



**TEXAS ALCOHOLIC  
BEVERAGE COMMISSION**

*Texans Helping Businesses & Protecting Communities*

**ADMINISTRATIVE RULES**

**December 2021**

Texas Alcoholic Beverage Commission  
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## CHAPTER 31. ADMINISTRATION

### **§31.1 Separation of Duties Between Commission and Executive Director**

(a) This rule implements §5.12 of the Alcoholic Beverage Code (Code), which requires the Texas Alcoholic Beverage Commission (commission) to adopt rules to clearly separate the policy-making authority of the commissioners from the management responsibilities of the executive director, and §5.34(b) of the Code, which requires the commission to develop and implement policies that clearly define the respective responsibilities of the commission and staff.

(b) The commission retains the duty and authority to:

- (1) Establish agency policies and goals to carry out the duties and authority granted to the commission under the Code;
- (2) Provide leadership and direction to ensure agency laws, rules, policies and goals are implemented in a responsible, effective and cost efficient manner;
- (3) Ensure accountability and transparency within the agency and to the Governor, the Legislature, the public, and persons regulated;
- (4) Appoint and remove the executive director;
- (5) Adopt agency rules to implement statutory duties and agency policies;
- (6) Employ or appoint and terminate or remove an internal auditor, adopt an audit plan, approve audit findings and ensure agency compliance with audit requirements;
- (7) Exercise any authority and carry out any duty of the commission not delegated to the executive director;
- (8) Render the final decision in any contested disciplinary action that has had an administrative hearing;
- (9) Approve or decline the settlement of any disciplinary action that carries a civil penalty of ten million dollars (\$10,000,000) or more; and
- (10) Approve or decline the settlement of any disciplinary action that the executive director recommends and that is accepted for consideration by:
  - (A) the presiding officer of the commission; or
  - (B) at least two commission members.

(c) The commission delegates the following duties and authority to the executive director (under Alcoholic Beverage Code §5.11(b), also referred to as the administrator in the Alcoholic Beverage Code and the commission's rules):

- (1) Plan and implement an effective an efficient operational and organizational structure;
- (2) Act as the agency liaison and resource to the executive and legislative branch;
- (3) Prepare and submit the agency budget and appropriations requests;
- (4) Employ and terminate the general counsel, who shall report directly to the executive director;
- (5) Employ or appoint an executive management team with the skills, knowledge and commitment necessary to achieve the goals and implement the policies adopted by the commission;
- (6) Assign and delegate to each member of the executive management team and the general counsel the responsibility and authority necessary to effectively administer all agency operations, duties and functions, implement policy, and manage staff and resources, including

the authority to further delegate and assign the essential duties and responsibilities of the agency to ensure the highest and best use of agency staff and resources;

(7) Develop, monitor and report measures or expectations for the administrative, regulatory and enforcement functions of the agency to ensure that the agency goals are accomplished and policies followed;

(8) Develop and implement comprehensive and agency-wide internal policies and procedures necessary to carry out each essential function, duty, policy or goal of the agency;

(9) Ensure that all agency staff has access to, knowledge of and responsibility for consistently following policies adopted by the commission and agency-wide internal policies and procedures;

(10) Administer the oath of office or commission to agency staff and agents;

(11) Render, or delegate to agency staff, the agency decision or order in any matter over which the agency has final decision-making authority unless otherwise retained by the commission in subsection (b) of this section; and

(12) Execute contracts, specifically including but not limited to approving and signing contracts for the purchase of goods or services that have a value exceeding \$1 million. Notwithstanding paragraph (5) of this subsection, the authority to approve and sign contracts for the purchase of goods or services that have a value exceeding \$1 million shall not be delegated by the executive director to staff.

(13) Nothing in this section shall be construed to limit the general counsel's duty to advise the commissioners directly as their legal counsel, with all duties to the client, legal privileges, and ethical requirements generally applicable to the attorney-client relationship.

*Note: Amended Rule Effective: June 9, 2020.*

### **§31.2 State-owned Motor Vehicles**

(a) Exemption from inscription requirements for state-owned vehicles.

(1) This subsection implements §721.003, Transportation Code, relating to exemption from inscription requirement for certain state-owned vehicles, which requires the commission to adopt a rule to be exempt from the inscription requirements of Chapter 721.

(2) The primary use of the state-owned vehicles for which an exemption is sought is the transportation of commission employees engaged in the prevention, detection, investigation and enforcement of criminal and regulatory violations of the Alcoholic Beverage Code.

(3) Not printing inscriptions on commission vehicles will: increase effectiveness of enforcement and compliance operations and activities; increase the safety of commission employees engaged in enforcement and compliance operations and activities; and, decrease the risk of damage to state-owned vehicles and property.

(b) Assignment of Vehicles.

(1) This subsection implements §2171.1045, Government Code, relating to the restrictions on assignment of state vehicles.

(2) Vehicles are assigned to commission executive staff whose essential agency duties and functions require them to have vehicles available on a regular or frequent basis to provide state-wide oversight, management and supervision of agency staff.

(3) Pool vehicles are maintained at headquarters to reduce the cost to the state for travel required by qualified agency staff whose essential duties and functions require regular or periodic travel by vehicle.

(4) Vehicles are assigned to field operation employees whose essential agency duties and functions require daily and extensive use of vehicles and the cost to the state of providing a state-owned vehicle is less than the cost of reimbursing employees for the use of personal vehicles.

*Note: Readopted Without Changes and Effective: March 24, 2015*

### **§31.3 Petition for the Adoption of a Rule**

(a) Purpose. This section implements Government Code §2001.021 and provides procedures for any interested person (petitioner) to request the Alcoholic Beverage Commission (commission) to adopt a rule. The petitioner must be:

- (1) a resident of this state;
- (2) a business entity located in this state;
- (3) a governmental subdivision located in this state; or
- (4) a public or private organization located in this state that is not a state agency.

(b) Content of Petition.

(1) The petition must be in writing. No form is required but all information must be provided, or a reason why required information cannot be provided given.

(2) The petition must contain the following:

(A) petitioner's name, address, organization or affiliation, if any, and the name of the person or entity on whose behalf the petition is filed, if different from the person submitting the petition;

(B) a plain and brief statement about why a rule or change in an existing rule is needed, required, or desirable, including the public good to be served and any effect on those who would be required to comply with the rule;

(C) an estimate of the fiscal impact on state and local government as a result of enforcing or administering the proposed rule, an estimate of the economic impact on persons required to comply with the proposed rule, whether there may be an effect on local employment, and the facts, assumptions and methodology used to prepare estimates and impacts required by this subparagraph;

(D) a statement on the commission's authority to adopt the proposed rule;

(E) the proposed text of a new rule, or proposed changes to an existing rule; and

(F) a list of individuals, organizations or affiliations that may be interested or affected by the proposed rule, if known.

(c) Submission. A petition is submitted on the date it is received by the Executive Director. The petition must be addressed to the Executive Director, Texas Alcoholic Beverage Commission, and mailed to P.O. Box 13127, Austin, Texas 78711-3127, or hand delivered to the Executive Director at commission headquarters in Austin, Texas.

(d) Review. The Executive Director will review the petition for compliance with the requirements of this section. If all requirements of this section are met, the Executive Director will bring the petition to the commission, except as provided otherwise in this section.

(e) Decision to Deny or Accept. The commission will deny a petition for rulemaking, or accept, in whole or in part, a petition for rulemaking within 60 days from the date the petition is submitted. If the commission neither denies nor accepts the petition within 60 days from the date it is submitted, agency staff will initiate the rulemaking process under Chapter 2001, Subchapter B, of the Government Code. In such case, agency staff may redraft the proposed text to conform

to style and format requirements for the agency's rules.

(1) The Executive Director will notify the petitioner in writing if the petition is denied and state the reason or reasons for the denial.

(2) The commission will refer an accepted petition to agency staff to initiate the rulemaking process under Chapter 2001, Subchapter B, of the Government Code. Agency staff may redraft the proposed text to conform to style, format and policy decisions of the agency.

(f) Repetitive petitions. The Executive Director may refuse to bring a petition for rulemaking to the commission if, within the preceding year, the commission has considered a previously submitted petition for the same rule.

*Note: Amended Rule Effective: December 8, 2015*

### **§31.4 Public Information Signs**

(a) Complaint Sign. In accordance with Alcoholic Beverage Code §5.53(d), any licensed or permitted business location in the state which sells or serves alcoholic beverages to the ultimate consumer shall display at his place of business in a prominent place easily seen by the public, i.e. near the door or by the cash register, a sign that provides the following information: "If you have a complaint about the sale or service of alcoholic beverages in this establishment, please contact the Texas Alcoholic Beverage Commission by mail at P.O. Box 13127, Austin, Texas 78711-3127, by or phone at 1-888-THE-TABC, by internet at <https://www.tabc.texas.gov/>, or by a TABC-authorized mobile application."

(1) This sign shall be no smaller than 6 inches by 3-1/2 inches and shall be in lettering or type of a size sufficient to render it both conspicuous and readily legible.

(2) The sign shall be made of sturdy material; if made of paper, the weight shall be no less than 65# stock.

(b) Health Risk Warning Sign. In accordance with Alcoholic Beverage Code §§11.042 and 61.111, a holder of a license or permit authorizing the sale of alcoholic beverages for on premises consumption shall display a health risks warning sign. The health risks warning sign must:

- (1) be posted at each egress of all public restrooms on the licensed premises;
- (2) be placed at a level where the sign can be easily seen by persons exiting the restroom;
- (3) be not less than 8 1/2 x 11 inches in size;
- (4) the following language shall be printed in English and in Spanish, in bold black type on a white surface, or other clearly legible graphic design, with a font or type set size of not less than 28 point Arial or Helvetica:

#### HEALTH RISK WARNING SIGN

- Drinking any type of alcohol while pregnant can hurt your baby's brain, heart, kidneys, and other organs and can cause birth defects.
- The safest choice is not to drink at all when you are pregnant or trying to become pregnant.
- If you might be pregnant, think before you drink.

## AVISO SOBRE RIESGOS DE SALUD

- Beber cualquier tipo de alcohol cuando está embarazada puede hacerles daño al cerebro, al corazón, a los riñones y a otros órganos de su bebé y puede causar defectos de nacimiento.
  - Lo más seguro es no beber nada de alcohol cuando está intentando quedar embarazada o ya lo está.
  - Si es posible que esté embarazada, piénselo antes de beber.
- (c) The responsibility of furnishing the required signs in this section is the sole responsibility of the licensee or permittee.

*Note: Amended Rule Effective: August 16, 2016*

### **§31.5 Public Information Act Requests**

(a) Charges made for providing copies of public information by the Texas Alcoholic Beverage Commission shall be assessed in accordance with the schedule of charges maintained by the Office of the Attorney General and found at 1 TAC §§70.1 – 70.12.

(b) The General Counsel or the General Counsel's designee shall be the agency's open records coordinator. The open records coordinator is subject to the direction of the Administrator, who is the officer for public information of the agency pursuant to Texas Government Code §552.201.

*Note: Readopted Without Changes and Effective: March 27, 2018*

### **§31.6 Establishment of Advisory Committees**

(a) This rule implements Alcoholic Beverage Code §5.21, which authorizes the commission, by rule, to establish advisory committees as necessary to accomplish the purposes of the Alcoholic Beverage Code, and to meet the changing needs of the agency. Government Code Chapter 2110 applies to an advisory committee created by the commission.

(b) The commission rule establishing an advisory committee shall contain, at a minimum, the following information:

- (1) the purpose, role, and goal of the committee;
- (2) composition and representation requirements;
- (3) qualifications of the members, such as experience or geographic location;
- (4) terms of service of committee members;
- (5) any necessary training requirements; and
- (6) the method the agency will use to receive public input on issues considered by the advisory committees.

(c) An advisory committee created by the commission shall not have more than nine members.

(d) The presiding officer of the commission shall appoint the members of an advisory committee.

(e) Each advisory committee shall hold at least one open meeting per fiscal year. Meetings at which a quorum is present are subject to the Texas Open Meetings Act (Tex. Gov't Code Ch. 551).

*Note: Original Rule Effective: February 19, 2020*

### **§31.10 Filing a Complaint**

(a) This section relates to §5.53 of the Texas Alcoholic Beverage Code (Code), which requires the Texas Alcoholic Beverage Commission (commission) to adopt a rule to define the agency's complaint process from the time a complaint is received until the complaint is resolved.

(b) The public, consumers, commission and persons and entities regulated by the commission may file a complaint against an individual or entity holding a license, permit or certificate issued by the commission.

(1) A complaint may be submitted anonymously. If the complainant wishes to be informed of the resolution of the complaint, the complainant must provide contact information.

(2) A complaint may be submitted: in writing to the Texas Alcoholic Beverage Commission (TABC), P.O. Box 13127, Austin, Texas 78711-3127; in person at any TABC office; by phone at (512) 206-3333 or the phone number of the nearest TABC office, or by electronic mail at [complaints@tabc.texas.gov](mailto:complaints@tabc.texas.gov).

(c) A written complaint form, instructions on how and where to file a complaint, and a list of local TABC offices may be found on the commission's public website at <https://www.tabc.texas.gov>. A complainant can also request that a form and instructions be mailed to a complainant by calling the commission at (512) 206-3333, or a local TABC office. A complainant may also file a complaint on plain paper without using the form by providing the following information:

(1) Complainant name and how the complainant may be contacted if they wish to be notified of the outcome or resolution of the complaint.

(2) The name or identity of the individual or entity being complained about and how the commission may find or contact the individual or locate the entity. This may include physical, mailing and e-mail address, phone numbers and persons the complainant has contacted or spoken with regarding the complaint.

(3) A brief statement of the nature of the complaint and relevant facts, including the names of persons with knowledge, times, dates, and location.

(4) If the complainant has documents or records related to the complaint, a copy of these should be attached to the complaint. Do not send original records with a complaint.

*Note: Readopted Without Changes and Effective: March 24, 2015*

### **§31.11 Resolution and Information on Complaints**

(a) The commission investigates all complaints. The time and resources allocated to an investigation will be based on facts stated in the complaint. Complaints alleging conduct that presents a serious risk to the public health and safety will be given priority.

(b) If an investigation results in a finding that a provision of the Texas Alcoholic Beverage Code (Code) or commission rules have been or may have been violated, the commission may proceed with an action to cancel, suspend, or refuse to issue a permit or license under Chapters 11 and 61 of the Code, and the complainant will be informed if contact information is provided



and if the complainant requests to be informed.

(c) If an investigation results in a finding that no violation of the Code or commission rules has occurred, the complainant will be informed of this result if contact information has been provided.

(d) General information and the nature and disposition of complaints can be accessed on the Texas Alcoholic Beverage Commission (TABC) public website at <https://www.tabc.texas.gov>.

(e) The public can access the violation history of a license or permit issued by the commission on the TABC public website at <https://www.tabc.texas.gov>.

(f) Information about a specific complaint against an individual or entity holding a license, permit or certificate issued by the commission may be obtained by filing a request under the Texas Public Information Act (TPIA). Some information in a complaint or investigation of a complaint may not be subject to disclosure under the TPIA.

*Note: Amended Rule Effective: June 17, 2015*

### **§31.12 Training and Education of Commission Employees**

(a) The commission may use state funds in accordance with Government Code §§656.041 - 656.104 to provide training and education for its employees.

(b) Training or education provided pursuant to subsection (a) of this section shall be related to the employee's current position or prospective job duties within the commission.

(c) Commission employees may be required to complete training and/or education programs related to the employee's current or prospective job duties as a condition of employment.

(d) Participation in training or education programs requires the approval of the employee's supervisors prior to participation and is subject to the availability of funds in the commission's budget.

(e) The employee training and education program for the commission may include:

- (1) mandatory agency-sponsored training or education required for all employees;
- (2) training or education relating to technical or professional certifications and licenses;
- (3) training and education designed to promote employee development;
- (4) employee-funded external education;
- (5) commission-funded external education;
- (6) a tuition-reimbursement program; and
- (7) such other training or education determined by the commission to be of benefit to

the employee and the commission, and to promote effective state administration pursuant to Government Code §656.042.

(f) Approval to participate in any portion of the commission's training and education program shall not in any way: affect an employee's at-will employment status; constitute a guarantee or indication of continued employment; or constitute a guarantee or indication of future employment in a current or prospective position.

(g) Approval to participate in any training or education program may be withdrawn if the commission determines, in its sole discretion, that participation would negatively affect the employee's job duties or performance.

*Note: Readopted Without Changes and Effective: March 27, 2018*

### **§31.13 Enhanced Contract Monitoring**

- (a) The Texas Alcoholic Beverage Commission (TABC) shall identify contracts that require enhanced monitoring.
- (b) In determining which contracts require enhanced monitoring, TABC shall consider factors including:
  - (1) contract amount;
  - (2) risk;
  - (3) special circumstances of project; and
  - (4) scope of goods or services provided.
- (c) TABC shall adopt procedures to administer the enhanced contract monitoring program.
- (d) Enhanced contract monitoring reports shall be regularly provided to the executive director, and when applicable, to the Commissioners.

*Note: Original rule effective December 16, 2019.*

## **CHAPTER 33. LICENSING**

### **SUBCHAPTER A. APPLICATIONS**

#### **§33.1 General Provisions**

- (a) When used in this chapter:
  - (1) the word “days” refers to calendar days, unless otherwise specified; and
  - (2) a “business day” is any day that is not a Saturday, a Sunday, a state or federal holiday (unless the commission is required to be open for business), or a standard Federal Reserve bank holiday.
- (b) A “day” or “business day” ends at:
  - (1) 5:00 p.m. Central Time for submissions by hand-delivery to a commission office or by e-mail; and
  - (2) 11:59 p.m. Central Time for submissions through the commission’s internet-based application information management system.
- (c) Submissions by mail must be postmarked by the due date.
- (d) When computing periods of time prescribed or allowed in subchapter D of this chapter:
  - (1) the day of the act, event, or default from which the designated time period begins to run is not counted; and
  - (2) the last day of the time period is counted, unless it is not a business day as defined by subsection (a)(2) of this section, in which case the time period will end on the next business day.

*Note: Original Rule Effective: December 6, 2021*

#### **§33.2 Application and Fee Payment Procedures**

- (a) Applications for licenses, permits and certificates shall be made by an applicant in such a manner as may be directed by the executive director upon forms provided by the commission.
- (b) Each application shall include all information required by the executive director to ensure compliance with all applicable statutes and rules and regulations of the agency.
- (c) Each applicant for a license, permit or certificate issued by the commission shall submit with the application the payment of all required fees in accordance with the applicable provisions

of the code and rules.

(d) In addition to the requirements of Alcoholic Beverage Code §§5.50, 11.32, 11.35, and 61.48 and any pertinent rule or procedure of the commission, license and permit renewal applications filed under Alcoholic Beverage Code §6.04 must be filed with the commission no later than 11:59 p.m. or postmarked by the thirtieth calendar day after expiration and must be complete in form and accompanied by all state fees as well as a \$100 late fee.

(e) Applicants must pay fees by cashier's check, teller's check, a check drawn on the account of the entity applying for a permit, money order, credit card, charge card, or other electronic form of payment approved by the commission, payable to the Texas Comptroller of Public Accounts.

*Note: Amended Rule Effective: September 1, 2021*

### **§33.3 Process to Apply for License or Permit**

(a) This section relates to any license or permit. The purpose of this section is to clarify the certification process in subsection (b) of this section and distinguish it from the application process described in subsections (c) and (d) of this section.

(b) Before filing an application for a license or permit that is required to be certified under §11.37 or §61.37 of the Alcoholic Beverage Code the applicant must obtain and submit to the commission:

(1) all required certifications signed by the city secretary, where appropriate, and the county clerk that the location for which the license or permit is sought is in a "wet" area for such license or permit and is not prohibited by charter, by ordinance, or by valid order in reference to the sale of any alcoholic beverage allowed by the license or permit;

(2) all other applicable certifications signed by the city secretary, where appropriate, and the county clerk;

(3) the required certification by the Comptroller of Public Accounts that the person applying for the license or permit holds, or has applied for and satisfies all legal requirements for, the issuance of a sales tax permit;

(4) proof of publication of notice of the application, if required by §11.39 and §61.38 of the Alcoholic Beverage Code; and

(5) completed commission forms and any other information reasonably requested by the commission.

(c) A person or entity may file an application with the commission by submitting all forms, documents and information prescribed by the commission in accordance with the practices, policies, and standards relating to the processing of applications for licenses and permits.

(d) If additional documentation or information is requested and not provided within the requested period of time, the application will be considered incomplete and withdrawn.

(e) An application to renew a license or permit shall be filed with the commission no earlier than 30 days prior to its expiration date.

(f) On completion of its processing pursuant to subsection (c) of this section, the commission shall inform the applicant that the application is granted or denied.

(g) An applicant must post the notice sign required by §§11.391 and 61.381 of the Alcoholic Beverage Code not less than 60 days before the date the license or permit is issued unless a license or permit authorizing the on-premises consumption of alcoholic beverages has been active at the requested location any time during the 24 months immediately preceding the filing

of the application. For purposes of this subsection, an application is filed on the date a completed application is received by the commission.

(h) For the purposes of §61.35(e) of the Alcoholic Beverage Code, the commission will transmit to the county tax assessor 5% of the license fee collected for each issued license in that county. This transmission will occur the month following the issuance of the license.

(i) Each applicant for an original or renewal license or permit that allows on-premises consumption of any alcoholic beverage shall furnish sales data or, if not available, projection of sales for the location at which the license or permit is located or will be located. The projection or sales data should include a sufficient breakdown of sales into the categories of food, alcoholic beverages, and other major categories of sales at the location.

(j) If an application is granted based in part upon an authorization issued by the TTB, and the TABC subsequently determines that the TTB authorization was issued in error or has been canceled or rescinded, the executive director may cancel the license or permit.

*Note: Amended Rule Effective: September 1, 2021*

### **§33.4 Deferred Adjudication**

(a) This section relates to Alcoholic Beverage Code §§11.46, 25.06, 61.42, 61.43, 69.06, and 109.532.

(b) In determining whether an applicant is not qualified or is unsuitable to hold a permit or license under Alcoholic Beverage Code §109.532(b)(1), or whether an application should be cancelled or denied the commission may consider whether the person is currently serving deferred adjudication for:

- (1) any felony offense;
- (2) any controlled substance offense in the Health and Safety Code Chapter 481;
- (3) any firearm or deadly weapon offense in Penal Code Chapter 46;
- (4) any prostitution offense in Penal Code Chapter 43;
- (5) any gambling offense in Penal Code Chapter 47;
- (6) any human trafficking offense in Penal Code Chapter 20A;
- (7) any fraud offense in Penal Code Chapters 32 or 35;
- (8) any money laundering offense in Penal Code Chapter 34; or
- (9) any violation of the Alcoholic Beverage Code.

(c) An applicant currently serving deferred adjudication for one of the offenses listed in subsection (b) of this section shall provide information requested by the commission to allow the commission to determine whether the applicant is qualified or suitable to hold a license or permit. In determining whether an applicant is qualified or suitable to hold a license or permit, the commission shall consider the relationship between the offense and the particular license or permit being sought, taking into account these factors:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person at the time of the crime;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person prior to and following the criminal activity;
- (5) evidence of the person's rehabilitation; and
- (6) other evidence presented by the person of the person's present suitability, including letters of recommendation.

(d) If an applicant has completed the conditions of a deferred adjudication prior to filing an application, the commission will not consider the offense for which the deferred adjudication was served in deciding whether the applicant is qualified or suitable to hold a permit or license under Alcoholic Beverage Code §109.532(b)(1).

*Note: Original Rule Effective: December 31, 2020*

### **§33.5 Food and Beverage Certificate**

(a) This rule relates to §§25.13, 28.18, 32.23 and 69.16 of the Texas Alcoholic Beverage Code.

(b) The following words and terms, when used in this section, shall have the following meaning unless the context clearly indicates otherwise:

(1) Entrée--course of a meal that may include an appetizer, small plate, main dish, dessert or other similar food item.

(2) Food service--the cooking, preparing, or assembling of food on the location available for consumption at the location. Commercially pre-packaged items purchased off of the location which require no cooking or assembly do not constitute food service under this section.

(3) Food service facilities--a designated permanent portion of the licensed location where food is stored and prepared for consumption at the location.

(4) Location--the designated physical address of a premises, but also including all areas at that address where the license or permit holder may sell, serve or deliver alcoholic beverages for immediate consumption at the address, regardless of whether some of those areas are occupied by other businesses, as long as those businesses are contiguous.

(5) Premises--the designated area at a location that is licensed by the commission for the sale, service, or delivery of alcoholic beverages.

(6) Restaurant--a business that:

(A) operates its own permanent food service facility with commercial cooking equipment on its premises; and

(B) prepares and offers to sell multiple entrees for consumption on or off the premises.

(c) An applicant is qualified for a food and beverage certificate if the following conditions, in addition to other requirements, are satisfied:

(1) multiple entrees are available to customers; and

(2) permanent food service facilities are maintained at the location; and

(3) either:

(A) the receipts from the sale of alcoholic beverages by the license or permit holder at the location are 60 percent or less of the total receipts from the location; or

(B) the facility meets the definition of Restaurant under subsection (b)(6) of this section.

(d) The hours of operation for sale and service of food and of alcoholic beverages are the same except that food may be sold or served before or after the legal hours for sale of alcoholic beverages.

(e) If the applicant is a hotel that maintains separate area restaurants, lounges or bars, food service facilities must exist for each of the designated licensed premises.

(f) An applicant for an original food and beverage certificate shall furnish the following, as well as any other information requested by the commission to ensure compliance`:

(1) the menu or, if no menu is available, a listing of the food and beverage items;

(2) hours of operation of food service and hours of operation for sale or service of alcoholic beverages;

(3) if qualifying under subsection (c)(3)(A) of this section, sales data (including complimentary drinks, as recorded pursuant to subsection (k)(3) of this section) or, if not available, a projection of sales. The sales data or projection of sales should include sufficient breakdown of revenues of food, alcoholic beverages, and all other sales categories at the location (e.g., tickets, merchandise, retail goods);

(4) if qualifying under subsection (c)(3)(B) of this section, a list of commercial cooking equipment used in food service; and

(5) copies of floor plans of the location indicating the licensed premises and permanent areas devoted primarily to food service.

(g) Applicants for renewal of food and beverage certificates shall submit sales data described in subsection (k) of this section. The commission may request additional information or documentation to indicate that the licensed location has permanent food service facilities for the preparation and service of multiple entrees.

(h) The commission may review the operation at the location to determine that food service with food service facilities for the preparation and service of multiple entrees is maintained. In doing so the commission may review such items as required in the original or renewal application as well as advertising, promotional items, changes in operations or hours, changes in floor plans, prominence of food items on the menu as compared to alcoholic beverages, name of the business at the location, number of transactions with food components, copies of city or county permits or certificates relating to the type of business operation, and any other item deemed necessary or applicable.

(i) Failure to provide documentation requested or accurately maintain required records is prima facie evidence of non-compliance.

(j) In verifying that food service is being maintained at the location, the commission may examine all books, papers, records, documents, supplies and equipment of the certificate holder.

(k) The following recordkeeping requirements apply to certificate holders:

(1) records must be maintained to reflect separate totals for alcoholic beverage sales or service, food sales, and all other sales categories at the location that, when combined, make up the location's total sales;

(2) purchase invoices must be maintained to reflect the total purchases of alcoholic beverages, food and all other purchase categories at the location;

(3) complimentary alcoholic beverages must be recorded and included in the total alcoholic beverage sales as if they were sold and clearly marked as being complimentary; and

(4) all records must be maintained for four years and made available to authorized representatives of the commission upon request.

(l) In considering alcoholic beverage sales, the dollar value of complimentary drinks shall be added to total sales or service of alcoholic beverages in determining the percentage of alcoholic beverage sales or service from the licensed premises.

(m) In determining the permanent food service facilities requirement for businesses qualifying under subsection (c)(3)(A) of this section, the gross receipts of all business entities sharing the location will be considered. For audit purposes, it shall be the responsibility of the food and beverage certificate holder to provide financial and accounting records related to food, alcohol, and other major sales categories of all business entities sharing the location. For audit

purposes, if such information that is provided is deemed insufficient to determine if a license or permit holder qualifies for issuance of a food and beverage certificate at the location, the computation and determination of the percentage of alcohol sales or service fees to total gross receipts at the licensed location may be based upon any available records of information.

*Note: Amended Rule Effective: January 1, 2022*

### **§33.6 Financial Interest**

For the purposes of Alcoholic Beverage Code, §102.06, “a person who has a financial interest in a package store permit or wine only package store permit” shall mean one who holds an ownership interest in the business, or assets thereof, of a package store or wine only package store permittee. This rule shall not be construed as authorizing any unfair trade practice or discrimination in violation of the tied-house provisions of the Alcoholic Beverage Code.

*Note: Original Rule Effective: December 31, 2020*

### **§33.9 Fees for Online Transaction**

*Note: Rule Repealed Effective September 1, 2021*

### **§33.10 Citizenship and Status**

(a) An individual who applies for a license or permit shall, at the time of filing the application, be a United States citizen or legally authorized to work in the United States. The commission will not issue a license or permit to a person that will cause the person to be in violation of the person's immigration status and/or result in the individual being illegally in the United States.

(b) No license or permit shall be issued to a corporation, partnership, firm, association, or other legal entity, other than an individual, unless the entity is formed by filing a certificate of formation or registered to transact business in this state. This requirement does not apply to:

- (1) An entity holding a brewer's license, and other licenses and permits as are necessary to the operation of the brewer's license;
- (2) A holder of a carrier's permit; or
- (3) A foreign corporation that was engaged in the legal alcoholic beverages business in this State under charter or permit prior to August 24, 1935.

*Note: Amended Rule Effective: September 1, 2021*

### **§33.11 Application and Issuance of Temporary Licenses and Permits**

*Note: Rule Repealed Effective: September 1, 2021*

### **§33.12 Use of Caterer's Permits and Request for Caterer Certificate**

*Note: Rule Repealed Effective: September 1, 2021*

### **§33.15 Use of Winery Festival Permit**

*Note: Rule Repealed Effective: September 1, 2021*

### **§33.16 Application Rules Applicable to 2021 Technology Transition.**

(a) Applications for original licenses and permits, requests for reinstatement under §33.91(g), notifications under §33.94, and applications for secondary permits described by §33.25 of this title, if received by the commission by midnight on July 31, 2021, will be subject to license and permit fees in effect on that date. An application is received only when the commission has received all required information and fees.

(b) From August 1, 2021 through August 31, 2021, no person may file and the commission shall not accept applications for original licenses and permits, requests for reinstatement under §33.91(g), any notification under §33.94, or applications for secondary permits described by §33.25 of this title.

(c) The Executive Director or their designee may authorize a filing under subsection (b) of this section during the month of August 2021 only if the applicant or license or permit holder can demonstrate that circumstances that could not have been reasonably foreseen require filing during August 2021 to comply with any statutory or rule deadline.

(d) Applications for renewals of licenses and permits with expiration dates through August 31, 2021 are subject to the fees in effect prior to September 1, 2021. Applications for renewals of licenses and permits with expiration dates of September 1, 2021 or later are subject to the fees that become effective on September 1, 2021.

(e) Applications for renewal of a license or permit with an expiration date of September 1, 2021 or later may not be filed and will not be accepted by the commission prior to September 1, 2021.

(f) The commission shall not charge the late-filing fee under §33.24 of this title for an application for renewal of a license or permit with an expiration date in the months of September or October, 2021, so long as the renewal application is received by the commission within the 30-day period following the expiration date.

(g) Applications under §§33.11, 33.12, and 33.15 of this title may be filed in August and will be processed as usual.

(h) This rule expires and is no longer effective at 12:01 a.m. on November 1, 2021.

*Note: Original Rule Effective: April 15, 2021; Amended Rule Effective: September 1, 2021*

## **SUBCHAPTER B. FEES AND PAYMENTS**

### **§33.22 Administrative Fees**

(a) This rule relates to §5.31 and §5.55 of the Alcoholic Beverage Code.

(b) The commission will charge fees for online transactions in the amount authorized by the Texas Department of Information Resources for processing online transactions utilizing the Texas.Gov portal.

(c) The commission may charge reasonable administrative fees for changes of address or ownership or other administrative changes not necessarily related to the issuance of certificates, licenses, and permits under Title 3 of the Code.

*Note: Original Rule Effective: February 17, 2021*



### §33.23 License and Permit Fees

- (a) This section relates to Alcoholic Beverage Code §5.50.
- (b) Each applicant for a license, permit, or certificate issued by the commission shall submit with the application the fee for that license, permit, or certificate that is listed in Fig. 33.23(b).

Figure 16 TAC§33.23b

License, Permit, or Certificate Type	Fee
Bonded Warehouse Permit (J/JD)	\$900
Branch Distributor's License (BC)	\$1,500
Brewer's License (B)	\$3,000
Brewer's Self-Distribution License (SD)	\$1,200
Brewpub License (BP)	\$1,100
Carrier's Permit (C)	\$1,100
Consumer Delivery Permit (CD)	\$10,000
Distiller's and Rectifier's Permit (D)	\$3,000
Food and Beverage Certificate (FB)	\$1,100
Forwarding Center Authority	\$2,000
General Class B Wholesaler's Permit (X)	\$3,500
General Distributor's License (BB)	\$3,500
Late Hours Certificate (LH)	\$1,100
Local Cartage Permit (E)	\$0
Local Distributor's Permit (LP)	\$1,300
Manufacturer's Agent's Warehousing Permit (AW)	\$1,900
Mixed Beverage Permit (MB)	\$5,300 original \$2,650 renewal
Nonresident Brewer's License (BN)	\$1,500
Nonresident Seller's Permit (S)	\$1,800
Out-of-State Winery Direct Shipper's Permit (DS)	\$500
Package Store Permit (P)	\$1,800
Passenger Transportation Permit	\$900

Private Club Exemption Certificate (NE)	\$0
Private Club Malt Beverage and Wine Permit (NB)	\$1,900
Private Club Registration Permit (N)	\$2,600
Promotional Permit (PR)	\$1,200
Retail Dealer's Off-Premise License (BF) (Malt Beverage)	\$1,100
Retail Dealer's On-Premise License (BE) (Malt Beverage)	\$1,100
Third-Party Local Cartage Permit (ET)	\$600
Water Park Permit (WP)	\$300
Wholesaler's Permit (W)	\$4,000
Wine and Malt Beverage Retailer's Off-Premise Permit (BQ)	\$1,900
Wine and Malt Beverage Retailer's Permit (BG)	\$1,900
Wine-Only Package Store Permit (Q)	\$1,600
Winery Permit (G)	\$3,000

(c) An applicant for a Nonprofit Entity Temporary Event authorization shall pay a fee of \$50 per day with a two-day minimum, pursuant to §33.78 of this title. The authorization must be in effect for all days that alcoholic beverages will be present at the temporary event location, from delivery to removal.

