**R82. Alcoholic Beverage Services, 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 Services 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) Authority. This rule is made pursuant to Sections 32B-2-202 and 32B-3-101 through 32B-3-207, which authorize the Commission to establish criteria and procedures for imposing sanctions against a licensee, permittee, or an officer, employee, or agent of a licensee or permittee who violates statutes and Commission rules relating to alcoholic beverages.

(2) Purpose.

(a) This rule establishes a schedule setting forth a range of penalties that may be imposed by the Commission for violations of Utah alcoholic beverage control laws.

(b) A Department decision officer shall use this rule in processing a violation.

(c) A hearing officer shall use this rule in:

(i) charging a violation;

(ii) assisting parties in settlement negotiations; and

(iii) recommending a penalty for a violation.

(d) The Commission shall use the schedule in this rule in rendering the Commission's final decisions as to the appropriate penalty for a violation.

(e) This rule does not apply to a licensee or permittee that fails to maintain the fundamental, minimum qualifications provided by law for holding a license or permit as described in Section R82-3-104.

(3) Definitions. As used in this rule:

(a) "Licensee" includes a holder of a certificate of approval.

(b) "Permit" does not include a single event permit issued under Title 32B, Chapter 9, Event Permit Act.

(4) Application.

(a) The Commission may:

(i) revoke or suspend a license or permit;

(ii) impose a fine against a licensee or permittee in addition to or in lieu of a suspension; or

(iii) impose a fine against an officer, employee, or agent of a licensee or permittee.

(b)(i) If a licensee or permittee has not received a letter of admonishment or been found by the Commission to be in violation of the Act or Commission rules for a period of 36 consecutive months, the licensee's or permittee's violation record shall be expunged for purposes of determining future penalties sought.

(ii) The expungement period shall run from the date the last offense was finally adjudicated by the Commission.

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

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

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

(d)(i) When the Commission imposes a fine or administrative costs, the Commission shall establish a date on which the payment is due.

(ii) Failure of a licensee, permittee, or an officer, employee, or agent of a licensee or permittee to pay on or before the date established by the Commission results 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.

(iii) Failure of a licensee or permittee to pay a fine or administrative costs within 30-days after the date established by the Commission results in the issuance of an order to show cause to be heard at the Commission's next regularly scheduled meeting as to why the license or permit should not be revoked and the licensee's or permittee's compliance bond forfeited.

(5) 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 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, 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 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 a law enforcement or Department compliance officer 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; or a $200 to $500 fine for the licensee or permittee and up to a $50 fine for the officer, employee, or agent; or both.

(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 ten-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.

(vi) If other minor violations are discovered during the same investigation, a verbal warning shall be given for each violation on a first occurrence.

(vii) 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 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 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 shall be forwarded to the Department. The penalty shall range from a letter of admonishment to a $1,000 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 ten-day suspension of the license or permit and a three to ten-day suspension of the employment of the officer, employee, or agent; or a $500 to $1,000 fine for the licensee or permittee and up to a $75 fine for the officer, employee, or agent; or both.

(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; or a $1,000 to $2,000 fine for the licensee or permittee and up to a $100 fine for the officer, employee, or agent; or both.

(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; or a $2,000 to $25,000 fine for the licensee or permittee and up to a $150 fine for the officer, employee, or agent; or both.

(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 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: A written investigation report from law enforcement or Department compliance officer 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; or a $500 to $3,000 fine for the licensee or permittee and up to a $300 fine for the officer, employee, or agent; or both.

(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; or a $1,000 to $9,000 fine for the licensee or permittee and up to a $350 fine for the officer, employee, or agent; or both.

(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; or a $9,000 to $25,000 fine for the licensee or permittee and up to a $700 fine for the officer, employee, or agent; or both.

(iv) 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.

(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 the Act, 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 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, or up to a $25,000 fine, or both.

(i) First occurrence involving a grave violation: A written investigation report from law enforcement or Department compliance officer shall be forwarded to the Department. The penalty shall range from a ten-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; or a $1,000 to $25,000 fine to the licensee or permittee and up to a $300 fine for the officer, employee, or agent, or both.

