

# **TITLE 45. ALCOHOLIC BEVERAGE LAWS ENFORCEMENT COMMISSION**

## **CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[Authority: 37 O.S., §§ 502 et seq.; 75 O.S., §§ 302, 305, and 307]  
[Source: Codified 12-31-91]

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **45:1-1-1. Purpose**

The rules in this Chapter provide information on the history, purpose, organization, operations, procedures and forms of the Oklahoma Alcoholic Beverage Laws Enforcement Commission. The rules in this Chapter also provide certain duties, responsibilities and authority of the Director of the Oklahoma Alcoholic Beverage Laws Enforcement Commission.

### **SUBCHAPTER 3. ORGANIZATION, OPERATIONS, PROCEDURES AND FORMS**

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

[Source: Amended at 35 Ok Reg 799, eff 10-1-18]

#### **45:1-3-2. Purpose of the Commission**

The general course and method of the Commission is prescribed by the Legislature as being an exercise of the police power of the State of Oklahoma for the protection of the welfare, health, peace, temperance and safety of the people of the State, for the purpose of licensing and regulating the liquor industry in this State by administrative, disciplinary procedures whereby licenses are issued or denied, suspended or revoked, after notice and hearing and enforcing the Oklahoma Alcoholic Beverage Control Act.

#### **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 200, Oklahoma City, Oklahoma.

[Source: Amended at 35 Ok Reg 799, eff 10-1-18]

#### **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, 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 200, Oklahoma City, Oklahoma.

[Source: Amended at 35 Ok Reg 799, eff 10-1-18]

#### **45:1-3-5. General procedures**

In addition to the rules of practice and procedures heretofore prescribed by the Legislature in the Repeal Act and the rules now in effect promulgated by the Commission, there is hereby adopted by the Commission all provisions, procedures and rules of evidence, established in the Oklahoma Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes. All rules heretofore adopted by the Commission which are in conflict with the Oklahoma Administrative Procedures Act are hereby repealed.

#### **45:1-3-6. Emergency rules**

No emergency rule shall be promulgated by the Commission unless at least five (5) days prior to the date of such adoption each member of the Commission is provided with a copy of such proposed emergency rule and proof of such delivery be shown prior to the adoption of any such emergency rule. This provision may be modified by a majority vote of the Commission members present.

#### **45:1-3-7. Requests for rule changes and declaratory rulings**

- (a) In all instances where interested persons request the promulgation, amendment, or repeal of a rule or petition the Commission for declaratory rulings the procedures prescribed in this section shall be used.
- (b) Requests for promulgation, amendment, or repeal of rules shall set out in its entirety the requested rule or the suggested amendment or repeal of any rule in effect.
- (c) All petitions filed for declaratory rulings by the Commission concerning any ruling or Order by said Commission shall set out fully the views of the petitioner giving the reasons he has in support of such views.
- (d) All petitions filed with the Commission on or before the 29<sup>th</sup> day of the month shall be set for hearing on the Agenda of the Commission at its next regular meeting of the following month; PROVIDED, that for good cause shown to the Director or the Commission by mutual agreement between the petitioner and the legal representative of the Commission, the hearing of the petition may be postponed.
- (e) All hearings before the Commission shall be in full compliance with the provisions of the Oklahoma Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes.
- (f) The following forms shall be used in petitioning the Commission for promulgation, amendment, or repeal of any rule or declaratory ruling:

(1)

In the Matter of the Promulgation

PETITION

Comes now the undersigned petitioner and respectfully requests the Commission to: \_\_\_\_\_ and in furtherance hereof asks that this petition be set for hearing before the Commission on the date of its next regular meeting.

WHEREFORE, petitioner asks that upon the hearing of the above requested that such relief be granted by the Commission.

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PETITIONER

(2)

In the Matter of a Request for a Declaratory Ruling

PETITION

Comes now \_\_\_\_\_ and respectfully requests the Commission for declaratory ruling upon the following Rule or Order heretofore entered by the Commission, to wit: \_\_\_\_\_ and in furtherance hereof asks that this petition be set for hearing before the Commission on the date of its next regular meeting.

WHEREFORE, petitioner asks that the Commission render a declaratory ruling interpreting and outlining the policy of the Commission with regard to the Rule and Regulation hereinabove referred to.

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PETITIONER

**SUBCHAPTER 5. 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.

[Source: Amended at 35 Ok Reg 799, eff 10-1-18]

#### **45:1-5-2. Requests for subpoenas**

(a) It is hereby provided that in all cases where a licensee desires the Commission to issue subpoenas to compel the attendance of witnesses after a Notice of Contemplated Denial of License or Suspension or Revocation thereof has been issued and the licensee, or licensees, or his attorney, desires to have witnesses subpoenaed to appear before the Commission or the Director and a request therefore in writing is made upon the Commission, or its employees, by any such licensee, or his attorney giving the name and correct address of any such witnesses named in said request at licensee's sole expense, and that in addition thereto, the traveling fees and the daily attendance fees will be paid by the licensee at the time of the service of such subpoena; also setting out in said request the name of the person, or persons, to whom such subpoenas shall be mailed for the purpose of serving such subpoenas and absolving the Commission, and its employees, and the State of Oklahoma from any obligation to pay the traveling fees and daily attendance fees of such witnesses desired subpoenaed by any such licensee.

(b) The Director, or the Chief Enforcement Officer, shall cause subpoenas to be issued and mailed in conformity with said written requests; PROVIDED, that in said subpoena the witnesses named therein shall be advised that they may demand their traveling fees and daily attendance fees from the licensee, or his representative, that the Commission will not be, and is not, responsible for any traveling fees, daily attendance fees, or other expenses incurred by any such witness in attending any hearing before the Commission or Director.

(c) Any such written request or praecipe for witnesses on behalf of the licensee shall not be honored and issuance of such subpoenas shall not be required unless such request or praecipe subpoena is presented to the Commission, or its employees, by mail or otherwise, at its office in Oklahoma City, Oklahoma, at least five (5) days prior to the date of the hearing at which the attendance of any such witness, or witnesses, would be required.

#### **45:1-5-3. Failure to appear**

Any licensee who fails to appear before the Commission, as directed, after having been first given proper Notice of Contemplated Suspension, Revocation, or Denial of his license by reason of an alleged violation of the Alcoholic Beverage Control Act or the rules of the Commission, and Proof of Service of such notice upon any such licensee having been duly made, may be determined to have waived his right to present a defense to the offense alleged in the Notice of Contemplated Suspension, Revocation, or Denial and a suspension, revocation or denial of the license of any such person may be ordered by the Commission if it appears, after having heard the evidence, that the violation alleged did in fact occur, when such licensee fails to appear before the Commission on the date of the hearing.

#### **45:1-5-4. Refusal to testify**

(a) A refusal on the part of any licensee under the Alcoholic Beverage Control Act to answer questions under oath, or to produce any book or record available to him under his control, when requested by the Commission or Director, shall constitute grounds upon which to suspend or revoke any license issued to such person or persons.

(b) It is further provided that if, at the time of hearing any application for the renewal of any license, it is made to appear to the Commission or the Director that any licensee has refused to answer any questions under oath concerning, or in any way relating to the liquor industry, or to produce any book or record available to him or under his control after being properly subpoenaed by any lawfully constituted inquisitorial body of any court of record, or the Commission or Director, that a renewal of any such license shall be denied by the Director or the Commission.

(c) This section shall in no way limit or modify the authority of the District Court in any proceeding for contempt where any such licensee has refused to answer any questions propounded to him by the Commission or the Director.

## **SUBCHAPTER 7. DIRECTOR OF THE COMMISSION**

### **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 1-108 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 1-108 and 1-107(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, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, Winemaker Self-Distributor, Retail Spirit, Retail Beer, Retail Wine, Beer and 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 2-146 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 2-149 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.

[Source: Amended at 35 Ok Reg 799, eff 10-1-18]

#### **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 1-108, 2-150, 2-151, and 2-152 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.

[Source: Amended at 35 Ok Reg 799, eff 10-1-18]

#### **45:1-7-3. Authority to issue notices and administer oaths**

In addition to the authority heretofore exercised by the Chief Law Enforcement Officer, there is hereby delegated to him, and he is hereby authorized to issue Subpoenas, Notices of Contemplated Denial of Licensed, Notices of Contemplated Suspensions and Revocations, and to administer oaths for the

purpose of examining witnesses when the need therefore arises.

#### **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, Beer Distributors, Small Brewer Self-Distributors, Brewpub Self-Distributors, and Winemaker Self-Distributors other pertinent information relative to credits and charge-offs.

[Source: Amended at 35 Ok Reg 799, eff 10-1-18]

## **CHAPTER 10. PROVISIONS AND PENALTIES APPLICABLE TO ALL LICENSEES**

[Authority: 37 O.S., §§ 502 et seq.]

[Source: Codified 12-31-91]

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **45:10-1-1. Purpose [REVOKED]**

[Source: Revoked at 38 Ok Reg 906, eff 9-11-21]

#### **45:10-1-2. Definitions**

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Public school"** means all schools supported, in whole or in part, by taxation of any kind or character within the State of Oklahoma, and shall also include all schools which may be attended by the public offering educational instruction equivalent to that offered in public grade schools, public high schools, public preparatory schools, and colleges and universities having authority to award recognized degrees.

### **SUBCHAPTER 3. PROVISIONS APPLICABLE TO ALL LICENSEES**

#### **45:10-3-1. Denial of application**

Grounds for which license applications may be denied wherein the applicant:

- (1) Fails to complete all questions on said application.
- (2) Omits any information required on said application.
- (3) Falsifies any information required by said application.

#### **45:10-3-2. Felony conviction or previous revocation [REVOKED]**

[Source: Revoked at 38 Ok Reg 906, eff 9-11-21]

#### **45:10-3-3. Interest in illegal business**

No license shall be issued to, nor shall such license be retained by, a person who has a beneficial interest, directly or indirectly, in any business or enterprise which is contrary to or operated in violation of any of the laws of this State or of the United States relating to public morals and decency, lotteries, gambling, gambling devices or bookmaking.

#### **45:10-3-4. Notice of intent to apply for license**

All applicants for original Brewer's, Distiller's, Winemaker's, Rectifier's, Wine and Spirits Wholesaler's, Beer Distributor's, Small Brewer Self-Distributor, Brewpub Self-Distributor, Winemaker Self-Distributor, Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, Bottle Club and Caterer licenses shall, prior to applying for such license, twice publish a notice of its intention to apply, once every eight (8) days within two (2) successive weeks.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

#### **45:10-3-5. Application filing period**

All applicants for original Brewer's, Distiller's, Winemaker's, Rectifier's, Wine and Spirits Wholesaler's, Beer Distributor's, Small Brewer Self-Distributor's, Brewpub Self-Distributor's, Winemaker Self-Distributor's, Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, Bottle Club, or Caterer licenses shall file with the Director or the Commission their application within sixty (60) days from the date of the first publication of Notice of Intention to Apply for an Alcoholic Beverage License, or said Notice of Intention shall be null and void.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

#### **45:10-3-6. Payment of municipal occupational tax**

No licensee shall sell or offer for sale any alcoholic beverages until such time as he shall have paid the annual occupational tax imposed by the city or town wherein the licensed premises is located if applicable.

#### **45:10-3-7. Employee, Agent or Manufacturer's Agent license**

No Nonresident Seller, Wine and Spirits Wholesaler, Beer Distributor, Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage or Bottle Club licensee or other licensee of this Commission, except the holder of a Carrier's license, Caterer's license, or Special Event license, shall have any person employed in connection with his licensed business who physically handles alcoholic beverages in this State unless the employer or the employee, Agent, or Manufacturers Agent have filed by certified mail or in person an application for license for such employee, Agent, or Manufacturers Agent.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

#### **45:10-3-8. Duplicate licenses**

Whenever any license issued by the Commission shall become lost or destroyed before the expiration date thereof, the licensee to whom such license was issued shall make written application to the Director for a duplicate license. Said application shall set forth all the facts and circumstances concerning the loss or destruction of such license and shall be sworn to by the person applying for such duplicate. Upon receipt of such application, the Director may cause an investigation to be made, and if satisfied that the application is made in good faith and is true and



correct, shall issue a duplicate in lieu of the license that was lost or destroyed. Such duplicate license shall show on its face that it is a duplicate license.

**45:10-3-9. Trade organization disclosure**

All licensees licensed by this Commission shall, upon receiving notification hereof by the Director, disclose in writing to the Director the name of any trade organization, association or corporation within the liquor or beer industry of which they are now, or may hereafter become, a member and shall, if required by the Director, reveal the purpose and objectives of such organization, association or corporation, together with a complete list of the membership of such organization, and any rules, by-laws, or governing regulations of any such organization, association, or corporation.

**45:10-3-10. Prohibited conduct on licensed premises**

No licensee shall engage in, allow, permit or suffer in or upon his licensed premises any disturbances, lewdness, immoral activities or displays, brawls, or unnecessary noises, or allow, permit, or suffer the licensed premises to be conducted in such a manner as to create public censure or to become a nuisance.

**45:10-3-11. Sanitation**

Sanitary conditions, conducive to public health and welfare, shall be maintained at all times, in, on, or about the licensed premises of all licensees.

**45:10-3-12. Restriction on delivery of alcoholic beverages**

No licensee of the Commission shall accept delivery of spirits or wines on Sunday, on New Year's Day, the Fourth of July, Thanksgiving Day or Christmas Day.

[Source: Amended at 20 Ok Reg 1479, eff 6-7-02 (emergency); Amended at 20 Ok Reg 1542, eff 6-12-03; Amended at 35 Ok Reg 801, eff 10-1-18]

**45:10-3-13. Payment before delivery by Wholesaler**

No alcoholic beverages shall be delivered to a Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, Caterer or Special Event licensee by a licensed Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor or Winemaker Self-Distributor, his agent, servant or employee without receiving payment therefore at the time of making such delivery, or payment having been made by said Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, Caterer or Special Event licensee prior to such delivery.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

**45:10-3-14. Wholesaler invoice requirement**

Every Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, Caterer or Special Event licensee or employee purchasing alcoholic beverage shall, at the time of delivery of such alcoholic beverage and at no other time, demand and receive from the licensed Wine and Spirits Wholesaler selling such alcoholic beverage, and such licensed Wine and Spirits Wholesaler shall furnish and deliver in duplicate, a serially numbered invoice, purchase order or sales ticket truly and correctly showing the kind, brand, quantity and price of such alcoholic beverage purchased or sold, the date and place of purchase or sale, the

name and address of the licensed Wine and Spirits Wholesaler and the name and address of the Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, Caterer or Special Event licensee. Such licensee shall keep one copy of each such invoice, purchase order, or sales ticket for a period of three (3) years thereafter, which shall be open at all times to inspections by the Commission, its deputies or agents, or any other law enforcing officer of the State of Oklahoma.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

#### **45:10-3-15. Returning merchandise delivered in error**

A Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, Winemaker Self-Distributor, or employee shall not be deemed to have violated Section 3-119(5) of Title 37A of the Oklahoma Statutes in instances where, through mistake, inadvertence, or oversight, such Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, Winemaker Self-Distributor delivers to a Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, Caterer or Special Event licensee in good faith, alcoholic beverage other than that which was ordered by the Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, Caterer or Special Event licensee. Such mistake or oversight must be called to the attention of the Wine and Spirits Wholesaler by the Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, Caterer, or Special Event licensee within a five (5) day period from the date the merchandise was received by the Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, Caterer or Special Event licensee. The Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, or Winemaker Self-Distributor will immediately, upon being notified by the licensee, initiate action within a reasonable time to correct the error. All invoices and records will be corrected to indicate the adjustment or replacement action taken. PROVIDED, a Wine and Spirits Wholesaler shall be prohibited from refunding, replacing, returning, or otherwise accepting product from a licensee that suffered damage at the retail licensee's location after delivery. PROVIDED FURTHER, retail licensees are prohibited from requesting or requiring the Wine and Spirits Wholesaler to remove such damaged product as a condition of continued business with the retail licensee.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

#### **45:10-3-16. Insufficient fund checks prohibited**

No holder of a Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage or Caterer's license or employee thereof shall give a check drawn upon any bank to a licensed Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, or Winemaker Self-Distributor in payment for alcoholic beverage purchases without having sufficient funds on deposit in said bank to pay said check upon presentment for payment. Any check which is not paid when presented for payment by reason of insufficient or no funds being on deposit in said bank with which to pay the same, shall be prima facie evidence that the maker of said check has accepted and received credit from the licensed Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, or Winemaker Self-Distributor to whom said check was issued. If any Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage or Caterer licensee shall issue an insufficient or no-fund check for the purchase of alcoholic beverages, which check was not paid as required by 45:10-3-17 within three (3) business days following notice of dishonor, the Wine

and Spirits Wholesaler, Beer Distributor, Self-Distributing Brewer, Self-Distributing Winery, or Brewpub Self-Distributor shall immediately notify the ABLE Commission of such fact and, the ABLE Commission shall, upon determining such fact immediately notify all Wine and Spirit Wholesalers, Beer Distributors, Self-Distributing Brewers, Self-Distributing Wineries, and Brewpub Self-Distributor that the issuing licensee shall not be permitted to purchase any alcoholic beverage until the licensee has paid the outstanding invoice at issue.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

#### **45:10-3-17. Payment of insufficient fund checks**

If any holder of a Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, or Caterer's license or employee shall give an insufficient or no-fund check to a licensed Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, or Winemaker Self-Distributor in payment for alcoholic beverages purchased by said licensee, said check shall be paid only by cash, bank draft, cashier's check, express or postal money order. Under no circumstances shall another personal check of said licensee be accepted or received by said licensed Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, or Winemaker Self-Distributor in payment of said check; PROVIDED, if such licensee or employee has on deposit for collection in the bank upon which such insufficient check should be drawn sufficient funds to pay such check, then in that event, any such check given to a licensed Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, or Winemaker Self-Distributor shall not be construed to mean an insufficient or no-fund check.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

#### **45:10-3-18. Notice of dishonored check**

(a) Whenever a licensed Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, or Winemaker Self-Distributor shall receive from the holder of a Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage or Caterer's license a check in payment of alcoholic beverages purchased, which check is returned dishonored, and not thereafter paid as required by 45:10-3-17 within three (3) business days after notice of dishonor, said licensed Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, or Winemaker Self-Distributor shall, immediately following the close of the third business day after receipt of the notice of dishonor, notify the Commission in writing of such fact and shall furnish in duplicate the following information to the Commission:

- (1) Name, address and license number of the licensee issuing the check.
- (2) The date and amount of said check.
- (3) Copy of invoice or invoices for which said check was given in payment.
- (4) The name and address of the bank upon which said check was drawn.
- (5) The name and address of the bank in which said check was deposited by the licensed Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, or Winemaker Self-Distributor.
- (6) The dates upon which said check was deposited and returned.
- (7) A statement that demand for payment of the dishonored check has been made upon the issuing licensee, and that the dishonored check has not been paid within three (3) business days.

