Amendments to Title 08, Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui

and

Chapter 102, Rules Governing Administrative Practices and Procedures of the Liquor Commission and Liquor Adjudication Board of the County of Maui

1. Section 08-101-5, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by adding definitions to appropriately inserted and to read as follows:

"Drink" means any quantity of wine, beer, or distilled spirits served in a container.

"Hosted bar" means a bar at an event at which the drinks are or have been paid by the host.

"No host bar" means a bar at an event at which guests are required to pay for the drinks themselves. Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp 8/12/19] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

2. Section 08-101-25, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsections (a) and (e) to read as follows:

"(a) Hours during which licensed premises may be open for the transaction of business shall be as follows:

(1) Dispensers, [restaurants,] clubs, transient vessels, tour or cruise vessels, and specials: any hour of the day from 8:00 a.m. to 2:00 a.m., the following day[.], and 6:00 a.m. to 11:00 p.m. for off-premises retail liquor sales for special license only.

(2) Cabarets: any hour of the day from 8:00 a.m. to 4:00 a.m., the following day.

(3) Hotels and condominium hotels: from 6:00 a.m. to 4:00 a.m., the following day, and any hour of the day for room service.

(4) Retailers: any hour of the day from 6:00 a.m. to 11:00 p.m.

(5) Manufacturers [and wholesalers]: from [5:00 a.m. to 9:00 p.m.], any hour of the day for manufacture and wholesale, 6:00 a.m. to 11:00 p.m. for off-premises retail liquor sales, and any hour of the day from 8:00 a.m. to 2:00 a.m., the following day for on-premises consumption liquor sales.

(6) Brewpubs: any hour of the day from 8:00 a.m. to 2:00 a.m., the following day for on-premises consumption liquor sales, any hour of the day for manufacture and wholesale, and 6:00 a.m. to 11:00 p.m. for off-premises retail liquor sales.
(7)  Small craft producer pubs: any hour of the day from 8:00 a.m. to 2:00 a.m., the following day for on-premises consumption liquor sales, any hour of the day for manufacture and wholesale, and 6:00 a.m. to 11:00 p.m. for off-premises retail liquor sales.

(8)  Caterers: any hour of the day from 6:00 a.m. to 2:00 a.m., the following day.

(9)  Wineries: any hour of the day for manufacture and wholesale, and from 6:00 a.m. to 11:00 p.m. for off-premises retail sales and on premises wine tasting activities.

(10) Restaurants: any hour of the day from 8:00 a.m. to 2:00 a.m., the following day for on-premises consumption liquor sales, and 6:00 a.m. to 11:00 p.m. for off-premises retail sales, pursuant to Section 281-31(c), Hawaii Revised Statutes.

(11) Wholesalers: any hour of the day. [Eff 7/1/00; am and comp 6/18/15; am and comp 3/4/17; am and comp 7/29/17; am and comp 1/14/18; am and comp 8/12/19] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)

(e)  Licensee may operate or be open for business for other than the sale, service, or consumption of liquor prior to or beyond the hours prescribed by the commission [, upon submitting an application and obtaining prior approval from the commission], provided an “employee approved by the Director” shall be within and in active charge of the premises at all times. [Eff 7/1/00; am and comp 6/18/15; am and comp 3/4/17; am and comp 7/29/17; am and comp 1/14/18; am and comp 8/12/19] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)

3. Section 08-101-30, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsections (a) and (h) to read as follows:

“(a) Applications for liquor licenses, renewals, transfers, management agreement, solicitor’s permit, or change of partner(s) in a partnership, limited liability partnership, member, manager, organizer or any person of a limited liability company, or officer(s), director(s), and stockholder(s) owning or controlling twenty-five percent or more of the outstanding stock or ownership of a corporation, thereof, and all notices of public hearing sent, and affidavits filed by applicants in connection with and part of such applications, shall be in the respective original forms and accompanied by the following necessary documentation and any other original forms or documents which may be prescribed from time to time by the commission, which shall be considered as part of the application.

(1) [Department of health clearance;

(2) State [and federal] tax [clearances] clearance or that the applicant has entered into and is complying with an installment plan agreement with the department of taxation for the payment of delinquent taxes in installments;

(3) Floor plans (not construction plans) drawn to scale;

(4) Tax map (drawn to scale) and list of all tax map key numbers, names and addresses of property owners, and lessees and owners of record of shares in a cooperative apartment situated within a radius of five hundred feet of the proposed premises;
(h) A change of location application is subject to all requirements and hearings as a new application for a license[,] provided the Director may approve a change of location within the County without hearing upon the filing of the application for change of location and any required documents for a Class 9 tour or cruise vessel license and for a Class 8, transient vessel license. The liquor license for the existing premises shall become void upon the issuance of the license for the new location. Licensee shall meet all requirements as a new license, pay the prorated license fee, and if applicable, file a gross sales report on all liquor sold under the original license and pay the assessment fee prior to the issuance of the license. All records of the original license shall be part of the licensee’s change of location application and record. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp 12/30/18; am and comp 8/12/19] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