(ii) More than one occurrence of the same type of grave violation: A 15-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 $3,000 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 subsection of the rule for licensees and permittees.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| TABLE 1 | | | | |
| Violation Degree  And Frequency | Warning -- Verbal\  Or Written | Fine Amount | Suspension  No. of Days | Revoke  License |
| 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 subsection of the rule for officers, employees, or agents of licensees and permittees.

|  |  |  |  |
| --- | --- | --- | --- |
| TABLE 2 | | | |
| Violation Degree and  Frequency | Warning -- Verbal \  Or Written | Fine Amount | Suspension  No. of Days |
| 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 180 |
| Grave |  |  |  |
| 1st |  | To 300 | 10 to 120 |
| Over 1 |  | To 500 | 15 to 180 |
|  |  |  |  |

(6) 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) 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 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.

(7) Violation Schedule. Any proposed substantive change to the violation schedule established in this rule that would establish or adjust the degree of seriousness of a violation requires rulemaking in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

**R82-3-103. Disciplinary Hearings.**

(1)(a) Authority.

(i) This rule is made pursuant to Section 32B-2-202 and governs the procedure for disciplinary actions under the jurisdiction of the Commission.

(ii) Package agencies are expressly excluded from the provisions of this rule, and are governed by the terms of the package agency contract.

(b) Definitions. The definitions found in Title 63G, Chapter 4, Utah Administrative Procedures Act, apply to this rule.

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

(d) Utah Administrative Procedures Act. A proceeding 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 governs the imposition of any penalty against a 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 under this rule include:

(A) a letter of admonishment;

(B) imposition of a fine;

(C) the suspension or revocation of a license, permit, or certificate of approval;

(D) the requirement that a licensee have a responsible alcohol service plan as provided in Section R82-3-107;

(E) the assessment of costs of action;

(F) 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 licensee, permittee, or certificate of approval holder for a period determined by the Commission;

(G) the forfeiture of a bond;

(H) 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

(I) 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 for a proceeding under this rule include:

(A) the hourly pay rate plus benefits of each Department employee involved in processing and conducting the adjudicative proceedings on the violation;

(B) an hourly charge for Department overhead costs;

(C) the amount billed to the Department by an independent contractor for services provided in conjunction with an adjudicative proceeding; and

(D) any additional extraordinary or incidental costs incurred by the Department.

(iv) The Commission may assess administrative costs in addition to the costs described in Subsection (1)(e)(iii) if a respondent fails to appear before the Commission at the final stage of the adjudicative process.

(v)(A) The Department shall calculate overhead costs described in Subsection (1)(e)(iii) 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.

(B) The Department shall recalculate the overhead costs at the beginning of each fiscal year.

(f) Witnesses.

(i) A hearing officer, in the course of conducting a hearing, may swear in a witness.

(ii) A 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.

(i) Service of any document under this rule is satisfied by:

(A) service personally or by mail upon the respondent, upon an officer or manager of a corporate or limited liability company respondent, upon an attorney for the respondent, to the last known address of the respondent; or

(B) upon any employee working in the respondent's premises; or

(C) posting of the document or a notice of certified mail upon the respondent's premises.

(ii) Proof of service under this rule is satisfied by:

(A) a receipt of service signed by the person served;

(B) a certificate of service signed by the person served;

(C) certificate of service signed by the server; or

(D) verification of posting on the respondent's premises.

(h) Filing of pleadings or documents. A respondent's filing of any pleading or document under this rule is satisfied by time delivery to:

(i) the Department office located at 1625 S. 900 West, Salt Lake City, Utah; or

(ii) P. O. Box 30408, Salt Lake City, Utah 84130-0408.

(i) Representation.

(i) A respondent who is not a corporation or limited liability company may:

(A) represent the respondent's self in any disciplinary action;

(B) be represented by an agent authorized by the respondent in writing; or

(C) be represented by an attorney.

