

## Kathy Sharp

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**From:** Lisette Barnes <lisette@okbeeralliance.com>  
**Sent:** Saturday, January 06, 2018 6:43 PM  
**To:** Kathy Sharp  
**Cc:** Steven Barker  
**Subject:** Oklahoma Beer Alliance Written Comments to ABLE Commission Proposed Rules  
**Attachments:** ABLE Cover Memo to Admin Rules Mark-Up.docx; ABLE Exhibit A to Memo.pdf

Kathy,

I have attached a cover memo and mark-up of the proposed rules. Please feel free to contact me if you have any questions. Thank you for the opportunity to provide input.

*Lisette*

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Oklahoma Beer Alliance  
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## OKLAHOMA BEER ALLIANCE

January 6, 2018

### VIA E-MAIL TRANSMISSION

Alcoholic Beverage Laws Enforcement Commission  
3812 N. Santa Fe, Suite 200  
Oklahoma City, Oklahoma 73118  
Attention: Kathy Sharp (Kathy.Sharp@able.ok.gov)

Dear Ms. Sharp,

In accordance with the Notice of Rule-Making Intent filed by the Alcoholic Beverage Laws Enforcement Commission and published in the Oklahoma Register on November 15, 2017, we are submitting our comments on the proposed rule changes to Title 45 of the Oklahoma Administrative Code. Please see below and attached.

At the outset, we want to acknowledge the sweeping nature of the changes to Oklahoma's alcohol laws contemplated by State Question 792 and Senate Bill 383 and the enormous task of updating administrative law to reflect these changes. We truly appreciate everyone's hard work on this task and the transparent and open manner in which the ABLE Commission and its staff have addressed the myriad of questions that arise as we face this transition. We are offering these comments with a view to furthering everyone's objective – ensuring a smooth transition for the industry and consumers, with product quality always being the guiding principle.

Attached as Exhibit A to this letter is a mark-up of the proposed rules with our proposed specific changes. Most of these changes are technical in nature and focus on consistency of defined terms, correcting typos, etc.

In addition to the comments marked on Exhibit A, we also offer the following more substantive suggested changes and clarifications:

### **(1) Employee Licensure and Training**

We respectfully request clarifying language regarding what type of employees are required to have a wholesaler's agent license and what type of employees are required to have an employee license. Based on our reading of the statute (37A:2-

120 and 37A:2-121), it appears that the employee license requirement is limited to employees of retail establishments, while the only requirement for licensure of brewer or beer distributor employees would be the manufacturer's agent license. As such, the only employees of brewers or beer distributors required to be licensed would be sales people and their licenses would not require certification of training. We have had some discussions with ABLE Commission staff on this point but would like further clarification in the Rules to confirm our interpretation of the statute.

## **(2) Right to Appeal**

Section 30-5-6 sets forth the criteria for a Beer Distributor seeking to discriminate against a retailer due to hostile work environment. The proposed Rules include a procedure whereby the retailer may appeal an adverse decision by the Commission but do not include a procedure whereby the Beer Distributor could appeal an adverse decision. We respectfully request that such an appeal procedure be added to the Rules.

In addition to the foregoing, we have certain concerns or clarifications that we understand need to be addressed via statutory changes. We are planning to pursue the statutory changes described below, which may require changes to the Rules in the future if the statutory changes are approved by the Legislature:

- We will be seeking statutory changes to permit a Brewer or Beer Distributor to repurchase "strong beer" from Class B Distributors either before or after October 1, 2018. Among other things, we believe that this provision is necessary to protect Class B Distributors that are not selected to continue as Beer Distributors for a particular brand after October 1, 2018 since these Class B Distributors would no longer have the authority to sell the remaining "strong beer" of that brand in their inventory.
- We will be seeking statutory changes to permit retailers to sell beer to consumers at a discount (including, without limitation, through instant redeemable coupons (IRCs)) and to permit Brewers and Beer Distributors to financially contribute to the cost of such discounts so long as such cost-sharing is made available to retailers on a non-discriminatory basis.

Again, we recognize and appreciate the amount of time and effort that went into the drafting of the proposed Rules and look forward to working with ABLE Commission staff through this transition process. Please feel free to contact the undersigned via phone at (405) 748-6414 or via e-mail at [lissette@okbeeralliance.com](mailto:lissette@okbeeralliance.com) if you have any questions regarding our comments or would like to discuss.

Sincerely,

Lisette Barnes  
Oklahoma Beer Alliance

Okla Beer Alliance  
Comments 1/5/18

A. KEITH BURT  
DIRECTOR

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Updated: October 1, 2018~~September 11, 2015~~

TITLE 45. ALCOHOLIC BEVERAGE LAWS ENFORCEMENT COMMISSION

Chapter	Section
1. Administrative Operations. . . . .	45:1-1-1
10. Provisions and Penalties Applicable to All Licensees. . . . .	45:10-1-1
<u>15. Employee Licenses, Training, Certification. . . . .</u>	<u>45:15-1-1</u>
20. Package Stores, Mixed Beverage, Caterers, Special Events and Bottle Clubs. . . . .	45:20-1-1
<u>25. Winemakers, Self-Distribution, Direct Shipment. . . . .</u>	<u>45:25-1-1</u>
<u>30. Manufactures, Wine and Spirit Wholesalers, Brewers, Nonresident Sellers and Beer Class-B Wholesalers. . . . .</u>	<u>45:30-1-1</u>
<u>35. Events, Airline/Railroad, Hotel/Motel. . . . .</u>	<u>45:35-1-1</u>
40. Transportation, Containers and Changes in Status or Location. . . . .	45:40-1-1
50. Charity Games. . . . .	45:50-1-1
60. Tobacco. . . . .	45:60-1-1

Distributors

CHAPTER 1. ADMINISTRATIVE OPERATIONS .

Subchapter	Section
<u>1. General Provisions. . . . .</u>	<u>45:1-1-1</u>
3. Organization, Operations, Procedures and Forms. . . . .	45:1-3-1
5. Hearings Before the Commission. . . . .	45:1-5-1
7. Director of the Commission. . . . .	45:1-7-1

no longer included?

[Authority: 37A O.S., Section 1-101-502 et seq., and 75 O.S., Sections 302, 305 and 307]  
 [Source: Codified 10-01-1812-31-94]

SUBCHAPTER 3. ORGANIZATION, OPERATIONS, PROCEDURES AND FORMS

- Section
- 45:1-3-1. Origin of the Commission
- 45:1-3-3. Availability of records and forms
- 45:1-3-4. Manner of obtaining information

45:1-3-1. Origin of the Commission

The Oklahoma Alcoholic Beverage Laws Enforcement Commission is an administrative body created by 37A O.S. Section 1-104 ~~the 28th Amendment to the Oklahoma Constitution~~ consisting of seven (7) members appointed by the Governor and whose power and authority is prescribed by the legislature. The appointment of the members of the Commission by the Governor being made only with the advice and consent of the State Senate. The statute ~~Constitutional Amendment~~ also created the Office of Director to be appointed by the Commission. Certain duties of the Director are likewise prescribed by the Legislature and the Commission is authorized to delegate to the Director such other duties as it may deem desirable, except that ~~it~~ may not deny an applicant for a license, or

The Director

any licensee, the right to a hearing before the Commission.

#### 45:1-3-3. Availability of records and forms

The forms described in this Title, together with all rules and all other written statements of policy or interpretations and all final Orders, decisions and opinions, formulated, adopted or used by the Commission in the discharge of its functions are available for public inspection in the office of the Oklahoma Alcoholic Beverage Laws Enforcement Commission, 3812 North Santa Fe Avenue, Suite 2002501 North Stiles, Oklahoma City, Oklahoma.

