

CHAPTER 61A-7 FLORIDA CLEAN INDOOR AIR ACT AND STAND-ALONE BAR SMOKING DESIGNATIONS

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61A-7.001 Definitions.

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

(1) “Customary bar snack” means popcorn and any ready to eat food item, commercially prepared and packaged off the premises, served without additions or preparations, that is not a potentially hazardous food. The definition of potentially hazardous food, provided in subparagraph 1-201.10(B)(61), Food Code, 1999 Recommendations of the United States Public Health Service/Food and Drug Administration, incorporated herein by reference, shall apply to Chapter 61A-7, F.A.C.

(2) “Noncommercial activities” mean social gatherings, which encompass activities in compliance with Section 849.0931, F.S., meetings, dining, dances and the services performed in furtherance of these activities can only be conducted by members, whether compensated or not.

(3) “Nonperishable snack food items” means food items commercially packaged off the premises of the stand-alone bar and served without any additions or further preparations of any kind. Popcorn is the only exception to the requirement of being a nonperishable snack food item, and can be prepared on the premises, provided that the equipment used to pop the popcorn is not used to prepare any other food for patrons.

(4) “Predominantly bounded by physical barriers” means:

(a) More than fifty percent covered from above, to be calculated when fully extended, by a physical barrier, that excludes rain, and

(b) More than fifty percent on the sides with surfaces that block air flow. Railings are not to be considered in making side surface calculations.

(5) “Stand-alone bar” means those licensed premises defined in Section 386.203(11), F.S.

(6) “Stand-alone smoking (ss)” means those licensed premises that operate a business that meets the definition of a stand-alone bar in Section 386.203(11), F.S., if the only food provided is limited to nonperishable snack food items.

(7) “Stand-alone smoking with food (ssf)” means those licensed premises that operate a business that meets the definition of a stand-alone bar in Section 386.203(11), F.S., in which the serving of food is merely incidental, that is the licensed premises may derive no more than ten percent of its gross revenue from the sale of food consumed on the licensed premises.

Specific Authority 386.2125, 561.695(3), (9) FS. Law Implemented 386.203(5), (11), (12), 561.695(3), (6) FS. History—New 6-14-05.

61A-7.002 Criteria for Smoking Designation.

Stand-alone bars with an alcoholic beverage consumption on premises license shall be issued a smoking designation of “ss” or “ssf” upon meeting the following criteria:

(1) The premises meet the definition of a stand-alone bar in Section 386.203(11), F.S.

(2) Licensee provides the division with a notice of election, using the division’s Internet site accessible at www.myflorida.com, Interactive Voice Response system at (850) 487-1395, the Customer Call Center at (850) 487-1395, or by delivering in person or through the mail form DBPR ABT 6039, incorporated herein by reference. Form DBPR ABT 6039, Notification of Election to Permit Tobacco Smoking in the Licensed Premises, effective July 1, 2003, may be obtained by writing the division at 1940 North Monroe Street, Tallahassee, FL 32399-1021, or may be downloaded from the internet at <http://www.state.fl.us/dbpr/abt/forms/index.shtml>.

Specific Authority 386.2125, 561.695(9) FS. Law Implemented 386.203(11), 561.695(1) FS. History—New 6-14-05.

61A-7.003 Premises Not Eligible for Smoking Designation.

Licensed premises shall not be designated as a stand-alone bar if the qualifications for licensure require the premises be devoted predominantly to activities other than the service of alcohol. The following licenses are not eligible for a stand-alone bar designation:

- S – Special Hotel
- SH – Special Hotel in counties with population of 50,000 or less
- SR – Special Restaurant issued on or after September 1, 1969
- SRX – Special Restaurant
- SBX – Special Bowling
- SAL – Special Airport
- SCX – Special Civic Center
- SCC – Special County Commission
- SPX – Pleasure, Excursion, Sightseeing, or Charter Boats
- X – Airplanes, Buses, and Steamships
- IX – Railroad Cars
- XL – Passenger Waiting Lounge operated by an airline
- PVP – Passenger Vessels engaged in foreign commerce
- FEX – Special Public Fairs/Expositions
- HBX – Special Horse Breeders
- 11AL – American Legion Post permitted to sell to general public
- 11C – Social, Tennis, Racquetball, Beach, or Cabana Club
- 11CE – Licensed vendors exempt from payment of surcharge tax
- 11CS – Special Act Club License
- 11CT – John and Mable Ringling Museum
- 11GC – Golf Club
- 11PA – Symphony, Live Performance Theatre, Performing Arts Center
- 12RT – Dog or Horse Track or Jai Alai Fronton
- 13CT – Catering

Specific Authority 386.2125, 561.695(9) FS. Law Implemented 386.203(11), 561.695 FS. History–New 6-14-05.

61A-7.004 Annual Certification Requirements.

A qualifying stand-alone bar receiving an “ss” or “ssf” designation shall file an annual affidavit, DBPR ABT 4000A-040, incorporated herein by reference, certifying that, on or before the licensee’s annual beverage license renewal, for the preceding twelve months, no more than ten percent of total gross revenue was derived from retail sales of food consumed on the licensed premises. The percentage of food sales shall be computed by dividing gross revenues from the sale of food consumed on the premises by the gross revenue of the licensed premises. Failure to file an affidavit in compliance with Section 561.695(5), F.S., shall result in loss of designation.

Specific Authority 561.695(9) FS. Law Implemented 561.695(5) FS. History–New 6-14-05.

61A-7.005 Triennial Renewal Requirements.

Every third year after the initial designation, on or before the licensee’s annual beverage license renewal, in order to renew the designation, a licensed vendor holding an “ssf” designation shall provide to the division a Procedures Report, prepared by a Florida certified public accountant, on DBPR Form ABT 4000A-400 and containing the license name, license number, physical location address, the owner of the license and the period of the report, along with the CPA company name, accountant name and signature and the accountant’s license number with date of expiration. DBPR Form ABT 4000A-400, herein incorporated by this reference, effective 2-15-05, may be obtained by writing the division at 1940 North Monroe Street, Tallahassee, FL 32399-1022 or may be downloaded from the internet at <http://www.state.fl.us/dbpr/abt/forms/index.shtml>.

The report must:

- (1) Provide the actual percentage of food sales for consumption on premises calculated pursuant to subsection (3) of this rule; and
- (2) Provide information for the preceding 36-month period from the renewal date; and
- (3) Provide the total gross sales revenue for each year, with a total for the 3-year period, as well as the total gross sales revenue from food for consumption on premises for each year and a total for the 3-year period, and the percentage of food sales for consumption on premises to total revenue for each year and for the 3-year period.

Specific Authority 386.2125, 561.695(9) FS. Law Implemented 386.203(11), 561.695(6) FS. History–New 6-14-05.

61A-7.006 Records Required to Maintain the Designation.

(1) Stand-alone bars holding an “ss” or “ssf” designation shall maintain records to substantiate reports, affidavits and designation qualifications. Records of all purchases of food, all gross retail sales of alcohol for consumption on the licensed premises, all gross retail sales of alcohol for consumption off the licensed premises, all gross retail sales of food sold for consumption on the premises, all gross retail sales of food sold for consumption off the premises, and gross revenue from all other sales shall be separately documented.

(2) Stand-alone bars holding an “ss” or “ssf” designation shall maintain complete and accurate records of all sales and purchases. Records shall include, but are not limited to, purchase invoices, sales tickets, inventory records, receiving records, cash register journal tapes, on premises food sales records, computer records generated from automatic dispensing devices, Department of Revenue Sales Tax Returns, and any other record documenting sales. Sales records shall be sequentially organized by month and year and include a monthly statement summarizing the total sales revenue, food revenue, and percentage of food revenue for each month.