(ii) A corporate or limited liability company respondent may be represented by:

(A) a member of the governing board of the corporation or manager of the limited liability company;

(B) a person authorized and appointed by the respondent in writing to represent the governing board of the corporation or manager of the limited liability company; or

(C) an attorney.

(j) Hearing officers.

(i) The Commission or the director may appoint a hearing officer to:

(A) receive evidence in a disciplinary proceeding; and

(B) 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 in this rule 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) Computation of time. In accordance with Section 68-3-7, the time within which any act shall be done under this rule is 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.

(l) 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 hearing officer shall:

(A) include a statement of the grounds for default in the order for default; and

(B) mail the order of default to the respondent and the Department.

(iii) A defaulted respondent may seek to have the order of default 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:

(A) conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the respondent in default; and

(B) 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:

(i) review the report;

(ii) review the alleged violator's violation history; and

(iii) in accordance with Section R82-3-102, determine the range of penalties that may be assessed should the alleged violator be found guilty of the alleged violation.

(b) Letters of admonishment. A letter of admonishment is not a "state agency actions" as described in Section 63G-4-102 and is subject to the following procedures:

(i) A letter of admonishment may be sent to the respondent if the decision officer of the Department determines that the alleged violation does not warrant:

(A) an administrative fine;

(B) suspension or revocation of the license, permit, or certificate of approval; or

(C) action against an officer, employee, or agent of a licensee, permittee, or certificate of approval holder, or a manufacturer, supplier, or importer of products listed in this state.

(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 the 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;

(E) notice that a rebuttal is permitted under this rule within 10 days after the letter of admonishment is served; and

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

(iii)(A) A copy of the law enforcement agency or Department staff report shall accompany the letter of admonishment.

(B) The decision officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iv)(A) A respondent may file a written rebuttal with the Department within 10 days after the letter of admonishment is served.

(B) The rebuttal shall set forth in clear and concise terms:

(I) the case number assigned to the action;

(II) the name of the respondent;

(III) any facts in defense or mitigation of the alleged violation; and

(IV) a brief summary of any attached evidence.

(C) The rebuttal may be accompanied by supporting documents, exhibits, or signed statements.

(D) The respondent or the respondent's authorized agent or attorney shall sign the rebuttal.

(v)(A) If the decision officer is satisfied, upon receipt of a rebuttal, that the letter of admonishment was not well taken, the decision officer may withdraw the letter of admonishment.;

(B) If the decision officer withdraws the letter of admonishment, the letter of admonishment and rebuttal shall be expunged from the respondent's file and the letter of admonishment may not be considered as a part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent.

(C) If no rebuttal is received, or if the decision officer determines after receiving a rebuttal that the letter of admonishment is justified, the decision officer shall submit the matter to the Commission for final approval.

(D) Upon Commission approval, the Department shall place the letter of admonishment, together with any written rebuttal, in the respondent's file.

(E) A letter of admonishment may be considered as part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent.

(F) If the Commission rejects the letter of admonishment, the Commission may direct the decision officer to dismiss the matter or 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, the respondent may request that the matter be processed under the adjudicative proceeding process.

(c) Commencement of adjudicative proceedings.

(i) An alleged violation 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 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) An adjudicative proceeding shall commence as an informal proceeding.

(iii) At any time after commencement of an informal adjudicative proceeding, but before the hearing, if the Department determines that the Department will seek administrative fines exceeding $3,000, 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, the hearing officer shall convert the matter to a formal adjudicative proceeding.