(b) If any licensed Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, or Winemaker Self-Distributor shall fail, neglect or refuse to notify the Commission or furnish information required by this rule, or shall, having knowledge that a licensee is prohibited from purchasing alcoholic beverages, accept the personal or business check of such licensee in return for alcoholic beverages during such probationary period, such acceptance, failure, neglect or refusal shall be deemed an extension of credit from said Wine and Spirits wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, or Winemaker Self-Distributor to the said Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, mixed beverage or caterer licensee and a violation of Section 3-119 of Title 37A of the Oklahoma Statutes.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

#### **45:10-3-19. Requirement for deposit of checks**

All checks, given in payment for alcoholic beverages purchased by the holder of a Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage or Caterer's license from a licensed Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, or Winemaker Self-Distributor, shall be deposited for payment by the licensed Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, or Winemaker Self-Distributor not later than the second banking day after the receipt of said check by said licensed Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, or Winemaker Self-Distributor, its salesman, agent or representative. The failure of a licensed Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, or Winemaker Self-Distributor to deposit any such check for payment by the end of said banking day after receipt thereof by said licensed Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, or Winemaker Self-Distributor, its salesman, agent or representative, shall be deemed a voluntary extension of credit by said licensed Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, or Winemaker Self-Distributor to a Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, or Mixed Beverage or Caterer licensee.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

#### **45:10-3-20. Holding of check prohibited**

Any arrangements or agreements, expressed or implied, between a licensee or an employee, whereby the licensed Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, or Winemaker Self-Distributor holds or retains a check received by him from such holder of a Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage or Caterer's license or employee in payment of alcoholic beverages sold shall be deemed an extension of credit and a violation by the licensees.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

#### **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, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, or

Winemaker Self-Distributor shall receive or accept any postdated or undated check in payment for alcoholic beverages.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

**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.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

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

No Manufacturer, Nonresident Seller, Wine and Spirits Wholesaler or Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, or Winemaker Self-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.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

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

All licensed Oklahoma Wine and Spirits Wholesalers, Beer Distributors, Small Brewer Self-Distributor, Brewpub Self-Distributor, Winemaker Self-Distributor, 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 electronic or non-electronic refrigerated equipment, fixture, dispensing equipment, outdoor electric or non-electric advertising structure displaying the retailer's name, permanent shelving, supplies, discount, retailer rebate, premiums, free goods, gifts, services of any employee including but not limited to affixing price labels or tags, routinely stocking product on shelves other than the stocking of cold boxes, entering information into a retailer's computer system, handling product that was not sold to the retailer by the licensee, paying a slotting fee, selling on consignment, operating a retailer's cash register, conducting janitorial services, decoration, samples of alcoholic beverages, personal property, or other inducements from any Manufacturer, Brewer, Distiller, Rectifier, Nonresident Seller, Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, Winemaker Self-Distributor or their agents or employees, except in compliance with Title 27 CFR Chapter 1 Part 6, Subparts A through D or as allowed by 45:10-3-25.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

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

No licensed Manufacturer, Brewer, Distiller, Rectifier, Nonresident Seller, Importer, Wine and Spirits Wholesaler or Beer Distributor, Small Brewer Self-

Distributor, Brewpub Self-Distributor, or Winemaker Self-Distributor, their agents or employees, shall directly or indirectly offer, sell, trade, give or furnish any discount, free goods, electronic or non-electronic refrigerated equipment, fixture, dispensing equipment, outdoor electric or non-electric advertising structure displaying the retailer's name, permanent shelving, supplies, gifts, prizes, coupons, premiums, retailer rebates, services of any employee including but not limited to affixing price labels or tags, routinely stocking product on shelves other than the stocking of cold boxes, entering information into a retailer's computer system, handling product that was not sold to the retailer by the licensee, paying a slotting fee, selling on consignment, operating a retailer's cash register, conducting janitorial services, 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 Beer Distributor, their agents or employees, except in compliance with Title 27 CFR Chapter 1 Part 6, Subparts A through D. Provided, that nothing in this section shall prohibit the furnishing of normal point of purchase advertising matter to such retail license, product display building and/or replenishment, initial shelving of product at the retail location, and rotating product forward on a retail shelf that was sold by the wholesaler or distributor to the retail licensee. Provided further, each Beer Distributor, Small Brewer Self-Distributor, and Brewpub Self-Distributor shall be permitted to take necessary merchandising actions for shelf replenishment, display building and quality control as provided by 37A O.S. §3-115 and Section 45:30-5-25.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

#### **45:10-3-26. Prohibited transactions**

All licensed Wine and Spirits Wholesalers, Beer Distributors, Small Brewer Self-Distributors, Brewpub Self-Distributors, Winemaker Self-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 any alcoholic beverages from authorized sellers of alcoholic beverage by consignment, or upon condition, or with the privilege of returning the same or on any condition other than bona fide sale. Further, Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Bottle Club, Mixed Beverage, Caterer and Special Events licensees and their employees are prohibited from accepting any loan or credit from any authorized seller of alcoholic beverages.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

#### **45:10-3-27. Storage in bonded warehouse**

A Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, Caterer or Special Event licensee who desires to remove some of his alcoholic beverages from his licensed premises to a Bonded Warehouse shall first obtain written permission of the Director. After the delivery of the alcoholic beverages, he shall send to the Director an itemized list showing the quantity and brands of the types of alcoholic beverages delivered to the warehouse. A Bonded Warehouse shall report in writing to the Director all receipts of alcoholic beverages from Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, Caterer or Special Event licensees, giving the name, address, and license number of the licensee delivering the same, the date of such delivery, and the description of the quantity and brands of the types of alcoholic beverages delivered. A Bonded Warehouse shall report in writing to the Director all withdrawals of alcoholic

beverages from its warehouse by a Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, Caterer or Special Event licensee, giving the name, address, and license number of the Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, Caterer or Special Event licensee who is withdrawing such alcoholic beverages, the date of such withdrawal, and a description of the quantity and brands of the types of alcoholic beverages so withdrawn.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

#### **45:10-3-28. Refunds for erroneous or excessive collections**

(a) The following shall be considered as erroneous or excessive collections and refunds therefore shall be made:

(1) Whenever the amount payable for a license has been received by the Director and the license is not issued or, if issued, is not used by the licensee, or

(2) Whenever a license is transferred from one location to another, calling for a smaller license fee, in which event the pro rata difference will be refunded.

(b) No claim for refund will be considered unless filed with the Director by June 30th of the present year for which the license has been applied for or issued. This rule shall not be construed to limit or modify Section 2-142 of Title 37A of the Oklahoma Statutes.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

#### **45:10-3-29. Restriction on licensing relatives [REVOKED]**

[Source: Revoked at 38 Ok Reg 906, eff 9-11-21]

#### **45:10-3-30. Transfer of stock by former licensee**

When a licensee has discontinued business under his license and his license has been terminated, he may apply in writing to the Director for permission to transfer his stock of alcoholic beverages to 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, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, Winemaker Self-Distributor, or Nonresident Seller whose license has been terminated or canceled shall be permitted to sell his wholesale stock of alcoholic beverages only to the holder of a Wine and Spirits Wholesaler or Beer Distributor license issued by the Commission. All sales of alcoholic beverages by the former holder of the Wine and Spirits Wholesaler, Nonresident Seller, Class B Wholesaler, Small Brewer Self-Distributor, Brewpub Self-Distributor, Winemaker Self-Distributor, or Beer Distributor 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, Beer Distributor, Nonresident Seller, Class B Wholesaler to return to a Manufacturer, Brewer or Nonresident Seller merchandise for credit or refund of the seller's laid-in cost.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

#### **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 ninety (90) days. At the end of the 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.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

#### **45:10-3-32. Prohibited locations**

- (a) No mixed beverage establishment, beer and wine establishment, or bottle club which has as its main purpose the selling or serving of alcoholic beverages for consumption on the premises shall be located within three hundred (300) feet of any public or private school or church property primarily and regularly used for worship services and religious activities. The distance between the establishment and the school or church shall be measured in a straight line from the nearest property line of the school or church to the nearest perimeter wall of the licensed premises of the establishment. If it is not possible to make a direct measurement because of obstructions or other hindrances, the measurement may be made by any reasonable method. The provisions of this section shall not prohibit the operation, or the renewal of a license, or a change of owner or operator of an establishment which was licensed to operate at an otherwise prohibited location on July 1, 1999, provided that the license has not lapsed for a period of more than sixty (60) days, the establishment has not changed locations, and the change in owner or operator results in the same type of business being conducted on the premises.



(b) If a new or relocating establishment, which claims that its main purpose is something other than the sale of alcoholic beverages, applies to be licensed at an otherwise prohibited location, the establishment shall have the burden of demonstrating that its claimed main purpose is reasonable considering its facilities, equipment and location and that the business would otherwise qualify for a separate or enclosed lounge or bar area under the provisions of 45:10-3-31 of the Rules and Regulations of the ABLE Commission. A new or relocating establishment which reasonably demonstrates that its main purpose is something other than the sale of alcoholic beverages may receive a license to operate for a period of ninety (90) days. At the end of the ninety (90) day period, the establishment shall have the burden of showing, by records as specified by the ABLE Commission, that the main purpose of the business continues to be something other than the sale of alcoholic beverages. If the establishment fails to demonstrate that its main purpose is something other than the sale of alcoholic beverages, the business shall immediately stop selling alcoholic beverages and its license shall be surrendered. Failure to surrender the license shall result in revocation and the inability to hold an alcoholic beverage license for one (1) year.

[Source: Added at 16 Ok Reg 3607, eff 8-25-99 (emergency); Added at 17 Ok Reg 2273, eff 6-26-00; Amended at 35 Ok Reg 801, eff 10-1-18]

## **SUBCHAPTER 5. PENALTIES**

### **45:10-5-1. General penalty**

It is hereby provided that the violation by any licensee of any rule now existing or which may be hereafter adopted shall constitute grounds for the revocation or suspension of any license for such period of time as, in the judgment of this Commission, may be determined, unless the punishment for any violation be prescribed within the rule violated.

### **45:10-5-2. Summary suspension**

(a) If, at the time of the issuance of a Notice of Contemplated Suspension or Revocation, the Director or the Commission finds that the public health, safety or welfare imperatively requires emergency action, a summary suspension of license may be ordered pending proceedings for such suspension or revocation of license; PROVIDED, that a finding to the effect that the public health, safety or welfare imperatively requires such emergency action is incorporated in the Order of Summary Suspension. A copy of such order shall be served, as in civil cases, by any Chief Enforcement Officer, Agent or Inspector commissioned by the Commission by delivering a copy of said order to the owner of the retail or wholesale premises of the person to whom the notice is directed or delivery of a true copy of said order to any licensed employee in charge of the licensed premises affected by said notice. Service of said order shall be made on all other licensees by personal delivery of a copy of such order or by certified mail directed to the last known address of the licensee.

(b) In cases where said emergency order is issued at the time of issuance of a Notice of Contemplated Suspension or Revocation such proceedings shall be heard on the date set out in the notice, except upon good cause shown or request of the licensee affected.

### **45:10-5-3. Penalty schedules**

Violations of the Oklahoma Alcoholic Beverage Control Act, 37A O.S., Section 1-101 et seq., may result in suspension, fine, suspension and fine, or revocation of a license. The specific penalties for violating the Act are listed in the Commission's penalty schedule. The penalty schedule is divided into two categories enumerating major and minor violations of the Act. Probation may be granted for minor violations. The major violations penalty schedule is listed in Appendix A of this Chapter and the minor violations penalty schedule is listed in Appendix B of this Chapter.

[Source: Amended at 35 Ok Reg 801, eff 10-1-18]

## **APPENDIX A. MAJOR VIOLATIONS PENALTY SCHEDULE**

[Figure 1](#)

[Figure 2](#)

[Figure 3](#)

[Figure 4](#)

[Figure 5](#)

[Figure 6](#)

[Figure 7](#)

[Figure 8](#)

[Figure 9](#)

[Figure 10](#)

[Source: Revoked and reenacted at 35 Ok Reg 801, eff 10-1-18]

## **APPENDIX B. MINOR VIOLATIONS PENALTY SCHEDULE**

[Figure 1](#)

[Figure 2](#)

[Figure 3](#)

[Figure 4](#)

[Figure 5](#)

[Figure 6](#)

[Figure 7](#)

[Figure 8](#)

[Source: Revoked and reenacted at 35 Ok Reg 801, eff 10-1-18]

## **CHAPTER 15. EMPLOYEE LICENSES, TRAINING CERTIFICATION**

[Authority: 37A O.S., §§ 1-101 et seq.; 37A O.S., §1-107(2)]

[Source: Codified 10-1-18]

### **SUBCHAPTER 1. EMPLOYEE LICENSE**

#### **45:15-1-1. Training required**

Every Applicant for an original employee license shall provide the Commission with a certificate of training completion issued by the Commission or an approved trainer of the Commission prior to licensure, unless 37A O.S. §2-121 is amended to provide otherwise. Said certificate may be provided to the Commission by mail to the Commission headquarters, delivered in person, or submitted electronically to the Licensing Division of the Commission.

[Source: Added at 35 Ok Reg 826, eff 10-1-18]

### **SUBCHAPTER 3. CERTIFIED TRAINERS**

#### **45:15-3-1. Application for certification of program**

Any person or legal entity desiring to become certified by the Commission as an approved employee licensee trainer shall make written application to the Commission on such forms as the Commission may proscribe. Upon application, the Commission shall hear the request of the applicant and a recommendation of the Director within 120 days. Certification by the Commission shall be valid for a period of three (3) years, unless revoked for cause by the Commission. Responsible Beverage Sales and Service Training provided by the Oklahoma Department of Mental Health and Substance Abuse Services will be considered the state sponsored training; exempt from the application process, and will be continuously listed as an approved training provider.

[Source: Added at 35 Ok Reg 826, eff 10-1-18]

#### **45:15-3-2. Minimum standards of curriculum**

Any Certified Trainer applicant must provide the Commission with a copy of its proposed employee training curriculum. Said curriculum may be delivered by any combination of lecture, role-play, discussion, and/or multimedia. At a minimum, the curriculum must include the following subjects:

- (1) Oklahoma law concerning underage sales;
- (2) Oklahoma law concerning sales to intoxicated persons;
- (3) Legal penalties for illegal sales to minors or intoxicated persons;
- (4) Recognizing fake identification cards;
- (5) Recognizing signs of an intoxicated person;
- (6) Rights of an establishment to refuse service;
- (7) Dram shop laws and liability;
- (8) Legal hours of operation;
- (9) Sales and consumption after hours;
- (10) Prohibition against employees drinking on duty;
- (11) Methods for eliciting information from patrons with questionable identification; and
- (12) Strategies on how to refuse service when necessary.

[Source: Added at 35 Ok Reg 826, eff 10-1-18]

#### **45:15-3-3. Additional requirements for online training programs**

Any Certified Trainer applicant desiring to provide employee training in an online format must state such intention to the Commission at the time of application. In addition, the applicant shall provide in its application to the Commission an explanation of the online training programs security features, including unique login identification and password protections for training participants.

[Source: Added at 35 Ok Reg 826, eff 10-1-18]

#### **45:15-3-4. Requirements of certified trainers**

All Commission approved Certified Trainers of employee licensees shall submit electronically to the Licensing Division a list of all training attendees who successfully complete such training within 3 business days of the program. Failure to submit a list of successful training attendees as required may result in the revocation of Commission approval of the Certified Trainer, administrative fines, or both. A Certified Trainer shall continually monitor the quality of its instruction, and

implement measures to authenticate the identification of all persons completing the training course. The Commission may review a Certified Trainer's course of instruction at any time, without notice.

[Source: Added at 35 Ok Reg 826, eff 10-1-18]

## **CHAPTER 20. RETAIL SPIRIT STORES, MIXED BEVERAGE, CATERERS, SPECIAL EVENTS AND BOTTLE CLUBS**

[Authority: 37 O.S., §§ 502 et seq.]

[Source: Codified 12-31-91]

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **45:20-1-1. Purpose [REVOKED]**

[Source: Amended at 35 Ok Reg 827, eff 10-1-18; Revoked at 38 Ok Reg 907, eff 9-11-21]

### **SUBCHAPTER 3. RETAIL SPIRIT STORES**

#### **45:20-3-1. Restriction on location of licensed premises**

All premises used for the sale of alcoholic beverage by a Retail Spirit licensee shall be located on the street level or ground floor. No entrance for the use of the public to such premises shall be located on a public or private alley. All entrances for the use of the public shall open immediately into the room used for retail sales purposes; PROVIDED, that no customers may be permitted to enter or leave the shopping area of a retail spirit store through a door which is not in full view of a public street or highway, except stores situated adjacent to, or opening into hotel or motel lobbies, public passageways in arcades and other buildings through which the public is permitted to pass at all times between the hours of 8:00 a.m. and 12:00 a.m. of each day, and then only after written permission is obtained from the Commission or Director.

[Source: Amended at 35 Ok Reg 827, eff 10-1-18]

#### **45:20-3-2. Connected living quarters prohibited**

No Retail Spirit, Retail Beer, or Retail Wine Licensee shall have living quarters or any room for living quarters connected with his licensed premises, and all entrances, doorways, and other openings between said licensed premises and living quarters shall be securely and permanently sealed at all times.

[Source: Amended at 35 Ok Reg 827, eff 10-1-18]

#### **45:20-3-3. Certificates of compliance**

Each applicant for a retail spirit license shall furnish to the Commission at the time of making his application for a license, a certificate from the city clerk or the town clerk wherein the licensed premises are to be located in conformity with all city or town zoning and building ordinances.

[Source: Amended at 35 Ok Reg 827, eff 10-1-18]

#### **45:20-3-4. Restriction on sales and deliveries**

The sales of all alcoholic beverages by a Retail Spirit, Retail Beer, and Retail Wine Licensee or employee shall be made within the licensed premises; PROVIDED, that deliveries of alcoholic beverages sold within the premises may

be made by the Licensee or employee to a vehicle of the purchaser parked anywhere on the licensee's property or at the curb immediately adjacent to the lot or lots upon which said licensed premises are situated.

[Source: Amended at 35 Ok Reg 827, eff 10-1-18]

#### **45:20-3-5. Prohibited transactions**

No Retail Spirit, Retail Beer, or Retail Wine Licensee or employee shall engage, directly or indirectly, in any conspiracy, transactions or agreement having as its object the sale or resale away from or off the licensed premises, of any alcoholic beverages owned, sold or delivered by such Licensee or employee, nor shall any such Licensee or employee sell or deliver any alcoholic beverage to any person with knowledge of or with reasonable cause to believe, that the person to whom such alcoholic beverage is sold or delivered has acquired the same for the purpose of peddling or reselling the same.

[Source: Amended at 35 Ok Reg 827, eff 10-1-18]

#### **45:20-3-6. Holding for delivery when sales illegal prohibited**

No Retail Spirit, Retail Beer, or Retail Wine Licensee or employee shall act as retainer or keeper of alcoholic beverages for customers or other persons for the purpose of delivering such alcoholic beverage before the legal opening hour or after the legal closing hour or on any day when sales are prohibited.

[Source: Amended at 35 Ok Reg 827, eff 10-1-18]

#### **45:20-3-7. Records of expenditures**

(a) All Retail 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 Retail licensee. The 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, checkbooks, 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 5-120 of Title 37A of the Oklahoma Statutes.

[Source: Amended at 35 Ok Reg 827, eff 10-1-18]

#### **45:20-3-8. Other business prohibited**

No Retail Spirit Licensee or employee shall permit any other person to use the licensed premises for the purpose of carrying on, within such licensed premises, any business activity of such other person in any of its phases including, but not by way of limitation, solicitation, sale, service or delivery.

[Source: Amended at 35 Ok Reg 827, eff 10-1-18]

#### **45:20-3-9. Percentage leases**

In the absence of proof to the contrary, anyone leasing premises to a Retail licensee for a reasonable rental that is based upon sales of alcoholic beverages by the licensee shall not be considered as having a financial interest in the operation of a retail store; PROVIDED, that no such lease shall provide for a rental of more than five (5) percent of the gross alcohol sales, and such lessor shall be limited to one such percentage type lease.

[Source: Amended at 35 Ok Reg 827, eff 10-1-18]

#### **45:20-3-10. Gambling, gambling devices and games prohibited**

No Retail Spirit Licensee or their employees shall permit gambling of any kind or character on or in the licensed premises, nor shall he permit the operation or possession of any slot machine, or payoff gambling device, or punchboard of any kind or character, or any pinball machine or game of skill or chance in or about the licensed premises. This provision does not serve to limit a licensee's ability to sell lottery tickets, scratch off tickets, or other permissible non-alcoholic items pursuant to 2-156 of Title 37A of the Oklahoma Statutes.

[Source: Amended at 35 Ok Reg 827, eff 10-1-18]

#### **45:20-3-11. Storage in licensed premises**

All alcoholic beverages of a Retail 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 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.

