

## Appendix A: Certificate of Approval Questions

### Are out-of-state spirits manufacturers required to obtain certificates of approval?

Cite	Statutory Text	Are out-of-state spirits manufacturers* included in certificate of approval statute?
§2(8)	[28-A definition] “Certificate of approval holder” means an in-state manufacturer, out-of-state manufacturer or out-of-state wholesaler licensed by the bureau.	<ul style="list-style-type: none"> <li>• Includes spirits manufacturers</li> </ul>
§1351	<b>1. Certificate of approval required.</b> All in-state manufacturers, out-of-state manufacturers and out-of-state wholesalers must obtain a certificate of approval from the bureau.	<ul style="list-style-type: none"> <li>• Includes spirits manufacturers</li> </ul>
§1361	<p><b>1. Certificate of approval required.</b> No manufacturer or foreign wholesaler of malt liquor or wine may hold for sale, sell or offer for sale in intrastate commerce, or transport or cause to be transported into the State for resale, any malt liquor or wine unless the manufacturer or foreign wholesaler has obtained from the bureau a certificate of approval.</p> <p><b>2. Fee for certificate of approval.</b> The fee for a certificate of approval is \$1,000 per year for malt liquor only and \$1,000 for wine only, except that the fee for a manufacturer or foreign wholesaler of wine or malt liquor who ships 120 gallons of wine or malt liquor or less per year is \$100. Payment of the fee must accompany the application for the certificate.</p> <p>...</p> <p><b>4. No sales of malt liquor or wine to person without wholesale license.</b> No certificate of approval holder, except a small brewery or small winery licensee allowed to sell directly to retailers, may sell or cause to be transported into the State any malt liquor or wine to any person to whom a Maine wholesale license has not been issued by the bureau. . . .</p> <p><b>5. No exclusivity agreement.</b> No certificate of approval holder may make it a condition in selling malt liquor or wine to any wholesale licensee that the wholesale licensee may not sell malt liquor or wine manufactured or sold by other manufacturers or foreign wholesalers.</p>	<ul style="list-style-type: none"> <li>• Excludes spirits manufacturers                             <ul style="list-style-type: none"> <li>○ Subsection 1 excludes spirits manufacturers if the phrase “of malt liquor or wine” modifies the word “manufacturer.” Subsections 2, 4 &amp; 5 support this interpretation by explicitly applying only to malt liquor and wine.</li> </ul> </li> </ul> <p><u>Note:</u> No other section of Title 28-A establishes the process or fee for out-of-state spirits manufacturers to obtain certificates of approval. This interpretation—that spirits manufacturers are not required to obtain certificate of approval—is also supported by:</p> <ul style="list-style-type: none"> <li>○ §708(7), which distinguishes between rebates offered by “a manufacturer or a supplier of spirits” and rebates offered by “a certificate of approval holder” [latter referring only to brewery or winery].</li> <li>○ §1052-D(1), which lists persons with “certificate[s] of approval” and a “foreign manufacturer[s] of spirits” as distinct types of entities eligible for a taste-testing license under that section.</li> <li>○ §1551, which lists fees for malt liquor or wine—but not spirits—certificates of approval.</li> </ul>

\* Note: “Manufacturer” is defined in §2(19) to include those who make spirits, wine and malt liquor. By contrast, “wholesaler” is defined in §2(35) in a way that excludes spirits. Thus, spirits wholesalers do not need a certificate of approval (instead, they have a §90 contract).

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### Effects of not requiring a certificate of approval:

- (1) Less direct state control over out-of-state manufacturers, for example:
  - a. Not subject to statutes applicable to “certificates of approval” and “certificate of approval holders”, *see* table below; and
  - b. Not subject to administrative penalties (suspension, revocation, straight fines or fines in lieu of suspension) for violating Title 28-A or implementing rules, *see* §1361(3).
- (2) But, other forms of regulation exist, for example:
  - a. State Liquor and Lottery Commission determines which items may be sold in Maine, *see* §81(3);
  - b. The Commission & BABLO set wholesale and retail price of all spirits sold in Maine, *see* §83-C(2), §606, §1651(1);
  - c. BABLO oversees contract for spirits wholesale distribution/storage pursuant to §90 contract process; and
  - d. BABLO limits marketing, mail-in rebates, and instant coupons on spirits products, *see* §708 (although the penalty for violating these provisions is unclear if the entity does not have a certificate of approval subject to administrative penalties).

