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Dated: December 19, 2000.

Andrea Gaski,

Chief, Branch of CITES Operations, Division of Management Authority.

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BILLING CODE 4310-55-U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Otoe-Missouria Tribe of Oklahoma Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Otoe-Missouria Tribe of Oklahoma Liquor Ordinance. The Ordinance regulates the control of, the possession of, and the sale of liquor on the Otoe-Missouria Tribe trust lands, and is in conformity with the laws of the State of Oklahoma, where applicable and necessary. Although the Ordinance was adopted on April 13, 2000, it does not become effective until published in the **Federal Register** because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on December 26, 2000.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW, MS 4631-MIB, Washington, DC 20240-4001; telephone (202) 208-4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transaction in Indian country. The Otoe-Missouria Tribe of Oklahoma Liquor Ordinance, Resolution No. OMTC #43-FY-00, was duly adopted by the Otoe-Missouria Tribal Council on April 13, 2000. The Otoe-Missouria Tribe, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members with the Otoe-Missouria Tribe of Oklahoma.

This notice is being published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 9.

I certify that by Resolution No. OMTC #43-FY-00, the Otoe-Missouria Tribe of Oklahoma Liquor Ordinance, was duly adopted by the Otoe-Missouria Tribal Council on April 13, 2000.

Dated: December 12, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

The Otoe-Missouria Tribal Council Liquor Ordinance, Resolution No. OMTC #43-FY-00, reads as follows:

Liquor Control Ordinance of the Otoe-Missouria Tribe of Oklahoma

Introduction

Title. This Ordinance shall be known as the "Otoe-Missouria Tribe of Oklahoma Liquor Ordinance."

Authority. This ordinance is enacted pursuant to the Act of August 15, 1953, 67 Stat. 586, codified at 18 U.S.C. 1161, by the authority of the Otoe-Missouria Tribal Council under the Constitution and Bylaws of the Otoe-Missouria Tribe of Oklahoma.

Purpose. The purpose of this ordinance is to regulate and control the possession and sale of liquor within the Indian Country Otoe-Missouria Tribe of Oklahoma. The enactment of a tribal ordinance governing liquor possession and sale on the Otoe-Missouria Tribe of Oklahoma Indian Country will increase the ability of the tribal government to control the sale, distribution and possession of liquor and will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

Effective date.

This ordinance shall be effective on certification by the Secretary of the Interior and its publication in the **Federal Register**.

Article I. Declaration of Public Policy and Purpose

(1) The introduction, possession, and sale of liquor in the Otoe-Missouria Tribe of Oklahoma are a matter of special concern to the Otoe-Missouria Tribe.

(2) Federal law forbids the introduction, possession and sale of liquor in Indian Country (18 U.S.C. 1154 and other statutes), except when same is in conformity both with the laws of the State and the Tribe (18 U.S.C. 1161). As such, compliance with this ordinance shall be in addition to, and not a substitute for, compliance with the laws of the State of Oklahoma.

(3) The Otoe-Missouria Tribal Council finds that a complete ban on liquor within the Otoe-Missouria Tribe of Oklahoma Indian Country is ineffective and unrealistic. However, it recognizes

that a need still exists for strict regulation and control over liquor transactions within the Otoe-Missouria Tribe of Oklahoma Indian Country because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, distribution, and consumption of liquor. The Otoe-Missouria Tribal Council finds that exclusive tribal control and regulation of liquor is necessary to achieve maximum economic benefit to the Tribe, to protect the health and welfare of tribal members, and to address specific concerns relating to alcohol use on the Otoe-Missouria Tribe of Oklahoma Indian Country.

(4) It is in the best interests of the Tribe to enact a tribal ordinance governing liquor sales on the Otoe-Missouria Tribe of Oklahoma Indian Country, which provides for purchase, distribution, and sale of liquor only on tribal lands within the exterior boundaries of the Otoe-Missouria Tribe of Oklahoma Indian Country. Further, the Tribe has determined that said purchase, distribution, and sale shall take place only at a tribally-owned gaming facility complex.

Article II. Definitions

(1) As used in the title, the following words shall have the following meaning unless the context clearly requires otherwise:

(a) *Alcohol* means that substance known as ethyl alcohol, hydrated oxide of ethyl, alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever source or by whatever process produced.

(b) *Alcoholic Beverage* is synonymous with the term liquor as defined in Article II(f) of this Chapter.

(c) *Bar* means any establishment with special space and accommodations for the sale of liquor by the glass and for consumption on the premises as herein defined.

(d) *Beer* means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and containing the percent of alcohol by volume subject to regulation as an intoxicating beverage in the state where the beverage is located.

(e) *Otoe-Missouria Tribal Council* means the governing body of the Otoe-Missouria Tribe of Oklahoma.