[Source: Amended at 35 Ok Reg 827, eff 10-1-18]

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

No Retail 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.

[Source: Amended at 35 Ok Reg 827, eff 10-1-18]

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

All retail 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 retail spirit store shall be made of non-transparent material, and any passageway from such other business into the 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.

[Source: Amended at 35 Ok Reg 827, eff 10-1-18]

#### **45:20-3-14. Extension of credit by Retail Spirit License**

All Licensees or employees are prohibited from extending credit. The acceptance by a 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 Retail 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 Retail Licensee or employee and customer, whereby the 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.

[Source: Amended at 35 Ok Reg 827, eff 10-1-18]

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

(a) Every licensed Retail Spirit, Retail Beer, Small Brewer, and Brewpub 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 identification seal may be affixed with a nonpermanent waterproof adhesive material in order to apply the seal directly to the outside surface of the beer keg at the time of sale.

(b) The identification seal shall be durable and waterproof of a type approved by the ABLE Commission. The identification seal shall be attached at the time of sale and shall include the following information:

- (1) The licensed Retail Spirit, Retail Beer, Small Brewer or Brewpub store's name, complete address, retail license number, and telephone number;
- (2) The unique beer keg number assigned by the licensee; and
- (3) A warning that intentional removal or defacement of the label is a misdemeanor subject to a Five Hundred Dollars \$500.00) fine.

(c) No person other than an employee of the licensed Retail Spirit, Retail Beer, Small Brewer or Brewpub store that sold the beer keg, a licensed Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, a law enforcement officer or an agent of the Commission may remove a seal placed on a beer keg in compliance with this rule. The licensed Retail Spirit, Retail Beer, Small Brewer or Brewpub store that sold the beer keg shall:

- (1) Be responsible for the complete and thorough removal of the identification seal and any adhesive residue when the beer keg is returned to the Retail Spirits, Retail Beer, Small Brewer or Brewpub store;
- (2) The beer keg seal identification number shall be kept on file by the licensed Retail Spirit, Retail Beer, Small Brewer or Brewpub store for not less than one (1) year from the date of the return.

(d) The Retail Spirit, Retail Beer, Small Brewer, or Brewpub store selling the beer keg shall maintain a record of all beer keg purchases. The record shall be retained for not less than one (1) year after the date of the sale. The record shall be made available for inspection during regular business hours by any law enforcement officer or agent of the ABLE Commission. The Retail Spirit, Retail Beer, Small

Brewer or Brewpub store shall not knowingly make a materially false entry in the record required by this section. The records required for each beer keg sale shall include the following information:

- (1) The purchaser's name and address;
- (2) The driver's license number or identification card issued by the Department of Public Safety, a military identification card number, or the number from a valid United States or foreign passport;
- (3) The date and time of purchase;
- (4) The unique keg identification seal number; and
- (5) The purchaser's signature.

(e) Any beer keg sold shall be returned not later than one (1) year from the date of the purchase to the Retail Spirit, Retail Beer, Small Brewer or Brewpub store from which it was purchased. The package store selling the beer keg shall warn the purchaser at the time of the sale that a failure to return the beer keg within one (1) year, or the return of the keg with a missing or damaged identification seal, is subject to a fine of Five Hundred Dollars (\$500.00). The Retail Spirit, Retail Beer, Small Brewer or Brewpub store shall also warn the purchaser that if the beer keg is stolen, the purchaser will be subject to the Five Hundred Dollars (\$500.00) fine unless the theft is reported to law enforcement authorities within twenty-four (24) hours of the discovery of the theft. Any Retail Spirit, Retail Beer, Small Brewer or Brewpub store that fails to report that a beer keg was not returned within one (1) year of the date of the purchase, or which was returned with a missing or damaged identification seal shall be guilty of a misdemeanor and shall be subject to fines of not less than Five Hundred Dollars (\$500.00) for the first and second offenses. A third violation by a licensed Retail Spirit, Retail Beer, Small Brewer or Brewpub store shall result in the revocation of the Retail Spirit, Retail Beer, Small Brewer or Brewpub store's license for up to one (1) year.

[Source: Added at 21 Ok Reg 1185, eff 5-27-04; Amended at 35 Ok Reg 827, eff 10-1-18]

## **SUBCHAPTER 5. MIXED BEVERAGE, CATERER, SPECIAL EVENT, ADDITIONAL HOURS**

### **45:20-5-1. Mixed Beverage license**

- (a) Application shall be made to the Commission and license granted when applicants have met the requirements of the Oklahoma Alcoholic Beverage Control Act in cases where the selling of mixed beverages by the individual drink for on-premises consumption is the normal routine operation of the business.
- (b) Licenses shall be available only in counties where sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized.
- (c) Postings prohibiting persons under twenty-one (21) years of age shall be posted in full public view at all licensed premises where alcoholic beverages are sold, served or consumed. Signs shall not be altered, removed, or the location changed without the approval of the Commission.
- (d) The boundaries of posted areas must be definable and separated from other areas of the licensed premises by a physical barrier. Postings are as follows:
  - (1) "No persons under the age of twenty-one (21) years of age permitted on these premises" must be posted at the entrance to the licensed premises where the consumption of alcoholic beverages is the primary activity, notwithstanding that as an incidental service, meals or short order foods are made available.



(2) "No persons under the age of twenty-one (21) years of age permitted in this area of the premises" must be posted in the bar area of the licensed premises which also has an area whose main purpose is the sale of food, the serving of alcoholic beverages being incidental. Food service in the bar area shall not exempt a licensee from this rule.

(e) The holder of a Mixed Beverage license may also obtain a Caterer license for a place other than his licensed premise if said operation meets the requirements of a Caterer license. A Caterer license shall not be issued in lieu of a Mixed Beverage license.

#### **45:20-5-2. Caterer license**

(a) Application shall be made to the Commission and license granted to any individual, association or corporation whose business is to provide food, supplies and service at a social gathering where sales of mixed beverages for on-premises consumption is incidental to the sale or distribution of food.

(b) License shall be available only in those counties where sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized.

(c) A Caterer license may be obtained in addition to a Mixed Beverage license for a location other than the permanent Mixed Beverage licensed premises but a Caterer license shall not be issued in lieu of a Mixed Beverage license.

(d) On the first day of each month, all licensed caterers shall file a written report with the Enforcement Division of the ABLE Commission stating the date, time and location of any event they have agreed to cater during that month. In addition, all licensed caterers shall maintain and make available for inspection at their main business office a current list stating the date, time and location of all events they have agreed to cater.

#### **45:20-5-3. Special Event license**

(a) Application for a Special Event license shall be made to the Commission by an organization, association or nonprofit corporation for authority to sell and distribute alcoholic beverage on the premises for which the license is issued.

(b) A Special Event license shall be available only in those counties where sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized.

(c) In addition to the location, date(s), hours of operation of said event, information on traffic flow, parking, aspects of possible public nuisance, local health or safety permit requirements and proof of liability must accompany the application.

(d) Selling of alcoholic beverages in the original container by a Special Event licensee is prohibited.

(e) At the time the license expires, the licensee will provide to the Commission a written inventory of all alcoholic beverages not consumed at the event. The inventory shall state the name(s) of the person(s) taking possession of the alcoholic beverages and where it will be stored.

#### **45:20-5-4. Private Carrier license**

The holder of a Mixed Beverage, Caterer or Special Event license may obtain a Private Carriers license from the Commission authorizing the holder of such license to transport alcoholic beverages and beer from the place of purchase to his licensed premises.

#### **45:20-5-5. Additional Hours license**

- (a) Caterer and Special Event licensees may obtain an Additional Hours license by making application to the Commission.
- (b) Application shall include location of event, date(s) and hours requested, circumstances requiring additional hours of operation, pertinent information as to effect of additional hours on requirements of original license, support for the application from local authorities if applicable and a fee.
- (c) Fee shall be twenty-five (\$25) dollars per each Additional Hours license issued.

#### **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, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor or Winemaker Self-Distributor, his agent, servant or employee without receiving payment therefore at the time of making such delivery. All holders of Special Events licenses shall make payment to the licensed Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor or Winemaker Self-Distributor, 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, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor or Winemaker Self-Distributor, to the holder of a Mixed Beverage or Caterer license shall be deposited by said Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor or Winemaker Self-Distributor in a bank.

[Source: Amended at 35 Ok Reg 827, eff 10-1-18]

#### **45:20-5-7. Invalidation of identification stamp [REVOKED]**

[Source: Revoked at 35 Ok Reg 827, eff 10-1-18]

#### **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, Beer Distributor's, Winemaker Self-Distributor's, Small Brewer Self-Distributor's, or Brewpub Self-Distributor's warehouse from 8:00 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.

[Source: Amended at 35 Ok Reg 827, eff 10-1-18]

#### **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 5-120 of Title 37A of the Oklahoma Statutes.

[Source: Amended at 35 Ok Reg 827, eff 10-1-18]

#### **45:20-5-10. Prohibited act**

No person shall remain in the bar or bar area of the licensed premises after the 2:00 a.m. closing time with the exception of employees for the purpose of restocking or cleaning the premises.

### **SUBCHAPTER 7. BOTTLE CLUBS - IN COUNTIES APPLICABLE**

#### **45:20-7-1. Bottle Club license**

(a) Application shall be made to the Commission and license granted when applicants have met the requirements of the Oklahoma Alcoholic Beverage Control Act in counties where the sale of alcoholic beverages by the individual drink for on-premise consumption has not been authorized.

(b) Postings prohibiting persons under twenty-one (21) years of age shall be posted in full public view at all licensed premises where alcoholic beverages are stored, possessed, mixed, served or consumed. Signs shall not be altered, removed or the location changed without the approval of the Commission.

(c) The boundaries of posted areas must be definable and separated from other areas of the licensed premises by a physical barrier. Postings are as follows:

- (1) "No persons under the age of twenty-one (21) years of age permitted on these premises" must be posted at the entrance to the licensed premises where the consumption of alcoholic beverages is the primary activity, notwithstanding that as an incidental service, meals or short order foods are made available.
- (2) "No persons under the age of twenty-one (21) years of age permitted in this area of the premises" must be posted in the bar area of the licensed premises which also has an area whose main purpose is the sale of food, the serving of alcoholic beverages being incidental. Food service in the bar area shall not exempt a licensee from this rule.

#### **45:20-7-2. Membership cards, records and bottle labels**

(a) All information must be completed on the membership cards with a typewriter or printed in ink with the exception of the signature of the person issuing the card and signature of the member. Each card shall show:

- (1) to whom issued;
- (2) name and address of club;
- (3) period of membership;
- (4) signature and title of person issuing card; and

(5) signature of member.

(b) A record of membership cards issued must be made in a permanently bound book at the time each card is issued. There shall be one book for temporary members and a separate book for annual members. The books shall be maintained on the licensed premises for a period of three (3) years and shall be available for examination by any representative of the Commission. The permanently bound book(s) shall show:

- (1) date issued;
- (2) name and address of member receiving card; and
- (3) code number of the membership card.

(c) The licensee shall affix to the bottle of alcoholic beverages of the member, a label obtained from the Commission. A fee sufficient to cover printing cost shall be paid to the Commission. The licensee shall note on each label, in ink:

- (1) the name of member;
- (2) date of membership card issuance;
- (3) code number of membership card;
- (4) whether temporary or annual; and
- (5) name of club.

#### **45:20-7-3. Membership card must be legible**

Information on the card shall be legible or it shall be deemed an invalid membership card.

#### **45:20-7-4. Membership bottle requirements**

At the time the membership card expires, the member or the licensee shall remove the bottle from the licensed premises. A bottle shall be removed when emptied. Whenever a member brings any bottle of alcoholic beverage onto the licensed premises, a label shall be affixed with the appropriate information placed on it. There shall be no bottles of alcoholic beverages on licensed premises without proper information on an affixed label.

#### **45:20-7-5. Restriction on number of open bottles**

A licensee may maintain only one open bottle per brand of alcoholic beverage for each member on the premises at any given time.

#### **45:20-7-6. Prohibited act**

No person shall remain in the bar or bar area of the licensed premises after the 2:00 a.m. closing time with the exception of employees for the purpose of restocking or cleaning the premises.

### **SUBCHAPTER 9. RETAIL BEER LICENSEES**

#### **45:20-9-1. Restriction on certain sales [REVOKED]**

[Source: Added at 35 Ok Reg 827, eff 10-1-18; Revoked at 38 Ok Reg 907, eff 9-11-21]

#### **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.

[Source: Added at 35 Ok Reg 827, eff 10-1-18]

**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.

[Source: Added at 35 Ok Reg 827, eff 10-1-18]

**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.

[Source: Added at 35 Ok Reg 827, eff 10-1-18]

**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.

[Source: Added at 35 Ok Reg 827, eff 10-1-18]

**SUBCHAPTER 11. RETAIL WINE LICENSEES**

**45:20-11-1. Restriction on certain sales [REVOKED]**

[Source: Added at 35 Ok Reg 827, eff 10-1-18; Revoked at 38 Ok Reg 907, eff 9-11-21]

**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.

[Source: Added at 35 Ok Reg 827, eff 10-1-18]

**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.

[Source: Added at 35 Ok Reg 827, eff 10-1-18]

**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.

[Source: Added at 35 Ok Reg 827, eff 10-1-18]

**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.

[Source: Added at 35 Ok Reg 827, eff 10-1-18]

**SUBCHAPTER 13. CURBSIDE AND DELIVERY SALES**

**45:20-13-1. Licensees authorized to utilize curbside and delivery methods**

- (a) Small Brewers and Small Farm Winery license holders are authorized to sell alcoholic beverages they produce on the licensed premises at their curbside to consumers age 21 years or older in accordance with Title 37A O.S. §2-161.
- (b) Retail Spirit license holders are authorized to sell sealed original containers of beer, wine, and spirits at their curbside or delivered to consumers age 21 years or older in accordance with Title 37A O.S. §2-161.
- (c) Retail Beer, Retail Wine, Mixed Beverage, Caterer/Mixed Beverage, and Beer and Wine license holders are authorized to sell sealed original containers of beer or wine only at their curbside or delivered to consumers age 21 years or older in accordance with Title 37A O.S. §2-161.
- (d) For purposes of this section, "curbside" shall mean the immediate outdoor area of the licensed premises that is owned, leased, or controlled by such licensee. Further, "delivery" shall mean the physical transportation of authorized alcoholic beverages to a consumer's physical location.

[Source: Added at 38 Ok Reg 907, eff 9-11-21]

#### **45:20-13-2. Signature required**

A valid signature of the person 21 years of age or older receiving the alcoholic beverages shall be obtained at the time of each delivery.

[Source: Added at 38 Ok Reg 907, eff 9-11-21]

#### **45:20-13-3. Maintaining records of delivery**

(a) All licensees authorized to engage in alcoholic beverage delivery to consumers provided for in Title 37A O.S. §2-161 shall maintain a record of each sale completed using delivery that includes the following information:

- (1) The purchaser's name, date of birth, and delivery location;
- (2) The name and license number of the licensee's employee completing the delivery; and
- (3) The signature receipt of the consumer receiving the delivery of alcoholic beverages.

(b) These records shall be available for inspection by the ABLE Commission upon request, and shall be held for a period of twelve (12) months.

[Source: Added at 38 Ok Reg 907, eff 9-11-21]

#### **45:20-13-4. Delivery vehicle requirements**

All vehicles used for retail delivery of alcoholic beverages shall have displayed on the outside 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, giving the name of the licensee and its Alcoholic Beverage Laws Enforcement Commission license number.

[Source: Added at 38 Ok Reg 907, eff 9-11-21]

#### **45:20-13-5. Curbside and delivery hours**

Any licensee engaged in authorized curbside or delivery sales may do so during any such time the licensee is authorized to engage in the sale of alcoholic beverages. For all purposes including hours of operating delivery sales, all such delivery sales shall be considered completed at the time the alcoholic beverages being delivered are in the physical possession of the end consumer.

[Source: Added at 38 Ok Reg 907, eff 9-11-21]

#### **45:20-13-6. Restriction on delivery area**

Any licensee engaged in authorized delivery sales may only do so within the county the licensed premise is located, and any immediately contiguous county sharing a county line border with the licensee's home county.

[Source: Added at 38 Ok Reg 907, eff 9-11-21]

#### **45:20-13-7. Invoice or receipt required on board**

Any employee licensee making authorized retail alcohol deliveries on behalf of a licensed establishment must carry on board the delivery vehicle an invoice or physical receipt reflecting the following:

- (1) the name of the licensee selling the alcoholic beverages;
- (2) the name and location of the consumer purchasing the alcoholic beverages;
- (3) the date and time the transaction occurred; and
- (4) the price charged for the alcoholic beverages.

[Source: Added at 38 Ok Reg 907, eff 9-11-21]

## **CHAPTER 25. WINEMAKERS, SELF-DISTRIBUTION, DIRECT SHIPMENT**

[Authority: 37A O.S., §§ 1-101 et seq.; 37A O.S., § 1-107(2)]

[Source: Codified 10-1-18]

### **SUBCHAPTER 1. WINERY PREMISES, FESTIVALS, AND TRADESHOWS**

#### **45:25-1-1. Samples on winery premises**

All samples of wine by the glass on the winery premise shall be done in the designated sampling area on file with the Commission. Sales of wine may be completed either within or outside the designated tasting area.

[Source: Added at 35 Ok Reg 831, eff 10-1-18]

#### **45:25-1-2. Festivals defined**

A "festival" shall be defined as a public event that is temporary in nature, the purpose of which is to celebrate, commemorate, or acknowledge a particular focus or topic.

[Source: Added at 35 Ok Reg 831, eff 10-1-18]

#### **45:25-1-3. Tradeshows defined**

A "tradeshow" shall be defined as an event or gathering of individuals or groups of people concerning the alcoholic beverage industry, agriculture, or small business within this state. A tradeshow shall not mean a "farmers market", unless it is officially registered and recognized by the Oklahoma Department of Agriculture. The Department shall provide the ABLE Commission with a list of all registered farmers markets in the State, as well as written notice when a new market becomes registered.

[Source: Added at 35 Ok Reg 831, eff 10-1-18]

#### **45:25-1-4. Extension of premises**

When attending a trade show or festival, the location within the trade show or festival occupied by the winery becomes a licensed premises and extension of the licensed winery. The licensee shall set up and define an area contiguous to their

booth space as a serving area where the wine is dispensed. Therefore, a 21 years of age and older serving area shall be established and 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 serving area or bar top. The licensee may only serve the wine in the serving area. In the event that multiple winemakers are at the same festival, they may combine their 21 year old and older serving areas into one larger area as long as they are contiguous to the winemaker's booths.

[Source: Added at 35 Ok Reg 831, eff 10-1-18]

#### **45:25-1-5. Event schedule required**

Winemaker licensees shall complete an "Event Schedule" by the 1st day of the Month and submit it to the Commission listing the name, location, date and time of the events. Licensees may amend their event schedule throughout the month with the Commission should events be added or removed from the licensees schedule.

[Source: Added at 35 Ok Reg 831, eff 10-1-18]

### **SUBCHAPTER 3. SELF-DISTRIBUTION LICENSE**

#### **45:25-3-1. License required**

A self-distribution license shall be required of all wineries electing to self-distribute, so long as the self-distributing winery does not produce more than 15,000 gallons of wine in a calendar year. In the event a licensed self-distributing winery exceeds the production limit in a calendar year, it shall cease self-distributing and only distribute using a wine and spirits wholesaler.

[Source: Added at 35 Ok Reg 831, eff 10-1-18]

#### **45:25-3-2. Sales to be on same price basis**

All sales by a self-distributing winemaker shall be made on the same price basis and without discrimination between every retail spirits, retail wine, beer and wine, and mixed beverage licensee.

