

**RULES & REGULATIONS
OF THE
LIQUOR CONTROL COMMISSION
OF THE
COUNTY OF KAUAI**



EFFECTIVE:

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RULES & REGULATIONS
KAUAI LIQUOR CONTROL COMMISSION

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RULES AND REGULATIONS OF THE LIQUOR CONTROL COMMISSION
COUNTY OF KAUAI

RULE 1
DEFINITIONS

Rule 1.1. Definitions. Words used in these rules and regulations in the singular include the plural, and vice versa; words of any gender include any other gender. Words defined in Section 281-1, Hawaii Revised Statutes, as amended, shall have the same meaning wherever used herein.

"Application" means the application or the required forms used in making the request and any information contained therein for liquor license, renewal, or transfer thereof, a permit or the amendment of restrictions or conditions placed on a license or for any other request or petition and shall include and not be limited to any affidavit or document filed by the applicant in connection with such application, oral statement to the commission, the required necessary documentation, and any other forms or documents which may be prescribed from time to time by the commission.

"Applicant" means a person who has filed any application for a permit, management agreement, liquor license, or its like, for consideration by the Department or Commission.

"Blue card" means a card issued by the department to a person 21 years of age or older who has scored at least 86% on a written exam administered by the department for an on-premises establishment.

"Bona fide" means made in good faith without fraud or deceit.

"Catering" means a privilege extended to a restaurant (class 2), hotel (class 12), caterer (class 13), brewpub (class 14), or condominium hotel (class 15) licensee to provide liquor service off of its license premises in conjunction with its food service.

"Complimentary drink(s)" means individual servings of the licensee's liquor inventory made in exchange for the immediate receipt of goodwill, which shall be valued at the licensee's prices routinely charged to cash-paying customers.

"Complimentary liquor" means packaged or individual servings of the licensee's liquor inventory made in exchange for the immediate receipt of goodwill which shall be valued at the licensee's prices routinely charged to cash-paying customers.

"Condominium Hotel Guest Room" means (1) a condominium hotel guest room that is a unit, as defined in Section 514B-3, HRS, which is used to provide transient lodging for periods less than thirty days under a written contract with the owner of a unit

in a condominium hotel operation; or (b) a guest room that is a unit, owned or managed by the condominium hotel operator, providing transient lodging for period less than 30 days, which is offered for adequate pay to transient guests.

"Customer" means any person other than an on-duty employee of that licensee.

"dBA" means a unit for measuring sound level of all noises as measured with a sound level meter using the "A" weighting network.

"Dancing" means "to move your body in a way that goes with the rhythm and style of music that is being played."

"Department" means the Department of Liquor Control of the County of Kauai, State of Hawaii.

"Decibels" means the unit for measuring the volume of sound equal to 20 times the logarithm to the base 10 of the ratio of the pressure to the sound measured to the reference pressure, which is 20 micropascals (0.0002 dynes per square centimeter).

"Director" means the director of the Department of Liquor Control of the County of Kauai, State of Hawaii.

"Employee" shall include the licensee and all other persons who perform any type of activity, whether compensated or not, in conjunction with the operation, maintenance, or management of the licensed premises, including but not limited to the dispensing, serving, or selling of liquor, directly or indirectly, or who shall assist in the dispensing, serving, or selling of liquor, or who shall manage or supervise, directly or indirectly, any person who shall dispense, serve, or sell liquor. Any person who performs, whether compensated or not, any act or function as defined above, shall be considered "on duty".

"Entertainer" means any person who performs a service usually or normally done, on or within licensed premises, regardless of whether that person is under contract or commission, registered or not registered, compensated or not compensated.

"Guest Room" means a room for the lodging of transient guests which is offered for adequate pay for period less than 30 days.

"Growler(s) or Container used for Off-Premises Consumption." A growler or other glass, ceramic, or metal container used by Manufacturers, Restaurants, Retail Dealers, Brewpubs, Wineries, and Small Craft Producer Pubs for sale of product for off-premises consumption by patrons shall be a single-use container that is filled on-premise or a container that is re-sealable once opened, and intended for multiple fills and use.

"Industry member" means any person engaged in business, within and without the County of Kauai or State of Hawaii, as a distiller, brewer, rectifier, blender, or other

producer; or as an importer or wholesaler including class 1 manufacturer licensee, class 3 wholesale dealer's licensee, class 14 brewpub licensee, class 16 winery licensee, class 18 small craft producer pub licensee, of distilled spirits, wine, or malt beverages; or as a bottler of distilled spirits, wine, beer, or malt beverages; or as a bottler, or warehousemen and bottler, of distilled spirits. An industry member must possess a valid federal alcohol and tobacco tax and trade bureau permit or brewer's notice. An industry member does not include an agency of a state or political subdivision thereof, or an officer or employee of such agency.

"Lap dancing" means any form of physical contact where a person's torso makes contact or is rubbed against another simulating sexual contact.

"Legal age" means someone over the age of 21 years of age.

"Manager" means any person who has a valid blue or red card and who is registered as a manager or assistant manager by the licensee.

"Meals" means the usual assortment of foods commonly ordered at various hours of the day (i.e. breakfast, lunch, or dinner) that are prepared within the licensee's premises; the service of any prepackaged food not prepared on the licensed premises shall not be deemed in compliance with this requirement.

"Noise" means any sound that may produce adverse physiological or psychological effects or interfere with individual or group activities, including but not limited to communication, work, rest, recreation, or sleep.

"Non-standard bar" means an on premise license that is authorized to have live entertainment with or without dancing by patrons.

"Off premises license, licensee, or establishment means a retail dealer, license, licensee, or business.

"On premises license, licensee, or establishment means any license, licensee, or business authorized to sell liquor for consumption on the premises.

"Private party" means a gathering of persons for a special occasion; such as a wedding, an anniversary, a luau, etc., where food and drinks are served.

"Red Card" means a card issued by the department to a person 21 years of age or older who has scored at least 86% on a written exam administered by the department for an off-premises establishment.

"Showroom Facility" is defined as a location having a staged performance with seated guests.

"Strip show," means a burlesque act in which a performer removes their clothing

piece by piece.

“Suspended Penalty” means a penalty or any part thereof that the Commission has ordered suspended for a period of time under conditions.

"Unreasonable noise" means noise emanating from liquor-licensed premises that exceed the maximum allowable decibel level as prescribed in rule 7.4(b).

RULE 2 **RULES OF PRACTICE AND PROCEDURE**

Rule 2.1. Methods whereby public may obtain information. The public may obtain information as to matters within the jurisdiction of the commission by inquiring at the office of the County Clerk of the County of Kauai, State of Hawaii, where there are on file all rules of the commission; or at the department. All rules, orders, or opinions of the commission are on file and available for public inspection at said office, copies of compilations of rules and supplements thereto are available to the public at a price to be fixed by the County Council to cover mailing and publication costs.

Such inquiry may be made in person at said office during business hours, or by submitting a request for information in writing to the department.

Rule 2.2. Petition for adoption, amendment, or repeal of rules. (a) Any interested persons may petition the commission requesting the adoption, amendment, or repeal of any rule of the commission.

(b) The petition shall be typewritten and shall include:

- (1) A statement of the nature of the petitioner's interest;
- (2) A draft or the substance of the proposed rule or amendment or a designation of the provision sought to be repealed; and
- (3) An explicit statement of the reasons in support of the proposed rule, amendment, or repeal.

(c) The commission shall within thirty days after the submission of the petition either deny the petition in writing, stating its reasons for such denial, or initiate proceedings in accordance with the Hawaii Administrative Procedure Act for the adoption, amendment, or repeal of the rule, as the case may be.

Rule 2.3. Declaratory ruling by the commission. (a) Any interested person may petition the commission for a declaratory order as to the applicability of any statute, ordinance, or of any rule or order of the commission.

- (b) The petition shall be typewritten and shall contain:
- (1) The name, address, and telephone number of the petitioner;
 - (2) A statement of the nature of the petitioner's interest, including reasons for the submission of the petition;
 - (3) A designation of the specific provision, rule, or order in question;
 - (4) A complete statement of facts;
 - (5) A statement of the position or contention of the petitioner; and
 - (6) A memorandum of authorities, containing a full discussion of the reasons, including any legal authorities, in support of such position or contention.
- (c) Any petition which does not conform to the foregoing requirements may be rejected.

(d) The commission may for good cause refuse to issue a declaratory ruling. Without limiting the generality of the foregoing, the commission may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts, or facts which can reasonably be expected to exist in the near future; or
- (2) The petitioner's interest is not of the type which would give him standing to maintain an action if he were to seek judicial relief; or
- (3) The issuance of the declaratory ruling may adversely affect the interests of the County of Kauai or any of its officers or employees in any litigation which is pending or may reasonably be expected to arise; or
- (4) The matter is not within the jurisdiction of the commission.

(e) Where any question of law is involved, the commission may refer the matter to the county attorney. The commission may also obtain the assistance of other agencies, where necessary or desirable.

(f) Upon the disposition of his petition, the petitioner shall be informed in writing thereof by the commission.

(g) Orders disposing of petitions shall have the same status as other commission orders. Orders shall be applicable only to the fact situation alleged in the petition or set forth in the order. They shall not be applicable to a different fact situation or where additional facts not considered in the order exist.

~~**Rule 2.3.1 Delegation of Administrative Duties.** The Commission at its discretion may delegate to the Director routine administrative duties and functions which do not require a hearing and which the Commission determines will more efficiently assist the Commission in its responsibilities.~~

Rule 2.4. Rules of practice. (a) Except as otherwise provided by law, in any proceeding involving an application for the issuance or transfer of a license, or the revocation or suspension of a license, or other disciplinary action by the commission, which by law is required to be determined after an opportunity for a hearing, the following shall apply:

- (1) The applicant or licensee shall be notified in writing of the hearing and of his opportunity to be heard. Such notice shall conform to the requirements of the Hawaii Administrative Procedure Act, and shall be sent not less than two calendar days before the date of the hearing in the case of license applications and not less than five calendar days before the date of the hearing in the case of disciplinary actions. Such notice shall be in addition to any notice required by law to be published in a newspaper.
- (2) The hearing shall be conducted in conformity with the applicable provisions of the Hawaii Administrative Procedure Act.
- (3) The determination shall be subject to such limitations or standards as may be prescribed by law.
- (4) If the commission decides in favor of the applicant or licensee, the commission shall promptly notify the applicant or licensee.
- (5) If the commission decides against the applicant or licensee, it shall issue an appropriate decision and order. Such decision and order shall be accompanied by separate findings of fact and conclusions of law. The commission shall within a reasonable time send a certified copy of the findings of fact, conclusions of law, decision and order to the applicant or licensee.

(b) Any of the foregoing procedures may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(c) The department shall adopt rules by which contested case hearings will be conducted. Parties to a contested case hearing shall be provided with such rules ten (10) days prior to the date of the contested case hearing.

(d) Judicial review shall be as provided by law.

