

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****Iowa Tribe of Kansas and Nebraska  
Liquor and Beer Ordinance**

**AGENCY:** Bureau of Indian Affairs,  
Interior.

**ACTION:** Notice.

**SUMMARY:** This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution numbered 97-R-08, Iowa Tribe of Kansas and Nebraska Liquor and Beer Ordinance, was duly adopted by the Iowa Tribe of Kansas and Nebraska Executive Committee May 28, 1997. The Ordinance provides for the regulation of the activities of the manufacture, distribution, sale, and consumption of liquor on reservation lands subject to the jurisdiction of the Iowa Tribe of Kansas and Nebraska; the provisions for criminal jurisdiction are to be exercised in accordance with applicable Federal case law, statutes, and regulations.

**DATES:** This Ordinance is effective April 21, 1998.

**FOR FURTHER INFORMATION CONTACT:** Bettie Rushing, Office of Tribal Services, 1849 C Street NW, MS 4603-MIB, Washington, DC 20240-4001; telephone (202) 208-4400.

**SUPPLEMENTARY INFORMATION:** The Iowa Tribe of Kansas and Nebraska Executive Committee resolution numbered 97-R-08 which reads as follows:

**Iowa Tribe of Kansas and Nebraska  
Liquor and Beer Ordinance****Section 1. Title and Purpose**

This Title shall be known as the Iowa Tribe of Kansas and Nebraska Liquor and Beer Ordinance ("Ordinance"). This law is enacted to regulate the sale and distribution of liquor and beer products on all properties under the jurisdiction of the Iowa Tribe of Kansas and Nebraska, and to generate revenue to fund needed tribal programs and services.

**Section 2. Authority**

This Ordinance is enacted pursuant to the Constitution and By-Laws of the Iowa Tribe of Kansas and Nebraska (as amended August 27, 1980) and the Act of August 15, 1953 (Pub. L. 83-277, 67 Stat. 588, 18 U.S.C. 1161).

**Section 3. Definitions**

Unless otherwise required by the context, the following words and

phrases shall have the designated meanings:

(a) *Nation* or *Tribe* shall mean the Iowa Tribe of Kansas and Nebraska.

(b) *Executive Committee* shall mean the Executive Committee of the Iowa Tribe of Kansas and Nebraska as constituted by Article IV, Sec. 2 of the Constitution of the Iowa Tribe of Kansas and Nebraska.

(c) *Commission* shall mean the Iowa Tribe of Kansas and Nebraska Liquor and Beer Control Commission established pursuant to Section 201 of this Ordinance.

(d) *Iowa Tribe of Kansas and Nebraska Indian Country* shall mean Indian Country as defined by 18 U.S.C. 1151 subject to the jurisdiction of the Iowa Tribe of Kansas and Nebraska, including but not limited to, any lands and waters held in trust by the Federal Government within the jurisdiction of the Iowa Tribe of Kansas and Nebraska.

(e) *Sale* shall mean the transfer, exchange or barter, in any or by any means whatsoever, for a consideration, by any person, association, partnership, or corporation, of liquor or beer products.

(f) *Wholesale Price* shall mean the established price for which liquor and beer products are sold to the Iowa Tribe of Kansas and Nebraska or any Operator by the manufacturer or distributor, exclusive of any discount or other reduction.

(g) *Alcohol* is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is produced by the fermentation or distillation of grain, starch, molasses or sugar, or other substances including all dilutions and mixtures of this substance.

(h) *Liquor* shall mean the four varieties of liquor, commonly referred to as alcohol, spirits, wine, and beer in excess of 5 percent of alcohol, and all fermented, spirituous, vinous or malt liquor or any other intoxicating liquid, solid, semi-solid or other substance patented or not, containing alcohol, spirits, wine, or beer in excess of 5 percent of alcohol, and intended for oral consumption.