[Source: Added at 35 Ok Reg 831, eff 10-1-18]

#### **45:25-3-3. Price posting procedure**

Self-Distributing Wineries shall on the last day of each month publish and distribute a complete and final schedule of posted prices to all licensed customers within the State 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 wine offered for sale by the Self-Distributing Winery, and the selling price of each, together with the name, address and telephone number of the licensed Self-Distributing Winery. Any request for such list by a licensed customer (verified by certified mail) must be immediately furnished by the licensed Self-Distributing Winery. These price lists shall be a full and complete price list of wine as posted with the Commission.

[Source: Added at 35 Ok Reg 831, eff 10-1-18]

#### **45:25-3-4. Record of sales**

(a) Every licensed Self-Distributing Winery shall keep full, complete and accurate records of all sales of and receipts for its 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 winery 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 Self-Distributing Winery 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.

[Source: Added at 35 Ok Reg 831, eff 10-1-18]

#### **45:25-3-5. Pooled transportation prohibited**

A Self-Distributing Winery shall not pool resources or make any agreement concerning the delivery of alcoholic beverages with another Self-Distributing Winery.

[Source: Added at 35 Ok Reg 831, eff 10-1-18]

### **SUBCHAPTER 5. DIRECT SHIPMENT OF WINE**

#### **45:25-5-1. License required**

Any winery licensed within or without this State desiring to directly ship its wine products to consumers within this State shall first obtain a Direct Shipper's Permit from the ABLE Commission. Proof of licensure as an Oklahoma winery or foreign winery must be submitted upon application along with the applicable fee proscribed by statute.

[Source: Added at 35 Ok Reg 831, eff 10-1-18]

#### **45:25-5-2. Limited amount to be shipped**

No Direct Shipper's Permit holder shall ship more than six (6) nine liter cases of wine per year to any one individual.

[Source: Added at 35 Ok Reg 831, eff 10-1-18]

#### **45:25-5-3. Label, signature, and other shipping requirements**

Every Direct Shipper's Permit holder shall be required to affix a label on every package being shipped to a consumer in this State the words: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". Said label shall be at a minimum four (4) inches by six (6) inches in size which shall be approved by the Director prior to use by the permit holder. Delivery confirmation for every direct shipment to a consumer including a signature or an electronic signature of the receiving person must be received by the Direct Shipper's Permit holder.

[Source: Added at 35 Ok Reg 831, eff 10-1-18]

#### **45:25-5-4. Reporting required**

No later than February 15<sup>th</sup>, every Direct Shipper's Permit holder shall submit an annual report to the Commission containing the amount of wine it directly shipped into the State, and to how many separate individual consumers such wine was shipped during the previous calendar year. Failure of a licensee to annually report such information to the Commission shall result in the revocation of the Direct Shipper's Permit.

[Source: Added at 35 Ok Reg 831, eff 10-1-18]

#### **45:25-5-5. Direct consumer's permit [REVOKED]**

[Source: Added at 35 Ok Reg 831, eff 10-1-18; Revoked at 38 Ok Reg 908, eff 9-11-21]

### **CHAPTER 30. MANUFACTURERS, WINE AND SPIRIT WHOLESALERS, BREWERS, NONRESIDENT SELLERS AND BEER DISTRIBUTORS**

[Authority: 37 O.S., §§ 502 et seq.]

[Source: Codified 12-31-91]

#### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **45:30-1-1. Purpose [REVOKED]**

[Source: Amended at 35 Ok Reg 833, eff 10-1-18; Revoked at 38 Ok Reg 909, eff 9-11-21]

#### **45:30-1-2. Definitions**

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Adjusted Price"** means percentage or individual item prices reported and registered by a Wine 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:

- (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 other than beer, to wit: Spirits, Cordials and Specialties, Wines-Domestic, Wines-Imported, and the additional category of Decanter bottles, regardless of contents.

**"Beer Distributor"** means an entity licensed to sell beer or brewed products to the holder of a Retail Spirit, Retail Beer, Beer and Wine, Mixed Beverage, Caterer or Special Event license.

**"Manufacturer or Nonresident Seller"** means a manufacturer of alcoholic beverages other than beer and shall also include:

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

(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 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 licensed to sell alcoholic beverages to the holder of a Retail Spirit, Retail Wine, Beer and Wine, Mixed Beverage, Caterer or Special Event license.

**"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 not including beer plus any miscellaneous charges added by the Nonresident Sellers.

[Source: Amended at 23 Ok Reg 882, eff 5-11-06; Amended at 35 Ok Reg 833, eff 10-1-18]

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

#### **45:30-3-1. Certain Manufacturer discrimination prohibited**

(a) Every Manufacturer who does not designate one wine and spirits wholesaler as its only wholesaler with the ABLE Commission, before selling or offering to sell any alcoholic beverages to Wine and Spirits Wholesalers shall file with the Director a written statement sworn to by him, or in case of a corporation, one of its principal officers, in which he shall agree that he will sell any of the brands or kinds of such alcoholic beverages manufactured or distributed by him to any licensed Wine and Spirits Wholesaler, and that all such sales will be made to all such Wine and Spirits Wholesalers in this State at the same current price and without discrimination.

(b) Each Distiller, Manufacturer and Nonresident Seller not designating a single wine and spirits wholesaler shall register with the Oklahoma Alcoholic Beverage Laws Enforcement Commission, in such form as prescribed by the Director, a complete list of all items of alcoholic beverages to be offered for sale in this State which shall include brand, type, container, size, proof and age. Wines and champagnes registered shall show the alcoholic content thereof. The number of containers in each case shall also be shown and such other information as may be required by the Director.

(c) The registration filed by a Manufacturer or Nonresident Seller shall include the cash price F.O.B., the Manufacturer's warehouse or the point from which the Manufacturer will make shipment and shall not include the gallonage tax imposed by the Oklahoma Alcoholic Beverage Control Act. Said listings shall show the place from where shipments will be made and the price per case for each size of original packages of each particular brand or kind of alcoholic beverages sold or offered for sale by such Manufacturer, and shall contain such other information as the Director may require.

(d) A non-designating Manufacturer shall be deemed to have discriminated among Wine and Spirits Wholesalers if he shall, either directly or indirectly, or by any agent or employee:

- (1) Offer to sell, or sell alcoholic beverages on credit, or in any manner, to a Wine and Spirits Wholesaler at a price less than the listed current price which he has filed with the Director;
- (2) Pay, or offer to pay, any of the transportation cost of any such alcoholic beverages sold or offered for sale by him to a licensed Wine and Spirits Wholesaler;
- (3) Make or offer to make any secret rebate to, or enter into any transaction in any manner whatsoever with any Wine and Spirits Wholesaler at a price less than the current price which he has filed with the Commission. The furnishing and distribution of free samples of alcoholic beverages shall be deemed a rebate;
- (4) Require a licensed Wine and Spirits Wholesaler to purchase in excess of one-case lots of any brand, or kind, or container size of such alcoholic beverages;
- (5) Refuse to sell any brand or kind of alcoholic beverages to licensed Wine and Spirits Wholesalers in any quantity ordered by a Wine and Spirits Wholesaler in lots of one or more cases;
- (6) Refuse to sell for cash at the listed current price any alcoholic beverages to a licensed Wine and Spirits Wholesaler, if such alcoholic beverages are ordered in a lot of one case or more;
- (7) Refuse to sell any brand or kind of alcoholic beverage to a licensed Wine and Spirits Wholesaler unless the Wine and Spirits Wholesaler shall purchase or agree to purchase alcoholic beverage of another kind, form, quantity, or brand in addition to, or partially in lieu of, the brand or kind of alcoholic beverage specifically ordered by the licensed Wine and Spirits Wholesaler; or
- (8) Fail to fill and ship orders of Wine and Spirits Wholesalers for alcoholic beverages in the sequence and order in which such purchase orders from Wine and Spirits Wholesalers are received by him.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-3-2. Manufacturer's brand name label registration**

- (a) No alcoholic beverage shall be sold or offered for sale to an Oklahoma licensed Wine and Spirits Wholesaler 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.
- (b) The registration shall be prepared on a form approved by the Commission and shall include the price, brand, type, size, age, and proof of each item of spirits, wines, cordials, and specialties. All items of champagnes and wines shall show the brand, price, size and alcoholic content thereof.
- (c) The registration shall be accompanied by a certified check, bank officer's check or draft, or money order in the amount of Three Hundred Seventy-Five Dollars (\$375) for each brand or label that such Nonresident Seller, Manufacturer, or Wine and Spirits Wholesaler proposes to offer for sale.
- (d) 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.

- (e) A separate fee will be required for each brand name label of spirits that differs as to name, class, type, age, or proof. Items that differ only as to color or flavor may be considered as one. Each different label other than container size will be considered a separate item.
- (f) A separate fee will be required for each brand of cordials and specialties. When items of the brand vary only as to flavor, they may be considered as one. A separate fee in the amount of Three Hundred Seventy-Five Dollars (\$375) shall be required for cordials in the following categories, to wit;
- (1) specialties,
  - (2) flavored brandies.
- (g) A separate fee in the amount to Two Hundred Dollars (\$200) shall be required for each brand name label used for domestic American wines in the following categories or types;
- (1) fortified,
  - (2) specialties,
  - (3) table or light wines,
  - (4) sparkling wines.
- (h) A separate fee in the amount of Two Hundred Dollars (\$200) shall be required of each brand name label used for imported or foreign wines. Imported or foreign wines with the same country of origin will be considered the same brand name label within each of the following classes or types;
- (1) light red wine,
  - (2) light rose wine,
  - (3) light white wine,
  - (4) fortified wines,
  - (5) sparkling wines, and
  - (6) specialties
- (i) In determining the fee for filing a brand name label or brand under the provisions of this Section, no additional fee shall be shall be charged for variations in net contents, vintage age or year, 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 Administration Act, will be submitted with each registration of a brand name label to aid in determining the appropriate registration fee.
- (j) Each brand name label registered and approved pursuant to this Section shall be valid for a term which shall run concurrently with the term of the license of the brand owner, or nonresident seller, representing the brand owner, registering such label and shall be valid for such license only and shall not be transferable.
- (k) 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 requirements are of this Section are satisfied.
- (l) Each new item offered for sale must comply with the Oklahoma Alcoholic Beverage Control Act and rules of the Commission in regard to labeling and container size.
- (m) All spirits and wines being offered for sale must be posted at a case price and all sales must be made in case lots. Each case must have containers of the same size, shape and design, and each container must contain merchandise of the same category.

(n) No brand or label will be listed on a price list or offered for sale in more than one place, method, different containers, nor at more than one price, except as provided for by the Director.

(o) The bottling, packaging, sale or possession by any licensee of any alcoholic beverage not registered in conformity with this Section and the provisions of Section 573 of Title 37 of the Oklahoma Statutes shall be grounds for suspension, revocation or cancellation of the license.

(p) 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.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-3-3. Manufacturer's price list**

(a) All non-designating Manufacturers or Nonresident Sellers of spirits, wines and cordials and specialties are hereby required on the fifteenth day of each month, to register in the office of the Oklahoma Alcoholic Beverage Laws Enforcement Commission, Oklahoma City, Oklahoma, all items of alcoholic beverages, which such Manufacturer or Nonresident Seller proposes to offer for sale to all licensed Wine and Spirits Wholesalers in this State. Such registration shall be prepared on a form approved by the Commission and shall show the brand, price and size and alcoholic content thereof. All Manufacturer or Nonresident Sellers' price 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 therefore in writing showing good cause and then only with written permission of the Commission or Director.

(b) When a new item is registered, or an old item is discontinued, or any change is made by a Manufacturer or Nonresident Seller as to price, age, proof, label or type of bottle of any item offered for sale in this State, such new item, or discontinued items, or change in price, age, proof, label or type of bottle of any item, shall be listed separately on the cover page or pages of the price schedule, and in the case of prices changed, shall reflect both the old and the new price of any item changed. All new items and changes as to age, proof, label, or type of bottle in which any item is offered for sale shall first be submitted to the Director for approval under such requirements as he may deem proper. Approval or disapproval of price changes shall not be required if filed in conformity with the rule.

(1) In addition to the foregoing requirements, Manufacturers or Nonresident Sellers shall, at the same time, on regular forms provided by the Commission, reregister all items of alcoholic beverages which such Manufacturers or Nonresident Sellers had registered and offered for sale in this State during the previous price period.

(2) A short form of price registration may be permitted by the Director for any price period in which no new item is offered or old item discontinued, or change is made in the price, age, proof, label, or type of bottle of any item offered by any Manufacturer or Nonresident Seller. Such short form shall contain only such statements as the Director may require or permit.

(c) The brand name, size, age, proof, and type of alcoholic beverages except wines, scotch whiskeys and blends, must be shown on each container sold in this State.

(d) No brand of alcoholic beverage shall be listed on a price list or posting more than one place, nor offered for sale by more than one method nor at more than one price, except as provided hereafter:

- (1) A Manufacturer or Nonresident Seller who has posted F.O.B. prices from a foreign shipping point shall also list the same item(s) at a F.O.B. point within the Continental United States. Only one United States F.O.B. point will be permitted
- (2) A Manufacturer or Nonresident Seller may list on their price list or posting an item of specific size that may be packaged in more than one type or design container; provided that the containers being offered have been approved by the Commission.
- (e) All Manufacturers or Nonresident Sellers shall sell to licensed Oklahoma Wholesalers all items of spirits, cordials and specialties, and wines at the current posted price in effect on the date of the shipment as shown on the manifest, bill of lading or invoice.
- (f) 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.
- (g) A full and correct copy of each said price registration shall be mailed to each licensed 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 Manufacturer or Nonresident Seller, and attached to the price registration.
- (h) The sale, or offer to sell, of any item of alcoholic beverage to a licensed Wine and Spirits Wholesaler at a price not in compliance with the price posted with the Commission by a Manufacturer or Nonresident Seller shall be deemed a discrimination against the licensed Wine and Spirits Wholesalers in this State.
- (i) All rules or parts of rules in conflict with this Section are hereby repealed.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-3-4. Products in short supply**

If any non-designating Manufacturer, or corporate subsidiary of any Manufacturer who markets his products solely through a subsidiary or subsidiaries, Rectifier, Distiller, Fermenter, Winemaker, Nonresident Seller or a distributor of alcoholic beverages bottled in a foreign country shall not have a sufficient supply of alcoholic beverage of any of the brands or kinds which he manufactures or distributes to fill and ship orders of all licensed Wine and Spirits 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 Wine and Spirits Wholesaler bears such, the Manufacturer or distributor, Rectifier, Winemaker, or Nonresident Seller shall immediately certify such fact to the Director of all such alcoholic beverage in short supply. The certificate required hereunder shall be verified under oath by a responsible officer or official of the Manufacturer, distributor or Nonresident Seller and shall set forth in detail and in such form as may be prescribed by the Commission all pertinent facts upon which the request for allocation is based. The filing of any materially false certificate under this section, or the failure of any such Manufacturer, distributor or Nonresident Seller to fully and truthfully certify such facts to the Commission as may be required in support of an application for allocation shall be prima facie evidence, in any proceeding, of an intent to violate Section 3-116 of Title 37A of the Oklahoma Statutes, and shall be grounds for the revocation of the authority of such Manufacturer or distributor to sell, or offer for sale, any and all of the brands and kinds of alcoholic beverage manufactured or sold by said Manufacturer or distributor. (EXCEPTION: Direct import items shall be shipped within sixty (60)

days from the date of the order of the licensed Wine and Spirits Wholesaler).

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

**45:30-3-5. Allocation plan for non-designated 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 Wine and Spirits Wholesalers. Should any licensed Wine and Spirits 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 Wine and Spirits Wholesaler(s).

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

**45:30-3-6. Wholesaler discrimination prohibited**

(a) Every licensed Wine and Spirits Wholesaler before selling or offering to sell any alcoholic beverages to any Retail Spirit, Retail Wine, 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, or in case of a corporation, one of its principal officers, in which he shall agree that he will sell any of the brands or kinds of alcoholic beverages distributed by him to any Retail Spirit, Retail Wine, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee, and that all such sales will be made to all such Retail Spirit, Retail Wine, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensees in this State 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, but as least once each three (3) months.

(b) The said price listings filed by a licensed Wine and Spirits Wholesaler with the Director shall be the cash price per case for each size of original package of each particular brand or kind of alcoholic beverage sold or offered for sale by such Wine and Spirits Wholesaler, and shall contain such other information as the Director shall require.

(c) A licensed Wine and Spirits Wholesaler shall be deemed to have discriminated among Retail Spirit, Retail Wine, 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, alcoholic beverages to a Retail Spirit, Retail Wine, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensees 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 transaction with a Retail Spirit, Retail Wine, 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 alcoholic beverages by a Retail Spirit, Retail Wine, Mixed Beverage, Caterer, or Special Event licensee at a price less than the current price which he has filed with the Director;

(3) Refuse to sell to a Retail Spirit, Retail Wine, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee in less than case lots or any brand or kind or container size, or combination thereof, of any alcoholic beverages without express authority granted by the Director or the Commission for good cause;



(4) Refuse to sell any brand or kind of alcoholic beverages to a Retail Spirit, Retail Wine, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee for cash at the listed current price in any particular order provided by the Retail Spirit, Retail Wine, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee without express authority granted by the Director or the Commission for good cause; PROVIDED, that each such Wine and Spirits Wholesaler in making and transmitting to the Oklahoma Tax Commission their monthly report, in reporting sales on all wines sold in less than case lots, shall convert units sold to the nearest full case;

(5) Refuse to sell any brand or kind of alcoholic beverages to a Retail Spirit, Retail Wine, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee unless the Retail Spirit, Retail Wine, Mixed Beverage, Beer and Wine, Caterer, 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 alcoholic beverages specifically ordered by the Retail Spirit, Retail Wine, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee;

(6) Fail to fill and ship orders of Retail Spirit, Retail Wine, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee for alcoholic beverages in the sequence and order in which such purchase orders from the Retail Spirit, Retail Wine, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee are received by him without express authority granted by the Director or the Commission for good cause; PROVIDED, that this paragraph shall not apply where the Wine and Spirits Wholesaler is operating under a rationing plan approved by the Director;

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

(d) A licensed wine and spirits wholesaler shall not be deemed to have discriminated among Retail Spirit, Retail Wine, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee under the following circumstances:

(1) A licensed wine and spirits wholesaler requests permission, in writing and signed under oath by a person authorized to represent the Wine and Spirits Wholesaler, from the Director of the ABLE Commission to refuse to sell alcoholic beverages to a Retail Spirit, Retail Wine, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee when the Wine and Spirit Wholesaler can substantiate, by credible evidence, that the Retail Spirit, Retail Wine, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee has created a dangerous or hostile work environment for the licensed Wine and Spirits Wholesaler, 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) 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 Wine and Spirits Wholesaler; or
- (F) malicious or unfair business practices; or

(2) The request shall contain at least the following information verified under oath:

- (A) the name and ABLE license number of the specific Retail Spirit, Retail Wine, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee;
- (B) the date(s) on which a Retail Spirit, Retail Wine, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee created a dangerous or hostile work Environment for the Wine and Spirits Wholesaler;
- (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 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 from a Wine and Spirits Wholesaler, 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 Wine and Spirits Wholesaler, grant the Wine and Spirits Wholesaler temporary permission to refuse to sell to the specific Retail Spirit, Retail Wine, 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 Wine and Spirits Wholesaler has been granted temporary permission to refuse to sell to the specific Retail Spirit, Retail Wine, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee, the Director shall promptly notify the named Retail Spirit, Retail Wine, 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 ABLE license number of the Wine and Spirits Wholesaler and the specific allegations against the licensee as stated in writing by the Wine and Spirits Wholesaler. 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 Wine and Spirits Wholesaler 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 Wine and Spirits Wholesaler 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 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 2-150, 2-151 and 2-152.

