**R82. Alcoholic Beverage Services, 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.**

(1) Authority. This rule is made pursuant to Sections 32B-1-102 and 32B-2-202.

(2) Definitions of terms in the Act are used in Title R82, except where the context of the terms in Title R82 clearly indicates a different meaning.

(3) As used in Title R82:

(a) "Act" means the Title 32B, Alcoholic Beverage Control Act.

(b) "Commission" means the Utah Alcoholic Beverage Services Commission.

(c)(i) "Controlled group of manufacturers" means a group of incorporated or non-incorporated alcohol manufacturers that are related directly or indirectly through more than 50% common ownership or control by any person;

(ii) "Controlled group of manufacturers" includes an alcohol manufacturer if more than 50% of the alcohol manufacturing entity is owned or controlled directly or indirectly either by, or in common with, another alcohol manufacturer.

(d) "Department " or "DABS" means the Utah Department of Alcoholic Beverage Services.

(e) "Director" means the director of the Department of Alcoholic Beverage Services.

(f) "Guest room" means a space normally utilized by an individual for occupancy, usually a traveler who lodges at an inn, hotel, or resort.

(g) "Manager" means, depending on the context:

(i) a person chosen or appointed to manage, direct, or administer the affairs of another person, corporation, or company;

(ii) an individual chosen or appointed to direct, supervise, or administer the operations at a licensed business; or

(iii) an individual who supervises the furnishing of an alcoholic product to another, regardless of the exact employment title that the individual holds.

(h) "Person" means the same as that term is defined in Section 68-3-12.5.

(i) "Point of sale" means that portion:

(i) 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; or

(ii) of an establishment that sells beer for off-premise consumption where the beer is displayed or offered for sale.

(j) "Respondent" means a licensee, 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.

(k) "Staff" or "authorized staff member" means a person authorized by the director of the Department to perform a particular act.

(l) "Subpart" refers to subsections of this rule.

(m) "Utah alcoholic beverage control laws" means any Utah statute, Commission rule, or municipal or county ordinance relating to the manufacture, possession, transportation, distribution, sale, supply, wholesale, warehousing, or furnishing of alcoholic beverages.

(n) "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 and Human Services 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) Authority. This rule is made 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) Purpose. The purpose of this rule is to provide administrative guidance to the Department and members of the public.

(3) Definitions. As used in 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 pursuant to Title 15, Contracts and Obligations in General, for any debt or obligation owed to the Department by a licensee, permittee, package agent, or any other person.

(5) The Department shall 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)(a) Receipt of a check payable to the Department that is returned by the bank for any of the reasons listed in Subsection (5) 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 plus the $20 charge described in Subsection (5) is received by the Department.

(b) Failure to make good the returned check and pay the $20 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)(a) In addition to the remedies listed in Subsection (6), the Department may require that the licensee, permittee, or package agent transact business with the Department on a cash-only basis.

(b) 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 is at the discretion of the Department and based on the following factors:

(i) the dollar amount of the returned check;

(ii) the number of returned checks;

(iii) the length of time the licensee, permittee, or package agency operator has had a license, permit, or package agency with the Department;

(iv) the time necessary to collect the returned check; and

(v) 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 beer event 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 event requiring a permit under Title 32B, Chapter 9, Event Permit Act.

(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) 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 costs incurred by the Department for the product that is not warehoused by the Department.

(11) 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 described in 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) Authority. This rule is made pursuant to Subsection 32B-1-206, which authorizes the advertising of alcoholic product in this state under guidelines established by the Commission except to the extent prohibited by Title 32B, Alcoholic Beverage Control Act.

(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" means a person 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 27 C.F.R. Parts 4, 5, 6, and 7. 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 C.F.R. Sec. 7.4 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 Subsection (3)(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) Any 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 described in R82-2-301, shall comply with the advertising requirements listed in Subsection (6).

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

(a) may not violate any federal laws referenced in Subsection (3);

(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:

(a) any administrative penalties authorized by Section 32B-3-205; or

(b) the imposition of the criminal penalty of a class B misdemeanor pursuant to Section 32B-4-304.

**R82-1-105. Label Approvals.**

(1) Authority. This rule is made pursuant to Section 32B-1-607, which gives the Commission the authority to adopt rules necessary to implement Title 32B, Chapter 6, Malted Beverage Act.

(2) Purpose.

(a) Pursuant to Section 32B-1-604, a manufacturer may not distribute or sell in this state any malted beverage, including a beer, heavy beer, or flavored malt beverage, unless the label and packaging of the beverage is 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 Beverage Act; and

(iii) establishes the format of certain words and phrases required on the label and packaging of certain malted beverages as required by Section 32B-1-606.

(3) Application.

(a)(i) Except as provided in Subsection (3)(a)(iii) a complete set of original labels for each size of container must accompany each application for label and packaging approval, including all band, strip, front and back labels appearing on any individual container.

(ii) The Department may not accept an original container under Subsection (3)(a)(i).

(iii) If original labels cannot be obtained, the following may be accepted as part of the application:

(A) color reproductions that are exact size; or

(B) if printed in color, 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.

(b) An application for approval is required for any revision of a previously approved label or packaging, including a revision to a label or 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.

(c) The statement "alcoholic beverage" or "contains alcohol" and the statement of alcohol content as a percentage of alcohol by volume or weight included on a malted beverage under Section 32B-1-606 shall appear:

(A) in capital letters and bold type;

(B) in a solid contrasting background;

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

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

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

(d) The Department may consider the following elements of the label or packaging of a malted beverage when determining whether the label or packaging must be rejected under Subsection 32B-1-606(3)(b):

(i) color palette;

(ii) font size and type;

(iii) imagery;

(iv) placement of words, images, or descriptions;

(v) references to alcohol content that are not statutorily required; and

(vi) container type or shape.

**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 19%, 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 cannot 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 19% 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)(a).

(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.

**R82-1-304.1. Background Checks for Public Service Permittees.**

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

(2) This rule describes what "engages in the management" of the airline, railroad, or other public conveyance means for the purposes of determining which individuals must undergo a background check as part of the application process for a public service permit.

(3) As used in this section, "engages in the management of the airline, railroad, or other public conveyance means manages or controls:

(a) the daily operations of the local branch of the entity that holds the public service permit; or

(b) the finances of the local branch of the entity that holds the public service permit.

(4) An individual who engages in the management of the airline, railroad, or other public conveyance shall undergo a background check as part of the application process for obtaining or renewing a public service permit.

**KEY: alcoholic beverages**

**Date of Last Change: November 22, 2024**

**Authorizing, and Implemented or Interpreted Law: 32B-1-102; 32B-2-202; 32B-1-206; 32B-1-606; 32B-1-607**