(i) *Beer* shall mean any beverage obtained by the alcohol fermentation of an infusion or decoction of pure hops, or pure extract of hops, and malt and sugar in pure water containing not more than 5 percent of alcohol by weight.

(j) *Liquor Outlet* shall mean a tribally licensed retail sale business selling liquor within the Iowa Indian Country, including all related and associated facilities under the control of the Licensee. Moreover, where a Licensee's business is carried on as part of the operation of an entertainment or

recreation facility, the "Liquor Outlet" shall be deemed to include the entire entertainment or recreation facility and associated areas.

(k) *Beer Outlet* shall mean a tribally licensed retail sale business selling beer within the Iowa Indian Country, including all related and associated facilities under the control of the Licensee. Moreover, where a Licensee's business is carried on as part of the operation of an entertainment or recreation facility, the "Beer Outlet" shall be deemed to include the entire entertainment or recreation facility and associated areas.

(l) *Operator* or *Licensee* shall mean any person twenty-one (21) years of age or older, properly licensed by the Tribe to operate a liquor and/or beer outlet.

**Chapter One—Prohibition****Section 101. General Prohibition**

It shall be unlawful to buy, sell, give away, consume, furnish, or possess any liquor or beer or product containing alcohol for ingestion by human beings, or to appear or be found in a place where liquor or beer are sold and/or consumed except as allowed by the Iowa Tribe of Kansas and Nebraska Liquor and Beer Ordinance and regulations promulgated thereunder.

**Section 102. Possession for Personal Use**

Possession of liquor or beer for personal use by persons over the age of 21 years shall, unless otherwise prohibited by Federal or tribal law or regulation, be lawful within the Iowa Indian Country, so long as such liquor or beer was lawfully purchased from an establishment duly licensed to sell such beverages, whether on or off the Iowa Indian Country and consumed within a private residence or location, or at a location or facility specifically licensed for the public consumption of liquor or beer.

**Chapter Two—Licensing****Section 201. Licensing of Liquor and Beer Outlets**

The Executive Committee shall be the Liquor and Beer Control Commission. The Commission is empowered to:

(a) Administer this Ordinance by exercising general control, management, and supervision of all liquor and beer sales, places of sale and sales outlets as well as exercising all powers necessary to accomplish the purposes of this Ordinance.

(b) Adopt and enforce rules and regulations in furtherance of the purpose of this Ordinance and in the performance of its administrative functions.

### *Section 202. Application for Liquor and Beer Outlet Licenses*

(a) Application. Any person twenty-one (21) years of age and older, may apply to the Commission for a liquor and/or beer outlet license.

(b) Licensing Requirements. The person applying for such permit must make a showing once a year, and must satisfy the Commission that:

(1) he/she is a person of good moral character;

(2) he/she has never been convicted of violating any of the laws prohibiting the traffic in any spirituous, vinous, fermented or malt liquors, or of any of the gambling laws of the Tribe, state, any other tribe or state of the United States or of the United States of America, within three (3) years immediately preceding the date of his/her petition;

(3) he/she has not violated the laws commonly called "prohibition laws";

(4) he/she has not had any permit or license to sell nonintoxicating liquors revoked by any governmental authority within the previous twelve (12) months.

(c) Processing of Application. The Commission's Secretary shall receive and process applications and be the official representative of the Tribe and Commission in matters relating to receipt of applications, liquor and beer excise tax collections and related matters. If the Commission or its authorized representative is satisfied that the applicant is suitable and a responsible person, the Commission or its authorized representative may issue a license for the sale of liquor and/or beer products.

(d) Application Fee. Each application shall be accompanied by an application fee to be set by regulation of the Commission.

(a) Discretionary Licensing. Nothing herein shall be deemed to create a duty or requirement to issue a license. Issuance of licenses is discretionary upon the Commission's determination of the best interests of the Tribe, and the license grants a privilege, but not a property right, to sell liquor and/or beer within the jurisdiction of the Tribe at the licensed outlet(s).