(d) An organization that holds a private club exemption certificate permit under Alcoholic Beverage Code §32.11 is exempt from the requirement to pay a fee.

(e) The commission shall review all fees at least once every four years and shall adjust fees as necessary.

*Note: Amended Rule Effective: September 1, 2021*

### **§33.24 Late Fees**

(a) Applications for renewal of a license or permit after its expiration date are subject to additional late filing fees pursuant to §33.2 of this title.

(b) Applications for temporary event authorizations are subject to additional late filing fees pursuant to §33.74 of this title.

*Note: Original Rule Effective: September 1, 2021*

### **§33.25 Refunds of License and Permit Fees**

(a) For an application for an original license or permit under Alcoholic Beverage Code §11.08, the commission will refund the license or permit fee if the license or permit is not issued for any reason.

(b) For an application for renewal of an existing license or permit, the commission will

refund the license or permit fee if, prior to expiration, the applicant withdraws the application or the application is denied. If the application is withdrawn or denied after the license or permit expiration date, the applicant's fee will not be refunded.

(c) No refunds will be issued for temporary event authorizations or late fees pursuant to §33.73(l) of this chapter.

(d) All refunds of license and permit fees will be remitted to the person or entity named in the license or permit application or renewal application, regardless of who paid the fee.

*Note: Original Rule Effective: September 1, 2021*

### **§33.26 Secondary Licenses, Permits, and Certificates**

(a) This section relates to Alcoholic Beverage Code §11.09 and §61.03.

(b) Secondary licenses, permits, and certificates that require the holder to first obtain another license or permit expire upon expiration or cancellation of the primary license or permit.

(c) A temporary license or permit expires on the date indicated on the license or permit or on the same date as the primary license or permit, whichever occurs earlier.

(d) Fees for a secondary license, permit, or certificate will not be prorated or refunded.

*Note: Original Rule Effective: September 1, 2021*

### **§33.27 Regional Forwarding Centers Fee**

*Note: Rule Repealed Effective: September 1, 2021*

### **§33.28 Consumer Delivery Permit Fee**

*Note: Rule Repealed Effective: September 1, 2021*

### **§33.29 Registration of Nonresident Brewer's Agent**

(a) Nonresident brewer's agents shall register with the Commission in the manner prescribed by the Commission, as authorized by Chapter 58 of the Alcoholic Beverage Code.

(b) The annual fee to register a nonresident brewer's agent is \$2,500.

*Note: Amended Rule Effective: September 1, 2021*

### **§33.30 Fee for a Manufacturer's Agent's Warehousing Permit**

*Note: Rule Repealed Effective: September 1, 2021*

### **§33.31 Secondary Permits**

*Note: Rule Repealed Effective: September 1, 2021*

### **§33.32 Nonresident Brewer's and Nonresident Manufacturer's Agent's Registration and Fee**

*Note: Rule Repealed Effective: September 1, 2021*

### **§33.37 Refunds of License and Permit Fees**

*Note: Rule Repealed Effective: September 1, 2021*

### **§33.38 Fees related to Renewals of Licenses and Permits after Expiration**

*Note: Rule Repealed Effective: September 1, 2021*

### **§33.39 Food and Beverage Certificate Fee**

*Note: Rule Repealed Effective: September 1, 2021*

## **SUBCHAPTER C. BONDS**

### **§33.40 General Provisions**

(a) This rule applies to conduct surety bonds, performance bonds, excise tax bonds, and bonds for alternating brewery proprietorships and contract brewing arrangements (“bonds”).

(b) Submission of Bond with Application.

(1) When required by the Alcoholic Beverage Code to submit a bond, an applicant for an original or renewal license or permit shall submit with its license or permit application the required bond or alternative form of surety, as authorized under this section.

(2) Failure to submit the necessary bond or alternative form of surety in proper form will result in denial of the application.

(c) A bond required under the Alcoholic Beverage Code must be executed only on forms prescribed by the TABC with the licensee or permittee as principal, a qualified surety company doing business in this state as surety, and the state as payee.

(d) All bonds shall be payable in Travis County.

(e) A license or permit holder shall obtain, submit, and maintain a separate bond for each license or permit it holds.

(f) A licensee or permittee required to furnish a bond under this section may furnish, in lieu of all or part of the amount of the bond required, one or more certificates of deposit or savings accounts assigned to the state or one or more letters of credit. If an assignment of a certificate of deposit, savings account, or letter of credit is furnished in lieu of a bond, the executive director or their designee shall keep it in the agency’s possession. Interest earned on a certificate of deposit or savings account is not subject to the assignment and remains the property of the owner of the certificate of deposit or savings account.

(g) A certificate of deposit or savings account furnished in lieu of a bond by a licensee or permittee must be assigned to the state, in a manner approved by the executive director or their designee, to secure payment to the state.

(h) A letter of credit furnished in lieu of a bond by a licensee or permittee must be on a form approved by the executive director or their designee and contain any conditions required by the executive director to secure payment to the state.

(i) Qualifications of Surety Company.

(1) A surety company, to qualify to provide bonds under this subchapter, must be licensed by this state and in “good standing” with the State Board of Insurance, Comptroller of Public Accounts, Secretary of State, and any other regulatory agencies with jurisdiction over its affairs.

(2) In addition to the requirements of Alcoholic Beverage Code §§11.11 and 61.13, a bank or credit union must have a physical facility in this state to accept cash deposits, make cash advances to customers and carry out day-to-day operations within this state.

(j) Each bond required by this subchapter must cover the permit or license period and must be maintained until it is released or forfeited or, if it is a bond required by §33.45(b), until it is terminated by the surety pursuant to Alcoholic Beverage Code §11.71.

(k) Release of Surety.

(1) Upon expiration of the license or permit, its voluntary cancellation, or upon the applicant's subsequent approval for exemption from the surety requirement, the licensee or permittee may request the release and return of the security supporting their license or permit.

(2) The release of the surety will not be unreasonably withheld; however, the surety company, bank, or credit union is not released from its obligation until it receives written notice of the release from the commission.

(3) The executive director may not release a surety bond until the surety company has paid and discharged in full all of its liabilities on the bond to the state as of the date of cancellation.

(l) General Provisions regarding Bond Forfeiture.

(1) When a permit or license is revoked, the commission shall notify the permittee or licensee in writing of its intent to seek forfeiture of the bond.

(2) Upon entry of a final order against the permittee or licensee or upon waiver of hearing by the permittee or licensee, the commission shall notify the surety company to remit to the state the full amount of the surety required within ten days after notification.

(m) For purposes of this subchapter, an order issued pursuant to an agreement of the parties in which the permittee or licensee waives its right to a hearing is a final adjudication of the violation that is the subject of the agreement and order.

(n) Violations of the Code or commission rules by the legal entity in the name of which a bond or other surety is held or by any of its officers, directors, or partners are counted toward and may result in cancellation, forfeiture, or exemption from the requirement to post a bond or other surety.

(o) In a joint venture, regardless of the type of legal entity formed, prior violations by any participant in the joint venture will disqualify the joint venture from exemption from the requirement to post a bond or other surety.

(p) Neither the bondholder nor any officer, director, or partner of a bondholding entity may be granted a new license or permit until a forfeited bond or other surety is paid.

(q) The commission may seek forfeiture of a bond due to cancellation of the license or permit for any reason, including cancellation for multiple violations of Alcoholic Beverage Code §§102.31 and 102.32.

*Note: Original Rule Effective: December 31, 2020*

### **§33.41 Conduct Surety Bonds**

(a) This section applies only to conduct surety bonds required by Alcoholic Beverage Code §§11.11 and 61.13.

(b) A conduct surety bond, assignment of certificate of deposit, savings account, or letter of credit must cover the minimum time required for the applicant to qualify for exemption from the surety requirement imposed by Alcoholic Beverage Code §§11.11 and 61.13.

(c) A permittee or licensee who is required to file a conduct surety bond may furnish instead of all or part of the required bond amount:

(1) one or more certificates of deposit assigned to the state issued by a federally insured bank or by a credit union authorized to do business in this state; or

(2) one or more letters of credit issued by a federally insured bank or credit union authorized to do business in this state.

(d) Pursuant to Alcoholic Beverage Code §11.11(e), a license or permit holder is exempt from the requirement to post a conduct surety bond if, at the time the commission receives the second renewal application for the license or permit, the holder of the license or permit:

(1) has not had any license or permit revoked within the preceding five years;

(2) is not the subject of a pending revocation or cancellation proceeding; and

(3) has continuously operated on the licensed or permitted premises for at least three years before the date the holder applied for renewal of the license or permit.

(e) Forfeiture of a Conduct Surety Bond.

(1) When a license or permit is cancelled, or upon a final adjudication that the licensee or permittee has committed three violations of the Alcoholic Beverage Code prior to the exemption date, the commission shall notify the licensee or permittee, in writing, of its intent to seek forfeiture of the bond or alternative form of surety.

(2) The licensee or permittee may, within 30 days of the notice specified in paragraph (1) of this subsection, request a hearing on the question of whether the criteria established by Alcoholic Beverage Code §§11.11 and 61.13 and by this section for forfeiture of the bond or alternative form of surety have been satisfied. The hearing shall be conducted in accordance with Chapter 2001 of the Government Code.

(3) Evidence that an agent or servant of the licensee or permittee has been adjudicated guilty of, or granted deferred adjudication for, an offense under the Alcoholic Beverage Code, because of conduct occurring during the performance of their duties for the licensee or permittee, shall constitute evidence of an adjudication that the licensee or permittee has violated a provision of the Alcoholic Beverage Code. This paragraph only applies to violations which were not attributable to the licensee or permittee because of the operations of Alcoholic Beverage Code §106.14.

(4) Upon entry of final order against the licensee or permittee in the hearing described in paragraph (2) of this subsection, or upon waiver of said hearing by the licensee or permittee, the commission shall notify the surety company, bank, or credit union to remit to the state the amount of surety required within ten days after notification.

(5) The commission may institute action to recover the amount of the surety in its own name, for the benefit of the state, as set forth in Alcoholic Beverage Code §11.70.

(6) Counting Violations for Conduct Surety Bond Forfeiture Purposes.

(A) Except as provided by subsection (B) of this section, the commission may seek forfeiture of a conduct surety bond upon the third violation during the effective period of the bond, including warnings, of any statute or rule under the commission's jurisdiction.

(B) For violations of Alcoholic Beverage Code §§102.31 and 102.32, the first six incidents may not be counted as violations supporting bond forfeiture. The seventh and subsequent violations will be counted as violations supporting bond forfeiture.

(C) Violations in which the license or permit holder has qualified for the legal protections of Alcoholic Beverage Code §106.14 (related to Actions of Employee) will be considered for forfeiture purposes according to §§11.11(b)(2) and 61.13(b)(2) of the Code.

(7) The commission will not seek forfeiture of a surety bond due solely to violations of Alcoholic Beverage Code §§102.31 and 102.32, but may seek forfeiture based upon violations of §§102.31 and/or 102.32 in combination with at least one other violation of the Code or commission rules.

*Note: Original Rule Effective: December 31, 2020*

### **§33.42 Performance Bonds**

(a) This section applies to performance bonds, which are the bonds required by Alcoholic Beverage Code §11.61(b-1) and §61.71(l).

(b) The first performance bond filed by a licensee or permittee with the commission as prescribed under §11.61(b-1) and §61.71(l) of the Alcoholic Beverage Code shall be in the amount of \$2,000. In the event the first bond is forfeited to the commission, a licensee or permittee must file a second bond with the commission as prescribed under those provisions in the amount of \$4,000 before a license or permit may be reinstated. In the event the second bond is forfeited to the commission, a licensee or permittee must file a third bond issued under those provisions in the amount of \$6,000 before a license or permit may be reinstated. If a permit or license that is secured by a performance bond is cancelled, the performance bond in place at the time of cancellation is forfeited to the commission.

(c) A permittee or licensee who is required to file a performance bond may furnish instead of all or part of the required bond amount:

(1) one or more certificates of deposit assigned to the state issued by a federally insured bank or by a credit union authorized to do business in this state; or

(2) one or more letters of credit issued by a federally insured bank or credit union authorized to do business in this state.

(d) Forfeiture of Performance Bonds.

(1) Except as provided by paragraph (2) of this subsection, the commission may seek forfeiture of a performance bond upon violation of any statute or rule under the commission's jurisdiction.

(2) For violations of Alcoholic Beverage Code §§102.31 and 102.32, the first six incidents may not be counted as violations supporting bond forfeiture. The seventh and subsequent violations will be counted as violations supporting bond forfeiture.

*Note: Original Rule Effective: December 31, 2020*

### **§33.43 When Excise Tax Bonds Are Necessary**

(a) This section is promulgated pursuant to Alcoholic Beverage Code §5.31, relating to General Powers and Duties, §204.01(g), relating to Bond Required, and §204.07, relating to Waiver of Bond Requirement.

(b) This section applies only to bonds required by §63.03 and Chapter 204 of the Alcoholic Beverage Code.

(c) The commission determines that it is no longer necessary or appropriate to require that every applicant who is subject to Chapter 204 of the Alcoholic Beverage Code furnish with its application the bond that is otherwise required by that chapter.

(d) The commission determines that it is necessary and appropriate to require that a bond under Chapter 204 of the Alcoholic Beverage Code be furnished upon renewal of its license or

permit by a licensee or permittee who:

- (1) is subject to Chapter 204 of the Alcoholic Beverage Code; and
- (2) has not made, on or before the due date, a required payment of \$500 or more for a tax or fee imposed by the Alcoholic Beverage Code.

(e) It is the commission's judgment, under Alcoholic Beverage Code §63.03, that the appropriate amount of bond that is required from the holder of a nonresident brewer's license to protect the revenue of the state from the tax due on malt beverages over any six-week period is zero. Therefore, no bond is required of the holder of a nonresident brewer's license, because the revenue of the state is protected for these reasons:

- (1) a holder of a nonresident brewer's license is not liable for payment of the malt beverage tax pursuant to Alcoholic Beverage Code §203.02; and
- (2) even when the nonresident brewer transports malt beverages into the state in a motor vehicle owned or leased by him, the malt beverage must be delivered to the holder of a distributor's license, who:
  - (A) is liable for payment of the malt beverage tax pursuant to Alcoholic Beverage Code §203.02; and
  - (B) is subject to the requirement of a bond to protect the revenue of the state when necessary and appropriate as determined in §33.44 of this title.

*Note: Amended Rule Effective: September 1, 2021*

#### **§33.44 Excise Tax Bonds**

- (a) Excise Tax Bond Required.
  - (1) Each holder of a general distributor's license, local distributor's permit, or branch distributor's license, and each holder of a brewer's license acting under the authority of Texas Alcoholic Beverage Code §62.122, who has not made, on or before the due date, a required payment of \$500 or more for a tax or fee imposed by the Alcoholic Beverage Code shall furnish a bond to ensure the payment of the tax on malt beverage imposed by the Texas Alcoholic Beverage Code, §203.01.
  - (2) Each holder of a winery permit who has not made, on or before the due date, a required payment of \$500 or more for a tax or fee imposed by the Alcoholic Beverage Code shall furnish a bond to ensure the payment of the tax on vinous liquor imposed by Texas Alcoholic Beverage Code §201.04.
- (b) Each bond required under this section shall be set by the executive director at an amount determined pursuant to §41.42 of this title that will protect the state against the anticipated tax liability of the principal for any six-week period based on previous average alcoholic beverage sales or estimates of the future average volume of sales.
- (c) The requirement under this section to furnish a bond shall be imposed at the next renewal of the license or permit after the failure to make a timely payment of the amount specified in subsection (a) of this section.
- (d) A finding of deficiency as a result of an audit does not constitute a failure to pay a tax when due, if the deficiency and any applicable penalty are paid within 10 days of the date of demand for payment by the commission.
- (e) A licensee or permittee required to furnish a bond under subsection (a) of this section is again entitled to exemption from the surety requirement if the licensee or permittee:
  - (1) pays all delinquent taxes and fees and any applicable penalties; and



(2) pays all taxes and fees required by the Texas Alcoholic Beverage Code on or before the due date for 18 consecutive months after the month in which the delinquent taxes and fees and penalties are paid.

(f) If a licensee or permittee fails to pay a tax or fee imposed by the Texas Alcoholic Beverage Code on or before the due date and the licensee or permittee holds multiple licenses or permits, the requirements for a bond shall be imposed under subsection (a) of this section only on the license or permit covering the licensed or permitted premises for which the tax or fee and any applicable penalty were not timely paid.

(g) If another license or permit is required, incidental to the operation of a business for which a basic license or permit is procured, the executive director may accept one bond to support all of the licenses and permits. The executive director shall determine the amount of the bond.

(h) All bonds or other forms of security under this section that are in place on the effective date of this section, as amended, shall remain in place for the length of time specified on the bond or other form of security when it was furnished to the commission.

*Note: Amended Rule Effective: September 1, 2021*

### **§33.45 Bonds for Alternating Brewery Proprietorships and Contract Brewing Arrangements**

(a) This section relates to Alcoholic Beverage Code §§11.71, 12.01(a)(6), 13.04(c), 61.41(d) and 62.01(a)(5).

(b) A bond in the amount of \$30,000 must be posted with the commission by each applicant for or holder of a brewer's license or nonresident brewer's license that:

(1) is a party to an alternating brewery proprietorship or a contract brewing arrangement; and

(2) does not own a fee interest in a brewing facility, whether domestic or foreign.

(c) A licensee or permittee who was not subject to the bond requirements of subsection (b) or (c) of this section at the time of application must post the required bond at the time it becomes subject to those requirements.

(d) The licensee or permittee may, within 30 days of the notice specified in §33.40(1)(1) of this title request a hearing on the question of whether the criteria established by this section for forfeiture of a bond have been satisfied. The hearing shall be conducted in accordance with Chapter 2001 of the Government Code.

(e) Release of Surety. A license or permit holder may request release and return of the surety required by subsection (b) or (c) of this section upon:

(1) expiration of the license or permit;

(2) voluntary cancellation of the license or permit;

(3) verification that the applicant or license or permit holder has acquired fee interest in a brewing or manufacturing facility (as appropriate in reference to subsections (b) and (c) of this section); or

(4) verification that the license or permit holder no longer is a party to an alternating brewery proprietorship or contract brewing arrangement.

(f) The commission may seek forfeiture of a bond under this section for a violation of any one or more of the terms of the bond.

*Note: Amended Rule Effective: September 1, 2021*

## SUBCHAPTER D. APPLICATION REVIEW AND PROTESTS

### §33.50 Purpose and Authority

This subchapter implements and is authorized by Alcoholic Beverage Code §§ 11.43 through 11.432.

*Note: Original Rule Effective: December 31, 2020*

### §33.51 Definitions

The following terms have the following meanings when used in this subchapter:

(1) “Commission” – the Texas Alcoholic Beverage Commission as an agency of the State of Texas, and not to the Commissioners, either individually or as a body.

(2) “Complaint” – a written expression of concern regarding a person or business that holds or has applied for a TABC license or permit, or a person or business that the complainant believes is violating the Alcoholic Beverage Code or laws related to alcoholic beverages. Complaints are handled according to §31.11 (relating to Resolution and Information on Complaints). A complaint is not a request for a contested case hearing, does not itself imitate a legal proceeding, and does not afford any legal rights or party status to the complainant. Any person can file a complaint at any time.

(3) “Protest” – a written request for an administrative contested case hearing in which the protestant will participate as a party and present evidence to a trier of fact to prove that a license or permit should not be issued or renewed as proposed. A protest will only be granted if filed by a person with legal standing and supported by reasonable grounds.

(4) “Reasonable grounds” – allegations or concerns regarding a matter within the commission’s jurisdiction that are supported by credible evidence or information, and includes the circumstances described in Alcoholic Beverage Code §§11.46 through 11.481, 61.42 through 61.46, and 61.50.

(5) “Received” – An application for a new license or permit or a renewal is considered received on the date the commission updates its public database to show the application as pending. An application is designated as pending only when the application is complete, meaning that the commission has received all required information and fees.

(6) “SOAH” – the State Office of Administrative Hearings.

(7) “Uncontested” – An application is uncontested if no valid protests have been timely filed or if all valid protests have been withdrawn.

*Note: Original Rule Effective: December 31, 2020*

### §33.52 Computation of Time

*Note: Repeal Effective: December 6, 2021*

### §33.53 Applicable Rules

Unless otherwise indicated, an application for a license or permit is subject to the rules in effect as of the date the application is received.

*Note: Original Rule Effective: December 31, 2020*

### **§33.54 Delegation of Application Approvals**

The Commission delegates to the executive director or their designee the authority to approve an uncontested license or permit application pursuant to Alcoholic Beverage Code §11.43(d).

*Note: Original Rule Effective: December 31, 2020*

### **§33.55 Conditional Approval**

(a) Unless the exception in subsection (b) of this section applies, the commission shall not issue a new license or permit until 15 days have elapsed since the commission updated its public database to show the application as pending.

(b) If the executive director determines that there is a compelling reason to issue a license or permit before 15 days have elapsed since the commission updated its public database to show the application as pending, the executive director may grant conditional approval of the license or permit. If no valid protests are filed at the end of the 15-day period, the license or permit becomes approved by operation of law. If one or more valid protests are filed before the time period for filing protests has expired, the conditional approval is revoked and the executive director shall provide notice of the revocation to the applicant.

(c) An applicant who chooses to proceed with operations while subject to a conditional approval does so at its own risk of loss in the event that the conditional approval is revoked and it fails to obtain the necessary license or permit. An applicant who fails to obtain the necessary permit following conditional approval will have its applications fees refunded in full.

*Note: Original Rule Effective: December 31, 2020*

### **§33.56 Alternative Dispute Resolution**

(a) At any time prior to or during a contested case hearing, any party in a disciplinary matter may request referral to alternative dispute resolution (ADR).

(b) Parties may agree to mediate a dispute through a mediator employed by the State Office of Administrative Hearings or through a private mediator. Mediation through SOAH is subject to SOAH's rules for mediation (Title 1 Texas Administrative Code); the Administrative Procedure Act (Tex. Gov't Code Ch. 2001); laws relating to SOAH administrative procedure in Tex. Gov't Code Ch. 2003; and Tex. Gov't Code Ch. 2009, relating to ADR for use by governmental bodies.

(c) If the parties elect to use a private mediator:

- (1) the participants must unanimously agree to use a private mediator;
- (2) the participants must unanimously agree to the selection of the person to serve as the mediator; and
- (3) the mediator must agree to be subject to all time limits imposed by the executive director, the administrative law judge, statute, or regulation.

(d) If a private mediator is used, the costs for the services of the mediator shall be apportioned equally among the participants, unless otherwise agreed upon in writing by the participants, and shall be paid directly to the mediator. In no event, however, shall any such costs be apportioned to a governmental subdivision or entity.

(e) All mediators in commission mediation proceedings shall subscribe to the ethical guidelines for mediators adopted by the ADR Section of the State Bar of Texas.

*Note: Original Rule Effective: December 31, 2020*

### **§33.57 Application Withdrawn**

- (a) An applicant may withdraw its application at any time prior to issuance or renewal of the license or permit that is the subject of the application or the denial of the application.
- (b) If an applicant fails to respond to requests from the TABC for additional information or for remittance of a license or permit fee within ten (10) business days of the request, the TABC may consider the application withdrawn by the applicant.
- (c) An application that is withdrawn is not considered denied and may be refiled at any time. Withdrawal of an application, whether affirmatively by the applicant or due to the applicant's failure to respond to requests for information or fees, does not trigger the right to appeal or any other due process rights.

*Note: Original Rule Effective: December 31, 2020*

### **§33.58 Management Review**

- (a) At any time, the executive director or person to whom he or she delegates authority may place a management review on a license or permit, address, or person so that upon receipt of an application, an issue of concern within the agency's jurisdiction is addressed.
- (b) An application remains pending until the management review is resolved and removed.
- (c) A license or permit holder may continue to operate under its current license or permit while a management review related to its renewal application is pending.
- (d) A license or permit holder may not surrender its existing license or permit while it is subject to a management review but may withdraw its renewal application.

*Note: Original Rule Effective: December 31, 2020*

### **§33.59 Denial of Application after Referral of Protest for Hearing**

- (a) In the event that a valid protest results in referral for hearing under Alcoholic Beverage Code §11.43(f) and that the executive director subsequently identifies at least one legal ground to deny the application, the executive director shall request that the application be remanded to the commission from the State Office of Administrative Hearings and upon remand, shall recommend to the commission that the application be denied, as required by Alcoholic Beverage Code §11.43(g).
- (b) Concurrent with the request for remand from SOAH, the executive director shall provide notice to each protestant that:
  - (1) the executive director will be recommending denial of the application to the commission;
  - (2) the case will be remanded to TABC for processing under §11.43(g), *et seq*;
  - (3) if the applicant does not request a hearing on the denial recommendation, the application will be sent to the commission for a vote on denial; and
  - (4) if the applicant requests a hearing on the denial recommendation or the commission declines to deny the permit, the application shall be referred to SOAH for a hearing in which the protestant(s) are parties.
- (c) If the executive director recommends to the commission that an application be denied and a valid protest has been referred for hearing and not withdrawn, the commission may only deny the application or refer it back to SOAH for a hearing on the previously referred protest(s).

*Note: Original Rule Effective: December 31, 2020*

### **§33.60 Request for Hearing on Recommendation of Application Denial**

- (a) If the executive director recommends denial of an application for a license or permit, notice of the recommendation shall be transmitted to the applicant by the commission.
- (b) An applicant may request an administrative hearing on the executive director's denial recommendation by filing a written request for hearing with the commission within thirty (30) days of the date on the notice of the denial recommendation.
- (c) A request for hearing under this section must be filed by mail to Texas Alcoholic Beverage Commission, ATTN: Clerk, P.O. Box 13127, Austin, Texas, 78711 or by electronic mail to [clerk@tabc.texas.gov](mailto:clerk@tabc.texas.gov).
- (d) If the applicant files a timely request for hearing, the executive director will refer the application to SOAH for a hearing pursuant to Alcoholic Beverage Code §11.43(h).
- (e) If the applicant does not file a timely request for hearing, the recommendation for denial of the application will be set for consideration by the commission at the next available regular commission meeting.

*Note: Original Rule Effective: December 31, 2020*

### **§33.61 Commission Action on Contested Applications**

- (a) This section applies to the application review process in Alcoholic Beverage Code §§11.43(h) and 61.31(b).
- (b) Except as provided by subsection (c) of this section, the executive director shall place all proposals for decision issued by an administrative law judge under Alcoholic Beverage Code §11.43(h) on a consent agenda for commission vote. If the commission votes to approve a contested application by consent, the executive director shall issue the license or permit.
- (c) The executive director shall set a proposal for decision issued by an administrative law judge under Alcoholic Beverage Code §11.43(h) for individual consideration on the commission's regular agenda at the request of:
  - (1) the presiding officer of the commission; or
  - (2) at least two commission members.

*Note: Original Rule Effective: December 31, 2020*

### **§33.62 Filing a Protest of a License or Permit Application**

- (a) A protest of a license or permit application must be:
  - (1) filed by a person or persons with legal standing to contest the issuance or renewal of the license or permit under Alcoholic Beverage Code §§11.431, 11.432, 61.313, or 61.314;
  - (2) timely filed according to subsection (b) of this section;
  - (3) in writing;
  - (4) submitted in at least one of the following manners:
    - (A) through the TABC's online protest tool, if available;
    - (B) by mailing either a completed TABC protest form, available on the TABC website, or a letter that meets the requirements of subsection (c), below, to the Texas Alcoholic Beverage Commission, ATTN: Licensing Protest Coordinator, P.O. Box 13127, Austin, Texas, 78711; or

(C) by e-mailing either a completed TABC protest form, available on the TABC website, or a letter that meets the requirements of subsection (c) of this section to the protest email address for the TABC Region in which the applicant premises is located, as follows:

- (i) [Protests\\_Reg1@tabc.texas.gov](mailto:Protests_Reg1@tabc.texas.gov)
- (ii) [Protests\\_Reg2@tabc.texas.gov](mailto:Protests_Reg2@tabc.texas.gov)
- (iii) [Protests\\_Reg3@tabc.texas.gov](mailto:Protests_Reg3@tabc.texas.gov)
- (iv) [Protests\\_Reg4@tabc.texas.gov](mailto:Protests_Reg4@tabc.texas.gov); or
- (v) [Protests\\_Reg5@tabc.texas.gov](mailto:Protests_Reg5@tabc.texas.gov); and

(5) complete, including all information required by this rule.

(b) A protest must be filed within the following time limits:

(1) For an application for an original license or permit or a change of location under Alcoholic Beverage Code §11.08, a protest is timely if it is filed between 60 days prior to and 15 days after the date the commission deems the application complete. When an application is deemed complete, the commission will update its public database to show the application as pending.

(2) For an application for renewal of a license or permit, a protest is timely filed if it is filed within 60 days prior to the expiration date of the license or permit, up to the expiration date.

(c) A protest filed by a member of the public must include the following elements:

(1) the first and last name and physical address of the property of the person or persons filing the protest;

(2) the approximate distance of the person's home from the premises or proposed premises;

(3) contact information for the person filing; and

(4) all reasonable grounds that are the basis for the protest.

(d) A protest filed by a government official must include the following elements:

(1) the name of the official, the office held, and contact information;

(2) a description of the geographic limits of the official's jurisdiction; and

(3) the basis or bases for the protest.

(e) A protest that fails to meet any of the requirements of this rule may be rejected. A person whose protest is rejected may refile the protest with corrections to meet the rule requirements within the time period prescribed by subsection (b) of this section and/or refile the concerns as a complaint at any time, according to §31.10, Filing a Complaint. The determination of the validity of a protest is not a contested case subject to the Texas Administrative Procedure Act (Tex. Gov't Code Ch. 2001).

*Note: Original Rule Effective: December 31, 2020*

### **§33.63 Withdrawal of Protest**

(a) A protestant may withdraw their protest at any time prior to the commission's final decision. Withdrawal of a protest may not be subject to any conditions.

(b) A withdrawal of a protest must be submitted in writing to the Texas Alcoholic Beverage Commission, ATTN: Licensing Protest Coordinator, P.O. Box 13127, Austin, Texas, 78711, or to the protest email address for the TABC Region in which the applicant premises is located, as follows:

(1) [Protests\\_Reg1@tabc.texas.gov](mailto:Protests_Reg1@tabc.texas.gov)

(2) [Protests\\_Reg2@tabc.texas.gov](mailto:Protests_Reg2@tabc.texas.gov)

- (3) Protests\_Reg3@tabc.texas.gov
  - (4) Protests\_Reg4@tabc.texas.gov; or
  - (5) Protests\_Reg5@tabc.texas.gov.
- (c) The protestant should also transmit a copy of the withdrawal to the applicant.
- (d) If all protests have been withdrawn, the executive director may grant the application and issue the license or permit, subject to other applicable statutes or rules.

*Note: Original Rule Effective: December 31, 2020*

## **SUBCHAPTER E. EVENTS AT A TEMPORARY LOCATION**

### **§33.70 Scope and Applicability**

- (a) This rule relates to Chapters 16, 25, 28, 30, 32, and 69 of the Alcoholic Beverage Code.
- (b) Except where otherwise specified, rules in this subchapter apply to all temporary events, including those requiring Temporary Event Approvals, Nonprofit Entity Temporary Event Permits, and File and Use Notifications (“event authorizations”).

*Note: Original Rule Effective: September 1, 2021*

### **§33.71 Classification of Event Authorizations**

- (a) A File and Use Notification does not require prior approval of the commission and may be used only if:
- (1) the estimated total wholesale value of the alcohol to be provided or sold at the event is less than \$10,000;
  - (2) the estimated attendance at the event is not more than 500 persons;
  - (3) the event is private and not open to the general public;
  - (4) the event is not sponsored by a member of the wholesale tier or the manufacturing tier; and
  - (5) the owner of the premises where the event will be held has authorized the sale of alcohol at the event.
- (b) In determining whether an event meets the requirement of subsection (a)(3) of this section, the commission may consider whether tickets are sold and whether the event spans more than one day.
- (c) A Nonprofit Entity Temporary Event is a picnic, celebration, or similar event, such as a cultural, charitable, religious, or civic event of a limited and specified duration that is organized for, and open to the public and is put on by a nonprofit entity as defined by Alcoholic Beverage Code §30.01.
- (d) For all other events that will be held at a temporary location, a Temporary Event Approval is required.

