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Regulation Rewrite Workgroup  
Final Rule Proposal



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Vermont Department of Liquor and Lottery

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- Code of Vermont Rules
- AGENCY 26. DEPARTMENT OF LIQUOR AND LOTTERY
- SUB-AGENCY 020. BOARD OF LIQUOR AND LOTTERY
- CHAPTER 001. RULES AND REGULATIONS

## **26 020 001. RULES AND REGULATIONS**

Section 1. Administrative Organization and Procedures, and Agency Rules of Practice.

1. In addition to the provisions as set forth in applicable sections of Title 7 of the Vermont State Statutes Annotated, all general information relative to general administration, agencies, warehouse, licensing, enforcement procedures, and personnel may be obtained at the central office of the Department of Liquor and Lottery.

2. Definitions. The definitions set forth in 3 VSA, Chapter 25 are hereby adopted and made applicable to these regulations.

3. Formal and Informal Proceedings. The following types of proceedings will be treated as formal proceedings:

a. Revocation of licenses.

b. Rule-making proceedings initiated by the Board of Liquor and Lottery under Regulation No. 9(b).

All other petitions, applications, submissions, requests, charges, etc., will be treated as informal proceedings.

4. Appearances in Formal Proceedings.

a. A party to a formal proceeding before the Board of Liquor and Lottery may represent himself or may be represented by an attorney admitted to practice in the State of Vermont.

b. Upon the filing of a petition, charge or other pleading initiating a formal proceeding before the Board of Liquor and Lottery, the name of the attorney or person who has signed such pleading will be entered on the agenda of the Board of Liquor and Lottery by the Department of Liquor and Lottery. Except for appearances entered during a hearing, all other appearances in formal proceedings by attorneys or persons appearing for themselves shall be by notice in writing filed with the Department.

c. All notice given to or by an attorney of record for a party in a formal proceeding shall be considered in all respects as notice to or from the party represented by such attorney.

d. When an attorney has entered their appearance for a party in a formal proceeding, they shall remain counsel for such party until they have been granted leave to withdraw by order of the Board of Liquor and Lottery.

e. An attorney not residing or not admitted to practice in the State of Vermont may appear for a party if they are associated with a resident and admitted attorney who has entered their appearance for the same party.

#### 5. Filing and Service of Documents in Formal Proceedings.

a. The petition, charge or other pleading initiating a formal proceeding before the Board of Liquor and Lottery shall be signed by the petitioner or complainant or an officer thereof and shall be filed with the Department of Liquor and Lottery. Such pleadings shall be drawn so as to fully and completely advise the Board of Liquor and Lottery and respondents, if any, as to the order of rule sought and the statutory authority and reasons therefor.

b. Filing with the Board of Liquor and Lottery shall be deemed to occur when a document is received by the Department of Liquor and Lottery except that filing shall be deemed to occur upon receipt by the Board of Liquor and Lottery when a document is submitted to the Board of Liquor and Lottery during a hearing.

c. A petition for leave to intervene as a party must set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and whether petitioner's position is in support of or opposition to the order sought.

d. Every document or paper filed by any party subsequent to the initial pleading in a formal proceeding shall be served upon the attorneys of record for all other parties and upon all persons who have appeared for themselves.

e. In its discretion the Board of Liquor and Lottery may treat any written communication to it concerning a matter within its jurisdiction as a pleading initiating a formal proceeding.

f. Briefs and proposed findings of fact and conclusions of law, if any, shall be filed within ten days after hearing or, in the event that the hearing has been waived under Regulation No. 7(a), within ten days after the date originally set for the hearing.

#### 6. Hearings.

a. An oral hearing shall be held in every formal proceeding except: (1) in a formal rule-making proceeding if no request to be heard is submitted within five days of the date set for such hearing, in accordance with the provisions of Title 3 in any other formal proceeding if all the parties to the proceeding file written waivers of opportunity to be heard.

b. Upon the filing of a pleading initiating a formal proceeding, or upon the initiation of such a proceeding by the Board of Liquor and Lottery on its own motion, the Board of Liquor and Lottery shall by order or otherwise assign a time and place for the hearing thereof and the

Department of Liquor and Lottery shall cause written notice of the hearing in the form as provided by Title 3 to be served upon each party and, if required by statute, shall arrange for publication thereof.

c. Every party and counsel representing the Board of Liquor and Lottery, if any, shall have the right to participate fully in any hearing before the Board of Liquor and Lottery, and, in the case of rule-making proceedings, all interested persons shall also be permitted to participate in accordance with the terms of the notice of the proceeding.

d. The admissibility of evidence in all formal proceedings before the Board of Liquor and Lottery shall be determined under the criteria specified in Title 3 e. The testimony of a hearing witness on direct examination may be offered in written form, either by having it read into the record or by offering it for incorporation in the record without reading, provided that a copy of such testimony shall be supplied to the Board of Liquor and Lottery, each attorney of record, and each party appearing for himself at a reasonable time in advance of the hearing at which testimony will be offered. Such testimony shall be subject to the same rules of admissibility and cross-examination as extemporaneous testimony.

