

## CHAPTER 61A-4 MANUFACTURERS AND DISTRIBUTORS

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### **61A-4.003 Delinquent Accounts, Reporting.**

(1) All distributors of alcoholic beverages shall report weekly, to the Division on forms prescribed by the Division for that purpose, all vendors that have been delinquent in the payment of their accounts for the purchase of alcoholic beverages. Each delinquent vendor shall be so reported on a separate report and a copy of such report shall be furnished the vendor by the distributor at the time the report is filed with the Division. If purchases involved in the delinquency were made by a chain or pool buying cooperative, the report shall so state. In the case of a co-op purchase, the agent for the co-op shall be notified in the same manner as

any other vendor. All such reports of delinquent accounts for the purchase of alcoholic beverages submitted to the Division must be accompanied by a complete copy of all invoices and delivery tickets representing or reflecting the delinquency for the single transaction as shown by the records of the distributor.

(2) Upon receipt of such documents, the vendor will be placed on the "delinquent list," in accordance with the provisions of Subsection 561.42(4), Florida Statutes. Vendors will be placed on the "delinquent list" for the invoiced amount, or in the case of chain or pool buying cooperatives for the master invoiced amount of the delinquency, on purchases of alcoholic beverages only.

*Specific Authority 561.11 FS. Law Implemented 561.01(10), 561.42(3),(4),(5) FS. Florida Beverage Corporation, Inc. et al. v. Wynne, 306 So. 2d 200 (Fla. 1st DCA 1975). History—Repromulgated 12-19-74, Amended 3-1-76, 11-28-76, 1-28-80, Formerly 7A-4.03, 7A-4.003.*

#### **61A-4.005 Brand Registration.**

(1) Each brand or label of spirituous beverages sold or offered for sale within the State of Florida or transported within the State of Florida must be registered with the Division and must have a brand registration number assigned to it by the Division. Requests for registration of brands shall be submitted on forms prescribed by the department for that purpose and in the manner prescribed by the Division.

(2) The manufacturer, distiller, rectifier, processor, blender, bottler, importer and distributor of each brand or label that is to be registered with the Division is responsible for its registration and for the payment of fees in connection with such registration; provided, however, nothing herein shall prevent a distributor or venter from disposing of a brand in the normal course of business if the brand's registration has not been renewed subsequent to the purchase of the alcoholic beverage by the distributor or vendor.

(3) The registration of any brand or labels may be suspended or revoked in the same manner as a beverage license for any violation by the registrant or its agent of any of the beverage laws of the State of Florida or of any rules, regulations or administrative orders promulgated pursuant thereto. During the period of the suspension or revocation of the registration of any brand or brands or labels no distributor shall purchase, receive, bring into, or cause to be brought into the State of Florida any such brand or label. No brand under suspension or revocation may be re-registered by another registrant.

(4) The registration year for all brands or labels shall be from July 1 to June 30 inclusive of each year.

(5) Annual registration of brands shall be effected by additions to or deletions from the master list of the registrant for the previous year and by the payment of twenty (\$20.00) dollars for each brand of label registered.

(6) Subsequent to the annual registration of brands or labels, any registrant desiring to register new brands or labels under which spirituous beverages are to be sold or offered for sale or transported within the State of Florida may register such brand or label on a registration form prescribed by the Division for that purpose and must make payment of twenty (\$20.00) dollar registration fee for each such brand or label. The payment of the \$20.00 registration fee shall be for the balance of the current registration year as set forth in Section (4) above.

(7) Distributors or vendors are prohibited from possessing, dealing in, or exercising control over any spirituous beverages if the brand or label of such spirituous beverages has not been registered with the Division as provided by law. Any such spirituous beverages shall be seized by the Division and disposed of in a manner prescribed by law.

*Specific Authority 561.11 FS. Law Implemented 565.08, 565.09 FS. History—Repromulgated 12-19-74, Amended 3-1-76, Formerly 7A-4.05, 7A-4.005.*

#### **61A-4.007 Salesmen Excluded as Vendors.**

No person employed by a distributor of alcoholic beverages in the capacity of a salesman may be issued a vendor's license.

*Specific Authority 561.11 FS. Law Implemented 561.22 FS. History—Repromulgated 12-19-74, Formerly 7A-4.07, 7A-4.007.*

#### **61A-4.009 Monthly Reports.**

(1) Manufacturers and distributors of alcoholic beverages shall keep complete and accurate records and shall make full and complete reports reflecting the detail of all transactions on the appropriate and applicable DBR forms, 620A-1 Distiller Monthly Report Of Production And Bonded Storage Operation Of Bulk Spirits; DBR 620A-2 Distiller Monthly Report Of Production And Bonded Storage Operation Of Bulk Spirits Summary; DBR 620A-3 Returns To Stock Previously Reported Sold Bulk Spirits; DBR 620A-4 Sales Only Within The State\* Bulk Spirits; DBR 620A-5 Out of State Sales\* Bulk Spirits; DBR 620A-6 Bulk Spirits Transferred To Bottling Premises; DBR 620A-7 Details of Deductions; DBR 621A-1 Distiller Monthly Report Of Production And Bonded Storage Operation Of Bulk Spirits; DBR 621A-2 Distiller Monthly Report of Production and Bonded Storage Operation Of Bulk Spirits Summary; DBR 621A-3 Returns To Stock Previously Reported Sold Bulk Spirits; DBR 621A-4 Sales Only Within The State\* Bulk Spirits; DBR 621A-5 Out-Of-State Sales Bulk Spirits; DBR 621A-6 Bulk Spirits Transferred To Bottling Premises; DBR 621A-7 Details Of Deductions; DBR 622A-1 Distiller Or Rectifier Monthly Report Of Bottling Operations; DBR 622A-2 Distiller Or Rectifiers Monthly Report Of Bottling Operations Summary; DBR 622A-3 Returns To Stock Previously Reported Sold; DBR 622A-4 Sales Only Within The State\*; DBR 622A-5 Out Of State Sales\*; DBR 623A-1 Distiller Or Rectifier Monthly Report of Bottling Operations Spirituous Beverages; DBR 623A-2 Distiller Or Rectifiers Monthly Report Of Bottling Operations Summary; DBR 623A-3 Returns To Stock Previously Reported Sold; DBR 623A-4 Sales Only Within The State\*; DBR 623A-5 Out of State\*; DBR 624A-1 Distillers And Rectifiers Report Of Bottling Operations; DBR 624A-2 Distillers And Rectifiers Report Of Bottling Operations; DBR 624A-3 Distillers And Rectifiers Report Of Bottling Operations Details Of Bulk