(iv) At any time before a final order is issued, the 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 an informal adjudicative proceeding, the hearing officer shall issue and sign a written notice of agency action that sets 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;

(B) the name, title, and mailing address of an attorney or employee who has been designated to appear for the Department;

(C) the Department's case number;

(D) the name of the adjudicative proceeding, "Department of Alcoholic Beverage Services vs. (insert name of the respondent)";

(E) the date that the notice of agency action is mailed;

(F) a statement that the adjudicative proceeding is to be conducted informally according to this rule and Sections 63G-4-202 and 63G-4-203 unless a hearing officer converts the matter to a formal proceeding under this rule, in which event the proceeding will be conducted formally according to this rule and Sections 63G-4-204 through 63G-4-209;

(F) the date, time, and place of any prehearing conference with the hearing officer;

(G) a statement that a respondent may request a hearing to determine whether the violation alleged in the notice of agency action occurred, and if so, the penalty 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 that 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) A copy of the law enforcement agency or staff report shall accompany the notice of agency action.

(B) The hearing officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iii) The Department shall retain the notice of agency action and any subsequent pleading in the case in the respondent's file.

(iv) The Department shall:

(A) serve the notice of agency action on the respondent; and

(B) send the notice of agency action to any attorney representing the Department and any law enforcement agency that referred the alleged violation to the Department.

(v)(A) The hearing officer may permit or require pleadings in addition to the notice of agency action.

(B) A party shall file additional pleadings with the hearing officer and send copies by mail to each respondent and the Department.

(vi) Amendment to Pleading.

(A) 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.

(B) The hearing officer shall disregard a defect in a pleading that does not substantially prejudice the respondent or Department.

(vii) Signing of Pleading.

(A) The Department or respondent, or the Department's or respondent's authorized attorney or representative, shall sign a pleading.

(B) The pleading shall show the signer's address and telephone number.

(C) The signature is deemed to be a certification by the signer that the signer has read the pleading and taken reasonable measures to ensure its truth.

(b) The prehearing conference.

(i) The hearing officer may hold a prehearing conference with the respondent and the Department to:

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence; or

(D) expedite the proceedings.

(ii)(A) All or part of an adjudicative proceeding may be stayed at any time by a written settlement agreement signed by the Department and respondent or the Department's or respondent's authorized attorney or representative, and the hearing officer.

(B) The stay takes effect immediately upon the signing of the settlement agreement and remain in effect until the settlement agreement is approved or rejected by the Commission.

(C) No further action is required with respect to any stayed action or issue until the Commission acts on the settlement agreement.

(iii)(A) A settlement agreement approved by the Commission constitutes a final resolution of all issues agreed upon in the settlement.

(B) After the Commission approves a settlement agreement, no further proceedings are required for any issue settled.

(C) The approved settlement takes effect by its own terms and binds the respondent and the Department.

(D) A breach of a settlement agreement by the respondent may be treated as a separate violation and is grounds for further disciplinary action.

(E) Sanctions stipulated to in the settlement agreement may be imposed against the respondent.

(iv) If the settlement agreement is rejected by the Commission, the action shall proceed in the same manner as if the settlement agreement had not been reached, except that all time limits are 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 the Department will seek administrative fines exceeding $3,000, 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.

(vi) If the Department does not seek a remedy described in Subsection (2)(b)(v), any hearing on the matter shall be adjudicated informally.

(vii)(A) If the Department seeks a remedy described in Subsection (2)(b)(v), the hearing officer shall convert the matter to a formal adjudicative proceeding, and any hearing on the matter shall be adjudicated formally.

(B) In a matter that is converted to a formal adjudicative proceeding under Subsection (2)(b)(vii)(A), the Department may waive the requirement that the respondent file a written response to the notice of agency action.

(c) The informal hearing.

(i)(A) Notice. The hearing officer shall notify the respondent and Department in writing of the date, time, and place of an informal hearing at least 10 days before the hearing.

(B) The respondent's failure to appear at the hearing after notice has been given is grounds for default and waives the respondent's right to contest the allegations and to the hearing.

(C) If the respondent fails to appear, the hearing officer shall prepare and serve on the respondent an order in accordance with this rule.

(ii) Hearing officer. An informal hearing is presided over by the hearing officer.

(iii) Rules of evidence.

(A) The respondent named in the notice of agency action and the Department are permitted to testify, present evidence, and comment on the issues at an informal hearing.

