

## **R82. Alcoholic Beverage Control, Administration.**

### **R82-3. Disciplinary Actions and Enforcement.**

#### **R82-3-101. Definitions.**

As used in this part:

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

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

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

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

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

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

#### **R82-3-102. Violation Schedule.**

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

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

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

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

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

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

(3) Application of Rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TABLE

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

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

TABLE

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

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

(a) Mitigating circumstances include:

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

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

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

(b) Aggravating circumstances include:

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

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

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

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

(1) General Provisions.

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

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

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

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

(e) Penalties.

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

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

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

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

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

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

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

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

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

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

(j) Hearing Officers.

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

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

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

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

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

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence;

(D) expedite the proceedings; or

(E) facilitate discovery, if a formal proceeding.

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

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

(m) Default.

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

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

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

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

(2) Pre-adjudication Proceedings.

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

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

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

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

(A) The case number assigned to the action;

(B) The name of the respondent;

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

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

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

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

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

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

(A) the case number assigned to the action;

(B) the name of the respondent; and

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

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

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

(c) Commencement of Adjudicative Proceedings.

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

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

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

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

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

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

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

(3) The Informal Process.

(a) Notice of agency action.

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

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

(B) The Department's case number;

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

(D) The date that the notice of agency action was mailed;

(E) A statement that the adjudicative proceeding is to be conducted informally according to the provisions of this rule and sections 63G-4-202 and 63G-4-203 unless a hearing officer converts the matter to a formal proceeding pursuant to subparts (2)(c)(iii) or (iv) of this rule, in which event the proceeding will be conducted formally according to the provisions of this rule and sections 63G-4-204 to -209;

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

(G) A statement that a respondent may request a hearing for the purpose of determining whether the violation(s) alleged in the notice of agency action occurred, and if so, the penalties that should be imposed;

(H) A statement that a respondent who fails to attend or participate in any hearing may be held in default;

(I) A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(J) A statement of the purpose of the adjudicative proceeding and questions to be decided including:

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

(II) the penalty sought, which may include assessment of costs under section 32B-3-205 if the respondent is found guilty of the alleged violation, and forfeiture of any compliance bond on final revocation, if revocation is sought by the Department;

(K) Any violation history of the respondent which may be considered in assessing an appropriate penalty should the respondent be found guilty of the alleged violation; and

(L) The name, title, mailing address, and telephone number of the hearing officer.

(ii) A copy of the law enforcement agency or staff report shall accompany the notice of agency action. The hearing officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

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

(iv) The notice of agency action shall be mailed to each respondent, any attorney representing the Department, and, if applicable, any law enforcement agency that referred the alleged violation to the Department.

(v) The hearing officer may permit or require pleadings in addition to the notice of agency action. All additional pleadings shall be filed with the hearing officer, with copies sent by mail to each respondent and to the Department.

(vi) Amendment to Pleading. The hearing officer may, upon motion of the respondent or the Department made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice a respondent or the Department shall be disregarded.

(vii) Signing of Pleading. Pleadings shall be signed by the Department or respondent, or their authorized attorney or representative, and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he or she has read the pleading and that he or she has taken reasonable measures to assure its truth.

(b) The Prehearing Conference.

(i) The hearing officer may hold a prehearing conference with the respondent and the Department to encourage settlement, clarify issues, simplify the evidence, or expedite the proceedings.

(ii) All or part of any adjudicative proceeding may be stayed at any time by a written settlement agreement signed by the Department and respondent or their authorized attorney or representative, and by the hearing officer. The stay shall take effect immediately upon the signing of the settlement agreement, and shall remain in effect until the settlement agreement is approved or rejected by the Commission. No further action shall be required with respect to any action or issue so stayed until the Commission has acted on the settlement agreement.

(iii) A settlement agreement approved by the Commission shall constitute a final resolution of all issues agreed upon in the settlement. No further proceedings shall be required for any issue settled. The approved settlement shall take effect by its own terms and shall be binding upon the respondent and the Department. Any breach of a settlement agreement by a respondent may be treated as a separate violation and shall be grounds for further disciplinary action. Additional sanctions stipulated in the settlement agreement may also be imposed.

(iv) If the settlement agreement is rejected by the Commission, the action shall proceed in the same posture as if the settlement agreement had not been reached, except that all time limits shall have been stayed for the period between the signing of the agreement and the Commission rejection of the settlement agreement.