(7) If a Wine and Spirits Wholesaler is granted permanent permission to refuse to sell to a specific Retail Spirit, Retail Wine, 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 Wine and Spirits Wholesaler, 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 Wine and Spirits Wholesaler, any temporary permission to refuse to sell originally granted by the Director shall expire and become null and void, and the Wine and Spirits Wholesaler shall be required to resume selling to the specific Retail Spirit, Retail Wine, Mixed Beverage, Beer and Wine, Caterer, Mixed Beverage/Caterer or Special Event licensee.

(9) A Wine and Spirits Wholesaler may not refuse to sell alcoholic beverages to any Retail Spirit, Retail Wine, 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.

[Source: Amended at 32 Ok Reg 1543, eff 9-11-15; Amended at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-3-7. Wine and Spirits Wholesaler's price registration**

(a) All Wine and Spirits Wholesalers selling non-designated product shall file with the Commission on the 15th day of each posting month a proposed category Percentage Markup, as defined in 45:30-1-2.

(b) The proposed markups will be computed by "Percentage" in the five categories, (1) Spirits, (2) Cordials and Specialties, (3) Wines-Domestic, (4) Wines-Imported, and (5) Decanters. In reporting to the Commission, the proposed markups will be set forth in the following categories and order.

(1) (Category 1) Spirits: Straights; Blends; Bonds; Corn; Rye; Scotch; Canadian; Irish; Vodka; Gin; Rum; Brandy Alcohol; Tequila.

(2) (Category 2) Cordials and Specialties: Cocktails; Cordials; Domestic and Imported; Miscellaneous Specialties.

(3) (Category 3) Wines-Domestic: Vermouth American; Fortified American; Light American; Champagne American.

(4) (Category 4) Wines-Imported: Vermouth Imported; Fortified Imported; Light French, Light German; Light Other Imported; Champagne Imported.

(5) (Category 5) Decanters: Includes only those items approved by the Director for sale in this State in decanter bottles, regardless of content.

(c) When a Wine and Spirits Wholesaler desires to charge for expenses incurred in handling of individual bottles in fractional cases, or for transportation of his alcoholic beverage to the holder of a Retail Spirit, Retail Wine, Mixed Beverage, Caterer or Special Event license, he shall on the 15th day of each posting month include with his proposed percentage posting the separate amounts if any, to be charged for (1) bottle handling and/or (2) the amount of transportation, respectively to be charged per case.

(d) The proposed posting by the Wine and Spirits Wholesaler shall list the percentage posting, the handling and/or transportation cost without discrimination, to all licensees regardless of their distance from the wholesale warehouse.

(e) The Commission shall immediately upon receipt of all proposed category percentage postings, prepare a summation of the proposal and mail a copy to all Wine and Spirits Wholesalers. The summation will contain the proposed percentage posting for each category, including proposed transportation charges as submitted by the individual Wine and Spirits Wholesaler.

(f) After filing the report required by (a) of this Section, any and all Wine and Spirits Wholesalers shall be permitted to register on or before the 25th day of each posting month an "adjusted price," as defined in 45:30-1-2. The "adjusted price" shall be no lower than the lowest percentage posted on the 15th day of said month by any Wine and Spirits Wholesaler.

(g) The "adjusted price" posted by a Wine and Spirits Wholesaler in response to the lowest percentage posted by any Wine and Spirits Wholesaler may, but need not be, posted in terms of a percentage, and if not so stated, shall state the price at which the Wine and Spirits Wholesaler proposes to sell each individual item or size of item which he proposes to offer for sale during the posting period. The price postings, except for unmodified percentage markups, shall describe each item by brand, size, age, type and proof. Wines and champagnes shall reflect the alcoholic contents thereof.

(h) The Percentage Markup utilized by a Wine and Spirits Wholesaler in calculating his adjusted prices may be at any level between his originally posted Percentage Markup and the lowest Percentage Markup originally posted by any Wine and Spirits Wholesaler, but not be above his original posting nor below the lowest percentage posted by any Wine and Spirits Wholesaler. Any fraction within four (4) decimals in determining final prices of bottles shall be raised to the next higher cent.

(i) Each Wine and Spirits Wholesaler may, upon the 25th day of the posting month, adjust his transportation and handling charges to a level no lower than that of a competitor nor higher than his initial proposal on the 15th day of the posting month. Such bottle handling and/or transportation charge shall be in effect for the duration of the price posting which it accompanies. PROVIDED, that if a licensee shall order any item in full case lots and the Wine and Spirits Wholesaler does not have in inventory such item in full case lots, no bottle handling charge may be assessed to the licensee for the partial case.

(j) All Wine and Spirits Wholesalers shall, on the same date of filing an "Adjusted Price" posting with the Commission, mail a copy of such report to all licensed

Wine and Spirits Wholesalers in this State. Each Wine and Spirits Wholesaler shall notify all licensees of transportation expenses in accordance with the requirements stated in 45:30-3-8.

(k) A licensed Wine and Spirits Wholesaler may include a minimum order charge of no less than One Dollar (\$1.00) for any order of alcoholic beverages to a Retail Spirit, Retail Wine, Mixed Beverage, Caterer or Special Event licensee that does not exceed the amount that such Wine and Spirits Wholesaler designates as a minimum order in his proposed price posting. The minimum charge, if it is more than One Dollar (\$1.00), and the amount of the minimum order must be included in the price posting.

(l) All price postings, as adjusted, shall become effective on the first day of the following month and remain in effect for a period of two months. No other charge may be assessed by the Wine and Spirits Wholesaler to the licensee, except those expressly authorized by the provisions of the Oklahoma Alcoholic Beverage Control Act or the rules of the Commission.

(m) A price posting on a "New Item" not previously stocked by a Wine and Spirits Wholesaler shall be filed with the Commission prior to offering for sale, but no such item shall be listed at a lower price than is then, or will be, in effect during the price period for which the "New Item" is filed, and within the "Percentage" in the proper category of said Wine and Spirits Wholesaler. In the event of a "New Item" posting, mailings to Wine and Spirits Wholesalers and holders of Retail Spirit, Retail Wine, Mixed Beverage, Caterer or Special Events licenses, as herein required, shall be sent on the same date as the postings.

(n) When a Wine and Spirits 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 the inventory of a Wine and Spirits Wholesaler, it will be reentered into the price postings as would a "New Item" .

(o) The sale of or the offer to sell, alcoholic beverages at the prices quoted in such price posting before the same, is in force and effect shall be grounds for the suspension or revocation of any such licensed Wine and Spirits Wholesaler's license if the "New Price" varies from the price then in effect.

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

[Source: Amended at 15 Ok Reg 1535, eff 7-27-98; Amended at 35 Ok Reg 657, eff 7-16-18 (emergency); Amended at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-3-8. Wine and Spirits Wholesaler's price list**

Licensed Wine and Spirits Wholesalers shall on the last day of each posting month publish and distribute a complete and final schedule of posted prices whether electronic or otherwise to the holders of all Retail Spirit, Retail Wine, Mixed Beverage, Caterer and Special Events licenses who have made purchases within the past sixty (60) days immediately prior to such posting. Such price list shall contain (nothing more than) the licensed Wine and Spirits Wholesaler's price of brands, types, kinds and sizes of alcoholic beverages offered for sale, and the selling price of each, together with the name, address and telephone number of the licensed Wine and Spirits Wholesaler. Any request for such list by a licensee (verified by certified mail) must be immediately furnished by the licensed Wine and Spirits Wholesaler. These price lists shall be a full and complete price list of alcoholic beverages as posted with the Commission. PROVIDED, that in the event there is a price change by the Nonresident Seller effective during the 60-day

posting period, the Wine and Spirits Wholesaler may adjust the price list accordingly using the percentage markup currently in effect. Any prices so amended shall become effective the first day of the second month of the 60-day posting period. Such amended list is to be prepared and distributed in the same manner as the original price list.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-3-9. Wine and Spirits Wholesaler's warehouses**

Every licensed Wine and Spirits Wholesaler of alcoholic beverages shall provide at his own expense warehouses, to be situated on and to constitute a part of his premises. Said warehouses shall be used solely and exclusively for the purpose of storage of alcoholic beverages and shall be separate and apart from any and all other business or businesses operated in any such building wherein such warehouse is located. In order to comply with Sections 3-123 and 5-115 of Title 37A of the Oklahoma Statutes, to avoid direct or indirect discrimination in price or services, all Wine and Spirits Wholesalers licensed to import and sell within this State, spirits and wines, shall comply with the following:

(1) All wholesale warehouses must be open for business each day beginning Monday and extending through Friday of each week, except on election days and legal holidays, and shall open not later than 10:00 a.m. and remain open until 5:00 p.m. on each of the above days.

(A) Continuous telephone service must be maintained during business hours.

(B) Some properly licensed person authorized to take orders from retailers must be on duty during said hours.

(2) Entries of all orders received by licensed Wine and Spirits Wholesalers, their agents or employees, shall be posted in a permanently bound record book showing the time, date, type, brand and quantity of such order, in sequence, and shall be sold in the sequence that such orders are received by the Wine and Spirits Wholesaler, except when being sold on an approved rationed basis.

(A) All orders received during the business day shall be posted before the closing of business that same day.

(B) All orders received shall be invoiced at the price in effect on the business day of delivery.

(3) A Wine and Spirits Wholesaler may be permitted to sell any size, type and brand of spirits or wines on a limited or rationed basis due to a rationed plan approved by the Commission or Director of a Manufacturer or Nonresident Seller of any item or items; or upon withdrawal of a particular item or items from the State by a Manufacturer or Nonresident Seller; or if a Wine and Spirits Wholesaler desired to discontinue keeping or stocking a particular brand on hand; but such a rationed system may not be used unless and until an equitable ration plan has been submitted by the Wine and Spirits Wholesaler and approved by the Commission or Director. The approval or disapproval of such plan shall be made within five (5) days and the licensee submitting such plan shall be immediately notified of the decision.

(4) All orders of one or more cases placed by a licensed Retailer with a licensed Wine and Spirits Wholesaler shall, if in short supply, be ordered by the Wine and Spirits Wholesaler from the Manufacturer or Nonresident Seller of such item or items within two (2) business days from receipt of the

order and shall be delivered to the Retailer ordering the same within five (5) days from the date such merchandise is received in the Wine and Spirits Wholesaler's warehouse.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

**45:30-3-10. Wholesaler's inventory requirement**

- (a) All Wine and Spirits Wholesalers are hereby specifically prohibited from engaging in any type of discrimination, conspiracy, collusion, agreement or understanding, orally or in writing, which would have as its purpose and be designed to create a monopoly, destroy competition, or give advantage to one or more Wine and Spirits Wholesalers over other Wine and Spirits Wholesalers or fix prices of alcoholic beverages. Nothing in this section shall be construed as a prohibition on a Wine and Spirits Wholesaler from being deemed the designated wholesaler for any one or more brands of alcoholic beverages.
- (b) The provisions set forth in (b) of this Section shall also apply to all Manufacturers, Distillers, Nonresident Sellers and Retail Dealers, and their representatives, agents, and employees. Nothing in this section shall be construed as a prohibition on a Manufacturer, Distiller, or Nonresident Seller from selecting a single Wine and Spirits Wholesaler as its designee for one or more brands.
- (c) All Wine and Spirits Wholesalers shall, in placing an order for alcoholic beverages with a Manufacturer or Nonresident Seller, on the same date provide the Commission with a copy of each purchase order so placed. Each purchase order shall be numbered in sequence, shall bear the date the order was placed, the type, brand, container size and full description of all alcoholic beverages ordered, showing the name of the Manufacturer or Nonresident Seller with whom such order was placed. All Manufacturers or Nonresident Sellers shall fill orders for non-designated product from all licensed Wine and Spirits Wholesalers in sequence and without discrimination in price, promptness of making shipments, or other service.
- (d) Manufacturers or Nonresident Sellers shall extend uniform credit to all licensed Wine and Spirits Wholesalers without discrimination. Exceptions to this provision may only be granted by the Commission or the Director upon written request setting out the reasons, if any, for any non-uniformity in credit.
- (e) The violation of this Section, or any provision thereof, by one or more licensees shall constitute grounds for the suspension or revocation of license by the Commission or the Director.
- (f) All rules or parts of rules in conflict with this Section are hereby repealed.
- (g) 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 of provisions of this Section.

[Source: Amended at 12 Ok Reg 1989, eff 6-26-95; Amended at 35 Ok Reg 833, eff 10-1-18]

**45:30-3-11. Permission to close out dead inventory**

- (a) Wine and Spirits Wholesalers who may hereafter seek permission to post down and close out certain dead inventory merchandise within their licensed premises shall provide the Commission with the number of cases, brand, type, size, name of the manufacturer, and proposed post down price and, at the same time, provide all other licensed Wine and Spirits Wholesalers within this State with a copy of their request to close out any such items of dead inventory. The Director may thereupon give written permission to such Wine and Spirits Wholesaler to sell any or all of his merchandise to the other Wine and Spirits Wholesalers, and, if the entire amount of such dead inventory is thereby disposed of, such Wine and Spirits Wholesaler shall

report each transfer to each other Wine and Spirits Wholesaler by providing the Director with a copy of each invoice, and each Wine and Spirits Wholesaler purchasing any such merchandise under the provision of this rule shall report to the Commissions a list of all merchandise so purchased.

(b) If there remains in the hands of the Wine and Spirits Wholesaler desiring to close out any such items of dead inventory, he will then be permitted to post prices on any and all remaining items of merchandise at any desired price, which posting, before the same can become effective, must have the approval of the Director. Thereafter, no item listed in the dead inventory merchandise so posted down may again be purchased or sold by such Wine and Spirits Wholesaler for a period of twelve (12) months from the date any such items are posted down, and all other Wine and Spirits Wholesalers are hereby prohibited from transferring to the Wine and Spirits Wholesaler posting down, any of the items included on the list of posted down item. It is further provided that such posted down price shall remain in effect until all such merchandise is sold by such Wine and Spirits Wholesale licensee.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-3-12. Wine and Spirits Wholesaler's record of sales**

(a) Every licensed Wine and Spirits Wholesaler of alcoholic beverage shall keep full, complete and accurate records of all sales of and receipts for beverages. 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 wine and spirits wholesaler and name of 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 Wine and Spirits Wholesaler 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.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-3-13. Wine and Spirits Wholesaler's record of expenditures**

(a) Every licensed Wine and Spirits Wholesaler of alcoholic beverage shall keep a full, separate, complete and accurate record of all expenditures with regard to beverages. No such expenditures of a Wine and Spirits Wholesaler shall be commingled with the expenditures of any other business or businesses operated by the Wine and Spirits Wholesaler. 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 supporting documents.

(b) All expenditures shall be supported by vouchers, invoices, checkbooks, bank statements, ledgers, journals, bills, 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.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-3-14. Wine and Spirits Wholesaler's separate records requirement**

Where a licensed Wine and Spirits Wholesaler of alcoholic beverage is engaged in any other type or class of business or businesses, such Wine and Spirits Wholesaler shall set up and keep a separate and complete set of records covering all beverages bought and sold. Such records shall not become commingled with the records of any other type or class of business or businesses.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-3-15. Sale or transfer between Wine and Spirits Wholesalers**

A licensed Oklahoma Wine and Spirits Wholesaler may sell or transfer any alcoholic beverages to another licensed Oklahoma Wine and Spirits Wholesaler. The Commission shall require a licensed Wine and Spirits Wholesaler to file an invoice within twenty-four (24) hours of any sale or transfer of any such alcoholic beverages. Such invoice shall include name, license number and location of the consignee, price, quantity, size of container, brands and kinds.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-3-16. Wine and Spirits Wholesaler's agents**

No Wine and Spirits Wholesaler shall employ nor retain in his employment any person as an agent or salesman who does not, in good faith, devote a major part of his or her time each work day of each week to selling, soliciting for, or taking orders from Retailers for the sale of alcoholic beverages, and whose employment classification is that of a salesman, representative or agent of such Wine and Spirits Wholesaler; PROVIDED, however, that the foregoing provision does not prohibit the employment of a person as a salesman, agent or representative by a Wine and Spirits Wholesaler, who is regularly employed on a full time basis by such Wine and Spirits Wholesaler in another capacity and who, incident to his regular employment, may sell, solicit, or take orders for the sale of alcoholic beverages.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-3-17. Business with suspended Manufacturer prohibited**

If, after proper notice and hearing before the Commission, it is determined by the Commission that any Manufacturer, Distiller or Nonresident Seller has violated any part of the Oklahoma Alcoholic Beverage Control Act or any part of the rules adopted by the Commission resulting in a suspension of the license of any such Manufacturer, Nonresident Seller, or its agent or representative, notice of such suspension shall be immediately given by the Director to all licensed Oklahoma Wine and Spirits Wholesalers and after receipt of said notice, all Wine and Spirits Wholesalers are hereby specifically prohibited during the period of said suspension from purchasing any item of alcoholic beverage from any such Manufacturer or Nonresident Seller whose license is suspended by the Commission and are, also,

specifically prohibited from selling to Retail Spirit, Retail Wine, Mixed Beverage, Caterer or Special Event licensees any item of alcoholic beverages offered in this State by such Nonresident Seller while under said suspension. It is further provided that, in cases where a Wine and Spirits Wholesaler is indebted to any such Manufacturer or Nonresident Seller at the time of the receipt of said notice of suspension for alcoholic beverages previously purchased from it, the terms and conditions of said credit arrangement shall be extended during such period that any such items of merchandise are withheld from sale or barter under the provisions of this Section.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-3-18. Transportation of alcoholic beverages by licensees**

A Manufacturer or licensed Wine and Spirits Wholesaler of alcoholic beverages may ship or transport alcoholic beverages from his bonded 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.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

### **SUBCHAPTER 5. BREWERS, NONRESIDENT SELLERS, AND BEER DISTRIBUTORS**

#### **45:30-5-1. Brewer discrimination prohibited [REVOKED]**

[Source: Revoked at 35 Ok Reg 833, eff 10-1-18]

#### **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 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, will be submitted with each registration of a brand name label to aid in determining the appropriate registration fee. Brand labels of Oklahoma brewed products not requiring federal approval and not intended for distribution in this State shall not require a submission for brand label registration to the ABLE Commission.

(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 registering such label and shall not be transferable. Provided, each registered brand name label on July 1, 2018 shall be allowed a one-time transfer to be completed before December 31, 2018. Such transfer shall be done through written notice to the ABLE Commission.

(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, different containers, nor 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.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-5-3. Brewer's price list [REVOKED]**

[Source: Revoked at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-5-4. Products in short supply [REVOKED]**

[Source: Revoked at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-5-5. Allocation plan for products in short supply [REVOKED]**

[Source: Revoked at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-5-6. Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-Distributor discrimination prohibited**

(a) Every licensed Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-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 County at the same current price and without discrimination.

(b) A licensed Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-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 a on-premise licensee within the same county at a price less than the listed current price or an off-premise licensee within the same county at a price less than the listed current price;

(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;

(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;

(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.

(c) A Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-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 Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-Distributor requests permission, in writing and signed under oath by a person authorized to represent the Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-Distributor, from the Director of the ABLE 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 Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-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 Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-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 Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-Distributor; or
- (F) malicious or unfair business practices; or

(2) The request shall contain at least the following information verified under oath:

- (A) the name and ABLE 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 Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-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 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 from a Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-Distributor, 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 Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-Distributor, grant the Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-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 Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-Distributor 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 ABLE license number of the Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-Distributor and the specific allegations against the licensee as stated in writing by the Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-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 Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-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 Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-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 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 2-150, 2-151 and 2-152.

(7) If a Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-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 Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-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 Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-Distributor, any temporary permission to refuse to sell originally granted by the Director shall expire and become null and void, and the Distributor 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 Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-Distributor may not refuse to sell alcoholic beverages 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.

