private event; and

(iv) a person who has not paid an admission fee from entering a privately sponsored event.

(4) The licensee or sublicensee shall provide electronic notice of banquet event cancellations or modifications at the time the event is canceled or modified.

(5) The Department shall provide access to documents listing scheduled banquet events upon request, to a commissioner, authorized representative of the Department, and any law enforcement officer for use in a purpose stated in Subsection (2).

(6) The Department shall retain a copy of any documents pertaining to scheduled banquet events for up to fourteen days after the conclusion of the banquet event.

(7) The Department shall classify the documents containing the details of scheduled banquet events as protected under Section 63G-2-305 of the Government Records Management Act if, upon review, the Department determines that:

(a) the documents contain commercial information, the disclosure of which could reasonably be expected to result in unfair competitive injury to the licensee or sublicensee submitting the information, and the licensee or sublicensee submitting the information has a greater interest in prohibiting access than the public in obtaining access to the information; and

(b) the licensee or sublicensee claims business confidentiality and requests that the documents be classified as protected pursuant to Sections 63G-2-305 and 63G-2-309.

((8) The Department and law enforcement may use the scheduled banquet event documents only for the purposes stated in this rule.

(9) On-premise banquet licensees and sublicensees must maintain a record of the following:

(a) the name and type of each event;

(b) the date and time of each event;

(c) the name of the third-party host of each event;

(d) the contract between the licensee or sublicensee and the host of each event;

(e) the percentage of ownership interest, if any, the host has in the banquet facility;

(f) the total number of guests attending each event;

(g) the total sales of spirituous liquor, wine, beer, heavy beer, and flavored malt beverages sold, served, or provided at each event;

(h) the price charged to the guests for each type of alcoholic product served at each event;

(i) the total sales of food served at each event;

(j) the purchase receipts for spirituous liquor, wine, heavy beer, beer, and flavored malt beverages; and

(k) the annual ratio of food sales to sales of spirituous liquor, wine, heavy beer, beer, and flavored malt beverages.

(10) Failure of an on-premise banquet licensee or sublicensee to timely file advance notice of scheduled banquet events or to retain the records as noted in this rule may result in disciplinary action pursuant to Sections 32B-3-201 to 32B-3-207, and Section R82-3-102 and R82-3-103.

R82-6-701. On Premise Beer Retailer – Reserved.

Reserved.

R82-6-801. Reception Center – Reporting Requirement for Reception Center Licensees.

(1) Authority. This rule is pursuant to the Commission's powers and duties under section 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to section 32B-6-805.

(2) Purpose. This rule implements the requirement of section 32B-6-805 which requires the Commission to provide by rule procedures for reception center licensees to report scheduled events to the Department to allow random inspections of events by authorized representatives of the Commission, the Department, or by law enforcement officers to monitor compliance with the alcoholic beverage control laws.

(3) Application of the Rule.

(a) A reception center licensee licensed under section 32B-6-805 shall file with the Department at the beginning of each quarter a report containing advance notice of events that have been scheduled as of the reporting date for that quarter.

(b)(i) The quarterly reports are due on or before January 1, April 1, July 1, and October 1 of each year and may be hand-delivered, submitted by mail, or submitted electronically.

(ii) If the licensee adds an event for a quarter after the licensee has already turned in the report, as described in subpart (3)(b)(i) of this rule, the licensee shall promptly contract the licensee's compliance officer to supplement the report.

(c) Each report shall include the name and specific location of each event and the name of the third-party host of the event.

(d) The Department shall make copies of the reports available to a commissioner, authorized representative of the Department, and any law enforcement officer upon request to be used for the purpose stated in subpart (2) of this rule.

(e) The Department shall retain a copy of each report until the end of each reporting quarter.

