

CHAPTER 61A-3 VENDORS AND LICENSEES

61A-3.008	Location, Vendor Licenses
61A-3.0081	Licensed Premises at Stadiums, Coliseums, Auditoriums, Locations
61A-3.0101	License Renewals, Fixing Dates by Counties, Exceptions
61A-3.0141	Special Restaurant Licenses
61A-3.017	Management, Operation and Responsibility Licensed Premises
61A-3.019	Club Licenses
61A-3.020	Licenses, Change of Series
61A-3.0305	Pool Buying Procedures
61A-3.032	Alcoholic Beverages, Deposit for Future Purchases
61A-3.033	Delinquency, Payment of (Repealed)
61A-3.035	Delinquent List
61A-3.039	Exceptions in Employment of Minors and Others
61A-3.043	Special Hotel, Motel, Motor Court and Condominium-owned Motor Court Minimum Requirements
61A-3.048	Exploitation of Dwarfs
61A-3.049	Bottle Club Licenses
61A-3.050	Special Low-proof Products
61A-3.052	Identification to Verify Age
61A-3.053	Hardship for Extension to Activate Quota License
61A-3.054	Party-Type Supplies
61A-3.055	Items Customarily Sold in a Restaurant

61A-3.008 Location, Vendor Licenses.

(1) A vendor must have a different license for each place of business operated.

(2) All licenses issued to vendors, other than railroads, sleeping cars, steamships, or airplanes licensed under Section 565.02(2), (3), Florida Statutes, must be for a permanent location at which the business is to be operated; provided, however, licenses permitting consumption on the premises may be issued to pleasure or excursion boats making regular round trips which do not exceed one hundred miles in each direction. The fee for such licenses shall be the same as that charged for the same type license in the county wherein the “home port” of the boat is located; and, all such licenses shall be issued in the same manner as other beverage licenses are issued.

Rulemaking Authority 561.11 FS. Law Implemented 565.02(2), (3), 561.17 FS. History—Amended 3-22-73, 4-19-73, Repromulgated 12-19-74, Formerly 7A-3.08, 7A-3.008.

61A-3.0081 Licensed Premises at Stadiums, Coliseums, Auditoriums, Locations.

(1) Every holder of an alcoholic beverage license who conducts an alcoholic beverage business within the enclosure of a stadium, coliseum or auditorium, may sell and serve alcoholic beverages to the general public under said license in more than one (1) location within the said structure, provided said locations are embraced within the required sketch appearing or attached to the application for the license involved, and are under the dominion and control of the licensee; and provided further that a certified copy of the said license be posted at each location; and provided further, however, that all of said locations need not be under one roof if deemed by the Division to be a part of and directly adjacent and contiguous to the aforementioned structures.

(2) Nothing in this rule shall be construed to limit the taxes imposed by Chapter 565, Florida Statutes.

Rulemaking Authority 561.11 FS. Law Implemented 561.01(11), 561.17, 563.02, 564.02, 565.02 FS. History—New 11-7-78, Formerly 7A-3.081, 7A-3.0081.

61A-3.0101 License Renewals, Fixing Dates by Counties, Exceptions.

(1) Alcoholic beverage licenses shall be renewed annually pursuant to license years for all places of business in counties as follows:

(a) Vendors and distributors – OCTOBER 1 through September 30 – Alachua, Baker, Bay, Bradford, Calhoun, Citrus, Clay,

Columbia, Dixie, Duval, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Marion, Nassau, Okaloosa, Orange, Osceola, Pasco, Pinellas, Putnam, St. Johns, Santa Rosa, Seminole, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, Washington.

(b) Vendors and distributors – APRIL 1 through March 31 – Brevard, Broward, Charlotte, Collier, Dade, DeSoto, Flagler, Glades, Hardee, Hendry, Highlands, Indian River, Lee, Manatee, Martin, Monroe, Okeechobee, Palm Beach, Polk, St. Lucie, Sarasota, Volusia.

(c) The term of licenses for all manufacturers, brokers, sales agents, importers and passenger common carriers, regardless of county location shall be OCTOBER 1 through September 30.

(2) Licensees must remit renewal fee prior to expiration of their licenses. The Division shall provide opportunity for renewal during the period thirty days prior to license expiration.

(3) Licensees will subsequently be notified of renewal at a full year fee to coincide with the effective date of license and will continue to renew in accordance therewith.

(4) License renewals will be timely if the correct fee is either:

(a) Received by the division on or before the expiration date, or

(b) Postmarked on or before the expiration date.