4. Section 08-101-31, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“§08-101-31 No license issued, when. No license shall be issued:
(1) To any minor or to any person who has been convicted of a felony and not pardoned, or to any other person not deemed by the commission to be a fit and proper person to have a license; provided that the commission may
grant a license under the rules of the commission to a partnership, trust, association, limited liability partnership, limited liability company, corporation, or any other person, that has been convicted of a felony where the commission finds that the partner, member, manager, organizer, or any person of a limited liability partnership, limited liability company or organization's officers, directors, and any person owning or controlling twenty-five percent or more of the outstanding stock are fit and proper persons to have a license;

(2) To any partner in a partnership, or a corporation, trust or association, the officers, directors, or any other person of which, or any of them, would be disqualified under subsection (1) from obtaining the license individually, or any person of which, owning or controlling twenty-five percent or more of the outstanding capital stock, or any other person, would be disqualified under such subsection (1) from obtaining the license individually; provided that for publicly-traded companies or entities ultimately solely owned by a publicly-traded company, only the officers and directors designated as primary decision-makers shall be considered to determine disqualification under paragraph (1);

(3) To any applicant for a license, or a renewal of a license, or in the case of a transfer of a license, where both the transferor and the transferee, failed to present to the issuing agency a tax clearance certificate from the department of taxation[,] showing that the applicant or the transferor and transferee do not owe the State government any delinquent taxes, penalties, or interest; or that the applicant, or in the case of a transfer of a license, the transferor or transferee, has entered into an installment plan agreement with the department of taxation for the payment of delinquent taxes in installments and that the applicant is or the transferor or transferee is, in the case of a transfer of a license, complying with the installment plan agreement[.] or when the applicant or the transferor or transferee, in the case of a transfer of a license, is validly challenging a tax assessment, penalty, or other proceeding that prevents the issuance of a signed certificate from the state tax agency, the commission shall issue a license that is valid for the period of time necessary to resolve the challenge;

(4) To any applicant who has a partner in the partnership, limited liability partnership, member, manager, agent, organizer, or any person owning or controlling twenty-five percent or more of a limited liability company, or any officer, director or any person owning or controlling twenty-five percent or more of the outstanding stock of any corporation, trust, or association, or any other person, who has had any liquor license revoked less than two years previous to the date of the application for any like or other license under the rules of the commission;

(5) To any person owning or controlling twenty-five percent or more of the outstanding stock of the corporation, trust, or association of a licensee, who is currently delinquent in filing the gross liquor sales report of any license that was issued, or currently owing any fees or monies due to the department, or both. "Any fees or monies" shall include but not be limited to license fees, publication fees, and any assessment of a penalty imposed by the department, commission, or board. Any licensee, who has any person, or person owning or controlling twenty-five percent or more of the
outstanding stock of a corporation, trust, or association of a licensee, who is delinquent in filing the gross liquor sales report of any other license that was issued, or currently owing any fees or monies to the department, shall not exercise its license until the gross sales report is filed and percentage fee paid;

(6) To a limited liability company, the members, managers, organizers, or any person, of which or any of them, would be disqualified under subsection (1) from obtaining the license individually, would be disqualified under that paragraph from obtaining the license individually;

(7) To a limited liability company, partnership, limited liability partnership, or corporation, that may consist of a limited liability company, partnership, limited liability partnership, corporation, or any other person or any combination thereof, the members, managers, organizers, partners, officers, directors, or any person thereof, of which any of them would be disqualified under subsection (1) from obtaining the license individually, or a person owning or controlling twenty-five percent or more of the outstanding stock of such corporation would be disqualified under that paragraph from obtaining the license individually; or

(8) To an applicant for a class 2, class 4 except for convenience minimarts, class 5, class 6, class 11, class 12, class 13, class 14, class 15, or class 18 license, unless the applicant for issuance of a license or renewal of a license, both the transferor and the transferee, present to the issuing agency proof of liquor liability insurance coverage in an amount of $1,000,000. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 3/4/17; am and comp 12/30/18; am and comp 8/12/19] {Auth: HRS §§ 91-2, 281-17} {Imp: HRS §281-17}

5. Section 08-101-33, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (f) to read as follows:

“(f) In no case shall any application for renewal of a liquor license be accepted unless it includes the completed application, basic fee payment, State [and Federal] tax [clearances,] clearance and all other required documents. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 3/4/17; am and comp 1/14/18; am and comp 12/30/18; am and comp 8/12/19] {Auth: HRS §§ 91-2, 281-17} {Imp: HRS §281-17}”

6. Section 08-101-35, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by adding a new subsection to be appropriately designated and to read as follows:

“(d) If a licensee closes out of the business for which the license is held, during the term for which the license was issued, the licensee shall within five days from the date of closing the same, give commission notice thereof and surrender the licensee’s license for cancellation, unless the licensee obtains prior approval from the commission to place its license with the commission for safekeeping. For the purposes of this subsection, “safekeeping” means the holding of a liquor license at the commission office while the licensee is not operating or expired. [Eff 7/1/00; am and comp 7/15/02; am
and comp 4/22/12; am and comp 8/12/19] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)

7. Section 08-101-50, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsections (b) and (d) to read as follows:

"(b) Basic fee. This fee shall be paid in advance not later than each June 15th, prior to the fiscal year for which the license is issued. The fee paid for a license issued on any other date shall be reckoned proportionally from the first day of the month in which the business is commenced to the expiration date or to the next payment due date.

<table>
<thead>
<tr>
<th>Class</th>
<th>Kind</th>
<th>Basic Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Manufacturers</td>
<td>(A) Beer</td>
<td>$ 600</td>
</tr>
<tr>
<td>(including rectifiers)</td>
<td>(B) Wine</td>
<td>600</td>
</tr>
<tr>
<td></td>
<td>(C) Wine manufactured</td>
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</tr>
<tr>
<td></td>
<td>from fruits grown in the State</td>
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<tr>
<td>(D) Alcohol</td>
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<td>200</td>
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<tr>
<td>(E) Other liquors</td>
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<td>640</td>
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<tr>
<td>(2) Restaurant</td>
<td>(A) General</td>
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<td></td>
<td>(B) Beer and Wine</td>
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<tr>
<td></td>
<td>(C) Beer</td>
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<td>(3) Wholesale</td>
<td>(A) General</td>
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<td>(B) Beer and Wine</td>
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<td></td>
<td>(C) Alcohol</td>
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<td>(4) Retail</td>
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<td>(B) Beer and Wine</td>
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<td></td>
<td>(C) Alcohol</td>
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<td>(5) Dispenser</td>
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<td></td>
<td>(B) Beer and Wine</td>
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<td></td>
<td>(C) Beer</td>
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<td>(6) Club</td>
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<td>(8) Transient Vessel, per day</td>
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<td></td>
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<td>(9) Tour or Cruise Vessel</td>
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<td>(10) Special, per day</td>
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<td></td>
<td>(B) Beer and Wine</td>
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<td></td>
<td>(C) Beer</td>
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<tr>
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<tr>
<td>(11) Cabaret</td>
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<td>(12) Hotel</td>
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<td>1,200</td>
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<tr>
<td>(13) Caterer</td>
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<td>600</td>
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<tr>
<td>(14) Brewpub</td>
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<td>1,000</td>
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<tr>
<td>(15) Condominium Hotel</td>
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<td>1,200</td>
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<tr>
<td>(16) Winery</td>
<td></td>
<td>1,000</td>
</tr>
<tr>
<td>(18) Small craft producer pub</td>
<td></td>
<td>1,000</td>
</tr>
</tbody>
</table>
(d) Percentage fee.

(1) Licensees in classes 2(A), (B) and (C), 4(A) and (B), 5(A), (B) and (C), 6, 9, 11, 12, 13, [14,] 15, [16, 18,] and temporary license, as defined in subsection (b) of this section, shall be subject to the basic fee plus a percentage fee. Licensees in class 1 (other than a class 1 manufacturer, whose wine is manufactured from fruits grown in the State), and class 3, class 14, class 16 and class 18, as defined in subsection (b) of this section, shall be subject to basic fee plus the percentage fee of retail (on premises and or off premises) liquor sales to any person for private use and consumption. Licensees in class 9, as defined in subsection (b) of this section, shall be subject to basic fee plus percentage fee of four times the total amount of liquor purchased from class 1 manufacturers' licensee, class 3 wholesale dealers' licensee, class 14 brewpub licensee, class 16 winery licensee, and class 18 small craft producer pub licensee. Licensee shall report the retail value of any complimentary drinks or donated liquor, or both, in their annual gross sales report.

(2) The percentage fee for each current fiscal year shall be based upon the following formula, which shall establish the percentage to be applied to the gross sales or four times the total amount of liquor purchased of each licensee:

\[
\text{Percentage} = \frac{\text{EE} - \text{BF} - \text{C}}{\text{EGS}}
\]

where:
- EE = Estimated Expenditures (current fiscal year)
- BF = Basic Fees (current fiscal year)
- C = Carryover (prior fiscal year)
- EGS = Estimated Gross Sales (prior fiscal year)

(Carryover in excess of twenty per cent as provided in section 281-17.5, HRS)

(3) Licensees in the above-mentioned classes shall file with the director on a form prescribed by the commission a report showing true and accurate 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, filed at, and accepted by the department not later than 4:30 p.m. on July 31 after the date of expiration of such licenses, and at such other times or intervals as the director may require. If the 31st of July falls on Saturday, Sunday, or legal County of Maui holiday, the last day for the filing of the gross liquor sales report shall be 4:30 p.m. on the first County of Maui working day following. The gross sales of liquor report shall be on the original form(s) and contain the original signature; duplicates or copies shall not be accepted.