*Note: Original Rule Effective: September 1, 2021*

### **§33.72 Term of Authorization; Annual Limitation on Authorizations**

- (a) Temporary Event Approvals and File and Use Notifications shall be effective for no more than four consecutive days.
- (b) A person or entity may use a Temporary Event Approval or File and Use Notification at

the same location for no more than ten events in a calendar year if the person or entity that will hold the authorization has an ownership interest in the real property or a portion of it or has a lease for its use of the location. For purposes of this rule, a lease is defined as a contractual agreement by which one party conveys an estate in property to another party, for a limited period, subject to conditions, in exchange for something of value, but retains ownership. The ten-event limitation does not apply to a location that meets the definition of a Public Entertainment Facility in Alcoholic Beverage Code §108.73, regardless of whether it holds that designation.

(c) A Nonprofit Entity Temporary Event Permit shall be effective for no more than ten consecutive days unless the executive director or the executive director's designated representative, on the basis of a case-by-case review of the specific situation, grants additional time.

(d) Upon written request, the executive director or the executive director's designated representative may make an exception to the limitations of subsections (a) through (c) of this section on a case-by case basis. An exception request will be granted or denied in writing.

(e) Authorization for an event under this subchapter automatically terminates upon issuance of a two-year license or permit for the event location, regardless of the term of the temporary event authorization.

(f) The effective dates of an event authorization under this subchapter must cover the period in which alcoholic beverages will be delivered or stored in addition to the event itself.

(g) A temporary permit or license expires on the date indicated on the license or permit or on the same date as the primary permit, whichever occurs earlier.

*Note: Amended Rule Effective: December 6, 2021*

### **§33.73 General Provisions**

(a) All wine sold or possessed with the intention to sell at an event held in an area where the sale of that type of alcohol has not been authorized by a local option election must comply with the terms of §16.011 of the Alcoholic Beverage Code.

(b) A copy of the File and Use Notification form that was filed with the commission, Nonprofit Entity Temporary Event Permit, or Temporary Event Approval and diagram must be displayed in a conspicuous place at the location of the event at all times during the event.

(c) The commission may deny authorization under this subchapter if:

- (1) the information required to be submitted is incomplete or inaccurate;
- (2) the person requesting the authorization does not qualify for the authorization;
- (3) the event does not qualify for the authorization; or
- (4) there is reason to believe that granting the authorization will:

(A) result in a violation of the Alcoholic Beverage Code or the rules of the commission; or

(B) be otherwise detrimental to the public.

(d) The grounds for denying a Nonprofit Entity Temporary Event Permit or Temporary Event Approval shall be communicated in writing to the applicant as soon as is reasonably practical.

(e) If an authorization under this subchapter is granted in error, the commission may rescind the authorization at any time.

(f) No person authorized under this subchapter shall use that authority to provide alcoholic beverages at any licensed premises during any time that a permit or license for that location is



suspended.

(g) A Temporary Event Approval or Nonprofit Entity Temporary Event Permit may be used to provide alcoholic beverages for on-premises consumption at a location that has been designated as the licensed premises in a pending application only if:

- (1) the commission has received an application for the proposed location and payment of all state fees and securities, if applicable, have been submitted;
- (2) there is no pending protest of the application;
- (3) the commission has performed an initial review for qualification; and
- (4) there is no notice sign (60-day sign) pursuant to Alcoholic Beverage Code §§11.391 or 61.381 posted at the event location.

(h) The completion of a responsibilities course provided by the commission may be required before a Temporary Event Approval request is granted.

(i) The signage requirements for a Temporary Event Approval are the same as those for a primary license or permit and may include signs required by §§5.53, 11.041, 11.042, 61.11, and 61.111 of the Alcoholic Beverage Code and §31.4 of this title.

(j) All alcoholic beverages being transported shall be accompanied by invoices.

(k) The holder of a primary license or permit may return remaining alcoholic beverage products to the primary licensed location. The holder of an event authorized under this subchapter may distribute remaining product as authorized under Alcoholic Beverage Code §109.54.

(l) An applicant is not entitled to a refund or proration of fees paid for authorization under this subchapter, including any late filing fees.

*Note: Original Rule Effective: September 1, 2021*

### **§33.74 Late Filing Fees**

(a) A request for Temporary Event Approval or application for a Nonprofit Entity Temporary Event Permit filed under this subchapter must be filed at least ten business days prior to the event date to avoid a late filing fee. If the request or application is filed less than ten business days prior to the event date, it must be accompanied by the appropriate late filing fee set forth below, in addition to any other applicable fees.

(b) A late filing fee is required for a request for Temporary Event Approval or application for a Nonprofit Entity Temporary Event Permit as follows:

- (1) a late filing fee of \$300 is required for applications submitted seven to nine business days before the event for which the approval or permit is requested.
- (2) a late filing fee of \$500 is required for applications submitted four to six business days before the event for which the approval or permit is requested.
- (3) a late filing fee of \$900 is required for applications submitted one to three business day(s) before the event for which the approval or permit is requested.

*Note: Original Rule Effective: September 1, 2021*

### **§33.75 Penalties and Suspension**

(a) Persons or entities issued a temporary permit or authorization under this chapter must comply with all requirements of the Alcoholic Beverage Code and commission rules applicable to holders of primary retail-tier permits and licenses including, but not limited to, statutes related

to the sale, service, possession, distribution, transportation, and advertising of alcoholic beverages in Chapters 104-108 of the Code.

(b) The executive director may cancel an authorization under this subchapter for violation of the Alcoholic Beverage Code or commission rules occurring during the temporary event covered by the authorization, regardless of the expiration of the temporary authorization.

(c) The executive director may temporarily suspend an applicant's right to apply for a temporary authorization for violations of offenses against the general welfare under §35.31 of this title that occur in connection with the use of a temporary authorization.

(d) The executive director may assess an administrative penalty for violations of the of the Alcoholic Beverage Code or commission rules for events authorized under this subchapter in the same manner as for two-year permits and licenses under chapter 34 of this title.

*Note: Original Rule Effective: September 1, 2021*

### **§33.76 File and Use Notifications**

(a) To qualify to use a File and Use Notification, the notification must include:

(1) all information requested by the commission; and

(2) a sworn statement that:

(A) the estimated total wholesale value of the alcohol to be provided or sold at the event is less than \$10,000;

(B) the estimated attendance at the event is not more than 500 persons;

(C) the event is private, and not open to the general public;

(D) the event is not sponsored by a member of the wholesale tier or the manufacturing tier; and

(E) the owner of the premises where the event will be held has authorized the sale of alcohol at the event.

(b) An event that does not meet the criteria in subsection (a)(2) of this section requires approval by the commission.

(c) A File and Use Notification does not require approval by the commission and may be submitted less than ten days before the event without incurring a late filing fee.

(d) In connection with a notification filed under subsection (a) of this section, the commission may require a letter from the owner of the property where the event will be held, sponsorship and/or promoter agreements, a diagram or site maps, local governmental authorization, and any other documents or agreements needed to determine qualifications under the Code.

(e) Persons using a File and Use Notification must keep the following records for four years and provide them to the commission upon request:

(1) records of the dollar amount of alcohol purchased and sold/served at the event;

(2) the number of event attendees; and

(3) an agreement or contract between the permit holder and the venue authorizing the event, including the event date, hire date, type of event, and a copy of any invitation to the event or obituary for a funeral-related event.

*Note: Original Rule Effective: September 1, 2021*

### **§33.77 Request for Temporary Event Approval**

- (a) A request for Temporary Event Approval shall be made on forms provided by the commission and shall be signed and sworn to by the requestor.
- (b) The requestor shall e-mail the completed Temporary Event Approval request form to the Events email address for the TABC Region in which the event will be held or, if the requestor holds another TABC permit or license, shall submit the request form through the TABC online portal.
- (c) The requestor shall remit payment of any late filing fees required by §33.74 of this title at the time the request is filed.
- (d) In addition to the request form, other documents related to the event that may be required include a letter from the property owner, sponsorship agreements, promoter agreements, concession agreements, management agreements, diagrams, site maps, local governmental authorization, and any other documents needed to determine qualification under the Alcoholic Beverage Code.
- (e) If the event is approved, the commission shall issue a Temporary Event Approval showing on its face the effective dates approved for the event.

*Note: Original Rule Effective: September 1, 2021*

### **§33.78 Nonprofit Entity Temporary Events**

- (a) A Nonprofit Entity Temporary Event Permit shall only be issued to a nonprofit entity as defined by Alcoholic Beverage Code §30.01.
- (b) An application for a Nonprofit Entity Temporary Event Permit shall be made on forms provided by the commission and shall be signed and sworn to by the applicant.
- (c) The requestor shall e-mail the completed Nonprofit Entity Temporary Event Permit application forms to the Events email address for the TABC Region in which the event will be held.
- (d) The applicant shall remit payment of fees at the time the application is filed. The fee for a Nonprofit Entity Temporary Event Permit is \$50 per day.
- (e) In addition to the application forms, other documents related to the event that may be required include a letter from the property owner, sponsorship agreements, promoter agreements, concession agreements, management agreements, diagrams, site maps, local governmental authorization, and any other documents needed to determine qualification under the Alcoholic Beverage Code.
- (f) If the event is approved, the commission shall issue to the applicant a Nonprofit Entity Temporary Event Permit showing on its face the effective dates of the permit.
- (g) Permit holders may sell any alcoholic beverage authorized by law to be sold where the event is to be held.
- (h) Permit holders must purchase distilled spirits for Nonprofit Entity Temporary Events from a local distributor permit holder.
- (i) A nonprofit entity is not limited in the number of events it may hold under this section in a calendar year, except for certain events in dry areas as provided by Alcoholic Beverage Code §30.09.
- (j) Events in dry counties must comply with Alcoholic Beverage Code §30.09.
- (k) Auction-only Events.
  - (1) Subsections (d) – (h) of this section do not apply to a Nonprofit Temporary Event at which alcoholic beverages are auctioned but not otherwise sold or served to a consumer.

(2) Events under this subsection do not require prior approval and are not subject to late fees.

*Note: Amended Rule Effective: December 6, 2021*

### **§33.79 Serving Alcoholic Beverages at Fundraising Events**

(a) This section applies to the use of alcoholic beverages at fundraising events held by or benefitting charitable, religious, political, and civic organizations.

(b) An organization may provide free alcoholic beverages at an event under this section without first obtaining a temporary authorization only if the alcoholic beverages are offered free of charge upon the request of any non-intoxicated person at least 21 years of age, regardless of whether the person has paid a membership fee, entrance fee, door charge, meal charge, ticket price, or any other fee for the event. The organization shall not request donations or tips or otherwise receive money in exchange for alcoholic beverages served.

(c) An organization providing free alcoholic beverages under subsection (b) of this section may:

- (1) serve donated alcoholic beverages;
- (2) receive donations in cash or of alcoholic beverage products;
- (3) enter into sponsorship or underwriting agreements with members of the alcoholic beverage industry, including agreements for advertising, signage, and product exclusivity; and
- (4) offer free alcoholic beverages to the general public outside of the event, but condition entry into the event on payment of a donation or fee.

(d) An organization that obtains a temporary authorization for an event may sell alcoholic beverages at the event subject to the following conditions:

- (1) the organization must sell only alcoholic beverages purchased from a licensed distributor, wholesaler, winery, brewery, or brewpub, or a holder of a local distributor's permit;
- (2) the organization may not sell any donated alcoholic beverages; and
- (3) the organization may not accept a cash donation from a member of the alcoholic beverage industry that is conditioned upon a written or unwritten agreement between the organization and alcoholic beverage industry member with respect to how the organization will spend the cash donation, any benefit that the industry member will receive as a result of the cash donation, which products the organization will sell at the event, or sponsorship rights, including signage and advertising.

(e) An organization selling alcoholic beverages pursuant to a temporary authorization obtained by the organization may accept cash donations from alcoholic beverage industry members and use the cash for any purpose, including purchasing alcoholic beverages for use at the event, subject to subsection (d)(3) of this section.

(f) An organization may partner with an independent third-party retail permit holder to sell alcoholic beverages at an event under this section, subject to the following conditions:

- (1) the permit to sell alcoholic beverages at the event must be held by a retailer that is independent of the sponsors of the event;
- (2) the retail permit holder may not receive any direct benefit or service due to sponsorship by a wholesaler or manufacturer of alcoholic beverages;
- (3) the organization may not exchange gifts or donations for exclusive rights to sell a certain product or brand; and

(4) the retail permit holder must retain the right to control the quantity and selection of brands of alcoholic beverages purchased or sold for the event and at the event.

(g) An organization partnering with an independent third-party retail permit holder under subsection (f) of this section may:

(1) receive cash or in-kind donations from manufacturers, wholesalers, and retailers; and

(2) enter into an agreement with the retail permit holder whereby the retail permit holder donates a portion of the proceeds from the event to the organization; and

(3) enter into sponsorship agreements with manufacturers, wholesalers, and retailers.

(h) Signs or other advertising materials placed by members of the alcoholic beverage industry indicating their participation in, or sponsorship of an event under this section must comply with §45.111 of this title, relating to Advertising Signs at Charitable or Civic Events.

*Note: Original Rule Effective: September 1, 2021*

### **§33.80 Temporary Events Authorized Under a Mixed Beverage Permit**

(a) The holder of a mixed beverage permit may hold an event at a temporary location subject to all rules applicable to the mixed beverage permit.

(b) An event under this section may be authorized by a File and Use Notification if it meets the requirements of §33.71(a) of this subchapter, or by a Temporary Event Approval.

*Note: Original Rule Effective: December 6, 2021*

## **SUBCHAPTER F. LICENSE AND PERMIT ACTION**

### **§33.90 Renewal of Licenses and Permits after Expiration**

For a renewal application, failure to submit any requested information, corrections, forms, or fees within fourteen days of demand will constitute non-compliance with Alcoholic Beverage Code §6.04 and this rule, resulting in the expiration of the license or permit due to the insufficiency of the application.

*Note: Amended Rule Effective: September 1, 2021*

### **§33.91 Administrative Inactivation, Reinstatement and Renewal of a License or Permit**

(a) This section implements Alcoholic Beverage Code §11.44 and §102.32(d-1) and clarifies procedures related to administrative inactivation involving either voluntary or involuntary suspensions.

(b) Administrative inactivation refers to the placing of a license or permit in administrative suspense under this section and without a due process hearing. During administrative inactivation (whether voluntary or involuntary), the license or permit holder may not engage in any authorized activities allowed under that license or permit. The term of the license or permit will not be tolled during administrative inactivation but will expire on the date indicated on the face of the license or permit.

(c) Unless otherwise disqualified or provided for by this section, the commission may, without a hearing, administratively inactivate and place in administrative suspense a license or permit upon receipt of an affidavit by the landlord, on a form prescribed by the executive

director, that the premises has been abandoned by the licensee or permittee and that the licensee or permittee no longer has any interest in the premises.

(d) The commission may without a hearing administratively inactivate and place in administrative suspense a license or permit if the commission receives a final, non-appealable court judgment of eviction concerning against a permitted or licensed premises that is subject to a pending or unexpired suspension order or for which a cancellation or suspension action has been initiated.

(e) The commission may, without a hearing, administratively inactivate and place in administrative suspense a license or permit if the license or permit holder is delinquent in the payment of an account for liquor under Code §102.32 and either subsection (c) or (d) of this section applies. The Commission may not accept the voluntary cancellation or suspension of a license or permit or allow a license or permit to be renewed or transferred if the license or permit holder is delinquent in the payment of an account for liquor under §102.32 of the Texas Alcoholic Beverage Code.

(f) The commission may, but is not required to, administratively inactivate and place in voluntary suspense a license or permit if no administrative action is pending against the license or permit and either:

- (1) the actual license or permit is submitted by the license or permit holder; or
- (2) a sworn statement is submitted by the license or permit holder stating that the actual license or permit is unavailable for surrender and why.

(g) If a license or permit has been placed in voluntary administrative inactivation and the license or permit has not expired then the license or permit may be reinstated to active status, but only if the same requirements and qualifications as an applicant for an original license or permit are met. If a license or permit is reinstated under this subsection, the license or permit fee for the remainder of the license or permit term during which it was placed in administrative inactive status is not required.

(h) A license or permit may be renewed while on administrative inactivation only if, prior to the expiration date of the license or permit, a completed renewal with required supporting documents and all necessary state fees and surcharges is filed in accordance with all applicable sections of the code and rules. Otherwise the license or permit will expire at the end of its existing term.

(i) The effective date of the administrative inactivation of a license or permit or its voluntary cancellation will be the date the statement or other document required by this section is received in the licensing division or any other date mutually agreed to by the parties.

*Note: Original Rule Effective: December 31, 2020*

### **§33.92 Notification of Expired or Suspended Licenses and Permits**

- (a) This rule refers to §§11.091(b) and 61.031(b) of the Alcoholic Beverage Code.
- (b) Notification to wholesalers of expired or suspended licenses or permits shall be by electronic publication of such information on the commission's Internet web page.
- (c) For purposes of the above referenced sections, an expired license or permit shall be one which has ceased to be active because of the operation of time and for which no timely and sufficient application for renewal has been filed with the commission.
- (d) For purposes of the above referenced sections, a suspended license or permit shall be one that has ceased to be active by operation of the procedures described in §33.91 of this title

(relating to Administrative Inactivation, Reinstatement and Renewal of a License or Permit).

*Note: Original Rule Effective: December 31, 2020*

### **§33.93 Notification Requirements**

(a) A person who holds a license, permit or certificate issued by the Alcoholic Beverage Commission shall maintain a current mailing address, telephone number and email address on file with the division that has issued the license, permit or certificate.

(b) A person who holds a license, permit, or certificate issued by the Alcoholic Beverage Commission shall file a written notice of change of mailing address with the Commission within seven (7) business days of the change. A person who holds a certificate issued by the Commission shall file the change of address with the Seller/Server Training Division at TABC, P.O. Box 13127, Austin, Texas 78711.

(c) A notice sent to a person by the Alcoholic Beverage Commission shall be sent by first class mail to the last known mailing address of a person that is on file with the commission.

(1) A person notified by mail under this subsection is presumed notified on the third day after the date on which the notice is mailed.

(2) This subsection does not apply to a notice required by Government Code §2001.054.

*Note: Original Rule Effective: December 31, 2020*

### **§33.94 Reporting Permit or License Changes**

(a) In order to process renewal applications efficiently and to assure that permittees and licensees are qualified throughout the term of their permits or licenses, the commission prescribes the following reporting timelines for changes to information that was provided in connection with an original application or for changes to the most recent information that has been reported to the commission. For the reasons recited above, the commission finds that the timelines are necessary to accomplish the purposes of the Alcoholic Beverage Code pursuant to Alcoholic Beverage Code §5.32.

(b) Any of the information described in this subsection that changes from the information provided in the original application, or that was provided in the most recent reported change to the commission, must be reported to the commission within 30 days following the date the change occurred:

(1) the addition or removal of a person whose name was included on the original application or whose name would be required if a new original application was being submitted, regardless of the title, position or ownership held;

(2) a change to the type of business;

(3) a change to a phone number or email address;

(4) a change to a person's criminal history that affects their qualifications to hold a permit or license;

(5) a change of the owner of the premises, a sublessor, a management company, or a concession company, or to the terms of any agreements with any such persons; or

(6) a change of organization as that term is defined in Business Organizations Code §1.002(62), other than a change of business entity described in Alcoholic Beverage Code §§11.12 or 61.14 which is subject to the requirements of subsection (d) of this section.

- (c) Any of the information described in this subsection that changes from the information provided in the original application, or that was provided in the most recent reported change to the commission, must be reported to the commission prior to the date the change will occur:
  - (1) a change in corporate control pursuant to Alcoholic Beverage Code §28.04; or
  - (2) a change of tradename.
- (d) A change of business entity described in Alcoholic Beverage Code §§11.12 or 61.14 must be reported not later than the 11th day preceding the date the change will occur.
- (e) This section does not apply to:
  - (1) a change of mailing address, which is subject to the requirements of §33.93 of this title (relating to Notification Requirements); or
  - (2) a change in the licensed or permitted location pursuant to Alcoholic Beverage Code §§ 11.08 or 61.09, which is subject to the requirements of §33.3 of this title (relating to Process to Apply for License or Permit).
- (f) All changes subject to this section must be reported on forms prescribed by the commission.
- (g) Nothing in this section limits the commission's authority to request information from a permittee or licensee at any time to determine if a change has occurred.

*Note: Original Rule Effective: December 31, 2020*

## **SUBCHAPTER G. EMERGENCY ORDERS**

### **§33.100 General Provisions**

- (a) The purpose of this subchapter is to implement the commission's authority under Texas Alcoholic Beverage Code Section 11.614 to issue an emergency order temporarily suspending a permit or license.
- (b) The commission, executive director, or executive director's designee may issue an emergency order suspending the permit or license of a business without a hearing if the commission, executive director, or executive director's designee determines that the operation of the business constitutes a continuing threat to the public welfare.
- (c) All hearings under this subchapter, including appeals, may be held by teleconference or videoconference in compliance with applicable provisions of the Texas Open Meetings Act (Tex. Gov't Code Ch. 551) and the Administrative Procedure Act (Tex. Gov't Code Ch. 2001).

*Note: Original Rule Effective: December 9, 2020*

### **§33.101 Authority of the Executive Director**

- (a) The executive director is authorized to issue emergency orders under this subchapter.
- (b) The executive director may delegate a representative or representatives to act on the executive director's behalf under this subchapter.

*Note: Original Rule Effective: December 9, 2020*

### **§33.102 Term of Suspension**

- (a) The term of an emergency order issued under this subchapter shall not exceed 90 days.
- (b) The term of an emergency order is not tolled and the order suspending the permit or



license remains in effect during any contested case proceeding against the permit or license holder.

*Note: Original Rule Effective: December 9, 2020*

### **§33.103 Notice and Opportunity for Hearing**

If an emergency order is issued without a hearing, the executive director or his designee shall set the time and place for a hearing on the emergency order to be conducted by the State Office of Administrative Hearings.

*Note: Original Rule Effective: December 9, 2020*

### **§33.104 Contents of Emergency Order**

An emergency order issued under this subchapter shall contain at least the following:

- (1) the name and address of the license or permit holder and information sufficient to identify the premises affected by the order;
- (2) a brief statement of fact supporting the issuance of the order;
- (3) a determination that the continued operation of a permitted or licensed business would constitute a continuing threat to the public welfare; and
- (4) a statement of the term of the order, including the date on which it begins and ends.

*Note: Original Rule Effective: December 9, 2020*

### **§33.105 Appeals of Emergency Orders**

There is no right to appeal to the commission an administrative law judge's determination affirming, modifying, or setting aside an emergency order issued under this subchapter.

*Note: Original Rule Effective: December 9, 2020*

## **CHAPTER 34. SCHEDULE OF SANCTIONS AND PENALTIES**

### **§34.1 General Provisions**

- (a) This rule relates to §§11.61, 11.64, 11.641 and 106.13 of the Alcoholic Beverage Code.
- (b) Agents, compliance officers or other specifically designated commission personnel have authority to settle a complaint issued by the commission against a person for a violation of the Texas Alcoholic Beverage Code (Code), prior to filing a contested case under Government Code, Chapter 2001, Subchapter C (Administrative Procedure Act).
- (c) A settlement authorized by this chapter must reflect the number of days a permit will be suspended or the amount of civil penalty authorized per day in lieu of suspension and shall conform to the other provisions of this chapter.
- (d) A written warning may be issued for any violation if it is determined by designated commission personnel to be an effective deterrent from further violations of the Code.
  - (1) A written warning may be used as an aggravating circumstance for purposes of determining the appropriate sanction under §34.2.

(2) A written warning is subject to the rights and procedures of a contested case under the Administrative Procedure Act.

(3) A written warning is an administrative notice issued by a representative of the commission to the permit or license holder documenting that a violation of the TABC code or rules has occurred.

(e) Any case alleging a sale to a minor or intoxicated person in violation of Alcoholic Beverage Code §§11.61(b)(14), 61.71(a)(6) or 101.63 in which the unlawful sale or service directly or indirectly caused death or serious bodily injury shall be referred directly to the Legal Services Division by district or regional personnel without an offer of settlement or compromise provided to the permittee/licensee. For purposes of this section, "serious bodily injury" means as defined in §1.07(a)(46) of the Texas Penal Code.

(f) Each suspension of a permit or license shall run for consecutive days. A person assessed a suspension by the commission may be provided with an opportunity to pay a civil penalty in lieu of a suspension as provided by §11.64 of the Code. The commission may, in its discretion, allow a licensee/permittee to divide an imposed sanction between civil penalty and suspension.

(g) A subsequent violation of the Code or rule will result in a sanction in the next higher violation level if the subsequent violation:

(1) is for a health, safety and welfare violation and occurs within 36 months of the prior violation, or

(2) is for a violation listed in the major regulatory violation category within 24 months of the prior violation, and

(3) the person has been given written notice of the prior violation, or

(4) the subsequent violation is issued during an undercover operation

(h) The list of violations in §34.2 is not intended to be an exhaustive list of possible violations of the Code or rules of the commission. A sanction for a violation of the Code or rules that is not listed in §34.2 must be approved by either the assistant administrator for field operations or a division director prior to entering into a settlement.

(i) A person authorized to enter into a settlement under this section is also authorized to recommend a deviation from sanctions in §34.2 when aggravating or mitigating circumstances are found to exist.

(1) A recommendation to deviate from sanctions in §34.2 must be made in writing.

(2) The administrator or his designee must approve a recommendation to deviate from §34.2 before the settlement may be offered.

(j) This chapter does not apply to a contested case brought under Chapters C and D of the Administrative Procedure Act, or a complaint or violation referred to the legal division of the commission for resolution.

*Note: Readopted Without Changes and Effective: March 27, 2018*

### **§34.2 Schedule of Sanctions and Penalties for Health, Safety and Welfare Violations**

An act or failure to act which results in a violation of the code or rules that represents a threat to the public health, safety, or welfare will be assessed sanctions and penalties as follows:

Figure: 16 TAC §34.2

DESCRIPTION	1 <sup>ST</sup> Violation	2 <sup>nd</sup> Violation	3 <sup>rd</sup> Violation
Minor Related Offenses			
Employing a minor to sell, serve, prepare or otherwise handle alcoholic beverages in violation of §106.09 or §61.71(a)(12), Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	30-Cancel \$300 per day
Permit a minor to possess or consume an alcoholic beverage in violation of §106.13, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-Cancel \$300 per day
Sale of an alcoholic beverage to a minor in violation of §106.03, Alcoholic Beverage Code.	8-12 days \$300 per day	16-24 days \$300 per day	48-Cancel \$300 per day
Conducting business in a manner as to allow a simple breach of the peace with no serious bodily injury or deadly weapon involved (as defined in the Texas Penal Code) in violation of §22.12 and §28.11, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-Cancel \$300 per day
Conducting business in a manner as to allow an aggravated breach of the peace with a serious bodily injury, death or involving a deadly weapon (as defined in the Texas Penal Code) in violation of §§22.12, 28.11, 69.13 and 71.09, Alcoholic Beverage Code.	25-35 days \$300 per day	Cancel	Cancel
Failure to report a breach of the peace in violation of Alcoholic Beverage Code §11.61(b)(21) and §61.71(a)(31).	2-5 days \$300 per day	4-10 days \$300 per day	12-Cancel \$300 per day
Possession of, sale or delivery of, or permitting the sale or delivery of narcotics by a licensee or permittee or possession of any equipment used or designed for the administering of a narcotic in violation of §104.01, Alcoholic Beverage Code, or Title 16, §35.41(27), Texas Administrative Code.	25-35 days \$300 per day	Cancel	Cancel

DESCRIPTION	1 <sup>ST</sup> Violation	2 <sup>nd</sup> Violation	3 <sup>rd</sup> Violation
The sale or service of an alcoholic beverage to an intoxicated person in violation of §§11.61(b)(14), 61.71(a)(6) or 101.63, Alcoholic Beverage Code.	8-12 days \$300 per day	16-24 days \$300 per day	Cancel
The license or permit holder or any employee being intoxicated on a licensed premise in violation of §11.61(b)(13) or §104.01, Alcoholic Beverage Code.	17-25 days \$300 per day	34-50 days \$300 per day	Cancel
Permitting public lewdness, sexual contact or obscene acts on a licensed premises in violation of §61.71(a)(11) or §104.01, Alcoholic Beverage Code and commission rule, §35.41(1) or the exposure of a person or permitting a person to expose his person in violation of §104.01(2), Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	Cancel
Creating excessive noise or having unsanitary conditions at a licensed premises in violation of §101.62 or §11.61(b)(9), Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Sell, serve or deliver alcoholic beverages during prohibited hours in violation of §105.01, et seq, Alcoholic Beverage Code. Consumption or permitted consumption of an alcoholic beverage during prohibited hours on a licensed premises in violation of §§11.61(b)(22), 61.71(a)(18) or 105.06, Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	Cancel
Rudely displaying or permitting a person to rudely display a weapon in a retail establishment in violation of §104.01(3), Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	30-Cancel \$300 per day

DESCRIPTION	1 <sup>ST</sup> Violation	2 <sup>nd</sup> Violation	3 <sup>rd</sup> Violation
<p>The place and manner of operation of an establishment is such that it constitutes a violation of §§11.46 (a)(8), 11.61(b)(7), 61.42(a)(3) or 61.71(a)(17), Alcoholic Beverage Code by committing the below listed violations. Requires detail on offenses.</p> <p>Examples (not limited to the following offenses):</p> <p>Possession of any gambling paraphernalia or device;  Gambling on a licensed premises;  Keeping a gambling place;</p>	<p>5-7/\$300  8-12/\$300  13-18/\$300</p>	<p>10-14/\$300  16-24/\$300  26-36/\$300</p>	<p>Cancel  Cancel  Cancel</p>
<p>Trafficking of an adult with intent that adult engage in forced labor or services or receives a benefit including labor or services per §20A.02(1-2) of the Penal Code;</p> <p>Trafficking an adult through force, fraud, coercion, causing prostitution-related conduct, receiving a benefit, or engaging in sexual conduct with an adult per §20A.02(3-4) of the Penal Code;</p> <p>Trafficking of one child with intent that child engage in forced labor or services, or receiving a benefit of such trafficking, including labor or services per §20A.02(5-6) of the Penal Code;</p> <p>Trafficking of one child causing child to engage in, be victim of, or conduct prohibited by sexual offenses described in §20A.02(7), received benefit, or participation in sexual conduct with a child trafficked per §20A.02(7-8) of the Penal Code;</p>	<p>Cancel  Cancel  Cancel  Cancel</p>	<p>Cancel  Cancel  Cancel  Cancel</p>	<p>Cancel  Cancel  Cancel  Cancel</p>

DESCRIPTION	1 <sup>ST</sup> Violation	2 <sup>nd</sup> Violation	3 <sup>rd</sup> Violation
Continuous trafficking of persons under §20A.03 of the Penal Code;	Cancel	Cancel	Cancel
Prostitution;	Cancel	Cancel	Cancel
Promotion of prostitution;			
Prohibited Activities by Persons	5-7/\$300	10-14/\$300	Cancel
Younger Than 18 (See AB Code 106.15,	8-12/\$300	16-24/\$300	Cancel
Penal Code 43.05, Penal Code 43.25 or	13-18/\$300	26-36/\$300	Cancel
Penal Code 43.251);	Cancel	Cancel	Cancel
Obscenity.	Cancel	Cancel	Cancel

*Note: Readopted Without Changes and Effective: March 27, 2018*

*Note: Amended Rule Effective: October 17, 2019*

### §34.3 Sanctions for Regulatory Violations

(a) Regulatory violations of the following statutory and rule provisions will be assessed a base penalty of \$250, \$500, or \$1,000 as shown in this chart:

\$250		\$500		\$1,000	
Failure to Display Permit or License	§§11.04 and 61.01	Permit Minor in Package Store	§109.53	Open Saloon - Sale to Non-Member	§§32.01 (a), 32.17 (a)(1) and 32.17 (b)
Failure to Timely File Monthly Report	§§201.075 (DS & Wine), 201.53 (Ale), 203.13 (Beer)	Cash Law	§§61.73 and 102.31; Rule 45.131	Conspiracy to Receive Unlawful Benefit	§104.03
Failure to Pay State Franchise Tax	§§11.61(b)(5), 61.712	Credit Law	§102.32; Rule 45.121	Inducement	§§102.04 (b)(6);102.07 (a)(8); 102.12; Rule 45.110
Failure to Pay State Hotel Tax	§§11.61(b)(5), 61.712	Private Club - Storage of Alco. Bev. not Owned by Members	§32.01(a)(1); Rules 41.51 and 41.52	Unlawful Agreement	§102.16
Failure to Maintain Acceptable Gross Receipts or Sales Tax Bond	§28.17	Inspection Refusal - Regular Business Hours	§32.12	Illegal Contract/Alternating Brewing/Manufacturing	§§12.06 or 62.14
Failure to Maintain Acceptable Alco. Bev. Excise Tax Bond	§§204.01 - .03	Maintaining a Noisy Establishment	§11.61(b)(9)	Illegal Contract Distilling - Spirits	§§11.06; 14.01