(5) The division requires 20 days to process license renewal fees and issue licenses. Licensees who have timely submitted their renewal fees will be authorized to continue selling alcoholic beverages. Licenses must be posted in a conspicuous place on the licensed premises after passage of the 20-day renewal processing period.

(a) The 20-day processing period shall begin on the first work day following the expiration date of the license.

(b) The expiration date of all licenses shall be on Monday if it falls on a Saturday or Sunday.

(6) Distributors may make sales and deliveries to all accounts during the 20-day renewal process if:

(a) The account was licensed on the expiration date, and

(b) The account is not on the delinquent list.

(7) Following the 20-day renewal processing period, all licensees must have their licenses conspicuously posted on the licensed premises and distributors must verify that their accounts did renew their license.

(8) The division shall maintain daily records of licenses that have not been processed for renewal. A renewal status report may be obtained from the division upon request.

Rulemaking Authority 120.53(1)(b), 561.11 FS. Law Implemented 561.14, 561.23, 561.26, 561.351, 562.12 FS. History—New 9-15-81, Formerly 7A-3.101, Amended 5-26-93, Formerly 7A-3.0101.

61A-3.0141 Special Restaurant Licenses.

(1) Special restaurant licenses in excess of the quota limitation set forth in subsection 561.20(1), Florida Statutes, shall be issued to otherwise qualified applicants for establishments that are bona fide restaurants engaged primarily in the service of food and non-alcoholic beverages, if they qualify as special restaurant licensees as set forth in subsection (2) of this rule. Special restaurant licensees must continually comply with each and every requirement of both subsections (2) and (3) of this rule as a condition of holding a license. Qualifying restaurants must meet the requirements of this rule in addition to any other requirements of the beverage law. The suffix “SRX” shall be made a part of the license numbers of all such licenses issued after January 1, 1958.

(2) Special restaurant licenses shall be issued only to applicants for licenses in restaurants meeting the criteria set forth herein.

(a) Except in the counties of Alachua, Brevard, Broward, Citrus, for premises with a cocktail lounge or open bar, Dade, Pasco, St. Lucie, Walton, Martin, Nassau, Okaloosa, Okeechobee, Osceola, Hendry, Highlands, Hillsborough, Indian River, Lake, and Orange County with respect to Orlando, Winter Park, and Maitland, each of the above being controlled by general law or special act, a qualifying restaurant must have a service area occupying 2,500 or more square feet of floor space.

1. The required square footage shall not include any space contained in an uncovered or not permanently covered area adjacent to the premises because food service is not available at all times.

2. The required square footage shall be contiguous and under the management and control of a single licensed restaurant establishment.

3. Kitchens, food service areas, pantries, storage rooms, offices, and toilets, used exclusively in the operation of the restaurant shall be included in the required square footage. Measurements will be taken from the outside of qualifying structures or areas.

(b) Except in the counties of Alachua, Brevard, Broward, Dade, Hendry, Highlands, Walton, Hillsborough, Indian River, Pasco,

Martin, Nassau, Okaloosa, St. Lucie, Osceola, and Orange County with respect to Orlando, Winter Park, and Maitland, each of the above being controlled by general law or special act, a qualifying restaurant must have accommodations for the service and seating of 150 or more patrons at tables at one time.

1. The tables and seating must be located within the floor space provided for in paragraph (2)(a) of this rule.
2. The tables must be of adequate size to accommodate the service of full course meals in accordance with the number of chairs or other seating facilities provided at the table.
3. Seating at counters used to serve food shall be included in the minimum seating requirements.

(c) Except in those counties and municipalities controlled by general law or special act, as set forth in paragraph (2)(b) of this rule, a qualifying restaurant must have all equipment for the service of 150 full course meals on the premises at one time.

(d) An applicant for an SRX license must either hold, or have applied for, the appropriate restaurant license issued by the Division of Hotels and Restaurants prior to issuance of the temporary SRX license. The restaurant must hold the appropriate restaurant license before it will be eligible for a permanent SRX license.

(e) A qualifying restaurant must comply with all fire safety laws relating to the operation of a restaurant.

(3) Qualifying restaurants receiving a special restaurant license after April 18, 1972 must, in addition to continuing to comply with the requirements set forth for initial licensure, also maintain the required percentage, as set forth in paragraph (a) or (b) below, on a bi-monthly basis. Additionally, qualifying restaurants must meet at all times the following operating requirements:

(a) At least 51 percent of total gross revenues must come from retail sale on the licensed premises of food and non-alcoholic beverages. Proceeds of catering sales shall not be included in the calculation of total gross revenues. Catering sales include food or non-alcoholic beverage sales prepared by the licensee on the licensed premises for service by the licensee outside the licensed premises.