[Source: Amended at 32 Ok Reg 1543, eff 9-11-15; Amended at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-5-7. Class B Wholesaler's price registration [REVOKED]**

[Source: Amended at 23 Ok Reg 882, eff 5-11-06; Amended at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-5-8. Class B Wholesaler's price list [REVOKED]**

[Source: Revoked at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-5-9. Beer Distributor's, Small Brewer Self-Distributor, or Brewpub Self-Distributor record of sales**

(a) Every licensed Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-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 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 Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-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.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-5-10. Beer Distributor's, Small Brewer Self-Distributor's, or Brewpub Self-Distributor's record of expenditures**

(a) Every licensed Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-Distributor of beer or brewed products shall keep a full, separate, complete and accurate record of all expenditures with regard to alcoholic beverages. No such expenditures of a Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-Distributor shall be commingled with the expenditures of any other business or

businesses operated by the Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-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 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.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-5-11. Beer Distributor's, Small Brewer Self-Distributor's, or Brewpub Self-Distributor's separate records requirement**

Where a licensed Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-Distributor of beer and brewed products is engaged in any other type or class of business or businesses, such Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-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.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-5-12. Sale or transfer between Class B Wholesalers [REVOKED]**

[Source: Revoked at 35 Ok Reg 833, eff 10-1-18]

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

(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 Beer Distributors and after receipt of said notice, all 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 Brewer or Nonresident Seller while under said suspension.

(b) It is further provided that, in cases where a Beer Distributor is indebted to any such Brewer or Nonresident Seller at the time of the receipt of said notice of suspension for beer or brewed products previously purchased from it, the terms and conditions of said credit arrangement be extended during such period that any such items of merchandise are withheld from sale or barter under the provisions of this



Section.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

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

Except as provided in 45:20-5-8, All deliveries of beer or brewed products shall be made by the Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-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 Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-Distributor any beer or brewed products at the Beer Distributor's, Small Brewer Self-Distributor's, or Brewpub Self-Distributor's premises or elsewhere, other than the licensed premises of the Retailer.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

**45:30-5-15. Beer Distributor's, Small Brewer Self-Distributor's, or Brewpub Self-Distributor's vehicle signs**

All vehicles owned or leased and made use of by Beer Distributors, Small Brewer Self-Distributors, or Brewpub Self-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 Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-Distributor may be printed in letters of lesser dimensions. These signs shall be properly displayed while transporting any beer or brewed products by the Beer Distributor, Small Brewer Self-Distributor, or Brewpub Self-Distributor from the Brewer or Nonresident Seller or to all Retail Spirit, Retail Beer, Mixed Beverage, Caterer or Special Event licensees.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

**45:30-5-16. Employees and agents must be licensed [REVOKED]**

[Source: Amended at 35 Ok Reg 833, eff 10-1-18; Revoked at 38 Ok Reg 909, eff 9-11-21]

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

All Brewers, Nonresident Sellers and 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 Beer Distributors.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

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

A Brewer, Nonresident Seller or 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.

[Source: Amended at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-5-19. Extension of brewery premises**

When attending a trade show or festival, the location within the trade show or festival occupied by the brewery becomes a licensed premises and extension of the licensed brewery. The licensee shall set up and define an area contiguous to their booth space as a serving area where the beer is dispensed. Therefore, a 21 years of age and older serving area shall be established and 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 serving area or bar top. The licensee may only serve the beer in the serving area. In the event that multiple brewers are at the same festival, they may combine their 21 year old and older serving areas into one larger area as long as they are contiguous to the brewer's booths.

[Source: Added at 35 Ok Reg 833, eff 10-1-18]

#### **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, listing the name, location, date and time of the events. Licensees may amend their event schedule throughout the month with the Commission should events be added or removed from the licensee's schedule.

[Source: Added at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-5-21. Procedures for filing agreements**

All agreements entered into between a manufacturer and a beer 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.

[Source: Added at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-5-22. Registration of designated brands**

A brewer 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 brand shall be necessary.

[Source: Added at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-5-23. 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.

[Source: Added at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-5-24. 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.

[Source: Added at 35 Ok Reg 833, eff 10-1-18]

#### **45:30-5-25. Quality Control [REVOKED]**

[Source: Added at 35 Ok Reg 833, eff 10-1-18; Revoked at 38 Ok Reg 909, eff 9-11-21]

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

[Authority: 37A O.S., §§ 1-101 et seq.; 37A O.S., § 1-107(2)]

[Source: Codified 10-1-18]

### **SUBCHAPTER 1. SPECIAL EVENTS**

#### **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.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

#### **45:35-1-2. License availability**

A Special Event License shall be available only in those counties where sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

#### **45:35-1-3. Proof of insurance required**

In addition to the location, date(s), hours of operation of the event, proof of liability insurance and a diagram/floor plan must accompany the application.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

#### **45:35-1-4. Diagram**

The diagram/floor plan for outdoor events provided by the applicant shall include the area to be licensed, a detailed perimeter, surrounding cross streets, security fencing or barriers, tents, buildings, and all places where alcoholic beverages will be distributed from. If the event is held inside a facility, the applicant shall provide a diagram/ drawing of the facility showing the areas to be licensed and where alcoholic beverages will be distributed from.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

#### **45:35-1-5. Barriers**

If the Special Event is to be held in an area in which there are other open businesses or buildings within the licensed premises perimeter, the licensee shall either provide fencing or barriers to separate those businesses or buildings from the licensed event premises or provide security at the entrance to each of those businesses or buildings to prevent alcoholic beverages from being removed from the event premises and taken into those businesses or buildings.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

#### **45:35-1-6. Designated bar area**

If the event will include patrons of all ages, the alcoholic beverages shall only be distributed from a designated bar area in which only person(s) 21 years old or older may enter. There shall also be a Type II sign posted at the entrance to the designated bar area. The sign shall state "No Persons under 21 Years of Age Permitted in This Area of These Premises." If the event will have only patrons that are 21 years of age or older, a Type I sign that states "No Persons under 21 Years of Age Permitted on These Premises" shall be posted at the event entrance. In order for to qualify for a Type II designation, the applicant must derive more than 51% of their income from something other than the sales of alcoholic beverages.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

### **SUBCHAPTER 3. PUBLIC EVENTS**

#### **45:35-3-1. Application**

Application for a Public 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.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

#### **45:35-3-2. License availability**

A Public Event License shall be available only in those counties where sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

#### **45:35-3-3. Proof of insurance required**

In addition to the location, date(s), hours of operation of the event, proof of liability insurance and a diagram/floor plan must accompany the application.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

#### **45:35-3-4. Diagram**

The diagram/floor plan for outdoor events provided by the applicant shall include the area to be licensed, a detailed perimeter, surrounding cross streets, security fencing or barriers, tents, buildings, and all places where alcoholic beverages will be distributed from. If the event is held inside a facility, the applicant shall provide a diagram/drawing of the facility showing the areas to be licensed and where alcoholic beverages will be distributed from.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

#### **45:35-3-5. Barriers**

If the Public Event is to be held in an area in which there are other open businesses or buildings within the licensed premises perimeter, the licensee shall either provide fencing or barriers to separate those businesses or buildings from the licensed event premises or provide security at the entrance to each of those businesses or buildings to prevent alcoholic beverages from being removed from the event premises and taken into those businesses or buildings.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

#### **45:35-3-6. Designated bar area**

If the event will include patrons of all ages, the alcoholic beverages shall only be distributed from a designated bar area in which only person(s) 21 years old or older may enter. There shall also be a Type II sign posted at the entrance to the designated bar area. The sign shall state "No Persons under 21 Years of Age Permitted in This Area of These Premises." If the event will have only patrons that are 21 years of age or older, a Type I sign that states "No Persons under 21 Years of Age Permitted on These Premises" shall be posted at the event entrance. In order for to qualify for a Type II designation, the applicant must derive more than 51% of their income from something other than the sales of alcoholic beverages.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

### **SUBCHAPTER 5. CHARITABLE EVENTS**

#### **45:35-5-1. Application**

Application for a Charitable Alcoholic Beverage License shall be made to the Commission (on forms prescribed by the Commission) by a non-profit or charitable organization recognized by the IRS as a 501(c) 3,4,5,6,7,8,9,10 or 19 for the authority to provide alcoholic beverages on a premises which is licensed and approved by the Commission.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

#### **45:35-5-2. License availability**

A Charitable Alcoholic Event License shall be available only in those counties where sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

#### **45:35-5-3. Donated alcohol**

A Charitable Alcoholic Beverage License shall authorize the holder thereof to purchase wine, beer or spirits from a retail spirit, retail beer, retail wine, or licensed wholesaler and to provide access to alcoholic beverages as part of their entrance fee or ticket price. The license shall also allow the wine, beer or spirits to be donated.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

#### **45:35-5-4. Barriers**

If the Charitable Alcoholic Beverage Event is to be held in an area in which there are open businesses or buildings within the licensed premises perimeter, the

licensee shall either provide fencing or barriers to separate those businesses or buildings from the licensed event premises or provide security at the entrance to each of those businesses or buildings to prevent alcoholic beverages from being removed from the event premises and taken into those businesses or buildings.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

#### **45:35-5-5. Designated bar area**

If the event will include patrons of all ages, the alcoholic beverages shall only be distributed from a designated bar area in which only person(s) 21 years old or older may enter. There shall be a Type II sign posted at the entrance to the designated bar area. The sign shall state "No Persons under 21 Years of Age Permitted in This Area of These Premises." If the event will have only patrons that are 21 years of age or older, a Type I sign that states "No Persons under 21 Years of Age Permitted on These Premises" shall be posted at the event entrance.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

#### **45:35-5-6. Diagram**

A diagram/floor plan for outdoor events shall be provided by the applicant to include the area to be licensed, a detailed perimeter, surrounding cross streets, security fencing or barriers, tents, buildings, and all places where alcoholic beverages will be distributed from.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

### **SUBCHAPTER 7. AIRLINES AND RAILROADS**

#### **45:35-7-1. Application required**

Any entity seeking to obtain an airline/railroad beverage license pursuant to Section 2-118 of Title 37A of the Oklahoma Statutes shall first submit an application and license fee to the ABLE Commission.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

#### **45:35-7-2. Sales and storage**

The holder of an airline/railroad beverage license shall allow for sales of alcoholic beverages, even if the airplane or train may cross an area in its travels where sale of alcoholic beverages by the individual drink is not permitted. Licensees may store sealed alcoholic beverages of any size at any airport or station regularly served by the licensee.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

#### **45:35-7-3. Tax presumption**

All alcoholic beverages purchased by the holder of an airline/railroad beverage license shall be deemed to be purchased for consumption outside of this State, and further exempt from the excise tax provided for in Section 5-101 of Title 37A of the Oklahoma Statutes.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

### **SUBCHAPTER 9. HOTELS AND MOTELS**

#### **45:35-9-1. Mixed beverage license required**

Any applicant for a hotel beverage license must also be the holder of a mixed beverage license, or have an application for such license on file simultaneously with the ABLE Commission.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

#### **45:35-9-2. Mini-bar access restricted**

Access to any mini-bar within the premises of the holder of a hotel beverage license must be restricted in access by key or magnetic card. Access to such key or magnetic card shall be restricted by the licensee to registered guests over the age of 21.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

#### **45:35-9-3. Licensee to license employees**

All employees of the holder of a hotel beverage license involved in the handling or stocking of alcoholic beverages in mini-bars shall hold an employee license issued by the ABLE Commission.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

#### **45:35-9-4. Size of containers to be sold**

A hotel beverage licensee shall only sell or alcoholic beverages in 50 milliliter spirits, 187 milliliter wine, and 12-ounce malt beverage containers in its mini-bars.

[Source: Added at 35 Ok Reg 851, eff 10-1-18]

## **CHAPTER 40. TRANSPORTATION, CONTAINERS AND CHANGES IN STATUS OR LOCATION**

[Authority: 37 O.S., §§ 502 et seq.]

[Source: Codified 12-31-91]

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **45:40-1-1. Purpose**

The rules in this Chapter provide procedures which regulate the transportation, storage in transit, containers and labels of alcoholic beverages, and changes in status or location of alcoholic beverage licensees.

### **SUBCHAPTER 3. TRANSPORTATION, BONDED CARRIERS AND STORAGE IN TRANSIT**

#### **45:40-3-1. Transportation by authorized Carrier**

(a) All alcoholic beverages transported into, within, or out of the State of Oklahoma shall be transported in this State only by Carriers holding either a certificate of public convenience and necessity and/or permit from either the Interstate Commerce Commission or the Oklahoma Corporation Commission, and an Alcoholic Beverage Carrier's license issued by the Commission; PROVIDED, that no such Carrier's license shall be required of licensed Brewers, Distillers, Winemakers, Rectifiers, Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor or Winemaker Self-Distributor, to transport alcoholic beverages from the place of purchase or acquisition to the

licensed premises of such licensees, and from such licensed premises to the licensed premises of the purchaser, in vehicles owned or leased by such licensee, when such transportation is for a lawful purpose and not for hire; PROVIDED further, that all Carriers, Brewers, Distillers, Winemakers, Rectifiers, Wine and Spirits Wholesalers, Beer Distributors, Small Brewer Self-Distributors, Brewpub Self-Distributors or Winemaker Self-Distributors shall comply with all the laws and rules and regulations of the Interstate Commerce Commission and/or the Oklahoma Corporation Commission and shall furnish proof of such compliance to the Director.

(b) All carriers required under (a) of this Section to secure a license from this Commission shall file with the Director an application in writing on forms to be prescribed by the Commission. No Carrier, except those exempt in (a) of this Section, shall transport any alcoholic beverage into, within or out of the State without first securing and holding a valid Carrier's license issued by the Commission, authorizing such transportation.

[Source: Amended at 35 Ok Reg 853, eff 10-1-18]

#### **45:40-3-2. Carrier's report**

Every person holding a Carrier's license for alcoholic beverages or any other person authorized by the law or the rules of this Commission to transport alcoholic beverages, shall file with the Director a copy of the report required to be filed with the Oklahoma Tax Commission in Section 5-123 of Title 37A of the Oklahoma Statutes. If any such Carrier shall fail, neglect, or refuse to make such reports regularly and promptly, and to deliver the same to the Director by the tenth day of the following month, the Permit of such Carrier may be suspended or revoked after notice in writing and hearing by the Director.

[Source: Amended at 35 Ok Reg 853, eff 10-1-18]

#### **45:40-3-3. Storage of alcoholic beverages in transit**

Whenever alcoholic beverages, except beer, shall be transported into this State, for delivery to a licensed Wine and Spirits Wholesaler or licensed Manufacturer of alcoholic beverages, such alcoholic beverages shall be deemed and considered to remain in transit until it is delivered to the warehouse of the Wine and Spirits Wholesaler or Manufacturer, and such alcoholic beverages may be stored in transit in a bonded alcoholic beverage warehouse within the State of Oklahoma, upon the following terms and conditions:

- (1) That said bonded warehouse in which any alcoholic beverages shall be stored in transit, shall, within forty-eight (48) hours of receipt of such alcoholic beverages, give written notice to the Director of receipt thereof, stating the names and addresses of the Nonresident Seller and the Wine and Spirits Wholesaler or Manufacturer, a description of the alcoholic beverages, and the name of the Carrier which delivered such alcoholic beverages to said warehouse.
- (2) That said bonded warehouse shall make delivery of such alcoholic beverages, or any part thereof, only to those persons specified in 45:40-3-1, as being authorized to transport alcoholic beverages.
- (3) That within forty-eight (48) hours after such alcoholic beverages have been removed from such bonded warehouse for delivery to the Wine and Spirits Wholesaler or Manufacturer, said warehouse shall make a written report to the Director, setting out the name of the Carrier to which such alcoholic beverages have been delivered, the name and address of the Wine



and Spirits Wholesaler or Manufacturer, and a description of the alcoholic beverages so delivered.

[Source: Amended at 35 Ok Reg 853, eff 10-1-18]

#### **45:40-3-4. Delivery to licensee's warehouse**

All alcoholic beverages, except beer, transported into this State and delivered to a licensed Wine and Spirits Wholesaler or a licensed Manufacturer of alcoholic beverages shall be delivered to the Wine and Spirits Wholesaler or Manufacturer in the State of Oklahoma and shall be received into the Wine and Spirits Wholesaler's or Manufacturer's warehouse; and no part thereof shall remain in the hands of the Carrier; nor shall any Carrier acquire any property rights in such alcoholic beverages; PROVIDED, however, that nothing contained in this Section shall prohibit a Brewer, Distiller, Winemaker, Rectifier, Wine and Spirits Wholesaler, or Beer Distributor, to transport alcoholic beverages, title to which may be in his name, in vehicles owned or leased by such licensees, provided such transport is for lawful purposes not for hire.

[Source: Amended at 35 Ok Reg 853, eff 10-1-18]

#### **45:40-3-5. Wine and Spirits Wholesaler's vehicle signs**

It is hereby provided that all vehicles owned or leased and made use of by Wine and Spirits Wholesalers, except licensed Carriers under the Oklahoma Alcoholic Beverage Control Act, to transport into this State from a Nonresident Seller to the Wine and Spirits Wholesaler's warehouse or to all Retail Spirits, Retail Wine, Mixed Beverage, Caterer or Special Event licensees shall have displayed on the outside of the doors, windows or side panels 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, giving the name of the Wine and Spirits Wholesaler, address, and his Alcoholic Beverage Laws Enforcement Commission license number. This provision shall also apply to all noncommercial vehicles owned or leased by any Wine and Spirits Wholesaler in which vehicle any alcoholic beverages may be transported at any time. The above stated dimensions shall apply only to the letters A.B.L.E. and license number. The name and address of the Wine and Spirits Wholesaler may be printed in letters of lesser dimensions.

[Source: Amended at 35 Ok Reg 853, eff 10-1-18]

### **SUBCHAPTER 5. CONTAINERS AND LABELS**

#### **45:40-5-1. Containers**

(a) All original packages of alcoholic beverages sold or offered for sale in this State 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 interests of the public. All such original packages of alcoholic beverages shall, before being offered for sale or sold, be approved by the Director as to nature and form. All Manufacturers, or corporate subsidiaries of any Manufacturer who markets his products through a subsidiary, Rectifiers, Distillers, Fermenters, and distributors of alcoholic beverages bottled in foreign countries, shall submit for approval the front and back labels for each container size. An eight (8) by ten (10) inch photograph along with labels, if any, shall be submitted for decanters. Said labels and/or photographs shall be attached to and be a part of the price list of each such

Manufacturer or corporate subsidiary, as provided for in 45:30-3-3. Each Manufacturer or corporate subsidiary of a Manufacturer who markets his products through a subsidiary, Rectifier, Distiller, Fermenter and distributor of alcoholic beverages for sale in this State shall furnish a copy of the price list containing such information as is required by the regulations for price lists, as provided for in 45:30-3-3, and it shall be accompanied by front and back labels and/or photographs of decanters of each item contained on said price list for approval as to nature and form.

(b) After a container has been approved as to nature and form for sale in Oklahoma, it need not again be submitted for approval. No new container embodying changes as to nature and form for the same brand or kind of merchandise shall be sold or offered for sale until labels of said container shall have been submitted to the Director for his approval. No container shall be 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 alcoholic beverages, except beer, and then only when there is a difference in the cost of the container and/or package to the Brewer, other Nonresident Sellers of brewed products and/or Beer Distributors. When prior approval has been received from the Director, individual bottle racks, stands, pourers, and pumps will be permitted for gallon and one-half gallon size containers only; PROVIDED, that these items are offered at no additional cost, each and every container is equipped in the same manner, and said rack, stand, pourer and pump will be in the shipping carton, or in accompanying carton, with the alcoholic beverage so offered. It is the intent and purpose of this regulation to require the approval of original containers and labels as to composition, nature, and form, and it shall be required that prior approval be secured from the Director by reason of any change in the original container or label. A photograph of a new decanter and/or label must be submitted with the request for approval.

[Source: Amended at 35 Ok Reg 853, eff 10-1-18]

#### **45:40-5-2. Container capacities**

The sale of alcoholic beverages, except beer, shall be strictly limited to those capacities approved by the Bureau of Alcohol, Tobacco and Firearms.