Spirits Received; DBR 625A-1 Exporter's Monthly Receiving Report; DBR 625A-2 Exporter's Monthly Withdrawal Report; DBR 636A-1 Beer Manufacturer's Monthly Report; DBR 636A-2 Beer Manufacturer's Monthly Report Summary Page; DBR 636A-3 Beer Manufacturer's Monthly Report Of Returns To Stock; DBR 636A-4 Beer Manufacturer's Monthly Report Received From Other Breweries; DBR 636A-5 Beer Manufacturer's Monthly Report Sales To Other Wholesalers In State; DBR 636A-6 Beer Manufacturer's Monthly Report Details Of Out-Of-State Sales; DBR 636A-7 Beer Manufacturer's Monthly Report Exported Out Of Country; DBR 636A-8 Beer Manufacturer's Monthly Report Of Returns To Stock Laboratory Samples; DBR 636A-9 Beer Manufacturer's Monthly Report Other Tax Exempt Sales; DBR 640A-1 Manufacturer's Monthly Wine Report; DBR 640A-2 For Taxable Wine Manufactured In Florida; DBR 640A-3 For Taxable Wine Manufactured In Florida; DBR 640A-4 Manufactured And Sold In Florida Only; DBR 640A-5 For Taxable Wine Manufactured In Florida Returns To Stock; DBR 640A-6 For Taxable Wine Manufactured In Florida And Sold Outside The State; DBR 643A-1 For Taxable Wine Only; DBR 643A-2 Wine Bottled In Florida/Sold Other Wholesalers In Bulk; DBR 643A-3 Wine Bottled In Florida; DBR 626A-1B Wholesale Distributors Beer Tax Report; DBR 626A-2B For Taxable Malt Beverages Only; DBR 626A-1L Wholesale Distributors Regular Liquor Tax Report; DBR 626A-2L For Taxable Regular Liquor Only; DBR 626A-1SL Wholesale Distributors Special Liquor Tax Report; DBR 626A-2SL For Special Liquor Only; DBR 626A-1W Wholesale Distributors Regular Wine Tax Report; DBR 626A-2W For Taxable Regular Wine Only; DBR 626A-1SW Wholesale Distributors Special Wine Tax Report; DBR 626A-2SW For Special Wine Only; DBR 626A-3 Distributor's Monthly Report; DBR 626A-3 Distributor's Monthly Report; DBR 626A-D Details of Distributor's Monthly Report; which forms are currently effective 8-20-87. Copies of the appropriate District Office having jurisdiction. Copies of the above forms may be obtained by writing to the appropriate District Office having jurisdiction. The report and remittance shall be mailed or delivered to the Auditing District Office having jurisdiction on or before the 10th day of each month for the previous months transaction.

(2) Such required reports and remittances shall be deemed to be filed in a timely manner and qualify the distributor for collection credits and allowances under Sections 563.07, 564.06(6) and 565.13, Florida Statutes, when the report and remittance are received by the proper office of the Division on or before the 10th day of the month or, in those cases where the 10th falls on a Saturday, Sunday or legal holiday, monthly reports and remittances shall be accepted as timely filed if postmarked or delivered to the Division on the following business day which is neither a Saturday, Sunday or legal holiday. As used in this rule, legal holiday means those days as designated in Section 110.117, Florida Statutes.

(3) If reports and remittances are physically delivered to the Division's office by the U.S. Postal Service, other established businesses engaged in the delivery of mail, or by the distributor after the 10th day of the month and supported with affidavits, letters or records by the distributor or manufacturer or their agent that the report was physically delivered to the U.S. Postal Service, other established businesses engaged in the delivery of mail, in accordance with subsection (2) above, the Division shall approve the collection credit and allowances.

(4) Failure of the distributors to report and remit excise taxes as required in subsection (2) or (3) above, shall cause the distributor to forfeit all rights and privileges of collection credits and allowances authorized by Sections 563.07, 564.06(6), and 565.13, Florida Statutes, and shall be deemed delinquent.

(5) Mail containing the monthly report or the excise tax remittance must bear a date mark stamp affixed by the U.S. Postal Service, or other established businesses engaged in the delivery of mail, to authenticate the mailing date. Postage meters owned, leased or operated by the distributor or manufacturer shall not serve as proof of mailing date without supporting affidavits, letters or records by the distributor or manufacturer that the reports were placed in the U.S. Mail, on or before the 10th day of the month.

*Specific Authority 561.11 FS. Law Implemented 561.55, 561.111 FS. History—Repromulgated 12-19-74, Formerly 7A-4.09, Amended 8-20-87, Formerly 7A-4.009.*

#### **61A-4.010 Reports, Out of State Shipments.**

All out of state manufacturers, importers and distributors who ship any alcoholic beverages into the State of Florida shall file a report of all such shipments with the Division on or before the 10th of each month for the previous month. Such reports shall be made on forms prescribed by the Division for that purpose and shall reflect the kind of beverages shipped into Florida, the date of shipment, the quantity shipped and the party to whom such alcoholic beverages were shipped and must include beverages shipped in Federal bond.

*Specific Authority 561.11 FS. Law Implemented 561.54 FS. History—Repromulgated 12-19-74, Formerly 7A-4.10, 7A-4.010.*

#### **61A-4.011 Inventory Forms, Spirituous, Vinous, and Malt Beverages.**

(1) Each manufacturer and distributor of spirituous, vinous, or malt beverages shall have printed or reproduced inventory forms listing each brand or label and size container of all spirituous, vinous, and malt beverages sold by such manufacturer or distributor. Such inventory form shall indicate the advance disposal fee status of each container and the number of units per case.

(2) Each such manufacturer or distributor shall be required to furnish the division's office wherein such manufacturer distributor's licensed place of business is situated and reporting, upon request, a sufficient supply of such inventory forms to be used in connection with the division's audit of such manufacturer or distributor's records.

*Specific Authority 561.02, 561.11 FS. Law Implemented 561.55, 561.29(2) FS. History—Repromulgated 12-19-74, Amended 3-1-76, Formerly 7A-4.11, 7A-4.011, Amended 2-24-94.*

**61A-4.012 Spirituous Beverages, Distributor Ledger Records or Print-out of Electronic Data Processing Accounting Records.**

Each distributor of spirituous beverages must maintain at his licensed premises a ledger account or print-out of electronic data processing accounting records for each vendor to which sales of spirituous beverages are made. All sales to each vendor and all payment received from each vendor must be recorded on the ledger account or printout of electronic data processing accounting records as follows:

- (1) Sales to Vendors: The date of sale, the number of the invoice covering the sale and the amount of the sale must be posted to the ledger account or printout of electronic data processing accounting record.
- (2) Payments from Vendors: The date payment was received and the amount of payment must be posted to the ledger account or printout of electronic data processing accounting record.
- (3) Such ledger accounts or printout of electronic data processing accounts must be retained by the distributor at his licensed premises for a period of three years.

*Specific Authority 561.11 FS. Law Implemented 561.55 FS. History—Repromulgated 12-19-74, Amended 3-1-76, 6-27-76, Formerly 7A-4.12, 7A-4.012.*

**61A-4.013 Malt Beverages, Differential Prices or Change of Prices.**

(1) If a manufacturer or distributor of malt beverages shall establish differential prices or change of prices on such beverages according to the quantity sold, such manufacturer or distributor must file the differential prices or changes of prices with the Division giving ten (10) days notice before change of price becomes effective.

(2) If any such manufacturer or distributor operates branches and maintains a price structure that establishes different prices in said branches than the prices established at the parent place of business, price list for such branches and the parent place of business must be filed with the Division.