### *Section 203. Liquor and Beer Outlet Licenses*

(a) Upon approval of an application, the Commission shall issue the applicant a liquor and/or beer outlet license, valid for one year from the date of issuance, which shall entitle the Operator to establish and maintain only the type of outlet being permitted. This license shall not be transferrable. The Licensee must properly and publicly

display the license in the place of business. It shall be renewable at the discretion of the Commission by the submission of the Licensee of a subsequent application form and payment of an application fee as provided in Section 202(d).

### *Section 204. Other Business by Operator*

An Operator may conduct another business simultaneously with managing a liquor and/or beer outlet; PROVIDED, if such other business is in any manner affiliated or related to the liquor and/or beer outlet it must be approved by majority vote of the Commission prior to initiation. Said other business may be conducted on the same premise as a liquor and/or beer outlet, but the Operator shall be required to maintain separate books of account for the other business.

### *Section 205. Revocation of Operator's License*

(a) Failure of an Operator to abide by the requirements of this Ordinance and any additional regulations or requirements imposed by the Commission will constitute grounds for revocation of the Operator's license as well as enforcement of the penalties provided in Section 601 of this Ordinance.

(b) Upon determining that any person licensed by the Tribe to sell liquor or beer is, for any reason, no longer qualified to hold such license or reasonably appears to have violated any terms of the license or tribal regulations, including failure to pay taxes when due and owing, or have been found by any forum of competent jurisdiction, including the Commission, to have violated the terms of a tribal or state license or of any provision of this Ordinance, the Chairperson of the Commission shall immediately serve written notice upon the Licensee directing that he/she show cause within ten days why his or her license should not be revoked or restricted. The notice shall state the grounds relied upon for the proposed revocation or restriction.

(c) If the Licensee fails to respond to the notice within ten (10) days of service, the Chairperson may issue an order revoking the license or placing such restrictions on the license as the Chairperson deems appropriate, effective immediately. The Licensee may, within the 10 day period, file with the Office of the Chairperson a written response and request for hearing before the Commission.

(d) At the hearing, the Licensee may present evidence and argument directed at the issue of whether or not the asserted grounds for the proposed

revocation or restriction are in fact true, and whether such grounds justify the revocation or modifications of the license. The Tribe may present other evidence as it deems appropriate.

(e) The Commission after considering all of the evidence and arguments, shall issue a written decision either upholding the license, revoking the license or imposing some lesser penalty (such as a temporary suspension or a fine), and such decision shall be final and conclusive.

(f) The Commission's final decision, upon posting a bond with the Court sufficient to cover the Commission's final hearing assessment or ruling, may be appealed by Licensee to the Iowa Tribe of Kansas and Nebraska Court. Any findings of fact of the Commission are conclusive upon the Court unless clearly unsupported by the evidence in the record. The purposes of Court review are not to substitute the Court's finding of facts or opinion for the Commission's, but to guarantee due process of law. If the Court should rule for the appealing party, the Court may order a new hearing before the Commission giving such guidance for the conduct of such as it deems necessary for a fair hearing. No damage or monies may be awarded against the Commission, its members, nor the Tribe and its agents and employees in such an action.

## **Chapter Three—Liquor and Beer Sales and Transportation**

### *Section 301. Sales by Liquor and Beer Wholesalers and Transport of Liquors and Beers Upon Iowa Indian Country*

(a) Right of Commission to scrutinize Suppliers. The Operator of any licensed outlet shall keep the commission informed, in writing, of the identity of the suppliers and/or wholesalers who supply or are expected to supply liquor and/or beer stocks to the outlet(s). The Commission may, at its discretion, limit or prohibit the purchases of said stock from a supplier or wholesaler for the following reasons: Non-payment of Tribal taxes; bad business practices; or sale of unhealthy supplies. A ten day notice of stopping purchases (Stop Purchase Order) will be given by the Commission whenever purchases from a supplier are to be discontinued unless there is a health emergency, in which case the Stop Purchase Order may take effect immediately.