#### 7. Petitions for Rule-making and Declaratory Rulings.

a. Petitions for the adoption, amendment, or repeal of any rule will be entertained by the Board of Liquor and Lottery. Such petitions shall be filed with the Department of Liquor and Lottery pursuant to Regulation No. 6 hereof. Such petitions will be considered and disposed of pursuant to the procedure specified in Title 3 and Regulation No. 9(b) hereof.

b. Petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the Board of Liquor and Lottery will be entertained by the Board of Liquor and Lottery in an informal manner. Such petitions shall be filed with the Department of Liquor and Lottery and shall be so drawn as to fully and completely advise the Board of Liquor and Lottery the reasons why such a ruling is sought. The Board of Liquor and Lottery shall within thirty days after such petition has been filed advise the petitioner of its decision and the facts involved.

#### 8. Special Procedures for Certain Informal Proceedings.

a. Any formal proceeding for revocation of a license, certificate, etc., shall be preceded by notice to the licensee of facts or conduct which warrant the intended action, and the licensee shall be given an opportunity informally to show compliance with all lawful requirements for the retention of the license prior to initiation of such formal proceeding under Regulation No. 7 hereof.

b. Petitions for rule-making filed under Regulation No. 7(a) hereof will be considered informally and the Board of Liquor and Lottery shall within thirty days after the filing of such a petition either deny the petition in writing (stating its reasons for the denial) or shall initiate formal rule-making proceedings in accordance with Title 3 and Regulation No. 6(b) hereof.

#### 9. Enlargement of Rules.

The Board of Liquor and Lottery may take a proceeding partially or entirely out of these rules when the law so permits and, in its opinion, the interest of the public so requires.

## Section 2. Definitions.

The following words as used in these regulations, unless a contrary meaning is required by the context, shall have the following meaning:

Department: The Department of Liquor and Lottery.

Board: The Board of Liquor and Lottery .

Commissioners: The Local Control Commissioners.

Commissioner: Appointing Authority of the Department.

Beverage Alcohol: All malt ,vinous, , fortified wine, ready-to-drink spirits beverages and spirits as defined by Title 7.

State Liquor Agencies: Establishments who enter into a contract to facilitate the sale and distribution of spirits and fortified wines.

Person: Individuals and partnerships composed solely of individuals, corporations organized under the Laws of any of the United States or corporations subject to the jurisdiction of the Interstate Commerce Commission or the Public Service Commission.

## REGULATIONS RELATING TO THE SALE OF BEVERAGE ALCOHOL

### Section 3. General Regulations.

For purposes of these Regulations, "license" shall have the same meaning as defined in 3 V.S.A. § 801(b)(3), including lithe whole or part of any [Department of Liquor and Lottery (DLL) or Board of Liquor and Lottery] permit, certificate, approval, registration, charter, or similar form of permission required by law"; "licensed premises" shall mean any location subject to a license; and "licensee" shall mean any individual or entity holding a license.

1. The Board may establish a schedule of penalties for specifically enumerated violations, which may be imposed by the Department, allowing for the licensee to waive a hearing and accept the stated penalty(s). licensees may decline to accept the stated penalty(s) and ask for a hearing before the Board.
2. It shall be unlawful for any common or contract carrier, or any individual or entity operating transportation facilities in this state or otherwise transporting goods for hire to receive or cause to be imported into this state any spirituous liquor unless such liquors are consigned for delivery to the Board, or malt ,vinous, or ready-to-drink spirits beverages unless consigned for delivery to a

wholesale dealer holding a wholesale dealer's license issued by the Board. However, it shall be lawful to accept individual consignments of malt, vinous, or ready-to-drink spirits beverages for transportation into and delivery within the state to an individual only when such malt, vinous, or ready-to-drink spirits beverages are sold and shipped pursuant to applicable provisions of law.

3. A licensee shall not permit or suffer the possession, consumption, or sale on its licensed premise of any beverage alcohol, tobacco product, tobacco substitute, tobacco paraphernalia, or other tobacco product other than allowed by the licenses granted for said premises.

4. Except for holders of a manufacturer's license who also have a First and/or Third-class license located on their manufacturing premises, a licensee shall not possess or allow the consumption of malt, vinous, fortified wine, ready-to-drink spirits beverages or spirituous liquors other than those purchased on invoice from a bottler's or wholesale dealer or on invoice from the Board, or on invoice from a direct-to-retail shippers licensee. A licensee shall not possess or allow the consumption or sale of any tobacco product, tobacco substitute, tobacco paraphernalia, or other tobacco product other than those purchased on invoice from a holder of a Wholesaler Dealer Licensed issued by the Vermont Department of Tax. No retail tobacco licenses or endorsements shall be issued to or renewed for entities that are also holders of a Wholesaler Dealer Licensed issued by the Vermont Department of Tax.

a. Holders of a manufacturer's license that are granted any permit to occur upon a licensed premise, may introduce products lawfully manufactured by the holder of the permit onto the license premise so long as the licensed manufacturer engages in on-premise sampling and off-premise sales only and clearly labels all beverage alcohol brought onto the licensed premise "for sale to the public only".

5. Requests for catering must be made by licensees holding a catering license, or a commercial caterers license, at least five days prior to the date of the catered event. The five-day requirement may be shortened if the request is approved by the local control commissioners. Any single catering event permit may not exceed 4 consecutive days.

a. Events with more than 200 people shall notify the Department by indication on the application.

6. Only Third-class licensees may possess, sell or furnish any malt or vinous beverages containing an alcoholic content greater than 16% unless otherwise specified in state law. Cooking wines, which contain an alcohol content greater than 16% and 1.5% of sodium, extracts, tinctures, and bitters not regulated by the Tax and Trade Bureau are not considered beverages and are therefore not governed under these regulations.

