**R82. Alcoholic Beverage Services, Administration.**

**R82-5. General Retail License Provisions.**

**R82-5-101. Definitions.**

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

(2) As used in this rule:

(a) "Convention center" is a publicly or privately owned or operated facility:

(i) the primary business or function of which is to host conventions, conferences, and food and beverage functions under a banquet contract;

(ii) that has adequate kitchen or culinary facilities on the premises of the convention center to provide complete meals; and

(iii) that is in total at least 30,000 square feet.

(b) "Resort facility" is a publicly or privately owned or operated commercial recreational facility or area:

(i) that is designed primarily to attract and accommodate people to a recreational or sporting environment;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises to provide complete meals; and

(iv) that has at least 1,500 square feet of function space consisting of meeting or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the Commission shall have the authority to waive the minimum function space size requirements.

(c) "Sports center" is a publicly or privately owned or operated facility:

(i) that is designed primarily to attract people to and accommodate people at sporting events;

(ii) that has a fixed seating capacity for more than 2,000 persons;

(iii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iv) that has adequate kitchen or culinary facilities on the premises of the sports center to provide complete meals; and

(v) that has at least 2,500 square feet of function space consisting of meeting or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the Commission shall have the authority to waive the minimum function space size requirements.

**R82-5-102. Licensing, Change of Ownership, and Change of License Location.**

(1) This rule is adopted pursuant to Section 32B-18-203, which authorizes the Department to make rules governing requirements for interim alcoholic beverage management agreements.

(2) Licenses are issued to persons. A licensee must communicate any contemplated action or transaction that may alter an organizational structure or ownership interest of the person to whom a license is issued to the Department so staff may ensure there is no violation of Section 32B Part 18.

(3) An interim alcoholic beverage management agreement is required if a buyer will be performing the day-to-day operations of the business before the Commission approves the transfer of the license from seller to buyer.

(4)(a) Before a retail licensee enters into an interim alcoholic beverage management agreement, it shall provide the proposed interim alcoholic beverage management agreement to the Department for its approval.

(b) The Department shall create a checklist of information that an interim alcoholic beverage management agreement must contain.

(c) The Department shall review a proposed interim alcoholic beverage management agreement and, no later than 15 business days after the day on which the agreement is received by the Department:

(i) approve the interim alcoholic beverage management agreement if it contains all the necessary information; or

(ii) return the proposed interim alcoholic beverage management agreement to the licensee, if the agreement is lacking in information or specificity, with guidance on how to remedy any errors or omissions.

(5) Once an interim alcoholic beverage management agreement is approved by the Department, the seller may allow the buyer to use their license to purchase alcoholic product from the Department, but revenue from the sale of alcohol during the transition period must be retained by the seller, less the cost of reimbursing the buyer for the cost of the alcoholic product paid to the Department.

(6) The seller must maintain the required bond, insurance, and business license during the transition period, as these are statutory requirements to hold a license, but the buyer may agree to reimburse the seller for any necessary costs incurred to maintain the bond, insurance, and business license.

(7) Nothing in this rule authorizes a licensee to close business without approval from the Department or Commission, as required by statute.

**R82-5-103. Application.**

(1) No license or sublicense application will be included on the agenda of a monthly Commission meeting for consideration for issuance of a license until:

(a) The applicant has first met all requirements of sections 32B-1-304 and 32B-5-201 through 207; and

(b) the Department has inspected the applicant's premise(s).

(2)(a) All application requirements of subpart (1)(a) of this rule must be filed with the Department no later than the 10th day of the month in order for the application to be included on that month's Commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of subpart (1)(a) must be filed on the next business day after the 10th day of the month.

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

(c) A completed application filed after the deadline in subpart (2)(a) of this rule will not be considered by the Commission that month, but will be included on the agenda of the Commission meeting the following month.

(3) Subpart (1)(a) of this rule does not preclude the Commission from considering an application for conditional licensure, pursuant to section 32B-5-205.

(4)(a) Applicants may apply for a Master Full-Service Restaurant or Master Limited Service Restaurant License, as defined by sections 32B-6-206 and 32B-6-306 so long as five or more locations are indicated as sublicenses on the application.

(b) The five or more locations described in subpart (4)(a) of this rule must be owned by the same person or entity.

(c) Locations that do not already have a full or limited service restaurant license must meet all requirements for licensing as a full service or limited service restaurant under subpart (1) of this rule.

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

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

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

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

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

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

**R82-5-104. Liquor Dispensing Systems.**

(1) Authority. This rule is made pursuant to Sections 32B-5-301 and 32B-5-304.

(2) Purpose. This rule describes:

(a) the minimum requirements for a liquor dispensing system required by Section 32B-5-304;

(b) how the Department approves a liquor dispensing system; and

(c) where a liquor dispensing system may be used and stored.