(b) Freedom of Information from Suppliers. Operators shall in their purchase of stock and in their business relations with suppliers cooperate with and assist the free flow of information and data to the Commission from

suppliers relating to the sales and business arrangements between the suppliers and Operators. The Commission may, at its discretion, require the receipts from the suppliers of all invoices, bills of lading, billings or other documentary receipts of sales to the Operators. All records shall be kept according to Section 302(g) of this ordinance.

#### *Section 302. Sales by Retail Operators*

(a) Commission Regulations. The Commission shall adopt regulations which shall supplement this Ordinance and facilitate their enforcement. These regulations shall include prohibitions on sales to minors, where liquor and/or beer may be consumed, persons not allowed to purchase liquor and/or beer, hours and days when outlets may be open for business, and other appropriate matters and controls.

(b) Sales to Minors. No person shall give, sell, or otherwise supply liquor and/or beer to any person under twenty-one (21) years of age either for his or her own use or for the use of his or her parents or for the use of any other person.

(c) Consumption of Liquor and/or Beer upon Licensed Premises. No Operator shall permit any person to open or consume liquor or beer on his or her premises or any premises adjacent thereto and in his or her control until the Commission allows the consumption of liquor and/or beer and identifies where liquor and/or beer may be consumed on Iowa Indian Country.

(d) Conduct on Licensed Premises.

(1) No operator shall be disorderly, boisterous, or intoxicated on the licensed premises or on any public premises adjacent thereto which are under his or her control, nor shall he or she permit any disorderly, boisterous, or intoxicated person to be thereon; nor shall he or she use or allow the use of profane or vulgar language thereon.

(2) No Operator shall permit suggestive, lewd, or obscene conduct or acts on his or her premises. For the purpose of this section, suggestive, lewd or obscene acts or conduct shall be those acts or conduct identified as such by the laws of the Tribe and/or of the State of Kansas.

(e) Employment of Minors. No person under the age of twenty-one (21) years of age shall be employed in any service in connection with the sale or handling of liquor, either on a paid or voluntary basis.

(f) Operator's Premises Open to Commission Inspection. The premises of all Operators, including vehicles used in connection with liquor and/or beer sales, shall be open during business

hours and at all other reasonable times to inspection by the Commission or its designated representatives.

(g) Operator's Records. The originals or copies of all sales slips, invoices, and other memoranda covering all purchases of liquor and/or beer by Operators shall be kept on file in the retail premises of the Operator purchasing the sale for at least five (5) years after each purchase, and shall be filed separately and kept apart from all other records, and as nearly as possible, shall be filed in consecutive order and each month's records kept separate so as to render the same readily available for inspection and checking. All canceled checks, bank statements and books of accounting covering or involving the purchase of liquor and/or beer, and all memoranda, if any, showing payment of money for liquor and/or beer other than by check, shall be likewise preserved for availability for inspection and checking.

(h) Records Confidential. All records of the Commission showing the purchase of liquor by any individual or group shall be confidential and shall not be inspected except by members of the Commission or its authorized representatives.

(i) Conformity with State Law. Operators shall comply with the State of Kansas liquor and beer laws to the extent required by 18 U.S.C. Sec. 1161. However, the Tribe shall have the fullest jurisdiction allowed under Federal law over the sale of liquor and beer products, and related products or activities, within the boundaries of Iowa Indian Country.

#### *Section 303. Transportation through the Reservation not Affected*

Nothing herein shall pertain to the otherwise lawful transportation of liquor or beer through the Iowa Indian Country by persons remaining upon public highways and where such beverages are not delivered or sold or offered for sale to anyone within the Iowa Indian Country.