7. Licensees and licensee employees shall allow at any time the Commissioner any of their assistants or Liquor Investigators to examine the licensed premises as well as all records, papers, stock, merchandise or equipment in reference to the operation of the license and shall retain such items for inspection. Excluding video footage all licensees shall keep on their licensed premises for a period of two years a complete record covering the operation of their license, including all invoices covering the purchase or transfer of beverage alcohol, tobacco product, tobacco

substitute, tobacco paraphernalia, or other tobacco product, and all financial records including but not limited to daily receipts for the sale of beverage alcohol, tobacco product, tobacco substitute, tobacco paraphernalia, or other tobacco product. If any licensee has more than one licensed location, the licensee may keep all records in one centralized business location in the State of Vermont and the Department shall be notified in writing, in advance, of the name, street address, and telephone number of such designated location. Except as provided in Education Regulations, licensees shall retain all training certificates and records, on the licensed premises where the individual in question works. Should any licensee employ a video surveillance system at the licensed establishment the Commissioner and/or any of their assistants or Investigators may at any time examine such system or resulting retained video recordings.

a. No licensee, licensee employee or any individual performing work or services for a licensee on a licensed premises shall interfere with, nor permit any other individual to interfere with, provide false written or verbal information to, or fail to cooperate with a Liquor Control Investigator or other Vermont Law Enforcement Officer in the performance of their duties.

b. A licensee, licensee employee, or any individual performing work or services for a licensee on a licensed premises, related to the liquor licenses held, shall provide a liquor investigator or a law enforcement officer with such bona-fide identification as is acceptable under Vermont law when requested.

8. No licensee shall keep within or in connection with the licensed premises any illegal implement, machine or device of any kind or nature by the use or operation of which there is an element of chance for the winning or losing of money or other things of value, nor permit said premises to be used for illegal gambling purposes.

9. No license shall be issued to an individual or entity that is not first licensed with the Vermont Department of Taxes to collect tax as required by Title 32. Suspension of any licenses issued by the Board may result by action of the Board, after notice and hearing, upon certification to the Board by the Vermont Department of Taxes that the licensee has failed to collect tax, has failed to pay over to the Vermont Department of Taxes the tax collected, is not licensed with the Vermont Department of Taxes to collect the tax, or is not in good standing with the Vermont Department of Taxes pursuant to Title 32. A licensee and licensee employees must allow the Commissioner of Taxes or any of their assistants or investigators on the licensed premise at all times to examine records covering the operation of the licensee's business.

10. All licenses shall be displayed in a conspicuous location viewable to the general public on the licensed premises described therein.

11. Unless when allowable by state law, no licensee or licensee employee shall sell or furnish beverage alcohol, tobacco product, tobacco substitute, tobacco paraphernalia, or other tobacco product to any individual who is less than twenty-one years of age, nor shall a licensee or the licensee employee permit or suffer beverage alcohol, tobacco product, tobacco substitute, tobacco paraphernalia, or other tobacco products to be consumed or used upon the licensed premises by any individual who is less than twenty-one years of age.

12. For individuals of questionable age, all licensees and their employees shall demand that such individual exhibit a valid operator's license, valid non-driver identification card, or enhanced driver's license, which has been issued by this state or another state or foreign jurisdiction, a valid United States military identification card, a valid passport card or valid passport all of which bear the person's photograph, name, date of birth, and expiration date. No temporary identification documents shall satisfy the requirements of this regulation.

13. No licensee shall permit an individual under eighteen years of age to be involved in the preparation, sale or service of beverage alcohol for on-premise consumption

14. No licensee shall permit an individual under sixteen years of age to sell beverage alcohol for off-premise consumption, any tobacco product, tobacco substitute, tobacco paraphernalia, or other tobacco product to the public at their licensed establishment.

15. No licensee or licensee employee, or any individual involved in the sale, preparation or furnishing of beverage alcohol, or sale of tobacco products and/or the enforcement on the premises of the laws, rules and regulations of this State pertaining to the sale or furnishing of beverage alcohol, or sale of tobacco products, shall consume or display the effects of alcohol or any impairing substance while in the performance of their duties.

16. No licensee shall sell or furnish beverage alcohol to any individual displaying signs of impairment from beverage alcohol or other drugs / substances. No licensee shall allow beverage alcohol to be consumed on the licensed premises by any individual displaying such signs of impairment. No licensee shall allow any individual displaying such signs of impairment to stay on the licensed premises, except under direct personal supervision by a licensee or licensee employee in a segregated nonpublic area when the patron's immediate departure could be expected to pose a risk of bodily injury to the patron or any other individual.

a. Licensees or licensees' employees shall not serve beverage alcohol to any individual whom it would be reasonable to expect would be under the influence as a result of the amount of alcohol served to that person. Under the influence, in this Regulation, shall mean that degree of impairment that would render it unsafe or illegal for the patron to undertake normal and expected activities upon leaving the licensed premises.

17. Licensees shall store all beverage alcohol, tobacco products, tobacco substitutes, tobacco paraphernalia, or other tobacco products on the licensed premises unless otherwise authorized in writing by the Board. First, Second and/or Third-class Licensees, and Master Resort Licenses may transfer beverage alcohol without prior authorization among similarly licensed locations so long as the locations are controlled by the same licensed entity. Tobacco Licensees may transfer tobacco products, tobacco substitutes, tobacco paraphernalia, or other tobacco products without prior authorization among locations so long as the locations are controlled by the same licensed entity.