(B) Except as provided in Subsection (2)(c)(v), formal rules of evidence do not apply to an informal hearing.

(C) In an informal hearing, the hearing officer:

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

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

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

(IV) 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;

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

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

(VII) may use the hearing officer's experience, technical competence, and specialized knowledge to evaluate the evidence.

(iv) Oath. All testimony at an informal hearing shall be under oath.

(v) Discovery and subpoenas.

(A) Discovery is prohibited at an informal hearing.

(B) The hearing officer shall issue subpoenas or orders to secure the attendance of witnesses or the production of evidence when requested by the respondent or Department, or upon the hearing officer's own motion.

(C) The 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.

(vi) Intervention.

(A) Intervention is prohibited at an informal hearing.

(B) Except as provided in Subsections (2)(c)(vi)(C) and (D), the hearing is open to the public.

(C) 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.

(D) The hearing officer may take appropriate measures necessary to preserve the integrity of the hearing.

(vii) Record of hearing.

(A) The hearing officer shall cause an official record of the hearing to be made, at the Department's expense, by an audio or video recorder or other recording device, by a certified shorthand reporter employed by the Department, or, if the Department chooses not to employ a reporter, by a party desiring to employ a certified shorthand reporter at the party's expense.

(B) If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the Department and a person who desires a copy of the certified shorthand reporter's transcript may purchase the copy from the reporter.

(C) A respondent, at respondent's 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.

(D) The Department shall make a transcript or audio or video recording of a hearing available at the Department for use by the parties, but the original transcript or recording may not be withdrawn.

(E) 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.

(viii) Order of presentation. Unless otherwise directed by the hearing officer at the informal hearing, the order of procedure and presentation of evidence is as follows:

(A) the Department;

(B) the respondent; and

(C) the rebuttal by the Department.

(ix) Time limits. The hearing officer may set reasonable time limits for the presentations described in Subsection (2)(c)(viii).

(x) Continuances of the informal hearing.

(A) The hearing officer may grant continuances or recesses as necessary or upon the hearing officer's own motion when in the public interest.

(B) If the hearing is continued to a time and date certain announced at the hearing, a new notification of the hearing is not required.

(C) A continuance of a hearing is not favored, but the hearing officer may grant a continuance upon motion of the respondent or Department indicating good cause as to why a continuance is necessary.

(xi) Oral argument and briefs. Upon the conclusion of the taking of evidence, the hearing officer may, in the hearing officer's discretion, permit the respondent and Department to make oral arguments or submit additional briefs or memoranda upon a schedule hearing officer designates.

(d) Disposition.

(i) Hearing officer's order.

(A) Within a reasonable time after the close of the informal 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 after the order is served, 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 hearing officer shall base the order on the facts appearing in the Department's files and presented in evidence at the informal hearing.

(C) Any contested finding of fact that may not be based solely on hearsay evidence.

(D) The hearing officer shall base findings of fact upon a preponderance of the evidence.

(E) The hearing officer's order may not recommend a penalty more severe than that sought in the notice of agency action, nor administrative fines exceeding $3,000, 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.

(F) A The hearing officer shall promptly mail the order to the respondent and the Department.

(G) The hearing officer shall wait 10 days after the order is served for written objections, if any.

(H) Upon receipt of objections, the hearing officer may amend or supplement the hearing officer's findings of fact, conclusions of law, or recommendations to reflect the objections that have merit or are not disputed.

(I) Upon expiration of 10-day period for filing written objections, the hearing officer shall submit the order and any written objections timely filed to the Commission for final consideration.

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

(ii) Commission Action. Upon expiration of 10-day period for filing written objections to the hearing officer's order under Subsection (2)(d)(i), the Commission shall place the order on the next available agenda of a regular Commission meeting for consideration by the Commission.

(B) The Commission shall finally decide the matter on the basis of the order and any objections submitted.

(C) No additional evidence shall be presented to the Commission when considering the order and objections.

(D) The Commission may, in the Commission's discretion, permit the respondent and the Department to present oral presentations at the Commission meeting.