Specific Authority 386.2125, 561.695(9) FS. Law Implemented 386.203(11), 561.695(6) FS. History–New 1-16-06.

61A-7.007 Formula for Compliance with Required Percentage of Gross Food Sales Revenues.

In order to determine compliance, the division shall use the formula of gross food sales revenue from the sale of food the licensee sells for consumption on premises, including but not limited to non-alcoholic beverages, divided by gross total sales revenue, in any consecutive two month period. The results of the formula will represent the percentage of food sales revenues as defined herein and in Section 561.695, F.S.

Specific Authority 386.2125, 561.695(9) FS. Law Implemented 386.203(11), 561.695(6) FS. History–New 1-16-06.

61A-7.008 For Percentage of Gross Alcohol Sales for Consumption on the Licensed Premises Revenue Formula.

In order to determine compliance, the division shall use the formula of gross alcohol sales revenues from the sale of alcohol the licensee sells for consumption on premises divided by gross total sales revenue, in any consecutive two-month period.

Specific Authority 386.2125, 561.695(9) FS. Law Implemented 386.203(11), 561.695(6) FS. History–New 1-16-06.

61A-7.009 Method Used to Determine Whether an Establishment is Predominately Dedicated to the Serving of Alcoholic Beverages.

In order to determine whether an establishment, other than one holding a specialty license designated in Rule 61A-7.003, F.A.C., is predominately dedicated to the serving of alcoholic beverages for consumption on the licensed premises, the division shall compare the percentage of gross alcohol sales revenue from the sale of alcohol the licensee sells for consumption on premises with the following categories of revenue:

(1) For stand-alone bars holding the “ss” designation:

(a) The percentage of gross alcohol sales revenue from the sale of alcohol the licensee sells for consumption off the premises where the purchaser is required to enter the premises.

(b) The percentage of gross alcohol sales revenue from the sale of alcohol the licensee sells for consumption off the premises where the purchaser is not required to enter the premises, and

(c) The percentage of gross revenue from any source not included in the alcohol categories above. If the percentage of gross alcohol sales revenue from the sale of alcohol the licensee sells for consumption on premises is greater than that of the gross sales revenue from each individual category of gross sales in paragraphs 61A-7.009(1)(a)-(c), F.A.C., an establishment is deemed predominately dedicated to the serving of alcoholic beverages.

(2) For stand-alone bars holding the “ssf” designation:

(a) The percentage of gross food sales revenue from the sale of food the licensee sells for consumption on premises,

(b) The percentage of gross food sales revenue from the sale of food the licensee sells for consumption off premises,

(c) The percentage of gross alcohol sales revenue from the sale of alcohol the licensee sells for consumption off the premises, and

(d) The percentage of gross revenue from any source not included in the food and alcohol categories above. If the percentage of gross alcohol sales revenue from the sale of alcohol the licensee sells for consumption on premises is greater than that of the gross sales revenue from each individual category of gross sales in paragraphs 61A-7.009(2)(a)-(d), F.A.C., an establishment is deemed predominately dedicated to the serving of alcoholic beverages.

Specific Authority 386.2125, 561.695(9) FS. Law Implemented 386.203(11), 561.695(6) FS. History–New 1-16-06.

61A-7.010 Penalty Guidelines for Chapter 386, F.S. – Florida Clean Indoor Air Act.

(1) This rule sets forth the penalties which shall be routinely imposed upon licensees who are supervised by the Division of Alcoholic Beverages and Tobacco, Department of Business and Professional Regulation. Enforcement supervisors and bureau chiefs are authorized to accept settlement offers that do not deviate from the penalty guidelines. The penalties below shall be

assessed for violations occurring thirty days after a notice to comply is issued. If a person refuses to comply with this part after having been assessed such penalty the department may file a complaint in the circuit court of the county in which the enclosed indoor workplace is located to require compliance.

(2) The penalty guidelines set forth in the table that follows shall serve to provide field offices and licensees or permittees with penalties that the division will routinely impose for violations.