(3) If any such manufacturer or distributor establishes price differentials on the same quantity but in different counties, price lists should be filed by county.

(4) All price lists required to be filed in the following manner: original to central office of the Division at Tallahassee; duplicate to the appropriate district office.

*Specific Authority 561.11 FS. Law Implemented 561.42(1) FS. History—Repromulgated 12-19-74, Formerly 7A-4.13, 7A-4.013.*

**61A-4.0131 Malt Beverages, Keg Deposits.**

(1) Distributors of malt beverages as defined in Section 563.05, Florida Statutes, upon the sale of such beverages in "draft kegs" to a vendor, shall require from all vendors a keg deposit of an amount not less than that charged the distributor by his brewer for each keg of beer sold. The amount of deposit charged to vendors for draft kegs of like brand shall be uniform.

(2) Charges made for deposits collected and credits allowed for empty containers returned must be shown separately on all such sales tickets or invoices. A copy of such sales tickets or invoices must be given to the vendor at the time of delivery.

*Specific Authority 561.11 FS. Law Implemented 561.42(1), 563.08 FS. History—New 6-13-77, Formerly 7A-4.131, 7A-4.0131.*

**61A-4.014 Alcoholic Beverages, Sale to Government Installations.**

Each licensed manufacturer or distributor making such tax free sales of alcoholic beverages shall attach to his monthly report a copy of all invoices or sales slips for each such tax free sale. The invoices or sales slips must be signed by a person authorized to receive and sign for such tax free beverages. The name of every person authorized to receive and sign for such tax free beverages must be filed with the appropriate district office of the Division of Beverage by the commanding officer of the armed services reservation concerned.

*Specific Authority 561.11 FS. Law Implemented 563.05, 564.06(7), 565.12 FS. History—Repromulgated 12-19-74, Amended 3-1-76, 9-5-84, Formerly 7A-4.14, 7A-4.014*

**61A-4.018 Rental Between Vendor and Distributor Prohibited.**

It shall be considered a violation of Section 561.42, Florida Statutes, for any distributor to rent any property to a licensed vendor or from a licensed vendor if said property is used, in whole or part as part of the licensed premises of said vendor or if said property is used in any manner in connection with said vendor's place of business.

*Specific Authority 561.11 FS. Law Implemented 561.42(1) FS. History—Repromulgated 12-19-74, Formerly 7A-4.18, 7A-4.018.*

**61A-4.020 Storage Permits.**

(1) Manufacturers, rectifiers, distributors, vendors and cooperatives or pool buying vendors who require additional storage outside of their licensed premises must obtain a permit therefor. Such permits can be obtained from the Division without fee, provided that the storage room is located in the same county as the parent place of business of the licensee or agent of such cooperatives or pool buying vendors to whom the permit was issued and provided that no such permits shall be issued to a structure which is or is a part of the residence or garage of a licensee or any employee of any licensee. Such permits authorize the storage of

alcoholic beverages only in sealed containers. Applications for such permits shall be made on forms prescribed by the Division for that purpose and shall be submitted to the district supervisor of the district in which the licensed place of business for which the permit is sought is located.

(2) The district office will prepare, in quadruplicate, a permit showing the name of the licensee and the licensed premise(s) he owns and operates. The permits will be validated by the signature of the district supervisor and distributed as follows: Original, to be posted on door of storage room; Second Copy, posted with license; Third copy, sent with copy of application and inspection report to Central Office licensing; Fourth copy, filed in field office license file.

(3) Applications for off-premises storage permits may be accepted at any time; however, renewals will be issued on an annual basis concurrent with the beverage license year and shall automatically renew with the renewal of the beverage license. Should the ownership of the beverage license change, a new off-premises storage permit will be required, otherwise, the permit shall remain in effect until cancelled by the licensee or division.

(4) In the event a licensee discontinues the use of storage permits, both copies shall be forwarded to the district office for cancellation.

(5) By acceptance of such storage permit, the licensee shall agree that the storage premise shall be subject to search by authorized employees of the Division, sheriffs, deputy sheriffs, and police officers during the hours such premise is occupied.

*Specific Authority 516.11 FS. Law Implemented 561.07, 562.03, 565.03(2) FS. History—Repromulgated 12-19-74, Amended 3-1-76, 1-28-80, Formerly 7A-4.20, 7A-4.020.*

#### **61A-4.023 Shipments, for Consumption Outside of Florida.**

Manufacturers or distributors shipping or delivering alcoholic beverages for consumption outside the confines of the State of Florida must supply the Division with a copy of the bill of lading, must show type of beverages, amount by size container and gallonage of each type shipped by common carrier or licensees' vehicles and a certificate from a representative of the appropriate regulatory agency of the jurisdiction into which the alcoholic beverages were shipped stating the shipment has been reported properly to that agency.

*Specific Authority 561.11 FS. Law Implemented 561.49 FS. History—Repromulgated 12-19-74, Formerly 7A-4.23, 7A-4.023.*

#### **61A-4.028 Delivery or Imports into Florida.**

Any person, firm or corporation bringing or delivering into the State of Florida any alcoholic beverages in an amount exceeding one gallon (standard U.S. gallon) is required to report such deliveries to the Division of Beverage on forms prescribed for that purpose. Such reports shall show the name of the shipper and consignee, the brand and type of beverages being delivered and the quantity of alcoholic beverages being delivered. The quantity must be reported, either in gallons or cases, and if it is reported in cases, the report must show the number and sizes of bottles in each case.

*Specific Authority 561.11 FS. Law Implemented 561.55(1), 562.20 FS. History—Repromulgated 12-19-74, Formerly 7A-4.28, 7A-4.028.*

#### **61A-4.030 Deliveries to Vendors.**

No manufacturer or distributor may deliver alcoholic beverages to a vendor at a location other than the licensed premises of a vendor for which the invoice covering the purchase of such alcoholic beverages has been prepared or a premises for which the vendor has secured an off-premises storage permit.

Deliveries may also be made at the warehouse of a manufacturer or distributor to a vendor or his authorized agent; provided, however, that all such deliveries must be made to a vehicle to which is attached a Division of Beverage Vehicle Permit issued to the licensee making such purchase and, provided further that the invoice or sales ticket covering all such purchases and deliveries must show, in addition to the information required by other rules, the Vehicle Permit number and the fact that the delivery was made at the warehouse of the manufacturer or distributor. Manufacturers engaged in the business of distilling, rectifying or blending of spirituous liquors licensed under Section 565.03(1), shall not make deliveries of alcoholic beverages to any vendor in violation of Section 561.14(1).

*Specific Authority 561.11 FS. Law Implemented 561.14(1), 561.56, 561.57, 565.03(1) FS. History—Repromulgated 12-19-74, Amended 3-1-76, Formerly 7A-4.30, 7A-4.030.*

#### **61A-4.031 Delivery to Vendors and Accumulated Discounts.**

Accrued, accumulative or retroactive discounts are prohibited by statute. Therefore, any discount given on the purchase of alcoholic beverages by a vendor must be given only on alcoholic beverages purchased in a single transaction. In order for quantity discounts on malt beverages to be granted, all of the quantity required to be purchased to qualify for the quantity discount must be delivered to a single location i.e., the total volume of malt beverages upon which the discount is based shall not be subdivided for delivery to multiple locations. However, the total quantity may be subdivided for delivery to a single licensed location or off-premise storage warehouse provided the total volume is delivered to that premise on a single day during the calendar week.