(E) The Commission is deemed a substitute hearing officer under Section 63G-4-103 when deciding the matter.

(F) The Commission's review and decision is not considered a "review of an order by an agency or a superior agency" under Sections 63G-4-301 and 63G-4-302.

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

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

(V) the 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 the order is in the district court in accordance with Sections 63G-4-401 through 63G-4-405 and 32B-3-207.

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

(I) The Commission shall base the Commission's order on the facts appearing in the Department's files and presented in evidence at the informal hearing.

(J) The Commission order may not impose a penalty more severe than that sought in the notice of agency action, nor administrative fines exceeding $3,000, 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.

(K) Upon issuance, a copy of the Commission's order shall be promptly mailed to the parties.

(L) The Commission may direct the Department to prepare, issue, and cause to be served on the parties the Commission's order.

(e) Judicial review. An appeal of informal adjudicative proceedings may be filed with the district court in accordance with Sections 63G-4-402 through 63G-4-405 and 32B-3-207.

(4) The formal adjudicative process.

(a) Conversion procedures.

(i) If a hearing officer converts an informal adjudicative proceeding to a formal adjudicative proceeding under this rule:

(A) 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 through 63G-4-209

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

(C) the respondent shall file a written response to the original notice of agency action within 30 days after the notice of the conversion of the adjudicative proceeding to a formal proceeding is served, unless this requirement is waived by the Department.

(ii)(A) An extension of time to file a response is not favored, but may be granted by the hearing officer for good cause shown.

(B) The respondent's failure to file a timely response waives 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 the hearing officer's final order in accordance with Subsection (4)(e).

(C) The response set forth in clear and concise terms:

(I) the case number assigned to the action;

(II) the name of the adjudicative proceeding, "Department of Alcoholic Beverage Services vs. (insert name of respondent)";

(III) the name of the respondent;

(IV) 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 is deemed denied;

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

(VI) a brief summary of any attached evidence, including supporting documents, exhibits, signed statements, or transcripts;

(VII) a statement of the relief the respondent requests; and

(VIII) a statement summarizing the reasons that the relief requested should be granted.

(iv) The hearing officer may:

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

(B) upon motion of a party made at or before the hearing, allow any pleading to be amended or corrected.

(v) The hearing officer shall disregard a defect in a pleading that does not substantially prejudice any of the parties.

(vi)(A) A party or the party's attorney shall sign a pleading.

(B) A pleading shall include the signer's address and telephone number.

(C) The signature on a pleading is deemed to be a certification by the signer that the signer has read the pleading and taken reasonable measures to ensure its truth.

(b) Intervention.

(i) Petition. A person who is not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the hearing officer.

(ii) 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.

(iii) The person who wishes to intervene shall mail a copy of the petition to each party

(iv)(A) Response to petition. A party to a proceeding into which intervention is sought may make an oral or written response to the petition for intervention.

(B) The response shall state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted.

(C) The party shall present or file the response at or before the hearing.

(v) 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.

(vi) 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 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.

(F) If 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) 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) The hearing officer shall issue subpoenas and orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings when requested by any party, or upon the hearing officer's own motion.

(d) The formal hearing.

(i)(A) Notice and continuances. The hearing officer shall notify the parties in writing of the date, time, and place of the formal hearing at least 10 days before the hearing.

(B) The hearing officer's name, title, mailing address, and telephone number shall be provided to the parties.

(C) A continuance of a hearing is not favored, but may be granted by the hearing officer for good cause shown.

(D) The respondent's failure to appear at the hearing after notice has been given is grounds for default and waives the respondent's right to contest the allegations and to the hearing.

(E) If the respondent fails to appear, the hearing officer shall prepare and serve on the respondent an order in accordance with this rule.

(ii)(A) Public hearing. Except as provided in Subsection (4)(d)(ii)(B), a formal hearing is open to the public.

(B) 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.

(C) The hearing officer may take appropriate measures necessary to preserve the integrity of the formal hearing.