### **Chapter Four—Taxation and Audits**

#### *Section 401. Excise Tax Imposed Upon Distribution of Liquor*

(a) General Taxing Authority. The Executive Committee shall have authority, as provided by Tribal law, to assess and collect tax on sales of liquor and beer products to the consumer or purchaser. The tax shall be collected and paid to the Tribe upon all liquor and beer products sold within the jurisdiction of the Tribe. The Executive Committee may establish differing tax rates for any given class of merchandise, which shall be paid prior to the time of

retail sale and delivery thereof.

Provided, however, the total amount of the state local and tribal tax shall not exceed one hundred twenty-five percent (125%) of the applicable state and local taxes which apply off-reservation in Brown County, Kansas.

(b) Excise Tax. An excise tax, to be set by the Executive Committee, on the wholesale price shall be added to the retail selling price of liquor and beer products sold to the ultimate consumer or purchaser. All taxes paid pursuant to this Ordinance shall be conclusively presumed to be direct taxes on the retail consumer precollected for the purposes of convenience and facility only.

(c) Tribal Tax Stamp. Within 72 hours after receipt of any liquor or beer by any wholesaler or retailer subject to this Ordinance, a tribal tax stamp shall be securely affixed thereto denoting the tribal tax thereon. Retailers or sellers of liquor and/or beer within the Tribe's jurisdiction may buy and sell or have in their possession only liquor and/or beer which have the tribal tax stamp affixed to each package.

#### *Section 402. Audits and Inspection*

(a) Inspection and Audit. All of the books and other business records of the outlet shall be available for inspection and audit by the Commission or its authorized representative during business hours and at all other reasonable times.

(b) Bond for Excise Tax. The excise tax, together with reports on forms to be supplied by the Commission, shall be remitted to the Commission on a monthly basis unless otherwise specified in writing by the Commission. The Operator shall furnish a satisfactory bond to the Commission in an amount to be specified by the Commission guaranteeing his or her payment of excise taxes.

### **Chapter Five—Liability Insurance and Sovereign Immunity**

#### *Section 501. Liability for Bills*

The Tribe and the Commission shall have no legal responsibility for any unpaid bills owed by a liquor and/or beer outlet to a wholesale supplier or any other person.

#### *Section 502. Tribal Liability and Credit*

(a) Unless explicitly authorized by tribal statute, Operators are forbidden to represent or give the impression to any supplier or person with whom he or she does business that he or she is an official representative of the Tribe or the Commission authorized to pledge tribal credit or financial responsibility for any of the expenses of his or her business

operation. The Operator shall hold the Tribe and the Commission harmless from all claims and liability of whatever nature. The Commission shall revoke an Operator's outlet license(s) if said outlet(s) is not operated in a businesslike manner or if it does not remain financially solvent or does not pay its operating expenses and bills before they become delinquent.

(b) Insurance. The Operator shall maintain at his or her expense adequate insurance covering liability, fire, theft, vandalism, and other insurable risks. The Commission may establish as a condition of any license, the required insurance limits and any additional coverage deemed advisable, proof of which shall be filed with the Commission.

#### *Section 503. Sovereign Immunity Preserved*

Nothing in this statute shall be construed as a waiver or limitation of the sovereign immunity of the Iowa Tribe of Kansas and Nebraska or its agencies, nor their officers or employees.

### **Chapter Six—Violations-Penalties**

#### *Section 601. Violations-Penalties*

(a) Any person who violates this ordinance or elicits, encourages, directs or causes to be violated these laws shall be guilty of an offense and subject to a fine. Failure to have a current, valid or proper license shall not constitute a defense to an alleged violation of the licensing laws or regulations. The Tribe's Court system will have jurisdiction over the proceeding.

(1) Any person convicted of committing any violation of this Ordinance shall be subject to punishment of up to one year imprisonment and/or a fine not to exceed Five Thousand Dollars (\$5,000.00).

(2) Additionally, any person upon committing any violation of any provision of this Ordinance may be subject to a civil action for trespass, and upon having been determined by the Court to have committed the violation, shall be found to have trespassed upon the lands of the Iowa Tribe, and shall be assessed such damages as the Court deems appropriate in the circumstances.