(f) *Liquor* includes all fermented, spirituous, vinous, malt liquor, or combinations thereof, and mixed liquor a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable

alcohol, beer, wine, brandy, whiskey, rum, gin aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contains more than one-half of 1 percent of alcohol.

(g) *Liquor Store* means any store at which liquor is sold and, for the purpose of this ordinance, including stores only a portion of which are devoted to sale of liquor or beer.

(h) *Malt Liquor* means beer, strong beer, ale, stout and porter.

(i) *Package* means any container or receptacle used for holding liquor.

(j) *Public Place* includes state, county, tribal, federal highways, or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted right of access and which are generally used by the public.

(k) *Sale and Sell* include exchange, barter and traffic, and also include the selling or supplying or distributing by and means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

(l) *Spirits* mean any beverage which contains alcohol obtained by distillation including wines exceeding 17 percent of alcohol by weight.

(m) *Wine* means any alcohol beverage obtained by fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than 17 percent of alcohol by weight, including sweet wines fortified with wine spirits such as port, sherry, muscatel and angelica, not exceeding 17 percent of alcohol by weight.

(n) *Otoe-Missouria Tribe of Oklahoma General Council* means the general council of the Otoe-Missouria Tribe of Oklahoma which is composed of the voting membership of the Tribe.

(o) *Otoe-Missouria Tribe of Oklahoma Indian Country* means all lands which

are recognized by the Federal Government as the Otoe-Missouria Tribe of Oklahoma Indian Country.

(p) *Tribal Court* means the Otoe-Missouria Tribe of Oklahoma Tribal Court.

Article III. Powers of Enforcement

(1) *Otoe-Missouria Tribal Council*. In furtherance of this ordinance, the Tribal Council shall have the following powers and duties:

(a) To publish and enforce rules and regulations adopted by the Tribal Council governing the sale, manufacture, distribution, and possession of alcoholic beverages on the Otoe-Missouria Tribe of Oklahoma Indian Country;

(b) To employ managers, accountants, security personnel, inspectors and such other persons shall be reasonably necessary to allow the Tribal Council to perform its function. Such employees shall be tribal employees;

(c) To bring suit in the Tribal Court or other appropriate Court to enforce this ordinance as necessary;

(d) To determine and seek damages for violation of the ordinance;

(e) To make such reports as may be required by the Otoe-Missouria Tribal Council;

(f) To collect taxes and fees levied or set by the Otoe-Missouria Tribal Council; and

(g) Keep accurate records, books and accounts.

(2) *Limitation on Powers*. In the exercise of its powers and duties under this ordinance, the Tribal Council and its individuals members shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee; or

(b) Waive the immunity of the Otoe-Missouria Tribe of Oklahoma from suit without the express written consent and resolution of the Tribal Council.

(3) *Inspection Rights*. The premises on which liquor is sold or distributed shall be open for inspection by the Tribal Council at all reasonable times for the purposes of ascertaining whether the rules and regulations of the Tribal Council and this ordinance are being complied with.

Article IV. Sales of Liquor

(1) The Otoe-Missouria Tribe may make retail sales of liquor in gaming facilities owned by the Tribe and the patrons of the Tribe's gaming facilities may consume said liquor on the gaming facility complex. The introduction and possession of liquor consistent with this section shall also be allowed. All other purchases and sales of liquor within the

Otoe-Missouria Tribe of Oklahoma Indian Country shall be prohibited.

(2) *Sales for Cash*. All liquor sales on the Otoe-Missouria Tribe of Indian Country shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that the provision does not prevent the payment for purchases with use of credit cards such as Visa, MasterCard, American Express, etc.

(3) *Sale for Personal Consumption*. All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage on the Otoe-Missouria Tribe of Oklahoma Indian Country is prohibited. Any person who purchases an alcoholic beverage on the Otoe-Missouria Tribe of Oklahoma Indian Country and sells it, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subjected to paying damages to the Otoe-Missouria Tribe of Oklahoma as set forth herein.

Article V. Taxes

(1) *Tax Levied*. There is hereby levied a liquor tax of 5 percent on the sale of each and every alcoholic beverage sold within the Otoe-Missouria Tribe of Oklahoma Indian Country. The incidence of said tax shall be on the consumer. The liquor tax shall be collected by the gaming facility and paid over to the Otoe-Missouria Tribe Tax Commission as provided herein.

(2) *Taxes Due*. All taxes for the sale of liquor and alcoholic beverages on the Otoe-Missouria Tribe of Oklahoma Indian Country are due on the 15th day of the month following the end of the calendar quarter for which the taxes are due.

(3) *Delinquent Taxes*. Past due taxes shall accrue interest at 2 percent per month.