(iii) Rights of parties. The hearing officer:

(A) shall regulate the course of the formal hearing 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.

(B) may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the formal hearing.

(iv)(A) Rules of evidence. Technical rules of evidence do not apply to a formal hearing.

(B) Except as provided in Subsection (4)(d)(iv)(C), the hearing officer may admit reliable evidence at the hearing.

(C) The hearing officer:

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

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

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

(IV) 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;

(V) 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;

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

(VII) may use the hearing officer's experience, technical competence, and specialized knowledge to evaluate the evidence.

(v) 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.

(vi) Order of presentation. Unless otherwise directed by the hearing officer at the hearing, the order of procedure and presentation of evidence is as follows:

(A) the Department;

(B) the respondent;

(C) the intervenors; and

(D) the rebuttal by the Department.

(vii) The hearing officer may set reasonable time limits for the presentations described in Subsection (2)(d)(vi).

(viii) Continuances of the formal hearing.

(A) The hearing officer may grant a continuance of the formal upon motion of a party indicating good cause as to why a continuance is necessary or upon the motion of the hearing officer when in the public interest.

(B) If the hearing is continued to a time and date certain announced at the hearing, a new notification of the hearing is not required.

(ix) Oral argument and briefs. Upon the conclusion of the taking of evidence, the hearing officer may, in the hearing officer's discretion, permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule the hearing officer designates.

(x) Record of hearing.

(A) The hearing officer shall cause an official record of the hearing to be made, at the Department's expense, by an audio or video recorder or other recording device, by a certified shorthand reporter employed by the Department or, if the Department chooses not to employ a reporter, by a party desiring to employ a certified shorthand reporter at the party's expense.

(B) If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the Department and a person who desires a copy of the certified shorthand reporter's transcript may purchase the copy from the reporter.

(C) A respondent, at the respondent's 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.

(D) The Department shall make a transcript or audio or video recording of a hearing available at the Department for use by the parties, but the original transcript or recording may not be withdrawn.

(E) 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.

(A) Inexcusable failure of the respondent to appear at a scheduled evidentiary hearing after receiving proper notice constitutes an admission of the charged violation.

(B) 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.

(A) Within a reasonable time after the close of the formal 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; a preponderance of the evidence, except if the respondent fails to respond, 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; and recommend a penalty more severe than the penalty sought in the notice of agency action.

(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 after the order is served 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 contested finding of fact may not be based solely on hearsay evidence.

(C) The hearing officer shall base findings of fact upon

(D) The hearing officer's order may not

(E) The hearing officer shall promptly mail the order to the parties.

(F) The hearing officer shall wait 10 days after the order is served for written objections, if any.

(G) Upon receipt of objections, the hearing officer may amend or supplement the hearing officer's findings of fact, conclusions of law, or recommendations to reflect the objections that have merit and are not disputed.

(H) Upon expiration of the 10-day period for filing written objections, the hearing officer shall submit the order and any written objections timely filed to the Commission for final consideration.

(ii) Commission action.

(A) Upon expiration of the 10-day period for filing objections under Subsection (4)(e)(i), the Commission shall place the on the next available agenda of a regular Commission meeting for consideration by the Commission.

(B) The Commission shall finally decide the matter on the basis of the order and any objections submitted.

(E) The Commission is deemed a substitute hearing officer under Section 63G-4-103 when deciding the matter.

(F) The Commission's review and decision is not considered a "review of an order by an agency or a superior agency" under Sections 63G-4-301 and 63G-4302.

(C) No additional evidence shall be presented to the Commission when considering the order and objections.

(D) The Commission may, in the Commission's discretion, permit the parties to present oral presentations at the Commission meeting.

(G) After the Commission reaches a final decision, the Commission shall issue or cause to be issued a signed, written order pursuant to Sections 32B-3-204 and 63G-4-208 containing:

(I) findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

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

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

(VII) notice of the right to seek judicial review of the order within 30 days after the order is issued in the court of appeals in accordance with Sections 32B-3-207 and 63G-4-403, through 63G-4-405.