1. Qualifying restaurants must maintain separate records of all purchases and gross retail sales of food and non-alcoholic beverages and all purchases and gross retail sales of alcoholic beverages.

2. The records required in subparagraph (3)(a)1. of this rule must be maintained on the premises, or other designated place approved in writing by the division for a period of 3 years and shall be made available within 14 days upon demand by an officer of the division. The division shall approve written requests to maintain the aforementioned records off the premises when the place to be designated is the business office, open 8 hours per work day, of a corporate officer, attorney, or accountant; the place to be designated is located in the State of Florida; and the place to be designated is precisely identified by complete mailing address.

3. Since the burden is on the holder of the special restaurant license to demonstrate compliance with the requirements for the license, the records required to be kept shall be legible, clear, and in the English language.

4. The required percentage shall be computed by adding all gross sales of food, non-alcoholic beverages, and alcoholic beverages and thereafter dividing that sum into the total of the gross sales of food plus non-alcoholic beverages.

(b) Restaurants issued special restaurant licenses prior to April 18, 1972 but after September 1, 1969 shall be required to derive at least 30 percent of gross revenues from the sale of food and non-alcoholic beverages.

(c) Restaurants holding special restaurant licenses issued prior to September 1, 1969 are not required to derive any fixed amount of gross revenue from the sale of food and non-alcoholic beverages but must operate as a bona fide restaurant and meet the other requirements of this rule.

(d) Full course meals must be available at all times when the restaurant is serving alcoholic beverages except alcoholic beverage service may continue until food service is completed to the final seating of restaurant patrons for full course meals. A full course meal as required by this rule must include the following:

1. Salad or vegetable;
2. Entree;
3. Beverage; and
4. Bread.

(e) For purposes of determining required percentages, an alcoholic beverage means the retail price of a serving of beer, wine, straight distilled spirits, or a mixed drink.

(4) Establishments obtaining and operating under a temporary initial license as provided in Section 561.181(2), Florida Statutes, or under a temporary transfer license as provided in Section 561.331, Florida Statutes, shall be investigated by the division during said operation and prior to issuance of a permanent license to insure that the establishment is a bona fide restaurant primarily engaged in food and non-alcoholic beverage sales and service and that the requirements of this rule have been met. The failure of an

establishment to operate as a bona fide restaurant during said period of time shall result in denial of the application for a special restaurant license. An application for a special restaurant license from an establishment which has had a prior application for a special restaurant license denied during the previous 30-day period will be accepted by the division. The recent denial of the prior application will, however, be deemed a disclosure on the face of the subsequent application of a reason to deny such subsequent application. Accordingly, in such cases, no temporary initial license will be issued for a period of 30 days to allow the division inspectors to ensure that the reason to deny has been abated.

Rulemaking Authority 561.11 FS. Law Implemented 561.20(2)(a)4. FS. History—New 8-23-90, Amended 5-19-91, 10-22-91, Formerly 7A-3.0141.

61A-3.017 Management, Operation and Responsibility Licensed Premises.

(1) All business conducted on the licensed premises under the beverage law shall be managed and controlled at all times by the licensee or managed by his authorized employee or employees.

(2) The term “employee,” as used herein, shall mean a person who receives a salary or wages for services performed, for and in behalf of a licensee, under the exclusive control and direction of the latter. It do not include a lessee, an independent contractor or any person employed by collateral agreement to independently manage and control the said business on the licensed premises.

(3) Indicia for determining whether a purported managerial contract conforms to this rule are as follows:

(a) The licensee must retain control of the operation of the business.

(b) Salary or wages must be paid by the licensee to the manager or employee for conduct of the business under the ultimate direction of the former.

(c) Social Security and Workers' Compensation coverage must be paid and accounted for by the licensee.

(d) The licensee must be responsible for all debts of the business and legally entitled to all incomes therefrom. All alcoholic beverages for the business must be purchased in the licensee's behalf and under the license covering the premises.

(e) The licensed premises must be operated for all purposes in the name of the licensee or his legal trade name as distinguished from the name or names of any other person or persons.

(f) The licensee must be responsible for all conduct of the business and the license involved must be subject to suspension and revocation for any illegal acts committed on the premises or under the beverage law.

(g) Complete ultimate authority for the hiring and dismissal of all employees on the premises must rest with the licensee.

(h) The licensee must be primarily responsible for the rent, utilities and insurance covering the premises, and all other incidental expenses occasioned in the operation of the business.