Rule 2.4.1 Legal Counsel or Other Authorized Representative. (a) A party may be represented by legal counsel or any other individual authorized in writing to represent that party at any proceeding before the Commission.

(b) Substitution of legal counsel shall be effective only upon filing written notice of substitution with the Commission.

(c) Withdrawal of legal counsel in the absence of a concurrent substitution shall be effective only upon the approval of the Commission and legal counsel shall be subject to the guidelines of the Hawaii Code of Professional Responsibility and other applicable law.

(d) No party shall substitute or withdraw legal counsel for the purpose of delaying a proceeding. Substitution or withdrawal of counsel less than thirty days before the hearing shall not be considered sufficient reason to continue the hearing, unless good cause is shown.

Rule 2.4.2 Authorized Agent Representing Party. (a) When an individual, acting in a representative capacity on behalf of a party, appears in a proceeding or signs a document submitted to the Commission, that personal appearance or signature shall constitute a representation that the individual is lawfully authorized to so act.

(b) The agent shall provide written authorization from the licensee or applicant to act in this capacity in all proceedings. This authorization shall be renewed annually or is considered invalid. The Commission may, at any time, however, require the individual to furnish proof of authorization.

(c) Authorized agents shall be bound by the provisions of the code of conduct currently applicable to attorneys and others authorized by law to represent parties. The Commission reserves the right to refuse to recognize authorized agents in its proceedings for sufficient cause.

Rule 2.4.3 Testimony and Recording; Adjudication Hearings. (a) All witnesses testifying at an adjudication hearing shall be administered an oath prior to their testimony. The Commission's chairperson or designee shall administer the oath.

(b) A record shall be made of all oral testimony taken at the hearing. Testimony taken at the hearing may be electronically recorded by video or audio recording and need not be transcribed. The cost of any transcription shall be paid by the requesting party, unless otherwise provided. The Commission shall make the written record of the testimony available to the parties for use in preparing exceptions to or statements in support of a recommended decision or recommended order.

(c) Unless otherwise provided by law, the record shall consist of the following:

- (1) All pleadings, motions, and intermediate rulings;
- (2) All evidence received or considered, including without limitation, oral,

- testimony, exhibits, and matters officially noted by the Commission;
(3) All offers of proof and rulings thereon; and
(4) All proposed findings and exceptions.

Rule 2.4.4 Pleadings; Adjudication Hearings. (a) The first page of every pleading in an adjudication hearing shall set forth the name, address, and phone number of the party, the party's attorney, if any, the title of the particular pleading, the name of the proceeding and case number, if any.

(b) All pleadings in an adjudication hearing shall be signed in black or digitally signed by the party filing the pleadings or by the party's authorized agent. The signature shall constitute certification that the person so signing has read the pleading and that to the best of the persons knowledge, information, and belief, the pleading is true and correct and is not submitted for the purpose of hindering, harassing, or delaying any party or proceeding.

(c) Unless otherwise provided, all pleadings, motions, memoranda, and other documents shall be filed with the Commission.

Rule 2.4.5 Evidence; Adjudication Hearings. (a) The admissibility of evidence at an adjudication hearing shall not be governed by the laws of evidence and all relevant oral or documentary evidence shall be admitted. Irrelevant, immaterial, or unduly repetitious material shall not be admitted into evidence. The Commission shall give effect to the privileges recognized at law.

(b) Documentary evidence may be received in the form of copies, provided that, upon request, all other parties to the proceeding shall be given an opportunity to compare the copy with the original. If the original is not available, a copy may still be admissible but the non-availability of the original and the reasons therefore may be considered by the Commission when considering the weight of the documentary evidence.

(c) The Commission may take notice of judicially recognizable facts and of generally recognized technical or scientific facts. The parties, whenever possible, shall be notified before the hearing of the material to be so noticed and shall be afforded an opportunity to contest the facts so noticed.

(d) Except as otherwise provided by law, the burden of proof, including the burden of producing the evidence and the burden of persuasion, shall be upon the party initiating the proceeding. Proof of a matter shall be by preponderance of the evidence.

Rule 2.4.6 Disclosure; Adjudication Hearings. (a) Any party to an adjudication hearing may, by written demand timely filed with the Commission, and served upon any other party, request of any other party to the proceeding, the full disclosure of:

- (1) The identity of all witnesses to be called by the other party, including their

addresses and phone numbers, if known;

(2) The identity of all persons, including their addresses and phone numbers, known by the other party to have material knowledge relevant to the proceeding; and

(3) All exhibits, including, but not limited to documents, photographs, and other tangible evidence to be introduced by the other party at the adjudication hearing. The requesting party shall have the right to examine the exhibits and make copies thereof.

(b) In order to be admitted at the adjudication hearing, a copy of an investigation report shall be provided to all parties upon request not later than seven days before such hearing. If a copy of the investigation report is not provided to all parties, the report shall not be permitted to be introduced at the adjudication hearing.

(c) All demands for disclosure shall continue in effect for the duration of the proceeding and the party to whom the demand is directed shall be under a continuing duty to disclose the information requested as and when it becomes available.

(d) The information requested shall be disclosed to the requesting party at the pre-hearing conference or at least seven days before the adjudication hearing, whichever occurs first. The failure to comply with disclosure requirements may result in the evidence subject to the disclosure request not being permitted to be introduced at the adjudication hearing.

Rule 2.4.7 Procedures; Adjudication Hearings. Unless otherwise stipulated by the parties, all adjudication hearings shall proceed as follows:

(a) The licensee who has been notified to appear before the Commission shall enter a plea admitting or not contesting or denying the allegations contained in the Notice of Hearing.

(b) If the licensee admits or does not contest the allegations contained in the Notice of Hearing, the Commission shall determine what action, if any, should be taken against the licensee.

(c) If the licensee denies the allegations contained in the Notice of Hearing, the parties shall have the opportunity to present any facts tending to prove or disprove the allegations contained in the Notice of Hearing.

(1) The parties shall have the opportunity to make opening statements before any evidence is presented, unless they waive the opportunity. The opening statement shall be heard in the following order:

(A) The County's opening statement; and

(B) Licensee's opening statement, unless licensee chooses to reserve same until after presentation of the County's evidence;

(2) The County's evidence shall be presented first, and shall be followed by the presentation of the evidence in support of licensee's case;

(3) After presentation of the evidence in support of their respective cases, the parties shall have the opportunity to introduce rebuttal evidence. Rebuttal evidence shall be introduced in the same order as was followed with respect to the introduction of evidence in support of the parties' respective cases;

(4) Each witness shall be examined first by the party calling the witness before cross-examination by the opposing party;

(5) After all evidence has been presented, including rebuttal evidence, the parties shall have the opportunity to make a final argument. Final argument shall proceed as follows:

(A) The County's final argument;

(B) Licensee's final argument;

(C) The County's final argument in rebuttal which shall be limited to countering matters raised in licensee's final argument.

(6) The adjudication hearing shall be deemed closed after completion of all final arguments or upon filing of all permitted memoranda and other post hearing submissions or upon the expiration of the time allowed for filing submissions, unless the time is extended, or upon the completion of taking further evidence pursuant to Rule §2.4.9, whichever is later.

Rule 2.4.8 Motion to Dismiss; Adjudication Hearings. (a) After all evidence has been presented by the County in support of the allegations contained in a Notice of Hearing, the licensee may move the Commission for an order denying or dismissing the charges in the Notice of Hearing or for similar affirmative relief.

(b) If the motion is denied or taken under advisement, licensee shall have the right to continue with the adjudication as fully as if the motion had never been made.

Rule 2.4.9 Taking of Further Evidence; Adjudication Hearings. At any time before the Commission's final decision, the Commission, on its own or upon motion for good cause shown, may reopen an adjudication hearing for the purpose of taking further evidence. The reopening shall be at the sole discretion of the Commission. Further evidence may be taken either through oral hearing or by certification of written questions to the parties.

Rule 2.4.10 Reconsideration of Decision and Order; Adjudication Hearings. Any request or motion to reconsider a decision made by the Commission or for a new hearing, or for a stay of the decision or order shall be filed with the Commission within fifteen (15) days from the date the decision and order is served. A suspension or

revocation of license shall commence following the fifteenth day after notification.

Rule 2.5. License application; notice of hearing; affidavits. (a) All applications for new licenses and all notices of public hearing sent and affidavits filed by applicants in connection with such applications, shall be in respective forms prescribed therefore from time to time by the department.

(b) An applicant for a new license or a transfer of license other than a special or temporary license shall file as part of its application:

- (1) Tax clearance from the state department of taxation
- (2) Personal history of all persons named in the application in the form prescribed by the department;
- (3) If the applicant is a partnership, a partnership agreement;
- (4) If the applicant is a corporation, the articles of incorporation which has been filed and accepted by the state department of commerce and consumer affairs;
- (5) If the applicant is a limited liability company, its articles of organization which has been filed and accepted by the state department of commerce and consumer affairs;
- (6) A floor plan which shall be drawn to scale and showing the detailed description of the proposed premises; and
- (7) Lease or rental agreement, if applicable.

(c) An applicant for a new license other than a transient vessel, tour or cruise vessel, or special license shall also file as part of its application,

- (1) A map drawn to scale showing all properties within five hundred (500) feet of the proposed premises; which shall also designate all properties within one hundred (100) feet of the proposed premises; and
- (2) A list of names and mailing addresses of property owners and lessees of record of the properties within five hundred (500) feet of the proposed premises; which list shall also designate all property owners and lessees of record within one hundred (100) feet of the proposed premises.
- (3) Proof of liquor liability insurance coverage in an amount of \$1,000,000 as prescribed for by HRS Section 281-31(s) except for Manufacture, Wholesale, Tour or Cruise, and Transient Vessel licenses prior to the issuance of a new license.

(d) An application for transfer of license shall also file as part of its application:

- (1) A statement of the price to be paid for the purchase of the licensed business; and
- (2) Tax clearances for the transferor from the state department of taxation
- (3) Proof of liquor liability insurance coverage in an amount of \$1,000,000 for both the transferor and transferee as prescribed for by HRS Section 281-31 (s) except for Manufacture, Wholesale, Tour or Cruise and Transient Vessel licenses.

(e) An applicant for a transfer of a class 5 and class 11 licenses shall also comply with requirements of Section 281-57 of the Hawaii Revised Statutes.

(f) A temporary license of any class and kind may be granted under the following conditions:

- (1) The premises shall have been operated under a license of the same class, kind and category issued by the commission at least one year immediately prior to the date of filing of the application for a temporary license; the application must be filed within 90 days of the surrender of the previous license or the closing of business.
- (2) The applicant for temporary license shall have filed with the commission an application for a license of the same class and kind then in effect for the premises.
- (3) If the issuance of a temporary license is based upon a transfer or new license application, the temporary license shall terminate upon the issuance or denial of the transfer or new license application.
- (4) Where a temporary license is issued and the application for an original license is denied or withdrawn, or the temporary license is canceled, the temporary licensee shall be responsible for filing a gross sales report together with percentage fee due for the duration that the temporary license was in effect.