#### 45:1-3-4. Manner of obtaining information

Any person desiring any information concerning the Commission, its employees, its policies or procedures or any pertinent information concerning said organization or any licensee in the liquor industry may obtain the same, or make submissions or requests to the Commission, either in person, or by mail or by email, by directing such submissions or requests to the Director or other employees of the Commission at 3812 North Santa Fe Avenue, Suite 2002501 North Stiles, Oklahoma City, Oklahoma. \*add e-mail address

### SUBCHAPTER 5. HEARINGS BEFORE THE COMMISSION

#### Section

##### 45:1-5-1. Hearings before the Commission

##### 45:1-5-1. Hearings before the Commission

- (a) A brief statement of fact outlining the reason for denial of the license or the alleged violation on the part of the licensee will be given by the agency attorney, Attorney General, Director, or Chief Enforcement Officer.
- (b) The applicant or licensee, or the attorney, should be given an opportunity to state his position.
- (c) Any pleadings or other documents which either party may wish to have filed may be presented.
- (d) The evidence supporting the issuance of the citation or the denial of an application for a license shall first be presented at the conclusion of which the applicant or licensee, or his attorney, may present evidence in support of his previously stated position.
- (e) The attorneys on both sides, in presenting testimony, shall stay within the Rules of Evidence as defined by law and the decision of our courts, but neither attorney shall interpose an objection to any part of the testimony until the conclusion of all the evidence on both sides. Then any objections to such testimony may be made by the attorneys on either side by dictating the same into the record.
- (f) Arguments may then be permitted by the Commission and, if the hearing is concluded, the Commission may announce its decision, or that a decision will be reached and the applicant or licensee notified within fifteen (15) days, unless both parties agree in writing that such decision may be delayed.

### SUBCHAPTER 7. DIRECTOR OF THE COMMISSION

#### Section

- 45:1-7-1. Duties and responsibilities
- 45:1-7-2. Authority to conduct hearings
- 45:1-7-4. Authority to require reports from licensees

**45:1-7-1. Duties and responsibilities**

(a) The Director is hereby specifically authorized and shall have all of the duties and responsibilities as set out in Section ~~1-108509~~ of Title 37A of the Oklahoma Statutes, and in addition thereto, he is hereby empowered and authorized to conduct any hearing and make any investigations which he may deem necessary in connection with any violations of the provisions of the Act and the Rules adopted by the Commission, and to make a report of such hearings and investigations. He is further empowered and authorized at said hearings and in conducting such investigations, or at any other time, to administer oaths and to examine under oath any person, and cause the same to be reduced to writing, and to examine, or cause to be examined, books, accounts and records of any licensee or other person, to hear testimony and take proof material for the Commission's information and the discharge of its duties under the law, and to issue subpoenas, which shall bear the seal of this Commission, for the attendance of witnesses and the production of books, accounts, or records, which shall be effective in any part of this State, requiring their attendance before the Director at the time and place to be specified herein by him. The District or Superior Court or any Judge thereof is hereby respectfully requested, by its proper order, to require the attendance of all such witnesses so subpoenaed, and that the Court or Judge compel obedience to its or his order by proceedings for contempt as provided for in Sections ~~1-108509~~ and ~~1-107(11)514(11)~~ of Title 37A of the Oklahoma Statutes.

(b) In addition to the authority given the Director to issue all licenses provided for in the Act, there is further delegated to the Director the duty and authority to refuse to issue a Wine and Spirits Wholesaler, Class B Wholesale Beer Distributor, Package Store Retail Spirit, Retail Beer, Retail Wine, Mixed Beverage, Bottle Club or Caterer license either on an original application or a renewal application, if he has reasonable grounds to believe and finds to be true any of the disqualifications outlined as set out in Section ~~5272-146~~ or ~~527-1~~ of Title 37A of the Oklahoma Statutes. There is further delegated to the Director the duty and authority to refuse to issue a Mixed Beverage, Beer and Wine, Bottle Club, Public Event, Caterer, Retail Wine, Retail Beer, or any other such license as provided in Section 2-101 of Title 37A of the Oklahoma Statutes, either on an original application or a renewal application, if he has reasonable grounds to believe and finds to be true any of the disqualifications as set out in Section 2-147 of Title 37A of the Oklahoma Statutes.

(c) There is also delegated to the Director the duty and authority to refuse to issue any other type of license covered by the Oklahoma Alcoholic Beverage Control Act, if he has reasonable grounds to believe and finds that, under the provisions of the Oklahoma Alcoholic Beverage Control Act and the Rules of the Commission, that the applicant for any such license is not entitled thereto. There is further delegation to the Director of the duty and authority of giving notice of a denial by the Director, or a denial by the Commission, or a suspension or revocation of a license by the Commission as provided for in Section ~~5292-149~~ of Title 37A of the Oklahoma Statutes. However, any person aggrieved by any Order or Notice of the Director shall have the right to be heard by the Commission upon the filing of a written request therefore with the Commission within fifteen (15) days after receipt of notice thereof.

**45:1-7-2. Authority to conduct hearings**



In addition to the authority heretofore delegated by the Commission to the Director, he is hereby authorized, as provided for in Sections ~~5081-108~~, ~~5302-150~~, ~~53012-151~~, and ~~5312-152~~ of Title 37A of the Oklahoma Statutes, to conduct hearings on all violations of the Rules and Regulations of the Commission or the Oklahoma Alcoholic Beverage Control Act and the amendments thereto, by licensees, and to deny any license or renewal thereof, and to suspend or revoke, after proper notice is given, any license issued under the Act, impose probation, and assess a fine for any violations found as a result of hearing, if by preponderance of the evidence, it appears that any licensee has committed the violation alleged in the notice, subject to the limitations hereinafter set out:

(1) No order denying a renewal, or order of revocation, order of suspension or fine shall be made by the Director unless a sufficient legal notice shall have been mailed by certified mail or served upon the licensee at least fifteen (15) days prior to such hearing. The notice shall set forth the grounds for the proposed agency action. Any licensee aggrieved by the action of the Director, may, in cases where a license or renewal thereof is denied, or a suspension or revocation thereof is ordered, or a fine imposed, within fifteen (15) days of the issuance of the Order or Notice of the Director, file with the Commission a written request for a review of the Order of the Director before the Commission, and shall be accorded such hearing in compliance with the provisions of the Act. The Director shall cause a transcript of the testimony heard by him or his Hearing Officer to be presented to the Commission on or before the date of the hearing by the Commission.

(2) The Director may, within his discretion for good cause, defer any matter to a hearing before the Commission for final determination.

(3) The Director shall make a monthly report to this Commission of any and all suspensions or revocations ordered by him under the provisions of this Section and, after the same becomes final, shall notify the District Attorney of the county wherein the licensee's premises are located, as required by the Act.

#### 45:1-7-4. Authority to require reports from licensees

All licensees shall, from time to time, file reports with the Oklahoma Alcoholic Beverage Laws Enforcement Commission giving therein such information as may be required and there is hereby delegated to the Director authority to call upon any and all licensees of the Commission for reports to be rendered by them, and the information to be shown therein, which from time to time may be by the Commission or the Director deemed necessary for the proper discharge of their duties conferred by the Repeal Act; including, but not limiting thereto, the authority for requiring reports of nonresident sellers to reveal current status of accounts of licensed Wine and Spirits wholesalers and Beer Distributors, other pertinent information relative to credits and charge-offs.

license or employee in payment of alcoholic beverages sold shall be deemed an extension of credit and a violation by the licensees.

**45:10-3-21. Postdated checks prohibited**

No ~~Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage~~ or Caterer licensee shall give and no licensed Wine and Spirits Wholesaler shall receive or accept any postdated or undated check in payment for alcoholic beverages.

**45:10-3-22. Wholesaler city bank deposit requirement**

All payments for alcoholic beverages sold by a licensed Wine and Spirits Wholesaler to a ~~Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, Caterer or Special Event~~ licensee shall be deposited by said Wine and Spirits Wholesaler in a bank in the city in which the licensed Wine and Spirits Wholesaler's licensed premises are located.