(3) Definitions. As used in this rule:

(a) "Dispensing area" means a fixed structure, area, counter, or surface where an alcoholic beverage is stored, prepared, and dispensed.

(b) "Dispensing system" means a device that measures alcohol and dispenses alcohol in the selected measured amount.

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

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

(5) The Department may approve a liquor dispensing system if the liquor dispensing system:

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

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

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

(6) Liquor dispensing systems may be of various types, including:

(a) gun;

(b) a stationary head;

(c) a tower;

(d) an insertable spout;

(e) a ring activator; or

(f) a type similar to the types described in Subsections (6)(a) through (e).

(7)(a) The licensee is responsible for verifying that a liquor dispensing system, when initially installed, meets the specifications described in this rule.

(b) Once installed, the licensee shall maintain the liquor dispensing system to ensure that the liquor dispensing system continues to meet the approved specifications.

(c) Failure to maintain the liquor dispensing system may be grounds for suspension or revocation of the licensee's license.

(8)(a) A licensee shall:

(i) affix spirituous liquor bottles in use by a liquor dispensing system in the dispensing area to the liquor dispensing system;

(ii) lock spirituous liquor bottles in use with a remote storage alcoholic beverage dispensing system approved by the Department in a locked storage area identified on the licensee's floor plan; and

(iii) lock or secure spirituous liquor bottles attached to a liquor dispensing system in a place and manner that precludes the dispensing of spirituous liquor at times when liquor sales are not authorized by law.

(b) A licensee may not dispense or store a spirituous liquor bottle at a patron's table.

(c) Any primary spirituous liquor not in service through a liquor dispensing system must remain unopened.

(9)(a) A liquor dispensing system:

(i) may not be utilized at patron's table;

(ii) may only be used at approved dispensing area;

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

(iv) may not dispense from or utilize containers other than original spirituous liquor bottles;

(v) shall prohibit the intermixing of different kinds of products or brands in the spirituous liquor bottles from which they are being dispensed; and

(vi) shall conform to federal, state, and local health and sanitation requirements.

(b)(i) Pursuant to federal law and Section 32B-4-420, liquor dispensed through a liquor dispensing system must be from its original container, and spirituous liquor bottles may not be reused or refilled with any substance.

(ii) The Commission adopts federal regulations 27 CFR 31.201 and 26 USC Section 5301 and incorporates them by reference.

(10)(a) A licensee shall keep daily records for each liquor dispensing system as follows:

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

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

(iii) the number of portions of spirituous liquor sold; and

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

(b)(i) Representatives of the Department, the State Bureau of Investigation, and any other law enforcement officer shall have access to a licensee's liquor dispensing system for inspection or testing purposes upon request.

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

(iii) A licensee shall make the records described in Subsection (10)(a) available for inspection and audit by the Department or law enforcement.

(c)(i) A licensee shall display in a prominent place on the licensed premises a list of the types and brand names of spirituous liquor being served through the licensee's liquor dispensing system.

(ii) A licensee meets the requirement under Subsection (10)(c)(i) by printing the list on an alcoholic beverage menu or by wall posting.

(11) The Department may:

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

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

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

(1) For the purposes of this rule:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**R82-5-106. Order and Return Procedures.**

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

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

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

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

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

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

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

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

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

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

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

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

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

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

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

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

**R82-5-107. Identification.**

(1) This rule is adopted pursuant to Section 32B-5-301.

(2) The purpose of this rule is to ensure that an individual who sells, dispenses, or provides alcoholic beverages is easily identifiable to a member of the public, Department staff, or law enforcement.

(3) Each employee of a retail on-premise licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge:

(a) On the front of the employee's clothing;

(b) visible above the waist;

(c) displaying the employee's:

(i) first or last name;

(ii) initials; or

(iii) a unique identification in letters or numbers; and

(d) with the unique letters or numbers not less than 3/8 inch high.

(4) Each manager of a retail, on-premise licensee who directly supervises employees who sell, dispense, or provide alcoholic beverages shall wear a unique identification badge that meets the requirements of Subsection (3).

(5) The on-premise retail licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the Department. The record shall include the employee's full name and address and a driver's license or similar identification number.

**R82-5-108. Menus and Price Lists.**

(1) Authority. This rule is made pursuant to Sections 32B-2-202 and 32B-6-406.

(2) Purpose. The purpose of this rule is to provide consumers with information and prevent discounting of alcohol or unlawful promotions.

(3) Application.

(a) A licensee shall have readily available for the licensee's patrons a printed or electronic alcoholic beverage price list or menu containing:

(i) current prices of all liquor, mixed drinks, wine, beer, and heavy beer; and

(ii) any charges for the service of packaged wines or heavy beer, including charges for the supply of glasses or chilling.

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

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

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

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

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

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

**KEY: alcoholic beverages**

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