18. No licensee that sells or distributes beverage alcohol to the public may accept free malt or vinous beverages, services, monetary payments or other things of value from a manufacturer,



holder of a certificate of approval, bottler, wholesale dealer, or holder of a solicitor's permit, nor purchase malt or vinous beverages below the uniform price charged by the bottler or wholesale dealer. The Board is empowered to define the terms "things of value" as contained within Liquor and Lottery Board Guidance Bulletin No. 1; "things of value" exclude brand-identified items that are primarily valuable for advertising purposes and are approved by the Board.

19. If a license is issued to a partnership and the partnership is dissolved, the remaining partner may continue to operate under the same license until its expiration. If a new partnership is formed, a new license must be issued and the former license surrendered.

20. Any individual having a direct or vested financial interest in the business of the licensee must be disclosed on the license application. Except for Clubs, a licensee must notify the Department no less than 20 days before any intended changes in the ownership of and or financial interest of any person or entity in the licensed entity can occur. Any such changes not approved by the Department, may place the license in jeopardy and/or may result in administrative penalties after a Board hearing.

a. Licensees shall have prior approval from the Board of any change of directors, officers, members, managers, or affiliates, and of any change in shares that causes the holdings of any new or existing shareholder, including the holdings of that shareholders immediate family, to equal ten percent or more of a corporation's voting shares. Notices shall be given in writing to the Board not later than 20 days prior to any change. The Board will consider changes in the same way that new licenses are considered. If changes, other than changes caused by the death of a joint tenant, are concluded without obtaining prior Board approval, in writing, the license shall be subject to suspension or revocation.

21. First-class licensees shall purchase on invoice, beverage alcohol from holders of a bottler's or Vermont wholesale dealer's license issued by the Board, or from holders of a direct-to-retailer shipping license for vinous beverages issued by the Board, for consumption only on the licensed premises, except as permitted by General Regulation 4 herein.

22. Second-class licensees shall purchase on invoice, beverage alcohol only from holders of a bottler's or wholesale dealer's license issued by the Board, or from holders of a direct-to-retailer shipping license for vinous beverages issued by the Board, for consumption off the licensed premises. A Second-class licensee that sells kegs must keep copies of their keg logs for 90 days.

23. Except as permitted by applicable state law or General Regulation 4 herein, Third-class licensees shall purchase on invoice, spirituous liquors only from the Board. Said liquor must be consumed on the licensed premises.

24. No First and/or Third-class license application may be issued until the applicant has on the premises a license issued by the Vermont State Board of Health. All licensed First and/or Third-class establishments, except for clubs and holders of a manufacturers or rectifiers license, must at all times when open for business have some form of food service available at the licensed establishment.

25. If a license is suspended or conditioned the license shall immediately notify the Board and/or Local Control Commissioners giving the reason as well as the effective date and length of time of the suspension or condition. If a license is suspended, the licensee is required to post notice of that suspension to the public giving the effective date and length of the time of the suspension in every entry way. Licensees under suspension shall not sell, serve, allow the consumption of, make orders for, or receive deliveries of regulated products upon the licensed premises.

26. No licensees shall sell beverage alcohol, at a price lower than the price in effect at the time of purchase from the wholesale dealer, the Board, or holders of a direct-to-retail shipping license.

27. All licensees shall have present on the licensed premises at all times when open for business a responsible employee, agent or principal.

28. Any licensee that closes may sell all unopened beverage alcohol remaining in stock only to another licensee of the same class, and an invoice covering same shall be retained by the purchasing licensee. All sales under this regulation shall be made within 30 days after such surrender or closing.

29. All licensees shall keep their licensed premises at all times in a safe and sanitary condition or in compliance with State Board of Health statutes and regulations. Safe and Sanitary conditions for holders of First and/or Third-class licenses include adequate restroom facilities.

30. Licensees must comply with the Vermont Department of Labor, and the Vermont Department of Public Safety, statutes and regulations.

31. A licensee shall not lock the doors of its licensed premises where beverage alcohol are stored, sold, furnished or consumed if any individual other than the on duty licensee or on duty licensee employees are on the licensed premises.

a. Notwithstanding the above, licensed clubs, may choose to have their doors locked or unlocked.

32. All licensees shall ensure that lighting in their licensed premises is of such degree that a Department Investigator, and the licensee and licensee employees, shall be able to read the identification cards of the patrons and observe all individuals wherever alcohol is served or consumed.

33. All licensees shall control the conduct of all individuals on their licensed premises. All licensees must ensure the safety of individuals entering, leaving, or remaining on the licensed premises. No licensee shall permit, suffer, or enable any disturbances, brawls, fighting or illegal activity upon the licensed premises; nor shall a licensee permit or suffer such premises to be conducted in such a manner as to render such premises or the streets, sidewalks, parking lots or highways adjacent thereto a public nuisance.

a. The Board may find, that a licensee suffered a disturbance, brawl, fight or illegal activity upon the licensed premises or upon the streets, sidewalks, parking lots or highways adjacent thereto if any individual engaged in such conduct had been allowed to stay on the licensed premises while displaying signs of impairment from alcohol, drugs or other substances, and/or if it would be reasonable to expect that such individual would be intoxicated as a result of the amount of alcohol served to that individual. Under such facts, the Board may conclude that any such individual's conduct should have been anticipated.