(1) Delivery of all alcoholic beverages purchased in a single transaction must be made during the same calendar week.

(2) Payment for alcoholic beverages purchased in a single transaction as defined by Rule 61A-1.011 must be made within the period of time prescribed by law.

(3) Any discount given a vendor for the purchase of alcoholic beverages shall be a cash discount and shall be reflected on the invoice covering such sale.

*Specific Authority 561.11 FS. Law Implemented 561.42(6), 561.01(10) FS. History—Amended 7-20-64, 3-24-65, 11-17-70, Repromulgated 12-19-74, Amended 3-1-76, Formerly 7A-4.31, Amended 1-9-91, Formerly 7A-4.031.*

#### **61A-4.0371 Excise Tax Deduction for Breakage and Spoilage of Alcoholic Beverages.**

(1) Distributors which distribute malt, vinous, and spirituous beverages shall make an excise tax deduction in their monthly tax report for alcoholic beverages which have become unsaleable through warehouse breakage, spoilage, evaporation, expiration, or which have become unfit for human consumption in an amount equal to .49 percent of gross tax for vinous sales; .15 percent of gross tax for spirituous beverage sales; and .20 percent of gross tax for malt beverage sales or the actual breakage or spoilage destruction witnessed and documented by the division employee or other authorized person. The method of breakage for malt beverages (percentage or actual) must be elected annually and will be effective for 1 year unless the license is transferred or 100 percent of the stock is sold to a new owner. Distributors who engage in the sale of more than one type of alcoholic beverage shall utilize the provisions of this subsection for all sales of malt, wine, and liquor products.

(2) However, extraordinary losses, as defined hereafter in this subsection, of malt, vinous, and spirituous alcoholic beverages shall be excluded from the standard rates applied in subsection (1) above. Extraordinary losses of alcoholic beverages shall constitute unusual losses which are not expected to recur resulting from acts of God or nature, and accidents which occur during interstate or intrastate shipment from manufacturers to distributors, from distributor to distributor, and from distributor to retailer, or products recalled by manufacturers and destroyed by the distributor. Extraordinary losses shall not include losses from evaporation, breakage, or spoilage incurred on the licensed premises in the normal course of business which merely exceed the standard deductions referenced in subsection (1). The distributor shall notify the division immediately upon the occurrence of an extraordinary loss of merchandise. The actual gallonage of the extraordinary loss shall be deducted by the distributor. The distributor shall show proof of the extraordinary loss occurrence prior to recovery or crediting of any excise tax due on unsaleable alcoholic beverages by either providing a copy of a traffic accident investigation or incident report from the investigating agency when the loss occurs in transit, or be witnessed by an authorized division employee where the loss occurs on the premise of the distributor, or other appropriate documentation which clearly and objectively establishes the extraordinary loss. The distributor shall show proof of the destruction, dumping or recycling of the alcoholic beverages involved in the extraordinary loss occurrence by providing a statement to the division from the distributor's employee responsible for the destruction or recycling. The statement shall include a description of alcoholic beverages, by gallon and tax category, which have been destroyed or recycled and a statement as to the location of the extraordinary loss occurrence and the location of the site of destruction or recycling.

(3) The distributor shall notify the division to witness the remaining undamaged, invoiced inventory which is utilized by the distributor. The distributor reporting extraordinary breakage, spoilage or evaporation shall furnish proof that Florida Excise Taxes have not been recovered from any other source. Copies of all insurance claims and receipt of payments shall be provided by the distributor to the division upon request by the division. The actual gallonage of breakage, spoilage, or evaporation of alcoholic beverages shall be recorded on form BPR-648A effective January 14, 1987 and incorporated herein by reference and will contain the date of product destruction, quantity destroyed by tax classification, and a statement signed by the distributor's authorized employee or agent that the product was destroyed. A copy of form BPR-648A may be obtained by writing to the Department of Business and Professional Regulation. All completed forms shall be maintained for a period of 3 years.

*Specific Authority 561.11 FS. Law Implemented 561.55(1), 563.05, 564.06, 565.12 FS. History—New 3-1-76, Formerly 7A-4.371, Amended 7-1-87, Formerly 7A-4.0371, Amended 2-24-94.*

#### **61A-4.040 Tax Free Beverages, Vessels or Aircraft.**

Manufacturers and distributors may sell alcoholic beverages to vessels or aircraft without payment of any of the taxes imposed on such alcoholic beverages under the beverage law, if the Federal Government permits such sales to be made without payment of Federal Excise taxes or if the Federal Government permits a refund of the Federal Excise Tax on such sales of alcoholic beverages. A copy of the evidence furnished to the Federal Government by the manufacturer or distributor for the purpose of securing a tax exemption or refund of tax payment on any such sale must be attached to the monthly report filed by the manufacturer or distributor.

*Specific Authority 561.11 FS. Law Implemented 561.49 FS. History—Repromulgated 12-19-74, Formerly 7A-4.40, 7A-4.040.*

#### **61A-4.043 Invoice by Alcoholic Beverages K-LD License Series Distributors, Spirituous, Malt and Vinous Beverages.**

(1) Any sale of spirituous beverages made by a distributor to a vendor must be evidenced by an invoice or sales ticket which shall reflect the following information:

- (a) Name and address of the distributor;
- (b) Date invoice was prepared;
- (c) Date of delivery;

- (d) Whether merchandise was delivered by common carrier or distributor's equipment;
- (e) Identification of salesman making sale;
- (f) Name, address and license number of the vendor to whom the merchandise was sold;
- (g) Brand name, amount of cases and size of container in each case, or number of bottles and size of container in each case, or number of bottles and size of bottles and total gallons sold by each tax classification; provided, however, the gallonage tax breakdown is not required on the invoice if such information is retained elsewhere in the distributor's records on a daily summary basis;
- (h) Gross unit cost, amount of discount and net cost of each item of merchandise. Gross amount of the invoice, total amount of discount and net amount due; and
- (i) Date payment is due.

(2) Each distributor collecting and remitting an advance disposal fee on containers shall separately identify the amount of any advance disposal fee imposed on the invoice or other form of accounting of the transaction submitted by the distributor to a vendor to which such container is sold or distributed. Such total advance disposal fee due shall be separately identified on the invoice by stating "Advance Disposal Fee" or using the abbreviation "ADF" or other abbreviations or statements approved in writing by the division. Separate lines may identify the items on the sales or credit invoices subject to the Advance Disposal Fee.

(3)(a) Invoices or sales tickets shall be used by distributors for the sale and delivery of malt, vinous, and spirituous beverages to vendors. A distributor may elect to use a separate invoice for each type of beverage or may use a single invoice for all items sold and including non-alcoholic merchandise.