(g) Applicant for a special license shall file as part of its application:

- (1) A floor plan which shall be drawn with measurements and showing the detailed description of the proposed premises;
- (2) A roster of all persons selling liquor, including their ages, and the name and age of the person in charge of those selling liquor;

- (3) The name of the person in charge of security;
 - (4) The property owner's permission to sell liquor for consumption on its property.
 - (5) Method of disposal for the remaining liquor inventory.
- (h) An applicant for a transient vessel license shall file as part of its application:
- (1) A list of dates, ports of call, times of arrival and departure.
- (i) An applicant for a transient vessel, per day, license shall file:
- (1) One application for each vessel, and the application may be filed annually;
 - (2) Tax clearances shall be applicable to all applications for the Transient Vessel licenses that are filed by the agent or owner during that fiscal year; and.
 - (3) The application shall include a list of dates, ports of call, times of arrival and departure and payment of fee per port of call.

When inclement weather forces a vessel to shift its port of call to the island of Kauai, and the vessel has a valid transient vessel license issued by another jurisdiction within the State of Hawaii, said license shall be valid in the County of Kauai, provided that notification of such change of port is sent to the Department prior to arrival.

(j) An applicant for a tour or cruise vessel license shall file as part of its application:

- (1) Commercial permit;
- (2) Mooring permit; and
- (3) Coast Guard certification.

Tour or cruise vessel license, exception. A tour or cruise vessel licensee may, with the approval of the commission, sell and serve liquor to ticketed passengers while on board the vessel during the loading of passengers for a period of time as determined by the commission.

(k) All applicants shall comply with all applicable federal, state, and county requirements whether in existence at the time or as adopted or changed from time to time.

Rule 2.5.4 Special License by For-Profit Organizations. (a) Any For-Profit organization may apply for special licenses in increments up to three (3) days on any occasion per license, not to exceed twelve (12) days per calendar quarter, with Commission approval.

(b) An application for a For-Profit special license must include a current tax clearance from the State of Hawaii – Department of Taxation, a letter of authorization from the landlord approving use for the sell of liquor for consumption at the premise.

(c) A floor plan drawn to scale.

(d) Names, addresses and telephone number of person(s) in charge of liquor sales, dispensing and security staff.

(e) The Special License will be required to be notarized prior to submission.

(f) Applications for special For-Profit organizations shall be submitted within established deadlines as prescribed by the commission.

Rule 2.5.5 License Application; False Statement: If the Department finds that the applicant has made a false statement or misrepresentation as part of the application, it may deny the application, suspend or revoke any current license, or assess and collect a penalty.

Rule 2.6. Renewal of license. (a) Applications for renewal of licenses, except temporary licenses, shall be submitted no earlier than June 1 and no later than June 30 of each year. Current tax clearances from the state department of taxation, a deposit to cover the basic fee as prescribed by Rule 4.1 and proof of liquor liability insurance coverage in the amount of \$1,000,000 except for Manufacture, Wholesale, Tour or Cruise and Transient Vessel licenses as prescribed for by HRS, Section 281-31 (s) shall be submitted as part of the application.

An application for renewal of a temporary license shall be submitted prior to the expiration date of the license. A deposit to cover the temporary license fee as prescribed by Rule 4.1 shall be deposited as part of the application.

(b) The commission may withhold the issuance of a renewed license for good and sufficient reason, which may include, but is not limited to:

(1) Failure to pay any outstanding penalties due the commission;

(2) Failure to file any outstanding gross liquor sales reports;

(3) Failure to pay any outstanding additional license fees;

(4) Failure to comply with any prior commission orders, which may include, but is

not limited to, an order to update or keep current any and all license application documents contained in the commission's licensee file;

(5) Complaints from the public or reports from the commission's investigators indicating that sounds emanating from the licensed premises cause undue disturbance which disrupts the peace and quiet of the neighborhood;

(6) Complaints from the public or reports from the commission's investigators indicating that noise created by patrons departing the premises disturbs residents of the neighborhood in which the premises are located;

(7) Complaints from the public or reports from the commission's investigators indicating that behavior by patrons of the premises poses a threat to public safety and disturbs residents of the neighborhood in which the premises are located;

(8) A report, investigated and verified by the commission, indicating that sounds emanating from the premises exceed permissible levels or any report from the commission's investigators for any non-compliance with proper conduct of the business.

(9) For licensees who are corporations, limited partnerships, limited liability companies, or limited liability partnerships, failure to maintain the business entity's good standing in the state of its organization. In this regard, business entity licensees shall submit with their license renewal documents a certificate of good standing from the state of its organization that is not more than sixty (60) days old to establish compliance with this requirement.

(10) All licensees shall certify all current officers, directors, managers, members, and partners and ownership/interest percentages. Corporate licensees who are publicly-traded companies are excluded from reporting only stockholder information.

Rule 2.7. Deposit with application. A deposit to cover the cost of publishing the notice of public hearing must accompany all applications for a license.

Rule 2.8. Filing fee with application. A filing fee in the sum of one hundred dollars (\$100.00) shall be paid with any application for an initial issuance of a license or for a transfer of a license, except for Transient Vessel, per day and Special license applications the filing fee shall be the cost of the basic license fee as prescribed for in rule 4.1.

The filing fee shall become a realization of the county where the application is denied or withdrawn.

Rule 2.9. Knowledge of liquor laws, rules and regulations. (a) No license shall be issued or renewed until the commission is satisfied that the applicant is familiar

with the liquor laws of Hawaii and with the rules and regulations of the commission.

(b) Every licensee shall ensure that its employees involved with the sale of liquor are familiar with the rules of the commission and liquor laws of Hawaii.

Rule 2.10. Rehearing on application. An applicant desiring a rehearing after his application has been refused must file a petition with the commission within fifteen days from the date of such refusal.

Rule 2.11. Application for individual permits to receive shipments of liquor.

(a) Any unlicensed person who is of legal age to purchase liquor may apply at the department on the form prescribed by the department and with the payment of a permit fee of ten dollars (\$10.00) or as required by Section 281-33.1(d) of the Hawaii Revised Statutes, whichever is greater, for a permit to receive a shipment of liquor from outside the state, within the limits allowed by Chapter 281, Hawaii Revised Statutes.

(b) The application form shall include the following information:

(1) A description of the liquor as to type, brand or trade name, domestic or imported, and quantity; and

(2) Whether the liquor is an unsolicited gift, unavailable in the state, or part of the applicant's household goods.

Rule 2.12. Direct Shipment of Wine by Wineries. (a) Any manufacturer of wine who desires to ship wines to residents of the County of Kauai shall obtain a Direct Wine Shipper Permit from the Department of Liquor Control, County of Kauai. The permit may be granted by the Director to any person holding:

1. A general excise tax license from the State of Hawaii department of taxation; and

2. Either:

A. A class 1 license to manufacture wine under section 281-31; or

B. A license to manufacture wine issued by another state.

(b) The term of the permit shall be for one calendar year. The applicant for a permit shall submit:

(1) An application form;

(2) Copy of the State of Hawaii Department of Taxation general excise tax license;

(3) Copy of the class 1 license to manufacture wine under section 281-31 or the license to manufacture wine issued by another state; and

(4) Payment of an annual permit fee of \$180. For purposes of this rule,

permit fees shall be prorated.

No permit shall be issued unless the applicant has met the foregoing requirements.

(c) The holder of a direct wine shipper permit may sell and annually ship to any person twenty-one years of age or older in this county no more than six nine-liter cases of wine per household for personal use only and not for resale and shall:

1. Ship wine directly to the person only in containers that are conspicuously labeled with the words containing or similar to: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY".
2. Require that the carrier of the shipment obtain the signature of any person twenty-one years of age or older before delivering the shipment.
3. Report no later than January 31 of each year to the Department the total amount of wine shipped to persons in this county during the preceding calendar year;
4. Pay all applicable general excise and gallonage taxes. For gallonage tax purposes, all wine sold under a direct wine shipper permit shall be deemed to be wine sold in the state; and;
5. Be subject to audit by the liquor commission.

(d) The holder of a license to manufacture wine issued by another state shall annually renew a direct wine shipper permit by providing the liquor commission with a renewal application, a copy of the current license to manufacture wine and payment of the annual fee.

(e) The sale and shipment of wine directly to a person in this state by a person that does not possess a valid direct wine shipper permit is prohibited. Knowingly violating this law is a misdemeanor.

Rule 2.13. Application for a permit for trade shows, tasting event or other exhibitions. (a) Any trade exhibitor or trade organization, may apply for a permit to have liquor for display and sampling on a not-for-sale basis at trade exhibitions. The director may permit the exhibitor or organization to receive liquor that is not available in the state from outside the state.

(b) The application for the permit shall include the following information:

- (1) The name and address of the applicant;
- (2) The location of the trade show;
- (3) The dates and hours of the trade show;

(4) An inventory list of the liquors to be displayed and sampled, its value and the procedure to be used to dispose of any liquor remaining at the end of the function; and

(5) Property owner's permission and floor plan detailing where the trade show, tasting event or exhibition will be taking place; and

(6) Source of where the liquor was acquired from.

(c) The dispensing of liquors for consumption is permitted between the hours of 8:00 a.m. to 11:00 p.m. on any day of the week.

(d) Liquor shall be consumed within the approved area that the holder of the permit has exclusive control and clear view of, and any liquor being consumed shall not be removed from the area.

(e) Guidelines for sample servings are four ounces of beer per customer, two ounces of wine per customer, and one-half ounce of distilled spirit per customer, except as otherwise approved by the director.

(f) An industry member may assist a licensee who conducts a product tasting event provided that in no case shall the industry member assume duties normally conducted by an employee of the licensee.

Rule 2.14. Applications for warehousing liquor off the licensed premises.

(a) Liquor may be warehoused off the licensed premises within an appropriately zoned area in the county with the written approval of the commission. An application for warehousing off the licensed premises shall include as part of the application:

(1) Floor plan drawn to scale;

(2) Lease agreement, if applicable;

(3) List of all licensed premises which will be using the warehouse, if the applicant holds more than one liquor license; and

(4) Street address and tax map key of warehouse location.

(b) Invoices for all liquor received at the warehouse and a record of all liquor removed from the warehouse shall be kept within the warehouse. All such records shall be kept for not less than three (3) years.

(c) No liquor shall be distributed or sold from the outside warehouse. However, this restriction shall not apply to the delivery of liquor from the outside warehouse of a wholesale dealer licensee. Liquor imported into the State may come to rest at an outside warehouse by being unloaded into such warehouse.

(d) Any investigator may without notice and without any search warrant or other legal process, visit and have immediate access to every part of the warehouse premises of any licensee for the purpose of making any examination.

Rule 2.15. Application and cost for a duplicate license. (a) A license that has been lost, destroyed, or mutilated will be replaced upon application from the licensee. A licensee shall submit a letter stating the cause of the loss, destruction, or mutilation of the license when applying for a duplicate license.