The director may reject, refuse to accept, or return any gross liquor sales report that is inaccurate, incomplete, illegible, or does not meet any requirement(s) of or not in compliance with any rule of the commission or chapter 281, HRS.
(4) After a tally of all total gross liquor sales filed by the due date by the licensees, the percentage fee due and payable shall be assessed each licensee and shall be paid within thirty-one calendar days of receipt of said assessment.

(5) In case of transfer of such licenses, the report shall be filed and paid by the transferor immediately after approval by the commission and before the actual transfer of the license and the business of the licensee-transferor. The percentage fee based on the current applicable percentage fee shall be paid prior to the issuance of the license.

(6) Any licensee who fails to file the report or fails to pay the percentage fee due on or before the due date shall not exercise his license after the due date and until said report has been filed or percentage fee paid, or both.

(7) Where licenses are revoked, expired, or canceled, or the licensee closes out the business for which the license is held, the report shall be filed and the percentage fee due paid within five calendar days of the revocation, expiration, cancellation or closing out the business. The percentage fee due shall be based on the current applicable percentage.

(8) Any licensee who fails to pay the percentage fee by the due date shall be assessed a late charge of five percent per month on the balance due until such fees are paid in full. The five percent late charge shall be a flat fee (not be prorated) that will be charged for any portion of the month payment is due.

(9) Any licensee who fails to pay the percentage fee within ninety days of the due date, shall be notified and scheduled for hearing. Upon satisfactory proof of such prohibited activity, the license shall be revoked.

(10) No licensee shall fail to accurately report revenues from gross liquor sales or to properly complete the gross liquor sales report. It shall be the licensee's responsibility to maintain complete and accurate records in order to properly complete and submit the gross liquor sales report pursuant to the rules of the commission. Records shall be maintained for a period of four years.

(11) All licensees shall have available for inspection within the County, books or records, or both, showing all income, purchases, and expenses of their liquor license business. These books and records, including but not limited to daily sales records, price lists, employee time sheets, and invoices, shall be made available for inspection or auditing, or both, by the department, through its auditor(s) or otherwise, at any time upon demand and shall be preserved for a period of four years, except that the commission may, in its discretion, consent to destruction of such books and records within such period or may require that they be kept longer. Licensee or its employees shall record the sale of liquor at the time of the transaction on its daily sales records.

(12) Any licensee who fails to pay any fee due on or before the due date or when any check, money order, or the like that is utilized by the licensee for payment of such fee is returned by any financial institution for non-payment due to insufficient funds or for any other reason, shall not exercise the license until said fee and any related service charges are paid in cash, certified check, or money order, and such payment is duly processed by the department.
(13) Any licensee who failed to file the gross sales of liquor report by the due date, shall be assessed the percentage fee equal to the highest percentage fee due and payable by the licensee of the same class or the highest percentage fee due and payable by any licensee if there is no licensee in the same class. [Eff 7/1/00; am and comp 7/15/02; am and comp 6/18/15; am and comp 9/3/16; am and comp 3/4/17; am and comp 1/14/18; am and comp 8/12/19] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)

8. Section 08-101-52, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“§08-101-52 [Guaranty. (a) The applicant or licensee shall post a bond that is approved by and filed with the department. The bond shall be not less than $5,000 or 1.5 times the total license fees paid in the current fiscal year or for any licensee that operated less than one full fiscal year, 1.5 times the prorated amount as determined by the department to reflect the basic fee and percentage fee of a year of operation, whichever is greater, shall be irrevocable and subject to the following conditions and any other conditions and restrictions set forth by the department.

(1) The bond cannot be canceled or terminated without written permission from the department. The bond company shall pay the total sum forthwith to the department whenever there is any attempt to cancel or terminate the bond without the expressed written consent of the department, or the failure to submit payment for renewal by the due date for renewal by the principle.

(2) The licensee shall automatically increase the penal sum of the bond to reflect any required increase pursuant to this section upon written notification by the director.

(3) Payment shall be immediately paid upon written demand by the director.

(4) The bond certificate and yearly renewal certificate shall be filed with the department.

(5) The term of the bond shall be for the entire period of the term of the license to be issued.

(6) The bond shall contain the name of the agent and the agent’s telephone number and address.