(v) If the matter cannot be resolved by settlement agreement, the Department shall notify the respondent and the hearing officer whether it will seek administrative fines exceeding \$3000, a suspension of the license, permit or certificate of approval for more than 10 days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s).

(vi) If the Department does not seek administrative fines exceeding \$3000, a suspension of the license, permit, or certificate of approval for more than 10 days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), any hearing on the matter shall be adjudicated informally.

(vii) If the Department does seek administrative fines exceeding \$3000, a suspension of the license, permit, or certificate of approval for more than 10 days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the hearing officer shall convert the matter to a formal adjudicative proceeding, and any hearing on the matter shall be adjudicated formally. The Department may waive the formal adjudicative proceeding requirement that the respondent file a written response to the notice of agency action.

(c) The Informal Hearing.

(i) The hearing officer shall notify the respondent and Department in writing of the date, time and place of the hearing at least 10 days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be granted by the hearing officer for good cause shown.

Failure by a respondent to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations, and the right to the hearing. The hearing officer shall proceed to prepare and serve on respondent an order pursuant to R82-3-103.

(ii) All hearings shall be presided over by the hearing officer.

(iii) The respondent named in the notice of agency action and the Department shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply, however, the hearing officer:

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

- (B) shall exclude evidence privileged in the courts of Utah;
- (C) shall recognize presumptions and inferences recognized by law;
- (D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document;
- (E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the Commission, and of technical or scientific facts within the Commission's specialized knowledge;
- (F) may not exclude evidence solely because it is hearsay; and
- (G) may use his or her experience, technical competence, and specialized knowledge to evaluate the evidence.
- (iv) All testimony shall be under oath.
- (v) Discovery is prohibited.
- (vi) Subpoenas and orders to secure the attendance of witnesses or the production of evidence shall be issued by the hearing officer when requested by a respondent or the Department, or may be issued by the hearing officer on his or her own motion.
- (vii) A respondent shall have access to information contained in the Department's files and to material gathered in the investigation of respondent to the extent permitted by law.
- (viii) Intervention is prohibited.
- (ix) The hearing shall be open to the public, provided that the hearing officer may order the hearing closed upon a written finding that the public interest in an open meeting is clearly outweighed by factors enumerated in the closure order. The hearing officer may take appropriate measures necessary to preserve the integrity of the hearing.
- (x) Record of Hearing. The hearing officer shall cause an official record of the hearing to be made, at the Department's expense, as follows:
  - (A) the record of the proceedings may be made by means of an audio or video recorder or other recording device at the Department's expense.
  - (B) the record may also be made by means of a certified shorthand reporter employed by the Department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the Department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the Department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.
  - (C) Any respondent, at his or her own expense, may have a person approved by the Department, prepare a transcript of the hearing, subject to any restrictions that the Department is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the Department for use by the parties, but the original transcript or recording may not be withdrawn.
  - (D) The Department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.
  - (xi) The hearing officer may grant continuances or recesses as necessary.
  - (xii) Order of presentation. Unless otherwise directed by the hearing officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) the Department; (2) respondent; (3) rebuttal by the Department.
  - (xiii) Time limits. The hearing officer may set reasonable time limits for the presentations described above.
  - (xiv) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a respondent or the Department indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the hearing officer when in the public interest.
  - (xv) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the hearing officer may, in his or her discretion, permit a respondent and the Department to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the hearing officer.
- (d) Disposition.
  - (i) Hearing officer's Order; Objections.
  - (A) Within a reasonable time after the close of the hearing, the hearing officer shall issue a signed order in writing that includes the following:
    - (I) the decision;
    - (II) the reasons for the decision;
    - (III) findings of facts;
    - (IV) conclusions of law;
    - (V) recommendations for final Commission action; and
    - (VI) notice that a respondent or the Department having objections to the hearing officer's order may file written objections with the hearing officer within 10 days of service of the order, setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful or not supported by the evidence.
  - (B) The order shall be based on the facts appearing in the Department's files and on the facts presented in evidence at the informal hearing. Any finding of fact that was contested may not be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence. The order shall not recommend a penalty more severe than that sought in the notice of agency action, and in no event may it recommend administrative fines exceeding \$3000, a suspension of the license, permit, or certificate of approval for more than 10 days, or a revocation of the license, permit, or certificate of approval.
  - (C) A copy of the hearing officer's order shall be promptly mailed to the respondent and the Department.
  - (D) The hearing officer shall wait 10 days from service of his or her order for written objections, if any. The hearing officer may then amend or supplement his or her findings of fact, conclusions of law, and recommendations to reflect those objections which have merit or which are not disputed.
  - (E) Upon expiration of the time for filing written objections, the order of the hearing officer and any written objections timely filed, shall be submitted to the Commission for final consideration.
  - (F) The hearing officer or presiding officer may grant a motion to file a late objection for good cause or excusable neglect.
- (ii) Commission Action.