**45:10-3-23. Tie-in sales prohibited**

No Nonresident Seller, Wine and Spirits Wholesaler or ~~Class B Wholesaler Beer Distributor~~ shall, as a condition for the sale or delivery of alcoholic beverages to another licensee, require such other licensee to purchase any one or more items of alcoholic beverages of another type, quantity, size or brand in addition to, or in lieu of, the specific items ordered. No licensee of any class shall sell or deliver alcoholic beverages in any form or quantity or of any brand to a customer licensee, under any arrangement, agreement, or understanding, direct or implied, that such sale or delivery will be made only if such other customer licensee also buys or accepts delivery of a quantity of alcoholic beverages of another form or brand.

**45:10-3-24. Acceptance of certain inducements prohibited**

All licensed Oklahoma Wine and Spirits Wholesalers, ~~Class B Wholesalers Beer Distributors~~, Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Bottle Club, Mixed Beverage, Caterer or Special Event licensees, their agents or employees are prohibited from accepting, directly or indirectly, any discount, rebate, free goods, gifts or other inducements from any Manufacturer, Brewer, Distiller, Rectifier, Nonresident Seller or Importer, their agents or employees, except in compliance with Title 27 CFR Chapter 1 Part 6, Subparts A through D.

**45:10-3-25. Offering of certain inducements prohibited**

No licensed Manufacturer, Brewer, Distiller, Rectifier, Nonresident Seller, Importer, Wine and Spirits Wholesaler or ~~Class B Wholesaler Beer Distributor~~, their agents or employees, shall directly or indirectly offer, sell, trade, give or furnish any gifts, prizes, coupons, premiums, rebates, services of any employee, decoration, samples of alcoholic beverages, personal property, or other inducement or thing of value to any Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, Caterer, Bottle Club or Special Event, Wine and Spirits Wholesaler or ~~Class B Wholesaler Beer Distributor~~, their agents or employees, except in compliance with Title 27 CFR Chapter 1 Part 6, Subparts A through D.

another qualified licensee. He shall furnish the Director with an inventory of the alcoholic beverages contemplated in such transfer. The licensee, who desires to purchase such stock of alcoholic beverages, shall also apply in writing to the Director for permission to make such purchase and shall report to the Director in writing, the quantity, brands, and types of such alcoholic beverages purchased and the address to which it is to be actually delivered after the purchase. No such sale or purchase shall be made by any licensee until written permission has been granted by the Director. PROVIDED, that a Wine and Spirits Wholesaler whose license has been terminated or canceled shall be permitted to sell his wholesale stock of alcoholic beverages only to the holder of an Wine and Spirits Wholesaler license issued by the Commission. All sales of alcoholic beverages by the former holder of the Wine and Spirits Wholesaler license to a Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, Caterer or Special Event License in Oklahoma are prohibited. PROVIDED, that the Director or Commission may authorize a Wine and Spirits Wholesaler to return to a Nonresident Seller merchandise for credit.

#### 45:10-3-31. Designated bar areas

- (a) Entities or establishments licensed by the ABLE Commission which have as their main purpose some objective other than the sale of alcoholic beverages may file a written request with the Commission to have a portion of their licensed premises designated for use as a separate or enclosed lounge or bar area. The request shall state the main purpose of the business and the licensee shall have the burden of showing that the business qualifies for a separate or enclosed lounge or bar area.
- (b) In order to qualify for a separate or enclosed lounge or bar area, a licensee must show that the total income derived from the stated main purpose exceeds the total income derived from the sale, mixing or serving of alcoholic beverages. In determining the total income derived from the stated main purpose, a licensee may not include income derived from secondary sources which are not related to the stated main purpose or income derived as an incidental service from coin-operated game or vending machines, the sale of meals, snacks or short order foods.
- (c) If the main purpose of a business is such that in the operation of a business of that type a portion of its income would be derived from an admission charge, the admission charge may be counted as income derived from the stated main purpose. If, however an admission charge would not normally be imposed by a business of that type or if customers are entitled to free or discounted alcoholic beverages after paying an admission charge, the admission charge may not be counted.
- (d) A newly established business which claims as its main purpose some objective other than the sale, mixing or serving of alcoholic beverages may be granted a separate or enclosed lounge or bar area for a period of ~~sixty~~ ninety (90) days. At the end of the ~~sixty~~ ninety (90) day period, the licensee shall have the burden of showing that the business continues to qualify for a separate or enclosed lounge or bar area.
- (e) The Commission shall have the authority to designate the portions of the licensed premises of a qualifying business which may be used as a separate or enclosed lounge or bar area. Any licensee aggrieved by the denial of a request for a separate or enclosed lounge or bar area may, within fifteen (15) days of receiving notice of the denial, file a written request for a hearing before the Commission. ~~For purposes of this section only, the term "alcoholic beverage" shall include nonintoxicating beverages as defined in Section 163.2 of Title 37 of the Oklahoma Statutes.~~

~~SUBCHAPTER 3. PROVISIONS APPLICABLE TO ALL LICENSES~~

All alcoholic beverages of a ~~Retailer Spirit, Retail Beer and Retail Wine Licensee~~ or under the control of an employee shall be stored and maintained in the licensed premises of the ~~Retailer Licensee~~ in a safe manner, and no such alcoholic beverages shall be stored in or transported to any other place except upon written authority of the Commission.

#### 45:20-3-12. Opened containers on licensed premises prohibited

No ~~Retailer Spirit, Retail Beer, or Retail Wine Licensee~~ or employee shall permit the original container of any alcoholic beverage to be opened in or on the licensed premises, nor shall he keep or permit to be kept on said premises any unsealed container or original package containing alcoholic beverage. The presence of any unsealed container or original package containing alcoholic beverages on the premises shall be considered as prima facie evidence of a violation of the Oklahoma Alcoholic Beverage Control Act. The word "container" as used herein shall not include a shipping container of wine.

#### 45:20-3-13. Restriction on adjacent business

All ~~retail package spirit~~ store licensees are prohibited from owning or operating any type of business where other goods, wares or merchandise are sold, or services rendered, on property adjacent to their retail package store, unless such other business is housed within permanent walls; PROVIDED, that the wall and all entrances between any such building and the ~~package retail spirit~~ store shall be made of non-transparent material, and any passageway from such other business into the ~~liquor retail spirit~~ store shall be closed at all times and may not be used by the public or persons other than the owner and those licensed by the Commission.

#### 45:20-3-14. Extension of credit by ~~Retailer Spirit License~~ <sup>(e)</sup>

All ~~Retailer Spirit Licensees~~ or employees are prohibited from extending credit. The acceptance by a ~~Retailer Licensee~~ or employee of an ordinary bank check or a nationally recognized cash, ~~debit, or similar~~ card will not be considered an extension of credit so long as such check or cash card is accepted in good faith and is not accepted with the intent to defer payment other than for the period of normal processing; PROVIDED, that with regard to acceptance of a nationally recognized cash card, all dollar amounts over Fifty Dollars (\$50) be verified prior to acceptance by the licensee. No ~~Retailer Spirit Licensee~~ or employee shall receive or accept a postdated or undated check in payment for alcoholic beverages. Any arrangements or agreements expressed or implied between a ~~Retailer Spirit Licensee~~ or employee and customer, whereby the ~~Retailer Licensee~~ or employee holds or retains a check received by him from such customer in payment for alcoholic beverages sold, shall be deemed an extension of credit.