(b) In the event that a distributor elects to bill sales of more than one type of alcoholic beverage (spirituous, vinous, malt) on a single invoice, the invoice must contain the same information that is furnished on a separate invoice prepared for each type of beverage.

(4) A master invoice must be prepared for all alcoholic beverages purchased in a single transaction by cooperative or pool buying vendors, or chain vendors.

(5)(a) If a distributor engages in multiple deliveries not in violation of Section 561.42, Florida Statutes, or these rules, he must:

- 1. Prepare a master invoice for all alcoholic beverages purchased in the single transaction reflected by the invoice, or
- 2. Prepare separate invoices or delivery tickets for each place where merchandise is to be delivered. Such separate invoices or delivery tickets shall clearly indicate thereon that the shipment is part of a single transaction. All separate invoices or delivery tickets relating to a single transaction shall be attached to each other and filed as required by other provisions of this rule.

(b) Invoices or sales tickets must be signed by the vendor or his authorized agent at the time the delivery of the merchandise covered by the invoice is made. A copy of the invoice or sales ticket must be furnished to the vendor at the time of delivery. The vendor must keep the invoice or sales ticket as part of his accounting records for a period of 3 years.

(c) The signed invoice or sales ticket must be kept by the distributor in customer files for a period of 3 years from the date of delivery. An additional copy of each invoice or sales ticket must be filed numerically and by calendar month and kept for a period of 3 years. These invoices or sales tickets must be kept on the licensed premises of the distributor as part of his accounting records.

(6) A quantity discount may be applied in the case of malt beverage sales only on the basis of the quantity of malt beverage delivered to a single location. It shall be considered a violation of Section 561.42, Florida Statutes, for a quantity discount to be applied to the total quantity of malt beverage delivered to more than one location pursuant to a master invoice.

*Specific Authority 561.11 FS. Law Implemented 212.14, 212.15, 561.14, 561.55, 563.08, 561.42 FS. History—Amended 7-25-66, 2-24-67, 10-20-72, Repromulgated 12-19-74, Amended 3-1-76, Formerly 7A-4.43, Amended 1-9-91, Formerly 7A-4.043, Amended 2-24-94.*

#### **61A-4.044 Loading Sheets, Beer and Wine Trucks.**

All manufacturers and/or distributors of beer and wine shall require drivers of trucks distributing beer and wine to vendors to carry a copy of a loading sheet or manifest showing the date the truck was loaded and the number of cases or containers loaded thereon. Manufacturers and/or distributors shall retain file copies of such loading sheets or manifests for a period of three years after their issuance; and such records shall be open to inspection by authorized employees of the Division. No alcoholic beverage may be transported by a manufacturer or distributor unless it is accounted for by a loading sheet, manifest or invoice accompanying the shipment or delivery.

*Specific Authority 561.11 FS. Law Implemented 561.42, 561.55, 563.08 FS. History—Repromulgated 12-19-74, Amended 3-1-76, Formerly 7A-4.44, 7A-4.044.*

#### **61A-4.045 Invoice by Alcoholic Beverages J-DBW and J-DB License Series Distributors, Malt Beverages and Wine.**

(1) Each manufacturer, distributor, broker, sales agent or importer of malt beverages must complete a sales ticket or invoice at the time of sale and delivery of any such malt beverages. Such sales ticket or invoice must have the following information written or printed thereon:

- (a) Date;
- (b) Name and address of the manufacturer, distributor, broker, sales agent or importer making the sale;
- (c) The name, address and license number of the purchaser;
- (d) The number of cases of malt beverages sold;

- (e) The price charged per case; and
- (f) The total price paid for the total amount of merchandise listed on the invoice.

Charges made for deposits collected and credits allowed for empty containers returned must be shown separately on all such sales tickets or invoices. A copy of such sales tickets or invoices must be given to the purchaser at the time of delivery.

(2) Each manufacturer, distributor, broker, sales agent or importer of vinous products must complete a sales ticket or invoice at the time of sale and delivery of any such wines. The sales tickets or invoices must have the following information written or printed thereon:

- (a) Date;
- (b) Name and address of the manufacturer, distributor, broker, sales agent or importer making the sale;
- (c) The name, address and license number of the purchaser; and
- (d) The number of cases of wine sold and the price paid therefore.

The sales ticket or invoice must be signed by the purchaser or his authorized agent at the time delivery is made. A copy of such sales ticket or invoice must be given to the purchaser at the time of delivery.

(3) Each distributor collecting and remitting an advance disposal fee on containers shall separately identify the amount of any advance disposal fee imposed on the invoice or other form of accounting of the transaction submitted by the distributor to a vendor to which such container is sold or distributed. Such total advance disposal fee due shall be separately identified on the invoice by stating "Advance Disposal Fee" or using the abbreviation "ADF" or other abbreviations or statements approved in writing by the division. Separate lines may identify the items on the sales or credit invoices subject to the Advance Disposal Fee.

(4)(a) All such sales tickets or invoices must be kept on file at the licensed premises of each manufacturer, distributor, broker, sales agent and importer for a period of 3 years from the date shown on such sales tickets or invoices and shall be opened to inspection by an authorized employee of the division during regular business hours.

(b) Provided, however, that if any such licensed entity requests in writing for permission to store records off the licensed premises, and states the reasons for such request, the sales tickets and invoices of any such licensee may be maintained at another location designated by it and approved by the division. The location designated by such licensee will be approved if it is so situated that said sales tickets and invoices can be made available to the division within 14 days of demand for same by the division.

(5) Failure by any licensee to produce such records for inspection within 14 days of demand shall result in the revocation of the privilege to store records at a location other than the licensed premise.

(6) Approval of the division of a location for the storage of sales tickets and invoices must be in writing and may be obtained by a written request to the Chief, Bureau of Licensing and Records, Division of Alcoholic Beverages and Tobacco.

(7)(a) Invoices or sales tickets shall be used by distributors for the sale and delivery of malt, vinous, and spirituous beverages to vendors. A distributor may elect to use a separate invoice for each type of beverage or may use a single invoice for all items sold including non-alcoholic merchandise.

(b) In the event that a distributor elects to bill sales of more than one type of alcoholic beverage, that is spirituous, vinous, or malt on a single invoice, the invoice must contain the same information that is furnished on a separate invoice prepared for each type of beverage.

(8) A master invoice must be prepared for all alcoholic beverages purchased in a single transaction by cooperative or pool buying vendors or chain vendors where the merchandise is purchased in a single transaction.

(9) If a distributor engages in multiple deliveries not in violation of Section 561.42, Florida Statutes, or these rules, he must:

(a) Prepare a master invoice for all alcoholic beverages purchased in the single transaction reflected by the invoice, or

(b) Prepare separate invoices or delivery tickets for each place where merchandise is to be delivered. Such separate invoices or delivery tickets shall clearly indicate thereon that the shipment is part of a single transaction. All separate invoices or delivery tickets relating to a single transaction shall be attached to each other and filed as required by other provisions of this rule.