(i) The licensee must remain at all times responsible for the maintenance and proper operation of equipment on the premises.

(j) The contract must contemplate the formation of the relationship of principal and agent between the licensee and the employee within the limits defined and implied by the contract.

(k) A contract wherein the so-called employee or manager pays a fixed sum to the licensee whether from net profits or not would not create the employer-employee relationship as contemplated by the rule.

(4) Any agreement woven in such language so as to clothe or disguise the true character of a contract either as a lease or a managerial contract will be shorn in order to effect the intent and purpose of the law and rule in this regard. The Pole Star which will guide the Division in determining whether or not a purported agreement is a bona fide managerial contract as distinguished from a lease will depend upon who has ultimate over-all control and direction of the licensed premises under the terms of the agreement.

(5) All agreements concerning ownership or operation of an alcoholic beverage license shall be attached to and submitted with each new or transfer application for a license, including, but not limited to, management agreements, options to purchase, and retailer franchise agreements. Any such agreements coming into existence following the issuance of a new or transfer license shall be submitted to the Division within ten (10) days of execution.

Rulemaking Authority 561.11 FS. Law Implemented 561.17(1), 561.29(1), 562.13 FS. History—Formerly 12-19-74, Amended 1-3-76, Formerly 7A-3.17, Amended 4-15-87, Formerly 7A-3.017.

61A-3.019 Club Licenses.

All clubs licensed under the beverage law must adhere to the following regulations:

(1) Alcoholic beverages may be served only to bona fide club members or to their guests. The payment for such service and distribution must be made only by bona fide club members.

(2) Such clubs must have a definite fixed method of electing persons to membership in the club; such method must be described

by the club's bylaws and must have some relation to the object and purpose of the club.

(3) Such clubs may sell and serve alcoholic beverages to club members and their invited guests only within the license premises as described by such sketch appearing on the application.

(4) Spirituous beverages may be purchased only in individual containers which are not larger than 1.75 liters or 59.18 ounces nor smaller than 0.75 liter or 25.36 ounces.

(5) Such clubs are required to observe the same hours of sale as permitted other licensees in the same city or county, unless a special act, city ordinance or resolution of the board of county commissioners establishes different hours of service for holders of such club licenses.

(6) All service and distribution of alcoholic beverages by any such club must be for consumption on the premises only and no alcoholic beverages may be sold in sealed containers for off-premises consumption.

(7) Clubs are prohibited from selling or serving or permitting their service of alcoholic beverages at social functions given at the club by any non-member of the club.

(8) Clubs, in order to qualify, shall have been in continuous active existence devoted to promoting and pursuing the objectives provided by statute for a club for a period of not less than two years in the county where they exist, provided, however, the statutory exceptions as found in Section 565.02(4), Florida Statutes, shall not be affected by this subsection.

(9) It shall be shown conclusively that the organization has actively pursued the purposes and objectives and goals of the charter and bylaws of that organization prior to issuance of a club license.

(10) Nothing in this rule shall prohibit the sale of vinous or malt beverages in unsealed containers not otherwise prohibited by law for on-premises consumption only.

(11) If any club holding a beverage license shall change club officers, such club shall within 10 days of the change file an application with the district office of the Division of Alcoholic Beverages and Tobacco and give a declaration of current officers. Any newly elected officers who have not previously been fingerprinted by the Division must have their fingerprints taken by the Division within this 10 day period.

(12) Subsection (11) does not apply to club licenses issued to national fraternal organizations. For these licenses, instead of all officers, only the official club manager, club steward, or bar manager needs to file an application and be fingerprinted when there is a change.

Rulemaking Authority 561.11 FS. Law Implemented 561.20(7), 565.02(4), 565.05, 565.06 FS. History—Amended 3-22-73, Repromulgated 12-19-74, Amended 3-1-76, 7-18-85, Formerly 7A-3.19, 7A-3.019.

61A-3.020 Licenses, Change of Series.

Any person, firm, or corporation holding a beverage license for which the annual fee has been paid in full may, upon qualifying for a license requiring a higher annual license fee, exchange it for the license requiring a higher annual license fee, upon payment of the difference between the annual rate of the first license purchased and the annual rate of the license desired; provided, however, all such transactions must be based upon the director's approval of the application to make such transactions. Applications for such transactions must be submitted to the district supervisor of the district of the Division of Beverage wherein the premises of the license in question is located and must be processed in the manner prescribed in Sections 561.17, 561.18, and 561.19, Florida Statutes. No reimbursement will be made by the Division to a holder of a beverage license who desires exchanging it for a license requiring a lower annual license fee.