34. Except as otherwise authorized by law or Board regulation, no licensee may serve malt beverages otherwise than in glasses, mugs, pitchers, or other containers, of a maximum capacity of thirty two ounces, nor serve more than four fluid ounces of spirituous liquor to any individual at one time or in the making of a single mixed drink, nor serve more than two of the above containers to any individual at one time. Bucket service by licensee staff is permissible under this regulation so long as number of containers per patron does not exceed 2 containers per patron and all service is provided in respect to all other regulations and provisions of state law.

35. Licensees dispensing any beverage alcohol from a draft system, shall display tap signs, clearly visible to the patrons, disclosing the brand of each beverage alcohol that is being dispensed.

36. No licensee or licensee employees shall serve to any customer any brand of beverage alcohol other than that actually ordered.

37. Licensees shall use a container under any beverage alcohol taps to catch drippings and dispose of drippings. in a sanitary manner.

38. No licensee shall allow consumption of beverage alcohol in any open area, on or in connection with licensed premises, without first obtaining an outside consumption permit from the local control commissioners and approval by the Board. Licensees shall control and define such area with a physical barrier, unless the area is segregated from the general public and used for a private group event open to invited attendees only such as a wedding or banquet. If an event is attended by 200 people or more, the Department may require a licensee to place a double barrier no less than six feet inside of the outer boundary of the defined area to prevent attendees from handing beverage alcohol to any individual outside of the licensed area.

39. Except as otherwise authorized by law or by the Board, licensees shall not reuse, refill or tamper with any bottle of beverage alcohol nor shall such licensee adulterate, dilute, fortify, or cause any substitution of any nature to be made in or to the contents of any bottle of beverage alcohol.

a. "Adulterate" does not include a licensee that colors, flavors, mixes, blends, or infuses beverage alcohol in preparation for later service at the licensed premise. The mixture/infusion must be clearly labeled with the following information: the date of production, the name of the person who created the mixture/infusion, the ingredients in the mixture/infusion including the alcohol brand name(s) and quantity, and the estimated proof of the mixture/infusion. Any mixture/infusion created shall be produced in a safe and sanitary manner. Any vessel used for

dispensing the mixture/infusion shall not have a beverage alcohol brand label, nor shall it be dispensed from a vessel that is of a design that would signify a particular brand of beverage alcohol to a consumer.

40. All licensee employees must be hired by the licensee and paid on a fixed salary or hourly basis except when allowable by state law. All employees must have the required withholdings deducted from their wages and the required reporting of such withholdings must be made to the Vermont Department of Labor. A First, Second, and/or Third-class licensee shall not contract out any work, labor or services directly or indirectly related to the preparation, sale or service of beverage alcohol. All such duties shall be performed by individuals who are employees in fact and by law.

41. Second-class licensees shall not sell or furnish malt or vinous beverages for consumption on the licensed premises nor allow any individual to consume beverage alcohol on the licensed premises except as authorized by the Board or other applicable provisions of law. Second-class licensees shall not sell or furnish any malt or vinous beverages in other than the original container unless otherwise authorized in writing by the Board. Should Second-class licenses wish to fill containers for off-premise consumption, those licensees shall meet the following conditions:

- \* Containers shall be sealed and sanitary.
- \* Consumption is only for off-premise.
- \* Retailers will notify the Department of their intent to participate in the container program.
- \* Manufacturers may elect to participate in the retailer container program by written authorization to their wholesale dealer with a copy sent to the Department.
- \* Clean containers will be provided by the retailer for each sale.
- \* Labels will contain the name of the retailer, **beverage** alcohol, alcohol by volume, name of manufacturer, date and time of fill, and best if consumed in 72 hours.
- \* Containers will be filled from a direct sealed draught system.

42. No licensee, or licensee agent or employee shall carry a stock of beverage alcohol in a vehicle for the purpose of soliciting orders to be filled directly from such stock. The intent and purpose of the foregoing is that no licensee shall engage in the business of peddling beverage alcohol from vehicles. No First, Second, Third, or Fourth-class licensee, licensee agent or employee shall make deliveries of beverage alcohol, unless permitted by the Board or applicable provisions of law.

43. First and/or Third-class licensees shall not offer alcohol beverages at reduced prices for any period of time during daily legal hours. This Regulation shall not be construed to regulate prices charged for group events to its attendees only, such as banquets, nor to prohibit cover charges or

price adjustments during times when live entertainment is presented on the licensed premises, nor to prohibit lower alcohol beverage prices for a full business day.

a. No licensee or licensee employee shall offer, permit or suffer on the licensed premises games, contests, or promotions, which encourage the rapid or excessive consumption of beverage alcohol. No licensee or licensee employee shall furnish beverage alcohol to any individual for no charge.

44. Each applicant for a license or permit shall file with the Board and/or Local Control Commissioners an application signed by the applicant on prescribed forms.

a. Misrepresentation of a material fact on any Department form or in other written communication with the Department shall be grounds for non-issuance, suspension or revocation of the liquor license, after notice and hearing.

45. Any licensee that is serving beverage alcohol for on premise consumption shall post in a prominent place where beverage alcohol are served, a sign with the words, "Do You Have a Designated Driver?".

46. No licensee shall display, distribute, or furnish any materials, signs, or postings of any kind that advertise beverage alcohol free of charge, or anything that would lead any consumer to believe he or she can receive an beverage alcohol for free. For any licensee promoting food and beverage alcohol combination specials, the licensee shall, during the promotion period, enter the sale of the beverage alcohol as a separate full price sale and must add all applicable tax. All receipts must specifically outline the separate beverage alcohol purchase at full price.