(f) Because any report filed under this rule contains commercial information, the disclosure of which could reasonably be expected to result in unfair competitive injury to the licensee or sublicensee submitting the information, and the licensee or sublicensee submitting the information has a greater interest in prohibiting access than the public in obtaining access to the report:

(i) any report filed shall be deemed to include a claim of business confidentiality, and a request that the report be classified as protected pursuant to sections 63G-2-305 and -309;

(ii) any report filed shall be classified by the Department as protected pursuant to section 63G-2-305; and

(iii) any report filed shall be used by the Department and law enforcement only for the purposes stated in this rule.

(g) Failure of an on-premise banquet licensee or sublicensee to timely file a quarterly report may result in disciplinary action pursuant to sections 32B-3-201 through 32B-3-207, and R82-3-102 and 103.

R82-6-802. Reception Center – Agreement For Alcoholic Beverage Service and Table Service.

(1) Authority. This rule is pursuant to the Commission's powers and duties under section 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to section 32B-6-805

(2) Definitions. "Third Party Host" is a party that contracts with the reception center licensee to provide alcoholic beverage service at an event to be held on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.

(a) With the exception of a nonprofit organization holding an event as described in section 32B-6-805, the reception center licensee may not contract with a third party host to hold an event that is open to the public where an alcoholic product is sold or offered for sale.

(b) With the exception of a nonprofit organization holding an event as described in section 32B-6-805, a third-party host may not collect a cover charge or entry fee for admission to the private event.

(c) With the exception of a nonprofit organization holding an event as described in section 32B-6-805, a third-party host may not receive any proceeds from the sale of alcoholic product from the event.

(d) A Reception Center Licensee may host an event for an immediate family member provided that the event is not an event that is open to the public where an alcoholic product is sold or offered for sale, and the Reception Center Licensee does not collect a cover charge or entry fee to the event.

(3) A wine service may be performed by the server at the patron's table. The wine may be opened and poured by the server.

(4) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table.

(5) A patron's table may be located in waiting, patio, garden and dining areas that are on the premises of the reception center, previously approved by the Department.

R82-6-901. Reserved.

Reserved.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: October 27, 2020

Authorizing, and Implemented or Interpreted Law: 32B-2-202

R82. Alcoholic Beverage Control, Administration.

R82-7. Off-Premise.

R82-7-101. Separation of Alcoholic Beverages from Non-Alcoholic Beverages and Required Signage.

(1) Authority and General Purpose. This rule is pursuant to section 32B-7-202 that requires:

(a) an off-premise beer retailer to prominently display a sign in each area where beer is sold, an easily readable sign that reads in print that is no smaller than .5 inches, bold type, "These beverages contain alcohol. Please read the label carefully," and requires the Commission to define by rule the format of the sign.

(2) Application of the Rule.

(a) Sign requirements.

(i) The sign required by section 32B-7-202 shall be:

(A) prominently posted in all areas where beer is sold;

(B) easily readable by the consumer; and

(C) in print that is no smaller than .5 inches, bold type.

(ii) The print on the sign must be clearly readable and on a solid, contrasting background.

(iii) The size of the sign, and the size of the print must be sufficiently large so as to be readable, and clearly and unambiguously convey to a consumer that the beverage products displayed in that area contain alcohol. In no instance may the sign be smaller than 8.5 inches x 3.5 inches.

(iv) Additional signs may be necessary depending on the size and type of display area. For example, an entire aisle devoted to beer products may require more than one sign to adequately inform the consumer.

R82-7-102. Off-Premise Beer Retailer State License and Master Off-Premise Beer Retailer License.

(1) The authority for this rule is Subsection 32B-2-202(1)(c) and Section 32B-7-408.

(2) The purpose of this rule is to establish:

(a) the criteria for issuing and denying licenses; and

(b) the process to apply for a master off-premise beer retailer state license.

(3) The application process is as follows:

(a) no license application will be included on the agenda of a monthly Commission meeting for consideration for issuance of a license unless:

(i) the applicant has submitted a complete application to the Department that meets the requirements of Sections 32B-7-402 or 32B-7-408;

and

(ii) the Department has completed an investigation and inspected the proposed licensed premises.

