

**TITLE 710. OKLAHOMA TAX COMMISSION**  
**CHAPTER 20. ALCOHOL, MIXED BEVERAGES, AND LOW-POINT BEER**

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking.

**PROPOSED RULES:**

Subchapter 1. General Provisions

710:20-1-3 [AMENDED]

Subchapter 2. Low-Point Beer

Part 1. General Provisions

710:20-2-20 [AMENDED]

Part 3. Low-Point Beer Distribution

710:20-2-52 [AMENDED]

710:20-2-53 [AMENDED]

710:20-2-55 [AMENDED]

710:20-2-56 [AMENDED]

Subchapter 5. Mixed Beverages

710:20-5-4 [AMENDED]

**SUMMARY:**

Sections 710:20-1-3 and 710:20-5-4 have been amended to correct a scrivener's error.

Sections 710:20-2-20, 710:20-2-52, 710:20-2-53, 710:20-2-55 and 710:20-2-56 were amended to reflect recent internal changes within the Tax Commission. The duties and responsibilities of the Audit Division have been transferred to the Compliance Division.

**AUTHORITY:**

Oklahoma Tax Commission; 68 O.S. § 203; 37 O.S. § 586

**COMMENT PERIOD:**

Persons wishing to make written submissions may do so by 4:30 p.m., February 4, 2008, to the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194. Those wishing to make oral comments at the public hearing should request placement on the docket well in advance of the hearing date, by calling Pat McDonald at (405) 522-3133.

**PUBLIC HEARING:**

A public hearing will be held to provide an additional means by which suggestions may be offered on the content of the proposed rules. Time, Date and Place of the hearing are as follows: February 5, 2008, 10:00 a.m. in the 4<sup>th</sup> floor hearing room at the Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, Oklahoma. In order to facilitate entry into the building, those wishing to appear should contact Pat McDonald at (405) 522-3133 at least 24 hours prior to the hearing date to complete their visitor pre-registration. Entry to the M.C. Connors' building must be made through the doors located on the east side of the building. In order to gain access to the 4<sup>th</sup> floor hearing room, attendees must register at the information desk in the lobby by presenting a driver license or other photo identification. A name badge and floor access card will be issued once registration is completed.

Time limitations may be imposed on oral presentations to ensure that all persons who have filed written requests for placement on the docket will have an opportunity to speak.

**REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:**

Although nothing in this rulemaking action has been determined to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that, pursuant to 75 O.S. § 303(B)(6),

business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed Rules.

**COPIES OF PROPOSED RULES:**

Interested persons may inspect proposed rules at the offices of the Oklahoma Tax Commission, Tax Policy Division, 5th floor, M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma. Copies of proposed rules may be viewed online at [www.oktax.state.ok.us](http://www.oktax.state.ok.us) or obtained without charge from the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194.

**RULE IMPACT STATEMENT:**

A Rule Impact Statement will be prepared and will be available for review from and after January 17, 2008, from the same source listed above for obtaining copies of proposed rules.

**CONTACT PERSON:**

Lisa R. Haws, Agency Liaison. Phone: 405-522-5519; FAX: 405-522-0063; Email: [lhaws@oktax.state.ok.us](mailto:lhaws@oktax.state.ok.us)

**710:20-1-3. Purchase requirements for mixed beverage permit holders**

(a) No mixed beverage or beer and wine licensee shall purchase or receive any alcoholic beverage other than from:

- (1) A person holding a wholesaler or Class B wholesaler license issued pursuant to the Oklahoma Alcoholic Beverage ~~control~~ Control Act; or,
- (2) A licensed Oklahoma winemaker, if the licensee's premises is also a restaurant. In this instance, the licensee may purchase wine produced at Oklahoma wineries directly from the winemaker. [See: 37 O.S. § 537(E)(1)]

(b) No mixed beverage, beer and wine, caterer, or special event licensee, nor any officer, agent, or employee of such licensee, may possess or allow on the licensed premises, any container of any alcoholic beverage which is not listed on an invoice from the wholesaler or from a licensed Oklahoma winemaker from whom the alcoholic beverage was purchased. [See: 37 O.S.Supp.2001, § 582(A)]

**710:20-2-20. Keg identification seal requirements and recordkeeping for licensed retailers**

(a) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

- (1) *"Beer keg"* means any brewery-sealed, single container that contains not less than four (4) gallons of low-point beer. [37 O.S.Supp.2003, § 163.2]
- (2) *"Licensed retailer"* means a retail dealer licensed to sell low-point beer in original containers for consumption off the premises. [37 O.S.Supp.2003, § 163.2]
- (3) *"Identification seal"* means any device approved by the Tax Commission which is designed to be affixed to beer kegs and which displays an identification number and any other information as may be prescribed by the Tax Commission. [37 O.S.Supp.2003, § 163.2]

(b) **Identification seals required on kegs sold.** Every licensed retailer of low-point beer shall affix an identification seal to an outside surface of each beer keg as defined by 37 O.S. Section 163.29. The identification seal shall be affixed to the surface of the beer keg in a manner so as not to conceal any information pertaining to the brand name, brewery code, or container size.