47. Prior to approval from Department to engage in break-open ticket sales, a licensee must provide an IRS 501(c) designation letter, or provide enough proof to the Department that the non-profit they are benefiting via sale of break-open ticket sales would qualify for 501(c) status pursuant to Title 31. That document or proof must accompany a non-profit disclosure form or be provided to the Department upon request.

a. Except for clubs as defined by Title 7, No owners or employees of a licensed establishment may order or take delivery of break-open tickets from a wholesale distributor, pursuant to Title 31, unless the owners or employees are bona-fide members or certified agents of the nonprofit. Only nonprofit organizations may purchase break-open tickets from a license wholesale distributor.

b. Except for clubs as defined by Title 7, No licensee may engage in games of chance that would benefit or support any non-profit of which they have direct or indirect control of, or have a direct or indirect financial interest in. No licensee, employee of a licensee, or their volunteers may engage in any game of chance play at their respective licensed establishment(s).

c. Licensees who engage in break-open ticket sales at their establishment must account for proceeds generated for each game on forms prescribed by the Department. That accounting shall include Serial number of the game, Number of tickets per game, Number of tickets sold, Total

dollar amount in payout for prizes awarded, Total dollar amount given to nonprofit organization, and Total dollar amount of any retained accounting fees. Licensees may retain a reasonable accounting fee pursuant to applicable sections of Title 13.

48. Retail Delivery- Second-class Licensees also holding a Retail Delivery Permit shall have and maintain all insurance coverages as required by Vermont law. Permit holders shall not deliver, to any one physical address in any twenty-four (24) hour period, malt, and ready-to-drink spirits beverages in quantities equal to or more than an aggregate amount of 288 ounces and/or vinous beverages in quantities equal to or more than an aggregate amount of 3,000 milliliters. Deliveries shall only be made between the hours of 9:00am and 5:00pm by an employee of the permit holder who is at least eighteen (18) years of age and who has successfully completed the required Second-class training. Permit holders shall comply with all applicable requirements of Title 7. Permit holders shall maintain a log of all deliveries made, which shall be subject to inspection upon request pursuant to General Regulation No.7. Such log shall at a minimum include:

- a. Name of recipient and physical address in Vermont to where the product was delivered;
- b. How ID was verified in compliance with General Regulation No. 11;
- c. A signature of recipient at least twenty-one (21) years of age;
- d. Complete description of the product and quantity delivered;
- e. The price;
- f. Time of delivery (delivery shall be permitted only between the hours of 9:00 am-5:00pm); and
- g. The name of the employee making the delivery.

49. Second-class licensees also holding a Fortified Wine Permit allowing for the sale and export of Fortified Wines for consumption off the licensed premises will sell Fortified Wine products at prices no less than or equal to current prices set by the Board in Vermont Liquor Agencies. Second-class licensees will be allowed to purchase Fortified Wines not currently listed by the Board in full case-load quantities only. The Permit Holder must pick up the case lot from the Agent within 7 days.

#### Section 4. Advertising.

1. Federal regulations relating to the advertising of distilled spirits, wine and malt beverages promulgated under the Federal Alcohol Administration Act (27 U.S.C. 201-211), as now existing or as amended in the future, are hereby adopted as a part of this regulation to the same extent as if set forth herein, and shall, to the extent so adopted, govern the advertising of beverage alcohol by manufacturers, certificate of approval holders, wholesalers, and retailers in Vermont.

2. No person, partnership, or corporation shall display a sign of a First, Second, Third-class, wholesale dealer's or bottler's license unless the person is actually the holder of the type of license he advertises.

3. Certificate of Approval holders and wholesale dealers may distribute bottle openers, can openers, and cork screws to retail dealers. These openers may carry the name of the manufacturer and/or brand name of the product. Retail dealers may distribute the openers to their customers with the sale of malt or vinous beverages. These openers are for the convenience of the public and not for advertising purposes.

4. Consumer advertising specialties, such as ash trays, bottles or can openers, cork screws, shopping bags, matches, printed receipts, pamphlets, cards, leaflets, recipe booklets, blotters, post cards, and pencils, which bear advertising matter may be furnished, given or sold to a retailer for unconditional distribution by the retailer to the general public. The retailer may not be paid or credited in any manner, directly or indirectly, for this distribution service.

5. Definitions for advertising, display or distribution service as used in the advertising regulations are:

a. Manufacturers, holders of certificate of approval or wholesale dealers are prohibited from influencing or controlling the purchases of a retailer by paying or crediting the retailer for any advertising, display or distribution service, whether or not the advertising, display or distribution service received is commensurate with the amount paid by the retailer.

b. An arrangement where manufacturer, holder of a certificate of approval, or wholesale dealer participates with a retailer in paying for an advertisement placed by the retailer constitutes paying the retailer for advertising.

c. Manufacturer, certificate of approval holder or wholesale dealer payments to retailers as compensation for setting up product or other displays constitutes paying the retailer for rendering a display service.

d. A promotion whereby a manufacturer, holder of a certificate of approval, or wholesale dealer rents display space at a retail establishment constitutes paying the retailer for rendering a display service.

#### Section 5. Hours of Sale.

1. Holders of a First and/or Third-class licenses shall sell or serve any beverage alcohol on the licensed premises between the hours of 8:00 a.m. and 2:00 a.m. the following morning. Consumption on the premises of such beverages and liquors sold and served pursuant to this regulation shall be prohibited after 2:30 a.m. Except as otherwise prohibited by law or regulation, the hours provided in this regulation shall be extended one hour for New Year's Day.