#### 45:20-3-15. Beer keg sales records and identification tags

(a) Every licensed ~~package Retail Spirit and Retail Beer~~ store shall affix an identification seal on every beer keg sold. The identification seal shall be placed on the beer keg so that it does not conceal any information pertaining to the brand name, brewery code or container size. The identification seal shall be made of a durable material not easily removed or destroyed. The

## ADDITIONAL HOURS

### Section

- 45:20-5-6. Payment requirements
- ~~45:20-5-7. Invalidation of identification stamp~~
- 45:20-5-8. Hours for pick-up at warehouses
- 45:20-5-9. Records of expenditures

### 45:20-5-6. Payment requirements

(a) No alcoholic beverages shall be delivered or sold to the holder of a Mixed Beverage, Caterer or Special Event license by a licensed Wine and Spirits Wholesaler, his agent, servant or employee without receiving payment therefor at the time of making such delivery. All holders of Special Events licenses shall make payment to the licensed Wine and Spirits Wholesaler only by cash, bank draft, cashiers check, express or postal money order.

(b) All payments for alcoholic beverages sold by a licensed Wine and Spirits Wholesaler to the holder of a Mixed Beverage or Caterer license shall be deposited by said Wine and Spirits Wholesaler in a bank in the city in which the licensed Wine and Spirits Wholesaler's license premises is located.

### ~~45:20-5-7. Invalidation of identification stamp~~

~~The invalidation of identification stamps required by Section 583 of Title 37 of the Oklahoma Statutes, shall be done by mutilating the stamp. As used in this rule, "mutilate" means to scratch, cut, tear, or abrade in a manner which inflicts obvious and substantial damage to the stamp but does not totally remove or obliterate the stamp. The marking of a stamp with ink, dye, or other material is not authorized as a method for invalidating the stamp.~~

### 45:20-5-8. Hours for pick-up at warehouses

Mixed Beverage, Caterer and Special Event license holders, with a valid Private Carriers license, shall be allowed to pick up shipments of alcoholic beverages ~~beer or brewed products~~ at a licensed Wine and Spirits Wholesaler's or Class B Wholesaler's Beer Distributor's warehouse from 10:00 a.m. to 5:00 p.m. Monday through Friday. All orders will be preordered and filled in sequence whether delivered or picked up by licensees.

### 45:20-5-9. Records of expenditures

(a) All Mixed Beverage, Caterer and Special Event licensees shall keep a full, separate, complete and accurate record of all expenditures with regard to alcoholic beverages. No such expenditures shall be commingled with the expenditures of any other business or businesses operated by the Mixed Beverage, Caterer and Special Events licensee. The minimum required records shall show clearly and accurately for each expenditure the following information:

- (1) Date of payment.
- (2) Name of payee.
- (3) Purpose of the expenditure in sufficient detail to permit a clear identification of the reason for

the expenditure.

(4) Petty cash fund reimbursements must be supported by receipts, vouchers, or other documents, showing the purpose of expenditure.

(5) Cross references to support documents.

(b) All expenditures shall be supported by vouchers, invoices, cash receipts, sales receipts, bills, expense reports, check books, bank statements, ledgers, journals or other documentary evidence properly cross referenced and filed in an orderly and consistent manner. These records shall be kept for three (3) years and shall at all times be available for inspection by representatives of the Alcoholic Beverage Laws Enforcement Commission and Oklahoma Tax Commission in accordance with Section 5525-120 of Title 37A of the Oklahoma Statutes.

## SUBCHAPTER 9. RETAIL BEER LICENSEES

### Section

45:20-9-1. Restriction on certain sales

45:20-9-2. Acceptance of alcohol at retail location only

45:20-9-3. Sale of other alcoholic beverages prohibited

45:20-9-4. Employees to be licensed

45:20-9-5. Necessity to qualify as a retailer

45:20-9-1. Restriction on certain sales

No retail beer licensee shall sell beer containing more than 8.99% alcohol by volume.

45:20-9-2. Acceptance of alcohol at retail location only

All beer delivered to a retail beer licensee by a licensed beer distributor shall be made directly to the licensed retail location. Retail beer licensees shall not accept the delivery of beer to any centralized distribution location owned, leased, or operated by the retail beer licensee.

45:20-9-3. Sale of other alcoholic beverages prohibited

Retail beer licensees are prohibited from selling any other form of alcoholic beverage, unless the licensee also holds a retail wine license.

45:20-9-4. Employees to be licensed

All employees of a retail beer licensee involved in the selling of beer shall hold an employee license issued by the ABLE Commission.

45:20-9-5. Necessity to qualify as a retailer

All Retail Beer licensees shall be a bona fide retailer as defined in Section 1-103 of Title 37A of the Oklahoma Statutes.

## SUBCHAPTER 11. RETAIL WINE LICENSEES

Section

- 45:20-11-1. Restriction on certain sales
- 45:20-11-2. Acceptance of alcohol at retail location only
- 45:20-11-3. Sale of other alcoholic beverages prohibited
- 45:20-11-4. Employees to be licensed
- 45:20-11-5. Necessity to qualify as a retailer

45:20-11-1. Restriction on certain sales

No Retail Wine licensee shall sell wine containing more than 14.99% alcohol by volume.

45:20-11-2. Acceptance of alcohol at retail location only

All wine delivered to a Retail Wine licensee by a licensed Wine and Spirits Wholesaler shall be made directly to the licensed retail location. Retail Wine licensees shall not accept the delivery of wine to any centralized distribution location owned, leased, or operated by the Retail Wine licensee.

45:20-11-3. Sale of other alcoholic beverages prohibited

Retail Wine licensees are prohibited from selling any other form of alcoholic beverage, unless the licensee also holds a Retail Beer license.

45:20-11-4. Employees to be licensed

All employees of a retail wine licensee involved in the selling of wine shall hold an employee license issued by the ~~ABLE~~ Commission.

45:20-11-5. Necessity to qualify as a retailer

All Retail Wine licensees shall be a bona fide retailer as defined in Section 1-103 of Title 37A of the Oklahoma Statutes.

CHAPTER 25. WINEMAKERS, SELF-DISTRIBUTION, DIRECT SHIPMENT

Section

<u>1. Winery Premises, Festivals, and Tradeshow</u> . . . . .	<u>45:25-1-1</u>
<u>3. Self-Distribution License</u> . . . . .	<u>45:25-3-1</u>
<u>5. Direct Shipment of Wine</u> . . . . .	<u>45:25-5-1</u>

[Authority: 37A O.S., Section 1-101 et seq., and 75 O.S., Sections 302, 305 and 307]  
[Source: Codified 10-01-18]

SUBCHAPTER 1. WINERY PREMISES, FESTIVALS, AND TRADESHOWS

Section

and Spirits Wholesaler on or before the 25th day of a posting month in response to a lower percentage reported and registered by a competitor Wine and Spirits Wholesaler on the 15th day of the month.

"Brewer or Nonresident Seller" means a manufacturer or distributor of beer ~~or brewed products~~ and shall also include: ↳ not defined in statute or rule 5

(A) A corporate subsidiary of any such brewer or nonresident seller who markets his products solely through a subsidiary or subsidiaries; and

(B) A distributor of beer ~~or brewed products~~ manufactured or bottled in a foreign country.

"Categories" means the four (4) common divisions in the systems of classification of alcoholic beverages to wit: Spirits, Cordials and Specialties, Wines-Domestic, Wines-Imported, and the additional category of Decanter bottles, regardless of contents.

"Class B Wholesaler Beer Distributor" means an individual or partnership entity licensed to sell beer ~~or brewed products~~ to the holder of a Retail Package Store Spirit, Retail Beer, Beer and Wine, Mixed Beverage, Caterer or Special Event license. (Mixed Beverage / Caterer)

"Manufacturer or Nonresident Seller" means a manufacturer ~~or distributor~~ of alcoholic beverages and shall also include: (Other than beer)

(A) A corporate subsidiary of any such manufacturer who markets his products solely through a subsidiary or subsidiaries; and (or Nonresident Seller)

(B) A distributor of alcoholic beverages manufactured or bottled in a foreign country.

"New Item" means an item not previously stocked, or a item newly priced posted with the Commission by the Wine and Spirits Wholesaler on or since his last price posting.