(b) A complete application includes the Department's application form and supplemental materials listed on the Department's application checklist.

(4)(a) An application for an on-premise or master on-premise license that meets the requirements of Subsection (3)(a) must be filed with the Department no later than the 10th day of the month in order to be put on that month's Commission meeting agenda;

(b) If the 10th day of the month is a Saturday, Sunday, or state or federal holiday, the application must be filed on the next business day after the 10th day of the month.

(c) An incomplete application will be returned to the applicant.

(d) A complete application filed after the deadline in Subsection (4)(a) will not be considered by the Commission that month, but will be put on the agenda of the Commission meeting for the following month.

(e) Subsection (2)(a) does not preclude the Commission from considering an application for a conditional license under the terms and conditions of Section 32B-7-406.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: October 27, 2020

Authorizing, and Implemented or Interpreted Law: 32B-2-202

R82. Alcoholic Beverage Control, Administration.

R82-8. Resorts.

R82-8a-101. Definitions.

(1) Authority. The Commission makes the following definitions, pursuant to section 32B-1-102.

(2) Definitions.

(a) "Lounge or bar area" means:

(i) the bar structure as defined in section 32B-1-102;

(ii) any area in the immediate vicinity of the bar structure where the sale, service, display, and advertising of alcoholic beverages is emphasized;

or

(iii) any area that is in the nature of or has the ambience or atmosphere of a bar, parlor, lounge, cabaret, or night club.

(b)(i) "Resort spa" means a facility within the boundary of a resort building that provides professionally administered personal care treatments such as massages, facials, hair care, and nail care.

(ii) Treatment providers who work at a resort spa must be licensed under Title 58, Division of Professional Licensing Act.

(iii) The resort spa also must hold a license to conduct business as a spa or similar operation under local licensing laws.

R82-8a-102. Applicability of Rules.

(1) Section 32B-8-402 requires that a person operating under a resort sublicense comply with the operational restrictions of Title 32B, Alcoholic Beverage Control Act, for the type of license applicable to the sublicense, except where otherwise provided. For example, a bar sublicensee must comply with the operational restrictions found in sections 32B-5-301 through 32B-5-310 and 32B-6-406 that are applicable to a bar licensee.

(2) This rule requires that a person operating under a resort sublicense comply with the operational restrictions found in any Commission rule for the type of license applicable to the sublicense, except where otherwise provided.

R82-8a-103. Application for licensure -- Operational Requirements.

(1)(a) Application. Pursuant to sections 32B-5-203 and 32B-8-204 and -302, a resort spa sublicense is not required to file a separate application from the application for the resort license unless the resort spa sublicense is being sought after the resort license has already been granted.

(b) If a resort licensee seeks to add a resort spa sublicense after its resort license is granted, the application shall comply with section 32B-8-302 and this rule.

(2) Minors in Lounge or Bar Areas.

(a) Pursuant to Section 32B-8-304, a minor may be on the premises of a resort spa if accompanied by a person 21 years of age or older, but may not be admitted into, use, or be on the premises of any lounge or bar area of a resort spa.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: February 25, 2020

Authorizing, and Implemented or Interpreted Law: 32B-2-202

R82. Alcoholic Beverage Control, Administration.

R82-10. Special Use Permits

R82-10-101. Application.

(1) Authority. This rule is made pursuant to the implicit authority Title 32B, Chapter 10, Special Use Permit Act, and the explicit authority of section 32B-2-202, which authorizes the Commission to make rules regarding the procedures and criteria for a permittee applicant.

(2) An application for a special use permit will only be included on the agenda of a monthly Commission meeting for consideration for issuance of a special use permit if:

(a) the applicant has first met all requirements of sections 32B-1-304 and 32B-10-202 and 32B-10-205, including submission of a completed application, payment of application and permit fees if required for the type of permit being sought, statement of purpose for which the applicant applies for the permit, types of alcoholic product the person intends to use under the permit, written consent of local authority, a bond if required, and a floor plan if required; and

(b) the Department has inspected the premise where the applicant intends to utilize the permit.