2. No licensee holding a Second-class license shall sell, furnish, or deliver, or allow to be removed from the licensed premises, any beverage alcohol except between the hours of six o'clock in the forenoon and twelve o'clock midnight. The time of day mentioned herein shall be construed to mean U.S. Standard Eastern Time, except that during the period of each year from the last Sunday in April to the last Sunday in September, inclusive unless the Governor shortens

or lengthens the period specified, by proclamation, or as provided in state law and such time of day shall be construed to mean U.S. Daylight Saving Time.

3. Notwithstanding the provisions in these Regulations, the Control Commissioners shall have the right to prescribe shorter periods of sale within the hours specified above.

#### Section 6. Credit.

1. No beverage alcohol shall be purchased on credit by any licensee Upon termination of a distributorship, or unsalability of a product or for cooperage or other containers, the payment for merchandise returned by a wholesale dealer to a certificate of approval holder must be paid within ten business days after receipt of the merchandise by the certificate of approval holder. Payment rendered via debit, credit card, or immediate Electronic Funds Transfer by any licensee at State Liquor Agencies is not to be considered credit as prohibited by this regulation.

#### Section 7. Wholesale Dealers and Certificate of Approval Holders and Vermont Manufacturers.

1. A liquor representative, employee of a wholesale dealer, holder of a certificate of approval or manufacturer's license shall not be employed directly or indirectly on a paid or voluntary basis by a First and/or Third-class licensee. This shall not apply to employees of a manufacturer's license who also hold a First and/or Third-class license, so long as the license holder of both the manufacturer's license and First and/or Third-class license are the same legal entity. Holders of a certificate of approval, manufacturer's license, wholesale dealer's license, solicitor permit, or any full-time employee of such licensees may, at a retail establishment, stock, rotate, build and move displays and price products which they sell, provided products purchased from other wholesalers are not altered or disturbed.

a. An employee of a wholesale dealer or manufacturer of beverage alcohol may also work for a Second-class licensee in a store that sells beverage alcohol for off premise consumption, provided the employee has no management role and does not exercise any control over the business or any business decisions of the Second-class licensee, and that neither of these employment relationships has the effect of excluding another wholesale dealer or any brand of beverage handled by another wholesale dealer.

2. Employees of wholesale dealers are not to be employed as representatives of distilleries distributing fortified wines or spirits in Vermont or by a holder of a manufacturer's license.

3. All beverage alcohol sold under a bottler's license or a wholesale dealer's license shall be purchased only from holders of certificates of approval or manufacturer's licenses issued by the Board.

4. No beverage alcohol shall be returned by a retail dealer to a wholesale dealer unless the beverages are of substandard packaging or quality, are misordered, out of code or if the licensee is going out of business or closing for the season and then only when duly reported to the Board. Reporting to the Board is not required when a wholesale dealer wishes to exchange product for another with the same SKU and move product going out of code to another licensed



premises where it will sell. No such authorization shall be required for the return of draft beer in barrels.

5. All invoices furnished by the wholesale dealer to the retail dealer must carry serial numbers and can be either manually or electronically generated and transmitted. One invoice is to be maintained by the wholesale dealer and a copy is to be maintained by the retail dealer upon delivery. All invoices must show the name or the initials of the person taking the order. Invoices are to be made out in the name of the licensee as it appears on the trade name of the establishment.

6. Tapping accessories, such as standards, faucets, rods, vents, taps, hoses, washers, couplings, vent tongues, shanks, pressure gauges, and check valves may be sold to a retailer, if the tapping accessories are sold at a price not less than the cost to the certificate of approval holder, manufacturer, or wholesale dealer who initially purchased those items. Invoices on all such sales must be maintained on the licensed premises for a period of two years. However, in an existing system, servicing and cleaning of all draught equipment from the barrel to the glass, and replacing of rods, taps, hoses and washers is approved.

7. Holders of a certificate of approval or manufacturer's license shall not ship any beverage alcohol to a wholesale dealer in Vermont unless same is covered by an invoice.

8. No wholesale dealer or bottler may solicit or accept orders for beverage alcohol except from the holder of a First or Second-class license and all such beverages must be delivered by the wholesale dealer or bottler to the licensed premises of the licensee giving the order. Deliveries may be made at the wholesale dealer's licensed premises to a First or Second-class licensee or their employee at the posted delivered price.

9. All wholesale dealers shall post their malt beverage prices to First and Second-class licensees with the Department. Prices will be posted as to each brand and size container. In the event of any proposed price change, the wholesale dealer will post same with the Board. Said price change or changes will not become effective until the seventh day after receipt of the proposed price change or changes at the office of the Board. Said price change or changes must remain in effect for a minimum period of fourteen days, and will remain in effect thereafter until notice of price change is posted as above provided. Each First and Second-class licensee in the wholesale dealer's territory must receive at least one opportunity to buy at the changed price. When a wholesale dealer runs out of product, they shall be allowed to offer rain checks to all licensees who were not able to purchase the product at the posted price for a period not to exceed fourteen days. No price posting involving quantity discounts will be made. Any sale made by a wholesale dealer lower than their posted prices shall be construed as a violation of Regulation under this heading, in addition to a violation of this regulation.

