

R82. Alcoholic Beverage Control, Administration.

R82-2. Administration.

R82-2-101. Notice of Hearings.

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

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

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

R82-2-102. Emergency Meetings.

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

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

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

R82-2-103. Electronic Meetings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Authority and Purpose.

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

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

(2) Definitions.

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

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

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

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

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

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

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

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

(3) Filing of Complaints.

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

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

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

(d) Each complaint shall:

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

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

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

(iv) describe the action and accommodation desired; and

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

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

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

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

(4) Investigation of Complaints.

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

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

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

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

(ii) require facility modifications; or

(iii) require reassignment to a different position.

(5) Recommendation and Decision.

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

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

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

(6) Appeals.

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

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

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

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

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

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

(ii) require facility modifications; or

(iii) require reassignment to a different position.

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

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

(7) Record Classification.

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

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

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

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

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

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

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

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

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

(2) Application of Rule.

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

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

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

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

R82-2-107. Criminal History Background Checks.

(1) Authority. This rule is pursuant to:

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

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

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

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

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

(3) Purpose. This rule:

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

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

(4) Application of Rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R82-2-108. Duties of Commission Subcommittees.

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

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

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

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

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

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

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

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

(2) Application of Rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Merchandise purchased by catering services.

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

R82-2-202. Payment for Liquor.

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

R82-2-203. State Store Hours.

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

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

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

(a) the locality of the store;

(b) tourist traffic;

(c) demographics;

(d) population to be served;

(e) customer demand in the area;

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

(g) budgetary constraints.

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

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

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

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

R82-2-205. Store Site Selection.

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

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

(a) determine the feasibility of a new site;

(b) weigh options;

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

(d) make its recommendation to the Commission.

R82-2-301. Types of Package Agencies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R82-2-303. Non-Consignment Inventory.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Type 2 and 3 package agencies shall:

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

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

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

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

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

R82-2-306. Operational Restrictions.

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

(2) Hours of Operation.

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

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

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

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

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

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

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

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

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

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

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

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

R82-2-307. Type 5 Package Agencies.

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

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

(3) Authority.

(4) Application of Rule.

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

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

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

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

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

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

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

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

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

R82-2-308. Consignment Inventory Package Agencies.

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

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

(3) Application of the Rule.

(a) Consignment Inventory.

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

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

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

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

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

(b) Payments.

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

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

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

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

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

(c) Transfers.

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

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

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

(d) Credit and Debit Card Credits.

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

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

(e) Audits.

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

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

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

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

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

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

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

(2) Application of Rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

KEY: alcoholic beverages

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

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