(b) In lieu of the bond, an individual, partners of the partnership, limited liability partnership, members, managers, organizers, or any person of a limited liability company, officers, directors, and stockholders owning or controlling twenty-five per cent or more of the outstanding stock of a corporation, trust, or association that is issued a liquor license shall be personal guarantor(s) of and liable for any payments or monies due to this department. The individual, partners of the partnership, limited liability partnership, members, managers, organizers or any person of a limited liability company, officers and directors of a corporation, trust, or association that is issued a liquor license, shall be personally liable for all costs associated with the enforcement or collection, including but not limited to attorneys’ fees and court costs, in the event that suit is instituted to enforce this guaranty.

(c) Licensee shall not exercise its license whenever it withdraws or cancels any bond or personal guarantee, unless the licensee files a bond whenever any personal guarantee is canceled or withdrawn or files the required personal guarantee(s) whenever any bond is canceled or withdrawn, and files its gross liquor sales report and makes
payment of the percentage fee due on the date of the filing of the withdrawal or cancellation of the personal guarantee or bond. [Eff 7/1/00] (Auth: HRS §§ 91-2, 281-17) [Imp: HRS §281-17] [Reserved]

9. Section 08-101-69, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

“(a) No licensee of any premises licensed to sell liquor for consumption on the premises shall:

(1) Sell, advertise, or offer to sell “all the liquor you can drink”, or more than two drinks of alcoholic beverage for a fixed price; or encourage, sponsor, permit or have any promotion, game or contest that involves the consumption of liquor or the awarding of liquor as a prize.

(2) Serve an unlimited amount of liquor during a set period of time for a fixed price, provided this provision does not apply to class 2, class 9, class 10, and class 12 licensees:

(A) When such function is not open to the general public and for which a hosted bar is utilized such as weddings, private parties, and fundraising functions;

(B) Where champagne may be inclusive with brunch;

(C) Where liquor may be inclusive with luaus; [or]

(D) Where liquor may be inclusive with tour or cruise vessel operations[.]; or

(E) Where at a Class 2, 10, 12 or 18 one day fundraising event, a set amount of alcoholic beverages may be sold at a fixed price as well as an open bar may be utilized provided at a pairing (food and liquor) fundraising event, Section 08-101-86(d) of the Rules of the Liquor Commission shall not apply. [Eff 7/1/00; am and comp 4/2/07; am and comp 3/4/17; am and comp 9/25/17; am and comp 8/12/19] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)

10. Section 08-101-70, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

“(a) On every licensed premises, an on-duty employee duly approved by the director must be in active charge of each premises during all times that such premises is open for business[.], provided this section shall not apply to Class 8, transient vessel except for a Class 8, transient vessels that have been issued an annual license. [Eff 7/1/00; am and comp 7/15/02; am and comp 8/12/19] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)

11. Section 08-101-74, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

“(a) Persons who apply to the commission for registration or as an employee approved by the director shall present:
(1) Valid positive unexpired identification in the form of a passport with photograph, a laminated state driver’s license with photograph, or other laminated government identification with photograph. School identification cards, city or county identification cards, or identification cards issued for the purpose of check cashing or other identification cards not issued by a government agency shall be unacceptable;

(2) The department may reject any identification presented or require a second valid identification for verification;

(3) [Proof of a social security number;

(4)] The completed department’s registration form as prescribed by the commission. [Eff 7/1/00; am and comp 8/12/19] (Auth: HRS §§91-2, 281-17) (Imp: HRS §§281-17)

12. Section 08-101-77, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“§08-101-77 [Certification certificate for “employee approved by the director”, counties. Any person holding a valid certificate for “employee approved by the director” or its equivalent issued by any department or commission within the State may exchange such certificate for a valid department certificate subject to verification, an expiration date set forth by the director, submission of proper documents, and any related fees. [Eff 7/1/00] (Auth: HRS §§91-2, 281-17) (Imp: HRS §§281-17)] Reserved”

13. Section 08-101-84, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (b) to read as follows:

“(b) No more than two drinks of [any liquor] distilled spirits at one time to an individual shall be permitted; provided however, distilled spirits may be served in container(s) up to one quart in capacity for any special occasion upon obtaining a special permit therefor from the director. Beer or wine may be served in a container, not to exceed the U.S. liquid measurement of one quart (.946 liter) or served to a customer in “flights” not to exceed a total volume of thirty-two ounces at any one time. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 3/4/17; am and comp 8/12/19] (Auth: HRS §§91-2, 281-17) (Imp: HRS §§281-17)”

14. Section 08-101-86, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“(a) Current prices of alcoholic beverages shall be at all times posted and exposed to view of patrons within the interior of a licensed premises authorized to sell liquor for consumption on the premises.

(b) All class 5, category D licensees shall post all beverage prices, alcoholic or non-alcoholic, and any other price for services or commodities that may be charged to the patrons.