"New Percentage" means a percentage reported and registered by the Wine and Spirits Wholesaler with the Commission on or before the 15th day of January, March, May, July, September and November whether such percentage be higher, lower or the same as the previous posting.

"Percentage Markup" means a percentage of increase or decrease in relation to the Wine and Spirits Wholesaler laid-in-cost for all items in each category. The percentage does not have to be the same for all categories, but in the original posting the percentage shall be the same for all items in the same category.

"Wine and Spirits Wholesaler" means an individual or partnership entity licensed to sell alcoholic beverages to the holder of a Retail Package Store Spirit, Retail Wine, Beer and Wine, Mixed Beverage, Caterer or Special Event license. (Mixed Beverage / Caterer)

"Wholesaler Laid-In-Cost" means the current posted Nonresident Seller F.O.B. price to which shall be added State and Federal Taxes on alcoholic beverages plus any miscellaneous charges added by the Nonresident Sellers.

### SUBCHAPTER 3. MANUFACTURERS AND WINE AND SPIRITS WHOLESALERS.

#### Section

- 45:30-3-1. Certain Manufacturer discrimination prohibited
- 45:30-3-2. Manufacturer's brand name label registration
- 45:30-3-3. Manufacturer's price list
- 45:30-3-4. Products in short supply
- 45:30-3-5. Allocation plan for products in short supply
- 45:30-3-6. Wine and Spirit Wholesaler discrimination prohibited
- 45:30-3-7. Wine and Spirit Wholesaler's price registration
- 45:30-3-8. Wine and Spirit Wholesaler's price list



Since price printing is no longer required for beer, it seems inefficient to require a new label application for a simple price change:

arising between a Class B Wholesaler and Brewer or Nonresident seller or his representative, as to the necessity or reasonableness of any quality control standard adopted pursuant hereto, are subject to formal review of the Director or Commission upon request of either party.

45:30-5-2. Brewer's brand name label registration

(a) No beer or brewed products shall be sold, or offered for sale to an Oklahoma licensed ~~Class B Wholesaler Beer Distributor~~ or to the public unless the brand name label shall have been registered with and approved by the Director of the Oklahoma Alcoholic Beverage Laws Enforcement Commission, and the required registration fee paid.

(1) Such registration shall be prepared on a form approved by the Commission and shall include the ~~price~~ brand, type, size and type container of each item of beer or brewed product.

(2) Such registration shall be accompanied by a certified check, bank officer's check or draft, or money order in the amount of two hundred dollars (\$200.00) for each brand name label that such Brewer or Nonresident Seller proposes to offer for sale.

(3) Should the application for registration of a brand name label be denied, the registration fee shall be returned to the applicant less twenty-five percent (25%) of such fee.

(4) In determining the fee for filing a brand name label or brand, no additional fee shall be charged for variations in net contents or bottling locations shown on the label. In determining the brand name label, reference may be made to the brand name label as registered with the Federal Government under the Federal Alcohol Administration Act ATF Form 1649 Application For and Certification of Label Approval Under Federal Alcohol Administration Act, which will be submitted with each registration of a brand name label to aid in determining the appropriate registration fee. Brand labels not requiring federal approval must be submitted for registration with the ABLE Commission as though federal approval was granted. Such submission shall include either actual labels or a color photograph of the label.

(5) Each brand name label registered and approved pursuant to this paragraph shall be valid for a period from July 1st to June 30th each year and shall be valid only for the ~~brand name owner~~ Brewer or Nonresident Seller representing the ~~brand owner~~ Brewer registering such label and shall not be transferable.

(6) All original packages of beer or brewed products, before being offered for sale in this state, shall be approved by the Tax Commission as to the nature and form. They shall be constructed of such material and be in such form as has been generally found by the industry and recognized by Federal and State Enforcement Officers to be safe, sanitary and in no manner prejudicial to the health or welfare of the public. After a container has been approved as to nature and form for sale in Oklahoma, it need not again be submitted for approval. It is the intent and purpose of this regulation to require the approval of the original container and labels as to composition, nature and form and it shall be required that prior approval be secured by reason of any change in the original container or labels.

(b) All items that are shipped into the State must be properly registered with the Commission and the fee paid regardless of when the merchandise was ordered. Back orders may not be shipped unless the above requirements are satisfied.

(c) Beer and brewed products will be offered for sale in container sizes and case capacity as approved by the Oklahoma Tax Commission and the Oklahoma Alcoholic Beverage Laws Enforcement Commission.

(d) No brand or label will be ~~listed on a price list~~ or offered for sale in more than one place, method,

Para. # 2 implies that the fee is \$200/reg. If this is correct, why need additional aids in determination?

which

6

44

different containers, ~~not at more than one price~~, except as provided for by the Director.

(e) The bottling, packaging, sale or possession by any licensee of any beer or brewed products not registered in conformity with the Rules and Regulations of the Oklahoma Alcoholic Beverage Laws Enforcement Commission and provisions of the Oklahoma Alcoholic Beverage Control Act shall be grounds for suspension, revocation or cancellation of the license.

(f) The provisions of this Section are severable and if any provision thereof shall be void, the decision of the court so holding shall not affect or impair the remaining parts or provisions of this Section.

#### 45:30-5-3. Brewer's price list

- (a) All Nonresident Sellers and Brewers who market beer or brewed products in excess of 3.2% alcohol by weight are hereby required on the fifteenth day of each month, to register in the office of the Oklahoma Alcoholic Beverage Laws Enforcement Commission, all beer or brewed items which such Nonresident Seller proposes to offer for sale to licensed Class B Wholesalers in this State. Such registration shall be prepared on a form approved by the Commission and shall show the brand, price, size, type container and number of items per case. All Nonresident Sellers' prices shall become effective on the first day of the second month following such registration and shall remain in effect and unchanged for a period of not less than one month. No change in said period shall be permitted except on an application thereof in writing showing good cause and then only with written permission of the Commission or the Director.
- (b) When a new item is registered or an old item is discontinued, or any change is made by a Nonresident Seller or Brewer as to price, label, container, or package of any item offered for sale in this State, such change shall be listed separately on the cover page or pages of the price schedule, and in case of prices changed, shall reflect both the old and the new price of any item changed. All new items and changes as to the label, container, or package in which any item is offered for sale shall first be submitted to the Director for approval. Approval or disapproval of price changes shall not be required if filed in conformity with this Section. In addition to the foregoing requirement, Nonresident Sellers or Brewers shall, at the same time, on regular forms provided by the Commission, reregister all items of beer or brewed products which such Nonresident Sellers or Brewers had registered and offered for sale in this State during the previous price period.
- (c) All Nonresident Sellers or Brewers shall sell to licensed Oklahoma Class B Wholesalers all items of beer or brewed products at the current posted price in effect on the date of the shipment as shown on the manifest, bill of lading or invoice.
- (d) No credit memorandum shall be issued at any time for any purpose without approval of the Commission or Director. Floor stock adjustments may be permitted or required when deemed necessary and approved by the Commission or Director.
- (e) A full and correct copy of each said price registration shall be mailed to each licensed Class B Wholesaler on the same day such prices are filed with or mailed to the Commission. Proof of such mailing or delivery shall be furnished the Commission by affidavit from each Brewer or Nonresident Seller, and attached to the price registration.
- (f) The sale, or offer to sell, any items of beer or brewed product to a licensed Class B Wholesaler at a price not in compliance with the price posted with the Commission by a Brewer or Nonresident Seller shall be deemed a discrimination against licensed Class B Wholesalers in this State.