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

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

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

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

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

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

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

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

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

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

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

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

(e) Judicial Review.

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

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

(4) The Formal Adjudicative Process.

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

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

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

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

(A) the case number assigned to the action;

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

(C) the name of the respondent;

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

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

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

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

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

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

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

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

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

(b) Intervention.

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

(A) the Department's case number;

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

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

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

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

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

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

(iv) Order Requirements.

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

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

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

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

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

(c) Discovery and Subpoenas.

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

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

(d) The Formal Hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Disposition.

(i) Hearing officer's Order; Objections.

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

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

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

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

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

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

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

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

(ii) Commission Action.

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

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

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

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

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

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

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

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

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

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

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

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

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

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

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

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

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

(f) Judicial Review.

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

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

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

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

(b) A failure to maintain fundamental, minimum qualifications includes but is not limited to a failure to maintain insurance or a bond, a failure to notify the Department regarding a change of ownership as described in section 32B-5-310, a failure to maintain records showing the appropriate amount of food sales for the license type, or a conviction for a criminal offense that disqualifies the licensee or permittee from holding the license or permit.

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

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

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

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

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

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

(a) cancel the hearing;

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

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

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

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

#### **R82-3-105. Consent Calendar Procedures.**

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

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

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

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

(3) Application of the Rule.

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

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

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

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

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

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

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

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

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

#### **R82-3-106. Commission Declaratory Orders.**

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

(2) Petition Procedure.

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

- (b) The petitioner shall file the petition with the Commission's executive secretary.
- (3) Petition Form. The petition shall:
  - (a) be clearly designated as a request for a declaratory order;
  - (b) identify the statute, rule, or order to be reviewed;
  - (c) describe the situation or circumstances giving rise to the need for the declaratory order, or in which applicability of the statute, rule, or order is to be reviewed;
  - (d) describe the reason or need for the applicability review;
  - (e) identify the person or agency directly affected by the statute, rule, or order;
  - (f) include an address and telephone number where the petitioner can be reached during regular workdays; and
  - (g) be signed by the petitioner.
- (4) Petition Review and Disposition.
  - (a) The Commission shall:
    - (i) review and consider the petition;
    - (ii) prepare a declaratory order stating:
      - (A) the applicability or non-applicability of the statute, rule, or order at issue;
      - (B) the reasons for the applicability or non-applicability of the statute, rule, or order; and
      - (C) any requirements imposed on the Department, the petitioner, or any person as a result of the declaratory order;
    - (iii) serve the petitioner with a copy of the order.
  - (b) The Commission may:
    - (i) interview the petitioner;
    - (ii) hold an informal adjudicative hearing to gather information before making its determination;
    - (iii) hold a public information-gathering hearing on the petition;
    - (iv) consult with Department staff, the Attorney General's Office, other government agencies, or the public; and
    - (v) take any other action necessary to provide the petition adequate review and due consideration.

**R82-3-107. Responsible Alcohol Service Plan.**

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

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

(3) Definitions.

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

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

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

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

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

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

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

(4) Application of Rule.

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

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

(b) Any RASP at a minimum shall:

- (i) outline the policies and procedures of the licensed business to:
  - (A) prevent over-service of alcohol;
  - (B) prevent service of alcohol to persons who are intoxicated;
  - (C) prevent service of alcohol to persons under the age of 21;
  - (D) provide alternate transportation options for problem customers; and
  - (E) deal with hostile customers;
- (ii) require that all managers, supervisors, servers, security personnel, and others who are involved in the sale, service or furnishing of

alcohol, agree to follow the policies and procedures of the Plan;

- (iii) require adherence to the Plan as a condition of employment;
- (iv) require a commitment by management to monitor employee compliance with the Plan;

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

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

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

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

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

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

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

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

**KEY: alcoholic beverages**

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

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

!--dar--