(3)(a) All application requirements of subpart (2)(a) of this rule must be filed with the Department no later than the 10th day of the month in order for the application to be included on that month's Commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of subpart (2)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in subpart (3)(a) of this rule will not be considered by the Commission that month, but will be included on the agenda of the Commission meeting the following month.

R82-10-102. Direct Delivery.

(1) Authority. This rule is made pursuant to the implicit authority Title 32B, Chapter 10, Special Use Permit Act, and the explicit authority of section 32B-2-202, which authorizes the Commission to make rules regarding the procedures and criteria for a permittee applicant.

(2) Industrial, manufacturing, scientific, educational, and health care special use permittees may purchase alcohol directly from the manufacturer and have it shipped directly to the permittee's address, provided the alcohol is used for industrial, manufacturing, scientific, educational, or health care purposes.

R82-10-201. Reserved.

Reserved.

R82-10-301. Public Service Permittee Operating Guidelines.

(1) Authority. This rule is made pursuant to the implicit authority Title 32B, Chapter 10, Special Use Permit Act, and the explicit authority of section 32B-2-202, which authorizes the Commission to make rules regarding the procedures and criteria for a permittee applicant.

(2) A public service permittee that operates on an interstate basis may purchase liquor outside of the state and bring it into the state and purchase liquor within the state and sell, store and serve it to passengers traveling on the permittee's public conveyance for consumption while en route on the conveyance. However, all liquor utilized within a public service permittee's hospitality room must be purchased from a state liquor store or package agency within this state.

(3) All liquor transported from outside the state to the permittee's storage facility shall be carried in sealed conveyances which may be inspected at any time by the Department.

(4) A public service permittee shall keep available and open for audit during regular business hours, complete and accurate records of alcoholic product shipments to and from their storage facility. Records shall be kept for a minimum of three years.

(5) A public service permittee shall allow the Department, through its auditors or examiners, to audit all records relating to the storage, sale, consumption and transportation of alcoholic products by the permittee.

(6) All public service permittees which utilize a hospitality room shall display in a prominent place a "warning sign," as defined in R82-1-102.

R82-10-401. Industry Rep Special Use.

(1) Authority. This rule is made pursuant to the implicit authority Title 32B, Chapter 10, Special Use Permit Act, and the explicit authority of section 32B-2-202, which authorizes the Commission to make rules regarding the procedures and criteria for a permittee applicant.

(2) No license application will be included on the agenda of a monthly Commission meeting for consideration for issuance of a local industry representative license until the applicant has first met all requirements of sections 32B-1-304 and 32B-11-606, and 32B-11-604, including submission of a completed application, payment of application and licensing fees, verification the person is a resident of Utah, a Utah partnership, a Utah corporation, or a Utah limited liability company, and an affidavit stating the name and address of any manufacturer, supplier, or importer the person will represent.

(3)(a) All application requirements of subpart (2) of this rule must be filed with the Department no later than the 10th day of the month in order for the application to be included on that month's Commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of subpart (2)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in subpart (3)(a) of this rule will not be considered by the Commission that month, but will be included on the agenda of the Commission meeting the following month.

R82-10-402. Industry Participation in Educational Seminars Involving Liquor, Wine, and Heavy Beer.

(1) Authority. This rule is pursuant to sections 32B-4-401 and 32B-4-701 through 32B-4-708. These provisions: preclude an industry member from selling, shipping, transporting, furnishing or supplying or causing the selling, shipping, transporting, furnishing or supplying of liquor, wine, and heavy beer products to another within this state other than the Department, a military installation, a holder of a special use permit to the extent authorized in the permit, and a bonded liquor warehouse; preclude an industry member from supplying anything of value except as allowed by law; preclude an industry member from giving away any of its alcoholic products to any person except for testing, analysis, and sampling purposes by the Department and local industry representative licensees to the extent authorized by 32B, Chapter 10, Special Use Permit Act; allow an industry member to participate in educational seminars involving the Department, retailers, holders of educational or scientific special use permits, or other industry members under certain conditions, but preclude the use of samples at such seminars; and allow an industry member to serve alcoholic products

to others at a private social function hosted by the industry member so long as the product is not served as part of a promotion of the industry member's products or as a subterfuge to provide samples to others for product testing, analysis, or sampling purposes.