45:30-5-4. Products in short supply

If any Brewer or Nonresident Seller, who markets beer or brewed products, shall not have a sufficient supply of beer or brewed products of any of the brands or kinds which he manufactures or distributes, to fill and ship orders of all licensed Class B Wholesalers in this State in the sequence and order in which such purchase orders are received, within forty-five (45) calendar days from the date the order of the licensed Class B Wholesaler bears, such Brewer or Nonresident Seller shall immediately advise the Director of such fact. (EXCEPTION: Direct import items shall be shipped within sixty (60) days from the date of the order of the licensed Class B Wholesaler). The failure of any such Brewer or Nonresident Seller to notify the Director shall be grounds for the revocation of the authority of such Brewer or Nonresident Seller to sell, or offer for sale, any and all of the brands and the kinds of beer or brewed products manufactured or sold by said distributor.

45:30-5-5. Allocation plan for products in short supply

One hundred percent (100%) of the total number of cases available for sale in the State shall be equally divided among the total number of licensed Class B Wholesalers. Should any licensed Class B Wholesaler(s) refuse any portion of the allocation, the remainder of the product in short supply which is unclaimed shall be equally divided among the remaining Class B Wholesaler(s).

45:30-5-6. Class B Wholesaler Beer Distributor discrimination prohibited

(a) Every licensed Class B Wholesaler Beer Distributor before selling or offering to sell any beer or brewed products to any Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee, shall file with the Director a written statement sworn to by him, in which he shall agree that he will sell any of the brands or kinds of beer or brewed product, distributed by him to any Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee in the State County at the same current price and without discrimination, and that price lists showing the current prices will be filed by him in the office of the Director as often as may be necessary or required by the Director.

(b) The price listings filed by a licensed Class B Wholesaler with the Director shall be the cash price per case for each size of original package of each particular brand or kind of beer or brewed product sold or offered for sale by such Class B Wholesaler, and shall contain such other information as the Director may require.

(c) A licensed Class B Wholesaler Beer Distributor shall be deemed to have discriminated among Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensees if he shall, either directly or indirectly or by any agent or employee:

(1) Offer to sell, or sell, beer or brewed products to Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee within the same county at a price less than the listed current price which he has filed with the Director;

(2) Make, or offer to make, any secret rebate to or enter into any such transaction in any manner whatsoever with any Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee which would result in, or having as its purpose, the purchase of any such beer or brewed products by a Retail Spirit, Retail Beer, Mixed Beverage, Caterer or Special Event licensee at a price less than the current price which he has filed with the Director;

beer no longer required to price list



different prices

Beer and Wine

Mixed Beverage/Caterer

price applicable to other licensees within the same County

Mixed Beverage/Caterer

Beer and Wine

(3) Refuse to sell any brand or kind of beer or brewed products to a Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee;

(4) Refuse to sell any brand or kind of beer or brewed products to a Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee unless the Retail Spirit, Retail Beer, Mixed Beverage, Caterer or Special Event licensee shall purchase or agree to purchase alcoholic beverages of another kind, quantity, or brand in addition to, or partially in lieu of the brand or kind of beer brewed product specifically ordered by the Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee;

(5) Fail to fill and ship orders of Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensees who have submitted written purchase orders for beer or brewed products in the sequence and order in which such written purchase orders from Retail Spirit, Retail Beer, Mixed Beverage, Caterer or Special Event licensees are received by him; PROVIDED, that this paragraph shall not apply where the Class B Wholesaler is operating under a rationing plan approved by the Director;

(6) Accept payment for merchandise from one Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee and refuse same method of payment from another Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee, without authority from the Director of the Commission.

(d) A Class B Wholesaler Beer Distributor shall not be deemed to have discriminated among Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee under the following circumstances:

(1) A Class B Wholesaler Beer Distributor requests permission, in writing and signed under oath by a person authorized to represent the Class B Wholesaler Beer Distributor, from the Director of the ABE Commission to refuse to sell alcoholic beverages to a Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee when the Class B Wholesaler Beer Distributor can substantiate, by credible evidence, that the Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee has created a dangerous or hostile work environment for the licensed Class B Wholesaler Beer Distributor, its agents, its representatives, or its employees. Evidence of a dangerous or hostile work environment includes, but is not limited to, one or more of the following:

- (A) an physical abuse;
- (B) repeated verbal abuse;
- (C) excessive and repeated profanity;
- (D) harassment due to race, gender, age, national origin, religion, or other protected status recognized by state or federal law;
- (E) threats of harm to any agent or representative of the Wholesaler Beer Distributor; or
- (F) malicious or unfair business practices.

- (2) The request shall contain at least the following information verified under oath:
  - (A) the name and ABE license number of the specific Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee;
  - (B) the date(s) on which a Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee created a dangerous or hostile work Environment for the Class B Wholesaler Beer Distributor;
  - (C) details of the actions and/or behaviors which created the dangerous or hostile work environment;
  - (D) the name(s) and addresses of the person(s) who created the dangerous or hostile work

its agents, its representatives or its employees

environment; and

(E) the names and addresses of persons possessing relevant information to support the events.

(3) Upon receipt of a request to refuse to sell ~~alcoholic beverages~~ <sup>beer</sup> from a ~~Class B Wholesaler Beer Distributor~~ <sup>beer</sup>, the Director may, upon a finding that there exists an eminent threat of physical violence or undue emotional or psychological harm to an agent or representative of the ~~Class B Wholesaler Beer Distributor~~, grant the ~~Class B Wholesaler Beer Distributor~~ temporary permission to refuse to sell to the specific ~~Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee~~. In all other cases, the complaint shall be addressed through the process set forth below.

(4) Upon receipt of any verified complaint, whether or not the ~~Class B Wholesaler Beer Distributor~~ <sup>Spirit, Retail Beer</sup> has been granted temporary permission to refuse to sell to the specific ~~Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee~~, the Director shall promptly notify the named ~~Retail, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee~~ in writing, by certified mail, of the complaint. The notice shall contain the name and ABL license number of the ~~Class B Wholesaler Beer Distributor~~ and the specific allegations against the licensee as stated in writing by the ~~Class B Wholesaler Beer Distributor~~. A copy of the verified complaint shall be included as an exhibit to the notice.

(5) Said licensee may request an administrative hearing on the matter within fifteen (15) days of receipt of the complaint. If a hearing is requested, both the ~~Class B Wholesaler Beer Distributor~~ and the named licensee may appear and present evidence or testimony, including witnesses, as to why the request should or should not be granted. If a request for a hearing is not made within fifteen (15) days of receipt of the complaint, the Director may grant or deny the request. In those instances where a temporary permission has been given to the ~~Class B Wholesaler Beer Distributor~~ to refuse to sell, the Director shall indicate whether the temporary permission is revoked or made a permanent permission. The Director's decision shall be put in writing and sent by certified mail to the named parties. Failure by the party to which notice has been given to request a hearing will constitute a failure to exhaust administrative remedies and the Director's decision may not be further appealed.

(6) If a hearing is requested and the request to refuse to sell ~~alcoholic beverages~~ <sup>beer</sup> is granted after the hearing and after notice is given to the licensee, the aggrieved licensee may request an appeal to the full Commission on the record, and such hearing will be conducted in the same manner as all other administrative hearings before the Commission pursuant to 37A O.S. Sections 5302-150, 5302-151 and 5302-152.

(7) If a ~~Class B Wholesaler Beer Distributor~~ is granted permanent permission to refuse to sell to a specific ~~Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee~~, that permanent permission to refuse to sell shall remain in effect for at least one year and, thereafter, will remain in effect indefinitely unless either the licensee requests, in writing, a reconsideration of the decision after the expiration of one year, and the request is granted by the Director following an evidentiary hearing on the merits with notice to the ~~Class B Wholesaler Beer Distributor~~, or unless the Director revokes his decision, in writing, for good cause.

(8) If a request for refusal to sell is denied, the Director shall put the denial in writing and shall send a copy by certified mail to all named parties. Upon receipt of the denial in writing by the ~~Class B Wholesaler Beer Distributor~~, any temporary permission to refuse to sell originally granted by the Director shall expire and become null and void, and the ~~Wholesaler Distributor~~ <sup>Beer</sup> shall be required to resume selling to the specific ~~Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer,~~

Mixed Beverage/Caterer or Special Event licensee.