#### **45:40-5-3. Wine in less than 7% alcoholic content by weight**

All sizes of wine offered in less than seven percent (7%) alcoholic content by weight, therefore, not considered by the Bureau of Alcohol, Tobacco and Firearms, shall be allowed for sale.

#### **45:40-5-4. Wine and Spirits Wholesalers use of private labels prohibited**

Wine and Spirits Wholesalers are prohibited from use of private labels.

[Source: Amended at 35 Ok Reg 853, eff 10-1-18]

### **SUBCHAPTER 7. CHANGES IN STATUS OR LOCATION**

#### **45:40-7-1. Change in location**

The requirements for change in location of a Wine and Spirits Wholesaler, Beer Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, Small Brewer Self-Distributor, Brewpub Self-Distributor, Retail Spirit, Retail Beer, Retail Wine, Mixed Beverage, Bottle Club or Caterer premises from the original premises to a new location are:

- (1) A letter of request to the Director requesting permission to move to a new location, which shall be described by street number and by lot or block number giving the name of the town and county in which it would be located.
- (2) Publication of Notice of Intent to apply for permission to change the premises or warehouse from one location to another, by two publications in which Notice of Intent of both the old and new location shall be accurately given by street address and by lot and block number. Proof of Publication must be furnished.
- (3) The letter giving permission shall state that all alcoholic beverages must be transported in licensee's vehicle or by a carrier licensed by this Commission, and that such transfer of alcoholic beverages shall be made during the daylight hours of a day or days during which such move is made.
- (4) Prior to permission being given, the original license, and any renewal thereof, shall be surrendered for modification to show the new address.
- (5) A valid lease shall be provided this Commission showing the right of the licensee to occupy the new location for a period of one (1) year. Also, a Certificate of Compliance from the municipality or county certifying that the proposed location complies with all municipal or county fire codes, safety codes, health codes and zoning codes, if applicable.

[Source: Amended at 35 Ok Reg 853, eff 10-1-18]

#### **45:40-7-2. Sale of entire stock of merchandise**

The requirements for the sale by a Wine and Spirits Wholesaler, Beer Distributor, Retail Spirit, Retail Beer, Retail Wine, Mixed Beverage, or Caterer Licensee of his entire stock of merchandise to another licensee are:

- (1) A written request to sell by the Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, or Caterer licensee desiring to sell to another Retail Spirit, Retail Beer, Retail Wine, Mixed Beverage, Caterer, Wine and Spirits Wholesaler, or Beer Distributor licensee, or a Wine and Spirits Wholesaler licensee desiring to sell to another Wine and Spirits Wholesaler licensee, shall be sent to the Commission.
- (2) An inventory of the entire stock of alcoholic beverages shall accompany such request (two (2) copies).
- (3) The licensee's original license, and any renewal thereof, shall be surrendered for cancellation at the same time, and the statement that it is being surrendered for cancellation shall be included in the request to sell.
- (4) A written request shall also be made by the licensed purchaser requesting permission to make such purchase and a report to the Director in writing of the quantity, brands, and types of such alcoholic beverages which he desires to purchase, and the address to which it is actually to be delivered shall be given in said report. No sale or purchase shall be undertaken by any licensee until written permission has actually been received. No one but a licensee may purchase a business from another.
- (5) A letter giving permission will instruct that the transfer shall only be made during daylight hours and shall be made in a vehicle owned by the purchaser or by a carrier properly licensed by this Department.
- (6) No bottles or containers that have been opened or that are partially filled may be sold or transferred.

[Source: Amended at 35 Ok Reg 853, eff 10-1-18]

#### **45:40-7-3. Operation by legal representative**

The requirements for the operation of a Wine and Spirits Wholesaler, Beer Distributor, Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, Bottle Club, or Caterer premises by a legal representative in cases where the licensee has died, or the trustees of an insolvent or bankrupt licensee, or the legal guardian of a licensee who has been adjudged to be incompetent or insane are:

- (1) The legal representative (administrator or executor) shall file with this Commission a petition or application requesting authority to operate the Wine and Spirits Wholesaler, Beer Distributor, Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, Bottle Club, or Caterer premises during the pendency of the probate proceedings or for a period of not to exceed two (2) years. Such petition or application shall be accompanied by certified copies of Letters of Administration or Letter Testamentary, and the original license, and any renewal thereof, shall be sent to this Department for amendment.
- (2) A letter authorizing the operation of a Wine and Spirits Wholesaler, Beer Distributor, Retail Spirit, Retail Beer, Retail Wine, Beer and Wine, Mixed Beverage, Bottle Club or Caterer premises can be written immediately upon the receipt of such petition and letters.

[Source: Amended at 35 Ok Reg 853, eff 10-1-18]

#### **45:40-7-4. Changes in partnerships**

- (a) In cases where the licensees operate as a partnership, one member will be permitted to withdraw by making a request in writing for permission to do so.
- (b) A dissolution agreement of said partnership, or copy thereof, shall be filed with the Commission. The partner leaving the partnership shall assign all of his right, title and interest to all alcoholic beverages, the license, and the lease on the property to the remaining partner.
- (c) The original license, and any renewal thereof, shall be forwarded to the Commission for modification.
- (d) In order to convert an individual business operation into a partnership operation, the proposed new partner is required to follow the same procedure as the original holder of the license, except that only ten percent (10%) of the original fee would be required to be deposited with the application; PROVIDED, that this shall not apply in cases where the licensee desires to make his or her spouse a legal partner of the business, if the relationship of husband and wife existed as of the date of the original license.
- (e) In order to convert an individual business operation into a partnership operation, the requirements are as follows:
  - (1) A request by licensee for permission to add partner or partners, identified by name and address.
  - (2) Submission of a copy of the partnership agreement affecting the licensed premises.
  - (3) Submission of application for license by new partner or partners; PROVIDED, that, this shall not apply where the licensee desires to make his or her spouse a legal partner of the business, if the relationship of husband and wife existed as of the date of the original license.
  - (4) The original license, and any renewal thereof, shall be forwarded to the Commission for modification.

(f) The addition or withdrawal of partners will not be authorized when such action in effect would be a transfer of the license, either voluntarily or involuntarily.

#### **45:40-7-5. Alterations of licensed premises**

(a) Any licensee who desires to change or alter his licensed premises shall write the Director for permission to do so.

(b) A plat or draft showing the exact change or modifications shall accompany the letter of request.

(c) Temporary permission can then be given in writing and the licensee advised to notify the Director as soon as the alterations or repairs are completed so that they may be checked by one of our inspectors or agents as to sanitation, appearance, and other requirements.

[Source: Amended at 35 Ok Reg 853, eff 10-1-18]

## **CHAPTER 50. CHARITY GAMES**

***Editor's Note:** Effective 7-1-93, the responsibility for "the administration and enforcement of the Oklahoma Charity Games Act" [Laws 1993, c. 305, § 4(B)] was transferred from the Oklahoma Tax Commission [OAC 710:95-7] to the Alcoholic Beverage Laws Enforcement Commission [OAC 45]. The Tax Commission was directed to continue to "promulgate and enforce . . . such rules as are necessary to provide for the collection, remitting and verification of payment of taxes by distributors . . ." [Laws 1993, c. 305, § 12(H)]. For additional information on the transfer of authority, see Laws 1993, c. 305. For rules promulgated subsequent to the transfer, see this Chapter [OAC 45:50] and the Tax Commission's Chapter 23 rules [OAC 710:23].*

[Authority: 3A O.S., § 427(D)]

[Source: Codified 8-11-94]

## **SUBCHAPTER 1. GENERAL PROVISIONS**

### **45:50-1-1. Purpose [REVOKED]**

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94; Revoked at 38 Ok Reg 910, eff 9-11-21]

### **45:50-1-2. Definitions**

In addition to the definitions found in the Oklahoma Charity Games Act, the following words and terms, when used in this Chapter shall have the following meaning, unless the context clearly indicates otherwise:

**"Act"** means the Oklahoma Charity Games Act, Section 401 et seq., of Title 3A, of the Oklahoma Statutes.

**"Auxiliary"** means a unit or society which is affiliated with, and organized in accordance with, the bylaws and regulations of the parent organization.

**"Bingo equipment"** means all paraphernalia used to conduct a bingo game including selection equipment, number display boards, and bingo faces. This definition does not include audio or video equipment which plays no part in the conduct of the game other than communicating the progress of the game or items used to mark numbers on the cards.

**"Card number"** or **"center number"** means the number printed in the center space or elsewhere on the bingo face that identifies the unique pattern of

numbers printed on that card.

**"Concealed bingo face sheet"** means a non-reusable bingo face constructed to conceal the bingo face.

**"Conduct of a charity game"** means the selling of bingo faces, U-Pik-Em game sets and breakopen tickets, the calling of numbers, the verification of winners and the payment or delivery of winnings.

**"Conforming face"** means a bingo face with the word "Oklahoma" and a facsimile outline of the map of Oklahoma printed thereon.

**"Continuous or simultaneous game"** means using a bingo face to play more than one game either at the same time or in sequence.

**"Designator"** means an item such as a ping pong ball, used to select numbers and letters in a bingo game.

**"Flare"** means the information sheet provided by the manufacturer that sets forth the rules of a particular game of breakopen tickets and that is associated with a specific deal of breakopen tickets. The "flare" shall contain the following information:

- (A) Name of the game;
- (B) Manufacturer name or manufacturer logo;
- (C) Form number;
- (D) Ticket count;
- (E) Prize structure, which shall include the number of winning breakopen tickets by denomination, with their respective winning symbols, numbers or both;
- (F) Cost per play; and
- (G) Deal serial number.

**"Member"** shall mean those persons defined as members in the organization's constitution, organizational document or by-laws. Member shall include an auxiliary unit or society member.

**"Packet"** means a combination of bingo sheets that are sold as a unit.

**"Prizes"** means cash or merchandise awarded to game winners.

**"Selection equipment"** means a device that may be operated manually or automatically and is used to randomly select bingo designators from a receptacle.

**"Serial number"** means the unique minimum five (5) digit number printed by the manufacturer on each bingo sheet in a set.

**"Series"** means the number of unique bingo faces contained in a set. A 1-9000 series, for example, has 9,000 unique faces with center or card numbers ranging from 1-9000.

**"Set"** means the bingo faces contained within each series.

**"Sheet"** means a disposable piece of paper containing one or more bingo faces.

**"Verification"** means the final determination of a winner by use of a verification device.

**"Verification device"** means a book compiled by the manufacturer of bingo faces which lists the unique pattern of numbers on each face by center number or an electronic verifier on bingo selection equipment which is used to verify the authenticity of a winning face.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

#### **45:50-1-3. Name of organization to be displayed**

The name of the licensed organization shall be prominently displayed at the entrance to the premises or room where charity games are conducted.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

#### **45:50-1-4. Sale or use of nonconforming bingo faces**

The sale of nonconforming bingo faces to licensed organizations by licensed distributors is prohibited. No licensed organization shall conduct charity games with nonconforming bingo faces.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

#### **45:50-1-5. Destruction of altered or damaged breakopen ticket cards**

All marked, defaced, altered, tampered with or damaged breakopen ticket cards shall be destroyed by shredding or burning.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

#### **45:50-1-6. Co-ownership of charity game equipment**

Two or more organization licensees may enter into an agreement for the joint ownership of any charity game equipment, except bingo faces, U-Pik-Em bingo games or breakopen ticket cards.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

#### **45:50-1-7. Rentals and leases of charity game equipment**

- (a) Bingo faces, U-Pik-Em bingo games and breakopen ticket cards shall not be leased or rented by a licensed organization.
- (b) Charity game equipment, other than bingo faces, U-Pik-Em bingo games and breakopen ticket cards shall be leased or rented to licensed organizations only by a licensed distributor or another licensed organization.
- (c) A lease or rental agreement for charity game equipment which will be shared by two or more licensed organizations shall include, as lessees, all organizations that will utilize the equipment to conduct charity games.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

#### **45:50-1-8. Use of vending machines prohibited**

No vending machine or any mechanized coin-operated machine shall be used to sell breakopen tickets.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

#### **45:50-1-9. Bingo Equipment**

- (a) Equipment used in the conduct of a bingo game shall be free from defect and shall be maintained in good repair and proper working condition.
- (b) Equipment used in the conduct of a bingo game shall be operating in a manner so that each player is given an equal opportunity to win.
- (c) Designators shall be the same in size, shape, weight and balance so that they are equally agitated in the selection equipment.
- (d) Equipment used in the conduct of a bingo game shall be available for inspection by the Commission.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

#### **45:50-1-10. Equipment transfer notification**

An organization shall notify the Commission in writing before selling or giving any charity game equipment to another organization or entity.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

#### **45:50-1-11. Location**

- (a) An organization shall be allowed to conduct charity games at only one location.
- (b) An organization shall not change the location at which it conducts charity games without:
- (1) Requesting and receiving the approval of the Commission; and,
  - (2) Complying with the publication requirements applicable to an initial license application.
- (c) The location where any charity game is conducted shall be open to inspection by the Commission or its duly appointed representative during the hours when charity games are being conducted.
- (d) An organization may be licensed and approved to conduct charity games at a location where another licensed organization conducts charity games. The organization's application shall specify the day or days the organization will conduct charity games at the location. All licensed organizations sharing a location shall comply with the following:
- (1) The license of the organization conducting charity games shall be posted at the location during play.
  - (2) Each licensed organization shall maintain a separate bingo face, U-Pik-Em, and breakopen ticket inventory.
  - (3) The licensed organizations sharing a location shall not conduct charity games on a day other than that specified by the organization in its application without prior approval of the Commission.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

#### **45:50-1-12. Printer exclusion**

Printers that print forms, programs or other written materials which are not used directly in the conduct of a charity game shall not be considered a manufacturer or distributor.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

### **SUBCHAPTER 3. LICENSES**

#### **45:50-3-1. Organization license**

- (a) Application for an organization license shall be made on a form prescribed by the Commission.
- (b) In addition to the requirements for application provided in the Act, each application shall be accompanied by:
- (1) A letter of tax clearance from the Tax Commission; and
  - (2) A consent form permitting the Commission to obtain Internal Revenue Service verification of current 501(C) tax exempt status.
- (c) Before submitting an application for an initial license, an organization shall twice publish, in the manner required by law, a notice of intent to apply for a license containing the following information:
- (1) Organization name;
  - (2) Organization address; and
  - (3) Location where charity game activities will be conducted.
- (d) An application for an initial license shall be submitted within sixty (60) days of the publication of the intent to apply.



- (e) Publication requirements shall not apply to a renewal application, unless an organization is changing the location at which charity games are conducted.
- (f) Any licensed organization that changes any of its officers, directors or officials during the term of the license shall, within thirty (30) days of the change, report the names and addresses of such individuals to the Commission.
- (g) An organization license shall expire one year from the date of issuance.
- (h) Any organization that holds an unexpired bingo license on July 1, 1993, may conduct a charity game in conformity with the Act until the license expires.
- (i) The Commission may impose a fine, suspend or revoke an organization's license for any violation of the Act or Rule promulgated by the Commission. An organization which has had a license revoked in this or any other jurisdiction shall not be eligible for a new license for a period of one (1) year from the date of revocation.
- (j) There shall be a fine of Five Dollars (\$5.00) per day for late renewal of an organization license. An organization shall stop conducting charity games during the period the license is expired and before it is renewed.
- (k) If a license is damaged, lost or destroyed, an organization may obtain a duplicate by submitting a written request to the Commission.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

#### **45:50-3-2. Distributor license**

- (a) Application for a distributor license shall be made on a form prescribed by the Commission.
- (b) In addition to the requirements for application provided in the Act, each application shall be accompanied by a letter of tax clearance from the Tax Commission.
- (c) Any licensed distributor that changes any of its officers, directors or officials during the term of the license shall, within thirty (30) days of the change, report the names and addresses of such individuals to the Commission.
- (d) A distributor license shall expire one year from the date of issuance.
- (e) Any distributor that holds an unexpired bingo license on July 1, 1993, may sell charity game equipment in conformity with the Act until the license expires.
- (f) The Commission may impose a fine, suspend or revoke a distributor's license for any violation of the Act or Rule promulgated by the Commission. A distributor which has had a license revoked in this or any other jurisdiction shall not be eligible for a new license for a period of one (1) year from the date of revocation.
- (g) There shall be a fine of Five Dollars (\$5.00) per day for late renewal of a distributor license. A distributor shall stop selling charity games equipment during the period the license is expired and before it is renewed.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

#### **45:50-3-3. Manufacturer license**

- (a) Application for a manufacturer license shall be made on a form prescribed by the Commission.
- (b) In addition to the requirements for application provided in the Act, each application shall be accompanied by a letter of tax clearance from the Tax Commission.
- (c) Any licensed manufacturer that changes any of its officers, directors or officials during the term of the license shall, within thirty (30) days of the change, report the names and addresses of such individuals to the Commission.
- (d) A manufacturer license shall expire one year from the date of issuance.

- (e) Any manufacturer that holds an unexpired bingo license on July 1, 1993, may sell charity game equipment in conformity with the Act until the license expires.
- (f) The Commission may impose a fine, suspend or revoke a manufacturer's license for any violation of the Act or Rule promulgated by the Commission. A manufacturer which has had a license revoked in this or any other jurisdiction shall not be eligible for a new license for a period of one (1) year from the date of revocation.
- (g) There shall be a fine of Five Dollars (\$5.00) per day for late renewal of a manufacturer license. A manufacturer shall stop selling charity games equipment during the period the license is expired and before it is renewed.
- (h) A manufacturer's license shall not be issued to a foreign person unless the applicant provides the full name and business and home addresses of a resident of this state authorized to accept service of process on behalf of the foreign person.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

## **SUBCHAPTER 5. EXEMPTIONS**

### **45:50-5-1. Organization exemption**

- (a) An organization which conducts not more than four (4) charity games sessions per year may apply to the Commission for certification as an exempt organization.
- (b) The application for exemption shall be made on a form provided by the Commission.
- (c) The application shall state the anticipated date, time and location of the four (4) sessions.
- (d) An organization may change the date, time or location of a charity game session only with the approval of the Director.
- (e) The certificate of exemption issued by the Commission shall be posted in a conspicuous place during the conduct of the charity games sessions.
- (f) An organization granted an exemption to conduct not more than four (4) charity game sessions per year shall not:
  - (1) Conduct a charity game session at a location other than the location provided in the organization's application;
  - (2) Conduct a charity game session on a day or time other than one provided in the application;
  - (3) Award prizes in an amount greater than the limit specified for organizations in the Act;
  - (4) Use electronic facsimile of bingo faces.
- (g) An organization which has had an exemption revoked or denied shall not be eligible to apply for another exemption for a period of one (1) year.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

### **45:50-5-2. Health care and retirement facility exemption**

- (a) A hospital, nursing home, residential care facility, senior citizens center, retirement center or convalescent facility that conducts charity games sessions in which not more than Two Hundred Fifty Dollars (\$250.00) in prizes are awarded in any one day may apply to the Commission for certification as an exempt entity.
- (b) The application shall be made on a form prescribed by the Commission.
- (c) The certificate of exemption shall be posted in a conspicuous place during the conduct of the charity games sessions.

(d) A health care or retirement facility granted an exemption to conduct charity games shall not:

- (1) Conduct charity games at a location other than the hospital, nursing home, residential care facility, senior citizens center, retirement center or convalescent facility;
- (2) Award prizes in cash or any other thing of value in excess of Two Hundred Fifty Dollars (\$250.00) in any one day; or
- (3) Use electronic facsimile of faces.