<b>\$250</b>		<b>\$500</b>		<b>\$1,000</b>	
Failure to Maintain Acceptable Conduct Surety Bond	§§11.11(a)(2), 61.13; Rule 33.24	Maintaining an Unsanitary Establishment	§11.61(b)(9)	Refilling Distilled Spirits Bottle on Licensed Premise	§28.08
Failure to Report Corporate Change	§28.04 and Rule 41.48	Brand Substitution w/o Customer Consent	§§28.081;104.04; 61.74(a)(13)	Permitting Removal of Alco. Bev. from Premise	§§28.10, 32.17(a)(4)
Possession of Unauthorized Alco. Bev.	§§25.09, 26.01(a), 69.12, 71.04	Poss. of Distilled Spirits w/o ID Stamp (Local Dist. Stamp)	§§28.15(a); 32.20(a)	Sell/Deliver Alco. Bev. while under Suspension	§11.68
Failure to Maintain Acceptable State Sales Tax Bond	§11.61(b)(8)	Failure to Invalidate ID Stamps	§28.09(a); Rule 41.71(h)	Soliciting Alcoholic Beverages	§104.01
Failure to Pay State Sales Tax	§§11.61(c)(2), 61.712	Mixed Bev. – Possession of Un-invoiced/Unauthorized Alco. Bev.	§28.06 (a), (b)	Operating without Required Permit or License	§§11.01, 61.01
Failure to Pay or Report Mixed Bev. Gross Receipts or Sales Tax	§§11.61(b)(5), 61.712	Possession of Alco. Bev. Unfit for Consumption	§103.07	Permit Consumption of Beer at Off-Premise Location	§71.01
Failure to Maintain Performance Bond	§11.61(b)(8), 61.71(l)	Sell/Deliver Alco. Bev. in Open Container	§§ 22.11, 24.10	Store Alco. Bev. Off Licensed Premise	§§69.10, 71.06
Failure to Timely Provide Records	§§5.32, 5.44 (a)(6)	Acquired Alco. Bev. from Another Retailer	§§69.09, 71.05	Subterfuge	§11.05, 109.53
Failure to Maintain or Properly Document Invoices	§5.32; Rules 41.23, 41.25	Purchase of Alco. Bev. while on Delinquent List	§102.32; Rule 45.121(g)	False/Misleading Statement in Application, Document, Report Etc.	§§11.46 (a)(4), 11.61(b)(4), 61.43(a)(4), and/or 61.71(a)(4) and (11)
Failure to Operate under the Required Tradename	§§61.05, 108.52(c)	Consignment Sale of Alco. Bev.	§§102.07(a)(4); 61.71(a)(8)	Illegal Interior Signage	§61.74(a)(1); Rule 45.113(d)
Outdoor Advertising Violation	Code Chapter 108	Sale away from Licensed Premise	§§11.06, 61.06, 32.17(a)(4)	Prohib. Relationship with Different Levels of Industry	§§102.01; 102.07; 102.15

<b>\$250</b>		<b>\$500</b>		<b>\$1,000</b>	
Failure to Post Required Sign	§§11.041, 11.042, 26.05, 61.11, 61.111, 71.10, 104.07; Rule 31.4	On-Premises Promotions	Rule 45.103	Sale to Respondent on Delinquent List	§102.32(d)
Food & Bev. Permit Holder: Incomplete / Missing Records	§5.32; Rule 33.5(l) and (n)	Session Class Size Exceeds 50	Rules 50.6(a), 50.26(b)(1), (b)(17)	No Permanent Food Service Facility at Addressed Location	§§25.13, 28.18, 32.23, 69.16; Rule 33.5(f)(2)
Failure to Complete or File Excise Tax Report	§5.32, Rule 41.45	Failure to Place Retailer on Delinquent List	Rule 45.121	Ineffective Instruction	Rules 50.3(e), 50.4(b), 50.5(b)
Failure to Meet Trainer Certification Requirements	Rule 50.26(b)	Failure to Report Cash Law Violation	§102.31(c); Rule 45.131(e)	Illegal Sampling / Tasting Event	§§16.01(c), 24.12, 26.08, 37.01, or 52.01
Failure to Properly Issue Trainee Certificates	Rule 50.9(b), (c)	Failure to Report Credit Law Violation	§102.32(e); Rule 45.121	Program Taught by Uncertified Trainer	Rule 50.25(c)
Failure to Properly Schedule/Cancel Training Session	Rule 50.10(a), (b)	Transporting w/o Required Invoice	§§22.08, 23.04, 24.04; Rule 35.1(d)	In-House Program Certified Non-Employees	Rule 50.8
Failure to Meet Testing Requirements	Rule 50.26(b)(19)	Records Incomplete or Missing	§32.13; Rule 41.52	Exclusive Outlet	§§102.13, 109.08
Failure to Meet Requirements-Sch/Pgm Certification	Rule 50.13	Membership/Membership Committee Violations	§§32.09, 32.16; Rule 41.52(c)(1)	Commercial Bribery	§102.12
Failure to Properly Prepare/File Session Reports	Rule 50.10(e)	Improper Financial Transactions	§32.06	Prohibited Interest	§§22.06, 51.06, 102.03, 102.04, 102.09, 102.10, 102.11, 102.18
		No Written Consent to Scan DL/ID	§109.61(b); Rule 41.52(g)	Unauthorized Manufacturing/Brewing Activity	§§11.01, 61.01
		Adequate Food Service Not Available	Rule 33.5(f)	Transporting Liquor w/out Required Transport Permit	§§11.01, 41.01, 42.01, 43.03, 44.01
		Food Items Not Prepared/Assembled on Premises	Rule 33.5(e)(1)	Unauthorized Sale/Brew Products for On-Premise Consumption	§12.052



\$250	\$500		\$1,000	
	Alcohol Sale Hours beyond Food Sale Hours	Rule 33.5(g)	Place / Manner - Violated Waiver Order	§§11.61(b)(7), 61.71(a)(17), and Rule 35.31 (b)
	Unauthorized Sale/Brew Products for Off-Premise Consumption	§12.052	Place / Manner - Over Serving	§§11.61(b)(7), 61.71(a)(17), 32.17(a)(8); Rule 35.31
	Engage in Promotional Activity w/o License/Permit	§§50.001; 35.01; 36.01	Place / Manner - Assaultive Offenses	§§11.61(b)(7), 61.71 (a)(17), 32.17(a)(8); Rule 35.31(c)
	Illegal Stocking/ Shelving/ Product Rotation	§102.20; Rule 45.109		
	Unauthorized Market Research	§§108.06, 102.07; Rule 45.113(b)(4)		
	Unauthorized Sweepstakes Contest	§§102.07(e), 108.061; Rule 45.106		
	Unauthorized Coupon	§§102.07(d), 108.06; Rule 45.113		
	Failed to Meet Labeling Requirements	§§37.07, 101.67		
	Illegal Bar Spending	§§102.07(g)(2), 102.15(b)(2); Rules 45.113, 45.117		
	Illegal Refund/ Exchange by Wholesaler/ Distributor	§§11.61(b)(2), 61.74(a)(1), 104.05(d), (e)		
	Possess/ Transport/ Store Illicit Beverage	§103.01		
	Food Service Not Available/ Adequate (Private Club)	§32.03(g); Rule 41.52(e)		
	Failure to Maintain ID Stamp Reports	Rule 41.71(d)		

<b>\$250</b>	<b>\$500</b>		<b>\$1,000</b>
	Possess Un-Affixed ID Stamps	§§28.151, 32.201	
	Unauthorized Repackaging of Alco. Bev.	§104.05	
	Unauthorized Breakdown & Sale of Alco. Bev. Co-packs	§§102.07(a)(5), 108.035; Rule 45.120(c)	
	Unauthorized Sale of Alco. Bev. to a Retailer	§§23.01(a)(2), 24.01(a)(2), 25.01(a)(1), 26.01(a), 69.01, 71.01.	

(b) The penalty chart in subsection (a) of this section is non-exclusive; the absence of a statute or rule from the chart does not limit the commission’s statutory authority to enforce compliance with the Code and its rules by assessing administrative penalties.

(c) Penalties assessed pursuant to subsection (a) of this section may be augmented or discounted based upon the number of violations and other circumstances surrounding the violation, according to the commission Penalty Policy in effect on the date of the issuance of the Notice of Violation.

(d) The number of days of license or permit suspension offered to the respondent in lieu of the penalty shall be commensurate with the penalty assessed under this section and calculated according to the commission Penalty Policy in effect on the date of the issuance of the Notice of Violation.

(e) The Penalty Policy shall be publicly available and published on the commission’s web site.

(f) The commission shall review the Penalty Policy and update or revise it as necessary at least once every seven (7) years.

(g) Nothing in this rule shall be construed to limit the commission’s authority to suspend or cancel a license or permit under §§11.38, 11.61, 32.17, 61.71, 201.075, or any other provision of the Code authorizing suspension or cancellation of a license or permit.

*Note: Original Rule Effective: March 1, 2021*

#### **§34.4 Attribution of Actions of Employee to License or Permit Holder**

(a) A license or permit holder who claims that the actions of an employee are not attributable to the license or permit holder under Alcoholic Beverage Code §106.14(a) must provide to the commission, not later than 10 days after receipt of an administrative notice of violation, an affidavit indicating that the license or permit holder was in compliance with the requirements of Alcoholic Beverage Code §106.14(a) at the time of the violation for which the administrative notice was issued. At a hearing in which the license or permit holder claims the benefits of Alcoholic Beverage Code §106.14(a), the license or permit holder may be required to present additional evidence to support such claim.

(b) If an employee performs an action described in paragraphs (1) or (2) of this subsection at

a time when the employee does not possess a currently valid seller server certificate, then the action of the employee does not meet the requirements of Alcoholic Beverage Code §106.14(a)(2) and therefore shall be attributable to the license or permit holder.

- (1) The employee sells, serves, dispenses or delivers an alcoholic beverage to:
  - (A) a person who is not a member of a private club on the club premises;
  - (B) a minor; or
  - (C) an intoxicated person.
- (2) The employee allows consumption of an alcoholic beverage by:
  - (A) a person who is not a member of a private club on the club premises;
  - (B) a minor; or
  - (C) an intoxicated person.

(c) Proof by the commission that an employee performed an action described in paragraph (1) or (2) of this subsection on three or more occasions within a 12-month period shall create a rebuttable presumption that the license or permit holder has indirectly encouraged a violation of the law within the meaning of Alcoholic Beverage Code §106.14(a)(3). The rebuttable presumption is created regardless of whether the employee performing the action described in paragraph (1) or (2) of this subsection on a second or subsequent occasion is the same person.

- (1) An employee sold, served, dispensed or delivered an alcoholic beverage to:
  - (A) a person who is not a member of a private club on the club premises;
  - (B) a minor; or
  - (C) an intoxicated person.
- (2) An employee allowed consumption of an alcoholic beverage by:
  - (A) a person who is not a member of a private club on the club premises;
  - (B) a minor; or
  - (C) an intoxicated person.

(d) For purposes of satisfying the condition precedent set forth in subsection (c) of this section, proof shall be demonstrated by:

- (1) producing final orders issued by the commission or a court of competent jurisdiction finding that the license or permit holder violated Alcoholic Beverage Code §§2.02, 11.61(b)(14), 32.17(a)(1), 61.71(a)(6) or 106.13(a) on two past occasions; and
- (2) establishing a prima facie case that an employee of the license or permit holder violated Alcoholic Beverage Code §§2.02, 11.61(b)(14), 32.17(a)(1), 61.71(a)(6) or 106.13(a) on a third or subsequent occasion.

(e) For purposes of subsection (d) of this section, all incidents offered to satisfy the condition precedent set forth in subsection (c) of this section shall be for the same type of offense and shall have occurred within a 12-month period as calculated from the dates the incidents occurred.

(f) There is a rebuttable presumption that a license or permit holder has indirectly encouraged a violation of the law within the meaning of Alcoholic Beverage Code §106.14(a)(3) if the commission presents sufficient proof that a license or permit holder fails to meet any of the standards set forth in paragraphs (1) - (5) of this subsection.

- (1) The license or permit holder requires each employee to present a seller server certificate within 30 days of his initial employment date.
- (2) The license or permit holder requires each employee to maintain a currently valid seller server certificate.

(3) The license or permit holder adopts written policies and procedures that are designed to prevent, and that affirm a strong commitment by the license or permit holder to prohibit:

- (A) the sale, service, dispensation or delivery of an alcoholic beverage to:
  - (i) a person who is not a member of a private club on the club premises;
  - (ii) a minor; or
  - (iii) an intoxicated person; and
- (B) the consumption of an alcoholic beverage by:
  - (i) a person who is not a member of a private club on the club premises;
  - (ii) a minor; or
  - (iii) an intoxicated person.

(4) The license or permit holder ensures that all employees have read and understood the license or permit holder's policies and procedures described in paragraph (3) of this subsection.

(5) The license or permit holder maintains records for at least one year after the date employment was terminated that show that each employee read and understood the license or permit holder's current policies and procedures described in paragraph (3) of this subsection.

(g) For purposes of this section, "employee" includes all persons paid by a license or permit holder to sell, serve, dispense, or deliver alcoholic beverages or to immediately manage, direct, supervise or control the sale or service of alcoholic beverages.

(h) At a hearing in which the license or permit holder asserts the affirmative defense established in Alcoholic Beverage Code §106.14(a), the commission may present evidence to establish a rebuttable presumption under this section. If the evidence is sufficient to establish a prima facie case, the burden of persuasion in the proceeding shifts to the license or permit holder to show that it has not indirectly encouraged a violation of the law within the meaning of Alcoholic Beverage Code §106.14(a)(3).

(i) The rebuttable presumptions authorized in this section are not the exclusive means by which the commission may establish that a license or permit holder has indirectly encouraged a violation of the law within the meaning of Alcoholic Beverage Code §106.14(a)(3).

(j) Notwithstanding §34.1(j), this section applies to contested cases under the Administrative Procedure Act and to complaints or violations referred to the legal division of the commission for resolution.

*Note: Readopted Without Changes and Effective: March 27, 2018*

### **§34.5 Mandatory Participation in Seller Server Certification**

(a) After notice and an opportunity for hearing, the commission may require by written order that a licensee or permittee require all of its employees to acquire and maintain seller server certification under Chapter 50 of this title, pursuant to Alcoholic Beverage Code §106.14. Such requirement may be imposed on a licensee or permittee that has:

(1) violated a provision of the code or rules relating to the sale, service, dispensation or delivery of alcoholic beverages to a minor or intoxicated person more than once in a twelve month period; or

(2) been found, by administrative order or court of competent jurisdiction, to have engaged in conduct directly or indirectly encouraging violations of law within the meaning of Alcoholic Beverage Code §106.14(a)(3).

(b) An order issued under this section shall remain in effect until such time as the licensee or permittee has established 24 continuous months of operation from the date of the last violation without violation of a provision of the code or rules relating to the sale, service, dispensation or delivery of alcoholic beverages to a minor or intoxicated person.

(c) A licensee or permittee who wants a hearing prior to the issuance of an order authorized by this section must request the hearing within 10 days of receipt of notice from the commission.

(d) Notwithstanding subsection §34.1(j), this section applies to contested cases under the Administrative Procedure Act and to complaints or violations referred to the legal division of the commission for resolution.

*Note: Readopted Without Changes and Effective: March 27, 2018*

### **§34.6 Liability for Actions of Alcohol Delivery Drivers**

(a) These terms, when used in this rule, have the following meanings:

(1) Delivery driver – any person engaged by a consumer delivery permit holder as an alcohol delivery driver including, but not limited to those hired directly, hired indirectly, paid, unpaid, or contracted, whether or not in a supervisory role.

(2) Delivery driver training program – a commission-approved alcohol delivery driver certification program under chapter 50 of this title, established pursuant to Alcoholic Beverage Code §57.09.

(b) A delivery driver shall not deliver an alcoholic beverage in violation of Chapter 57 of the Alcoholic Beverage Code.

(c) The actions of a delivery driver acting on behalf of a holder of a consumer delivery permit are not attributable to the holder of a consumer delivery permit if the permit holder has not directly or indirectly encouraged the delivery driver to violate the law and the delivery driver:

(1) at the time the delivery occurred, held a valid certification from a delivery driver training program; or

(2) completed the delivery using an alcohol delivery compliance software application that meets the requirements established under Alcoholic Beverage Code §57.09.

(d) The holder of a consumer delivery permit may establish a rebuttable presumption that it has not directly or indirectly encouraged the delivery driver to violate Chapter 57 of the Alcoholic Beverage Code by providing proof that:

(1) each of the permit holder's delivery drivers engaged by the permit holder during the twenty-four months prior to the violation have actually attended a delivery driver training program and maintained alcohol delivery driver training certification for the entire duration of their engagement by the permit holder as a delivery driver;

(2) prior to the violation, the permit holder adopted written policies and procedures designed to prevent, and that affirm a strong commitment by the permit holder to prohibit violations of Chapter 57 of the Alcoholic Beverage Code; and

(3) all delivery drivers have read and understood such policies and procedures.

(e) The consumer delivery permit holder is not entitled to the rebuttable presumption in subsection (d) of this section if the commission provides proof of violations of Chapter 57 of the Alcoholic Beverage Code on two or more prior occasions by any delivery driver making a delivery of alcohol on the permit holder's behalf in the twelve months preceding the current violation, or on three or more prior occasions by any delivery driver making a delivery of alcohol

on the permit holder's behalf in the twenty-four months preceding the current violation.

(f) Criminal Negligence.

(1) Regardless of whether the permit holder has directly or indirectly encouraged the delivery driver to violate Alcoholic Beverage Code Chapter 57, the commission or executive director may suspend a consumer delivery permit as prescribed by Alcoholic Beverage Code §57.08 if, after notice and hearing, a court or administrative hearing officer finds that a delivery driver made a delivery on the permit holder's behalf with criminal negligence.

(2) It is a rebuttable presumption that delivery of an alcoholic beverage to a minor or an intoxicated person was not made with criminal negligence if the delivery driver:

(A) at the time of the delivery held a valid certification from a delivery driver training program; and

(B) completed the delivery as a result of a technical malfunction of an alcohol delivery compliance software application that otherwise meets the requirements of §35.7 of this title (relating to Alcohol Delivery Compliance Software Applications).

*Note: Original Rule Effective: December 9, 2020*

## **CHAPTER 35. ENFORCEMENT**

### **SUBCHAPTER A. TRANSPORTATION OF LIQUOR**

#### **§35.1 Transportation of Alcoholic Beverages by Package Stores and Wine Only Package Stores**

*Note: Repeal Effective: December 6, 2021*

#### **§35.2 Transportation of Imported Liquor**

*Note: Repeal Effective: December 6, 2021*

#### **§35.3 Vehicle Identification**

*Note: Repeal Effective: December 6, 2021*

#### **§35.5 Private Carrier Permit Requirements**

*Note: Repeal Effective: December 6, 2021*

#### **§35.6 Regional Forwarding Centers**

*Note: Repeal Effective: December 6, 2021*

#### **§35.7. Alcohol Delivery Compliance Software Applications**

(a) Definition. In this section, the term "software application" means an alcohol delivery compliance software application.

(b) To qualify for limitations on liability for the actions of its delivery drivers under Alcoholic Beverage Code § 57.08 by using a software application, a consumer delivery permit

holder must require its drivers to use a software application when delivering alcoholic beverages that meets the minimum requirements of this rule.

(c) The software application must enable the delivery driver to:

- (1) access electronically readable data from a government-issued driver's license or identification card;
- (2) manually enter the birthdate of the holder of the driver's license or identification card, in the event that the information cannot be read electronically for any reason;
- (3) provide an affirmation electronically that at the time of delivery, the person accepting the alcoholic beverage delivery:
  - (A) does not display signs of intoxication;
  - (B) presents a valid, unexpired government-issued driver's license or identification card; and
  - (C) is 21 years of age or older;
- (4) cancel the transaction in the event that delivery is not completed;
- (5) indicate the reason for any non-delivery of alcoholic beverage(s), which at a minimum must include the options to select:
  - (A) person receiving the delivery displayed signs of intoxication;
  - (B) person receiving the delivery failed to present a valid, unexpired government-issued driver's license or identification card demonstrating that the holder is at least 21 years of age; or
  - (C) unable to complete delivery within a reasonable amount of time after leaving the retailer's premises, which is now closed; and
- (6) record the disposition of any undelivered alcohol.

(d) Delivery address verification.

(1) The consumer delivery permit holder is responsible for ensuring the type of alcoholic beverage ordered can legally be delivered to the delivery address (wet/dry status). This may be accomplished automatically, either during the online ordering process or by the software application, or by the delivery driver, using the software application.

(2) If the consumer delivery permit holder's online ordering process or the software application automatically verifies that the type of alcoholic beverage ordered can legally be delivered to the delivery address, the software application must enable the delivery driver to affirm that the delivery address is the same address entered during the online ordering process.

(3) The mechanism or program employed to comply with this section must use, at a minimum, publicly available information provided by the commission regarding the eligibility for sale of each type of alcohol to the delivery address.

(e) In addition to all other requirements of this rule, a software application used in the delivery of alcohol to a consumer pursuant to Alcoholic Beverage Code §28.1001 must enable the delivery driver to affirm that:

- (1) the amount of distilled spirits delivered does not exceed 375 milliliters;
- (2) all alcoholic beverages are delivered in containers sealed by the manufacturer; and
- (3) food was delivered concurrently with the alcoholic beverage(s).

(f) The software application must use industry standard mechanisms to authenticate the identity of each delivery driver using the software application. At a minimum, the software application must use a generally accepted single-factor authentication method to verify the identity of the user, such as a password or biometric identification.

(g) The consumer delivery permit holder must maintain the following information for each

transaction and must provide it to the commission upon request:

- (1) whether the consumer passed or failed age verification, based on either the reading of the electronically readable data from the driver's license or identification card or manual entry of the birthdate on the driver's license or identification card presented at the time of delivery;
  - (2) the physical address to which the alcoholic beverage was delivered;
  - (3) the specific alcoholic beverage(s) or type(s) of alcohol delivered (e.g., malt beverages, wine, and/or distilled spirits);
  - (4) time stamps for when the order was received, when the delivery driver obtained the alcoholic beverages from the retailer, and when the alcoholic beverages were either delivered to the consumer or the transaction was canceled;
  - (5) information related to the disposition of undelivered alcoholic beverages; and
  - (6) the software application compliance features used on the date of the transaction.
- (h) The information listed in subsection (g) of this section:
- (1) must be stored for at least six months; and
  - (2) if the information is the subject of an ongoing commission enforcement action, must be stored in the consumer delivery permit holder's usual manner until the enforcement action is closed.
- (i) Information from a government-issued driver's license or identification card accessed under this section must be maintained and used in a manner compliant with Alcoholic Beverage Code § 109.61.
- (j) The consumer delivery permit holder may submit its software application compliance features to the commission for review prior to rollout of the initial version, and at any time the software application compliance features are updated in a manner that may impact its compliance with the requirements of this rule. The commission will provide the permit holder with an opinion as to whether the software application compliance features meet rule requirements or need changes to come into compliance.
- (k) The commission may perform periodic audits to verify compliance with this rule.

*Note: Original Rule Effective: August 19, 2020*

## **SUBCHAPTER B. PROHIBITED EQUIPMENT**

### **§35.11 Bottle Capping Devices**

No member of the retail or wholesale tiers may, for unlawful purposes, possess on the licensed premises a device used for capping or recapping of beverage bottles.

*Note: Amended Rule Effective: August 18, 2015*

## **SUBCHAPTER C. MINORS**

### **§35.21 Assist Defined**

The word "assist" as used in Alcoholic Beverage Code §106.09(a) and §61.71(a)(12) shall not be construed to mean that a person under 18 years of age assists in selling, serving, preparing, handling, or dispensing alcoholic beverages merely by being employed to work on or about a premises where alcoholic beverages are sold or served, as long as the person under 18 years of age does not have a direct and immediate connection with any particular sale or service of such



beverages.

*Note: Amended Rule Effective: April 18, 2017*

## **SUBCHAPTER D. PLACE OR MANNER**

### **§35.31 Offenses Against the General Welfare**

(a) This rule relates to §§11.46(a)(8), 11.61(b)(7), 61.42(a)(3) and 61.71(a)(17) of the Alcoholic Beverage Code.

(b) A licensee or permittee violates the provisions of the Alcoholic Beverage Code cited in paragraph (a) of this rule if any of the offenses listed in paragraph (c) of this rule are committed:

(1) by the licensee or permittee in the course of conducting his/her alcoholic beverage business; or

(2) by any person on the licensee or permittee's licensed premises; and

(3) the licensee or permittee knew or, in the exercise of reasonable care, should have known of the offense or the likelihood of its occurrence and failed to take reasonable steps to prevent the offense.

(c) The offenses that are the subject of this rule are as follows:

(1) any preparatory offense described in Chapter 15 of the Texas Penal Code;

(2) any homicide offense described in Chapter 19 of the Texas Penal Code;

(3) any trafficking or smuggling of a person or receipt of benefit from participating in a human trafficking offense described in Chapter 20A of the Texas Penal Code or 18 U.S.C. §1581-1592;

(4) any sexual offense described in Chapter 21 of the Texas Penal Code;

(5) any assaultive offense described in Chapter 22 of the Texas Penal Code;

(6) any arson, criminal mischief or property damage or destruction offense described in Chapter 28 of the Texas Penal Code;

(7) any theft offense described in Chapter 31 of the Texas Penal Code;

(8) any fraud offense described in Chapter 32 of the Texas Penal Code;

(9) any money laundering offense described in Chapter 34 of the Texas Penal Code;

(10) any bribery offense described in Chapter 36 of the Texas Penal Code;

(11) any obstruction offense described in Chapter 38 of the Texas Penal Code;

(12) any disorderly conduct or related offenses described in Chapter 42 of the Texas Penal Code;

(13) any public indecency offense described in Chapter 43 of the Texas Penal Code;

(14) any weapons offense described in Chapter 46 of the Texas Penal Code;

(15) any gambling offense described in Chapter 47 of the Texas Penal Code;

(16) any narcotics related offense described in Chapters 481 and 483 of the Texas Health and Safety Code;

(17) any law, regulation or ordinance of the federal government or of the county or municipality in which the licensed premises is located, violation of which is detrimental to the general welfare, health, peace and safety of the people.

(d) This rule does not constitute the exclusive means by which §§11.46(a)(8), 11.61(b)(7), 61.42(a)(3) and 61.71(a)(17) may be violated.

*Note: Amended Rule Effective: October 17, 2019*

### **§35.32 Reporting a Breach of the Peace**

- (a) This section relates to Alcoholic Beverage Code §11.61(b)(21) and §61.71(a)(31).
- (b) Except as provided in this subsection, a permittee or licensee shall report to the commission a breach of the peace on a licensed premises as soon as possible, but not later than five calendar days after the incident. If a shooting, stabbing or murder, or an incident involving serious bodily injury, occurs on the licensed premises, the permittee or licensee shall report the breach of the peace not later than 24 hours from the time of the incident.
- (c) Unless the report is required to be made in a specific manner pursuant to subsection (d) of this section, the report required by this section shall be made:
  - (1) in person at any commission office;
  - (2) by facsimile transmission to the appropriate commission office;
  - (3) through the commission's website;
  - (4) by e-mail to [breachofpeace@tabc.texas.gov](mailto:breachofpeace@tabc.texas.gov); or
  - (5) by a commission-authorized mobile application.
- (d) The administrator or administrator's designee may require, in writing, that a permittee or licensee make any reports required by this section in a specific manner as instructed, if the permittee or licensee has previously violated Alcoholic Beverage Code §11.61(b)(21) or §61.71(a)(31).
- (e) At a minimum, the report required by this section shall include the information required in paragraphs (1) - (9) of this subsection, but may include other information the person making the report wishes to include:
  - (1) the date and time of the report;
  - (2) the date and time of the incident being reported;
  - (3) the trade name of the licensed premises where the incident occurred;
  - (4) the name and physical location of the licensed premises where the incident occurred, including the city (if applicable) and county;
  - (5) the name of the person filing the report, that person's relationship to the holder of the permit or license, and contact information for that person;
  - (6) if different from the information given in response to paragraph (5) of this subsection, the name of the person designated by the holder of the permit or license to answer questions from the commission about the incident, that person's relationship to the permit or license holder, and contact information for that person;
  - (7) a brief description of the incident;
  - (8) the name of all law enforcement agencies who were called or otherwise appeared in connection with the incident, and the names of the officers involved (if known); and
  - (9) the names and contact information of any witnesses to the incident (if known).
- (f) For purposes of subsection (b) of this section and subject to the provisions of subsection (g) of this section, a reportable "breach of the peace" occurs when law enforcement or emergency medical services personnel respond to the licensed premises, or when a disturbance is created on the licensed premises by a person:
  - (1) shooting, stabbing or murdering a person;
  - (2) causing bodily injury to another person;
  - (3) threatening another person with a weapon;
  - (4) discharging a firearm on the licensed premises; or
  - (5) destroying the permittee's or licensee's property, if the incident is reported by the permittee or licensee to a law enforcement agency.

- (g) For purposes of this section:
- (1) conduct identified in subsection (f) of this section (other than a shooting, stabbing or murder, or an incident involving serious bodily injury) creates a "disturbance", and therefore is a reportable breach of the peace, when it:
    - (A) occurs at a time when the permittee or licensee, or any person allowed by the permittee or licensee, is on the licensed premises; and
    - (B) interferes with, interrupts, or intrudes upon the operation or management of the licensed premises;
  - (2) a shooting, stabbing or murder, or an incident involving serious bodily injury, on the licensed premises is always a "disturbance", and therefore is always a reportable breach of the peace;
  - (3) a "licensed premises" is as defined in Alcoholic Beverage Code §11.49;
  - (4) a "permittee" is as defined in Alcoholic Beverage Code §1.04(11); and
  - (5) a "licensee" is as defined in Alcoholic Beverage Code §1.04(16).
- (h) A permittee or licensee may not be held administratively liable for failing to file a report or failing to file a timely report under this section if the permittee or licensee can demonstrate that he had no knowledge, nor in the exercise of reasonable care should have had knowledge, of the alleged breach of peace on the licensed premises.

*Note: Amended Rule Effective: August 16, 2016*

## **SUBCHAPTER E. DEFINITIONS**

### **§35.41 Terms Defined**

The following words and terms, when used in this chapter, shall have the following meanings, except when the context clearly indicates otherwise.

- (1) Lewd and vulgar entertainment or acts--Any sexual offenses contained in the Texas Penal Code, Chapter 21 or any public indecency offenses contained in the Texas Penal Code, Chapter 43 (See Texas Alcoholic Beverage Code, §104.01(6)).
- (2) Narcotic--Any substance defined in the Texas Controlled Substances Act, §481.002(5),(6),(7), or (26). (See Texas Alcoholic Beverage Code, §104.01(9).)

*Note: Readopted Without Changes and Effective: May 28, 2015*

## **SUBCHAPTER F. INSPECTIONS**

### **§35.50 Physical Inspection of Licensed and Permitted Premises**

- (a). This section implements Alcoholic Beverage Code §5.361(a-2)(2).
- (b). Notwithstanding §35.51(d), the commission will physically inspect each in-state licensed or permitted premises at least once every eight (8) years.

*Note: Original Rule Effective: February 19, 2020*

### **§35.51 Risk-Based Inspection of Licensed and Permitted Premises**

- (a) This rule implements Alcoholic Beverage Code §5.361(a-1) and (a-2)(1), which require the commission to develop by rule a plan for inspecting permittees and licensees using a risk-

based approach that prioritizes public safety.

(b) The commission will classify each licensed or permitted premises as priority or non-priority, for inspection purposes. In classifying a premises, the commission may consider factors including, but not limited to:

- (1) the type of permit or license held;
- (2) the location of the permittee's or licensee's premises;
- (3) previous public safety violations committed by the premises;
- (4) any breaches of the peace occurring at the permittee's or licensee's premises;
- (5) the permittee's or licensee's record of compliance with the Alcoholic Beverage Code and these rules;
- (6) any public safety-related complaints received by the commission against the premises;
- (7) whether the premises has regularly completed and submitted the report required by §41.22, of this title, concerning Compliance Reporting by License and Permit Holders; and
- (8) whether the premises is a "priority location" for enforcement purposes under subsection (c) of this section.

(c) For purposes of this section, a premises is a "priority location" if:

- (1) any public safety-related violations have occurred on the premises during the past six months;
- (2) the commission is currently investigating any allegations of public safety violations at the premises;
- (3) the premises has been licensed for less than two years for off-premises consumption, and has not been the target of any underage compliance operation or other public safety operation; or
- (4) the premises has been licensed for less than two years for on-premises consumption, holds a late hours permit or license, and has not been the target of an underage compliance operation or other public safety operation.

(d) The commission will inspect a permitted or licensed premises classified as:

- (1) priority not less than once every six months; or
- (2) non-priority on an as-needed basis.

(e) Inspections under this section may be virtual, physical, or a combination of both.

*Note: Original Rule Effective: February 19, 2020*

## **CHAPTER 36. GUN REGULATION**

### **§36.1 Possession and Sale of Firearms on Licensed Premises**

(a) Gun Shows. A permittee/licensee may use or allow a portion of the grounds, buildings, vehicles and appurtenances of the licensed premises for the use of gun shows if the permittee/licensee:

- (1) suspends all sales, complimentary offers and consumption of all alcoholic beverages during the gun show including time required for preparation or set-up and dismantling of the gun show; and
- (2) operates its licensed premises at a facility regularly used for special functions, directly or indirectly, under a lease, concession or similar agreement from a governmental entity

or legally formed and duly recognized civic, religious, charitable, fraternal or veterans organization.

(b) Off-Premise Retailers and Gun Sales. The holder of a retail dealer's off-premise license, a wine and beer retail dealer's off-premise permit, a wine only package store or package store permit may allow the sale or offer for sale firearms at the licensed location if:

(1) alcoholic beverages are not being displayed or sold in any area where firearms are readily accessible or can be viewed; and

(2) the firearms are secure from the general public and are only accessible by employees of the person or entity offering the firearms for sale.

(c) On-Premise Possession of Firearms. Firearms may be possessed on premises licensed for on-premise consumption if:

(1) the firearm is in the possession of the permittee/licensee; or

(2) the firearm is:

(A) possessed for ceremonial and/or display purposes;

(B) disabled from use as a firearm while on the licensed premises;

(C) is possessed on the licensed premises in connection with charitable fundraising; and

(D) remains in the possession, control or supervision of person or persons acting on behalf of the charitable organization sponsoring the fundraising activity.