(c) **Contents of identification seal.** The identification seal shall consist of a durable material and be in a form approved by the ~~Audit~~ Compliance Division of the Oklahoma Tax Commission. The identification seal shall be attached at the time of sale and shall include the following information:

- (1) The licensed retailer's name, address, beer license number, and telephone number;
- (2) The beer keg number assigned by the licensed retailer; and,
- (3) A warning that intentional removal or defacement of the seal is a misdemeanor.

(d) **Recordkeeping requirements.** Records required of each beer keg sale shall include:

- (1) The purchaser's name and address;
- (2) The driver's license number or identification card number 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 the purchase;
- (4) The purchaser's signature; and,
- (5) The beer keg identification seal number.

(e) **Retention of records.** The licensed retailer shall retain on file the records set out in (d)(1) through (d)(4) of this Section pertaining to the sale of each beer keg for a period of not less than one (1) year after the sale of a keg, and shall keep a record of the beer keg identification seal number set

out in (d)(5) of this Section for one (1) year from the return of the keg.

**710:20-2-52. Procedures for filing agreements**

- (a) On or before July 1, 1994, a copy of all agreements entered into between a manufacturer and a wholesaler as required by 37 O.S. §163.18B shall be filed with the Audit Compliance Division of the Commission.
- (b) After July 1, 1994, a copy of all agreements entered into between a manufacturer and a wholesaler shall be filed with the Audit Compliance Division within fifteen (15) calendar days of the date it was signed.
- (c) The copy filed shall be a photo copy of the original signed agreement so as to clearly show the names of all signatories to the agreement.
- (d) If the agreement does not contain a map indicating the sales territory, then a map indicating the sales territory shall be filed with the copy of the agreement.
  - (1) The map shall be not less than eight and one half (8 1/2) inches by eleven (11) inches in size.
  - (2) The map shall indicate approval by the licensed manufacturer and the licensed wholesaler.
- (e) Any changes or amendments to an agreement which do not necessitate a signing of a completely new agreement shall be reduced to writing and shall be signed in the same manner as if there were a completely new agreement.
- (f) A copy of any changes or amendments to an agreement shall be filed with the Audit Compliance Division within fifteen (15) calendar days of the date the changes or amendments were signed.

**710:20-2-53. Registration of designated brands**

- (a) On or before July 1, 1994, a manufacturer shall register each designated brand with the Audit Compliance Division of the Commission in such form as the Oklahoma Tax Commission shall prescribe.
- (b) After July 1, 1994, a manufacturer shall register each designated brand at the same time that an agreement is filed. In the event a change or amendment is made to an agreement:
  - (1) 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; or
  - (2) If the changes or amendments affect the registered designated brands, then a new registration for each designated brand shall be necessary.
- (c) With each brand registered, the following information shall be furnished:
  - (1) The full and correct brand name.
  - (2) The name and corporate address of the owner of the designated brand.

**710:20-2-55. Delivery outside sales territory**

- (a) When a wholesaler is temporarily unable to provide the designated brands of the manufacturer within the sales territory, the manufacturer may authorize another wholesaler to supply the designated brands within that sales territory.
- (b) A wholesaler shall be deemed to be temporarily unable to provide the designated brands when the manufacturer finds that illness, natural catastrophes such as tornadoes, fires, floods, or other conditions will prevent the wholesaler from providing the designated brands for a determinate period of time.
- (c) In the event the manufacturer determines that a wholesaler is temporarily unable to provide the designated brands within a sales territory, the manufacturer shall provide written notification within ten (10) calendar days from the date of the determination to:

- (1) The temporarily unavailable wholesaler,
- (2) The wholesaler which will be providing the designated brands within the sales territory, and
- (3) The ~~Audit~~ Audit Compliance Division of the Commission.

**710:20-2-56. Termination of agreement**

- (a) A manufacturer terminating an agreement with a wholesaler shall file a copy of the written notification of termination with the ~~Audit~~ Audit Compliance Division of the Commission no more than five (5) calendar days from the date of termination.
- (b) If a manufacturer enters into an agreement with another wholesaler to provide any designated brands of the manufacturer in the sales territory of the terminated wholesaler, the new agreement shall be filed with the ~~Audit~~ Audit Compliance Division not more than five (5) calendar days from the date the new agreement is signed.