(2) Definitions. For purposes of this rule:

(a) "Educational seminar" means an educational class involving the study of alcoholic beverages attended only by students who have registered in advance for the course, a privately-hosted event or social function held by a private group engaged in the study of alcoholic beverages, and a private training session held by a retailer for the purpose of educating the retailer and the retailer's employees of the qualities and characteristics of alcoholic beverages. An educational seminar does not include a seminar to which the general public is invited to attend.

(b) "Industry member" means a liquor, wine or heavy beer manufacturer, supplier, importer, wholesaler, or any of its affiliates, subsidiaries, officers, directors, agents, employees, or representatives.

(c)(i) "Private event" means a specific social, business, or recreational event for which an entire room, area, or hall is leased, rented, or reserved, in advance by an identified group, and the event is limited in attendance to people who are specifically designated and their guests.

(ii) "Private event" does not include an event to which the general public is invited whether for an admission fee or not.

(d) "Retailer" means the holder of an alcoholic beverage license or permit issued by the Commission to allow the holder to engage in the sale of alcoholic beverages to consumers, or any of the holder's agents, officers, directors, shareholders, partners, or employees.

(e)(i) "Sample" means liquor, wine and heavy beer that is placed in the possession of the Department for testing, analysis, and sampling by the Department, or for testing, analysis, and sampling by local industry representatives on the premises of the Department. Samples are furnished by industry members to the Department for these purposes at no cost, and are labeled by the Department as samples.

(ii) Sample does not include liquor, wine and heavy beer that is sold by the Department at retail after taxes and markup have been included.

(3) General Purpose. This rule authorizes industry representatives, under certain restrictions, to attend and participate in educational seminars where liquor, wine and heavy beer products are analyzed, tested, and tasted.

(4) Application of Rule.

(a) An industry member may attend and participate in an educational seminar where liquor, wine and heavy beer products are analyzed, tested, and tasted only as the invited guest of the host of the seminar. An industry member may not directly or indirectly host, organize, or otherwise arrange for an educational seminar where such products are present.

(b) Liquor, wine and heavy beer products used at an educational seminar must be purchased by the host from the Department at full retail. An industry member may not directly or indirectly furnish or otherwise provide the liquor, wine and heavy beer products for the seminar. No liquor, wine or heavy beer samples may be present or used at an educational seminar. Tastings involving samples may occur only on the Department's premises in accordance with section 32B-4-705.

(c) An industry member may be invited by the host to lecture, and analyze, test, and taste the liquor, wine and heavy beer products during the industry member's presentation at an educational seminar.

(d) An educational seminar where liquor, wine and heavy beer products are present may not be used by an industry member to introduce retailers to new products which are not presently listed by the Department for sale in this state.

(e) An educational seminar may not be open to the general public.

R82-10-501. Educational Wine Judging Seminars.

(1) Definition of Applicant. An applicant is any person or organization who is applying for an educational wine judging seminar permit, whose purpose is to inform and educate about the qualities and characteristics of wines.

(2) Application. The applicant must meet the requirements and qualifications for a scientific or educational special use permit found in sections 32B-1-304 and 32B-10-202. In addition, the applicant must submit to the Department a detailed proposal of the seminar which must include the qualifications of the judges, the number of wines being submitted by the wineries, and the location of the seminar. Additional information may be requested by the Commission or Department to properly evaluate the application.