(d) Historical Reenactments. Pursuant to §11.61(i) of the Texas Alcoholic Beverage Code, a historical reenactment utilizing firearms maybe conducted on the premises of a permit or license if:

(1) the firearms are of the type, caliber, or gauge common to the era and event being reenacted;

(2) such firearms remain in the possession of members of the cast, production company, employees of the permit holder, or others directly involved in the reenactment and are not left unattended or accessible to unauthorized persons at all times such firearms are on the licensed premises;

(3) such firearms remain unloaded at all times while on the licensed premises except that the firearms may be loaded with blank ammunition firing no projectile;

(4) such firearms shall be handled in a safe manner so as to present no threat of injury to audience members or others because of discharge or other use;

(5) persons engaged in reenactments shall maintain a minimum of 15 feet intervals between those armed with pistols and all others, and 40 feet between those armed with shotguns and all others;

(6) the permittee shall adopt safety rules to be employed during the reenactment and such rules shall be read and signed by all employees of the permit holder involved in the reenactment prior to the beginning of the event; and

(7) the permittee provides the relevant Commission District Office or outpost notice of the reenactment at least three business days before the event.

*Note: Readopted Without Changes and Effective: March 27, 2018*

## **CHAPTER 37. LEGAL**

## **SUBCHAPTER A. RULES OF PRACTICE**

### **§37.2 Contested Case**

(a) This rule relates to any contested case under the Alcoholic Beverage Code (Code) where notice and hearing are required, or an opportunity for public participation is provided under the Code.

(b) All notices and pleadings in a contested case shall comply with the provisions of Texas Government Code, Chapter 2001, Subchapters C, D, and F and the rules of procedure adopted by the State Office of Administrative Hearings in Title 1, Texas Administrative Code, Chapter 155.

*Note: Readopted Without Changes and Effective: May 28, 2015*

### **§37.5 Determining Population**

For purposes of any provision of the Alcoholic Beverage Code or the commission's rules that refers to population, it shall be determined by the most recent federal decennial census.

*Note: Amended Rule Effective: June 18, 2015*

## **SUBCHAPTER B. PENALTIES**

### **§37.61 Suspensions**

(a) This section implements Alcoholic Beverage Code §11.64(a), which requires the commission to adopt rules addressing when a suspension may be imposed without the opportunity to pay a civil penalty.

(b) The administrator may deny a licensee or permittee the option of paying a civil fine in lieu of a suspension of the license or permit if the licensee or permittee has violated one or more of the following provisions of the Alcoholic Beverage Code:

- (1) §11.61(b)(14): sale to an intoxicated person by a permittee;
- (2) §22.12: breach of the peace on the premises of a package store;
- (3) §28.11: breach of the peace on the premises of a mixed beverage permittee;
- (4) §32.17(a)(2): refuse to allow an authorized agent or representative to come onto the premises;
- (5) §32.17(a)(3): refuse to furnish requested information to the commission or its agents or representatives;
- (6) §32.17(a)(7): consumption or service of alcohol on the premises during prohibited hours;
- (7) §61.71(a)(5): sale to a minor by a licensee;
- (8) §61.71(a)(6): sale to an intoxicated person by a licensee;
- (9) §61.74(a)(14): sale to a minor by a licensee;
- (10) §69.13: breach of the peace on the premises of an on-premise retail beer dealer;
- (11) §71.09: breach of the peace on the premises of an off-premise retail beer dealer;
- (12) §101.04: refuse to allow inspection;
- (13) §104.01(a)(4): solicitation of drinks;
- (14) §101.63: sale to an intoxicated person;
- (15) §106.03: sale to a minor;
- (16) §106.06: purchase of alcohol for a minor;

- (17) §106.15: engage in prohibited activity related to dancing by a person under 18;
- (18) Chapter 105: sale or offer of sale of an alcoholic beverage during prohibited hours, or consumption or permitting consumption of an alcoholic beverage during prohibited hours;
- (19) any offense relating to gambling, prostitution or trafficking of persons; or
- (20) any offense relating to controlled substances or drugs.

(c) For the violations referenced in subsection (b) of this section, and after considering the circumstances required or allowed to be considered in this section, the administrator has discretion to determine whether to allow a licensee or permittee the right to pay a civil penalty in lieu of a suspension but is not required to allow such payment in lieu of suspension.

(d) In determining whether to deny a licensee or permittee the right to pay a civil penalty in lieu of a suspension, the administrator shall consider any aggravating or mitigating factual circumstances related to the violation, including but not limited to:

- (1) the type of permit or license held by the violating licensee or permittee;
- (2) the type of violation or violations charged;
- (3) the licensee's or permittee's record of past violations, including the number, type and frequency of violations of the Alcoholic Beverage Code and of the rules of the commission; and
- (4) the date the permit or license was issued.

(e) In addition to the circumstances listed in subsection (d) of this section that must be considered in determining whether to allow a licensee or permittee the right to pay a civil penalty in lieu of a suspension, the administrator may also consider other circumstances, including but not limited to:

- (1) whether the sale of alcoholic beverages constitutes the primary or partial source of the licensee or permittee's business;
- (2) whether the violation was caused by intentional or reckless conduct by the licensee or permittee;
- (3) whether the violation caused the serious bodily injury or death of another;
- (4) whether the character and nature of the licensee's or permittee's operation were reasonably calculated to avoid violations of the Alcoholic Beverage Code and rules of the commission at the time of violation; and/or
- (5) whether the licensee or permittee has taken action to remediate the violation and to prevent future violations.

*Note: Amended Rule Effective: October 17, 2017*

## **CHAPTER 39. PORT OF ENTRY**

### **§39.1 Personal Importation**

(a) This section applies to alcoholic beverages imported into this state for personal use under the authority of Alcoholic Beverage Code §§107.07, 201.71 and 201.81.

(b) All alcoholic beverage containers imported into Texas for personal consumption are subject to the state tax and a \$3.00 administrative fee. This administrative fee shall be included in the posted tax rates.

(c) Payment of the fees and taxes must be documented by a tax stamp.

*Note: Amended Rule Effective: August 17, 2016*

## **CHAPTER 41. AUDITING**

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **§41.1 Scope & Applicability**

- (a) This chapter relates to and implements chapters 201, 202, and 203 of the Alcoholic Beverage Code.
- (b) The rules in this chapter apply to regulated entities required to keep records and/or file reports for taxation purposes.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.2 Timely Filing of Reports**

With respect to all tax reports required under the Texas Alcoholic Beverage Code, Chapter 201, or this chapter, it is a violation of this rule if a report or a payment is not received or postmarked by 11:59 p.m. on the date that it is due.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.3 Required Signature**

Each report required by this chapter shall be signed and affirmed to be true and correct by the permittee or licensee or a duly authorized representative.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.4 Report and Record Retention**

- (a) The license or permit holder must keep all records required by the Alcoholic Beverage Code or by rule and an exact copy of each report required by this chapter for a period of at least two years, unless a different period is specified in the Alcoholic Beverage Code or in another rule.
- (b) The license or permit holder must keep all records and reports available for inspection by the commission or its authorized representatives during reasonable office hours.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.5 Records and Invoice Requirements**

- (a) An invoice that is required by the Alcoholic Beverage Code or by rule for any alcoholic beverage must have the exact trade name and license or permit number of the issuing licensee or permittee and the receiving licensee or permittee, if any.
- (b) A licensee or permittee who owns more than one business operating under separate licenses or permits or a single business operating at two or more locations under separate licenses or permits shall keep separate records for each such business or place of business.
- (c) Each licensee or permittee who is also engaged in any other kind of business shall make and keep all records for the alcoholic beverage business that are required by the Alcoholic Beverage Code or by rule separate and apart from any and all other records.



(d) Making a false entry or any alteration in records that are required by the Alcoholic Beverage Code or by rule is a violation of this section.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.6. Failure to Make Reports and Records**

Failing to make any record or report required by this chapter, or failing to make any entry or entries on any record or report required by this chapter at the time or in the place or manner required, is a violation of this section.

*Note: Original Rule Effective: December 6, 2021*

### **SUBCHAPTER B. RECORDKEEPING & REPORTS**

#### **§41.11 Basic General Records Required**

(a) Except as provided by subsections (b) and (c) of this section, a brewer, distiller, winery, rectifier, wholesaler, Class B wholesaler, package store, brewpub, or distributor must keep at each place of business, for a period of two years, for inspection at all times by the commission or its authorized representatives:

(1) a complete record of all alcoholic beverages manufactured, distilled, sold, purchased, received, blended, or bottled, including all invoices, bills of lading, way bills, freight bills, express receipts, and all other shipping records furnished by the carrier and the seller or shipper of the alcoholic beverages, including, at a minimum:

(A) the name and address of the person from whom alcoholic beverages were purchased;

(B) the name and address of the person receiving alcoholic beverages;

(C) the address from which the alcoholic beverages were shipped or delivered;

(D) the address at which the alcoholic beverages were received;

(E) the quantity and kind of alcoholic beverage received; and

(F) except as provided in subsection (b) of this section, inventories on the last day of each month, showing the quantities, sizes, brands, and taxable class of beverages on hand; and

(2) a complete record of each sale or distribution of alcoholic beverages, upon an invoice to be furnished by the licensee or permittee.

(b) Package store permittees are not required to keep inventories of alcoholic beverages on hand on the last day of each month under subsection (a)(1)(F) of this section.

(c) Wine and malt beverage retailers are required to keep the records required by subsection (a) of this section only as to wine purchases.

(d) Invoices must:

(1) be printed, numbered, and issued in consecutive order;

(2) show the date of sale or distribution, the purchaser's tradename, purchaser's license or permit number, purchaser's address, the means of delivery, the name and permit number of the carrier (if delivered by common carrier), and the quantity, price, container size and brand name of alcoholic beverages sold;

(3) be supported by the receipts or other records furnished by the carrier of such alcoholic beverages; and

(4) include the alcohol percentage by volume or an approved symbol or statement in the product description for malt beverages.

(e) The licensee or permittee making the sale shall keep each invoice or a copy thereof and shall deliver an invoice to the purchaser.

(f) Each purchaser and seller of tax-free alcohol shall keep for inspection of the commission or its authorized representatives all invoices of tax-free alcohol for a period of at least two years.

(g) License and permit holders selling alcoholic beverages to-go under Alcoholic Beverage Code Chapter 28 or 32 shall maintain receipts for those sales for a period of at least six months.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.12 Compliance Reporting by License and Permit Holders**

(a) This rule implements Alcoholic Beverage Code §§5.31 and 5.361. The purpose of this rule is to allow the commission to better leverage resources in meeting its charge to inspect, supervise, and regulate members of the alcoholic beverage industry; reduce unnecessary physical inspections of industry locations; and use automation to better and more efficiently protect public safety and serve the alcoholic beverage industry.

(b) Each permittee and licensee must prepare and file an automated compliance report with the commission as instructed by the commission. The commission may require that the report be filed using a specified digital application.

(c) The commission will annually notify each permittee and licensee of the requirement to file its compliance report. The license or permit holder will have 90 days from the date of notification to file the report.

(d) The commission may issue a written warning to a permittee or licensee who fails to file the mandated compliance report within 90 days of being notified by the commission. The commission may initiate an administrative case to cancel or suspend the license or permit of any permittee or licensee who does not file the compliance report within 30 days following issuance of the written warning.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.13 Carrier Report**

(a) Each holder of a carrier permit under Chapter 41 of the Alcoholic Beverage Code shall make a monthly report to the commission on forms prescribed by the executive director.

(b) The permittee shall file the report with the commission on or before the 15th day of the month following the calendar month for which the report is made.

(c) The report shall give an accurate account of all liquor, wine, and malt beverages transported by the carrier in interstate commerce during the month for which the report is made, and shall state the date of shipment, consignor, point of origin, consignee, destination, freight bill number, number of packages, kind of commodity shipped, and the date of delivery, and shall give all information requested by the form. If no shipments were transported, the permittee shall submit a report stating so.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.14. Transfer of Alcoholic Beverages by Package Stores and Wine-Only Package Stores**

(a) This rule relates to transportation of alcoholic beverages under the authority of §§22.08, 23.04 or 24.04 of the Alcoholic Beverage Code.

(b) Only a holder of a package store permit, wine-only package store permit, local distributor's permit, or a carrier's permit may transport alcoholic beverages under the authority of §§22.08, 23.04 or 24.04 of the Alcoholic Beverage Code.

(c) Package stores and wine only package store permittees transporting shipments of alcoholic beverages governed by this rule to a permitted location shall prepare an invoice in duplicate. The invoice shall show:

(1) the date of the shipment;

(2) the quantity, container size and brands of alcoholic beverages shipped, and if sold, a price extension for each line item listed on the invoice; and

(3) the store name and address of the origination and destination point of the shipment.

(d) The purchaser must sign the invoice acknowledging receipt of the alcoholic beverages.

(e) The original of the invoice mandated by this rule shall be maintained at the originating store for two years after the date of shipment. The copy of the invoice shall accompany the shipment and be maintained at the receiving store for two years after the date of shipment.

(f) Shipments of alcoholic beverages governed by this rule may not be transported outside the county in which the shipment originated and must be transported by the most direct practical route from point of origination to point of destination.

(g) Shipments made by local distributor permittees under the authority of §23.04 of the Alcoholic Beverage Code are subject to the restrictions expressed in §102.56(d) of the code.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.15. Transportation of Imported Alcoholic Beverages**

(a) This rule relates to alcoholic beverages imported into the state under the authority of §§14.071, 16.10, 19.06, 20.04, 41.01(a), 62.15, 63.01, 64.10, and 66.01 of the Alcoholic Beverage Code.

(b) Alcoholic beverages imported into the state for resale may only be transported by the holder of a license or permit authorizing transport or a carrier's permit. Shipments of alcoholic beverages into the state must be accompanied by an invoice.

(c) Nonresident sellers shipping alcoholic beverages for importation to any class of licensees or permittees shall cause the invoice covering that shipment of alcoholic beverages to show delivery to the authorized license or permit holder.

(d) All license and permit holders subject to this section shall transport alcoholic beverages by the most direct route practical to the place of destination.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.16. Tamper-proof Containers**

(a) This rule relates to Alcoholic Beverage Code §§28.1001 and 32.155.

(b) A "tamper-proof container" means a container that, once sealed, clearly shows whether it has been opened. The term includes a closed cup or similar container that is:

(1) placed into a bag that has been sealed with a zip tie or staple;

(2) sealed with shrink wrap or a similar seal;

- (3) sealed with a tamper-evident adhesive tape or seal having one or more indicators or barriers to entry which, if breached or missing, can reasonably be expected to provide visible evidence that tampering has occurred; or
- (4) sealed mechanically on-premises with a can seamer.
- (c) The following sealing methods, unless used in combination with a method described in subsection (b) of this section, are not sufficient to meet the standard for a tamper-proof container:
  - (1) freezing the beverage, putting a lid on it, and leaving the straw out of the lid's straw hole; and
  - (2) sealing with a sticker or adhesive tape that is not tamper-evident.
- (d) The list in subsection (c) of this section is non-exclusive.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.17. Vehicle Identification and Liability**

- (a) This rule applies to vehicles used in the alcoholic beverage business by license and permit holders operating under the authority of §§ 14.071, 19.06, 20.04, 22.08, 24.04, 62.15, or 64.10 of the Alcoholic Beverage Code.
- (b) Each vehicle subject to this section shall have the correct TABC license or permit number painted or printed or attached in a conspicuous place on the vehicle, with each character being not less than 1.5 inches in height. These characters shall never be covered from public view when the vehicle is being used in the alcoholic beverage business.
- (c) For each vehicle subject to this section, the license or permit holder shall carry at least \$500,000 of liability insurance for bodily injury and property damage covering every registered vehicle whose gross weight, registered weight or gross-weight rating exceeds 26,000 pounds.
- (d) For each vehicle subject to this section or operating pursuant to §16.10 of the Alcoholic Beverage Code, the license or permit holder shall file with the commission an affidavit stating that the license or permit holder has knowledge of, and will conduct operations in accordance with, all federal and state safety regulations, and that it is in compliance with the requirements for insurance coverage under this section.
- (e) For each vehicle subject to this section, the license or permit holder shall maintain proof of insurance in the licensed or permitted vehicle at all times.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.18. Regional Forwarding Centers**

- (a) This rule relates to Alcoholic Beverage Code, §§37.01(a)(2), 62.08, and 63.01.
- (b) Members of the manufacturing tier transporting alcoholic beverages into the state, or from point to point within the state under the authority of Alcoholic Beverage Code §§37.01(a)(2), 62.08(a), or 63.01 may temporarily hold such alcoholic beverages in a regional forwarding center, subject to the following conditions:
  - (1) A regional forwarding center is a facility wherein alcoholic beverages may be held under the control of the manufacturing tier member responsible for shipping the alcoholic beverages.
  - (2) The regional forwarding center may be operated by a third party who acts as the agent of the manufacturing tier member in arranging for interstate or intrastate shipments of

alcoholic beverages to licensees and permittees authorized to receive such beverages or for shipment to locations outside the state.

(3) No member of the wholesale or retail tiers of the alcoholic beverage industry may, directly or indirectly, hold any interest in, or right of operation of a regional forwarding center.

(4) No alcoholic beverages may be sold to a person or entity from a regional forwarding center. For purposes of this rule, a “sale” occurs when an order is taken and/or payment is made.

(5) No member of the retail tier may take delivery of alcoholic beverages at a regional forwarding center.

(6) A regional forwarding center must be located in an area that is wet for the type of alcoholic beverages held therein.

(7) A licensee or permittee, by using a regional forwarding center under the authority of this rule, consents to inspection of such facility by the commission, its agents or employees, or any peace officer, to the same extent as consent is given for inspection of licensed premises by §101.04 of the Alcoholic Beverage Code.

(c) Licensees and permittees using regional forwarding centers under the authority of this rule shall maintain a record at the regional forwarding center with information relating to specific shipments entered into the record on the day the shipment is received or sent. The record shall show the:

- (1) invoice number for each receipt and transfer;
- (2) date for each receipt and transfer;
- (3) point of origin for each receipt;
- (4) destination (name and address) for each transfer;
- (5) type of alcoholic beverages and total gallons for each receipt and transfer; and
- (6) name of the carrier making delivery and transfer, and its TABC license or permit

number if one is required by the Alcoholic Beverage Code.

(d) Licensees and permittees using regional forwarding centers under the authority of this rule shall pay an annual fee to the commission pursuant to §33.23 of this title.

(e) All records required by this section shall be kept for at least two years.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.19. Warehouse Registration**

(a) Licensees required by Code §62.08 to register a warehouse with the Commission shall provide the warehouse’s address and all other information required on a form prescribed by the Commission. Should any information required by the form change, a licensee is required to submit a new form reflecting those changes within 30 days. A licensee may not operate a warehouse until the registration form is received by the Commission’s Licensing Division.

(b) A registered warehouse is a place of business of the license holder for purposes of §§41.5 and 41.11 of this title.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.20. Bonded Warehouse Report**

(a) Each holder of a bonded warehouse permit shall make a monthly report to the commission on forms prescribed by the executive director.

- (b) The report shall:
- (1) state the name, address, and permit number of the warehouse;
  - (2) state the name, address, and permit number of each customer storing liquor;
  - (3) show monthly opening inventory receipts, withdrawals and closing inventory in gallons for each class of liquor;
  - (4) affirm that the permittee is in compliance with Alcoholic Beverage Code §46.03, which requires the holder of a bonded warehouse permit to derive at least 50 percent of its gross revenue in a bona fide manner during each three month period from the storage of goods or merchandise other than liquor; and
  - (5) be signed by the custodian of the bonded warehouse.
- (c) Reports shall be filed with the commission on or before the 15th day of the month following the calendar month for which the report is made.
- (d) A holder of a bonded warehouse permit may only store or offer to store liquor in full and unbroken case lots.
- (e) Except as provided in this subsection, a holder of a bonded warehouse permit may only allow the withdrawal of liquor in full and unbroken case lots. When actual breakage occurs in a bonded warehouse which results in actual loss, the holder of a bonded warehouse permit may allow withdrawal in partial or broken case lots if the bonded warehouse permit holder executes duplicate affidavits documenting the actual breakage. The bonded warehouse permit holder shall retain one such affidavit shall be on file, and permittee shall submit the other affidavit with the monthly report required by this section.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.21. Record Requirements: Export**

No person shall export any alcoholic beverages in any manner except in compliance with the following:

- (1) Permittees authorized to export alcoholic beverages shall maintain copies of billing invoices and shipping documents to support any export out of the State of Texas. Supporting documentation shall include an order signed by the purchaser of alcoholic beverages or, in case of return to a distillery, brewery, or winery, a letter of authority.
- (2) The alcoholic beverages may then be delivered to a common carrier holding a carrier's permit, or if the permittee is authorized under its permit to transport alcoholic beverages in vehicles owned or leased by the permittee, such alcoholic beverages may be transported and exported in vehicles registered with the commission by the permittee.
- (3) A license or permit holder exporting under this section must obtain proper proof from the purchaser that the alcoholic beverages were sold or disposed of outside of this state and keep such records on file for inspection or audit by any representative of the commission for at least two years.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.22. Sale and Delivery of Malt Beverages to Retail Premises and Private Clubs**

- (a) Malt beverages intended to be delivered in sales transactions consummated at a licensed retailer's place of business or at a private club located in a wet area may be transported through dry areas in vehicles owned or leased and operated by one of these authorized sellers, who are

authorized to sell to retailers or private clubs located in wet areas: the holder of a brewer's self-distribution license; the holder of any type of distributor license; or the holder of a brewpub license. The person directly in charge of the vehicle used in such transportation must possess a written statement furnished and signed by the authorized seller showing the quantity of malt beverages so delivered to such person, the origin thereof, and the fact that said malt beverage is intended for delivery only upon any sale that may be consummated by such person acting as agent for the authorized seller at the place of business of a licensed retail dealer or a private club located in a wet area.

(b) A person into whose charge malt beverages are delivered as provided in this section and who is delivering and obtaining payment for any such malt beverages at a licensed retailer's place of business or at a private club located in a wet area must at that time provide a sales invoice for such malt beverages that must be signed by the purchaser of the malt beverages. The invoice must show the purchaser, the quantity of each type of container sold, and the price. A copy of such invoice shall be furnished to the purchaser at the time of sale and a copy of the signed sales invoice must be furnished to the authorized seller of such malt beverages within 24 hours from the time of its delivery.

(c) A person into whose charge malt beverages are delivered as provided in this section must possess the signed sales invoices required by subsection (b) of this section for any such malt beverage that is not in the person's possession. Records pertaining to any such shipment must be shown to any representative of the commission or any peace officer upon demand.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.23. Providing Retailer Samples: Nonresident Seller**

(a) A holder of a Nonresident Seller's Permit must purchase samples from a package store permit or wholesale permit holder.

(b) Samples purchased by a nonresident seller from a wholesaler's inventory are considered "first sale" for purposes of taxation under Alcoholic Beverage Code §201.03. The wholesaler shall remit excise taxes for samples purchased not later than the 15th day of the month following the month in which occurs the "first sale."

*Note: Original Rule Effective: December 6, 2021*

#### **§41.24. Providing Retailer Samples: Distiller's and Rectifier's Permit**

(a) A holder of a Distiller's and Rectifier's Permit may provide samples obtained from the distiller's inventory to a retailer in accordance with Alcoholic Beverage Code §14.07.

(b) Samples taken from the distiller's inventory are considered "first sale" for purposes of taxation under Alcoholic Beverage Code §201.03. The holder of the Distiller's and Rectifier's Permit shall remit excise taxes for samples taken from inventory not later than the 15th day of the month following the month in which occurs the "first sale."

*Note: Original Rule Effective: December 6, 2021*

#### **§41.25. Nonresident Seller's Report**

(a) Each holder of a nonresident seller's permit shall make a monthly report to the commission on forms prescribed or approved by the executive director or the executive

director's designee.

(b) The report shall be electronically submitted or, if mailed, postmarked on or before the 15th day of the month following the calendar month for which the report is made.

(c) Upon request by an authorized representative of the commission, invoices shall be submitted to support each entry in the report. A legible copy of each invoice must show the:

- (1) invoice number and invoice date;
- (2) trade name, permit number, and address of the seller;
- (3) trade name, permit number, and shipping address of the purchaser;
- (4) brand name, type, number and size of containers, total cases, unit or line item extension price, and total sales price;

(5) origin of shipment and shipping date; and

(6) total by taxable class gallons of each class of liquor.

(d) As long as a nonresident seller's permit remains active, the monthly report required by this section must be filed each month even if no sales or shipments have been made.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.26. Nonresident Brewer's Report**

(a) Each holder of a nonresident brewer's license shall make a monthly report to the commission on forms prescribed or approved by the executive director or the executive director's designee.

(b) The report shall be electronically submitted or, if mailed, postmarked on or before the 15th day of the month following the calendar month for which the report is made.

(c) Upon request by an authorized representative of the commission, invoices shall be submitted to support each entry in the report. A legible copy of each invoice must show the:

- (1) invoice number and invoice date;
- (2) trade name, license number, and address of the brewer;
- (3) trade name, license or permit number, and shipping address of the purchaser;
- (4) brand name, type, number and size of containers, total cases, unit or line-item extension price, and total sales price;

(5) origin of shipment and shipping date; and

(6) total gallons of malt beverages invoiced.

(d) As long as a nonresident brewer's license remains active, the monthly report required by this section must be filed each month even if no sales or shipments have been made.

*Note: Original Rule Effective: December 6, 2021*

### **SUBCHAPTER C. EXCISE TAXES**

#### **§41.30. Excise Tax**

Holders of licenses and permits authorizing the manufacture, wholesaling, or distribution of distilled spirits, wine, and malt beverages in this state must pay the assessed excise tax not later than the 15th day of the month following the month in which occurs the "first sale" as this term is defined in Alcoholic Beverage Code §§201.02, 201.41 and 203.02. All taxes shall be remitted by electronic funds transfer, check, or money order made payable to the Texas Alcoholic Beverage Commission.



*Note: Original Rule Effective: December 6, 2021*

#### **§41.31. Monthly Report of Distilled Spirits, Wines, and Malt Beverages**

(a) Each holder of a distiller's and rectifier's permit, any class of wholesaler's permit, a winery permit, a brewer's license, or a distributor's license shall make a monthly report to the commission on forms prescribed or approved by the executive director or the executive director's designee.

(b) The report shall be electronically submitted or postmarked by the license or permit holder with the commission at its offices at Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made.

(c) Upon request by an authorized representative of the commission, invoices shall be submitted to support each entry in the report. A legible copy of each invoice must show:

- (1) invoice number and invoice date;
- (2) trade name, license number and address of licensed brewer for malt beverages;
- (3) trade name, permit number and address of permitted non-resident seller, distiller or winery for wine and distilled spirits;
- (4) trade name and shipping address of customer;
- (5) brand name, type, number and size of containers, total cases, unit or line-item extension price, and total selling price;
- (6) origin of shipment and shipping date; and
- (7) total gallons by taxable class of alcohol invoiced.

(d) The monthly report required by this section must be filed each month even if no sales or shipments have been made.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.32. Out-Of-State Winery Direct Shipper's Permits**

(a) This rule relates to Chapter 54 of the Alcoholic Beverage Code.

(b) Each holder of an out-of-state winery direct shipper's permit shall make reports (Direct Shipper's Report) to the commission on forms prescribed by the executive director or executive director's designee.

(c) The report shall be made and filed by the permittee with the commission at its offices in Austin, Texas, on or before the 15th day of the month following the end of the reporting period for which the report is made and shall show:

- (1) the reporting period and year for which the report is made, the permit number and the name and address of the winery; and
- (2) the ship date, invoice date, invoice number, customer name, city, total wine gallons per invoice, and carrier name and tracking number for each sale and delivery.

(d) The permittee shall attach to the Direct Shipper's Report either:

- (1) complete, un-redacted copies of invoices showing:
  - (A) the names and addresses of the individuals to whom the alcoholic beverages were shipped;
  - (B) the brand name shipped, the container size and the quantities of each brand name;
  - (C) the prices charged for each brand name;
  - (D) the licensed common carrier used to deliver the alcoholic beverages; and

(E) the licensed common carrier tracking number used to identify each shipment;  
or

(2) a complete, unredacted list containing the information described in paragraph (1) of this subsection.

(e) Holders of out-of-state winery direct shipper's permits must pay the excise tax on the total gallons of wine shipped into the state, not later than the 15th day of the month following the reporting period the wine was shipped into the state. Remittance of the tax due on wine, less 2.0% of the amount due when submitted within the required time, shall accompany the Direct Shipper's Report and shall be made by check, United States money order, or other acceptable methods of payment payable to the Texas Alcoholic Beverage Commission.

(f) As long as an out-of-state winery direct shipper's permit remains active, the reports required herein must be filed even though no sales or shipments have been made.

(g) Holders of out-of-state winery direct shipper's permits that shipped 5,000 gallons annually or more to consumers in Texas during the previous calendar year, must file a monthly report.

(h) Holders of out-of-state winery direct shipper's permits that shipped less than 5,000 gallons annually to consumers in Texas during the previous calendar year, must file a quarterly report. Quarterly Reporting Periods: January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(i) Holders of out-of-state winery direct shipper's permits must:

(1) require adult signature upon delivery of alcoholic beverages and notify the carrier that the shipment contains alcoholic beverages;

(2) ensure that any third party it uses for order fulfillment identifies and marks the packages to be shipped as containing alcohol and obtains an adult signature upon delivery of the alcoholic beverage product;

(3) maintain tracking status documentation for each shipment to a Texas consumer, which must include delivery confirmation and undeliverable shipments; and

(4) provide records relating to alcohol shipments to Texas consumers made by a third party on behalf of the permit holder.

(j) Failure to comply with the requirements of this section or accurately maintain required records may result in cancellation or suspension of the direct shipper's permit.

(k) Holders of out-of-state winery direct shipper's permits that contract with a third party to provide packaging services and/or recordkeeping services, such as filing state tax reports, shall ensure all service records and tax reports subject to the third-party contract are available upon commission request.

*Note: Original Rule Effective: December 6, 2021*

### **§41.33. Excise Tax Exemptions**

The following transactions are exempt from the requirement to pay excise taxes:

- (1) Sales of sacramental wine in compliance with §41.34 of this title;
- (2) Out-of-state sales in compliance with §41.35 of this title;
- (3) Export of malt beverages that are not legal for sale in Texas in compliance with §41.36 of this title;
- (4) Alcoholic beverages destroyed in compliance with §41.37 of this title; and
- (5) Sales of alcoholic beverages for industrial purposes.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.34. Sacramental Wine**

(a) Any minister, priest, rabbi, or the authorized head of any religious organization may obtain any wine, tax free, for sacramental purposes.

(b) Each wholesaler, Class B wholesaler, or winery shall, for each transaction, obtain a letter from the minister, priest, rabbi, or other authorized head of any religious organization who obtains from him any wine for sacramental purposes, tax-free, to the effect that said wine will be used for sacramental purposes. In computing tax liability, no credit shall be allowed for such transactions unless such letter is submitted as documentary proof that such wine was delivered to a minister, priest, rabbi, or other authorized head of a religious organization, and such letter shall be kept available for the inspection of a representative of the commission for a period of at least two years.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.35. Reporting Required for Export of Alcoholic Beverages**

License and permit holders authorized to export alcoholic beverages must list those transactions as tax-exempt out-of-state exports on monthly excise tax reports.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.36. Export of Malt Beverages not Legal for Sale**

(a) This section applies to the export of malt beverages that are not legal for sale in Texas under Alcoholic Beverage Code §§62.09, 64.09, and 66.11.

(b) The holder of any class of distributor's license with the intent to receive, store, transport, and deliver for export to another state malt beverages that are otherwise illegal to sell to a Texas retailer because of alcohol content, container size, package, or label shall:

(1) store and segregate the products separately from products that are legal to sell to a Texas retailer;

(2) prepare a separate invoice for each transaction, which shall be different from the invoice used for malt beverages that are legal to sell to a Texas retailer; and

(3) maintain each invoice for at least two years and make them available upon request by an authorized representative of the commission.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.37. Destructions**

(a) Each permittee subject to the provisions of Alcoholic Beverage Code §§201.03, 201.04, or 201.42, and each licensee subject to the provisions of Alcoholic Beverage Code §203.01, is entitled to receive a tax exemption or a tax credit for alcoholic beverages destroyed in accordance with subsections (c) - (g) of this section.

(b) Each permittee or licensee eligible to destroy alcoholic beverages following a natural disaster pursuant to Alcoholic Beverage Code §109.09, is entitled to receive a tax exemption or a tax credit for alcoholic beverages destroyed in accordance with subsection (i) of this section.

(c) To be claimed as a destruction for purposes of receiving a tax exemption or a tax credit,

the alcoholic beverages must be destroyed in such a manner that the product is rendered unrecoverable or unfit for human consumption.

(d) A permittee or licensee must comply with the following requirements prior to the destruction of alcoholic beverages for which a tax exemption or tax credit is claimed, unless it submits to the commission a written request for an exception and receives approval of the request prior to destruction:

(1) At least three full working days prior to the destruction, the permittee or licensee must notify the nearest authorized representative of the commission of the intent to destroy the alcoholic beverages. This notification must be made in writing on the commission's Application for Destruction of Alcoholic Beverages and contain a complete listing by brand, quantity, container size, and package size of the alcoholic beverages to be destroyed. This requirement for a complete listing may be satisfied by attaching a computerized listing that provides all the required documentation to the Application for Destruction of Alcoholic Beverages.

(2) The permittee or licensee must receive written approval from an authorized representative of the commission to conduct the destruction.

(e) To support a claim for a tax exemption or tax credit for a destruction, the permittee or licensee must retain the following documentation and make it available to an authorized representative of the commission upon request:

(1) a signed copy of the Application for Destruction of Alcoholic Beverages indicating that it was approved, which an authorized representative of the commission shall provide to the permittee or licensee when the destruction is approved;

(2) if the alcoholic beverages were destroyed at a location that charges a fee for this service, a copy of the receipt for payment of the fee; and

(3) an affidavit of destruction executed by an employee of the permittee or licensee who witnessed the destruction location, and a description of how the alcoholic beverages were destroyed. A separate affidavit must be prepared for distilled spirits, wine, and malt beverages.