(4) *Reports*. Along with payment of the taxes imposed herein, the taxpayer shall submit a quarterly accounting of all income from the sale or distribution of liquor, as well as for the taxes collected.

Article VI. Rules, Regulations and Enforcement

(1) In any proceeding under this ordinance, conviction of one unlawful sale or distribution of liquor shall establish prima facie intent of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this ordinance.

(2) Any person who buys liquor within the boundaries of the Otoe-Missouria Tribe of Oklahoma Indian Country contrary to this ordinance shall be guilty of a violation of this ordinance.

(3) Any person who sells or offers for sale any liquor within the boundaries of the Otoe-Missouria Tribe of Oklahoma Indian Country shall be guilty of a violation of this ordinance.

(4) Any person who keeps or possesses liquor upon his person or in any place or on premises conducted or maintained by his principal or agent with the intent to sell or distribute it contrary to the provisions of this title, shall be guilty of a violation of this ordinance.

(5) Any person who knowingly sells liquor to a person under the influence of liquor shall be guilty of a violation of this ordinance.

(6) Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink liquor in any public conveyance shall be guilty of an offense. Any person who shall drink liquor in a public conveyance shall be guilty of a violation of this ordinance.

(7) No person under the age of 21 years shall consume, acquire or have in his possession any liquor or alcoholic beverage. No person shall permit any other person under the age of 21 to consume liquor on his premises or any premises under his control except in those situations set out in this section. Any person violating this section shall be guilty of a separate violation of this ordinance for each and every drink so consumed.

(8) Any person who shall sell or provide any liquor to any person under the age of 21 years shall be guilty of a violation of this ordinance for each sale or drink provided.

(9) Any person who transfers in any manner an identification of age to a person under the age of 21 years for the purpose of permitting such person to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this ordinance.

(10) Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely supports to show the individual to be over the age of 21 years shall be guilty of violating this ordinance.

(11) Any person guilty of a violation of this ordinance shall be liable to pay the Otoe-Missouria Tribe of Oklahoma the amount of \$500 per violation as civil damages to defray the Tribe's cost of enforcement of this ordinance.

(12) When requested by the provider of liquor, any person shall be required to present official documentation of the

bearer's age, signature and photograph. Official documentation includes one of the following:

(a) Driver's license or identification card issued by any state department of motor vehicles;

(b) United States Active Duty Military; or

(c) Passport.

(13) Liquor which is possessed, including for sale, contrary to the terms of this ordinance is declared to be contraband. Any tribal agent, employee or officer who is authorized by the Tribal Council to enforce this section shall seize all contraband and preserve it in accordance with the provisions established for the reservation of impounded property.

(14) Upon being found in violation of the ordinance, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Otoe-Missouria Tribe of Oklahoma.

Article VII. Abatement

(1) Any room, house, building, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this ordinance or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, and all property kept in and used in maintaining such place, is hereby declared to be a nuisance.

(2) The Chairman of the Tribal Council or, if the Chairman fails or refuses to do so, by a majority vote, the Tribal Council shall institute and maintain an action in the Tribal Court in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this article. In addition to other remedies at tribal law, the Tribal Court may also order the room, house, building, vehicle, structure, or place closed for a period of 1 year or until the owner, lessee, tenant, or occupant thereof shall give bond of a sufficient sum from \$1,000 to \$15,000, depending upon the severity of past offenses, the risk of offenses in the future and any other appropriate criteria, payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this ordinance or of any other violation of this ordinance or other tribal liquor laws. If any conditions of the bond are violated, the bond may be applied to satisfy any amounts due to the Tribe under this ordinance.

(3) In all cases where any person has been found in violation of this ordinance relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a nuisance any real estate or other property involved in the violation of the ordinance and violation of this ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Article VIII. Revenue

Revenue provided for under this ordinance, from whatever source, shall be expended for administrative costs incurred in the enforcement of this ordinance. Excess funds shall be subject to appropriation by the Tribal Council for essential governmental and social services.

Article IX. Severability and Effective Date

(1) If any provision or application of this ordinance is determined by review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this ordinance or to render such provisions inapplicable to other persons or circumstances.

(2) This ordinance shall be effective on such date as the Secretary of the Interior certifies this ordinance and publishes the same in the **Federal Register**.

(3) Any and all prior liquor control enactments of the Tribal Council which are inconsistent with the provisions of this ordinance are hereby rescinded.

Article X. Amendment and Construction

(1) This ordinance may only be amended by a vote of the Tribal Council, the governing body of the Otoe-Missouria Tribe of Oklahoma.

(2) Nothing in this ordinance shall be construed to diminish or impair in any way the rights or sovereign powers of the Otoe-Missouria Tribe of Oklahoma or its tribal government.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management; Alaska

[AK-962-1410-HY-P]

Notice for Publication; AA-14015; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision approving