(b) A fee of twenty-five dollars (\$25.00) will be charged for a duplicate license to replace a license that was lost, destroyed, or mutilated because of negligence on the part of the licensee.

Rule 2.16. Authority vested to the director. (a) In the event that any licensee or any person submits a written application for a permit or renewal of an existing license or permit and the application cannot be brought before the commission at a regular meeting prior to the date of the event or function, the director may approve the application provided that all other applicable requirements of the liquor laws and the commission's rules and regulations have been met.

(b) The director may issue a notice of violation hearing to any licensee for any violation of the commission's rules and regulations or the liquor laws.

(c) When all applicable requirements of the liquor laws and the commission's rules and regulations have been met, the director shall have the authority to issue, suspend or revoke the following permits and issue the following licenses:

Permits for: All games, game machines; karaoke machines; temporary increase or decrease of premises; alteration of premises. Karaoke permit shall be limited to licensees whose category of license provides for live entertainment with applicable conditions, as it may exist.

Licenses: Special license, Transient Vessel, per day license.

Rule 2.17. Emergency rules and regulations. In the event of a national, statewide, or local emergency, the commission may adopt emergency rules and regulations, with the approval of the Mayor, for the protection of life and/or property. All emergency rules and regulations shall be scheduled for public hearing at the earliest possible date.

If the commission is unable to hold a meeting to meet the emergency, the Mayor may authorize the director to act for the commission.

Rule 2.18. [Free] One-day Non-Profit special license. (a) Notwithstanding

any other rule to the contrary, the director may issue a free one-day Non-Profit special license of any class and kind at no cost to any nonprofit organization for a fundraising event from which no member is entitled to or takes, directly or indirectly, any share of the profits there from. Issuance of such license shall not exempt the licensee from any other provision of the liquor laws.

(b) An applicant for this [free] one-day non-profit special license shall file an application on the form prescribed by the department.

(c) The applicant shall obtain the property owner's permission to dispense and/or retail liquor on its property.

(d) The director may issue a [free] one-day non-profit special license to any applicant if the event for the license is to occur prior to a commission meeting.

(e) A one-day non-profit special license may be issued to any non-profit organization, not to exceed (15) fifteen days per calendar year.

Rule 2.19. Notice of change in officers, directors, and stockholders of corporate licenses, partners of a partnership license, and members of a limited liability company license.

Corporate licensees shall notify the Commission, in writing, within thirty days of any change of officers or directors and submit a personal history of the new officer or director, on forms prescribed by the Commission. Limited liability company licensees shall notify the Commission, in writing, within 30 days of any change of managers of manager-managed limited liability companies or of any change of members in a member-managed limited liability companies and submit a personal history of the new manager or member, on forms prescribed by the Commission. All newly appointed or elected principals, who are natural persons, of any class license, must request a Criminal History Clearance from the Hawai'i Criminal Justice Data Center within thirty days of appointment or election, unless the period is extended or the requirement is waived by the Commission, for just cause. Principals that are not natural persons must submit whatever documentation establishes the entity (i.e. Articles of Incorporation or Organization, or Partnership Agreement), and a list of principals of the entity. Limited partnerships and manager-managed limited liability company licensees shall notify the Commission, in writing, within thirty days of any change of limited partners holding twenty-five percent or more interest or members and submit a personal history of the new limited partner holding twenty-five percent or more interest or member, on the forms prescribed by the Commission.

Rule 2.19.1. License Applicant Background Verification. The license applicant shall ensure that every person named in an application discloses to the Commission any felony convictions. The obligation to disclose such information shall be continuing even after the license is issued.

Rule 2.20. Notarial act performed using audio-visual communication technology; electronic or digital signatures. (a) Applications and any related documents bearing a notarized signature obtained using audio-visual communication technology and performed in compliance with state law may be submitted and accepted for processing.

(b) Applications and any related documents may be submitted and accepted for processing with an electronic or digital signature in accordance with procedures established by the department.

RULE 3 **RULES OF GENERAL APPLICATIONS**

Rule 3.1. Posting of license and availability of rules and regulations and Liquor Laws of the State of Hawaii. (a) The original liquor license shall be conspicuously posted on the licensed premises.

(b) Every licensee shall have a current copy of the rules and regulations of the commission and a copy of the liquor laws of the State of Hawaii available at all times on the licensed premises for examination by employees and customers. A copy viewed on a computer is not acceptable unless the computer is located in a general sales area accessible to all employees and customers.

(c) Licensees and employees shall familiarize themselves with said rules and laws.

Rule 3.2. Alteration of premises. A licensee shall obtain a permit from the commission prior to making any substantial physical alteration, such as adding or removing walls, changes in entrances and/or exits, relocating wet bars, changing floor levels, etc., to its licensed premises.

Rule 3.3. Unauthorized liquor. The possession of any liquor by a licensee on any licensed premises, other than that authorized by the license, is prohibited. The finding of such unauthorized liquor on the licensed premises will be considered prima facie evidence of illegal possession thereof by the licensee.

Rule 3.4. Surrender of license. The holder of any license must immediately surrender its license to the commission upon suspension or revocation thereof, or within five days after closing his business if it be otherwise discontinued.

Rule 3.5. Free goods prohibited, exception. No licensee shall directly or indirectly offer, furnish, deliver, or give away any free goods, gratuities, gifts, prizes, coupons, premiums, or other article or thing of value to a consumer which is tied into the sale of liquor, except "pupus" (appetizers) offered in on premises establishments and

advertising specialties which are available to all consumers are exempt from this provision.

Rule 3.6. Advertisements, posters, and signs. (a) No licensee shall, directly or indirectly, cause obscene, lewd, or immoral matter to be shown, displayed or distributed either on or from the premises.

(b) Any exterior poster or sign advertising liquor by brand name either in whole or part and maintained on the exterior of a licensed premises shall conform to the sign ordinances of the County ~~[government]~~ [of Kauai](#).

Rule 3.7. Attire and conduct of persons within a licensed premises, exception. No licensee shall at any time:

(1) Employ or use any person or permit any person to remain in or upon the licensed premises while such person is unclothed or in such attire, costume, or clothing as to expose to view any portion of the female breast below the top of the areole or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals, except as provided by Rule 8.5;

(2) Permit any person to perform or simulate sexual acts in its licensed premises.

(3) Permit the showing of film, still pictures, or electronic reproductions depicting:

(a) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;

(b) Nudity or scenes wherein a person displays the anus, genitalia or female breast below the top of the areole;

(c) Any person being touched, caressed or fondled on the anus or genitalia; and

(d) Scenes wherein artificial devices or inanimate objects are employed to depict, or drawing are employed to portray, any of the prohibited activities described above.

Rule 3.8. Sales to persons below the legal age to purchase liquor prohibited. No licensee shall sell or furnish any liquor to any person who is below the legal age to neither purchase liquor nor accept any payment, including the signing of any charge slip, from any person who is below the legal age to purchase liquor for any liquor sold.

Rule 3.9. Warehousing of liquor off the licensed premises. (a) Any licensee with warehousing off his licensed premises shall keep within the warehouse invoices for

all liquor received at the warehouse, and a record of all liquor distributed from the warehouse. All records shall be kept for no less than three years.

(b) Any liquor distributed from the warehouse must be delivered directly to the licensed premises of the licensee.

(c) If a warehouse building is used by more than one licensee, each licensee's space shall be separated with permanent partitions.

Rule 3.10. Pool buying. The agent of a pool buying agreement shall file a copy of the agreement with the department and receive its approval prior to exercising the agreement. The agreement shall name the licensee who is to be the agent, the address of the delivery location, and a list of participants, their license number and street addresses.

A pool buying agreement shall expire on June 30 of each year or upon the addition of a new party to the agreement, whichever occurs first.

The agent shall inform the department of the date of transaction made under the pool buying agreement prior to the transaction date. Each pool buying transaction shall be completed on the day transacted which means that all members of the pool must take possession and pay for their merchandise on the day that the agent receives the liquor at his premises.

Where the pool buying agreement is between or among licensees from different counties, the transaction shall be deemed completed when the product has been delivered to a freight forwarder, water carrier or private trucking firm for delivery to the licensee.

The agent shall provide a list to the wholesaler and/or manufacturer of all members of the pool buying agreement and a list of purchases to be made by each member.

The wholesaler and/or manufacturer shall prepare separate invoices for each member of the pool buying agreement.

Participants of the pool buying agreement shall maintain records of its liquor purchases pursuant to the pool buying agreement within the licensed premises for a period of three years and the records shall be made available forthwith for inspection by the department or its authorized personnel.

Nothing in this section shall be deemed to exempt any licensee entering into any pool buying agreement from any antitrust laws, liquor laws, or rules of the commission.

Rule 3.11. Waiving of rights to a violation hearing. A licensee who is cited by the commission as having violated any one of the following rules:

- (1) Rule 3.1. Posting of license and availability of rules and regulations;
- (2) Rule 3.2. Alteration of premises;
- (3) Rule 3.6. Advertisements, posters, and signs;
- (4) Rule 7.8 Manager on Duty, qualifications
- (5) Rule 7.9 Manager registration;
- (6) Rule 7.10. Bar employee records;
- (7) Rule 7.13. Fight and disturbance reports;
- (8) Rule 8.4. Minimum requirements of a hotel condominium license
- (9) Rule 9.1. Membership list of club;
- (10) Rule 10.2. Manager on Duty, qualificatons
- (11) Rule 10.3. Manager registration

may waive its right to a hearing and admit to the charge prior to the hearing without appearing before the commission.

For the first violation of any under section (1), (3), (5), (6), (8), (9), and (11) one of the above-mentioned rules, the licensee shall pay a penalty of one hundred fifty dollars (\$150.00) to the department at the time that the licensee admits to the charge.

For the second violation within a twelve-month period under section (1), (3), (5), (6), (8), (9), and (11), whether the violation is of the same rule or any other rule mentioned above, the licensee shall pay a penalty of three hundred dollars (\$300.00) to the department at the time that the licensee admits to the charge.

For the first violation under section (2), (4), (7), and (10), the licensee shall pay a penalty of three hundred dollars (\$300.00) to the department at the time that the licensee admits to the charge.

For the second violation within a twelve-month period of violation under section (2), (4), (7), or (10) whether the violation is of the same rule or any other rule mentioned above, the licensee shall pay a penalty of six hundred dollars (\$600.00) to the department at the time that the licensee admits to the charge.

The licensee may not waive its right to a hearing pursuant to this rule and shall be required to appear before the commission where the licensee has committed more than two rule violations of the commission's rules within the previous twelve-month period.

Rule 3.12. Commission orders. All licensees shall comply with all lawful orders of the commission.

Rule 3.13. Contests and prizes, prohibitions. (a) No licensee shall promote or permit any contests which involve the consumption of liquor.

(b) No licensee shall at any time give any liquor as a prize directly or indirectly for any contest.