(9) A Class B ~~Wholesaler~~<sup>Beer</sup> ~~Beer Distributor~~ may not refuse to sell ~~alcoholic beverages~~<sup>beer</sup> to any Retail Spirit, Retail Beer, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee unless and until the Director grants the request under any of the conditions set forth above either on a temporary or permanent basis. A permanent grant of the request will be made by the Director, in writing, which shall be sent by certified mail to all named parties.

#### 45:30-5-7. Class B Wholesaler's price registration

(a) All licensed Class B Wholesalers on or before the 10th day of each month shall register or file with the Commission a listing of all beer or brewed products and the price that he proposes to market these items for during the following month.

(1) The price posting will list all items by brand name, type, container size, type of package and number of cans or bottles per package.

(2) The Commission shall immediately upon receipt of all Class B Wholesalers' postings, prepare a summation of the proposals and mail a copy to all Class B Wholesalers.

(b) After filing the initial price posting any and all Class B Wholesalers shall be permitted to register with the Commission on or before the 20th day of each month an "Adjusted Price" no lower than the lowest price posted on the 10th day of the posting month by any Class B Wholesaler. No prices shall be increased during this adjustment period. The Class B Wholesaler(s) posting the lowest price cannot adjust to a lower or higher price than he originally posted on the 10th day. A Class B Wholesaler may adjust his prices for one or more items or he may remain at his initial 15th day of the posting month posting.

(1) The Commission shall immediately upon receipt of all Class B Wholesalers adjusted postings prepare a summation of final postings and mail a copy to all Class B Wholesalers.

(2) If no adjustments are made a certificate to that effect shall be filed with the Commission on or before the 20th day of the month.

(3) The adjusted prices will not be in effect until the first day of the following month and will then stay in effect for a period of one month.

(c) All beer or brewed products that have not been previously sold by Class B Wholesalers shall be considered "new items". No Class B Wholesaler shall list a "new item" on his price posting until it is properly registered with the Commission by the Brewer or Nonresident Seller. If properly registered, the Class B Wholesaler may sell a "new item" only after he has posted prices with the Commission.

(d) When a Class B Wholesaler discontinues an item or does not have an item in his warehouse, or on order, the item will be deleted from his price posting. When or if the item is restocked or replaced in inventory of a Class B Wholesaler it will be reentered into the price posting as would a "new item".

(e) A Class B Wholesaler who received his license during a price posting period shall not sell to any retailers until a price posting is submitted. This posting shall not be lower than the lowest price posted by the other Class B Wholesalers for that period.

(f) The sale or the offer to sell, beer or brewed products at a price quoted in such price posting before the same is in force and effect shall be grounds for the suspension or revocation of any such Class B Wholesaler's license if the price varies from the price then in effect. To sell at a price not in compliance with the price posted with the Commission shall be deemed a discrimination against Retail, Mixed Beverage, Caterer or Special Event licensees in this State.

(g) No change of prices during any price posting period shall be permitted by a Class B Wholesaler;

except on an application thereof in writing showing good cause and then only with written permission of the Director,

(h) There shall be a fee of one dollar (\$1.00) collected for the identification (tax) stamp affixed to each case or keg of beer sold to the holder of a Mixed Beverage, Caterer or Special Event license, in accordance with Section 581 of Title 37 of the Oklahoma Statutes.

#### 45:30-5-8. ~~Class B Wholesaler's price list~~

~~Licensed Class B Wholesalers shall on the last day of each posting month publish and distribute a complete and final schedule of posted prices to all licensed customers who have made purchases within the past sixty (60) days immediately prior to such posting. Such list shall contain the brands, types, kinds and sizes of beer and brewed products offered for sale by the licensed Class B Wholesaler, and the selling price of each, together with the name, address and telephone number of the licensed Class B Wholesaler. Any request for such list by a licensed customer (verified by certified mail) must be immediately furnished by the licensed Class B Wholesaler. These price lists shall be a full and complete price list of beer and brewed products as posted with the Commission.~~

#### 45:30-5-9. ~~Class B Wholesaler's~~ Beer Distributor's record of sales

(a) Every licensed ~~Class B Wholesaler~~ Beer Distributor of beer or brewed products shall keep full, complete and accurate records of all sales of and receipts for beer or brewed products. The minimum required records shall include a "sales and cash receipt record" showing clearly the following information:

- (1) Date of sale.
- (2) Invoice number.
- (3) Name of ~~wholesaler~~ distributor and purchaser.
- (4) Amount of sale.
- (5) Terms (cash or C.O.D.)
- (6) Date of payment.
- (7) Method of payment (cash, money order, check, cashier's check, bank draft).
- (8) Merchandise returned from customer.

(b) The ~~Wholesaler~~ Beer Distributor may maintain a separate sales record and cash receipt record showing the information required in paragraphs (1) through (8) of (a) of this section, in lieu of the single "sales and cash record". If separate records are maintained, there shall be cross references between entries on the sales record and cash receipt record. Supporting invoices for each sale shall be filed in an orderly and consistent manner to permit the matching of invoices with the entries on the sales and receipt records.

#### 45:30-5-10. ~~Class B Wholesaler's~~ Beer Distributor's record of expenditures

(a) Every licensed ~~Class B Wholesaler~~ Beer Distributor of beer or brewed products shall keep a full, separate, complete and accurate record of all expenditures with regard to ~~alcoholic beverages~~ <sup>beer</sup>. No such expenditures of a ~~Class B Wholesaler~~ Beer Distributor shall be commingled with the expenditures of any other business or businesses operated by the ~~Class B Wholesaler~~ Beer Distributor. The minimum required records shall show clearly and accurately for each expenditure the following information:

- (1) Date of payment.
  - (2) Name of payee.
  - (3) Purpose of the expenditure in sufficient detail to permit a clear identification of the reason for the expenditure.
  - (4) Petty cash fund reimbursements must be supported <sup>(copy)</sup> receipts, vouchers, or other documents, showing the purpose of expenditure.
  - (5) Cross references to supporting documents.
- (b) All expenditures shall be supported by vouchers, invoices, bills, checkbooks, bank statements, ledgers, journals, expense reports, or other documentary evidence properly cross referenced and filed in an orderly and consistent manner to permit the matching of these documents with the entries on the expenditure record.

**45:30-5-11. Class B Wholesaler's Beer Distributor's separate records requirement**

Where a licensed ~~Class B Wholesaler Beer Distributor~~ of beer and brewed products is engaged in any other type or class of business or businesses, such ~~Class B Wholesaler Beer Distributor~~ shall set up and keep a separate and complete set of records covering all beer and brewed products bought and sold. Such records shall not become commingled with the records of any other type or class of business or businesses.

within this state

**45:30-5-12. Sale or transfer between Class B Wholesalers**

A licensed Class B Wholesaler may sell or transfer any beer or brewed products to another licensed Class B Wholesaler or to another of the transferee's licensed premises. The Director may require a licensed Class B Wholesaler to make written application for permission to sell or transfer any such beer or brewed product by filing in duplicate an application giving the name, license number and location of the consignee, quantity, size of container, brands and kinds, and such other information as the Commission may require. All sales or transfer of alcoholic beverages from one licensed premises to another licensed premises shall be evidenced by proper withdrawal and receiving tickets which shall be filed forthwith in the Office of the Commission.