10. In case of a change of distributors, holders of certificate of approval or holders of manufacturer's licenses or the new distributor shall make provision for taking over stock on hand, including empties and cooperage, supplied by said holders to distributors; and said holder of a certificate of approval or manufacturer's license or new distributor shall, within fifteen days from effective date of said change, pick up said stock on hand, including empties and cooperage,

from the distributor who is surrendering its stock. Distributors who so surrender said stock, including empties and cooperage, shall be reimbursed by said holder of certificates of approval or manufacturer's licenses or new distributor on the date the stock is received by the holder of certificate of approval, holder of manufacturer's license or the new distributor at cost price plus handling expenses not to exceed fifteen percent of the cost price and an invoice shall accompany the sale. After effective date of said change, said distributors shall not sell the products of said holders of certificates of approval or manufacturer's licenses.

11. A person, partnership or corporation holding a wholesale dealer's license issued by the Board, or any agent representing the wholesale dealer is prohibited from taking orders, selling or delivering any beverage alcohol in an aggregate quantity of less than seven and one half gallons or, if the quantity is less than seven and one half gallons, the cost is less than \$ 75.00; nor shall a person, partnership, association or corporation holding a First or Second-class license order, purchase, or accept delivery of any beverage alcohol in an aggregate quantity of less than seven and one half gallons or if the quantity is less than seven and one half gallons, the cost is less than \$ 75.00.

12. No manufacturer, certificate of approval holder, or wholesale dealer shall directly or indirectly or through any affiliate induce any licensee to purchase any beverage alcohol by giving or offering to such purchaser anything of value except brand-identified items which are primarily valuable to the retailer for advertising purposes only or explicitly allowed under Board Guidance Bulletin No. 1

13. A person to be eligible to hold a solicitor's permit must have reached their eighteenth birthday and be an employee of the licensee they represent.

#### Section 8. Manufacturing, Mechanical, Medicinal or Scientific Alcohol Regulations.

1. Completely denatured alcohol may be lawfully possessed, furnished, purchased, sold, bartered, transported, imported, or delivered into, from and within the State of Vermont in accordance with the rules, laws and regulations of the Federal Government pertaining thereto.

2. Pure ethyl or grain alcohol, including special denatured alcohol, for manufacturing, mechanical, medicinal, and scientific purposes must not be transported or delivered into or within the State of Vermont by other than a common carrier and only when consigned to the Board or to persons designated as , industrial users, hospitals, druggists, institutions of learning, etc., and only in wholesale quantities in containers of five gallons or more when accompanied by permit issued by the Board. This regulation shall not pertain to holders of manufacturer's licenses issued by the Board.

3. Upon application made on forms provided for this purpose by the Department, the Commissioner may issue a permit to persons designated in Regulation No. 2, requiring alcohol in quantities of five gallons or more for hospitals, manufacturing, mechanical and scientific purposes to purchase such alcohol direct from duly registered manufacturers of alcohol or manufacturers' agents. .

4. Purchases of pure ethyl or grain alcohol may be made from Vermont State Liquor Stores or Vermont State Liquor Agencies upon the completion of an alcohol purchase form provided at the retail location. The purchase of pure ethyl or grain alcohol at the retail outlet must be made for the purposes of manufacturing, mechanical, medicinal or scientific purposes.

#### Section 9. Education Regulations.

1. It shall be the duty of all licensees to know and to ensure that their employees know the laws and regulations of the State of Vermont relative to the sale of beverage alcohol and tobacco products, paraphernalia, and substitutes as well as the rules and regulations of the Board applying to their particular licenses. In case of an infraction of the laws, rules or regulation by any licensee, such infractions shall be deemed prima facie evidence of the licensee's unfitness to hold a license.

2. All licensees shall complete the Department of Liquor and Lottery licensee training associated with their license as designated by the Board and pass the associated test prior to licensure and at least once every two years thereafter.

- a. A licensee shall designate an owner, director, partner, or manager who shall comply with the terms of this regulation
- b. The Department shall not consider a renewal application of any license or permit complete until satisfactory proof can be accessed or provided to the Department showing that the licensee has complied with the terms of this regulation.
- c. Wine Storage Facility, Wholesale Dealer, Certificate of Approval, and Bottler's licenses do not require training.

3. Each licensee shall ensure that every employee who is involved in the sale, service, or solicitation of beverage alcohol, or the sale of tobacco products, paraphernalia, and substitutes, or the enforcement of beverage or tobacco laws and regulations must complete the training program associated with the licenses at that location offered or approved by the Department. Completion of this training includes passing the associated test before the employee begins working in that capacity and at least once every two years.

- a. A licensee may comply with this requirement by delivering training to their own employees using an employee who meets all trainer requirements as defined by the Department. The Board may revoke trainer status due to failure to comply with requirements as established by the Department.
- b. A licensee may comply with this requirement using a Department approved 3<sup>rd</sup> party training that meets all 3<sup>rd</sup> party training requirements as defined by the Department. The Board may revoke 3<sup>rd</sup> party training approval due to failure to comply with requirements as established by the Department.

- c. A licensee who fails to comply with the requirements as established by the Department shall be subject to a fine or suspension of their license of no less than one day after appropriate notice to appear for a hearing pursuant to Section 1 provisions of this Administrative Rule.
  - d. Licensees shall maintain physical or have access to electronic records at the licensed location. These records must be made available within a reasonable amount of time to a Department's Investigator or a Vermont Law Enforcement Officer for verification if requested.
4. Failure to comply with these Education Regulation provisions may result in suspension or revocation of a license after notice and an opportunity for a hearing.

## **Statutory Authority**

STATUTORY AUTHORITY:

3 V.S.A. § 212(14); 7 V.S.A. §§ 101 to 108; 31 V.S.A. § 1208