Rulemaking Authority 561.11 FS. Law Implemented 561.17, 561.18, 561.19, 563.02, 564.02, 565.02, 565.03 FS. History—Formerly 12-19-74, Amended 3-1-76, Formerly 7A-3.20, 7A-3.020.

61A-3.0305 Pool Buying Procedures.

(1) "Purchases between members of a pool buying group" shall mean that a member of a pool buying group who is part of the pool order making up a single transaction shall pay the buying agent directly for its share of the order, or shall give the buying agent the payment to remit to the distributor owed for the alcoholic beverages received. All payments shall be for the exact amount shown delivered on the invoice from the distributor, and all orders shall be placed in the following manner:

(a) All pool orders for alcoholic beverages shall be ordered from distributors by the pool buying agent.

(b) The pool buying agent shall place the order under the name of the pool buying group and provide instructions for delivery as well as each licensed vendor's part of the pool order.

(c) Each distributor shall be responsible for creating the individual invoices for each vendor and a master invoice which shall include all alcoholic beverages ordered following the invoice rule and referring to each associated invoice supporting the master invoice.

(2) "Members of a pool buying group" shall mean all licensed premises reported and on file with the division, using form DBPR 42-010, "Application for Changes to Pool Buying Group", effective 6/93 and incorporated herein and available upon request from the Division of Alcoholic Beverages and Tobacco, 1940 North Monroe Street, Tallahassee, FL 32399-1021, prior to being a part of a pool order.

(3) "Pool Buying Agent" shall be the licensed vendor who is registered by the pool buying group with the division, using form DBPR 42-010, "Application for Changes to Pool Buying Group", effective 6/93 and incorporated herein and available upon request from the Division of Alcoholic Beverages and Tobacco, 1940 North Monroe Street, Tallahassee, FL 32399-1021, prior to placing any pool orders.

(4) All of the members of a pool buying group who participate in an order which was not timely paid by the pool buying agent, shall be considered delinquent accounts and reported to the division as required by Section 561.42, Florida Statutes.

(5) Pool buying agents are required to maintain, for a period of 3 years, records of each pool order placed. The following information must be included in these records:

- (a) The date the pool order was placed and each date it was revised.
- (b) The distributor who was given the order.
- (c) The names and license numbers of each pool member participating in the pool order.
- (d) The price, discounts, and net price of all alcoholic beverages ordered by each member in the pool order.
- (e) The date when deliveries of pool orders are made to the pool buying agents premises, which is a permitted off-premises storage area.

(6) Upon written request, a pool buying agent must make available for inspection all papers and reports related to pool orders, purchases, and payments within 10 days to any division employee.

(7) Transfer of alcoholic beverages to the vendor who ordered the products as a part of a single transaction pool purchase from a vendor who received the products shall be considered a purchase between members of a pool buying group; provided the transfer is made within 7 days after delivery and a record of the transaction is made by the vendor transferring the products to another vendor. This record shall include:

- (a) Business name and license number of each vendor;
- (b) Names, sizes, and quantities of products transferred;
- (c) Date delivery of products was received;
- (d) Date physical transfer of products was made;
- (e) Unique identifier that links the record with a specific pool order.

Rulemaking Authority 561.11 FS. Law Implemented 561.14(3), 561.08, 561.42 FS. History—New 1-20-97.

61A-3.032 Alcoholic Beverages, Deposit for Future Purchases.

(1) Vendors may make payment to distributors for alcoholic beverages prior to the time such alcoholic beverages are ordered or delivered. All such advance payments must be made by check, or other legal tender, and the distributor must deposit any such check, or legal tender, in his account on the next successive banking day after such payment is received.

(2) The distributor must maintain records for any vendor who makes such advance payments whereby any advance payments and any sales to the vendor will be posted daily and it will be possible to ascertain the balance on hand in the vendor's account.

Rulemaking Authority 561.11 FS. Law Implemented 561.42 FS. History—Formerly 12-19-74, Amended 3-1-76, Formerly 7A-3.32, 7A-3.032.

61A-3.033 Delinquency, Payment of.

Rulemaking Authority 561.11 FS. Law Implemented 561.42(3) FS. History—Formerly 12-19-74, Formerly 7A-3.33, 7A-3.033, Repealed 8-1-12.

61A-3.035 Delinquent List.

No vendor will be placed on or removed from the "delinquent list"

unless the appropriate forms prescribed for that purpose have been properly executed and received by the Division in the Central

Office at Tallahassee or has otherwise provided by the director after sufficient cause is shown.