(3) Any person suspected of having violated any provision of this Ordinance shall, in addition to any other penalty imposed hereunder, be required to surrender any liquor or beer in such person's possession to the officer making the arrest or complaint. The surrendered beverages, if previously unopened, shall only be returned upon

a finding by the Court after trial that the individual committed no violation of this Ordinance.

(4) Any Operator who violates the provisions set forth herein shall forfeit all of the remaining stock in the outlet(s). The commission shall be empowered to seize forfeited products.

(5) Any stock, goods or other items subject to this Ordinance that have not been registered, licensed, or taxes paid shall be contraband and subject to immediate confiscation by the Commission or its employees or agents, PROVIDED, that within fifteen (15) days of the seizure the Commission shall cause to be filed an action against such property alleging the reason for the seizure or confiscation, and upon proof, the Court shall order the property forfeited and vested in the Iowa Tribe of Kansas and Nebraska.

### **Chapter Seven—Miscellaneous Provisions**

#### *Section 701. Severability*

If any provision of this Ordinance in its application to any person or circumstance is held invalid, the remainder of the Ordinance and its application to other persons or circumstances is not affected.

#### *Section 702. Effective Date*

This Ordinance shall become effective upon publication of the Secretary of the Interior's certification notice in the **Federal Register**.

#### *Section 703. Repeal of Existing Liquor Ordinance*

On the Effective Date, Tribal Resolution 95-R-30 shall be repealed and of no further force or effect whatsoever, having been replaced and superseded by this ordinance.

Dated: April 6, 1998.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 98-10500 Filed 4-20-98; 8:45 am]

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## **DEPARTMENT OF THE INTERIOR**

### **Bureau of Land Management**

[CO-010-1060-00]

#### **Helicopter and Motorized Vehicle Use While Gathering Wild Horses and Burros; Hearings/Meetings**

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Notice of public hearings.

**SUMMARY:** Two public hearings on the use of helicopters and motorized

vehicles have been scheduled in Colorado in 1998. The May 21 meeting will discuss helicopter use in the Spring Creek Herd Management Area, San Juan Resource Area. The June 22 hearing will discuss helicopter use in the Sand Wash Herd Management Area, Little Snake Resource Area; the West Douglas and North Piceance Herd Areas, White River Resource Area; and the Bookcliffs Wild Horse Range, Grand Junction Resource Area. This gives notice of the times and dates of these two hearings.

**DATES:** The hearings/meetings are scheduled as follows:

1. May 21, 1998, 12 Noon, Norwood, Colorado
2. June 22, 1998, 6:00 p.m., Meeker, Colorado

**ADDRESSES:** The hearings/meetings will be held at the following locations:

1. Norwood—Forest Service Office, 1760 East Grand, Norwood, Colorado 81401
2. Meeker—White River Resource Area Office, 73544 Highway 64, Meeker, Colorado 81641

#### **FOR FURTHER INFORMATION CONTACT:**

Valerie Dobrich, White River Resource Area, 73544 Highway 64, Meeker, Colorado 81641; Telephone (970) 878-3601.

**SUPPLEMENTARY INFORMATION:** The agenda will be limited to:

1. Introduction and Opening Remarks
2. Review of the Wild Horse Gathering Plans for 1998
3. Use of Helicopters in the Gather of Wild Horses
4. Public Comment Period

**Robert W. Schneider,**

*Associate District Manager.*

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## **DEPARTMENT OF THE INTERIOR**

### **Bureau of Land Management**

[OR-958-0777-63; GP7-0022; ORE-03587]

#### **Public Land Order No. 7325; Modification and Partial Revocation of Public Land Order No. 1144; OR**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order establishes a 20-year term as to 949.43 acres of National Forest System lands withdrawn by a public land order for the Forest Service's Miller Lake Recreation Area. These lands have been and will remain closed to mining, but will be opened to surface entry, and will remain open to mineral leasing. This order also revokes