Rule 3.14. Suspension or revocation of blue card or red card. The Commission may at any time for good cause suspend or revoke a blue card or red card.

Rule 3.15. A person below the age of eighteen years working or entertaining in licensed premises. The licensee shall comply with all of the requirements of the Child Labor Laws of the State of Hawaii.

Rule 3.16. Legal age to sell liquor. The legal age for an employee to begin selling liquor is 18 years old.

Rule 3.16.1 Prohibitions involving minors; penalty. (a) The sale or service of liquor to a minor or the permitting consumption of liquor by a minor on any licensed or unlicensed premises, any off-premises catered event, or any other premises authorized by the commission is prohibited.

Rule 3.17 Restrictions or Conditions on Licenses. (a) Licensees shall comply with all applicable federal, state, and county requirements whether in existence at the time or as adopted or changed from time to time. Licensees shall comply with any restrictions or conditions placed on the license by the Commission.

(b) Failure to comply with any such other laws applicable to the business of the licensee which results in a citation or notice of violation from another official governmental entity will constitute a violation of this rule.

Rule 3.18 Suspended Penalty. Whenever the Commission has assessed a penalty against a licensee, any part of which the Commission has ordered suspended under conditions, in the event of the violation of such conditions by the licensee, the Director shall collect from the licensee the amount suspended without further action by the Commission.

RULE 4

LICENSE FEES, GROSS SALES REPORTS

Rule 4.1. License fees. The fees for licenses of the several classes and kinds as described in Section 281-31, Hawaii Revised Statutes, as amended, shall be as follows, the same being per annum except where otherwise specified:

<u>Class</u>	<u>Kind</u>	<u>Basic Fees</u>
1. Manufacturer (including rectifiers)	(a) Beer	\$ 408
	(b) Wine	\$ 408
	(c) Wine manufactured from agricultural products grown in the State	\$ 120
	(d) Alcohol	\$ 204
	(e) Other Liquors	\$ 648
	(f) Distilled spirits manufactured from agricultural products grown in the State	
2. Restaurant	(a) General	\$ 180
	(b) Beer & Wine	\$ 480
	(c) Beer	\$ 180
3. Wholesale Dealer	(a) General	\$ 120
	(b) Beer & Wine	\$ 1,200
	(c) Alcohol	\$ 324
4. Retail Dealer	(a) General	\$ 18
	(b) Beer & Wine	\$ 480
	(c) Alcohol	\$ 180
5. Dispenser	(a) General	\$ 18
	(b) Beer & Wine	\$ 480
	(c) Beer	\$ 180
6. Club		\$ 120
7. Transient Vessel, per day		\$ 240

—[Transient Vessel, per ear]		\$	[900]
[8. Tour or Cruise Vessel]		\$	[240]
[9. Special, per day]	[(a) General]	\$	[33]
	[(b) Beer & Wine]	\$	[24]
	[(c) Beer]	\$	[16]
[10. Cabaret]		\$	[600]
11. Hotel]		\$	[900]
[12. Caterer]		\$	[120]
[13. Brewpub]		\$	[900]
[14. Condominium Hotel]		\$	[900]
[15. Winery]		\$	[900]
[16. Small Craft Producer Pub]		\$	[900]

7. Reserved

<u>8. Transient Vessel, per day</u>		\$	<u>33</u>
<u>Transient Vessel, per year</u>		\$	<u>900</u>
<u>9. Tour or Cruise Vessel</u>		\$	<u>240</u>
<u>10. Special, per day</u>	<u>(a) General</u>	\$	<u>90</u>
	<u>(b) Beer & Wine</u>	\$	<u>60</u>
	<u>(c) Beer</u>	\$	<u>45</u>
<u>11. Cabaret</u>		\$	<u>600</u>
<u>12. Hotel</u>		\$	<u>900</u>
<u>13. Caterer</u>		\$	<u>120</u>
<u>14. Brewpub</u>		\$	<u>900</u>
<u>15. Condominium Hotel</u>		\$	<u>900</u>
<u>16. Winery</u>		\$	<u>900</u>
<u>17. Reserved</u>			
<u>18. Small Craft Producer Pub</u>		\$	<u>900</u>

The fee for a temporary license of any class and kind shall be ~~[sixty dollars (\$60.00)]~~ one hundred and twenty dollars (\$120.00) for an initial period of one hundred twenty days or any fraction thereof, and an additional one hundred and twenty dollars (\$120.00) ~~[sixty dollars (\$60.00)]~~ for a renewal of not more than sixty days of the license.

Rule 4.2. Fees for solicitors' and representatives' permits. The fees for solicitors' and representatives' permits shall be for twelve calendar months, including the month the permits are issued, and shall be in the following amounts: General-\$180.00; Beer & Wine-\$90.00; and Alcohol-\$5.00.

Rule 4.3. Special license sales report. Persons issued special licenses shall report their gross sales and any other information required by the commission within three days after the expiration of the license.

Rule 4.4. Percentage Fee. Licensees in Classes 2, 4, 5, 6, 8, 10, 11, 13, 14, and 16, and Classes 1, 3, and 15 for retail liquor sales to any person for private use and consumption, shall be subject to the basic fee plus a percentage fee. Licensees shall report the retail value of any complimentary drinks or donated liquor, or both, in their annual gross sales report. The Final Gross Liquor Sales of each licensee multiplied by the percentage shall constitute the percentage fee. The percentage to be applied to the Final Gross Liquor Sales of each licensee for each current fiscal year shall be based upon the following formula:

$$\frac{EE - (BF + C)}{TFGS} = \text{Percentage Fee}$$

EE = Estimated Expenditures (current fiscal year)
BF = Basic Fees (current fiscal year)
C = Carryover (excess fees from prior fiscal year)
TFGS = Total Final Gross Sales (prior license year)

(a) Licensees in the above-mentioned classes shall submit with the Director, on a form prescribed by the Commission, a report showing gross sales of liquor and any other pertinent record or records requested therein. The form shall be furnished by the Director and shall be completed and filed no later than July 31 after the date of expiration of such licenses, and at such other times or intervals as the Director may require. After a tally of the total gross sales of all licensees, the percentage fee due and payable shall be assessed each licensee. Notice of Percentage Fee Due shall be mailed and/or electronically delivered to each licensee and shall be paid within 30 days from the date of such notice or as otherwise provided by the Director.

Rule 4.5. License Fees; When Due; How Received. (a) Fees Due, When. The basic fee as prescribed by Rule 4.1 for any license or permit issued hereunder shall be due and payable in advance of or on June 30 of each year. The fee for a license or permit issued July 1 shall be for a full year.

Full payment of a prorated license fee is due and payable at the time the license is issued and the fee paid shall be reckoned proportionally from the first day of the month on which the license or permit is issued to the expiration date.

Transient vessel, per day, special and temporary license fees shall be paid in full at the time of filing the application.

(b) Change to higher kind or different class. A holder of a license who applies for a higher kind of license within the class of the existing liquor license or a higher class of license on the same premises shall be credited with the unused portion of the current basic license fee in computing the fee for the new license.

(c) Change to lower class or kind. A licensee who desires to lower the class or kind of license, pursuant to Section 281-31 and 281-52 of the Hawaii Revised Statutes, as amended, or terminate a category of license shall file written notice to the Commission for its approval and state the effective date of the change.

(d) Forfeiture of fees; when. Upon termination of business by a licensee and upon revocation, cancellation, or change to lower class or kind of license, all fees paid for the remaining unexpired term shall be forfeited.

Rule 4.6. Payment of fees upon transfer of license. (a) Final report and percentage fee by transferor. Prior to the transfer of a license, the transferor shall file a final report of its gross liquor sales and payment of its percentage fees due. The past fiscal year's percentage figure shall be used to calculate the percentage fee owed by the transferor. The transferor shall be notified of the percentage fee due and the transfer shall not be completed until the percentage fee is paid.

(b) Final report and percentage by transferee; when. If the transferor fails to submit a final report of gross liquor sales and/or fails to pay the percentage fees upon transfer of such a license, the transferee shall be responsible for any percentage fee based on the total gross liquor sales for the entire term for which the license was exercised by the transferor.

Rule 4.7. Gross liquor sales report, percentage fee, and records. (a) Filing. Licensees holding Classes 2, 4, 5, 6, ~~8~~, 9, ~~10~~, 11, 12, ~~13~~, 14, 15 and ~~16~~, 18 and Classes 1, 3, and 15 for retail liquor sales to any person for private use and consumption, shall file, on a form provided by the Department, a report showing the true and accurate gross sales of liquor including complimentary liquor as defined in Rule 1 for the license year.

Gross sales of liquor under a temporary license shall be included as part of the transferee's or new licensee's gross sales report for the fiscal year.

Reports shall be completed and filed with the department as follows:

- (1) On or before July 31, a final gross sales report for that license year.
- (2) Within 30 days of the closing of business or cancellation or revocation of the license, a final gross sales report.

(3) At such other time as the Commission or Director may direct.

For purposes of this rule, reports postmarked on the due date shall be acceptable. Where the due date falls on a holiday or weekend, the report shall be delivered to the office of the Department on the first working day thereafter.

(b) Percentage fee due; when. The percentage fee based on gross sales of liquor shall be due and payable in full on October 30.

In case of revocation or cancellation of such license, the percentage fee chargeable against such license shall be the past fiscal year's percentage figure and the percentage fee due shall become due and payable within 30 days from the date of the Notice of Percentage Fee Due.

Any licensee who fails to pay its percentage fee on the due date may be issued a notice of violation for every day payment has not been made and be subject to penalties as stated in Section 281-91, Hawaii Revised Statutes.

(c) Percentage fee amount due; when. All licensees required to pay an annual percentage fee as prescribed in rule 4.4 shall be mailed and/or electronically submitted when a Notice of Percentage Fee Due stating the amount due to the department by the due date.

Any licensee whose annual percentage fee exceeds \$5,000 may pay to the department either in full or in two equal payments with the first payment being due no later than September 30 and the final payment being due no later than January 31 of the same fiscal year.

(d) Records and accounts. All licensees shall keep, within the State of Hawaii, a set of books or records, which show all income, purchases and expenses of the liquor licensed business for a period of three years. These books and records, including but not limited to daily sales records, employee time sheets, and invoices, shall be made available for inspection and/or auditing by the department within forty-eight (48) hours from the time the licensee is notified by the department.

Rule 4.8 Failure to Submit Accurate Gross Liquor Sales Reports:

Licensees shall maintain complete and accurate records in order to properly complete and submit the gross liquor sales report pursuant to Rule 4.4(a). Failure to submit an accurate gross liquor sales report may subject the licensee to the penalty set forth in Section 281-91, Hawaii Revised Statutes.