(D) A contested finding of fact may not be based solely on hearsay evidence.

(E) The Commission shall base findings of fact upon a preponderance of the evidence, except if the respondent fails to respond, then the findings of fact shall adopt the allegations in the notice of agency action and the respondent is considered in default.

(F) The Commission's order may not impost a penalty more severe than the penalty sought in the notice of agency action.

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

(I) The Commission may use the Commission's experience, technical competence, and specialized knowledge to evaluate the evidence.

(J) Except as provided in Subsection (4)(e)(ii)(K), the Commission shall promptly mail a copy of the Commission's order to the parties.

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

(iii) Reconsideration of Commission's order.

(A) A respondent having objections to the order of the Commission may file, within 10 days after the order is served, 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.

(B) If the request is based upon newly discovered evidence, the respondent shall include with the request for reconsideration 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.

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

(D) Within 20 days after 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.

(E) If the Commission grants the request, the Commission shall limit the request to the matter specified in the order.

(F) Upon reconsideration, the Commission may confirm the former Commission order, vacate, change, or modify the former Commission order in any particular, or remand the matter for further action.

(G) The final order on the request for reconsideration shall have the same force and effect as the Commission's original order.

(H) If the Commission does not issue an order on the request for reconsideration within 20 days after the filing of the request, the request is considered denied.

(f) Judicial Review. An appeal from formal adjudicative proceedings may be filed with the Utah Court of Appeals in accordance with Sections 32B-3-207 and 63G-4-403 through 63G-5-405.

**R82-3-104. Orders to Show Cause.**

(1) Authority. This rule is made pursuant to Sections 32B-2-202 and 32B-3-202.

(2)(a) If 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:

(i) a failure to maintain insurance;

(ii) a failure to maintain a bond;

(iii) a failure to notify the Department regarding a change of ownership as described in Section 32B-18-202;

(iv) a failure to maintain records showing the appropriate amount of food sales for the license type; or

(iv) receiving a conviction for a criminal offense that disqualifies the licensee or permittee from holding the license or permit.

(3) The order to show cause shall:

(a) identify the time and place of the hearing on the order to show cause;

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

(c) require the licensee or permittee to provide the Commission with proof that the licensee or permittee maintains the fundamental, minimum qualifications to hold the license or permit.

(4) The Department shall mail the order to show cause to the address on file of the licensee or permittee no later than ten calendar days before the day on which the hearing described in Subsection (3) is scheduled to be held.

(5) If a licensee or permittee provides the Department with proof that the licensee or permittee maintains the fundamental, 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 the fundamental, minimum qualifications.

(6) If a licensee or permittee fails to provide the Commission with proof that the licensee or permittee maintains the fundamental, minimum qualifications to hold the license or permit at a scheduled hearing, the Commission shall:

(a) suspend, revoke, or deem forfeited the license or permit; or

(b) hold the hearing on the order to show cause until the next Commission meeting.

(7) An order to show cause issued pursuant to this rule are not required to comply with Title 63G, Chapter 4, Administrative Procedures Act or Section 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 made pursuant to the Commission's powers and duties under Sections 32B-1-103 and 32B-2-202 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 with the licensee's initial application, upon renewal if the Responsible Alcohol Service Plan 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" mean the same as those terms are defined in Section 32B-1-102.

(b) "Licensed business" means 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.

(a)(i) The Commission may direct that a licensed business that has been found by the Commission to have violated any provision of the Title 32B, 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 Responsible Alcohol Service Plan as a condition of continued licensing and relicensing by the Commission.

(b) Any Responsible Alcohol Service Plan 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 described in Section 26B-5-205, 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, Alcoholic Product Liability Act; 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 any 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 Subsection (4)(a), or to have a Plan available for inspection as required by Subsection (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 Last Change: November 22, 2024**

**Authorizing, and Implemented or Interpreted Law: 32B-1-103; 32B-2-202; 32B-3-101 through 32B-3-207**