(c) For the purpose of this section, there shall be a clear and legible sign, menu, table tents, placard, or marker which shall be in the English language, situated in a conspicuous location and clearly legible from the distance of where any patron is situated.
[[(d)] The volume of a wine pour shall be disclosed on the price list for wine sold by the glass.] [Eff 7/1/00; am and comp 4/22/12; am and comp 8/12/19] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)"

15. Section 08-101-87, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"(a) In case a license is revoked, cancelled, or not renewed, the remaining liquor inventory shall be offered for credit to the wholesaler or manufacturer authorized to sell such liquor. In the event the wholesaler or manufacturer declines the offer, a written request shall be made to the director for approval to sell or transfer the remaining liquor inventory[,] to the transferee in a transfer of a license, or to utilize the remaining liquor inventory for personal use, or to destroy the remaining liquor inventory[, or to sell or transfer to a licensee as approved by the director. The value of the remaining liquor inventory shall be indicated on the request. [Eff 4/22/12; am and comp 8/12/19] (Auth: HRS §§91-2, 281-17, 281-97) (Imp: HRS §281-17)"

16. Section 08-101-97, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"(a) Licensee must have and maintain exclusive control of the premises and shall be subject to all State laws and rules of the commission, at all times. Licensee must conduct, maintain and operate all its business including the payment of all taxes, liquor purchase, and all related monies due under the license issued[, unless otherwise authorized by the commission.
(b) All licensed premises shall be considered open for business whenever there is a private party, business meeting, or its like.
(c) Licensee may not discriminate or exclude anyone due to race, gender, or any other discriminating classification.
(d) Licensed premises shall be open to the general public at all times unless otherwise authorized by the Commission.
(e) Nothing in this rule shall be construed or interpreted to prohibit a licensee from exercising the right to deny service to any person for failure to conform to the usual and regular requirements, standards, and regulations for the licensed premises so long as the denial, requirements, standards and regulations are uniformly applied to all persons without regard to race, color, disability, religion, sex, sexual orientation or ancestry. [Eff 7/1/00; am and comp 8/12/19] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)"

17. Section 08-101-99, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

"(a) No liquor consumption and/or service shall be allowed in the following areas[,] except as otherwise approved by the commission:
(1) Food and beverage preparation areas, except for Chef's Table events approved by special permit;
(2) Storerooms, walk-in refrigerators and freezers, except for wine cellar events approved by special permit;
(3) Elevators and stairwells;
(4) Employee and service corridors;
(5) Employee lounges, employee dining rooms and employee locker rooms;
(6) Restrooms; and
(7) Areas for dancing, music, and entertainment[, when utilized for dancing, music and entertainment. [Eff 4/22/12; am and comp 3/4/17; am and comp 8/12/19] (Auth: HRS §§91-2, 281-17, 281-78) (Imp: HRS §281-17)"

18. Section 08-101-100, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"§08-101-100 Deliveries by [manufacturers, wholesalers, retailers;] industry member and retailers; peddling prohibited; exception.

(a) Except as specifically allowed herein, peddling in any sense is strictly prohibited. Before removing any liquor from a licensed premises for delivery to a customer under the [manufacturer's or wholesaler's;] industry member's and/or retail dealer's license, the licensee must have in hand in his office, store, or warehouse, a bona fide order therefor. Provided, however, duly licensed wholesale dealers may, without a bona fide and specific order therefor, remove beer from licensed premises to delivery vehicles for the purpose of selling said beer directly to persons who may lawfully sell liquors at retail in their original packages or dispense liquor for consumption on the premises.

(b) [A manufacture or wholesaler licensee] An industry member shall deliver any liquor ordered or purchased by a retailer into the retailer's premises. Delivery of any liquor to any other location except the retailer's licensed premises is strictly prohibited. Provided, however, any retailer or its duly authorized employee may pick up any order of liquor directly from the [wholesaler's or manufacturer's] industry member's licensed premises, and such liquor must come to rest within the retailer's premises prior to any sale.

(c) An industry member may make [Deliveries] deliveries to a licensee's catered or other location by permit. [Eff 7/1/00; am and comp 3/4/17; am and comp 8/12/19] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

19. Section 08-101-106, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending the title to read as follows, and further to amend subsection (h) to read as follows:

"§08-101-106 [Manufacturer, brewpub, and wholesale dealer licensees;] Industry members; special restrictions.

(h) [Manufacturers' or wholesale dealers' licensee,] Industry member, may:
(1) Furnish or give a sample of distilled spirits, wine or malt beverages to a retailer who has not purchased the brand from that industry member within the last twelve months. Industry member may give a sample of not more than three gallons of malt beverage, not more than three liters of any brand of wine, and not more than three liters of distilled spirits, which shall be invoiced and clearly marked "sample" on each container.