Rule 4.8.5 Trade Name; Change; Fee: A new licensee or transferee shall have a

choice of trade name, however, any trade name must be registered with the State Department of Commerce and Consumer Affairs. Any current or pending licensee desiring to change an existing or previous trade name shall submit to the Commission a Certificate of Registration of Trade Name issued by the State Department of Commerce and Consumer Affairs, showing approval of that registration. A processing fee of \$45.00 shall be assessed by the Commission for any change of existing trade name.

Rule 4.9 Payment for Under Reporting Gross Liquor Sales. Any licensee who is determined by the Director to have under-reported gross liquor sales may be issued a notice of violation.

Rule 4.10 Fines Collected From Penalties Assessed. The Director, with the Commission approval, shall be authorized to designate a portion of the fines collected for use in programs to promote compliance with liquor laws, business development, and improvement of interagency and interoffice functions. Such programs may include, but are not limited to, grant assistance programs, enforcement, public service announcements promoting responsible drinking and driving, youth programs, education, and liquor control administrative meetings.

Rule 4.11 Use of Unauthorized Trade Name Prohibited. Use of any trade name without prior approval of the Commission is prohibited. Any publication or advertising or sign with an unauthorized trade name will be considered presumed evidence of use of that trade name.

Rule 4.12 Waiver. Upon receipt of a written request from a license applicant or a licensee, or upon the Commission's initiative but with the concurrence of a license applicant or a licensee, the Commission may waive any portion of the Rules upon a showing by the license applicant or the licensee that:

(A) the license applicant or the licensee would suffer undue hardship, economic or otherwise, if the Rule were to be strictly implemented;

(B) the waiver of the Rule would not unduly burden or adversely affect any affected parties; and

(C) the waiver is consistent with the underlying purposes of Chapter 281, Hawaii Revised Statutes, as amended, and the Rules. Waiver requests made by the license applicant or the licensee must be submitted in writing to the Commission, and shall include all documentation which supports the waiver request.

Rule 4.13 Ex Parte Communications. In any proceeding before the Commission:

(a) No person shall communicate privately on the merits of the case with any member

of the Commission or the Commission's staff unless specifically provided for by law; and

(b) No member of the Commission's staff or any other government agency who participates in the proceeding as a witness or counsel shall communicate privately on the merits of the case with any member of the Commission, unless specifically provided for by law.

RULE 5 **TERM OF LICENSE AND PERMIT**

Rule 5.1. Terms of licenses and permits. (a) Every license issued, except classes 8 and 10 and temporary licenses, shall expire at 12:00 midnight on June 30 next succeeding its issue.

(b) Transient vessel, special, temporary licenses, and solicitors' and representatives' permits shall expire at 12:00 midnight on the expiration day of the licenses.

(c) All liquor licenses not exercised within one hundred eighty (180) days of approval by the commission shall, become void. Applications approved prior to January 1, 2020 will be exempt from this rule.

(d) A licensee who applies for a license to change its class or category of license shall exercise the new license within seven (7) days of approval by the commission or it will become void.

RULE 6 **HOURS OF BUSINESS**

Rule 6.1. Hours during which licensed premises may be open for transaction of business are as follows:

(a) Dispenser, restaurant, club, tour or cruise vessel: Every day from 6:00 a.m. to 2:00 a.m. the following day. For Restaurant class from 6:00 a.m. to 11:00 p.m. for retailing of "growlers".

(b) Cabaret, hotel, transient vessel, and condominium hotel: Every day from 6:00 a.m. to 4:00 a.m. the following day. Exception: Cabaret in a location zoned other than resort shall be from 6:00 a.m. to 2:00 a.m. the following day.

(c) Retail dealers: Every day from 6:00 a.m. to 11:00 p.m.

(d) Wholesale dealers and manufacturers: Every day from 6:00 a.m. to 11:00

p.m.

(e) Caterer: Every day from 6:00 a.m. to 12:00 midnight.

(f) Special Dispenser: From 6:00 a.m. to 12:00 midnight.

(g) Free One-Day Special Retail Dealer: From 6:00 a.m. to 11:00 p.m.

(h) Free One-Day Special Dispenser: From 6:00 a.m. to 12:00 midnight.

(i) Brewpub: Every day from 6:00 a.m. to 2:00 a.m. for dispensing, 6:00 a.m. to 11:00 p.m. for retailing.

(j) Winery: Every day from 6:00 a.m. to 2:00 a.m. for dispensing, 6:00 a.m. to 11:00 p.m. for retailing.

(k) Small Craft: Every day from 6:00 a.m. to 2:00 a.m. for dispensing, 6:00 a.m. to 11:00 p.m. for retailing.

Rule 6.2. Sales, service, or consumption before or after hours of business, exception. There shall be no sale, service, or consumption of liquor on or within any licensed premises before or after hours established by the commission.

RULE 7 **RELATING TO ON PREMISES ESTABLISHMENTS**

Rule 7.1. Number of drinks per person and liquor content of drinks, exception.

a. Distilled spirits containing no mixes shall be limited to not more than two ounces per person at one time.

A pitcher of beer or mixed drink containing distilled spirit, not to exceed 64 ounces, may be served to no less than two or more persons when seated together.

Distilled spirits may be served from its original package of up to 1 liter in capacity for any special occasion upon obtaining a permit from the director.

A bottle of wine, not to exceed 750 milliliters, may be served to one person at one time with a meal as it applies to a hotel, restaurant, club, cabaret, condominium hotel, brewpub, and dispenser class licensee engaged in meal service as provided for in section 281-31 (u) of the Hawaii Revised Statutes. The law allows for a patron to remove from the licensed premises any portion of wine, liquor, or beer that was purchased for consumption with a meal; provided that it is recorked or resealed in its

original container. A licensee wishing to exercise this privilege shall inform the customer of the State of Hawaii "open container" law as stated in sections 291-3.1, 291-3.2, 291-3.3 and 291-3.4 of the Hawaii Revised Statutes.

(b) A drink consisting of one or more kinds of liquor and water or any other mix which is served, sold, or offered for sale by any on premises licensee, or prepared for such purpose, shall contain not less than one fluid ounce of liquor; except when selling a specialty drink which requires less than one ounce of liquor; in which case the licensee shall present to the patron a recipe or have in plain view of the patron ordering the drink a menu which specifies the amount of liquor in the drink.

When liquor is poured into a service glass by the licensee or an employee, the drink shall be presumed to have been prepared for service or sale, notwithstanding the fact that the mix or water has not been added.

(c) A straight drink shall have not less than one fluid ounce of liquor.

Rule 7.2. Sanitary conditions. (a) All licensed premises, including all furnishings, equipment, and paraphernalia within the premises, shall be kept in a strictly clean and sanitary condition, and all drinking glasses must be un-cracked and effectively sterilized.

(b) All on premises establishments shall have access to adequate toilet facilities, which have been approved by the Department of Public Works-Building Division. Special license establishments shall have toilet facilities as may be required by the commission.

Rule 7.3. Draught beer. Draught beer sold or served shall be freshly drawn. The selling and serving of stale or slop beer is prohibited.

Rule 7.4. Condition of premises. (a) The main entrance of an on premises establishment must be kept unlocked whenever there is any non-employee or any employee who was not on duty at the closing time in the premises.

(b) Entrance to booths must be open and unobstructed.

(c) Lighting in all parts of the licensed premises shall be sufficient to make easily discernible the appearance and conduct of all persons in the premises and the main entrance of licensed premises shall be well and properly lighted.

(d) All interior rooms or enclosed areas in a Restaurant, Dispenser, Brewpub, Winery, Small Craft Producer Pub or Cabaret licensed premises where liquor is sold, served, or consumed shall be constructed in such a manner as to permit a full view of the interior of the room through a transparent window on the entry door or on the wall. Tinted windows are prohibited.

(e) No licensee that is authorized for on-premise consumption shall have an opening, transparent window or entrance from within the licensed premises into any other enclosed, unlicensed part of the same structure, or into any adjoining or enclosed unlicensed structure.

(f) An on premises establishment shall be constructed in such a way that the sound from the licensed premises shall not disturb the nearby residents with unreasonable noise in excess of the following noise levels in decibels (dBA) for more than ten percent of the time within any 20-minute period at the boundary line of the complainant's property which is closest to the licensed premises. For this purpose, any sound having duration of less than one second shall be deemed to last one second.

<u>Zoning Districts</u>	<u>7 a.m. to 10 p.m.</u>	<u>10 p.m. to 7 a.m. the following day</u>
Residential (R-1 to R-6)	55 dBA	45 dBA
Open (O)	55 dBA	45 dBA
Residential (R10 & R20)	60 dBA	50 dBA
Resort (RR10 & RR20)	60 dBA	50 dBA
Commercial (Neighborhood and General)	60 dBA	50 dBA
Agricultural	70 dBA	70 dBA
Industrial (Limited and General)	70 dBA	70 dBA

Where the allowable noise level between two adjacent zoning districts differ, the lower allowable noise level shall be used. This rule shall be enforced if a complaint of noise from the premises is received by the department from any resident or property owner with rental units within the area.

Rule 7.5. Music, dancing, and entertainment, exception. (a) In any on premises establishment, radios, television sets, jukeboxes, and any other system of providing recorded background music in the premises may be installed and operated without commission approval, provided that the sound does not disturb the neighborhood. Programs that are not offensive to common propriety and programs that are rated G or PG may be shown within the premises.

(b) Impromptu entertainment which is unpaid and unscheduled entertainment by a person who is not less than eighteen years of age is permitted without commission approval if said entertainment is not offensive to common propriety and the sound does not disturb the neighborhood.

(c) Any and all games and other forms of entertainment provided by management, such as music, shows, and game machines are prohibited except where and when specifically permitted by the commission in writing for amusement purposes

only. Any electronic gaming device, card playing, and table games approved by the commission are limited to amusement purposes only, and any form of gambling is strictly prohibited.

(d) A standard bar or a dispenser, [~~category (C)~~] in which live entertainment or recorded music is provided, or a restaurant, [~~category (2)~~] in which live entertainment or recorded music is provided without dancing premises that wishes to have dancing in its premises as part of its normal operations shall be subject to Section 281-51 to 281-60 of the Hawaii Revised Statutes.

(e) In premises where dancing by customers is permitted, the licensee shall provide a clearly designated dance floor of not less than one hundred fifty (150) square feet suitable for ballroom dancing. The designated area may be utilized for other purposes when not used for dancing. However, when used for dancing, the designated area must be totally cleared of all obstructions and utilized only for dancing.

(f) Dancing by customers is permitted only on a designated dance floor approved by the Commission. Licensees shall not allow any form of lap dancing by customers or its employees.

(g) Paragraph (c) above to the contrary notwithstanding, no permit shall be required by a hotel or condominium hotel licensee for live entertainment, games, movies, etc., if the entertainment, games, movies, etc., are not offensive to common propriety.

Rule 7.6. Repealed.

Rule 7.7. Clearing of tables at closing time. Any and all vessels containing liquor shall be removed from all areas of the licensed premises which is open to the public no later than the legal closing time for liquor sales, except as permitted by Rule 6.2.