*Specific Authority 561.11 FS. Law Implemented 212.14, 212.15, 561.14, 562.21, 562.22, 561.42, 561.55, 563.08 FS. History—Amended 7-21-65, 12-20-73, Repromulgated 12-19-74, Amended 3-1-76, Formerly 7A-4.45, Amended 3-5-86, Formerly 7A-4.045, Amended 2-24-94.*

#### **61A-4.046 Alcoholic Beverages, Samples, Withdrawals.**

(1) A distributor may furnish or give a sample of distilled spirits, wine, or malt beverages to a retailer who has not previously purchased the brand from that distributor. For each retail establishment, the distributor may give not more than three gallons of any brand of malt beverage, not more than 500 milliliters of any brand of distilled spirits, not more than one gallon of any brand of wine and not more than three gallons of any brand of wine coolers.

(2) Any withdrawal of tax paid samples from the inventory of a distributor as permitted herein must be substantiated by an invoice to a licensed vendor. The invoice shall include:

- (a) Distributor's name and address.
- (b) Date invoice was prepared.
- (c) Date of use for sample.
- (d) Identification of salesman.
- (e) Name and address and license number of the vendor.
- (f) Brand name.

(g) Number of containers and size of containers used in sampling.

*Specific Authority 561.11 FS. Law Implemented 561.42 FS. History—Repromulgated 12-19-74, Amended 3-1-76, 11-20-85, Formerly 7A-4.46, 7A-4.046.*

#### **61A-4.0461 Discounts, Alcoholic Beverages.**

(1) Pursuant to the provisions of Subsection (10) of Section 561.01 and Subsection (1) and (6) of Section 561.42, Florida Statutes, discounts on sales of alcoholic beverages by distributors to vendors shall be considered a subterfuge to evade the beverage laws by the giving of a financial aid or economic assist to the vendor unless:

(a) The discount is a cash discount given simultaneously at the time of sale;

(b) The same discount is offered to all vendors buying similar quantities in any one business day;

(c) The discount is related to a single transaction; and

(d) In the case of malt beverage sales all of the quantity of malt beverage required to be purchased in order to qualify for the discount is delivered to a single location. However, the total quantity may be subdivided for delivery to a single licensed location or off-premise storage warehouse provided the total volume is delivered to that premise on a single day during the calendar week. The giving away of an alcoholic beverage to a vendor by a distributor would be considered a financial aid and economic assist. Any maneuver, shift or device of any kind by which a discount is given contrary to the provisions of this rule shall be considered a violation of this Rule and Subsection (1) and (6) of Section 561.42, Florida Statutes.

(2) All such discounts must be allowed to all vendors buying the same quantities of merchandise as reflected by the deal sheet for that business day.

*Specific Authority 561.11 FS. Law Implemented 561.01(10), 561.42(1),(6) FS. History—New 3-1-76, Formerly 7A-4.461, Amended 1-9-91, Formerly 7A-4.0461.*

#### **61A-4.0501 Cooperative or Pool Buying - Definition; Creation; Record Keeping; Restrictions.**

(1) Cooperative or pool buying shall mean the combining of orders into a single order or transaction, by two or more vendors, who are members of a pool buying group approved by the Division of Alcoholic Beverages and Tobacco, for the purpose of maximizing purchasing power.

(2) There shall be no sales or transfers of alcoholic beverages between members of a cooperative or pool buying group, except as to the combining of individual orders and the placement of a pool order with a distributor. In order to effectuate convenience or economies of delivery of pool orders, a pool member other than the buying agent may transfer to another pool member any portion of the alcoholic beverages ordered by the transferee vendor as part of the single transaction pool purchase provided adequate documentation is retained by the buying agent establishing that the transferee vendor has properly ordered such alcoholic beverages as part of the pool order and an invoice is provided from the transferor vendor to the transferee vendor identifying the pool invoice and establishing that the transfer is being made without cost or charge by the transferor vendor of any nature whatsoever. Transfer pursuant to this paragraph must be made within seven days of the pool delivery without any cost or charge whatsoever being made against the transferee vendor. Warehousing of pool orders by the buying agent shall be done in accordance with paragraphs (6) and (7) of this rule.

(3) A cooperative or pool buying group shall be created in the following manner:

(a) Prior to operating as such, cooperative or pool buying groups shall file with the Division a copy of the agreement under which such group will operate. The Division shall review the agreement and if the requirements of applicable law and rules are met shall approve the agreement.

(b) Any proposed amendment to a cooperative or pool buying agreement shall be filed with and must be approved by the Division in the same manner as original agreements, before said proposed amendment shall be effective.

(c) Cooperative or pool buying agreements shall include the name and address of the cooperative or pool buying group, the name of the buying agent for the group, and for each member, the licensee's name, business name, license number and the date each licensee joined the group.

(d) The buying agent must be a licensed vendor of alcoholic beverages in this state.

(e) A member of the pool or cooperative group shall not be eligible to place an order with said group until such member has first executed the pool buying agreement and the licensee's name, business name, license number and date of membership have been filed with and approved by the Division at its Tallahassee central office.

(f) Any additions or deletions to the membership of the cooperative or pool buying group shall be provided to the Division under signature of the buying agent or its authorized employee. Such notice shall include the effective date of new members and/or the effective date of deletion of existing members. Such notice may be in letter form or on official forms which may be promulgated by the Division.

(g) Upon the transfer, suspension or revocation of any alcoholic beverage license held by a member of a cooperative or pool buying group, the Division shall automatically delete such licensee from membership in the cooperative or pool buying group.

(4) Individual members of a cooperative or pool buying group must place their orders with and remit their payment to the buying agent. Payments shall be made payable to the pool buying agent or the distributor. Distributors of alcoholic beverages may accept pool orders and payment therefor only from the designated buying agent of a cooperative or pool buying group. The buying agent may not use any third party checks in violation of Rule 61A-4.0021.

(5) Where the distributor prepares and keeps a master invoice which identifies the total pool order placed by the buying agent and separately identifies each pool order member's portion of the total pool order by setting forth the name of the buying agent making the order and the information set forth in Rule 61A-4.043(1) through (9), the pool buying agent is not required to keep a separate record of each pool order. Distributors must prepare and keep invoices for pool purchases in accordance with Rule 61A-4.043. Where the distributor does not prepare and keep a master invoice, the pool buying agent must prepare and keep for a period of 3 years, records of each pool order containing:

- (a) The date of each pool order and the name of the distributor with whom each order was placed.
- (b) The names and license numbers of each pool member participating in each pool order.
- (c) The brand, size and quantity of alcoholic beverages ordered by each pool member and each pool purchase.
- (d) The cost to each member for its share of each pool purchase and any vinous and spirituous beverage discount given on any pool purchase.

(6) Where warehousing in accordance with the beverage rules is provided by the buying agent, the buying agent shall keep delivery records in accordance with this paragraph. The buying agent shall maintain all required records at the address filed with the Division. The buying agent shall issue a delivery ticket to the vendor to accompany the order. The vendor shall acknowledge receipt of the order by signing the delivery ticket and returning a copy to the buying agent. The vendor shall keep the original and the buying agent shall keep a copy of the delivery ticket for a period of 3 years. The delivery ticket shall contain the following information: name and address of vendor and buying agent and respective license numbers; and the brand, size, quantity and master sales invoice number for all alcoholic beverages delivered.