Rulemaking Authority 561.11 FS. Law Implemented 561.42(3),(4),(5) FS. History—Formerly 12-19-74, Amended 3-1-76, Formerly 7A-3.35, 7A-3.035.

61A-3.039 Exceptions in Employment of Minors and Others.

(1) As used in Section 562.13, Florida Statutes:

(a) “Employ” means selecting a person to perform work for wages or tips who is subject to dismissal and control by the licensee. It shall also include permitting a person to work or the presence of any person in any place of employment during open hours who is not a customer.

(b) “Drugstores, grocery stores, department stores, florists, specialty gift shops, automobile service stations”, shall mean any premises for which a beer or beer and wine package only license is issued.

(c) “Senior high school student” shall mean any person who has completed the ninth grade and enrolled in the tenth, eleventh, or twelfth grade in a public or private school.

(d) “Senior high school graduate” shall mean any person who has been issued a high school or high school equivalency diploma.

(e) “Written permission” shall mean that the licensee has on the licensed premises a copy of the high school diploma or evidence that the person is a senior high school student.

(f) “Bona fide food service establishment” shall mean any premises issued a current and valid restaurant license from the Division of Hotels and Restaurants and which derives at least 51 percent of its total gross revenues from the retail sale of food and non-alcoholic beverages served for consumption on the premises on a bi-monthly basis.

(g) “Sale, preparation, and service of alcoholic beverages” shall not include cashier duties, whose sole job is accounting for guest checks and income, bussing tables, or general cleaning duties.

(2) Each licensed vendor who employs anyone under 18 years of age shall maintain on the licensed premises a position description that lists all of their duties.

(3) A licensed vendor is not prohibited from employing anyone under 18 years of age in a business which is not licensed to sell alcoholic beverages, or in the vendor's office, provided it is a separate premises and not connected to the licensed premises by an interior doorway.

(4) Chapter 450, Part I, Florida Statutes, set forth special restrictions when employing persons under the age of 18.

Rulemaking Authority 561.11 FS. Law Implemented 562.13 FS. History—New 10-1-68, Repromulgated 12-19-74, Amended 3-1-76, Formerly 7A-3.39, 7A-3.039, Amended 2-28-94.

61A-3.043 Special Hotel, Motel, Motor Court and Condominium-owned Motor Court Minimum Requirements.

(1) All hotel, motel and motor courts holding a license, in addition to quota limitations imposed by Section 561.20(1), Florida Statutes, and all hotel, motel, motor courts and condominium-owned motor courts, holding or applying for a license issued under Section 561.20(2), Florida Statutes, or any applicable special act must meet and maintain the minimum requirements for bona fide motel, hotel, motor court and condominium-owned motor courts.

(2) The following criteria will be used in determining whether an applicant for a special liquor license is a bona fide hotel, motel, motor court or condominium-owned motel or motor court:

(a) The business must be advertised and held out to the public to be a hotel, motel, motor court or condominium-owned motor court, and

(b) All State, county and municipal licenses required by law for proper operation, must reflect hotel, motel, motor court or condominium-owned motor court, and

(c) The premises shall establish and maintain daily, weekly and monthly rates, on all transient guest rooms, required to qualify for special hotel, motel, motor court or condominium-owned motor court license, and

(d) The premises shall establish and maintain registration records and procedures, and the premises shall supply such services as commonly found in a bona fide hotel, motel, motor court or condominium-owned motor court, such as; linen, maid service, telephone, etc. All utilities such as gas, electric or telephone shall be under the name of the premises and paid for by same, and

(e) The primary operation of such premises shall be the operation of a bona fide hotel, motel, motor court or condominium-owned motor court, and at all times maintain sufficient equipment for the operation of same, and at no time shall the premises be

maintained solely for the purpose of sale and service of alcoholic beverages.

(3) Transient guest means “temporary occupancy” as a transient in a rental unit for less than six (6) months. Indications for determining whether an occupancy is temporary under this rule are as follows:

(a) All parties intend that the occupancy will last no longer than six (6) months from the beginning of the occupancy.

(b) No written document or oral agreement is executed or entered into between the parties, the terms of which clearly indicate an intention to enter into a lease agreement or lease type arrangement that lasts for more than six (6) months.

Rulemaking Authority 561.11 FS. Law Implemented 561.20 FS. History--New 3-1-76, Formerly 7A-3.43, 7A-3.043.

61A-3.048 Exploitation of Dwarfs.