(3) The applicant must post a cash or corporate surety bond in the penal sum of \$1,000 payable to the Department, which the permittee has procured and must maintain for as long as the permittee continues to operate as a special use permittee. The bond shall be in a form approved by the attorney general, conditioned upon the permittee's faithful compliance with 32B, Chapter 10, Special Use Permit Act and the rules of the Commission. If the surety bond is canceled due to the permittee's negligence, a \$300 reinstatement fee may be assessed. No part of any cash bond so posted may be withdrawn during the period the permit is in effect. A bond filed by a permittee may be forfeited if the permit is finally revoked.

(4) The application for the educational wine judging seminar permit must be completed and submitted 90 days before the seminar date.

(5) Restrictions. Any person granted an educational wine judging seminar permit must meet the following requirements and restrictions:

(a) The techniques used in judging the wines must meet internationally accepted techniques of sensory or laboratory evaluation, and the wines used may not be consumed.

(b) All unopened bottles must be returned to the Department and any wine product residual in open bottles must be destroyed by the permittee.

(c) The educational wine judging seminar permit has an automatic expiration date of three days following the scheduled ending date of the seminar.

(d) The permittee must comply with R82-1-104 regarding advertising of the seminar.

(6) Procedures for Handling the Seminar.

(a) The permittee must order all wines used in the seminar from the Department. The Department will order the wines from the wineries designating on the order that they are for a wine judging seminar. The permittee must make prior arrangements with the wineries to have the wines sent to the Department at no charge and freight prepaid.

(b) The wines will be entered into the Department's accounting system at no cost and will be given a special Department number, designating the wines as those to be used with an educational wine judging seminar permit and not to be consumed.

(c) The wines will be delivered to the permittee from the Department. After the seminar, the permittee will return all unopened bottles of wine to the Department and the permittee will destroy any other residual wine products left. The permittee will pay to the Department a fee of two dollars for every bottle of wine used in the judging seminar.

(d) All wines returned to the Department become the property of the state and will be destroyed under controlled conditions or will be given a new Department number and sold in the state's retail outlets, which profits will be property of the state.

R82-10-601. Religious Wine Permits.

(1) Authority. This rule is made pursuant to the implicit authority Title 32B, Chapter 10, Part 6, Religious Use of Alcoholic Products, and the explicit authority of section 32B-2-202, which authorizes the Commission to make rules regarding the procedures and criteria for a permittee.

(2) Purpose. This rule outlines the procedures for a religious wine permit holder to purchase wine for religious purposes, and the procedures Department personnel shall follow to process the purchase.

(3) Application of Rule.

(a) The permit holder may purchase any generally listed wine directly off the shelf of any state store or package agency at a charge of cost plus freight. The cashier shall first verify that the purchasing religious organization is a holder of a permit on file in the Department's licensee or permittee data base. The cashier shall determine the cost plus freight price of the wine. The wine may be purchased only with cash or a check belonging to the religious organization, and not with an individual's personal check or credit card. Checks shall be deposited in the ordinary course of business with other checks.

(b) The permit holder may order wine for religious purposes directly from a winery and have the winery ship the wine prepaid at a charge of cost plus freight to the Department's central administrative warehouse. The warehouse shall deliver the wine to the state store or package agency nearest to the permit holder's church. The state store or package agency shall notify the permit holder when the product is available for pick-up.

(c)(i) The permit holder may place a special order for wines not generally listed by the Department only if the winery will not sell directly to the permit holder.

(ii) Special orders may be placed only with the special order clerk at the Department's administrative office.

(iii) No special orders may be placed with a state store or package agency.

(iv) The special order clerk shall verify that the purchasing religious organization is on file in the Department's licensee or permittee data base, place the order, assign it a special order code number, assess a charge of cost plus freight, and have the wine delivered to the state store or package agency nearest to the permit holder's church.

(v) The state store or package agency shall notify the permit holder when the product is available for pick-up.

(vi) All procedures for processing the purchase that are outlined in (3)(a) above shall be followed by the state store or package agency to complete the sale.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: February 25, 2020

Authorizing, and Implemented or Interpreted Law: 32B-2-202

R82. Alcoholic Beverage Control, Administration.

R82-11. Manufacturing.