(2) Conduct tasting and sampling activities at a licensed premises authorized for on-premises consumption. Industry member must purchase the products used from the licensee, but may not purchase them from the
licensee for more than the ordinary retail price. Industry members may, conduct tasting and sampling activities upon its licensed premises for the introduction of new products, upon obtaining a permit from the director. Industry member staff may taste sample liquor while conducting the tasting and sampling activities or education seminar to assess the quality controls, blending decision, the various other attributes of the liquor for quality control, training or education seminar purposes by permit from the director. Taste shall mean taking a sip of said sample of liquor, and swirling within one's mouth, without swallowing or consuming of said liquor.

(3) Give or sponsor educational seminars for employees of retailers either at the [wholesaler's or manufacturer] industry member's premises or at the retailer's premises. Examples would be seminars dealing with the use of a retailer's equipment, training seminars for employees of retailers, or tours of wholesaler's or manufacturer's premises. This section does not authorize the wholesaler or manufacturer to pay a retailer's or its employee's expense in conjunction with an educational seminar such as travel and lodging, nor does it allow the consumption of liquor by any on-duty employee. This does not preclude providing nominal hospitality during the event.

(4) Give or sell point of sale advertising specialties to a retailer if these items bear advertising matter and are primarily valuable to the retailer as point of sale advertisement. These items include such things as posters, placard, designs, inside signs (electric, mechanical or otherwise), window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, backbar mats, thermometers, clocks, t-shirts, hats, and calendars. An industry member may add the name or name and address of the retailer to the advertising specialty.

(A) The total value of all advertising specialties furnished by an industry member to a retailer may not exceed $300 per brand in any one calendar year per licensed premises. The value of the advertising specialty is the actual cost of that item to the industry member who initially purchased it. Transportation and installation costs are excluded;

(B) Industry members may not pool or combine their dollar limitation in order to provide a retailer with retail advertising specialties valued in excess of $300 per brand;

(C) All point of sale advertising materials and consumer advertising specialties must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed; or

(D) Industry members and retailers are required to keep and maintain records on the licensed premises for a three-year period of all items furnished to retailers.

(5) Accept the return of any liquor product from a retailer for "ordinary and usual commercial reasons" after the product has been purchased, so long as the product meets the following conditions and limitations for such returns:
(A) Defective products which are unmarketable due to product deterioration, leaking containers, damaged labels, or mutilated and missing strip stamps;

(B) Error in products delivered where there is a discrepancy between products ordered and delivered may be corrected within a reasonable period of time of not more than five calendar days;

(C) Products which may no longer be lawfully sold due to a change in law or regulation, a particular size or brand is no longer permitted to be sold; or there is a change in the formula, proof, label or container of the product, or where the industry member has discontinued the production or importation of a product; or

(D) Termination of business where the licensee may return products on hand at the time the licensee terminates the operation of the business.

An industry member is under no obligation nor required to accept the return of products for the reasons listed.

(6) Give or sell product displays to a retailer, subject to the following limitations:

(A) The total value of all product displays furnished by an industry member under this section may not exceed $300 per brand in use at any one time in any one retail establishment. The value of a product display is the actual cost to the industry member who initially purchased it with transportation and installation costs excluded;

(B) Product display means any wine racks, bins, barrels, casks, shelving and the like from which distilled spirits, wine, or malt beverages are displayed on and sold;

(C) Industry member may not pool or combine their dollar limitations in order to provide a retailer a product display in excess of $300 per brand;

(D) Product display shall bear conspicuous and substantial advertising matter; and

(E) Industry member may assist a retailer in setting a product display in a retail premises.

(7) Give or sell outside signs to a retailer, providing:

(A) The sign must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed;

(B) The retailer is not compensated, directly or indirectly, such as through a sign company, for displaying the signs; and

(C) The cost of the signs may not exceed $400.

(8) Provide a recommended shelf plan or shelf schematic for distilled spirits, wine or malt beverages.

(i) Manufacturers’ or wholesale dealers’ licensee, shall, at all liquor establishments, stock, rotate, and affix the prices to distilled spirits, wine, or malt beverages which they sell, and check for outdated or spoiled liquor products, at least once a month and at the time of delivery of any liquor product, unless the retailer requests in writing that this service not be provided or be discontinued. [Eff 7/1/00; am and comp 7/15/02; am and comp 3/4/17; am and comp 8/12/19] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)"
20. Section 08-101-112, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

“(a) [Any] No holder of a class 3, wholesale dealers' licensee, or a class 1, manufacturer's license [who is a liquor licensee in other counties within the State, may] shall refuse to sell liquor to two or more licensees [participate in pool buying of liquor products] pursuant to any pool buying agreement between [the same licensee] licensees [from different counties.] which has been filed with and approved by the commission; provided that:

(1) The pool buying agreement is in writing and designates one of the licensees as the agent of the others for the purpose of pool buying;
(2) Any order for pool buying from the holder of a manufacturer's license shall be placed by the agent and payment for that order shall be made by the agent;
(3) Each pool buying order shall contain an inventory and cost of the liquor products purchased by each liquor license number of the different counties;
(4) The holder of a manufacturer's license in selling to the agent shall follow invoice, record keeping, and delivery procedures which are in compliance with this chapter and the rules of the commission of each county having jurisdiction over the seller;
(5) Licensee of the pool buying agreement shall maintain invoices and any records of the liquor products purchased pursuant to the pool buying agreement within the licensed premises for a period of four years and shall be made available forthwith for inspection by the department or its authorized personnel; and
(6) Each pool buying transaction shall be completed on the day transacted, and 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 licensees. [Eff 7/1/00; am and comp 8/12/19] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)”

21. Section 08-101-113, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“§08-101-113 [(Reserved)] “Growlers” or containers 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-premise consumption by patrons shall be a single-use container that is filled on-premises or a container that is resealable once opened, and intended for multiple fills and use. [Eff 8/12/19] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

22. Section 08-101-114, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:
§08-101-114 Trade shows and/or other exhibitions. Any trade exhibitor, trade organization or other exhibitor shall apply for the issuance of a permit, without hearings, fees, notarizing of documents, submission of floor plans, and other requirements, to receive liquor from within or outside the State for display and sampling on a not-for-sale basis at trade exhibitions, shows or other exhibitions, subject to the following terms and conditions:

1. Liquor shipped into the County under this section shall be in [750 milliliter-sized] containers, be appropriately marked “Sample - Not For Sale or Resale,” and shall come to rest at the warehouse of a holder of a class 3, wholesale dealers’ licensee, within the County, and be held in the licensed premises for at least forty-eight hours before delivery to or picked up by the person who was issued a permit to receive such liquor;

2. The applicant shall submit an inventory of all liquor shipped into the County at the time of the application, and a closing inventory of all liquor used during the event within five working days after the close of the event. Any liquor not utilized at the event shall become the property of the department and it shall be the permit holder’s responsibility to transport all liquor not utilized at the event to this department for disposal;

3. The applicant shall obtain and certify that all necessary clearances from other governmental agencies have been obtained for the event;

4. The applicant shall be subject to and shall comply with the rules of the commission, State liquor laws, and shall be subject to any penalties as provided by law;

5. Sample tasting shall be limited to one ounce per person per brand but not more than three ounces of liquor in total shall be provided to any person;

6. Liquor may be sampled on a complimentary basis only and at no time under any circumstances shall any holder of a permit or its employee, directly or indirectly, sell or be compensated for such sample;

7. At no time under any circumstances shall any holder of a permit or its employee sell, serve, or furnish any liquor to, or allow the consumption of any liquor by any person at the time under the influence of liquor, drugs, or any combination thereof, or to any person under twenty-one years of age;

8. Liquor shall be consumed on the approved area that the holder of the permit have exclusive control and clear view of, and any liquor shall not be removed from the area, except as may be approved by the director;

9. The director shall not approve any permit application unless it includes a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators. Application shall be submitted at least ten working days prior to the event. [Eff 7/1/00; am and comp 8/12/19] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)

23. Section 08-102-11, Rules Governing the Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui, is amended by amending subsection (b) to read as follows:

“(b) The petition shall be submitted in thirteen copies and shall include:

1. A statement of the nature of 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[.] and

(4) Proposed rule, amendment, or deletion shall be written and submitted in its entirety in Ramseyer and standard formats or any other format as may be required by the rules of the commission and/or the Hawaii Revised Statutes. [Eff 2/7/00; am and comp 8/12/19] (Auth: HRS section 91-2, 281-17) [Imp: HRS section 281-17]"  

24. Section 08-102-82, Rules Governing the Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui, is amended to read as follows:

"Section 08-102-82 Transaction of business. A majority of the board shall constitute a quorum for the transaction of business. The concurring vote of the majority of the members shall be necessary to take any action.

(1) If the board is unable to render a decision on any complaint heard before the board, and no other motion regarding the matter is passed, the complaint shall be considered dismissed.

(2) Whenever the board is ready to vote on any question, the chairperson shall state the question, put the question to vote, and announce the results to the board.

(3) Unless a present board member states that the board member is disqualified or excused from voting pursuant to sections 08-102-98 and/or 08-102-99 of the rules of the commission, the board member's silence or refusal to vote shall be recorded as an [affirmative vote] abstention. An abstention is not a vote and is not counted as a vote.

(4) The board or its designee shall render a written decision within a reasonable time from the date of the public hearing. [Eff 2/7/00; am and comp 8/12/19] (Auth: HRS sections 91-2, 281-17) [Imp: HRS section 281-17] *  

25. Material, except source notes, to be repealed is bracketed. New material is underscored.

26. Additions to update source notes to reflect these amendments are not underscored.