(f) The license or permit holder shall submit the approved Application for Destruction of Alcoholic Beverages (including any attachments) with the monthly excise tax report it files with the commission upon which it claims the tax exemption for the destroyed alcoholic beverages. If the permittee or licensee is unable to claim the destroyed alcoholic beverages as an exemption on a tax report, it may submit a letter to the commission requesting issuance of an authorized tax credit.

(g) The license or permit holder shall maintain a copy of the approved Application for Destruction of Alcoholic Beverages (including any attachments) and make it available upon request for inspection by an authorized representative of the commission.

(h) The commission may require that the alcoholic beverages designated for destruction be physically inspected and inventoried by a representative of the commission prior to the scheduled destruction and/or that the actual destruction be witnessed by an authorized representative of the commission.

(i) A permit or license holder may destroy uninsured malt beverages subject to destruction under Alcoholic Beverage Code §109.09 only in compliance with the following requirements:

(1) the alcoholic beverages must be destroyed in such a manner that the product is rendered unrecoverable;

(2) an employee of the permittee or licensee who witnessed the destruction of the malt beverages must execute an affidavit of destruction that includes the date of destruction, the destruction location, and a description of how the alcoholic beverages were destroyed;

(3) not later than 30 days following the destruction of malt beverages under this section, the permittee or licensee must submit to the commission the affidavit required under paragraph (2) of this subsection with a completed and signed commission form for notification of destruction of uninsured product after a natural disaster; and

(4) The permittee or licensee must retain the following documentation and make it available to the commission upon request:

(A) a copy of the receipt for the cost of destruction, if the malt beverages were destroyed at a location that charged a fee for the service;

(B) a copy of the completed and signed Notification of Destruction of Uninsured Product after a Natural Disaster; and

(C) a copy of all destruction affidavits executed by the person who witnessed the destruction.

*Note: Original Rule Effective: December 6, 2021*

### **§41.38. Production Record**

(a) Each holder of a distiller's and rectifier's permit, winery permit, brewer's license, or brewpub license shall make a production record to be retained by the license or permit holder and made available to a representative of the commission upon request.

(b) The production record shall show:

(1) a full and complete report of all liquor or malt beverages manufactured, received, and produced;

(2) the date of each day's operation;

(3) for each day's operation, the opening inventory in bulk gallons;

(4) receipts in bulk gallons;

(5) bulk gallons used in production;

(6) closing inventory in bulk gallons;

(7) total units produced, stating number, size, and type of container;

(8) total gallons produced; and

(9) total taxable gallons produced of malt beverage or class of liquor.

(c) Entries shall be made on the production record no later than three days after malt beverage or liquor is received or produced.

(d) Each winery shall maintain a record of wine manufactured and labeled pursuant to Alcoholic Beverage Code §16.01(b). This record shall include date of manufacture, the name of the adult(s) for whom the wine was manufactured and labeled, a sample label, and the total gallons manufactured for each adult. Each record shall be made available to a representative of the commission upon request.

*Note: Original Rule Effective: December 6, 2021*

### **§41.39. Amount of Excise Tax Bonds**

(a) Excise tax bonds required by Chapter 204 of the Alcoholic Beverage Code and by Chapter 33, Subchapter C, of this title to be maintained by license or permit holders authorized to import malt beverages or liquor into this state shall be in a minimum amount of \$1,000 and the maximum amounts of the bonds shall be determined by the executive director. The maximum bond fixed by the executive director must be an amount that will adequately protect the State of

Texas against the anticipated tax liability of the principal during any six-week period.

(b) The executive director may investigate the adequacy of any bond and adjust the bond as they deem justified by the investigation results.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.40. Reports Required for Brewpubs**

(a) Each holder of a brewpub license shall make a monthly report to the commission on forms prescribed or approved by the executive director or executive director's designee.

(b) The report shall be electronically submitted or, if mailed, postmarked on or before the 15th day of the month following the calendar month for which the report is made.

(c) Upon request by an authorized representative of the commission, invoices shall be submitted to support each entry in the report. A legible copy of each invoice must show the:

(1) invoice number and invoice date;

(2) trade name, license number, and address of the brewpub;

(3) trade name, license or permit number, and shipping address of the purchaser;

(4) brand name, type, number and size of containers, total cases, unit and or line-item extension price, and total sales price;

(5) origin of shipment and shipping date; and

(6) total gallons of malt beverage invoiced.

(d) As long as a brewpub license remains active, the monthly report required by this section must be filed each month even if no sales or shipments have been made.

*Note: Original Rule Effective: December 6, 2021*

### **SUBCHAPTER D. SALES OF ALCOHOLIC BEVERAGES NOT IN REGULAR COURSE OF BUSINESS**

#### **§41.41. Sale to and by Lien Holders**

(a) All alcoholic beverages are subject to levy and other judicial process the same as any other personal property under the general laws of the state.

(b) Alcoholic beverages may be sold to and purchased by lien holders and licensees and permittees who are privileged to purchase and sell the same.

(c) In all instances after such sale has been made, the person making the sale shall notify the executive director or the executive director's designee, giving the date of sale, the names and addresses of both the original owner and the purchaser, an inventory of the beverages sold and the name of the lien holder or lien holders. A lien holder who is not a licensee or permittee and who purchases alcoholic beverages or who procures title thereto in any other lawful manner shall dispose of such alcoholic beverages within 30 days after acquiring title thereto, unless the executive director grants additional time for good cause shown.

(d) Before reselling alcoholic beverages under this section, the lien holder shall apply to the executive director or the executive director's designee for permission to make such sale. The application shall show the name and address of the intended purchaser, the number of the intended purchaser's license or permit, the quantity and type of beverages to be sold, and the date and manner of the sale, and shall include copies of any documentation by which the lien holder procured title thereto.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.42. Sale by Carrier**

(a) Any person authorized to transport alcoholic beverages may sell, in accordance with law, any alcoholic beverage the person acquires by reason of unpaid charges, to any permittee or licensee who is privileged to import and sell such alcoholic beverage.

(b) Any person contemplating such sale shall apply to the executive director or the executive director's designee, setting out the facts regarding such shipment, the names and addresses of the consignor and consignee, the name and address of the proposed purchaser, and documentation supporting the amount of the charges due.

(c) No person authorized to transport alcoholic beverages shall sell or offer for sale any alcoholic beverages for unpaid charges except in the manner herein provided.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.43. Sale after Cancellation, Expiration, or Voluntary Suspension of License or Permit**

(a) In the event any license or permit granted under the code is cancelled, expires, or is voluntarily suspended by the license or permit holder, the license or permit holder is authorized for 30 days thereafter to sell or dispose of its remaining inventory of alcoholic beverages on hand at the time of the license or permit cancellation, expiration, or voluntary suspension, in bulk, to a licensee or permittee authorized to purchase and sell same.

(b) If a necessity exists for a longer period, written permission must be procured from the executive director or the executive director's designee. The application for such permission shall specify the reasons.

(c) A holder of a license or permit who holds more than one such license or permit and who submits one to the commission for cancellation or voluntary suspension may request approval to transfer the inventory on hand to one of its other licensed or permitted locations.

(d) In all cases where alcoholic beverages are disposed of or sold in bulk as herein set out, a sworn transfer document shall be filed with the local office of the commission and is subject to approval by the executive director or the executive director's designee. Approval of the sale or transfer shall not be granted if either the seller or purchaser is delinquent under Alcoholic Beverage Code §102.32 and §45.130 of this title at the time of the request.

(e) The transfer document filed with the commission must show the complete inventory of alcoholic beverages on hand. The inventory shall show the quantity, brand, and size of each container of alcoholic beverage, and for distilled spirits it shall also show the identification stamp number affixed to each container.

(f) Both the transferor and the transferee shall sign the transfer document under oath before a notary public swearing to the correctness of the transaction.

(g) All alcoholic beverages shall be transferred in a single transaction unless, based on the circumstances, multiple transactions are approved by the executive director or the executive director's designee.

(h) No person shall dispose of any alcoholic beverages after the expiration, cancellation, or voluntary suspension of a license or permit except in the manner and within the time herein specified unless written permission is procured from the executive director or the executive director's designee.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.48 Changes Relating to Control**

(a) Definitions. Any terms defined in the Alcoholic Beverage Code shall have the meaning assigned to it by such code subject to modifications expressed in this section.

(1) Any change of--Any one of the following:

(A) any addition of a person;

(B) any removal of a person; and

(C) any transfer of title, responsibility, dominion or power from one or more persons to another person or persons.

(2) Effective control. Shall include, but is not limited to, situations in which a person (or persons) is in fact able to direct the general course of corporate affairs, even though such person or persons may not hold controlling ownership.

(3) Managerial control. With reference to any business conducted under authority of a permit, this term severally includes, but is not limited to, each of the following:

(A) having discretion to formulate and institute operating policy regarding purchases, disbursements, maintenance of records or handling of funds;

(B) having authority to hire or fire personnel; and

(C) having general supervisory authority over the operation of the business on a regular basis.

(4) Permit. Shall mean only a mixed beverage permit or private club permit and subsidiary permits of either. The original permit and all renewals thereof shall constitute a single, continuous authority within the meaning of this section.

(b) Disqualification. Any corporation which by any means is effectively controlled, jointly or severally, by a person or persons not then individually qualified for the issuance of a mixed beverage permit of his own, shall be disqualified to hold a mixed beverage permit.

(c) Change of control.

(1) Each corporation holding a mixed beverage permit shall report to the commission any change of effective control.

(2) Each corporation or unincorporated association holding a private club permit shall report to the commission any change of effective control.

(d) Disclosure. Upon request of the administrator, any corporation holding a mixed beverage permit, or any holder of a private club permit, shall disclose to the commission any information which may assist the administrator in determining whether or not any change has occurred in the control of that corporation or unincorporated association.

(e) Determination of effective control. If the administrator has reason to believe that a change may have occurred in the effective control of any corporation holding a mixed beverage permit, he may hold hearings to determine if such a change has occurred, and further to determine whether or not said corporation is presently, or was at any time within the present or next proceeding permit term, disqualified for renewal of said permit by virtue of any person or persons jointly or severally controlling such corporation.

(f) Cancellation. If upon notice and hearing the administrator finds that a change of control has occurred, and further finds that at any time within the present or next preceding permit term the persons jointly or severally controlling such corporation were, while so situated, not qualified for the issuance of a mixed beverage permit individually, the administrator shall immediately cancel said permit; provided, however, that if the administrator affirmatively finds to his



satisfaction that no participant acted with intent to circumvent this rule or related provisions of the Alcoholic Beverage Code, he shall not cancel said permit but may, in his discretion, suspend said permit for a period not exceeding 60 days or dismiss the cause; and the administrator is hereby authorized in such cases to issue a conditional order, but no conditional status shall exceed one year beyond the entry of the order.

(g) Affidavit. In each instance in which this section requires information to be reported to the commission, such information shall be conveyed by affidavit from an officer of the corporation or unincorporated association and shall be due in the offices of the commission within 10 days of the event, unless the administrator shall allow or direct a different method or time.

(h) Reporting chain of control. In the event that a corporation holding a permit is jointly or severally controlled by another corporation, the corporation holding a permit shall report to the commission the same information about such other corporation as the permittee is required to report about itself. In the event that such other corporation is, in turn, jointly or severally controlled by a third corporation, and further regarding any additional chain of control in like manner, the corporation holding the permit shall report to the commission information about each corporation in the chain of control the same as is required of the corporation holding the permit.

(i) Failure to provide information. Upon notice and hearing, the administrator may suspend for a period not exceeding 60 days, or cancel, any mixed beverage permit or private club permit if he finds that the permittee has failed or refused to provide any information required by this section.

(j) Timeliness. Upon notice and hearing, the administrator may suspend for a period not exceeding 60 days, or cancel, any mixed beverage permit or private club permit if he finds that the permittee has failed or refused to provide information required by this section in the time or manner prescribed by this section.

(k) Privilege. The reports required by this section shall not be deemed "periodic reports" within the meaning of §5.48 of the Alcoholic Beverage Code, and, unless otherwise made public under the provisions of the code, all such information shall be protected by the privilege declared in §5.48 of the Alcoholic Beverage Code.

(l) Administrator's discretion. The administrator shall have discretion to modify the application of this section to holders of private club exemption certificate permits, but he shall at all times invoke such requirements herein as he may deem necessary to ascertain that such permits are in fact controlled by the organization to whom the permit is issued.

*Note: Amended Rule Effective: December 6, 2021*

## **SUBCHAPTER E. PRIVATE CLUBS**

### **§41.50. General Provisions**

(a) Definitions. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

- (1) Club – a private club.
- (2) Guest – an individual who is personally known by the member or one of the member's family and who is admitted to the club premises by personal introduction of, or in the physical company of, the member or one of the member's family.

- (3) Member and membership – a member of and membership in a private club.
- (4) Member’s family – a spouse, parent, sibling, or adult child of the member.
- (b) Digital Recordkeeping. A club using a computer system to maintain its membership records is not be required to keep a well-bound book if such computer system provides the information as required by these rules.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.51. Requirements for Permit; Membership**

- (a) This section does not apply to temporary members or to hotel patrons, as described in Alcoholic Beverage Code §§32.09, 32.10, and 32.11.
- (b) To qualify to hold a private club registration permit, a private club must:
  - (1) have 50 or more members at all times;
  - (2) have a membership committee composed of three or more members of the club and vested with authority by charter, bylaw or regulation to approve or reject membership applications and terminate existing memberships. The governing body of a club, if qualified under this provision, may be the membership committee, and when functioning as such is subject to and governed by all provisions herein relating to the membership committee. When considering a membership application or termination of membership, the membership committee shall keep written minutes showing the meeting date, the names of all committee members present, the name of any person admitted to membership, and the name of any person whose membership was terminated. No minutes are required of any discussion or action regarding a membership application that is denied;
  - (3) have, other than charter members, no members except those approved by at least three members of the membership committee at a meeting of such a committee;
  - (4) keep a well-bound book in which is shown the following about each member: the full name of the member, the member’s initial membership number which shall be issued in sequence, the current complete address of such member, the date such member was admitted to membership, and the date such member was removed from membership. When a member has been removed from membership, the membership number may be reassigned to another member. Additional well-bound books may be used if necessary to record the information required by this paragraph, but all such books shall be kept permanently by the club;
  - (5) keep all books, records, and minutes required herein on the premises of the club, and make them available to any representative of the commission upon reasonable notice; and
  - (6) maintain in force any bond required and executed by the corporation as principal, if an incorporated club, or by an officer of the club as principal, if an unincorporated club. Such bond shall be executed by a surety company duly authorized and qualified to do business in this state, as surety, in an amount required by rule of the commission payable to the State of Texas conditioned that all fees and taxes owed by such club to the State of Texas shall be paid. Such bond shall be in a form approved by the executive director and the attorney general of Texas.
- (c) No membership shall be terminated except by action of the membership committee or by written resignation of the member. Resignation of any member shall be recorded immediately in the minute book of the membership committee and in the records required by subsection (b) of this section.
- (d) The executive director may, after notice and hearing, refuse to issue a private club registration permit if the executive director finds that the applicant has failed to comply with any

requirement set forth in this subsection.

(e) As provided in the Alcoholic Beverage Code §32.01, alcoholic beverages owned by members of a private club may only be served to and consumed by a member, a member's family, or their guests.

(f) Permittees may access electronically readable information on a driver's license, commercial driver's license, or identification certificate for the purpose of verifying the accuracy of the records required by this rule. Information so accessed may not be retained longer than is reasonably necessary to ensure verification. The information may not be marketed in any manner. Written consent must be obtained from the club member or prospective member when accessing electronically readable information and proof of such consent must be maintained with the permittee's membership records.

*Note: Original Rule Effective: December 6, 2021*

### **§41.52. Temporary Memberships**

(a) This rule relates to §32.09 of the Alcoholic Beverage Code.

(b) A holder of a private club registration permit shall:

(1) issue a temporary membership card to any person who intends to be served alcoholic beverages on its licensed premises, except a person who is a member of the club or a guest of a member of the club, or, if the club is located in a hotel, a patron of the hotel who is at the hotel for overnight lodging and is a guest of the hotel manager who is a member of the club; and

(2) keep a record with entries made in chronological order showing the following about temporary membership cards issued: the date issued, the name of the person to whom the card was issued, and the serial number of the temporary membership card.

(c) A holder of a private club registration permit shall not serve an alcoholic beverage to a person who holds a temporary membership card unless the temporary card is:

(1) issued to the club by the commission;

(2) issued to the temporary member by the manager of the club, or other person in charge of the premises of the club;

(3) complete and legible, with all blanks, except signature blanks, properly completed, including the name of the temporary member, club name, city, and time period covered;

(4) signed at the time of issuance by the manager of the club or other person in charge of the licensed premises; and

(5) in possession of the temporary member to whom it is issued.

(d) The commission shall not issue a temporary membership card to a club until the commission has received a written request from a club in the manner prescribed by the commission, together with the effective fee established in the Texas Alcoholic Beverage Code. Payment of the fee shall be made only by cashier's check, certified check, corporate check, through the commission's electronic portal, or by United States postal money order payable to the Texas Alcoholic Beverage Commission.

*Note: Original Rule Effective: December 6, 2021*

### **§41.53. Pool Systems**

(a) This section relates to §§32.06 and 32.13 of the Alcoholic Beverage Code.

(b) Equal Assessment Pool Systems. Each holder of a private club registration permit operating under a pool system that requires each member of the pool to participate equally in the purchase and replacement of alcoholic beverages shall:

(1) purchase all such alcoholic beverages with money assessed and collected in advance from each member equally;

(2) initially set the assessment fee according to the club's by-laws or governing body and increase or decrease the fee as needed upon approval of the club's governing body and recording of the fee change in the club's minutes;

(3) use only money from the fee assessment to purchase or replace alcoholic beverages purchased for use under the equal assessment pool system; and

(4) keep a well-bound book in which is recorded the following about each member of the pool: the member's name and membership number, the date and amount of each liquor pool assessment, and the date of payment of the assessment. This rule does not apply to fraternal organizations or to veterans' organizations.

(c) Replacement Pool Systems. Each holder of a private club registration permit operating under a replacement pool system by which a designated percentage of daily service charges collected for the service of alcoholic beverages is set aside to replace alcoholic beverages served to club members and their guests and to temporary membership card holders shall:

(1) initially set the percentage according to the club's by-laws or governing body and increase or decrease the percentage as needed upon approval of the club's governing body and recording of the percentage change in the club's minutes; and

(2) use only money from the designated percentage of daily service charges collected for the service of alcoholic beverages to purchase or replace alcoholic beverages purchased for use under the replacement pool system.

(d) Each holder of a private club registration permit operating under the pool system using either equal assessments or a replacement percentage shall prepare a record showing separately the pool assessments or replacement funds collected from the membership and the disbursements of these collections for purchases of alcoholic beverages.

(e) The holder of a private club registration permit or a private club exemption certificate permit may purchase wine only from the holder of a local distributor's permit.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.54. Locker Systems**

(a) This section relates to §§32.05, 32.10, and 32.13 of the Alcoholic Beverage Code.

(b) A club may allow its members to store their privately-owned alcoholic beverages in secure lockers on the club premises.

(c) All alcoholic beverages owned by each member under the locker system must be kept in a locker rented only to such member at all times, except when the member, one of the member's family or the member's guest is present on the premises and using such alcoholic beverages. This section does not apply to fraternal organizations or to veterans' organizations.

(d) The club will be assessed gross receipts taxes on alcoholic beverages kept in member lockers based upon storage fees, corkage fees, and/or service fees collected by the club.

(e) The club must keep the following records on the premises for at least two years and must make available to the TABC upon reasonable request:

(1) receipts or other records of storage fees, corkage fees, and/or service fees collected;

(2) an inventory of each alcoholic beverage stored in a member locker, including the brand and container size of distilled spirits, locker number, and member name or other unique identifier, such as a membership number; and

(3) with respect to distilled spirits, the inventory must include other identification approved by the commission sufficient to demonstrate that the distilled spirit is owned by the member.

(f) Once stored, members may not remove an alcoholic beverage from the club premises except as authorized by §32.15 of the Alcoholic Beverage Code.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.55. Food Service**

A private club shall provide regular, adequate food service including, at a minimum, meals available on the club premises for service to members, their families, and guests. The food service requirement may be fulfilled through the use of a concession or catering agreement with an outside vendor. Prepared food must be available upon request and must be delivered and served at the licensed premises. Payment for food service must be made to the private club. This section does not apply to fraternal organizations or veterans' organizations.

*Note: Original Rule Effective: December 6, 2021*

#### **§41.56. Enforcement**

The executive director may, after notice and hearing, suspend for a period not exceeding 60 days or cancel a private club registration permit:

(1) if the executive director finds that the club or any of its members, agents, servants, or employees has:

(A) served, consumed or permitted another person to consume an alcoholic beverage on the premises of the club at any time when the private club registration permit of such club is suspended by an order of the executive director; or

(B) made a false statement or a misrepresentation in any book, record, minutes or report, or other written matter required to be kept or reported by this subchapter or by any provision of the Alcoholic Beverage Code;

(C) failed to comply with any requirement set forth in this subchapter; or

(2) for any reason listed in §32.17 of the Alcoholic Beverage Code.

*Note: Original Rule Effective: December 6, 2021*

### **SUBCHAPTER F. IDENTIFICATION STAMPS**

#### **§41.60. Identification Stamps and Local Distributor's Records**

(a) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

(1) Identification stamp – the identification stamp referenced in §§28.15 and 32.20 of the Alcoholic Beverage Code.

(2) Invoice – an instrument requesting payment for alcoholic beverages issued by the seller of alcoholic beverages to a permittee.

(3) Mutilate – to scratch, cut, tear, or abrade in a manner which inflicts obvious and substantial damage to the stamp but does not totally remove or obliterate the stamp.

(4) Retail permittee – the holder of a mixed beverage permit, a private club registration permit, or private club exemption certificate permit.

(b) The holder of a local distributor's permit shall keep any record required by any rule of the commission or by the Alcoholic Beverage Code for a period of two years on the licensed premises and shall make any such record available to a representative of the commission upon request within a reasonable time.

(c) Identification stamps shall be affixed only by the holder of a local distributor's permit to whom such stamps have been issued by the commission. When affixing identification stamps, the holder of a local distributor's permit shall affix each identification stamp near the top of the brand label of the bottle of distilled spirits in such a manner that some portion of the identification stamp covers and is attached to some portion of the brand label but does not cover any information on the brand label, unless the exception in subsection (d) of this section applies. "Brand label" means the principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(d) A licensee selling cases of distilled spirits containing only multiple spirits containers each with a capacity of 375 mL or less may stamp the case with one identification stamp prior to selling the alcoholic beverages to a mixed beverage permittee, rather than individually stamping each bottle in the case. The mixed beverage permittee purchasing cases of distilled spirits subject to this section shall retain for two years invoices showing the identification stamp for each case purchased.

(e) Transaction records.

(1) Each holder of a local distributor's permit shall prepare a record making an entry thereon on each date there occurs any of the following transactions involving identification stamps and showing the following:

(A) Quantity of identification stamps received.

(B) Quantity and serial numbers of identification stamps affixed, and also showing the invoice date, invoice number, retailer trade name, and retailer permit number;

(C) Quantity of identification stamps on hand after each receipt or affixing of such stamps.

(D) When the holder of a local distributor's permit affixes identification stamps prior to the sale of such stamped merchandise, the permittee shall also record the date the merchandise is stamped showing the number of stamps used per brand and size. Stamped merchandise shall be stored separately from all other merchandise on hand. Stamps issued from pre-stamped stock must be listed individually per invoice line item on sales invoices prepared for retail sales.

(E) The serial number of each stamp issued, lost, stolen, voided, destroyed, or issued as a replacement stamp must be recorded.

(2) Full title and ownership of all identification stamps shall remain vested in the commission. Upon termination of any local distributor's permit, all unaffixed identification stamps on hand shall be surrendered to the commission along with distribution records of stamps issued by the local distributor permittee.

(f) An invoice shall be issued in original and one copy in consecutive numbered order, showing the date of the sale or distribution, the name and permit number of the seller and the purchaser, and the purchaser's complete address, the serial numbers of all identification stamps

affixed to the merchandise, the quantity, brand and class of alcoholic beverages sold and the total price of each brand and class shown thereon. Such invoices or a copy thereof shall be delivered to the permittee and a copy of such invoices shall be kept by the seller making same. The seller's copy of the invoice must be signed by the purchaser.

(g) A local distributor may elect to maintain identification stamp records required by subsection (e) of this section in an electronic format using an automated stamp record system. If this election is made, the automated system must provide the information required by subsection (e) of this section, and the automated system must be inspected and have prior approval from the Commission.

(h) The invalidation of identification stamps required by §28.09 of the Alcoholic Beverage Code shall be done by mutilating the stamp. The marking of a stamp with ink, dye, or other material is not authorized as a method for invalidating the stamp.

(i) No retail permittee shall possess or permit any person to possess on the permittee's licensed premises any distilled spirits in any container bearing an identification stamp that has been mutilated or otherwise damaged or marked to a substantial degree.

(j) No retail permittee shall possess or permit any person to possess on the permittee's licensed premises any blank or serially numbered TABC identification stamp that is not properly attached to a distilled spirits container that has been properly invoiced to the retail permittee by a local distributor.

(k) All provisions of §§28.08, 28.09, and 28.15 of the Alcoholic Beverage Code applicable to a mixed beverage permittee apply to holders of private club registration permits and private club exemption certificate permits.

*Note: Original Rule Effective: December 6, 2021*

## **CHAPTER 45. MARKETING PRACTICES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **§45.1 Statutory Authority and Applicability**

(a) This chapter implements Alcoholic Beverage Code §§101.67 and 101.671, which provide for the registration of alcoholic beverage products with the state, and Chapter 108, Advertising.

(b) This chapter does not apply to:

- (1) distilled spirits for export or for industrial use;
- (2) wine produced pursuant to §109.21, Alcoholic Beverage Code;
- (3) wine that is to be exported in bond;
- (4) malt beverages in bond; or
- (5) malt beverages manufactured for sale exclusively outside this state.

*Note: Amended Rule Effective: September 1, 2021*

#### **§45.2 Definitions**

When used in this chapter, the terms listed below shall have the following meanings:

(1) Advertisement--Any statement provided by or at the behest of a permittee promoting the purchase of a brand of alcoholic beverage through the medium of: radio broadcast; television broadcast; the internet; newspapers, periodicals, or other publications; any sign or outdoor

advertisement; or of any other printed or graphic matter, including trade booklets, menus, and cards, if such advertisement is in, or is calculated to induce sales in, this state, or is disseminated by mail or electronic mail. The term "advertisement" does not include: any label affixed to any alcoholic beverage bottle; or any individual covering, carton, or other container of the bottle, or any written, printed, graphic, or other matter accompanying the bottle, which constitutes a part of the labeling under this chapter; or any editorial or other reading matter in any periodical newspaper, or other publication for which no money or other valuable consideration is paid or promised, directly or indirectly, by any permittee.

(2) Alcoholic beverage — Alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted, including distilled spirits, malt beverages, and wine, as defined herein.

(3) Applicant — A person who submits an application with the commission to register an alcoholic beverage product.

(4) Bottler — Any person who places alcoholic beverages in containers.

(5) Brand label — The label carrying, in the usual distinctive design, the brand name of the alcoholic beverage.

(6) Brewpub — A holder of a brewpub license under Chapter 74 of the Alcoholic Beverage Code.

(7) Code — The Texas Alcoholic Beverage Code.

(8) COLA — A certificate of label approval issued by the United States Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 CFR Ch. I, Subch. A, Part 13.

(9) Commission — The state agency, the Texas Alcoholic Beverage Commission; this term is not intended to refer to the agency's commissioners sitting as a deliberative body.

(10) Container — Any can, bottle, barrel, keg, cask, tank car, or other closed receptacle, irrespective of size or of the material from which made, for use for the sale of malt alcoholic beverages. This provision does not in any way relax or modify §1.04(18) of the Alcoholic Beverage Code.

(11) Distilled spirits — Alcohol, ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, other distilled spirits, and any liquor produced in whole or in part by the process of distillation, including all mixtures and dilutions thereof.

(12) Malt beverage — a fermented beverage of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, in whole or in part, or from any malt substitute.

(13) Person — A natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.

(14) Producer — A manufacturer of all classes of alcoholic beverages and nonresident sellers that are the primary American source of supply for purposes of §37.10 of the Code.

(15) TTB — The United States Alcohol and Tobacco Tax and Trade Bureau or its successor agency.

(16) Sake — an alcoholic beverage made by fermenting rice.

(17) Wine — A product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, berries, or honey, and includes wine coolers and other alcoholic beverages made in the manner of wine, including sparkling and carbonated wine, vermouth, cider, sake, and perry.

*Note: Amended Rule Effective: September 1, 2021*



### **§45.3 General Prohibition**

No person may ship or import into the state, manufacture and offer for sale, or distribute or sell an alcoholic beverage product in this state in a manner that does not comply with all applicable requirements of this chapter.

*Note: Original Rule Effective: December 31, 2020*

### **§45.4 Product Registration Required**

(a) Except as provided by subsection (b) of this section, no alcoholic beverage product may be shipped or imported into the state, manufactured and offered for sale, or distributed or sold in the state until the product is registered with the commission.

(b) Product registration is not required for products sold:

(1) in compliance with Code §101.6701 by holders of brewer's licenses authorized to sell directly to consumers under Code §62.122;

(2) by holders of brewpub licenses except for malt beverages sold under the authority of Code §§74.08 or a distributor under 74.09; and

(3) pursuant to out-of-state winery direct shipper's permits under Chapter 54 of the Code.

*Note: Amended Rule Effective: September 1, 2021*

### **§45.5 Denial of Product Registration**

(a) The commission may deny an application for product registration for one or more of the following reasons:

(1) the product label does not meet applicable federal requirements;

(2) registration of the product would create a cross-tier violation;

(3) the label includes a statement, design, device, or representation that is obscene or indecent;

(4) the commission determines the product would create a public safety concern; or

(5) the commission determines the product violates any other section of the Code.

(b) No alcoholic beverage label may contain any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, other than a bona fide guarantee to refund the purchase price if the consumer is dissatisfied.

(c) If the commission denies an application to register a product, the applicant is prohibited from shipping or importing into or within the state, manufacturing or offering for sale, or distributing or selling the product in the state using the denied label.

*Note: Amended Rule Effective: September 1, 2021*

### **§45.6 Revocation of Registration**

The commission may revoke product registration at any time if the registration was granted in error; if the commission receives new information supporting a denial under §45.5 of this title; or if the registration was issued subject to conditions and the conditions were not satisfied by the deadline.

*Note: Original Rule Effective: December 31, 2020*

### **§45.7 Time Limitation for Processing Product Registration Application**

(a) Not later than the 30th day after the date the commission receives an application for registration of a product under this section, the commission shall either approve or deny the registration application.

(b) For purposes of this chapter, an application is received only when all required information has been received by the commission. An incomplete application is not considered received.

*Note: Original Rule Effective: December 31, 2020*

### **§45.8 Protest**

(a) If the commission denies the application for a product with a valid COLA or fails to act on the application within the time required by §45.7 of this title, the applicant is entitled to an administrative hearing before the State Office of Administrative Hearings.

(b) To request a hearing under this chapter, the applicant must file a written request for hearing with the commission within ten (10) business days of:

(1) receiving notification from the commission that product registration has been denied; or

(2) the expiration of the time limit for commission action, if the commission has not either approved or denied the application.

*Note: Original Rule Effective: December 31, 2020*

### **§45.9 Withdrawal of Application**

An applicant may unconditionally withdraw their application for product registration at any time prior to product registration or issuance of a notification of denial.

*Note: Original Rule Effective: December 31, 2020*

### **§45.10 Application Fee**

(a) The fee for an application for registration under this chapter is \$25 and shall be paid at the time the application is filed.

(b) An applicant for product registration under this chapter is not entitled to a refund of the application fee for any reason.

*Note: Original Rule Effective: December 31, 2020*

### **§45.11 When Reapplication is Required**

(a) For products registered with the commission using a federal COLA, any change to the label or product that requires issuance of a new COLA requires reapplication for product registration with the commission.

(b) For products registered with the commission that are not eligible for a federal COLA, any change to the label or product requires reapplication for product registration with the commission, except for the following permissible label revisions:

- (1) Deleting any non-mandatory label information, including text, illustrations, graphics, and ingredients;
  - (2) Repositioning any label information, including text, illustrations, and graphics;
  - (3) Changing the color of the background or text, the shape, or the proportionate size of labels;
  - (4) Changing the type size or font or make appropriate changes to the spelling (including punctuation marks and abbreviations) of words;
  - (5) Changing the type of container or net contents statement;
  - (6) Adding, deleting, or changing optional information referencing awards, medals or a rating or recognition provided by an organization as long as the rating or recognition reflects simply the opinion of the organization and does not make a specific substantive claim about the product or its competitors;
  - (7) Adding, deleting, or changing holiday or seasonal-themed graphics, artwork, or salutations;
  - (8) Adding, deleting, or changing promotional sponsorship-themed graphics, logos, artwork, dates, event locations or other sponsorship-related information; and
  - (9) Adding, deleting or changing references to a year or date.
- (c) Not later than September 1, 2023, producers of products required to obtain a first federal COLA pursuant to Alcoholic Beverage Code §101.67(a) must reapply for commission registration of any such product that will be shipped or imported into the state, manufactured and offered for sale, or distributed or sold on or after Sept. 1, 2023, unless granted an exception under subsection (d) of this section.
- (d) The executive director may issue a temporary Certificate of Registration containing an expiration date at the request of a producer demonstrating that the producer requires additional time beyond September 1, 2023 to use up products bearing labels approved by the commission and printed before December 31, 2020.