R82-11-101. Authority, Purpose, Definition.

(1) This rule is enacted pursuant to sections 32B-2-202, which authorizes the Commission to make rules governing criteria and procedures for licensure, 32B-11-208, which authorizes the Commission to make rules regarding the general operational requirements of a manufacturing licensee, and 32B-11-210, which authorizes the Commission to define "educational information."

(2) The purpose of this rule is to provide guidance to manufacturing licensees who wish to provide tastings.

(3) "Educational Information" means a presentation of information whose primary purpose is imparting knowledge related to the history, culture, significance, agriculture, manufacture, flavor profile, the effects of alcohol, or any combination of the foregoing.

R82-11-102. Application Guidelines.

(1) This rule is enacted pursuant to sections 32B-2-202, which authorizes the Commission to make rules governing criteria and procedures for licensure, and 32B-11-208, which authorizes the Commission to make rules regarding the general operational requirements of a manufacturing licensee.

(2) The purpose of this rule is to provide guidance to prospective manufacturing licensees.

(3) No license application will be included on the agenda of a monthly Commission meeting for consideration for issuance of a manufacturing license until:

(a) A complete application including all documents and supplemental materials listed on the Department's application checklist have been submitted to the Department.

(b) the Department has inspected the manufacturer premise; and

(c) an investigation is conducted and a recommendation can be made as required by section 32B-11-206.

(4)(a) All application requirements of subpart (2)(a) of this rule must be filed with the Department no later than the 10th day of the month in order for the application to be included on that month's Commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of subpart (2)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in subpart (3)(a) of this rule will not be considered by the Commission that month, but will be included on the agenda of the Commission meeting the following month.

R82-11-103. Out of State Business.

(1)(a) Purpose. Pursuant to section 32B-11-201, brewers located outside the state must obtain a certificate of approval from the Department before selling or delivering beer containing an alcohol content of less than 4% alcohol by volume before November 1, 2019 and less than 5% alcohol by volume on or after November 1, 2019 to licensed beer wholesalers in this state, or if a small brewer, to licensed beer wholesalers or retailers in this state. These certificates must be renewed annually.

(b) In addition to issuing certificates of approval to brewers who actually produce the beer, the Department has also issued certificates to (1) importers that hold federal permits, and have the contractual rights to distribute and market beer for foreign breweries; and (2) marketing agents that distribute and market beer for domestic breweries. The Department has also allowed brewers with a certificate of approval to market the products on behalf of other brewers under that certificate. However, this has resulted in a loss of direct regulatory authority over the breweries that actually produce the beer.

(c) This rule ensures that each producer of beer obtain its own certificate of approval to allow its beer to be sold or delivered in this state.

(2) Application of Rule.

(a) A certificate of approval to sell or deliver beer in this state under section 32B-11-201 may be issued only to the company that is ultimately responsible for producing the beer. The company holding the certificate may not allow another brewery to sell or deliver beer to this state under the certificate holder's certificate. A certificate of approval may not be issued to any third party such as an importer or marketing agent that does not actually manufacture or produce alcoholic beverages.

(b)(i) This rule does not preclude the company that holds the certificate of approval from having its brand of beer produced by another brewery under contract under the brand name of the certificate holder's company.

(ii) A certificate holder is responsible to ensure that any beer produced by the contract-brewery complies with the alcoholic beverage laws of this state and any violations committed by the contract brewery will be the responsibility of the certificate holder.

(c)(i) A distillery or winery that has beer produced for it by a brewery under contract under the distillery's or winery's brand name is deemed to be a "brewery" for purposes of section 32B-11-201, and may be issued a certificate of approval.

(ii) A distillery or winery described in Subsection (2)(c)(i) is responsible to ensure that any beer produced by the contract-brewery complies with the alcoholic beverage laws of this state. Any violations committed by the contract brewery will be the responsibility of the distillery or winery that holds the certificate.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: February 25, 2020

Authorizing, and Implemented or Interpreted Law: 32B-2-202

R82. Alcoholic Beverage Control, Administration.