**45:30-5-13. Business with suspended Brewer prohibited**

- Brewer or**
- (a) If after proper notice and hearing before the Director or the Commission, it is determined by the Director or the Commission that any Brewer or Nonresident Seller has violated any part of the Oklahoma Alcoholic Beverage Control Act or any part of the Rules and Regulations adopted by the Commission resulting in a suspension of the license of any such Nonresident Seller, or its agent or representative, notice of such suspension shall be immediately given by the Director to all licensed Oklahoma ~~Class B Wholesalers Beer Distributors~~ and after receipt of said notice, all ~~Class B Wholesalers Beer Distributors~~ are hereby specifically prohibited during the period of said suspension from purchasing any item of beer or brewed products from any such Brewer or Nonresident Seller whose license is suspended by the Commission and are, also, specifically prohibited from selling to Retail Spirit, Retail Beer, Mixed Beverage, Caterer or Special Event licensees any item of beer or brewed products offered in this State by such Nonresident Seller while under said suspension.
  - (b) It is further provided that, in cases where a ~~Class B Wholesaler Beer Distributor~~ is indebted to any such Nonresident Seller at the time of the receipt of said notice of suspension for beer or brewed

Beer and Wine,

Mixed Beverage / Caterer



products previously purchased from it, the terms and conditions of said credit arrangement <sup>shall</sup> be extended during such period that any such items of merchandise are withheld from sale or barter under the provisions of this Section.

#### 45:30-5-14. Restriction on deliveries

All deliveries of beer or brewed products shall be made by the Class B Wholesaler Beer Distributor to the Retail Spirit, Retail Beer, Mixed Beverage, Caterer or Special Event licensee at his licensed premises and not elsewhere, and all Retail Spirit, Retail Beer, Mixed Beverage, Caterer or Special Event licensees are prohibited from accepting from any Class B Wholesaler Beer Distributor any beer or brewed products at the Class B Wholesaler Beer Distributor's premises or elsewhere, other than the licensed premises of such licensee.

#### 45:30-5-15. Class B Wholesaler Beer Distributor's vehicle signs

All vehicles owned or leased and made use of by Class B Wholesaler Beer Distributors, except licensed carriers under the Oklahoma Alcoholic Beverage Control Act, shall have displayed on the outside of the doors, windows or side panel on both sides of the vehicle a sign in letters at least three (3) inches in height and one and one-half (1 1/2) inches in width stating the letters A,B,L,E. and the license number. The name and address of the Class B Wholesaler Beer Distributor may be printed in letters of lesser dimensions. These signs shall be properly displayed while transporting any beer or brewed products by the Class B Wholesaler Beer Distributor from the Brewer or Nonresident Seller or to all Retail Spirit, Retail Beer, Mixed Beverage, Caterer or Special Event licensees.

#### 45:30-5-16. Employees and agents must be licensed

- (a) No Brewer, Nonresident Seller or Class B Wholesaler Beer Distributor shall have any person employed in connection with his licensed business in this State, unless the employer and/or employee have filed by certified United States mail or in person an application for license for such employee or agent.
- (b) Any Brewer, Nonresident Seller or Class B Wholesaler Beer Distributor having an unlicensed person performing any duties of an employee or agent in connection with his licensed business will be subject to a suspension of license for such time as the Director or Commission deems appropriate.

#### 45:30-5-17. Container price differences

All Brewers, Nonresident Sellers and Class B Wholesaler Beer Distributors may post prices on containers of beer or brewed products that are offered for sale in this State at a price in excess of any other approved container for the same quantity of the same brand or kind of beer or brewed product, when there is a difference in the cost of the container and/or package to the Brewer, or the Nonresident Sellers of beer or brewed products and/or Class B Wholesaler Beer Distributors.

#### 45:30-5-18. Transportation of alcoholic beverages by licensees

A Brewer, Nonresident Seller or Class B Wholesaler Beer Distributor may ship or transport beer or brewed products from his licensed warehouse to the premises of any other licensee by any common,

contract or private carrier who is the holder of a valid carrier's permit issued by the Commission.

45:30-5-19. Extension of Brewery Premises

When attending a trade show or festival, the location becomes a licensed premises and extension of their brewery. Therefore, a 21 years of age and older consumption and tasting area shall be established. The licensee shall set up and define an area contiguous to their booth space and being no larger than 500 square feet, a 21 years of age and older consumption and tasting area. A Type II sign stating "No Persons Under 21 Years of Age Permitted In This Area of These Premises" shall be posted at the entrance to the consumption area. Customers or consumers can only consume the beer in the designated consumption and tasting area. In the event that multiple brewers are at the same festival, they may combine their 21 year old and older consumption and tasting areas into one larger area (not to exceed 500 square feet per brewer) as long as they are contiguous to the brewers booths. The Commission may approve additional square footage on a case by case basis.

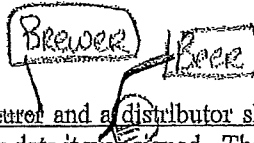
45:30-5-20. Event Schedule Required

Brewer licensees shall complete an "Event Schedule" by the 1st day of the Month and submit it to the Commission, along with a diagram/floor plan of any trade show or festival that they will be attending. Diagrams/floor plans shall be approved by the Commission prior to the brewer licensee attending the trade show or Festival.

45:30-5-21. Separate Licensed Premises

No brewer licensee shall attend or set up on the licensed premise of another licensee. If a brewer wants to attend or set up at a trade show or festival that is a licensed premises, the brewer may set up outside of the licensed premises and shall contain the consumption of their beer to within their own established premises.

45:30-5-22. Procedures for filing agreements



All agreements entered into between a manufacturer and a distributor shall be filed with the Commission within fifteen (15) calendar days of the date it was signed. The copy filed shall be a photo copy of the original signed agreement. The agreement shall contain a map indicating the sales territory, or a separate map shall be filed contemporaneously with the agreement. Such map shall indicate the approval by all parties of the agreement. A copy of any changes to an agreement on file with the Commission shall be submitted to the Commission within fifteen (15) calendar days of the date the changes or amendments were signed.

45:30-5-23. Registration of designated brands

Brewer

A manufacturer shall register each designated brand at the same time that a sales agreement is filed. In the event a change or amendment is made to an agreement, an affidavit to the effect that there has been no change in the registered designated brands or information concerning the registered designated brands shall be filed with the changes or amendments. In the event a change or amendment does affect the registered designated brands, then a new registration for each designated

Change throughout both sections

Manufacturer → Brewer

distributor → Beer Distributor

brand shall be necessary.

45:30-5-24. Delivery outside designated sales territory

When a distributor is temporarily unavailable to provide the designated brands of the manufacturer within the sales territory, the manufacturer may authorize another distributor to supply the designated brands within that sales territory. A distributor shall be deemed to be temporarily unavailable to provide the designated brands with the manufacturer finds that illness, natural catastrophes such as tornadoes, fires, floods, or other conditions will prevent the distributor from providing the designated brands for a determinate period of time. In the event a manufacturer deems a distributor temporarily unavailable to provide such brands, the manufacturer shall provide notice within ten (10) calendar days to the affected distributor, the new temporary distributor for the territory, and the Commission.

45:30-5-25. Termination of agreement

A manufacturer terminating an agreement with a wholesaler shall file a copy of the written notification with the Commission no more than five (5) calendar days from the date of termination.

CHAPTER 35. EVENTS, AIRLINE/RAILROAD, HOTEL/MOTEL

following

<u>Subchapter</u>	<u>Section</u>
1. Special Events	45:35-1-1
3. Public Events	45:35-3-1
5. Charity Events	45:35-5-1
7. Airlines and Railroads	45:35-7-1
9. Hotels and Motels	45:35-9-1

[Authority: 37A O.S., Section 1-101 et seq., and 75 O.S., Sections 302, 305 and 307]

[Source: Codified 10-01-18]

SUBCHAPTER 1. Special Events

Section

- 45:35-1-1. Application
- 45:35-1-2. License Availability
- 45:35-1-3. Proof of Insurance Required
- 45:35-1-4. Diagram
- 45:35-1-5. Barriers
- 45:35-1-6. Designated Bar Area

45:35-1-1. Application

Application for a Special Event License shall be made to the Commission (on forms prescribed by the Commission) by an organization, association or non-profit corporation for the authority to sell and distribute alcoholic beverages on a premises which is licensed and approved by the Commission.