(7) The buying agent may store or warehouse any portion of an individual pool member's purchase. However, the buying agent may not warehouse any alcoholic beverages off its licensed premises without first applying for and receiving from the Division an off-premises storage permit.

*Specific Authority 561.11 FS. Law Implemented 561.01(10), 561.14(3), 561.42 FS. History--New 12-3-84, Amended 3-17-85, Formerly 7A-4.501, 7A-4.0501.*

#### **61A-4.056 Primary American Source of Supply.**

(1) One primary American source of supply shall be designated for each brand of spirituous liquors and wines handled in this state by any Florida distributor. The manufacturer or owner of the spirituous liquor or wine at the time the same became a marketable product shall designate the primary American source of supply and such primary American source of supply shall file a registration application with the Division on forms provided by the Division. Each brand of such spirituous liquor or wine shall be individually listed on such registration.

(2) No manufacturer, owner, agent of such person or primary American source of supply shall ship or cause to be shipped into Florida nor shall any Florida distributor receive any spirituous liquors or wines unless the primary American source of supply for such spirituous liquor or wine has filed an application for registration as primary American source which application has been approved by the Division.

(3) The Division shall register only one primary American source of supply for any one brand of spirituous beverages or wine.

(4) Distributors licensed in the State of Florida shall not purchase, receive or be in possession of any spirituous liquors or wines unless the same were obtained directly from a registered primary American source of supply and the invoice to the distributor for such product is from the registered primary American source of supply.

(5) Nothing in this rule shall prohibit subsequent intrastate sales, transfer, and invoicing of spirituous liquor or wine between licensed Florida distributors.

(6) It shall be the responsibility of the primary American source to report on forms provided by the Division all shipments of product to any Florida distributors and to provide copies of invoices going to such distributors.

*Specific Authority 561.11 FS. Law Implemented 564.045, 565.095 FS. History--New 8-31-83, Formerly 7A-4.56, 7A-4.056.*

#### **61A-4.061 Malt Beverages; Exclusive Sales Territories.**

(1) Each licensed distributor that sells or delivers malt beverages is required to file all formal written sales territory agreements prior to selling or delivering any brand or brands of malt beverages to vendors.

(a) Each licensed distributor that has an oral sales territory agreement that was in effect prior to July 6, 1988 shall file a letter of notification to the division that such an oral agreement is in effect, which shall include the following information:

1. The name of the brand or brands covered in the agreement;
2. The name of the parties to the agreement;
3. The effective date of the agreement; and
4. The expiration date of the agreement.

(b) Agreements shall be filed with the division's field offices or the Bureau of Licensing and Records.

(c) The division shall not initiate any administrative remedies against manufacturers, importers, or distributors if sales territory agreements were in effect prior to July 6, 1988, and allowed more than one distributor to sell or deliver malt beverages to vendors in the same sales territory.

(d) Licensed distributors shall report any brand or brands of malt beverages received from a manufacturer or importer for which no letter or formal written agreement has been filed with the division prior to selling or delivering the products to a licensed vendor.

(2) In the event an exclusive sales territory agreement for malt beverages is modified by agreement between a manufacturer or importer and a licensed distributor, the affected distributor shall, within 30 working days, provide such modified agreement to the division.

(3) Each applicant for a license to distribute malt beverages, shall file with the application for licensure a copy of all exclusive sales territory agreements in existence at the time of the application.

(4) Manufacturers and importers shall provide a copy of all formal written agreements specifying exclusive sales territories for malt beverage products to their distributors prior to shipping or causing to be shipped any brand or brands of such products into the state unless the invoice clearly notes "Not for sale to vendors in the State of Florida".

(5) Agreements in effect prior to July 6, 1988 may be subject to judicial review to resolve complaints and interpretation.

*Specific Authority 561.11 FS. Law Implemented 563.021 FS. History—New 10-31-89, Formerly 7A-4.061, Amended 8-25-93.*

#### **61A-4.063 Alcoholic Beverage Surcharge Implemented for Consumption-on-Premises Vendors.**

(1) The basic terms utilized in this rule are defined as follows:

(a) "Purchase" as used in Section 561.501, Florida Statutes, shall be defined as any alcoholic beverages received for consumption on premises. Purchases include beverages bought, beverages received in lieu of discounts, transfers from a vendor's package store, and any other acquisitions from pool-buying groups and all other acquisitions into inventory. "Purchase" shall not include beverages brought in for tastings, nor shall it include displays by manufacturers or distributors pursuant to temporary convention permits.

(b) "Sale" as used in Section 561.501, Florida Statutes, shall occur at the serving of any alcoholic beverage for consumption on premises. "Sale" means any transfer of an alcoholic beverage for a consideration, any gift of an alcoholic beverage in connection with, or as part of, a transfer of property other than an alcoholic beverage for a consideration, or the serving of an alcoholic beverage by a club licensed under the Beverage Law, or any alcoholic beverages that are provided by a minibar in an individual guest hotel or motel room. A sale, for example, occurs when a free drink is provided with the purchase of a drink, drinks are given free to ladies at a "ladies night", or a particular brand is provided free as a promotion. Alcoholic beverages used in the preparation of food for sale are not considered beverages sold for consumption.

(2) Upon making an application for a new or temporary consumption-on-premises license, the applicant must select a method of surcharge calculation by submitting DBR form 44-005E, ELECTION OF SURCHARGE CALCULATION METHOD AND INVENTORY REPORT, incorporated herein by reference and effective 12-22-92, at the time the license application is submitted.

(3) Upon making an application for transfer of a consumption-on-premises license, the applicant must select a method of surcharge calculation by submitting DBR form 44-005E, ELECTION OF SURCHARGE CALCULATION METHOD AND INVENTORY REPORT, at the time the license application is submitted.

(4) The surcharge calculation methods are as follows:

(a) Sales method – Each month, the vendor shall determine the amount of alcoholic beverages sold by using sales records or any alternate method approved in writing by the Division of Alcoholic Beverages and Tobacco. Requests for an alternate sales method must be submitted within 20 days after the issuance of a new license or transfer of an existing license. The surcharge is calculated by multiplying the units of alcoholic beverages sold times the applicable surcharge rate and shall be reported on DBR form 44-005, RETAIL SURCHARGE REPORT, incorporated herein by reference and effective 12-22-92. When a license is transferred from a vendor utilizing the purchases method to a vendor who selects the sales method, the new vendor shall be responsible for the payment of surcharge on alcoholic beverages sold during the month less the inventory recorded at the time of transfer. The inventory is to be reported to the division with the selection of calculation method.

(b) Purchase method – Vendors who select the purchases method shall calculate the surcharge by multiplying the units of all alcoholic beverages purchased during the month times the applicable surcharge rate, less applicable spillage allowances specified in subsection (6) of this rule, and shall be reported on DBR form 44-005, RETAIL SURCHARGE REPORT. When a license is transferred from a vendor utilizing the sales method to a vendor who selects the purchases method, the new vendor shall be responsible for the payment of surcharge on alcoholic beverages purchases during the month including the inventory recorded at the time of transfer. The inventory is to be reported to the division with the selection of calculation method.