(e) A health care or retirement facility which has had an exemption revoked or denied shall not be eligible to apply for another exemption for a period of one (1) year.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

#### **45:50-5-3. Games where no consideration is required to play**

Bingo games are not subject to the Act if it does not cost anything to play and no admission fee is charged.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

### **SUBCHAPTER 7. OPERATIONS OF CHARITY GAMES**

#### **45:50-7-1. Conduct of a bingo game or U-Pik-Em bingo game**

(a) The following requirements and restrictions apply to the conduct of bingo games and U-Pik-Em games:

- (1) A licensed organization shall post the organization license containing the licensee's name, location of the game, license number and licensee's business address;
- (2) The licensed organization shall post any house rules governing the game;
- (3) With the exception of concealed face games, bingo faces shall be sold prior to the start of a game;
- (4) Bingo faces shall not be reserved for any player(s), except "braille" cards intended for use by blind players;
- (5) No two bingo faces shall be sold for use in the same game if they have the same center or card number.
- (6) The use of electronic facsimiles of bingo faces is prohibited.
- (7) Before selecting and calling the first number in a game, the bingo caller shall announce or display the pattern or arrangement of squares to be covered to win the game.
- (8) After selecting each number, the bingo caller shall:
  - (A) Clearly announce the number;
  - (B) Display the ball or other device used as a designator in a manner allowing the players to see the number; and,
  - (C) Place the designator in a receptacle so as to prevent it from being placed back in the selection pool;
- (9) Squares shall be covered by daubing with indelible ink.
- (10) To play the bingo game or U-Pik-Em bingo game or have a claim against the prizes offered, players shall be present at the location where the game is conducted;
- (11) No member or employee shall be a player in the same bingo or U-Pik-Em bingo game which he or she is conducting.

- (12) Members and employees who wish to play when they are not conducting a game shall pay to play in the same manner and at the same cost as any other player;
  - (13) No member or employee shall conduct charity games while impaired by the consumption of alcohol or drugs.
  - (14) Winning faces may be given to the winning player;
  - (15) Simultaneous or continuous games are prohibited; and,
  - (16) A face shall be used for only one game.
- (b) The following procedures shall be used to determine a winner of a bingo game:
- (1) A winner is determined when the required pattern of squares is covered by a player on a card.
  - (2) It is the player's responsibility to notify the game operator or caller that he has a winning bingo combination. House rules shall govern whether a winning combination of a bingo player who fails to stop the game before the next number is called will be honored.
  - (3) When a player declares a winning face, the following steps shall be followed for winner verification:
    - (A) The game shall be stopped immediately. If the next number has already been selected, it should be secured to ensure that if the declared "bingo" is invalid, the game continues.
    - (B) The game is verified by one of the following:
      - (i) A working member or employee takes the winning card from the player, holds it in front of a neutral player and calls back the winning combination;
      - (ii) The caller verifies first that the serial number and card color is in play and then verifies the number combination in a verification book; or
      - (iii) The caller verifies by the use of the verifier on the bingo number machine.
    - (C) If the winner disputes the verification, the winner may request a second verification. The game cannot resume until the verification is completed.
    - (D) The neutral player shall not be compensated in money or free faces for his part in verification.
  - (4) If more than one winner is declared in a given bingo game, the organization shall:
    - (A) Divide cash prizes equally among the verified winners for winners at the same level, or proportionately, if at different levels; or
    - (B) If the prize is something other than cash and cannot be divided among winners, award substitute prizes of equal proportionate value.
  - (5) Once winner verification has been completed, the caller shall announce the prize paid to the previous game's winner(s).

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

**45:50-7-2. Conduct of breakopen ticket games**

- (a) Only breakopen ticket games approved by the Commission shall be played.
- (b) The following restrictions shall apply to breakopen ticket games:
  - (1) A member or employee shall not purchase breakopen tickets at the location of the organization during the time the member or employee is

selling breakopen ticket cards or redeeming winning breakopen ticket cards;

(2) An organization shall not change the flare or use a flare that it receives in an altered or defaced condition. A breakopen ticket game deal shall not be placed out for play when the value of the prizes or the cost of the breakopen tickets differs from the flare;

(3) A member or employee of an organization shall not purchase tickets or redeem prizes on behalf of a player.

(4) An organization shall not purchase deals of breakopen tickets that have the same manufacturer's form number and serial number. This does not prevent an organization from retaining upon its location breakopen tickets remaining from a deal removed from play, if the organization:

(A) Has defaced by marking or punching each breakopen ticket removed and retained immediately upon removal of the breakopen ticket games from play;

(B) Has made a written record of the game form and serial number, color trim, and the number of breakopen ticket cards remaining in the deal immediately upon removing the deal from play; and

(C) The written record is maintained and available for inspection;

(5) No organization shall place a deal of breakopen tickets in play unless the game form and serial number of the deal of breakopen tickets corresponds to the game serial number written on the invoice provided the organization. If the game form and serial number does not correspond to the number written on the invoice, the organization shall return the deal of breakopen tickets to the distributor.

(c) Breakopen ticket games shall be conducted as follows:

(1) An organization shall not put into play any breakopen ticket game that has been marked, defaced, altered, tampered with, damaged or otherwise operated in a manner which tends to deceive the public or affects the chances of winning or losing;

(2) Each breakopen ticket shall be sold for the single ticket price indicated on the flare and no breakopen ticket shall be provided to a player free of charge or for any other consideration. This paragraph does not apply to the winning of a free play;

(3) The Flare of all deals in play shall be posted in a conspicuous place;

(4) The play of breakopen tickets shall be clearly identified as a single deal or a commingled deal. If a commingled deal is played, the flare of the last deal played shall be posted;

(5) House rules governing the sale of breakopen tickets shall be posted in such a manner that players have access to the house rules before buying any breakopen ticket;

(6) A player shall not be paid any prize unless the player redeems the actual winning breakopen ticket. A prize payout shall not be made to any player for a lost, marked, defaced, damaged or altered breakopen ticket;

(7) A player shall not be paid a prize for any ticket which has been removed from the location where the game is conducted;

(8) The organization shall pay a winning player immediately;

(9) All winning breakopen tickets shall have the winning symbol or number defaced or punched immediately after redemption;

(10) Placing only a part of a deal out for play is prohibited.

(11) A copy of the distributor's invoice for each breakopen ticket deal in play and for each breakopen ticket deal on the premises shall be maintained at the location of the charity game and shall be available for inspection by the Commission.

(d) Two or more single deals of breakopen tickets may be commingled in one receptacle subject to the following:

(1) The deals shall be identical as to a particular type of game and as to the number of breakopen tickets per game;

(2) Each deal shall have a separate flare and manufacturer's serial number; and

(3) The flares shall be identical as to the price per ticket, the amount of prizes, and the denominations of prizes.

(e) All records, reports, and receipts relating to a deal of breakopen tickets in play shall be retained at the location and thereafter retained by the organization for a period of three (3) years and made available on demand to the Commission.

(f) Breakopen ticket games paying sixty percent (60%) or more of gross revenues as prizes are considered approved when the Commission receives from a licensed manufacturer a current catalog of breakopen ticket games which comply with the standards of the North American Gaming Regulators Association (NAGRA) for breakopen ticket games. If a game is not in the manufacturer's current catalog, the manufacturer shall submit the game to the Commission prior to its sale in Oklahoma, along with an affidavit stating that the game was manufactured in compliance with North American Gaming Regulators Association (NAGRA) standards. No breakopen ticket game will be approved unless prize payout on the game is equal to or exceeds sixty percent (60%) of gross revenue generated by the sale of all tickets in the game.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

## **SUBCHAPTER 9. ACCOUNTING, RECORDKEEPING, REPORTING**

### **45:50-9-1. Organization operations, accounts, and reports**

(a) An organization shall maintain complete, accurate, and legible general accounting journals and ledgers, with detailed supporting subsidiary records sufficient to furnish information regarding all charity game transactions. The monthly accounting records shall be sufficient to adequately reflect gross receipts, prizes, net receipts, expenses, and all other charity game related accounting transactions.

(b) Gross receipts shall be determined by the amount of cash and checks actually received.

(c) Allowable expenses shall be determined by the amount of cash paid out, checks written, and amounts set aside to pay winners for breakopen tickets in play.

(d) Copies of distributor's invoices or invoices from other sources for bingo, U-Pik-Em, and breakopen ticket games in play and in inventory shall be maintained and stored in such a manner as to be available for inspection by the Commission.

(e) Each organization shall deposit its charity game proceeds in a bank account at a financial institution, located within Oklahoma.

(f) A bank reconciliation shall be done each month, which lists outstanding checks, deposits in transit, and beginning and ending book balances for the month.

(g) Each licensed organization that files with the United States Department of the Treasury any forms that are required for organizations exempt from the payment of income tax shall retain a copy of those forms and make them available to the

Commission upon request.

(h) All Records, reports and receipts required by the Act or by rule shall be maintained and stored in such a manner as to be available for inspection by the Commission on demand.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

#### **45:50-9-2. Distributor operations and reporting**

(a) A distributor who sells, leases, or otherwise provides charity game equipment shall record the transaction on a sales invoice.

(b) A sales invoice shall contain the following information:

- (1) The license number of the distributor;
- (2) The complete business name and address of the organization or entity;
- (3) The license or the exemption permit number of the organization or entity issued by the Commission;
- (4) The invoice number;
- (5) The date the equipment was shipped;
- (6) A full description of each item of equipment sold;
- (7) The serial numbers of the bingo sets, breakopen ticket games and selection equipment;
- (8) The quantity of U-Pik-Em games;
- (9) The identity of the manufacturer from which the distributor purchased the equipment;
- (10) The date of the sale of the equipment; and
- (11) The name of the person who ordered the equipment.

(c) A distributor, on or before the last day of the month following the end of the quarter, shall submit a quarterly report containing:

- (1) All sales invoice information for sales to licensed organizations or exempt organizations or entities;
- (2) All purchase invoice information for purchases from licensed manufacturers including the amount and price of each item purchased; and
- (3) A reconciliation of inventory of charity game equipment.

(d) All Records, reports and receipts required by the Act or by rule shall be maintained and stored in such a manner as to be available for inspection by the Commission on demand.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

#### **45:50-9-3. Manufacturer operations and reporting**

(a) A manufacturer shall maintain copies of sales invoices to licensed distributors in Oklahoma for a minimum of three (3) years. Invoices shall include:

- (1) Name of manufacturer;
- (2) License number of manufacturer;
- (3) Name of distributor;
- (4) License number of distributor;
- (5) Invoice number;
- (6) Full description of charity game equipment shipped;
- (7) Serial number of equipment; and
- (8) Date equipment shipped.

(b) A manufacturer, on or before the last day of the month following the end of the quarter, shall submit a quarterly report containing:

- (1) Total amount of equipment sold in Oklahoma;
- (2) Total number and the serial and series numbers of bingo faces;

- (3) The quantity of U-Pik-Em games;
  - (4) The serial number and quantity of breakopen ticket deals; and
  - (5) All sales invoice information for charity game sales to licensed distributors in this state.
- (c) In packaging breakopen ticket games, a manufacturer shall comply with the following:
- (1) Each deal's package, box, or other container shall be sealed at the factory with a seal including a warning to the purchaser that the deal may have been tampered with if the package, box, or other container was received by the purchaser with the seal broken.
  - (2) A deal's serial number shall be clearly and legibly placed on the outside of the deal's package, box or other container or be able to be viewed from the outside of the box.
  - (3) Manufacturer shall seal or tape every entry point into a container of breakopen tickets prior to shipment. The seal or tape shall be of such construction as to guarantee that should the container be opened or tampered with, such tampering or opening would be easily discernible.
- (d) All Records, reports and receipts required by the Act or by rule shall be maintained and stored in such a manner as to be available for inspection by the Commission on demand.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

## **SUBCHAPTER 11. ADMINISTRATIVE HEARINGS AND PENALTIES**

### **45:50-11-1. Procedures for conducting hearings**

- (a) The Director shall have the authority to conduct an initial hearing when a hearing before the Commission is required by law. The Director may employ such hearing officers and assistants as are necessary to conduct the hearings. All hearings shall be conducted in accordance with the Administrative Procedures Act, Section 250 et seq., of Title 75, of the Oklahoma Statutes.
- (b) A hearing shall be conducted for the following reasons:
- (1) Receipt of a timely protest to an application for license;
  - (2) Receipt of a petition for revocation from the district attorney of the county or the city attorney of the municipality wherein a license has been issued;
  - (3) Denial of a license;
  - (4) Suspension or revocation of a license;
  - (5) Issuance of a cease and desist order; or
  - (6) Imposition of an administrative fine.
- (c) The Commission shall provide timely notice of a hearing to all parties, stating the date, time, place and subject matter of the hearing.
- (d) The Director shall have the authority to issue subpoenas for the attendance of witnesses and the production of books, accounts and records which shall be effective in any part of the state, requiring their attendance or production before the Director at the time and place specified.
- (e) Any applicant, licensee or other person who fails to appear as directed, after notice, shall be determined to have waived their right to present their case and a final unappealable order may be entered by the Commission. A failure to appear shall constitute a failure to exhaust administrative remedies.
- (f) Hearings shall be conducted by the Commission pursuant to the following procedures:



- (1) A brief statement of facts by the Commission or person protesting the license outlining the reason for denial, suspension or revocation of the license or the alleged violation on the part of the applicant, licensee, or other person shall be given by the Commission.
  - (2) The applicant, licensee, or other person, or the representative thereof, shall be given an opportunity to state his position.
  - (3) Any pleadings or other documents which either party may wish to have filed may be presented.
  - (4) The evidence supporting the requested action shall first be presented at the conclusion of which the applicant, licensee, or other person, or his representative, may present evidence in support of his previously stated position.
  - (5) Closing arguments shall then be permitted.
- (g) If the hearing is conducted by a hearing officer, the hearing officer shall issue a report to the Director. The report of the hearing officer shall include findings of fact and conclusions of law.
- (h) After conducting a hearing or after receiving the report of the hearing officer, the Director shall issue a recommendation to the Commission. Notice of the recommendation of the Director shall be sent to the last known address of the licensee or other person.
- (i) If the licensee or other person disagrees with the recommendation of the Director, they may request a hearing before the Commission for a review of the record. If the licensee or other person fails to request a review of the record within fifteen (15) days after the date of the notice of the Director's decision, the recommendation of the Director shall become the final order of the Commission. A failure to request a timely review of the record by the Commission shall constitute a failure to exhaust administrative remedies.
- (j) Any party aggrieved by a final order of the Commission may seek judicial review as prescribed by the Administrative Procedures Act.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

#### **45:50-11-2. Penalty Schedule**

- (a) The following violations of Title 3A of the Oklahoma Statutes shall be cause for mandatory revocation:
- (1) 3A - 406A(1)
  - (2) 3A - 406A(2)
  - (3) 3A - 406B
  - (4) 3A - 406C
  - (5) 3A - 407A(1)
  - (6) 3A - 407A(2)
  - (7) 3A - 407A(3)
  - (8) 3A - 407B(3)
  - (9) 3A - 426
- (b) All other violations of Title 3A of the Oklahoma Statutes shall be subject to a maximum penalty of:
- (1) A thirty (30) day license suspension and a \$3,000.00 fine for the first violation;
  - (2) A sixty (60) day license suspension and a \$6,000.00 fine for a second violation;
  - (3) A ninety (90) day license suspension and a \$9,000.00 fine for a third violation; and

(4) Revocation of license for a fourth violation.

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94]

**45:50-11-3. Petition for rule change or declaratory ruling [REVOKED]**

[Source: Added at 10 Ok Reg 4713, eff 9-17-93 (emergency); Added at 11 Ok Reg 4415, eff 8-11-94; Revoked at 38 Ok Reg 910, eff 9-11-21]

**CHAPTER 60. TOBACCO**

[Authority: 37 O.S., §§ 502 et seq.]

[Source: Codified 6-25-99]

**SUBCHAPTER 1. GENERAL PROVISIONS**

**45:60-1-1. Purpose**

The rules in this chapter provide for the administration and enforcement of the Oklahoma Prevention of Youth Access to Tobacco Act.

[Source: Added at 15 Ok Reg 3677, eff 6-23-98 (emergency); Added at 16 Ok Reg 2128, eff 6-25-99]

**SUBCHAPTER 3. NOTIFICATION**

**45:60-3-1. Employer notification**

When an enforcement official issues a citation to an employee of the owner of a store at which tobacco products are sold at retail, for the sale of a tobacco product to a person under eighteen (18) years of age, the enforcement official shall obtain the name and address of the storeowner. If the employee is subsequently determined by the ABLE Commission to have sold a tobacco product to a person under eighteen (18) years of age or is convicted of a violation by a municipality, the ABLE Commission shall notify the storeowner by certified mail. The ABLE Commission shall maintain a record of all employees determined to have sold or convicted of selling tobacco products to a person under eighteen (18) years of age.

[Source: Added at 15 Ok Reg 3677, eff 6-23-98 (emergency); Added at 16 Ok Reg 2128, eff 6-25-99]

**45:60-3-2. Parental notification**

When an enforcement official issues a citation to a person under eighteen (18) years of age, for purchasing, receiving or possessing a tobacco product, or for presenting or offering to any person, for the purpose of purchasing or receiving a tobacco product, any purported proof of age with is false or fraudulent, the enforcement official shall obtain the name and mailing address of the cited person's parent or guardian. The ABLE Commission shall then notify the person's parent or guardian that a citation has been issued.

[Source: Added at 15 Ok Reg 3677, eff 6-23-98 (emergency); Added at 16 Ok Reg 2128, eff 6-25-99]

**45:60-3-3. Procedures for conducting hearings**

(a) The Director shall have the authority to conduct an initial hearing when a hearing before the Commission is required by law. The Director may employ such hearing officers and assistants as are necessary to conduct the hearings. All hearings shall be conducted in accordance with the Administrative Procedures Act, Section 250 et seq., of Title 75, of the Oklahoma Statutes.

(b) A hearing shall be conducted for the following reasons:

- (1) Receipt of a timely protest to an application for license;
  - (2) Receipt of a petition for revocation from the district attorney of the county or the city attorney of the municipality wherein a license has been issued;
  - (3) Denial of a license;
  - (4) Suspension or revocation of a license;
  - (5) Issuance of a cease and desist order; or
  - (6) Imposition of an administrative fine;
- (c) The Commission shall provide timely notice of a hearing to all parties, stating the date, time, place and subject matter of the hearing.
- (d) The Director shall have the authority to issue subpoenas for the attendance of witnesses and the production of books, accounts and records which shall be effective in any part of the state, requiring their attendance or production before the Director at the time and place specified.
- (e) Any applicant, licensee or other person who fails to appear as directed, after notice, shall be determined to have waived their right to present their case and a final unappealable order may be entered by the Commission. A failure to appear shall constitute a failure to exhaust administrative remedies.
- (f) Hearings shall be conducted by the Commission pursuant to the following procedures:
- (1) A brief statement of facts by the Commission or person protesting the license outlining the reason for denial, suspension or revocation of the license or the alleged violation on the part of the applicant, licensee, or other person shall be given by the Commission.
  - (2) The applicant, licensee, or other person, or the representative thereof, shall be given an opportunity to state his position.
  - (3) Any pleadings or other documents which either party may wish to have filed may be resented.
  - (4) The evidence supporting the requested action shall first be presented at the conclusion of which the applicant, licensee, or other person, or his representative, may present evidence in support of his previously stated position.
  - (5) Closing arguments shall then be permitted.
- (g) If the hearing is conducted by a hearing officer, the hearing officer shall issue a report to the Director. The report of the hearing officer shall include findings of fact and conclusions of law.
- (h) After conducting a hearing or after receiving the report of the hearing officer, the Director shall issue a recommendation to the Commission. Notice of the recommendation of the Director shall be sent to the last known address of the licensee or other person.
- (i) If the licensee or other person disagrees with the recommendation of the Director, they may request a hearing before the Commission for a review of the record. If the licensee or other person fails to request a review of the record within fifteen (15) days after the date of the notice of the Director's decision, the recommendation of the Director shall become the final order of the Commission. A failure to request a timely review of the record by the Commission shall constitute a failure to exhaust administrative remedies.
- (j) Any party aggrieved by a final order of the Commission may seek judicial review as prescribed by the Administrative Procedures Act.