### Regardless of the answer to this question, Title 28-A must be amended:

- If out-of-state spirits manufacturers are not required to obtain certificates of approval:
  - Amend the definition of certificate of approval holder in §2(8) and the broad, mandatory language of §1351 to exclude out-of-state spirits manufacturers.
- If out-of-state spirits manufacturers are required to obtain certificates of approval:
  - What is the process for obtaining a foreign spirits manufacturer certificate of approval? (Same as §1361?)
  - What is the fee for a foreign spirits manufacturer’s certificate of approval? (Need to add to list of fees in §1551)

### In either case, need to ensure whether out-of-state spirits manufacturers are intended to be included in current statutes governing “certificate[s] of approval” or “certificate of approval holder[s]”:

Citation	Description	Intent to include out-of-state spirits manufacturers?
§707(3), (4), (5)	Prohibits entities in the three-tier system (including entities with a “certificate of approval”) from having financial ties with entities in the other tiers (for example, retail licensees or wholesalers).	?
§707-A	Exceptions to three-tier financial separation rules in §707, permitting a retail licensee that operates a hotel to have a financial interest in a “certificate of approval holder” and vice versa.	?

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Citation	Description	Intent to include out-of-state spirits manufacturers?
§708(1) & §1408	Prohibiting a “certificate of approval holder” from offering most discounts unless offered to all wholesale licensees and approved by the bureau.	?
§708-A	Allowing “certificate of approval holders” as well as wholesale and retail licensees to offer in-pack sweepstakes, contests and games	?
§708-C	Allows §1355-A licensees, wholesalers or “certificate of approval holders” to make donations for an auction or award or for consumption at on-premises events. Specifically includes spirits.	?
§1051(8)	Allows on-premises retailers to conduct liquor taste-testing events for the public. “Certificate of approval holders” that participate in these taste-testing events may: ¶P: offer free snacks during the event; ¶Q: provide promotional/advertising materials for the event; ¶R: distribute novelties to public during event.	?
§1071(6)	Incorporated civic organizations may obtain on-premises event licenses for the sale of spirits, wine and malt liquor. ➤ Sub-§6 states that an in-state manufacturer, “a certificate of approval holder” or a wholesaler who provides the malt liquor, wine or spirits for the event may serve its product.	Questions: may an out-of-state spirits manufacturer’s products be served at these events and, if so, may that manufacturer serve the product at the event?
§1361(3) and Chapter 33	➤ Violation of liquor laws or rules may lead to suspension or revocation of a “certificate of approval.” ➤ Chapter 33 adds that, in lieu of a suspension, the “certificate of approval holder” may pay a fine calculated as a specific percentage of its gross profits to the Court. See §803(9).	Key question: is the intent that out-of-state spirits manufacturers be subject to these types of administrative penalties?

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Citation	Description	Intent to include out-of-state spirits manufacturers?
§1363	<ul style="list-style-type: none"> <li>➤ Sub-§1: Corporate officers of a company that is the “holder of a manufacture’s certificate of approval” may not have financial interest in wholesale licensee.</li> <li>➤ Sub-§2: Prohibits a “manufacturer or certificate of approval holder” from loaning money to wholesale licensee for equipping a business establishment where malt liquor or wine is sold.</li> </ul>	<p>Appears intended to apply only to malt liquor and wine manufacturers, given Subchapter and Section headnotes (but those headnotes have no legal effect). Is this correct?</p>
§1364(1), (2)	Requires “all certificate of approval holders” to submit copies of all invoices sent to wholesale licensees as well as monthly reports.	Are out-of-state spirits manufacturers intended to file these reports or is this something handled in the §90 contract?
§1406	➤ Requires certificate of approval holders to send to the bureau a list of licensed wholesalers who distribute their products.	Given §90 contract process and heading of the chapter (“malt liquor and wine wholesale licensees”), likely not intended to apply to spirits. Is this correct?
§1407	Limiting the ability of a “certificate of approval holder” who acquires new brands “of liquor” to terminate a wholesale licensee who is the exclusive distributor of those same brands “of liquor.” Violations are an unfair trade practice.	Given §90 contract process and heading of the chapter (“malt liquor and wine wholesale licensees”), likely not intended to apply to spirits. Is this correct?
Chapter 57 (§1451 to §1465)	<p><b>Certificate of Approval Holder and Maine Wholesale Licensee Agreement Act</b></p> <ul style="list-style-type: none"> <li>➤ Regulates the relationship between “wholesalers” (defined to include licensees who may distribute wine or malt liquor) and “certificate of approval holders” (a term not specially defined for purposes of this Chapter).</li> </ul>	<p>This does not apply to spirits. But, if out-of-state spirits manufacturers obtain certificates of approval, should clarify that they are not included in Chapter 57.</p>
§1652(4)	Bureau must open an account “with all . . . certificate of approval holders” pertaining to payment of excise taxes.	<p>This does not apply to spirits, which have a state tax built into their retail price and which are not subject to excise taxes. But, if out-of-state spirits manufacturers obtain certificates of approval, should clarify that they are not governed by this provision.</p>