(c) If the vendor chooses the sales method, the vendor will bear the burden of proof that the method used accurately reflects actual sales. If the vendor uses the purchases method, the vendor will bear the burden of proof that purchases are accurately recorded.

(d) The consumption-on-premises licensee will be authorized to change the reporting method to be used upon division approval. Those licensees desiring the change must stipulate the month the change becomes effective and inventory all stock as of the effective date and complete DBR form 44-005E, ELECTION OF SURCHARGE CALCULATION AND INVENTORY

REPORT, as referenced in subsection (2) of this rule. When the licensee elects to change from the purchase to the sales method, the licensee shall be responsible for the payment of surcharge for sales during the effective month less the certified inventory as of the first day of the effective month. When the licensee elects to change from the sales to the purchase method, the licensee shall be responsible for the payment of surcharge for purchases during the effective month plus the certified inventory as of the first day of the effective month.

(e) Section 562.45, Florida Statutes, provides that any person willfully and knowingly making any false entries in any records required under the Beverage Law shall be guilty of a felony of the third degree punishable as provided in Sections 775.082, 775.083, and 775.084, Florida Statutes.

(5) The surcharge rates are as follows:

(a) Ten cents for each 1 ounce of liquor;

(b) Ten cents for each 4 ounces of wine;

(c) Four cents for each 12 ounces of beer; and

(d) Commercially produced coolers served in a sealed container, whether beer, wine or liquor-based shall be assessed a surcharge of 4 cents per 12 ounce container.

(6) Vendors reporting under the purchases method are allowed a standard monthly allowance for spillage which may be applied as a deduction from the units of each type of product purchased. Spillage shall include loss from evaporation, breakage and other incidental losses prior to sale. The rate of spillage allowance is 10 percent for draft beer and liquor and 5 percent for all other alcoholic beverage products. Vendors reporting under the sales method are not allowed any monthly allowance for spillage.

(7) No surcharge shall be due on any alcohol that is documented as missing as a result of a reported theft confirmed by a police report or as a result of a casualty confirmed by the filing of an insurance loss claim or report.

(8) Each vendor licensed in any manner for consumption on premises shall maintain complete and accurate records on the quantities of all alcoholic beverage purchases, inventories, and sales. Records include purchase invoices, inventory records, receiving records, cash register tapes, computer records generated from automatic dispensing devices, and any other record used in determining sales. In the event a licensee maintains an active consumption-on-premises license but has no surcharge sales for a specific period of time, the licensee must file monthly surcharge report DBR form 44-005, RETAIL SURCHARGE REPORT, showing no activity. Records may be maintained on optical or visual storage retrieval systems capable of being viewed, retrieved and reproduced upon request by the division. All records must be maintained for a period of 3 years.

(9) Employees of the division shall have access to and shall have the right to examine the accounting records, invoices, or any other source documents used to determine a vendor's compliance with this rule. Each vendor is required to give the division the means, facilities and opportunity to verify the accuracy of the surcharge imposed by Section 561.501, Florida Statutes. In order to determine whether the monthly reports submitted by the vendor are accurate, the division shall use the formula of beginning inventory plus purchases for the period, less ending inventory, less the spillage allowance, to ascertain sales for the period. Adjustments made to this formula in favor of the licensee will be based on factual, substantiated evidence. The results of the formula will represent sales transactions as defined herein and in Section 561.01(9), Florida Statutes, for the period under review.

(10) The surcharge payments due shall be reported on DBR form 44-005, RETAIL SURCHARGE REPORT, as referenced in subsection (4) of this rule.

(a) Required reports and remittances shall be deemed to be filed in a timely manner and qualify the vendor for the 1 percent collection allowance provided for under Section 561.501, Florida Statutes, when the reports and remittances are postmarked or received by the division on or before the 15th day of the month. In those cases where the 15th falls on a Saturday, Sunday, or legal holiday, monthly reports and remittances shall be accepted as timely filed if postmarked or received by the division on the following business day. As used in this rule, "legal holiday" means those days as designated in Section 110.117, Florida Statutes, and Federal holidays.

(b) Failure of the vendor to timely report or remit surcharges as required in paragraph (10)(a) of this rule in any reporting period shall cause the vendor to forfeit all rights and privileges of the 1 percent collection credit authorized by Section 561.501, Florida Statutes, for that reporting period and shall cause the vendor to be deemed delinquent.

(c) Remittances received after the 20th day shall cause the licensee to be subject to late penalties of 10 cents per day or 1 percent of the amount due per day for each day after the 20th of the month, whichever is greater.

(11) Vendors owning existing multiple license locations desiring consolidated reporting must make the request to the Chief, Bureau of Audit Operations, in writing. Applicants for new multiple licenses shall include the request with the license application. Such request shall be on the vendor's letterhead and must list the name, address and license number of each location to be included in the consolidated report. The request must provide sufficient information as to the accounting method to be used to permit a determination as to compliance with this rule. The request must be signed by the owner or an officer of the corporation desiring consolidated reporting. Upon a determination by the Chief, Bureau of Audit Operations, that the consolidated accounting method is sufficient to permit accurate auditing, the consolidated reporting method shall be approved.

(12) Vendors operating with a nonprofit civic organization permit shall, no later than 20 days after the expiration date of the license, submit DBR form 44-005, RETAIL SURCHARGE REPORT, for alcoholic beverages sold during the permit period. Permittees failing to submit reports and remittances shall be subject to the collection process set forth in Section 562.17, Florida Statutes.

(13) Vendors with a contractual agreement to provide alcoholic beverages at premises licensed to municipalities by special act shall report to the division each month for the term of the contract regardless of the monthly activity. The appropriate auditing office of the division is to be notified of the termination of the contract.

(14) Vendors operating as described in subsections (12) and (13) of this rule shall not be exempt from any of the provisions of Section 561.501, Florida Statutes, or rules implementing the alcoholic beverages surcharge collection procedures.

(15) When the division performs an audit on the vendor, it shall determine the surcharge due. If the division determines that any amount of gross surcharge is due from the vendor, it shall notify the vendor in writing by personal service or U.S. Mail, return receipt requested, stating that the vendor has 30 days from the receipt of written notification in which to correct the findings of the audit and remit payment. If the vendor does not correct the findings of the audit or remit payment within the allotted time then the division will notify the vendor in writing by personal service or U.S. Mail, return receipt requested, that it intends to assess the proper amount due including applicable penalties and begin administrative proceedings.

(16) Vendors who have moved their business, changed the business name, or had a change of legal entity, shall complete DBR form 44-005A, CHANGE OF ADDRESS OR OWNERSHIP FORM, incorporated herein by reference and effective 12-22-92, and mail it with their monthly surcharge report. Vendors who have discontinued or sold their business shall complete DBR form 44-005F, FINAL SURCHARGE REPORT, incorporated herein by reference and effective 12-22-92, and include it with their final return.

*Specific Authority 561.11 FS. Law Implemented 561.501 FS. History—New 1-15-91, Amended 11-4-91, 12-22-92, Formerly 7A-4.063.*