**710:20-5-4. Calculation of gross receipts tax for mixed beverage transactions**

- (a) **Advertised price; admission charge.** The advertised price of a Mixed Beverage shall be the sum of the total retail sale price and the Gross Receipts Tax levied thereon. Admission charges to a Mixed Beverage establishment which entitle a person to complimentary mixed beverages or discounted prices for mixed beverages are subject to the Gross Receipts Tax.
- (b) **Records.** On and after June 29, 1987, Mixed Beverage Permittees shall maintain records of the total retail prices of all drinks and the Gross Receipts Tax shall be calculated on the individual total retail price of each drink and added thereto to ~~from~~ form the advertised price.
- (c) **Calculation of tax.**
  - (1) A mixed beverage tax permit holder shall report the following:
    - (A) The total amount received for mixed beverages sold, prepared or served at the total retail price;
    - (B) The total retail value, computed at the total retail price, of all mixed beverages sold, prepared or served either upon a discounted or complimentary basis;
    - (C) The total amount received for ice or nonalcoholic beverages sold, prepared, or served for the purpose of being mixed with alcoholic beverages and consumed on the premises where the sale, preparation, or service of mixed beverages occurs; and
    - (D) The total gross amount received as admission charges which entitle a person to complimentary mixed beverages or discounted prices for mixed beverages.
  - (2) The sum of the four amounts in (1) of this subsection, multiplied by the 13.5% tax rate, shall constitute the amount of the Gross Receipts Tax.
- (d) **Example.** If the total retail sales price for a mixed drink is \$3.00, each drink sold, and each drink served as a "complimentary drink" incurs a Forty-one Cent Gross Receipts Tax which shall be added to the total retail price to form an advertised price of \$3.41. Sales tax shall be calculated on the total retail price of \$3.00. [See: 37 O.S. §576]

OKLAHOMA TAX COMMISSION  
**Rule Impact Statement**  
CHAPTER 20 ALCOHOL, MIXED BEVERAGES, AND LOW-POINT BEER

**RULE IMPACT STATEMENT:** This statement is provided in conjunction with the following rulemaking action(s):

- 710:20-1-3. Purchase requirements for mixed beverage permit holders [AMENDED]
- 710:20-2-20. Keg identification seal requirements and recordkeeping for licensed retailers [AMENDED]
- 710:20-2-52. Procedures for filing agreements [AMENDED]
- 710:20-2-53. Registration of designated brands [AMENDED]
- 710:20-2-55. Delivery outside sales territory [AMENDED]
- 710:20-2-56. Termination of agreement [AMENDED]
- 710:20-5-4. Calculation of gross receipts tax for mixed beverage transactions [AMENDED]

- (a.) **Purpose of the Proposed Rule:** This rulemaking action is being undertaken to correct scrivener's errors and reflect recent internal changes within the Tax Commission.
- (b.) **Classes Affected:** All taxpayers are affected by these rule changes.
- (c.) **Persons Benefited:** All taxpayers may benefit from these rule changes.
- (d.) **Probable Economic Impact:**
  - 1. **On Affected Classes:** The amendment is not expected to have any economic impact on the affected classes separable or distinct from the underlying legislation which it implements.
  - 2. **On Political Subdivision:** The amendment is not expected to adversely impact other political subdivisions of the State.
  - 3. **Fees:** The rule set out in this statement does not involve any administrative fees.
- (e.) **Probable Costs to the Agency:** The promulgation of the rule should have no significant revenue impact on the state and would create no cost to the agency.
- (f.) **Will the Rule Impact Political Subdivisions?** No economic impact on, nor need for cooperation from political subdivisions is anticipated.
- (g.) **Small Business Impact:** After consideration with reference to Sections 303(A)(4) and 303(B)(6) of the APA, it is believed that the proposed rule will have no adverse impact upon Small Business.
- (h.) **Alternative Methods and Costs of Compliance:** There are no less costly or non-regulatory methods of less intrusive methods for implementing the statutory amendments that necessitated this proposed rule. No formalized compliance cost minimization measures have previously been pursued.

- (i.) **Public Health/Safety/Environmental Concerns:** The proposed rule is not anticipated to have any affect whatsoever on the public health, safety, or the environment either beneficial or otherwise.
- (j.) **Effect of Non-Implementation on Environment:** No detrimental effect on the public health, safety, or the environment will result if this rule amendment is not implemented.
- (k.) **Date:** October 8, 2007      **Date Modified:**
- (l.) **Prepared By:** Lisa Haws      **Phone Number:** 522-3133