(1) A dwarf is a person with the medical condition known as dwarfism. Dwarfism means a person of disproportionate or proportionate short stature most often caused by a genetic syndrome.

(2) It is unlawful for a licensee to promote, engage in, or permit any exploitative contest, promotion or other form of recreational activity which results in the endangerment of the health, safety or welfare of a dwarf on any premises licensed under the beverage law. Any activity described as dwarf-tossing is specifically included within those acts of exploitation prohibited by this rule.

(3) Nothing contained herein shall be construed to prohibit dwarfs from engaging in non-exploitative sporting or recreational events of the type engaged in by persons who are not dwarfs.

(4) The division is authorized to impose all the penalties set forth in Section 561.29 or 561.665, Florida Statutes, against the license of any entity found in violation of this rule.

Rulemaking Authority 561.11, 561.665 FS. Law Implemented 561.665 FS. History--New 8-21-02.

61A-3.049 Bottle Club Licenses.

(1) Definition. A bottle club is:

(a) A commercial establishment;

(b) Operated for profit, whether or not a profit is actually made;

(c) A premises where alcoholic beverages are not sold but where patrons are allowed to consume alcoholic beverages on the premises; and

(d) Located in a building or other enclosed or covered structure.

(2) The definition of a bottle club does not include:

(a) Sporting facilities where events sanctioned by nationally recognized regulatory athletic or sports associations are held.

(b) Bona fide restaurants licensed by the Division of Hotels and Restaurants, whose primary business is the service of full course meals. A public food service establishment licensed by the Division of Hotels and Restaurants is not conclusive in determining whether or not a public food service establishment is a bona fide restaurant. A bona fide restaurant is a premises that holds itself out to be primarily a restaurant, advertises as a full service restaurant, offers a complete menu as opposed to snacks or fast food, and meets all of the requirements of Rule 61A-3.0141, F.A.C., except for the requirement that 51 percent of the gross proceeds come from food and non-alcoholic beverages.

(c) Hotels and motels licensed by the Division of Hotels and Restaurants.

(3)(a) Owners or operators of bottle clubs must hold a bottle club license issued by the Division of Alcoholic Beverages and Tobacco. Applications for a bottle club license shall be made on DBR form 42-049, APPLICATION FOR BOTTLE CLUB LICENSE, incorporated herein by reference and effective 2-26-91.

(b) A DBR form 42-050, PERSONAL QUESTIONNAIRE BOTTLE CLUBS, incorporated herein by reference and effective 2-26-91, must be completed by all applicants and persons directly connected with the business sought to be licensed.

(4) Bottle club licenses are subject to all of the pertinent laws, rules and regulations relevant to alcoholic beverages.

(5) Bottle club licensees may not purchase alcoholic beverages for subsequent sale to patrons nor may they sell alcoholic beverages to patrons.

(6) Bottle club licensees are subject to all general, special, and local laws regulating vendors of alcoholic beverages including laws or ordinances permitting the operation of bottle clubs after the hours of sale for alcoholic beverages have elapsed.

Rulemaking Authority 561.11, 561.14 FS. Law Implemented 561.14, 562.121 FS. History--New 2-26-91, Formerly 7A-3.049.

61A-3.050 Special Low-proof Products.

Special low-proof products are defined as products which contain less than 6 percent alcohol by volume. Distilled, mixed, or fermented products which contain less than 6 percent alcohol by volume shall mean only those products sealed by the manufacturer and offered for sale to vendors through licensed distributors in the originally sealed containers.

Rulemaking Authority 561.11 FS. Law Implemented 564.06(5), 562.02 FS. History—New 4-1-91, Formerly 7A-3.050, Amended 1-20-97.

61A-3.052 Identification to Verify Age.

(1) A licensee who has been cited in an administrative action for violations of Sections 562.11(1)(a) and 859.06, Florida Statutes, shall have a defense to any administrative action if the underage person falsely evidenced that he was of legal age to purchase the alcoholic beverage, cigarettes, or tobacco products or consume the alcoholic beverage product and the appearance of the person was such that an ordinarily prudent person would believe the person is of legal age to purchase or consume those products, and if the licensee attempted to verify the person's age by checking one of the following forms of identification with respect to the person:

- (a) A driver's license, issued by any government agency, domestic or foreign, provided it includes a photograph;
- (b) Identification cards issued by any state, provided it includes a photograph;
- (c) Passports;
- (d) An identification card issued by any branch of the United States military which shows the customer is currently serving in the United States Armed Services or is a family member of a person currently serving in the United States Armed Services.