R82-13. Wholesaler.

R82-13-101. Application.

(1)(a) The authority for this rule is implied in Title 32B, Chapter 13, Beer Wholesaling License Act and explicit in section 32B-2-202, which authorizes the Commission to make rules governing criteria and procedures for licensure.

(b) The purpose of this rule is to clarify the process by which a person applies for a beer wholesaler license.

(2) No license application will be included on the agenda of a monthly Commission meeting for consideration for issuance of a beer wholesaler license until:

(a) The applicant has first met all requirements of sections 32B-1-304 (qualifications to hold the license), and 32B-13-202, 32B-13-204 and 32B-13-206 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation as a beer wholesaler license, a bond, a statement of the brands of beer the applicant is authorized to sell and distribute, statement of the territories in which the applicant is authorized to sell and distribute beer under an agreement required by 32B-11-201 or 32B-11-503, and public liability insurance); and

(b) the Department has inspected the beer wholesaler premise.

(3)(a) All application requirements of subpart (2)(a) of this rule must be filed with the Department no later than the 10th day of the month in order for the application to be included on that month's Commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of subpart (2)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in subpart (3)(a) of this rule will not be considered by the Commission that month, but will be included on the agenda of the Commission meeting the following month.

R82-13-102. Transfer of a Wholesale License, Conditions of Transfer, Change of Trade Name.

(1)(a) The authority for this rule is implied in Title 32B, Chapter 13, Beer Wholesaling License Act and explicit in section 32B-2-202, which authorizes the Commission to make rules governing criteria and procedures for licensure.

(b) The purpose of this rule is to clarify the process by which a person applies for a beer wholesaler license.

(2)(a) The holder of one or more wholesaler licenses may assign and transfer the license to any qualified person in accordance with the provisions of these rules.

(b) Notwithstanding Subsection (2)(a), no assignment and transfer may result in both a change of license and change of location.

(3) The holder of the wholesaler license shall first execute a proposed assignment and transfer of the license. The assignee or transferee shall apply to the Commission for approval of the assignment and transfer, and shall furnish any information the Commission may require.

(4) The assignment and transfer shall not be of any force and effect until the Commission has approved it.

(5) The assignee or transferee shall not take possession of the premises, or exercise any of the rights of a license until the Commission has approved the assignment and transfer.

(6) No assignment and transfer shall be made within 30 days after the holder of a wholesaler license has been granted a change of location.

(7) No change of location shall be granted within 90 days after assignment and transfer of a wholesaler license.

(8) In approving any assignment and transfer of a wholesaler license, the Commission may impose special conditions relating to any future connection of the former licensee or any of his or her employees with the business of the assignee or transferee.

(a) Before the imposition of any special conditions, the Commission shall hold a hearing to allow the former licensee or any of his or her employees to attend and provide information to the Commission.

(b) The Commission shall provide written notice to all parties involved at least 10 days before the hearing.

(9) No wholesaler license may be assigned to any person who does not qualify for the license under sections 32B-1-304 and 32B-13-202 through 206.

(10)(a) A change of trade name may coincide with the transfer of the wholesaler license, with the Commission's approval.

(b) Any licensed wholesaler may adopt a trade name or change the trade name by applying to the Commission on forms provided by the Department and upon receiving the Commission's approval.

R82-13-103. Change in Partners.

(1) The authority for this rule is implied in Title 32B, Chapter 13, Beer Wholesaling License Act and explicit in section 32B-2-202, which authorizes the Commission to make rules governing criteria and procedures for licensure.

(2) If the wholesaler licensee is a partnership, the sale of a partnership interest or any change in partners shall be considered an assignment and transfer of the wholesaler license held by one partnership within the meaning of R82-13-103.

(3) However, if the wholesaler licensee is a partnership, and a partner should die dissolving the partnership, that partnership license shall remain in effect on a temporary basis for one month, unless or until the Commission directs otherwise.

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