STATUTE	VIOLATION	FIRST OCCURRENCE	SECOND OCCURRENCE	THIRD OCCURRENCE	EACH SUBSEQUENT OCCURRENCE
386	Failure to comply with Florida Clean Indoor Air Act within Chapter 386, F.S.	\$275	\$550	\$750	\$1,750

Specific Authority 386.2125, 561.695(9) FS. Law Implemented 386.206, 386.207(3) FS. History–New 6-14-05.

61A-7.011 Aggravating or Mitigating Circumstances for Chapter 386, F.S. – the Florida Clean Indoor Air Act.

When either the petitioner or respondent is able to demonstrate aggravating or mitigating circumstances to the division by clear and convincing evidence, the division shall be entitled to impose adjusted penalties within the guidelines. Based upon the following factors, the division may impose a disciplinary action within the statutory guidelines:

- (1) The number of counts in the administrative complaint;
- (2) The disciplinary history of the applicant or licensee;
- (3) The applicant or licensee has corrected the violation and implemented written corrective policies and procedures;
- (4) The degree of financial hardship incurred by a licensee as a result of the imposition of suspension or a fine.

Specific Authority 386.2125, 561.695(9) FS. Law Implemented 386.206(2), 386.207(3) FS. History–New 6-14-05.

61A-7.012 Investigation and Notification Procedures for Section 386.207, F.S.

The following procedures shall be followed by division personnel when investigating complaints and notifying alleged violators.

- (1) Upon receipt of a complaint of a violation of Chapter 386, F.S., the division shall determine if the premises is designated as a stand-alone bar. If the premises are designated as a stand-alone bar the complaint shall be closed.
- (2) If the premises are not designated as a stand-alone bar a notice to comply shall be issued.
- (3) If the initial complaint is based on an observed violation then the premises shall be rechecked for compliance.
- (4) A notice to show cause shall be issued for violations occurring at least thirty days after a notice to comply has been issued.

Specific Authority 386.207(1), 386.2125, 561.695(9) FS. Law Implemented 386.206(2), 386.207(3) FS. History–New 6-14-05.

61A-7.013 Penalty Guidelines for Section 561.695, F.S. – Stand-Alone Bar Enforcement.

(1) This rule sets forth the penalties which shall be imposed upon licensees who are supervised by the Division of Alcoholic Beverages and Tobacco, Department of Business and Professional Regulation. Enforcement supervisors and bureau chiefs are authorized to accept settlement offers that do not deviate from the penalty guidelines. The penalties provided below are for violations one through three, within a two-year period, and a fourth or subsequent violation occurring anytime within the aforementioned time period or thereafter.

(2) The penalty guidelines set forth in the table that follows shall serve to provide field offices and licensees or permittees with penalties that the division will routinely impose for violations.

STATUTE	VIOLATION	FIRST OCCURRENCE	SECOND OCCURRENCE	THIRD OCCURRENCE	FOURTH OCCURRENCE	SUBSEQUENT OCCURRENCE
561.695	Failure to comply with stand-alone bar designation requirements within Section 561.695, F.S.	Warning	\$500	Suspension of designation for 14 days and \$1000	60 days suspension of designation and \$2000	Revocation

Specific Authority 561.695(9) FS. Law Implemented 561.695(5), (8) FS. History–New 6-14-05.

61A-7.014 Aggravating or Mitigating Circumstances for Section 561.695, F.S. – Stand-Alone Bar Violations.

When either the petitioner or respondent demonstrates aggravating or mitigating circumstances by clear and convincing evidence, the division may adjust penalties within statutory guidelines.

Specific Authority 561.695(9) FS. Law Implemented 561.695(8) FS. History–New 6-14-05.

61A-7.015 Appeals.

The procedure for appeal under Chapter 61A-7, F.A.C., shall be as provided in Section 120.68, F.S.

Specific Authority 386.207(1), 386.2125, 561.695(9) FS. Law Implemented 561.695 FS. History–New 6-14-05.