(2) It is the responsibility of each licensee/permittee to provide and train their employees so that they will recognize or be able to compare an identification card presented by a customer with a facsimile of the legitimate identification card. The division shall advise any licensee who requests information about identification source materials where they can be purchased to assist in their training programs to determine if an identification card is genuine.

(3) No other type of identification will be recognized as mitigation if a licensee or a licensee's employee sells, gives, or serves alcoholic beverages, cigarettes, or tobacco products to an underage person.

Rulemaking Authority 561.11 FS. Law Implemented 561.29, 561.701-.706, 562.11 FS. History—New 2-28-94.

61A-3.053 Hardship for Extension to Activate Quota License.

(1) The division shall grant an extension to all licensees who request that their license remain inactive if the licensee can demonstrate to the division that:

- (a) The value of the license is less than the licensee's original cost of the license;
- (b) The licensee has listed the license with a broker in a formal written agreement;
- (c) The licensee is advertising the license at least monthly in a newspaper of general circulation in the classified section;
- (d) If a corporate license has more than one shareholder, then documentation proving that corporate approval is pending for activation of the license at a new location;
- (e) Documentation that activation of the license is pending a land use approval of a new site (special exceptions, zoning, variances, environmental approvals, and comprehensive plan amendments); or
- (f) Documentation showing the ongoing negotiation of a lease or purchase of a building or land.

(2) A licensee who owns a quota license may petition the division for an extension to activate the license by setting forth in writing evidence of any one or more of the hardships or attempts to activate as specified above. Each petition must include an estimated date to activate the license and additional extension must be requested by petition at least 30 days prior to the activation date.

(3) The division shall state in all extension letters the 12-month period the licensee must operate the license for the required time set forth in Sections 561.29(1)(h) and (1)(i), Florida Statutes.

(4) "Active" shall mean that the licensee is in compliance with Section 561.29, Florida Statutes, and is making weekly purchases of alcoholic beverages from distributors, the license is located at a business premises, and sales of alcoholic beverages are made each week.

Rulemaking Authority 561.11 FS. Law Implemented 561.29 FS. History—New 2-28-94.

61A-3.054 Party-Type Supplies.

(1) Party-type supplies shall only include the following:

- (a) All dairy products;
- (b) Ready to eat deli meats and cheeses, including those packaged by a manufacturer;
- (c) Condiments;
- (d) Sauces;
- (e) Spices;
- (f) Eggs;
- (g) Chips, popcorn, and nuts;
- (h) Crackers;
- (i) Ingredients for salads, dips, and dressings;
- (j) Cooked foods ready to eat;
- (k) Bread;
- (l) Candy; and
- (m) Fruit;
- (n) Napkins, paper and plastic plates and cups, and eating and serving utensils;
- (o) Wine and liquor opening, storage, and serving utensils and equipment;
- (p) Publications relating to alcoholic beverage products and recipes;
- (q) Items containing the logo, trade name, or trademark relating to alcoholic beverages;
- (r) Gift wrapping accessories and greeting cards; and
- (s) Ice.

(2) A licensee may petition the division for permission to sell products other than those listed, provided the licensee can clearly show the item is to be used as a party-type supply. This petition shall be submitted to the director of the division at Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1020, and must be approved prior to selling or offering the item for sale.

(3) For the purpose of package store restrictions set forth in Section 565.04, Florida Statutes, merchandise shall not include services or sales authorized in the “Florida Public Lottery Act”, Chapter 24, Florida Statutes.

Rulemaking Authority 561.11 FS. Law Implemented 565.04, 565.045 FS. History—New 2-28-94.

61A-3.055 Items Customarily Sold in a Restaurant.

(1) As used in Section 565.045, Florida Statutes, items customarily sold in a restaurant shall only include the following:

- (a) Ready to eat appetizer items; or
- (b) Ready to eat salad items; or
- (c) Ready to eat entree items; or
- (d) Ready to eat vegetable items; or
- (e) Ready to eat dessert items; or
- (f) Ready to eat fruit items; or
- (g) Hot or cold beverages.

(2) A licensee may petition the division for permission to sell products other than those listed, provided the licensee can show the item is customarily sold in a restaurant. This petition shall be submitted to the director of the division at Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1020, and must be approved prior to selling or offering the item for sale.

(3) For the purpose of consumption on premises regulations set forth in Section 565.045, Florida Statutes, items customarily sold in a restaurant shall include services or sales authorized in the “Florida Public Lottery Act”, Section 24.122(4), Florida Statutes.

Rulemaking Authority 561.11 FS. Law Implemented 565.045, 24.122(4) FS. History—New 12-20-94.