*Note: Original Rule Effective: December 31, 2020*

#### **§45.12 Application Procedures during Interruption of Federal Agency Operations**

- (a) In the event of a federal government shutdown or other interruption in service that prevents the TTB from issuing COLAs, the commission shall evaluate applications using the federal standards required for the applicant to receive a COLA or the federal exemption from the COLA requirements, if applicable.
- (b) If the applicant meets the applicable federal standards, the commission shall register the product on a provisional basis.
- (c) An applicant whose product has been registered with the state on a provisional basis shall apply for a COLA or any applicable federal exemption from COLA requirements within 30 days of the resumption of services of the TTB.
- (d) The provisional registration with the state shall expire automatically on the 31st day after the resumption of services of the TTB, unless the applicant has timely filed an application with the TTB. If the applicant timely filed an application with the TTB, the applicant's provisional registration shall continue in effect either:
  - (1) if the TTB denies the applicant's COLA or exemption application, until the notice of that denial is issued by the TTB; or,

(2) if the TTB issues the COLA or grants the exemption, until 30 days after the COLA or exemption is issued.

(e) If the TTB grants the COLA or exemption application, the applicant must re-apply with the commission for product registration within 30 calendar days of receipt of the federal COLA or exemption.

(f) If the TTB denies the COLA or exemption application, the applicant shall notify the commission within five calendar days of receipt of the denial. The commission may revoke the provisional product registration in the event of COLA or exemption denial by the TTB.

*Note: Original Rule Effective: December 31, 2020*

## **SUBCHAPTER B. ENFORCEMENT**

### **§45.20 Exhibiting Certificates to Representatives of the Commission**

It shall be unlawful for any person to fail or refuse to exhibit, upon demand or request by any authorized representative of the commission, the certificate of approval as issued by the United States Department of the Treasury or the executive director.

*Note: Original Rule Effective: December 31, 2020*

### **§45.21 Examination and Testing of Product**

Samples of alcoholic beverages shall be taken for examination by representatives of the commission whenever deemed necessary by the executive director. Examinations may include any chemical or physical determinations for the measurement of contents, the detection of alteration, and lack of conformity to standards of identity, quality, and purity, as set forth in the Code and the rules of the commission.

*Note: Original Rule Effective: December 31, 2020*

### **§45.22 Additional Provisions for Examination of Wine**

*Note: Rule Repealed Effective: September 1, 2021*

### **§45.23 Alteration of Labels**

No person may alter, mutilate, destroy, obliterate, or remove any mark, brand, or label on an alcoholic beverage product held for sale in this state except:

- (1) as authorized by Texas law; and
- (2) that the executive director may, on written application, permit additional labeling or relabeling of bottled alcoholic beverages with labels covered by certificates of label approval that comply with the requirements of this subchapter and with state law.

*Note: Original Rule Effective: December 31, 2020*

### **§45.24 Records Retention**

(a) Producers of alcoholic beverage products registered in this state shall retain records of laboratory analyses of the contents of each registered product, including tests of alcohol content.

(b) Producers shall maintain records under this section in a manner that they can be made available upon request of the commission.

(c) Producers shall maintain records under this section until the product is no longer in the stream of commerce in the state of Texas.

*Note: Original Rule Effective: December 31, 2020*

#### **§45.25 Damaged Stock**

No alcoholic beverages may be sold or possessed for the purpose of sale in this state that have had fire, smoke, or water damage to the label, container, or contents, unless authorized by the executive director.

*Note: Amended Rule Effective: September 1, 2021*

#### **§45.26 Intrastate Bottling**

It is unlawful for any distiller, rectifier, or other bottler of distilled spirits in this state to bottle or remove such distilled spirits from the licensed premises unless the distilled spirits have first been registered with the commission or clearance of its export procedure has been obtained from the executive director.

*Note: Amended Rule Effective: September 1, 2021*

#### **§45.27 Illicit Beverage**

(a) Any alcoholic beverage or container that does not meet all the requirements of this chapter is an illicit beverage subject to seizure without a warrant.

(b) The executive director may authorize such disposition as facts and circumstances may warrant of any alcoholic beverage that has been seized as the result of an accidental shipment or other reasonable mistake.

(c) All alcoholic beverages that cannot be restored to meet the standards of purity shall be destroyed.

*Note: Amended Rule Effective: September 1, 2021*

### **SUBCHAPTER C. SPECIFIC REQUIREMENTS FOR DISTILLED SPIRITS**

#### **§45.30 Certificate of Registration for a Distilled Spirit Product**

(a) No distilled spirit may be shipped into the state or sold within the state without a Certificate of Registration issued by the commission.

(b) An applicant for a Certificate under this section must hold a distiller's and rectifier's permit or a nonresident seller's permit issued by the commission.

(c) An applicant must submit an application to register a distilled spirit on the prescribed commission form. The application must contain the following:

- (1) the product COLA issued by the TTB;
- (2) all information required to complete the application form; and
- (3) the application fee.

(d) A legible copy of the COLA must be included with the application. If the COLA is not

legible, an actual label that is affixed to the distilled spirit as shipped or sold, or an exact color copy of a label must be included with the application.

*Note: Amended Rule Effective: September 1, 2021*

## **SUBCHAPTER D. SPECIFIC REQUIREMENTS FOR MALT BEVERAGES**

### **§45.40 Certificate of Registration for a Malt Beverage Product**

- (a) No malt beverage may be shipped into the state or sold within the state without a Certificate of Registration issued by the commission.
- (b) An applicant for a Certificate under this section must hold a brewer's license, nonresident brewer's license, or brewpub license issued by the commission.
- (c) A nonresident brewer's agent may file an application for a Certificate of Registration on behalf of a holder of a nonresident brewer's license.
- (d) An applicant must submit an Application to Register a Malt Beverage on the form prescribed by the commission along with the application fee to the commission. The application must contain the following:
  - (1) If the product is eligible for a COLA:
    - (A) legible copy of the COLA;
    - (B) an actual label that is affixed to the malt beverage as shipped or sold, or a legible exact color copy of a label; and
    - (C) all information required to complete the application form.
  - (2) If the product is not eligible for a COLA:
    - (A) an actual label that is affixed to the malt beverage as shipped or sold, or a legible exact color copy of the label;
    - (B) TTB formulation; and
    - (C) all information required to complete the application form.
- (e) Labels for beverages that meet the definition of malt beverage but are ineligible for a COLA must also comply with 21 C.F.R. Part 101; 27 C.F.R. Parts 16 and 25; 21 U.S.C. §§341-350; 26 U.S.C. Ch. 51; and 27 U.S.C. §215.

*Note: Amended Rule Effective: September 1, 2021*

### **§45.41 Additional Reasons for Denial of Registration of a Malt Beverage Product**

- (a) In addition to the provisions of §45.5 of this title, the commission may deny registration for a malt beverage for the following reasons:
  - (1) the label filed with the application by a brewer's or nonresident brewer's licensee:
    - (A) indicates by any statement, design, device, or representation that the malt beverage is brewed or bottled for any retailer permittee or licensee or any private club registration permittee;
    - (B) includes the name, tradename, or trademark of any retailer permittee or licensee or any private club registration permittee; or
    - (C) fails to include the alcohol content by volume as required by subsection (c) of this section.
  - (2) the brand of malt beverages by a brewer's or nonresident brewer's licensee is exclusive to the holder of a license or permit authorizing the retail sale or service of malt

beverages, or exclusive to retail licensees or permittees under common ownership, control, or management, to the exclusion of other retail licensees or permittees; or

(3) with the exception of the brewpub licensee's name, tradename or trademark, the label filed by a brewpub licensee:

(A) indicates by any statement, design, device, or representation that the malt beverage is brewed or bottled for any retailer permittee or licensee or for any private club registration permittee (other than the brewpub licensee label applicant itself, an entity under common ownership with it, or an entity with the same name or tradename as it); or

(B) includes the name, tradename, or trademark of any retailer permittee or licensee or of any private club registration permittee (other than the brewpub licensee label applicant itself, an entity under common ownership with it, or an entity with the same name or tradename as it).

(b) Nothing in this subchapter or in Alcoholic Beverage Code Chapter 74 authorizes a brewpub licensee to engage in contract brewing or alternating brewery proprietorship arrangements, and its facilities may not be used to provide such arrangements or engage in such activities, which are authorized only for holders of licenses under Alcoholic Beverage Code Chapters 62 or 63.

(c) All labels subject to this section must include alcohol content by volume according to the following schedule:

(1) For all new product registrations after September 1, 2021, labels must include the product's alcohol content by volume.

(2) Except as provided in paragraph (3) of this subsection, products registered with the commission prior to September 1, 2021, must include alcohol content by volume on products shipped or imported into the state, manufactured and offered for sale, or distributed or sold on or after September 1, 2023.

(3) Notwithstanding paragraph (2) of this subsection, if prior to September 1, 2023, a manufacturer subject to this rule makes a change to a label or product requiring issuance of a new COLA, the manufacturer shall also revise the product's label to include its alcohol content by volume as part of the application for a new COLA.

*Note: Amended Rule Effective: September 1, 2021*

#### **§45.42 Misbranding**

Malt beverages in containers shall be deemed to be misbranded if the container has blown, branded, or burned therein the name or other distinguishing mark of any person engaged in business as a brewer, wholesaler, distributor, bottler, or importer of malt beverages, or of any other person, except the person whose name is required to appear on the brand label.

*Note: Amended Rule Effective: September 1, 2021*

#### **§45.43 Verification Regarding Use of Facilities**

On or before September 1 of each year, each holder of a license issued under Alcoholic Beverage Code Chapter 62 or 63 shall verify to the commission, on a form promulgated by the commission, that no brewing or manufacturing facility owned or controlled by the license holder is used to produce malt beverages primarily for a specific Texas retailer or the retailer's Texas affiliates.

*Note: Amended Rule Effective: September 1, 2021*

## **SUBCHAPTER E. SPECIFIC REQUIREMENTS FOR WINE**

### **§45.50 Certificate of Registration for Wine**

(a) Except as provided by §45.4(b) of this title, no wine may be shipped into the state or sold within the state without a Certificate of Registration issued by the commission.

(b) An applicant for a Certificate under this section must hold a winery or a nonresident seller's permit issued by the commission.

(c) An applicant must submit an Application to Register a Wine on the form prescribed by the commission along with the application fee to the commission. The application must contain the following:

(1) If the product is eligible for a COLA:

(A) a legible copy of the COLA;

(B) an actual label that is affixed to the wine as shipped or sold, or a legible exact color copy of a label; and

(C) all information required to complete the application form.

(2) If the product is not eligible for a COLA:

(A) an actual label that is affixed to the wine as shipped or sold, or a legible exact color copy of the label;

(B) the TTB formulation, if required by the TTB; and

(C) all information required to complete the application form.

(d) Wines with an alcohol content of at least 0.5% but less than 7% are ineligible for a COLA and must adhere to the labeling requirements contained in 21 C.F.R. Part 101; 27 C.F.R. Parts 16, 24, and 27; 21 U.S.C. §§341-350; 26 U.S.C. Ch. 51; and 27 U.S.C. §215.

*Note: Amended Rule Effective: September 1, 2021*

### **§45.51 Additional Provision for Examination of Wine**

(a) It is unlawful for any producer or bottler of wine to accept as a return or to purchase or to use any container permanently branded or imprinted with the name of another producer or bottler of any alcoholic beverage.

(b) The alcoholic content requirements set forth in this chapter do not apply to sacramental or altar wines where ecclesiastical regulations limit the alcoholic content to not more than 18% by volume. Such wines must be labeled "Sacramental" or "Altar" wines.

(c) It is unlawful for any permittee to bring into this state, store, sell, or possess for the purpose of sale, any bottles of wine that are not protected from tampering or contamination by being sealed with seals of a type that must be irreparably mutilated or destroyed before the bottle can be opened. Such seals may not be made of paper.

*Note: Original Rule Effective: September 1, 2021*

## **SUBCHAPTER F. ADVERTISING AND PROMOTION**

### **§45.101 Rebates, Coupons and Premium Stamps**

(a) It shall be unlawful for the holder of a license or permit to give or offer to give to any



person premium stamps or any other type of inducement with the purchase of alcoholic beverages. The term "premium stamp" is hereby declared to include but not be limited to the following: exchange stamps, trade stamps, green stamps, gold stamps, and cash register premium tapes.

(b) No holder of a manufacturing, wholesale, or retail level license or permit may give any rebate or coupon redeemable by the public for the purchase of or for a discount on the purchase of any alcoholic beverage.

(c) No holder of a manufacturing, wholesale, or retail level license or permit may offer or give away with or without the purchase of any alcoholic beverage, a coupon redeemable for a rebate, cents-off or for any free non-alcoholic beverage item or product. A retailer, manufacturer, or wholesaler may, however, offer a discount, rebate, or cents-off coupon on any non-alcohol product except non-alcohol malt beverages and wines that he sells if it does not require the purchase of any alcoholic beverage.

(d) None of the above prohibits any retailer from offering a complimentary drink or drink discount as part of a meal package, a hotel package or any airline frequent flier program or in conjunction with any airline ticket purchase, provided, however, that no discount or complimentary beverage shall be brand identified or redeemed by a wholesaler or manufacturer.

*Note: Readopted Without Changes and Effective: May 24, 2016*

#### **§45.103 On-Premises Promotions**

(a) This rule is adopted to prohibit those practices by on-premise establishments that are reasonably calculated to result in excessive consumption of alcoholic beverages by consumers. Such practices constitute a manner of operation contrary to the public welfare, health and safety of the people in violation of §§11.61(b)(7) and 61.71(a)(17) of the Alcoholic Beverage Code. Nothing in this section shall be construed to relieve a person serving alcoholic beverages from responsibility under the Alcoholic Beverage Code and commission rules to refrain from serving alcoholic beverages to an intoxicated or underage consumer.

(b) Excessive consumption of alcoholic beverages shall be determined by the standard of public intoxication articulated in §49.02 of the Penal Code.

(c) Licensees and permittees authorized to sell or serve alcoholic beverages for on-premises consumption may not:

(1) serve, sell, or offer to serve or sell, two or more open containers of alcoholic beverages at a price less than the number of containers actually sold or served;

(2) increase the volume of alcohol contained in a drink without increasing proportionally the price thereof;

(3) serve or offer to serve more than one free alcoholic beverage to any identifiable segment of the population during the course of one business day. Licensees and permittees may, however, without prior advertising, give one free alcoholic beverage to individual consumers in celebration of birthdays, anniversaries or similar events;

(4) sell, serve, or offer to sell or serve an undetermined quantity of alcoholic beverages for a fixed price or "all you can drink" basis;

(5) sell, serve, or offer to sell or serve, alcoholic beverages at a reduced price to those consumers paying a fixed "buy in" price;

(6) sell, serve, or offer to sell or serve, alcoholic beverages at a price contingent on the amount of alcoholic beverages consumed by an individual;

- (7) reduce drink prices after 11:00 p.m.;
  - (8) sell, serve or offer to sell or serve more than two drinks to a single consumer at one time;
  - (9) impose an entry fee, cover or door charge for the purpose of recovering financial losses incurred by the licensee or permittee because of reduced or low drink prices;
  - (10) conduct, sponsor or participate in, or allow any person on the licensed premises to conduct, sponsor or participate in, any game or contest to be determined by the quantity of alcoholic beverages consumed by an individual or group, or where alcoholic beverages or reduced price alcoholic beverages are awarded as prizes;
  - (11) engage in any practice, whether listed in this rule or not, that is reasonably calculated to induce consumers to drink alcoholic beverages to excess, or that would impair the ability of the licensee or permittee to monitor or control the consumption of alcoholic beverages by consumers.
- (d) The provisions of subsections (c)(1) through (c)(8) of this section do not apply where:
- (1) the permittee or licensee has entered into an agreement under the terms of which all or a portion of the licensed premises are utilized for a private party or a meeting of a particular organization;
  - (2) the event is a private party, charity event held on a hotel premises, or temporary charitable event authorized by Alcoholic Beverage Code §109.58; or
  - (3) the licensed premises is a Public Entertainment Facility, as defined by Alcoholic Beverage Code §108.73 and the person to whom the alcoholic beverages are served holds a ticket or other pass that includes alcoholic beverages in the price of the ticket or pass.
- (e) Notwithstanding the provisions of (c)(1) through (c)(7) of this section, licensees and permittees may:
- (1) offer free or reduced-price food or entertainment at any time, provided the offer is not based on the purchase of an alcoholic beverage;
  - (2) include alcoholic beverages as part of a meal or hotel/motel package;
  - (3) sell, serve or deliver wine by the bottle to individual consumers during the sale or service of a meal to the consumer; or
  - (4) sell, serve or deliver alcoholic beverages in pitchers, carafes, buckets or similar containers to two or more consumers at one time.

*Note: Amended Rule Effective: February 17, 2021*

### **§45.105 Advertising**

- (a) Retailer Establishments.
  - (1) This subsection relates to Alcoholic Beverage Code §§108.07, 108.51, and 108.52.
  - (2) Except as provided in this paragraph, retail-tier license and permit holders may not advertise any price for an alcoholic beverage on any sign, billboard, marquee, or other display located on the retailer's premises in such a manner that the price may be read by persons outside of the premises. It is an exception to the restriction in this paragraph if the holder of a food and beverage certificate places a menu on the exterior wall of the premises so that it can be read outside of the premises only by a pedestrian in close proximity to the menu. In order to qualify for the exception granted in this paragraph, the menu visible outside of the premises must be of the same size and in the same sized font as the menu presented to the establishment's customers, and must show both food and beverage prices.

(b) Private Clubs.

(1) This subsection relates to Alcoholic Beverage Code §§32.01(b), 108.51, 108.52 and 108.56.

(2) The holder of a private club registration permit or a private club exemption certificate must, in any advertising either directly or indirectly advertising the service of alcoholic beverages, whether or not by any specific brand name, state that the service of alcoholic beverages is only for persons who are members of the club.

(3) The holder of a private club registration permit or a private club exemption certificate may advertise any class of alcoholic beverages in an area where the sale of that class of alcoholic beverages is legal for on-premises consumption, provided no other provisions of the Alcoholic Beverage Code are violated.

(c) Mobile Advertising.

(1) This subsection relates to Alcoholic Beverage Code §§108.51, 108.52 and 108.54.

(2) Mobile advertising on vehicles is not permitted unless it meets the definition of an "electric sign" in Alcoholic Beverage Code §108.51(3).

(3) Mobile advertising that meets the definition of an "electric sign" in Alcoholic Beverage Code §105.51(3) and that is funded directly or indirectly by upper-tier members may not be parked within 200 feet of a retail location for more than one hour, in order to prevent benefit to the retailer by drawing consumer traffic to the location.

(4) Mobile advertising that meets the definition of an "electric sign" in Alcoholic Beverage Code §108.51(3) may not be parked, maintained in, or driven through an area or zone where the sale of alcoholic beverages is prohibited.

(d) Internet Advertising.

(1) This subsection relates to Alcoholic Beverage Code §§102.07, 102.15 and 108.07.

(2) Retailers may advertise on the internet via their website or through third party advertising, unless the advertising is funded directly or indirectly by an upper-tier member.

(3) All retailer advertising on the internet must conform with the on-premises promotion restrictions of §45.103 of this subchapter, coupon and inducement restrictions of §45.101 of this subchapter, and sweepstakes and giveaway restrictions of §45.106 of this subchapter.

*Note: Amended Rule Effective: December 16, 2019*

#### **§45.106 Sweepstakes and Games of Chance**

(a) This rule relates to §§102.07 and 108.061 of the Alcoholic Beverage Code.

(b) For purposes of the above referenced provisions of the Alcoholic Beverage Code, sweepstakes shall include prizes that are awarded to consumers on the basis of random chance or on the basis of some knowledge or skill demonstrated by the sweepstakes participant, as determined by a judge or judges selected by the sponsor for that purpose. If a prize is a private event or other prize awarded in accordance with Alcoholic Beverage Code §108.061(d) then subsections (k)-(q) of this section apply.

(c) Except as otherwise provided in this subsection, members of the manufacturer and wholesaler tier may offer a prize to a consumer if the offer is part of a promotional sweepstakes activity. Holders of a distributor's license may not offer a prize to a consumer if the offer is part of a promotional sweepstakes activity. Pursuant to Alcoholic Beverage Code §108.061(d), only brewers or nonresident brewers may offer a prize, including food, beverages, entertainment,

recreation, gifts or attendance at a private event at a permitted or licensed retailer's premises.

(d) A promotional permit holder contracted by a member of the manufacturing tier may sponsor a sweepstakes on behalf of the manufacturing tier member.

(e) A person affiliated with the alcoholic beverage industry may not receive a prize from a sweepstakes promotion.

(f) A person must be 21 years of age or older to enter a sweepstakes promotion.

(g) Entry codes or entry forms on or in the caps, corks, labels, case cartons, or other materials packaged with, within, or printed on any packages of alcoholic beverages may be used as an entry mechanism provided:

(1) such mechanisms do not grant a consumer's right to claim winnings; and

(2) there is at the point of sale or on product packaging conspicuously displayed alternate means of entry available to the consumers.

(h) All sweepstakes entries are prohibited from requiring a purchase of an alcoholic beverage or the validation of any kind which requires a purchase of any alcoholic beverages.

(i) Except as specifically authorized by this section, and Alcoholic Beverage Code, §102.07 and §108.061, it shall be unlawful for any person to sell or distribute any alcoholic beverage in a container bearing any label, crown, or covering upon which there is printed or marked any word, letter, figure, symbol or character representative of or suggesting any game of chance, or to use or display any advertising so printed or marked.

(j) Except as authorized by Alcoholic Beverage Code §108.061(d)-(f), any sweepstakes promotion that includes prizes that are to be awarded on the basis of some knowledge or skill demonstrated by the sweepstakes participant may not be held or conducted on the licensed premises of a retailer or private club. Sweepstakes sponsors may, with the retailer's permission, place sweepstakes entry forms on retail premises.

(k) Except as authorized by Alcoholic Beverage Code §108.061(d)-(f), alcohol may not be awarded as a prize.

(l) Except as authorized by Alcoholic Beverage Code §108.061(d)-(f), a sweepstakes sponsored by a member of an upper tier may not be retailer specific and prizes may not be awarded at a retailer's premises.

(m) A brewer or nonresident brewer may conduct a private event at a retailer's premises or award other prizes at a retailer's premises only in accordance with the requirements of this section and Alcoholic Beverage Code §108.061(d)-(f).

(n) A prize awarded pursuant to Alcoholic Beverage Code §108.061(d)-(f) may include food, beverages, entertainment, recreation, gifts, or attendance at a private event for the winners of the sweepstakes and other guests of the sponsor of the event.

(o) The name or location of the premises where a private event described by subsection (n) of this section is held or prizes are awarded may not be mentioned in any advertising related to the sweepstakes.

(p) A sweepstakes authorized by Alcoholic Beverage Code §108.061(d)-(f) may be conducted at a permitted or licensed premises and the prize may be awarded to the winners at the permitted or licensed premises at which the sweepstakes is conducted.

(q) If a licensee or permittee conducts a private event authorized by Alcoholic Beverage Code §108.061(d)-(f) at a retailer's premises:

(1) the licensee or permittee shall pay the retailer the fair market value for the use of the premises;

- (2) the retailer must retain control of the sale and service of alcoholic beverages at the private event;
- (3) product served at the private event must be served by the retailer; and
- (4) the upper-tier sponsor authorized in subsection (m) of this section may purchase product for attendees from the retailer.

*Note: Amended Rule Effective: September 1, 2021*

#### **§45.107 Alcoholic Beverages Utilized for Cooking Purposes at On-Premise Locations**

- (a) Wine and Beer On-Premises Retailers.
  - (1) This subsection is promulgated pursuant to Alcoholic Beverage Code §25.09.
  - (2) Any alcoholic beverage that is in excess of 17 percent alcohol by volume and is used by wine and beer on-premises retailers for cooking purposes must be individually labeled as "For Cooking Use Only".
  - (3) All alcoholic beverages in excess of 17 percent alcohol by volume used by wine and beer on-premises retailers for cooking purposes must be stored separately from alcoholic beverages that are legal for sale on the premises by such retailers.
  - (4) No alcoholic beverage in excess of 17 percent alcohol by volume that is designated by wine and beer on-premises retailers for cooking purposes may be sold, served or consumed in liquid form by staff or customers of the retailer.
  - (5) All receipts for the purchase by wine and beer on-premises retailers of alcoholic beverages in excess of 17 percent alcohol by volume must be retained on the premises until the bottle is empty and disposed of.
- (b) Mixed Beverage Permittees.
  - (1) This subsection is promulgated pursuant to Alcoholic Beverage Code §28.06.
  - (2) Alcoholic beverages used for cooking purposes may be purchased by a mixed beverage permittee from a local distributor's permittee, or may be purchased at retail from a licensed retailer. All receipts for the purchase of alcoholic beverages used for cooking purposes and purchased by a mixed beverage permittee at retail without a tax stamp must be retained on the premises until the bottle is empty and disposed of.
  - (3) An alcoholic beverage used for cooking purposes and purchased by a mixed beverage permittee at retail without a tax stamp must be individually labeled as "For Cooking Use Only".
  - (4) All alcoholic beverages used for cooking purposes and purchased by a mixed beverage permittee at retail without a tax stamp must be stored separately from alcoholic beverages purchased from a local distributor's permittee.
  - (5) No alcoholic beverage used for cooking purposes and purchased by a mixed beverage permittee at retail without a tax stamp may be sold, served or consumed in liquid form by staff or customers of the permittee.

*Note: Amended Rule Effective: April 18, 2017*

#### **§45.109 Restocking and Rotation of Alcoholic Beverages**

- (a) General.
  - (1) This rule is enacted pursuant to §102.20 of the Alcoholic Beverage Code.

(2) This rule applies to members of the wholesale tier and those members of the manufacturing tier authorized to sell to retailers for all beverages.

(b) Restocking. Licensees and permittees subject to this rule may, at retail premises, with permission of the retailer, stock, rotate, affix prices, and reset or rearrange alcoholic beverages they sell, provided products of other industry members are not altered or disturbed.

(c) Licensees and permittees subject to this rule may, at retail premises, with permission of the retailer, organize and construct displays of alcoholic beverages they sell. Notwithstanding the provisions of subsection (b) of this section, products of other industry members, arranged in floor or end cap displays, may be moved, with the permission of the retailer, in order to perform the services allowed by this subsection. Displays constructed under this subsection must be accessible to the consumer.

(d) The activities permitted by paragraphs (b) and (c) of this rule may only be performed during the hours when the sale or delivery of specific alcoholic beverages are legal and may also be performed for malt beverages and wine from 5:00 a.m. to 12:00 noon on Sunday.

(e) Licensees and permittees subject to this rule may provide shelf plans or schematics to retailers.

*Note: Readopted Without Changes and Effective: March 27, 2018*

#### **§45.110 Inducements**

(a) General. This section is enacted pursuant to Alcoholic Beverage Code §§102.04, 102.07, 102.12, 102.15 and 108.06.

(b) Unless otherwise specified, this section applies to members of the manufacturing and wholesale tiers for all alcoholic beverages.

(c) Inducements. Notwithstanding any other provision of these rules, practices and patterns of conduct that place retailer independence at risk constitute an illegal inducement as that term is used in the Alcoholic Beverage Code. Examples of unlawful inducements are:

(1) purchasing or renting shelf, floor or warehouse space from or for a retailer;

(2) requiring a retailer to purchase one product in order to be allowed to purchase another product at the same time;

(3) providing or purchasing, in whole or in part, any type of advertising benefitting any specific retailer, if the advertising is a result of unauthorized activity;

(4) furnishing food and beverages, entertainment or recreation to retailers or their agents or employees except under the following conditions:

(A) the value of food, beverages, entertainment and recreation shall not exceed \$500.00 per person on any one occasion; and

(B) food, beverages, entertainment and recreation provided may only be consumed or enjoyed in the immediate presence of both the providing upper tier member and the receiving retail tier member; and

(C) in the course of providing food, beverages, entertainment or recreation under this rule, upper tier members may only furnish ground transportation.

(D) food, beverages, recreation and entertainment may also be provided during attendance at a convention, conference, or similar event so long as the primary purpose for the attendance of the retailer at such event is not to receive benefits under this section.

(E) each upper tier member shall keep complete and accurate records of all expenses incurred for retailer entertainment for two years.

- (5) furnishing of service trailers with equipment to a retailer;
- (6) furnishing transportation or other things of value to organized groups of retailers. Members of the manufacturing and distribution tiers may advertise in convention programs, sponsor functions or meetings and other participate in meetings and conventions of trade associations of general membership; or
- (7) except as otherwise allowed under §45.96 of this chapter, marking, branding or labeling a malt beverage with:
  - (A) the tradename or trademark of any retailer permittee or licensee or any private club registration permittee; or
  - (B) a tradename or trademark that is owned or licensed by, or is exclusively used by any retailer permittee or licensee or any private club registration permittee.
- (d) Criteria for determining retailer independence. The following criteria shall be used as a guideline in determining whether a practice or pattern of conduct places retailer independence at risk. The following criteria are not exclusive, nor does a practice need to meet all criteria in order to constitute an inducement.
  - (1) The practice restricts or hampers the free economic choice of a retailer to decide which products to purchase or the quantity in which to purchase them for sale to consumers.
  - (2) The retailer is obligated to participate in a program offered by a member of the manufacturing or wholesale tier in order to obtain that member's product.
  - (3) The retailer has a continuing obligation to purchase or otherwise promote the industry member's product.
  - (4) The retailer has a commitment not to terminate its relationship with a member of the manufacturing or wholesale tier with respect to purchase of that member's products.
  - (5) The practice involves a member of the manufacturing or wholesale tier in the day-to-day operations of the retailer. For example, the member controls the retailer's decisions on which brand of product to purchase, the pricing of products, or the manner in which the products will be displayed on the retailer's premises.
  - (6) The practice is discriminatory in that it is not offered to all retailers in the local market on the same terms without business reasons present to justify the difference in treatment.

*Note: Readopted Without Changes and Effective: March 27, 2018*

#### **§45.111 Advertising Signs at Charitable or Civic Events**

- (a) This rule is enacted pursuant to §108.53(d) of the Alcoholic Beverage Code.
- (b) At a charitable or civic event of a temporary nature, members of the alcoholic beverage industry may place signs or other advertising materials indicating their participation in, or sponsorship of, the charitable or civic event.
- (c) It is the intent of this rule that any proceeds from signs advertising alcoholic beverages be received directly by the charity or civic endeavor.
- (d) Notwithstanding any other provision of the Alcoholic Beverage Code, signs at a charitable or civic event of a temporary nature may be within 200 feet of the licensed premises of a retailer of alcoholic beverages. No consideration of any kind may be given directly or indirectly, in any form or degree, to any retailer for the placement of any sign.

*Note: Readopted Without Changes and Effective: January 23, 2018*

#### **§45.112 Use of Brand Names and Insignia by Industry**

- (a) This section is promulgated pursuant to Alcoholic Beverage Code, §102.07 and §108.03.
- (b) Advertising of an alcoholic beverage on caps, regalia or uniforms worn by an employee of a manufacturer, distributor, distiller or winery, shall be limited to:
- (1) the name and address of the manufacturer, distributor, distiller or winery; and
  - (2) the brand names, logos and slogans that appear on the container labels approved by the administrator for such alcoholic beverage.
- (c) Advertising of an alcoholic beverage on caps, regalia or uniforms worn by a participant in any game, sport, athletic contest or revue, when the participant is sponsored by a manufacturer, distributor, distiller or winery, shall be limited to:
- (1) the name and address of the manufacturer, distributor, distiller or winery; and
  - (2) the brand names, logos and slogans that appear on the container labels approved by the administrator for such alcoholic beverage.
- (d) Business cards and stationery bearing brand insignia may be used by licensees and permittees who are not retail licensees and permittees. Such business cards and stationery may contain:
- (1) the name and address of the user;
  - (2) the name and address of the firm represented;
  - (3) the brand insignia of any alcoholic beverage which the firm represents or the user is licensed to sell; and
  - (4) any other logo, slogan or trademark that appears on the approved label for such alcoholic beverage, or which slogan or trademark has otherwise been approved by the administrator.
- (e) Advertising of alcoholic beverages on the equipment, service or delivery vehicles of a member of the manufacturing or wholesale tiers shall be limited to the brand names or logos of the alcoholic beverages sold or represented by the manufacturer, local distributor or wholesaler, firm names and addresses of the manufacturer, local distributor or wholesaler, and such slogans as have been approved by the administrator.
- (f) Menu cards, folders or sheets advertising beer, ale or malt liquor may be furnished to a holder of a retail license or permit by an upper-tier member, if such menu cards, folders or sheets, at the time of their delivery to the retailer, do not list any food or drink item offered for sale by the retailer. The holder of the retail license or permit shall bear all costs of listing any such food or drink item on the menu cards, folders or sheets.

*Note: Readopted Without Changes and Effective: March 27, 2018*

#### **§45.113 Gifts, Services and Sales**

- (a) General.
- (1) This rule is promulgated pursuant to §108.04 of the Alcoholic Beverage Code to relax certain restrictions and prohibitions set forth in §§102.14, 102.15 and 108.06 of the code.
  - (2) This rule applies to buyers, sellers and consumers of malt beverages.
- (b) Gifts to Consumers. Brewers, nonresident brewers, and distributors may furnish novelty items and malt beverages to consumers.
- (1) Novelty items are things designed to advertise or promote a specific product or brand. Such items may have a utilitarian function in addition to product promotion.
  - (2) Such items may not exceed a value of \$1.00 per unit wholesale cost.