Rule 7.8. Manager on duty, qualifications. (a) A person who is not less than twenty-one years of age must be in active charge of any on premises establishment during the time the establishment is open for business and licensed to sell or serve liquor.

(b) To become eligible for approval as a manager, the applicant shall take a test covering all applicable laws relating to liquor and the rules and regulations of the commission and receive a score of eighty-six percent (86%) or more correct. Upon successful completion of the test and presentation of proper identification showing the applicant's date of birth, applicant shall be issued a blue card. Any blue card issued shall be valid for a period of four years from the date of issuance, and shall be in the employee's possession or be readily available on the premises for inspection at all

times, when the employee is on duty. The commission may require the applicant to appear before the commission for a personal interview and evaluation as to eligibility prior to granting final approval of the applicant as a manager.

(c) A non-refundable registration of ten dollars (\$10.00) shall be charged at the time of registration for the manager's test.

(d) An additional ten dollars (\$10.00) shall be charged to cover processing costs for each manager card issued after successful completion of the test.

(e) A manager may obtain a replacement manager card upon payment of a ten dollars (\$10.00) replacement fee.

(f) A person with an active and valid manager card from a neighboring island may be issued a manager card from the Department to expire no later than the expiration date on the neighboring island card. Upon expiration of the card so issued, the card-holder must take and pass with a score of eighty-six percent 86% or better the test required in subsection (b) of this rule.

Rule 7.9. Manager registration. (a) The manager on duty is strictly accountable for the conduct of all employees, including other management personnel, and for the sales of liquor in the licensed premises.

(b) An on premises licensee shall notify the commission of the employment of a manager prior to his employment by submitting a notice of employment of such person to the department. A manager must have a valid blue card prior to his employment as manager.

(c) The commission may require the licensee to suspend or terminate the employment of any employee for good and sufficient reason. Good and sufficient reason shall include but not be limited to conviction for an offense against the public health and morals as set out in the Hawaii Penal Code.

Rule 7.10. Bar employee records. An on premises licensee shall have available at all times in the licensed premises a current record showing all bar employees, including management personnel, who are on duty.

Rule 7.11. Employees drinking on duty and entertaining patrons prohibited. In an on premises establishment, no employee or manager who is in active charge of the premises and while on duty ~~and~~ within the premises, shall consume liquor or sit or dance with or play games with patrons. ~~[This restriction shall not apply to the overall manager who is in active charge of the premises if he does not work at selling or serving liquor.]~~

For the purpose of this rule, "while on duty" shall mean from the time an employee starts work on any day until the employee is through for that day. It shall include any time during a split shift, a meal break and a rest break.

Rule 7.12. A person below the age of eighteen years in an on premises establishment prohibited, exceptions. (a) A person below the age of eighteen years is not permitted in an on premises establishment where liquor sales account for seventy-five percent (75%) or more of the total revenues of the establishment, excluding revenues from coin operated machines and logo items or when there is a show or televised program that exposes to view the female breast below the top of the areole, or a strip tease show, or a show that is offensive to common propriety.

The revenue figures for the immediate past calendar month shall be used to determine if a licensed premises is qualified to have persons below the age of eighteen years in its premises. A new licensee or a licensee who changes its operation to include sales of other merchandise shall be automatically qualified to permit persons below the age of eighteen years in its premises during its first month of operation.

(b) A minor below the age of 18 years shall not be permitted in any area of any licensed premises where liquor is served after 12 o'clock midnight. This paragraph shall not apply to such minor who is attending a private party with a parent or a guardian.

(c) The commission may exempt any licensee from this rule upon application and review of a proposed special event.

Rule 7.13. Fight and disturbance reports. An on premises licensee shall report all fights and disturbances, on the form provided or approved by the department that occurs in their licensed premises. The report shall be typewritten and submitted to the department within seven days from the time of the incident. Hand written reports will not be accepted.

The report shall include the name of the licensee and business, the date and time of the incident, the location of the incident, the name(s) of person(s) involved, the condition of those involved, the details of the incident and action taken by the licensee to prevent or suppress the occurrence. The report shall be signed by the licensee or its authorized agent.

For the purpose of this rule, the word "disturbance" shall mean any incident of whenever law enforcement or emergency medical services personnel are called to the licensed premises, or when a breach of the peace is created at the premises by a person. Also for the purpose of this rule, the word "fight" shall mean a physical confrontation.

For the purpose of this rule, "breach of the peace" shall means any act in violation of HRS 711-1101 DISORDERLY CONDUCT.

Rule 7.14. Review by patron of charge slip for liquor purchased. Any on premises licensee who does not collect payment for each drink as it is served shall upon request, inform the patron the amount owing each time liquor is served.

Rule 7.15. Practices that promote excessive consumption of liquor prohibited. (a) No licensee shall promote the ~~[excessive]~~ **excessive** consumption of liquor, sell, or offer to sell any liquor to any person who appears to be intoxicated.

- (b) No alcoholic beverage shall be sold unless the consuming patron consents to accept said beverage prior to service.
- (c) No licensee shall sell to any person an unlimited quantity of liquor during any set period of time for a fixed price.
- (d) Before serving liquor in an on-premises establishment the licensee shall have received a bona fide and specific order before preparing and serving the order from its service bar.
- (e) No licensee shall encourage or permit any game or contest that involves the consumption of liquor or the awarding of liquor as a prize.

Rule 7.16 Drugs and Other Illegal Activities. (a) The possession, distribution, or use of illicit or illegal drugs or narcotics on the licensed premises of any on-premises establishment by any person is prohibited.

- (b) No licensee shall promote, encourage or permit any person on the licensed premises to possess, distribute or use illicit or illegal drugs.

Rule 7.17 Improper Influence. (a) Any licensee, employee of a licensee or its agent who shall give, pay, or offer, directly or indirectly, any pecuniary benefit to any Liquor Department investigator or staff member, with intent to influence the investigator or staff member in the discharge of any duty herein provided for, shall be guilty of a violation.

RULE 8 **RELATING TO CABARET, HOTEL AND CONDOMINIUM HOTEL LICENSEES**

Rule 8.1. Minimum requirements of cabaret license. (a) A cabaret license

shall be general only (but excluding alcohol) and shall authorize the sale of liquors for consumption on the premises. A cabaret establishment shall have an adequate kitchen facility where hot meals are prepared and available to patrons from the time the premises is open for business to midnight unless the premises closes before midnight. A dance floor of not less than one hundred fifty (150) square feet suitable for dancing and clearly designated for such purpose or professional entertainment shall be provided for the benefit of the patrons.

(b) No cabaret licensed premises shall remain open after 2:00 a.m. without dancing or professional entertainment being provided. The commission reserves the right to regulate and control professional entertainment in cabarets. The licensee will be strictly accountable for the conduct of all entertainers in the licensed premises.

Rule 8.2. Cabaret license not issued, when. (a) No application for a new cabaret license which is to be located in an area which is not a resort zoned area shall be approved if there is any residential property located within 500 feet of the proposed premises.

(b) A cabaret license shall not be issued for any premises located within an apartment mixed use subprecinct within a special improvement or special district in which the economy is primarily based on tourism.

Rule 8.3. Minimum requirements of hotel license. (a) Minimum requirements for hotel license shall be an establishment consisting of one or more buildings which contain (1) at least forty rooms in which sleeping accommodations are provided and offered for adequate pay to transients or timeshare ownerships.

(b) A hotel licensee may provide off premises catering between 6:00 a.m. and 12:00 midnight daily for the sale of liquor while performing food-catering functions, subject to Rules 12.2 to 12.4.

Rule 8.4. Minimum requirements of condominium hotel license. (a) Minimum requirements for a condominium hotel license shall be a condominium hotel, as defined in HRS Sec. 281-1, containing: at least forty condominium hotel guest rooms. Room service, self-service, and service at private parties within the condominium hotel premises are permitted.

(b) As part of its initial application, (1) a condominium hotel license applicant shall submit a list of the initial condominium hotel guest rooms that are part of the proposed licensed premises and (2) the number of condominium hotel guest rooms that are part of the proposed licensed premises must equal at least fifty percent (50%) of the total number of rooms in the condominium hotel. If the condominium hotel is a phased project (meaning built and/or administered in separate phases), for purposes of determining the total number of condominium hotel guest rooms in the condominium hotel, each phase shall be treated as a separate condominium hotel. After said application is approved by the Commission, the condominium hotel licensee shall

update the list of condominium hotel guest rooms on a quarterly basis.

(c) In addition to the quarterly update obligation in subparagraph (b), the condominium hotel licensee shall maintain for inspection at the premises by any authorized employee of the Commission a current list of the condominium hotel guest rooms.

(d) Upon the opening or closing of any section within the condominium hotel premises which serves alcoholic beverages, the licensee shall notify the Liquor Commission with details and floor plan changes (which may be shown using relevant portions of the condominium map) in writing not less than thirty (30) days prior to the commencement of such event.

(e) A condominium hotel licensee may provide off premises catering between 6:00 a.m. and 12:00 midnight daily for the sale of liquor while performing food-catering functions, subject to Rules 12.2 to 12.4.

Rule 8.5. Strip shows, exotic dancers. Rule 3.7 to the contrary notwithstanding, cabaret and hotel licensed premises may allow scheduled entertainers whose breasts and/or buttocks are exposed to view to perform, if they perform on a stage that is not less than twelve inches above the immediate floor level and not less than six feet from the nearest patron, but at no time under any circumstances shall an entertainer expose their genitals, pubic hair, or anus, or perform or simulate sexual acts in the licensed premises. A tip of money or other gifts on the performer's person during the performance while in such attire that exposes to view the female breast below the top of the areole and/or performer's buttocks is prohibited. The licensee shall submit the names of all entertainers who are to perform to the department not less than twenty-four hours prior to their performance and the performers shall be 18 years of age or older. The licensee shall not permit any nude impromptu entertainment under this rule.

Rule 8.6. Mini bars in guest rooms and room service. A hotel or a condominium hotel licensed premises shall be restricted from selling liquor in its original package except via mini bars installed in guest rooms and room service. Said service shall be initiated at the request of an occupant twenty-one years of age or older.

Rule 8.7. Recognizable security person. (a) Every cabaret and hotel licensee shall have recognizable security personnel within the premises to prevent anyone from selling, distributing, or using illegal drugs within the premises where liquor is being sold during the time the premises is open for business after 2:00 a.m.

(b) The possession, distribution, or use of illicit or illegal drugs or narcotics on the licensed premises by any person is prohibited.

(c) No licensee shall promote, encourage or permit any person on the licensed premises to possess, distribute or use illicit or illegal drugs.

Rule 8.8. Change of Hotel or Cabaret license. Any hotel class or cabaret class license failing to meet the minimum requirements of a hotel class or cabaret class license, respectively, may be reclassified by the commission to a dispenser or restaurant class license. The category of license assigned will be decided by the commission based upon the permitted activities of the license to be reclassified.

