

STATE OF KANSAS

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To: Beer Distributors, Retail Liquor Stores and Cereal Malt Beverage (CMB) Retailers

From: Debbi Beavers, Director

Date: December 14, 2018

Re: Implementing SB 13

This memo authorizes certain one-time exceptions allowed to implement SB 13. It also provides clarification for distributors, retail liquor stores and CMB retailers.

Deliveries of beer 6% or less to CMB retailer licensees

- Beer distributors may deliver beer to CMB licensees beginning March 1, 2019.
- Beer may be placed:
 - on the shelf. Must have signage that clearly indicates it is not for sale until April 1, 2019. May be covered in shrink wrap or with other covering.
 - in the cooler. Must have signage that clearly indicates it is not for sale until April 1, 2019. May cover door, cover beer in shrink wrap or with other covering.
 - in another location on the licensed premises but must be secured so it cannot be sold until April 1, 2019.
- Cooler resets.
 - This memo authorizes a one-time exception to allow distributors to divide accounts among each other to reset a cooler that has an approved schematic. Once agreed upon, the distributor may reset all beer in the cooler per the approved schematic.

Deliveries of CMB to retail liquor stores

- Beer distributors may deliver CMB to retail liquor stores beginning March 1, 2019. CMB may be placed:
 - on the shelf. Must have signage that clearly indicates it is not for sale until April 1, 2019. May be covered in shrink wrap or with other covering.
 - in the cooler. Must have signage that clearly indicates it is not for sale until April 1, 2019. May cover door, cover beer in shrink wrap or with other covering.
 - in another location on the licensed premises but must be secured so it cannot be sold until April 1, 2019.
- Cooler resets.
 - This memo authorizes a one-time exception to allow distributors to divide accounts among each other to reset a cooler that has an approved schematic. Once agreed upon, the distributor may reset all beer in the cooler per the approved schematic.

Deliveries of non-alcoholic liquor goods and services to retail liquor stores

- Retail liquor stores may accept delivery and store other goods and services on their licensed premises beginning March 1, 2019.
- Other goods and services may be placed:
 - on the shelf. Must have signage that clearly indicates it is not for sale until April 1, 2019. May be covered in shrink wrap or with other covering.
 - in the cooler. Must have signage that clearly indicates it is not for sale until April 1, 2019. May cover door, cover beer in shrink wrap or with other covering.
 - in another location on the licensed premises but must be secured so it cannot be sold until April 1, 2019.
- Cigarette and tobacco does not include vape oils and accessories. Sales of these products will count toward the 20% other goods and services.

Distributor pricing

K.A.R. 14-14-11(f)(1) states that a distributor cannot discriminate in its pricing by selling alcoholic liquor or CMB to any “licensed retailer, club, drinking establishment or caterer...at a price different than the current price offered to all retailers, clubs, drinking establishments or caterers.” This has long been interpreted to mean that the prices offered to each “pair” of license types listed must be the same (i.e. the price offered to one retailer must be the same as that offered to all retailers, etc.).

Section 4, subsection (y)(1), of SB 13 states that on and after April 1, 2019, “retailer” will essentially mean retail liquor stores and CMB retailers. Combining this definition with the current interpretation of K.A.R. 14-14-11(f)(1) will mean that a distributor must offer products at the same price to all retail liquor stores and CMB retailers, since they will both be considered “retailers” under Kansas law. This applies to deliveries of beer beginning March 1, 2019.

Distributor invoices

- There is no requirement to place the ABV on an invoice.
- To obtain a listing of products with their ABV, visit our active brands database at: <https://www.kdor.ks.gov/apps/liquorlicensee/>

Trade practices

- Policy Memo 2016-1 Trade Practices (Product Displays, POS Items and Equipment) <https://www.ksrevenue.org/pdf/abcpm2016-1.pdf> can be printed off for CMB licensees.
- In 2012, K.A.R. 14-10-17 was amended to adopt portions of the trade practice regulations of the TTB. **27 CFR Subpart D §6.99 Stocking, rotation, and pricing service.**
 - (a) *General.* Industry members may, at a retail establishment, stock, rotate and affix the price to distilled spirits, wine, or malt beverages which they sell, provided products of other industry members are not altered or disturbed. The rearranging or resetting of all or part of a store or liquor department is not hereby authorized.
 - Distributors may stock and rotate their own products whenever they want to.
 - Distributors may not utilize the retailer’s software/hardware. This would be providing a service.
- Can an industry member who sells non-alcoholic products giving a non-alcoholic liquor branded cooler (or other item) to a retailer? ABC reached out to the TTB and here is the response:
 - The Tied-house provisions of the FAA Act (27 U.S.C. 205(b)) provide that it is unlawful for an industry member (alcohol beverage producer, importer or wholesaler) to induce any retailer engaged in the sale of alcohol beverages to purchase such products from the industry member to the exclusion, in whole or in part, of alcohol beverage products sold or offered for sale by other persons in interstate or foreign commerce. Section 6.41 of TTB’s Tied–house regulations (27

CFR 6.41) provides that, subject to the Subpart D exceptions, the act by an industry member of furnishing, giving, renting, lending, or selling any equipment, fixtures, signs, supplies, money, services, or other things of value to a retailer constitutes a means to induce within the meaning of the FAA Act. There are no exceptions for providing coolers or other equipment to retailers free of charge. Accordingly, if an industry member provides a cooler to a retailer, for whatever reason and regardless of how it is branded, it would be considered an inducement.

Taxation of products

- CMB retailers will collect sales tax on beer, CMB and non-alcoholic beer.
- Retail liquor stores will collect liquor enforcement tax on products they currently sell. They will collect sales tax on CMB sales and other goods and services.

CMB retailer license requirement

A CMB retailer must be registered as an Alcohol Dealer with the TTB. If they have not done this, they must:

- complete and mail the form to the TTB, <https://www.ttb.gov/forms/f56305d.pdf>.
- keep a copy for their records as the TTB will not send any confirmation back.

City/County CMB retailer license information

- There is no change in CMB retailer licensing.
- There is no need for the city/county to issue a new license for these changes.
- City/county clerks must use the new application form with a diagram of the licensed premises. The form can be obtained at: <https://www.ksrevenue.org/abccmb.html>
- ABC relies on the city/county clerk to send the applications for CMB retailer licenses to us by the 25th of the month following issuance of the license. Our database is updated within two weeks of receipt. If the license is not on our website, it is the distributor's responsibility to verify they have a valid CMB retailer's license.
- City/county clerks can verify a CMB retailer has registered as an Alcohol Dealer with the TTB by asking the CMB retailer if they have registered or requesting a copy of the completed form.