RULE 9 **RELATING TO THE CLUB LICENSE**

Rule 9.1. Membership list of club. Each licensed club shall keep a complete list of its members, which list shall at all times be conspicuously posted and exposed to view, convenient for inspection on the licensed premises.

Rule 9.2. Guest-card privileges of club. Any individual enjoying guest-card privileges of a club and to whom liquors may be sold must be a bona fide guest of the club. Each club shall keep records as to registration of all such bona fide guests, which records shall be produced whenever required by the commission, or by any member thereof, or by any investigator. Guest-card privileges extended to such guest shall be limited, in each case, to not more than four weeks within any twelve consecutive months.

RULE 10 **RELATING TO MANUFACTURERS, WHOLESALERS, AND RETAILERS**

Rule 10.1. Retail dealer licensed premises. (a) If the retail dealer licensed premises remains open to the public during the hours when the sale of liquor is prohibited, the licensee shall post conspicuous signs about all areas displaying liquor giving notice that the sale of liquor is prohibited.

(b) An off premises licensee shall have available at all times in the licensed premises a current record showing all employees, including management personnel, who are on duty.

(c) Drive-in retail sale is prohibited. Customers making a purchase at a retail dealer's premises must enter the licensed premises to purchase liquor. The drive-in method whereby the customer orders from a motor vehicle and the licensee delivers liquor to the vehicle is prohibited. Nothing in this rule shall be construed to prohibit assistance to any person who is physically unable to walk, lift or carry purchases of liquor because of a disability.

~~(d) [A Retail Dealer licensee may make deliveries of liquor to private residences or businesses with a bona fide order from the purchaser provided the licensee produces a receipt of delivery signed by a person verified to be of legal age at the delivery point.]~~

Rule 10.1.1 Deliveries. (a) Retail Dealer licensees may make deliveries of liquor to a person who is twenty-one (21) years of age or older pursuant to a bona fide order which can be taken by telephone, fax, or through the internet subject to the following restrictions:

(1) Orders shall be placed and delivery shall be made within the permitted hours of business for a retail dealer licensee and within the County of Kauai;

(2) The order may be submitted directly to the retail dealer licensee through a technology provider that connects consumers and licensed retailers using the internet, mobile application, or other similar technology;

(3) Payment for orders of liquor may only be processed by a licensed retailer dealer and an independent contractor may not take possession of funds used to purchase liquor, but an independent contractor may facilitate the sales transaction, such as through the collection of credit card information or the securing of payment authorization from the purchaser;

(4) The person accepting delivery of liquor must be at least twenty-one (21) years old and must display identification at the time of delivery that complies with rule §3.16.1. No liquor shall be delivered to a person who appears to be intoxicated as prescribed in rule §7.15;

(5) The retail dealer licensee must maintain a record of the receipt of delivery signed by the person accepting the delivery of liquor;

(6) The retail dealer licensee may facilitate the delivery, including preparing the order for delivery, by contracting with one or more independent contractors, that may also contract with one or more independent contractors, or by contracting with a common carrier for delivery of liquor, provided the person delivering the order is at least twenty-one (21) years old;

(7) For purposes of this rule, an independent contractor, an independent contractor of an independent contractor, the employee of an independent contractor, or a common carrier is deemed to be acting on behalf of the retail dealer licensee when making a delivery of liquor, and the retail dealer licensee shall be held liable for any violation of this rule during any delivery of liquor made on behalf of such retail dealer licensee;

(8) Independent contractors, an independent contractor of an independent contractor, or the employee of an independent contractor shall comply with an inquiry or investigation by the commission if requested;

(9) Bona fide orders can only be processed, and deliveries can only be made, during permitted hours of business as prescribed in rule §6.1. Any electronic orders

received outside permitted hours of business can be maintained in a virtual queue and processed during permitted hours of business; and

(10) Retail dealer licensees may pay a fee to an independent contractor for the services permitted herein so long as the fee is not based on a percentage of profits received from the sale of liquor.

(11) An executed copy of the contract or agreement between the retail dealer licensee and any agent shall be provided to the commission prior to the start of any such delivery. Any acts or terms found to be in violation of any liquor laws or rules will be subject to the penalties as prescribed by law or rules.

(12) For purposes of this rule, an "agent" is defined as one who acts for or in place of another by authority of that individual or entity. An independent contractor providing delivery services for a retail dealer licensee within the meaning of HRS Chapter 281 shall be deemed an "agent" of the retail dealer licensee.

(13) If an agent, servant, employee, independent contractor, or common carrier commits a substantiated violation of this rule during any delivery of liquor made on behalf of a retail dealer licensee, the licensee shall be prohibited from using said agent, servant, employee, independent contractor, or common carrier for delivery of liquor on its behalf without commission approval.

(b) Deliveries of liquor by licensed wholesaler dealers or distributors shall only be made to a licensee's premises. With commission prior approval, deliveries to a licensee's catered or other location shall be permitted.

(c) A retail dealer licensee must have received an order for the type and quantity of liquor to be removed from the licensee's premises before removing said liquor for delivery to a customer. Peddling in any sense of the term is prohibited.

Rule 10.2. Manager on duty, qualifications. (a) A person who is not less than twenty-one years of age must be in active charge of any off premise establishment at all times that liquor can be legally sold.

(b) To become eligible for approval as a manager, the applicant shall take a ~~written or oral~~ test covering all applicable laws relating to liquor and the rules and regulations of the commission and receive a score of eighty-six percent (86%) or more correct. Upon successful completion of the test; presentation of proper identification showing the applicant's date of birth; and commission review of eligibility and approval; the applicant shall be issued a red card. Any red card issued shall be valid for a period of four years from the date of issuance and shall be in the employee's possession or be readily available on the premises for inspection at all times, when the employee is on duty. The commission may require the applicant to appear before the commission for a

personal interview and evaluation as to eligibility prior to granting final approval of the applicant as a manager.

(c) A non-refundable registration of ten dollars (\$10.00) shall be charged at the time of registration for the manager's test.

(d) An additional ten dollars (\$10.00) shall be charged to cover processing costs for each manager card issued after successful completion of the test.

(e) A manager may obtain a replacement manager card upon payment of a ten dollars (\$10.00) replacement fee.

(f) A person with an active and valid manager card from a neighboring island may be issued a manager card from the Department to expire no later than the expiration date on the neighboring island card. Upon expiration of the card so issued, the card-holder must take and pass with a score of eighty-six percent 86% or better the test required in subsection (b) of this rule.

Rule 10.3. Manager registration. (a) An off premises licensee shall notify the commission of the employment of a manager prior to employing the individual by submitting a notice of employment of such person to the department. A manager must have a valid red card prior to employment as a manager

Rule 10.4. Prohibition against peddling, exception. Except as specifically allowed herein, peddling in any sense is strictly prohibited. Before removing liquor from licensed premises for delivery to a customer under a manufacturer's or wholesale or retail dealer's license, the licensee must have received a bona fide and specific order therefore. Provided, however, duly licensed wholesale dealers may, without a bona fide and specific order therefore, remove beer from licensed premises to delivery vehicles for the purpose of selling said beer directly to persons who may lawfully sell liquor at retail in their original package or dispense liquor for consumption on the premises.

Rule 10.5. Record keeping by wholesalers. All wholesale dealers shall keep a separate and distinct book account, wherein shall be entered the name of the licensee, license number, place of business, the day, month, and year in which the sale was made and the quantity of liquor sold to each licensee, and shall, upon the specific request therefore, submit to the commission a list of such sales data as may be required from time to time.

Rule 10.6 Manufacture, Wholesale or Retail Dealer licensee; Free One-Day Special license, exception. (a) The rules of the commission do not prohibit a manufacturer, wholesaler or retail dealer licensee from giving financial or other forms of event sponsorship assistance to any bona fide nonprofit organization owning and exercising a Free One-Day Special license issued by this department for purposes of charitable fundraising.

(b) An industry member or its employee may deliver the draft keg dispensing van, draft keg dispensing trailer, or draft keg dispensing wagon to the site of the special licensed premises, and may assist in the connection and maintenance of the draft kegs

and its tapping accessories, but may not assist the licensee in the selling, serving, or furnishing of liquor to patrons.

RULE 11 **RELATING TO RESTAURANT LICENSE**

Rule 11.1. Minimum requirements for a restaurant license. A restaurant license may be issued to an establishment which is regularly used and kept open for the serving of meals to patrons for compensation and which has suitable kitchen facilities connected therewith, containing the necessary equipment and supplies for cooking an assortment of foods which may be required for ordinary meals. Additionally, at least thirty per cent of the establishment's gross revenues must derive from the sale of foods.

Rule 11.2. Catering privilege. A restaurant licensee may provide off premises catering between 6:00 a.m. and 12:00 midnight daily for the sale of liquor authorized by its license while performing food catering functions, subject to Rules 12.2. to 12.4.

Rule 11.3. Categories of license. A restaurant license shall be either category A or category B, a premises in which live entertainment or recorded music is provided. A category B premises shall be further described as a premises with dancing or a premises without dancing. A licensee who wishes to change from one category to a different category will be required to apply for a new license.

Rule 11.4. Change to a restaurant license. (a) A license of a different class, which qualifies for a restaurant class license, may be issued a restaurant, category A or B license by the commission. The category assigned will be according to the permitted activities of the license to be changed.

(b) Any restaurant class license failing to meet the minimum requirements of a restaurant class license may be reclassified by the commission to a dispenser class license. The category of license assigned will be decided by the commission based upon the permitted activities of the license to be reclassified.

RULE 12 **RELATING TO CATERER LICENSE**

Rule 12.1. Minimum requirements for a caterer license. A general license may be issued to any applicant operating a kitchen facility as part of a Restaurant, Hotel, or Condominium Hotel license, where food is prepared for the sale of liquor while performing food catering functions off of the licensed premises subject to rule 12.2 to 12.4.

Rule 12.2. Notification of catering function. The licensee shall notify the

department of all catering functions that will be held away from the licensee's premises at least five days prior to the function on the form provided by the department. The notification shall include a written statement from the owner or representative of the property giving the applicant permission to sell liquor for consumption on its property.

Rule 12.3. Location of catering function, restrictions. (a) The commission may deny the use of any specific location for catering functions for good cause as stated in paragraph (c) below.

(b) The licensee may provide catering service to any location if the property owner is not compensated for the use of the property and there is no charge to anyone to attend the function.

(c) If the property owner of the location for the catering event is compensated for the use of the property or if the caterer is the property owner, the property owner shall acknowledge that the property is properly zoned or be a government facility where liquor may be sold. The property may be used for catering functions provided the department does not receive any complaints, such as noise, dust, traffic, parking, etc., as the result of the catered function.

Rule 12.4. No host bar prohibited. The caterer shall not at any catered function which is held away from its licensed premises open or operate a no host bar. A no host bar means a bar where each person who orders a drink is charged for the drink.

RULE 13 **SEVERABILITY**

Rule 13.1. Severability. If any provision of these rules and regulations or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules and regulations are declared to be severable.