(3) Malt beverages may be purchased for consumers provided that such beverages are consumed at retail licensed premises in the presence of the purchaser. Such purchases shall not be excessive. All members of the manufacturing and distribution tiers participating in promotions authorized by this paragraph must be an employee or agent of a brewer, nonresident brewer, or distributor or a promotional permit holder contracting with a brewer or nonresident brewer.

(4) The executive director may grant specific approval for sampling tests designed to determine consumer taste preferences. The executive director may impose such conditions as they deem necessary.

(5) Brewers and distributors may, as a social courtesy, give malt beverages and other things of value to unlicensed persons who are not employed or affiliated with the holder of a retail license or permit.

(c) Promotional items sold to retailers. Distributors and brewers authorized to sell to retailers may sell promotional items to retailers.

(1) Promotional items are things designed to promote a specific product or brand and are further designed for use by the consumer, either on or off the retailer's premises.

(2) Promotional items sold must bear a manufacturer's logo, brand or product name.

(3) Promotional items may not be sold for less than the item producer's regularly published wholesale price. Payment must be in cash, paid on or before delivery.

(d) Signs provided to retailers.

(1) Distributors and brewers authorized to sell to retailers may furnish, give or sell interior signs to retailers.

(2) A sign is a thing whose primary purpose is the advertisement of a brand or product or the price thereof.

(3) A sign furnished by a distributor or brewer authorized to sell to retailers may not bear the name, logo or trademark of a specific retailer.

(4) No brewer or distributor may paint, improve or remodel a retailer's buildings or parts of buildings, inside or out, or finance any improvements thereto.

(e) Services provided to retailers.

(1) Distributors and brewers authorized to sell to retailers may service and repair promotional items and signs furnished or sold under the provisions of this rule.

(2) Distributors and brewers may:

(A) furnish meeting rooms to retailers on the brewer's or distributor's licensed premises. In no event shall anything be furnished to retailers except samples of the brewer's or distributor's product or food provided as a courtesy in accompaniment to such samples; and

(B) furnish and install shanks, washers, hose and hose connections, tap rods, tap markers, and coil cleaning service necessary for the proper delivery and dispensing of draft malt beverages.

(f) Gifts to unlicensed organizations. Brewers, nonresident brewers, and distributors may donate money or other things of value, and brewers and distributors may donate malt beverages, to unlicensed civic, religious or charitable organizations, subject to the following conditions:

(1) Malt beverages may only be given for consumption in a wet area.

(2) Advertising of events sponsored by organizations receiving donations shall include promotion of the organization sponsor or cause in a manner at least equal to or greater than the advertising of the industry donor.

(3) Distributors and authorized brewers may furnish malt beverage dispensing equipment for use at temporary events, provided that such equipment may not be given in exchange for an exclusive sales privilege.

(4) Brewers, distributors and their employees and agents may not serve or dispense malt beverages at temporary events.

(5) "Unlicensed" means not having a permit or license authorizing the sale or service of alcoholic beverages.

*Note: Amended Rule Effective: September 1, 2021*

#### **§45.117 Gifts and Advertising Specialties**

(a) General.

(1) This section is enacted pursuant to Alcoholic Beverage Code §§102.07(b), 102.07(d), 108.042 and 109.58.

(2) This section applies to buyers, sellers, and consumers of liquor.

(b) Gifts to consumers. Holders of distiller's and rectifier's, winery, nonresident seller's, and wholesaler's permits may furnish gifts to consumers.

(1) The gifts shall be offered consistently with the restrictions contained in Alcoholic Beverage Code §102.07(d).

(2) The items given may be novelty items of limited value. Such items shall be designed to promote a specific product or brand and may have a utilitarian function in addition to product promotion.

(3) Liquor may be purchased for consumers provided that such beverages are consumed on retail licensed premises in the presence of the purchaser. Such purchases shall not be excessive. All members of the manufacturing and wholesaler tiers participating in promotions authorized by this paragraph must be an employee or agent of a member of the manufacturing tier, a distributor, or a promotional permit holder.

(4) Holders of distiller's and rectifier's, winery, nonresident seller's, and wholesaler's permits may, as a social courtesy, provide liquor or other things of value to unlicensed persons who are not employed or affiliated with the holder of a retail license or permit.

(c) Gifts to Retailers. Holders of distiller's and rectifier's, winery, nonresident seller's and wholesaler's permits may furnish advertising specialties to retailers.

(1) Advertising specialties are things designed to advertise or promote a specific product or brand. Such items may have a utilitarian function in addition to product promotion.

(2) The total cost of all advertising specialties furnished to a retailer shall not exceed \$125 per brand per calendar year. Dollar limitations may not be pooled to provide a retailer with advertising specialties in excess of the maximum permitted under this subsection.

(d) Service provided to retailer.

(1) Holders of distiller's and rectifier's, winery, nonresident seller's and wholesaler's permits may service and repair items furnished to retailers under the provisions of this rule.

(2) Holders of distiller's and rectifier's, winery, nonresident seller's and wholesaler's permits may furnish meeting rooms to retailers for purposes of product promotions. In no event shall anything be furnished to retailers except samples of the permit holder's product or food provided as a courtesy in accompaniment to such samples.

(3) The holder of a wholesaler's permit, or the permit holder's employee or agent, may furnish and install shanks, washers, hose and hose connections, tap rods, tap markers, and coil cleaning service necessary for the proper delivery and dispensing of wine.

(e) Gifts to Unlicensed Organizations. Holders of distiller's and rectifier's, winery, nonresident seller's and wholesaler's permits may donate money, liquor or other things of value to unlicensed civic, religious, or charitable organizations.

(1) Liquor may only be given for consumption in wet areas.

(2) Advertising of events sponsored by organizations receiving donations shall include promotion of the organization sponsor or cause in a manner at least equal to or greater than the advertising of the industry donor.

(3) "Unlicensed" means not having a permit or license authorizing the sale or service of alcoholic beverages.

*Note: Amended Rule Effective: September 1, 2021*

#### **§45.120 Co-Packaging of Alcoholic Beverage**

(a) This section relates to Alcoholic Beverage Code §102.07(a)(5) and §108.035.

(b) As used in this section:

(1) "Co-pack" means a package:

(A) originally bundled and supplied by a manufacturer, distiller, brewer, rectifier, wholesaler, class B wholesaler, winery or wine bottler (or an agent, employee or servant of such);

(B) containing an alcoholic beverage and another item;

(C) where the package is designed to be delivered intact to the ultimate consumer;

and

(D) where the additional items have no value or benefit to the retailer other than that of having the potential of attracting purchases and promoting sales.

(2) "Naked bottle" means an alcoholic beverage sold by a wholesaler that is similar in all regards to the alcoholic beverage contained in a co-pack sold by that wholesaler, except that it is not packaged with any other item.

(c) If any alcoholic beverage is sold to a retailer as a "co-pack", the retailer may not separate the other packaged item and sell it by any means other than the way it was originally packaged when received.

(d) In order to demonstrate that a non-alcoholic beverage item in a co-pack has no unlawful value or benefit to the retailer, a retailer must price and sell a co-pack at a cost/price differential not to exceed the cost/price differential at which the retailer prices and sells a naked bottle received from the same wholesaler.

(e) Nothing in this section shall preclude a supplier from differentiating in the price of a naked bottle and co-pack during the packaging phase of a co-pack by adding cost to the co-pack and increasing the baseline price of the co-pack.

(f) A retailer may not be forced, induced or persuaded to purchase a prescribed number of co-packs in order to purchase naked bottles, nor may a retailer be forced, induced or persuaded to purchase a prescribed number of naked bottles in order to purchase co-packs.

*Note: Readopted Without Changes and Effective: March 27, 2018*

#### **§45.121 Advertising Standards Required**

No person, directly or indirectly, or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication, or by any sign or outdoor advertisement, or any other printed or graphic matter, including via the internet, any advertisement of alcoholic beverages if such advertisement is in this state, is calculated to induce sales in this state, or is disseminated by mail or e-mail in this state, unless such advertisement is in conformity with this chapter. This chapter does not apply to the publisher of any newspaper, periodical or other publication, or radio broadcaster, unless such publisher or radio broadcaster is a permittee.

*Note: Original Rule Effective: September 1, 2021*

#### **§45.122 Prohibited Statements**

- (a) An advertisement for an alcoholic beverage shall not contain:
- (1) any statement that is false or untrue in any particular or that irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression;
  - (2) any statement that is disparaging of a competitor's product;
  - (3) any statement, design, device, or representation that is obscene or indecent;
  - (4) any statement, design, device, or representation of or relating to analyses, standards or tests, irrespective of falsity, that the administrator finds likely to mislead the consumer;
  - (5) any statement of, or any statement likely to be interpreted as a statement regarding intoxicating qualities; nor
  - (6) any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, that the executive director finds to be likely to mislead the consumer. Enforceable money back guarantees are not prohibited.
- (b) Statements inconsistent with labeling. The advertisement shall not contain any statement concerning a brand or lot of alcoholic beverage that is prohibited from appearing on the label or inconsistent with any statement on the label thereof
- (c) Curative and therapeutic effects. The advertisement shall not contain any statement, design, or device representing that the use of any alcoholic beverage has curative or therapeutic effect, if such statement is untrue in any particular, or tends to create a misleading impression.
- (d) Place of origin. The advertisement shall not represent that the alcoholic beverage was manufactured in or imported from a place or country other than that of their actual origin, or was produced or processed by one who was not in fact the actual producer or processor.
- (e) Confusion of brands. Two or more different brands or lots of alcoholic beverages shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provisions of this regulation or are in any respect untrue.
- (f) Flags, seals, coats of arms, crests, and other insignia.
- (1) An advertisement or product label shall not contain any statement, design, device, or pictorial representation that relates to or is capable of being construed as relating to the armed forces of the United States, or the American flag, or the Texas flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any advertisement contain any statement, design, device, or pictorial representation of or concerning any flag, seal,

coat of arms, crest, or other insignia unless an exception to this rule is granted by the executive director under subsection (2) of this section.

(2) The executive director, in their sole discretion, may authorize an exception to subsection (1) of this section upon written request. The executive director shall authorize an exception if the advertisement or product label is not likely to mislead or capable of misleading the consumer to believe that the product has been endorsed, made, or used by, or produced for or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(g) An advertisement for an alcoholic beverage product shall not contain any statement that the product is distilled, blended, made, bottled, or sold under or in accordance with any municipal, state, federal, or foreign authorization, law or regulation, unless such statement appears in the manner authorized by this chapter. If a municipal, state or federal permit number is stated, such permit number shall not be accompanied by any additional statements relating thereto.

(h) No alcoholic beverage possessed for the purpose of sale in this state shall be advertised for sale as the result of fire, smoke, or water damage to the label, container or contents.

(i) Subsections (b) and (h) of this section do not apply to the institutional advertising of wines inside any building in an area where the sale of such wines is legal, provided that the advertising has been approved by the executive director.

*Note: Original Rule Effective: September 1, 2021*

#### **§45.123 Required Statements.**

(a) Responsible advertiser.

(1) An advertisement not exempt under subsection (a)(2) of this section shall state the name and address of the person responsible for its publication or broadcast. Street number and name may be omitted in the address.

(2) If an advertisement refers to a general malt beverage or wine line or all of the malt beverage or wine products of one company, whether by the company name or by the brand name common to all the products in the line, the only mandatory information necessary is the name and address of the responsible advertiser. This exception does not apply where only one type of malt beverage or wine is marketed under the specific brand name advertised.

(b) Class and type. The advertisement shall contain a conspicuous statement of the class to which the product belongs and the type thereof corresponding with the statement of class and type that is required to appear on the label of the product.

*Note: Original Rule Effective: September 1, 2021*

#### **§45.124 Lettering.**

Statements required under this subchapter to appear in any written, printed, or graphic advertisement shall be in lettering or type of a size sufficient to render them conspicuous and readily legible.

*Note: Original Rule Effective: September 1, 2021*

#### **§45.125 Cooperative Advertising by Package Stores.**

It is unlawful for any person holding a package store permit to share the same advertisement of distilled spirits with any other person or persons holding a package store permit or permits, provided, however, that members of a partnership or corporation may share the same distilled spirits advertisement when said distilled spirits are offered for sale under the permit or permits held by the said partnership or corporation.

*Note: Original Rule Effective: September 1, 2021*

#### **§45.126 Additional Mandatory Statements for Distilled Spirits.**

(a) Alcoholic content. The alcoholic content shall be stated by percentage by volume for distilled spirits except that it may be stated in proof of cordials and liqueurs, cocktails, highballs, and such other specialties as may be specified by the administrator.

(b) Percentage of neutral spirits and name of commodity.

(1) In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form: "\_\_\_\_\_% neutral spirits distilled from \_\_\_\_ (insert grain, cane products, or fruit, as appropriate)"; or "\_\_\_\_\_% neutral spirits (vodka) distilled from \_\_\_\_ (insert grain, cane products, or fruit, as appropriate)"; or "\_\_\_\_\_% grain (cane products), (fruit) neutral spirits"; or "\_\_\_\_\_% grain spirits."

(2) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin has been distilled. The statement of the name of the commodity shall be made in substantially the following form: "distilled from grain," or "distilled from cane products," or "distilled from fruit."

(3) Retailers are exempt from the provisions of this subsection.

(c) Price advertising. All distilled spirits advertised with prices by package store permittees shall state the brand name of the distilled spirits offered for sale.

*Note: Original Rule Effective: September 1, 2021*

#### **§45.127 Additional Prohibited Statements for Distilled Spirits.**

(a) An advertisement for a distilled spirit shall not contain any statement, design, or device directly or by implication concerning age or maturity of any brand or lot of the product unless a statement of age appears on the label of the advertised product.

(b) When any such statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction therewith and with substantially equal conspicuousness) all parts of the statement, if any, concerning age and percentages required by the TTB to be made on the label.

(c) An advertisement for any whiskey or brandy (except immature brandies) that is not required to bear a statement of age on the label or an advertisement for any rum, tequila or mescal that has been aged for not less than four years may, however, contain an inconspicuous, general representation as to age, maturity or other similar representation even though a specific age statement does not appear on the label of the advertised product and in the advertisement

itself.

*Note: Original Rule Effective: September 1, 2021*

## **SUBCHAPTER G. REGULATION OF CASH AND CREDIT TRANSACTIONS**

### **§45.130. Credit Law and Delinquent List.**

(a) Purpose. This section implements §§102.32, 11.61(b)(2), 11.66, and 109.64 of the Texas Alcoholic Beverage Code (Code).

(b) Definitions. For purposes of this section, the following terms have the definitions given in this subsection.

(1) Alcoholic beverage--As used in this section includes only liquor, as that term is defined in §1.04 of the Code.

(2) Cash equivalent--A financial transaction or instrument that is not conditioned on the availability of funds upon presentment, including money order, cashier's check, certified check or completed electronic funds transfer.

(3) Delinquent payment--A financial transaction or instrument that fails to provide payment in full or is returned to the Seller as unpaid for any reason, on or before the fourth business day after the date that payment is due under §102.32(c) of the Code, or is returned to the Seller as unpaid for any reason after the fourth business day after the date payment is due under §102.32(c) of the Code. A delinquent payment also occurs in the event the Retailer fails to submit payment on or before the fourth business day after the date that payment is due under §102.32(c) of the Code.

(4) Event--A financial transaction or instrument that fails to provide payment to a Retailer and results in a Retailer making one or more delinquent payments to one or more Sellers.

(5) Incident--A single delinquent payment. Failure to submit payment also constitutes an incident.

(6) Retailer--A package store permittee, wine only package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other Retailer, and their agents, servants and employees.

(7) Seller--As used in this section includes:

(A) the holder of a wholesaler's permit or a general class B wholesaler's permit

(B) the holder of a winery permit;

(C) the holder of a local distributor's permit when making a sale of an alcoholic beverage that is not the sale of a malt beverage to a mixed beverage permittee or a nonprofit entity temporary event permittee; and

(D) the agents, servants and employees of a permit or license holder identified in subparagraphs (A) - (C) of this paragraph.

(c) Invoices.

(1) A delivery of alcoholic beverages by a Seller to a Retailer must be accompanied by an invoice of sale showing the name and permit number of the Seller and the Retailer, a full description of the alcoholic beverages, the price and terms of sale, and the place and date of delivery.

(2) The Seller's copy of the invoice must be signed by the Retailer to verify receipt of alcoholic beverages and accuracy of invoice.

(3) The Seller and Retailer must retain invoices in compliance with the requirements of §206.01 of the Code.

(4) Invoices may be created, signed and retained in an electronic or web-based inventory system, and may be retained on or off the licensed premise, as long as the records can be accessed from the licensed premises and made available to the commission during normal business hours.

(d) Late Payment Violation.

(1) A payment is late if it is not received by the Seller on or before the date that payment is due under §102.32(c) of the Code. If the Seller receives payment by mail within four days of the date that payment is due under §102.32(c) of the Code, the payment is not late.

(2) A Retailer shall not make a late payment to a Seller for the delivery of alcoholic beverages. A payment is late and a violation accrues to the Retailer according to paragraph (1) of this section.

(3) A Retailer who violates this section must pay the amount due, and a Seller shall accept payment, only in cash or cash equivalent financial transaction or instrument.

(4) A Retailer who violates this section shall be placed on the Delinquent List unless the delinquent account is paid within four days of the date that payment is due under §102.32(c) of the Code.

(5) A Retailer whose permit or license expires or is cancelled for cause, voluntarily cancelled, suspended or placed in suspension while on the Delinquent List is disqualified from applying for or being issued an original or renewal permit or license until all delinquent accounts are paid in full. For purposes of this section, the Retailer includes all persons who were owners, officers, directors and shareholders of the Retailer at the time the delinquency occurred.

(e) Reporting Violation and Payment; Failure to Report.

(1) A report of a violation or payment must be submitted electronically to the commission on the commission's web-based reporting system at <https://www.tabc.texas.gov>.

(2) A Seller who cannot access the commission's web-based reporting system must either:

(A) submit a request for exception to submit reports by paper; or

(B) contract with another Seller or service provider to make electronic reports on behalf of the Seller

(3) All reports of violations or payment under this subsection must be made to the commission before the date the Delinquent List is published.

(4) A Seller who fails to report a violation or a payment as required by this subsection is in violation of this section.

(f) Prohibited Sales and Delivery.

(1) Sellers are prohibited from selling or delivering alcoholic beverages to any licensed location of a Retailer who appears on the commission's Delinquent List from the date the violation appears on the Delinquent List until the Release Date on the Delinquent List, or until the Retailer no longer appears on the Delinquent List.

(2) A sale or delivery of alcoholic beverages prohibited by this section is a violation of this section.

(g) Prohibited Purchase or Acceptance.

(1) A Retailer who violates subsection (d) of this section is prohibited from purchasing or accepting delivery of alcoholic beverages from any source at any of Retailer's licensed locations from the date any violation occurs until all delinquent accounts are paid in full.



(2) A prohibited purchase or acceptance of a delivery of alcoholic beverages is a violation of this section.

(h) Exception.

(1) A Retailer who wishes to dispute a violation of this section or inclusion on the commission's Delinquent List based on a good faith dispute between the Retailer and the Seller may submit a detailed electronic or paper written statement with the commission with an electronic or paper copy to the Seller explaining the basis of the dispute.

(2) The written statement must be submitted with documents and/or other records tending to support the Retailer's dispute, which may include:

(A) a copy of the front and back of the cancelled check of Retailer showing endorsement and deposit by Seller;

(B) bank statement or records of bank showing funds were available in the account of Retailer on the date the check was delivered to Seller; and

(C) bank statement or records showing:

(i) bank error or circumstances beyond the control of Retailer caused the check to be returned to Seller unpaid; or

(ii) the check cleared Retailer's account and funds were withdrawn from Retailer's account in the amount of the check.

(3) A disputed delinquent account will not be removed from the Delinquent List until documents and/or other records tending to support the Retailer's dispute are submitted to the commission.

(4) The Retailer must immediately submit an electronic notice of resolution of a dispute to the commission under this subsection.

(i) Penalty for Violation. An action to cancel or suspend a permit or license may be initiated under §11.61(b)(2) of the Code for one or more violations of this section. The commission may consider whether a violation is the result of an event or incident when initiating an action under this subsection.

(j) Delinquent List.

(1) The Delinquent List is published bi-monthly on the commission's public web site at <https://www.tabc.texas.gov>. An interested person may receive the Delinquent List by electronic mail each date the Delinquent List is published by registering for this service online.

(2) Except as otherwise specified in subsection (k) of this section, the Delinquent List will be published on the fifth business day after the 25th day of the month for purchases made from the 1st to the 15th day of that month and for which payment was not received by the fourth business day after the 25th day of that month. Except as otherwise specified in subsection (k) of this section, the Delinquent List will be published on the fifth business day after the 10th day of the next month for purchases made between the 16th and the last day of the preceding month and for which payment was not received by the fourth business day after the 10th day of the next month.

(3) The Delinquent List is effective at 12:01 A.M. on the date of publication.

(4) The Delinquent List is updated hourly to reflect reports of payments submitted.

(k) Calculation of Time. A due date under this section or §102.32(c) of the Code or the publication date of the Delinquent List that would otherwise fall on a Saturday, a Sunday, a state or federal holiday (unless the commission is required to be open for business), or a standard Federal Reserve bank holiday will be the next regular business day. For purposes of this section, a business day means a day which is not a Saturday, a Sunday, a state or federal holiday (unless

the commission is required to be open for business), or a standard Federal Reserve bank holiday.

*Note: Original Rule Effective: September 1, 2021*

#### **§45.131 Cash Law**

(a) Purpose. This rule implements §102.31 of the Texas Alcoholic Beverage Code (Code).

(b) Definitions. For purposes of this section, the following terms have the meaning given in this subsection.

(1) Cash equivalent--A financial transaction or instrument that is not conditioned on the availability of funds upon presentment, including money order, cashier's check, certified check or completed electronic funds transfer.

(2) Cash payment--United States currency and coins, or a cash equivalent financial transaction or instrument.

(3) Event--A financial transaction or instrument that fails to provide payment to a Retailer and results in one or more incidents to one or more Sellers.

(4) Incident--One financial transaction or instrument made by a Retailer that fails to provide payment in full for malt beverages delivered by a Seller to the Retailer. Failure to submit payment also constitutes an incident.

(5) Malt beverages-- a fermented beverage of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, in whole or in part, or from any malt substitute.

(6) Retailer--A license or permit holder and their agents, servants and employees, authorized to sell malt beverages for on- or off-premise consumption to an ultimate consumer.

(7) Seller— As used in this section means:

(A) the holder of a local distributor's permit when selling malt beverages to a mixed beverage permittee or nonprofit entity temporary event permittee, or an agent, servant, or employee of a local distributor's permit holder when selling malt beverages to such permittees;

(B) the holder of a brewpub license when selling malt beverages to Retailers;

(C) the holder of a general or branch distributor's license;

(D) the holder of a brewer's self- distribution license under Chapter 62A of the Code; and

(E) the agents, servants, and employees of a license or permit holder identified in subparagraphs (A)-(D) of this paragraph when selling malt beverages to a Retailer.

(c) Invoices. A delivery of malt beverages by a Seller, to a Retailer, must be accompanied by an invoice of sale showing the name and permit number of the Seller and the Retailer, a full description of the malt beverages, the price, the place and date of delivery.

(1) The Seller's copy of the invoice must be signed by the Retailer to verify receipt of malt beverages and accuracy of invoice and by the Seller to acknowledge payment was received on or before the delivery.

(2) The Seller and Retailer must retain invoices for four years from the date of delivery.

(3) Invoices may be created, signed and retained in an electronic or web-based inventory system, and may be retained on or off the licensed premise, as long as the records can be accessed from the licensed premise and made available to the commission during normal business hours.

(d) Cash Payment Violation. A Retailer who fails to make a cash payment to a Seller for the delivery of malt beverages violates this section unless an exception applies.

(1) A Retailer who violates this section must pay the amount due, and a Seller may accept payment, only in cash or cash equivalent.

(2) For purposes of this section, the Retailer includes all persons who are or were owners, officers, directors, managers or shareholders of the Retailer at the time a cash payment violation occurs.

(e) Reporting Violation and Payment; Failure to Report.

(1) A report of a violation must be submitted electronically on the forms provided on the commission's web-based reporting system at <https://www.tabc.texas.gov>.

(2) A Seller who cannot access the commission's web-based reporting system must either:

(A) submit a request for exception to submit reports by paper; or

(B) contract with another Seller or service provider to make electronic reports on behalf of the Seller.

(3) All reports of violations under this subsection must be made to the commission within two business days from the date the violation is discovered by the Seller.

(4) A Seller who fails to report a violation as required by this subsection is in violation of this section.

(f) Exception.

(1) A Retailer who wishes to dispute a violation of this section, based on a good faith dispute between the Retailer and the Seller may submit supporting documents and a detailed written statement to the commission with a copy to the Seller explaining the basis of the dispute.

(2) The written statement must be submitted with documents and/or other records tending to support the Retailer's dispute, which may include:

(A) a copy of the front and back of the cancelled check of Retailer showing endorsement and deposit by Seller;

(B) bank statement or records of bank showing funds were available in the account of Retailer on the date the check was delivered to Seller; and

(C) bank statement or records showing:

(i) bank error or circumstances beyond the control of Retailer caused the check to be returned to Seller unpaid; or

(ii) the check cleared Retailer's account and funds were withdrawn from Retailer's account in the amount of the check.

(3) The Retailer must immediately submit a notice of resolution of a dispute to the commission under this subsection.

(g) Penalty for Violation. An action to cancel or suspend a permit or license may be initiated under the Code for one or more violations of this section. The commission may consider whether a violation is the result of an event or incident when initiating an action under this subsection.

(h) Calculation of Time. Sundays and legal holidays are not counted in determining time periods under this section.

*Note: Amended Rule Effective: September 1, 2021*

## **CHAPTER 50. ALCOHOLIC BEVERAGE SELLER SERVER AND DELIVERY DRIVER TRAINING**

## SUBCHAPTER A. GENERAL AND ADMINISTRATIVE PROVISIONS

### §50.1 Purpose and Authority

This chapter implements Texas Alcoholic Beverage Code §106.14, which provides the commission with authority to adopt rules establishing requirements for approved seller training programs and §57.09, related to alcohol delivery driver training.

*Note: Amended Rule Effective: June 9, 2020*

### §50.2 Definitions

Words used in this chapter have their common and ordinary meaning unless they are given a specific meaning in the code or are defined in this section.

- (1) Applicant--The individual and/or each owner, officer, director, manager or trainer of a legal entity who applies to the commission for a certificate under this chapter.
- (2) Branch Seller Server School Certificate.
  - (A) Branch Classroom-Based Seller Server School Certificate--A certificate issued by the commission to the holder of a Primary Seller Server School Certificate granting the same authority as the Primary Certificate but at a site that is designated on the Branch Certificate and that is different from that designated on the Primary Certificate;
  - (B) Branch Mobile Application Seller Server School Certificate—A certificate issued by the commission to the holder of a Primary Internet-Based Seller Server School Certificate that allows for the approved course content to be completed through the internet or through the mobile application, provided that all testing must be completed through the internet and that tests may not be stored on the mobile device or in the mobile application; or
  - (C) Branch Internet-Based Seller Server School Certificate—A certificate issued by the commission to the holder of a Primary Internet-Based Seller Server School Certificate that allows for the approved course content to have an alternate domain location on the internet, provided that all course content and testing must be completed online.
- (3) Break--An interruption in a course of instruction occurring after the lesson introduction and before the lesson summation.
- (4) Classroom-Based Seller Server School Certificate--A Primary or Branch Seller Server School Certificate issued by the commission under this chapter to a school that:
  - (A) has authority under this chapter to offer instruction and issue seller server certificates; and
  - (B) does not qualify for either an In-House Seller Server School Certificate or an Internet-Based Seller Server School Certificate.
- (5) Commission-Approved Personal Identification Number—A social security number, an individual taxpayer identification number (ITIN), an alien registration number (“A” number), or the IV case number from a machine-readable immigrant visa (MRIV).
- (6) Course of Instruction--The mandatory curriculum and the optional curriculum used to teach a seller server certificate course.
- (7) Incomplete application--An application that fails to include all facts, disclosures, documents, statements, authorizations, signatures and fees required by this chapter or requested by the commission for issuance of a certificate.
- (8) In-House Seller Server School Certificate--A Primary or Branch Seller Server School Certificate issued by the commission under this chapter to a school sponsored or operated by a

retail permittee or licensee and that has authority under this chapter to offer instruction on either a classroom basis or a computer basis and to issue seller server certificates.

(9) Internet-Based Seller Server School Certificate--A Primary or Branch Seller Server School Certificate issued by the commission under this chapter to a school offering an interactive course on a delivery platform with web-based functionality that:

(A) has authority under this chapter to offer instruction and issue seller server certificates; and

(B) does not qualify for either a Classroom-Based Seller Server School Certificate or an In-House Seller Server School Certificate.

(10) Mandatory Curriculum--The curriculum provided by the commission that must be used by a certified school teaching a seller server certificate course.

(11) Optional Curriculum--Any curriculum not provided by the commission that is used by a school to teach a seller server certificate course.

(12) Primary Seller Server School Certificate--A certificate issued by the commission under this chapter granting authority to:

(A) offer instruction and maintain records at the school's principal site designated on the primary certificate; and

(B) issue seller server certificates.

(13) School--The holder of a Primary or Branch Seller Server School Certificate issued by the commission.

(14) Seller Server Certificate--A certificate issued to an individual who completes a course of instruction offered by a school and who passes the Commission Standard Competence Test.

(15) Seller Server Certificate Course--A class providing instruction in the sale, service, dispensing, delivery and consumption of alcoholic beverages to or by persons in private clubs, minors or intoxicated persons, and that is designed to enable students to pass the Commission Standard Competence Test and receive a seller server certificate.

(16) Trainer--An individual who holds a Seller Server Trainer Certificate issued under this chapter.

*Note: Amended Rule Effective: April 17, 2018*

## **SUBCHAPTER B. MANDATORY CURRICULUM AND COURSE OF INSTRUCTION**

### **§50.3 Mandatory Course Curriculum**

(a) The mandatory curriculum is created by and updated by the commission or under a work-for-hire contract. Each certified school is provided with information and security access to the commission's secure portal when an original certificate or renewal is issued. Schools that are unable to access or download the mandatory curriculum must submit a written request to have the curriculum provided in an alternate format. The commission will not provide paper copies of the mandatory curriculum.

(b) The commission claims a copyright in the mandatory curriculum. The mandatory curriculum may not be sold and may not be used in whole or in part without including the commission's claim of copyright.

(c) Each certified school is granted access and specific rights of use to the mandatory curriculum and all updates as part of the school licensing fee.

(1) The copyright license provides unlimited use of the mandatory curriculum for authorized purposes only.

(2) The commission's claim of copyright must be included in all written and visual materials from the mandatory curriculum.

(3) Any sale or use of the mandatory curriculum for unauthorized purposes is a violation of this chapter.

(d) Upon receiving notice from the commission of a change to the mandatory curriculum, a school has thirty calendar days to implement the change.

(e) These topics in the mandatory curriculum must be included in the course of instruction offered by each school.

(1) The definition of intoxication.

(2) The law pertaining to intoxicated persons.

(3) The law pertaining to minors.

(4) The law pertaining to proper identification.

(5) How to detect intoxication.

(6) How to detect minors.

(7) How to detect improper identification.

(8) How to monitor customer behavior.

(9) How to use a chart showing the effects of alcohol based on: the size, type and number of drinks; body weight; the sex of the drinker; and the passage of time.

(10) The dangers of alcohol poisoning.

(11) Intervention pertaining to intoxication.

(12) Intervention pertaining to minors.

(13) Sanctions for employee violations.

(14) Any other topics identified by the commission as appropriate, giving due consideration to developments in the law, society, and the alcoholic beverage industry.

(f) In developing the original mandatory curriculum pursuant to subsection (a) of this section, the commission will conduct work group meetings with members representing a cross-section of interested parties. After receiving input from the work group, the staff of the commission will present its recommended mandatory curriculum to the commissioners at an open meeting. After the original mandatory curriculum is developed, the commission will review it after every session of the legislature to determine if changes are required. If changes to the curriculum are required simply to update it to reflect legislative changes, the commission will make such changes and post notice in the Texas Register and on the commission's website that such changes have been made. If the commission wants to make other changes to the curriculum, it will publish notice of such intent in the Texas Register and on the commission's website.

*Note: Readopted Without Changes and Effective: March 27, 2018*

#### **§50.4 Commission Approval of Classroom-Based Course of Instruction**

(a) Each classroom-based school must provide a course of instruction using the content and sequence of topics contained in the mandatory curriculum. Subject to the requirements of subsection (c) of this section, the course of instruction may include optional material.

(b) All classroom-based training materials and courses of instruction must be submitted to the commission for approval.

- (1) A classroom-based course of instruction must be paced to provide a minimum of 120 minutes of active instruction and student participation in the mandatory curriculum.
  - (2) The 120 minute requirement excludes time taken for breaks and the administration of the Commission Standard Competence Test.
  - (3) The 120 minute requirement is based on a 6<sup>th</sup> grade comprehension and reading skills level.
  - (4) The commission must approve a course of instruction before it can be offered by a school.
- (c) Upon approval by the commission, a classroom-based school may present a course of instruction including optional material in addition to the mandatory curriculum if:
- (1) a request for approval of the optional material is submitted to the commission, with any alteration of the mandatory curriculum and all optional materials clearly identified;
  - (2) the entire proposed course of instruction is submitted with the request, showing the sequence in which the mandatory curriculum and the optional material will be presented;
  - (3) the optional material will not alter the scope or effectiveness of the mandatory curriculum; and
  - (4) additional time is added to the course of instruction to ensure that 120 minutes are devoted entirely to the mandatory curriculum.
- (d) A classroom-based school must file a revised course of instruction implementing a change to the mandatory curriculum within 30 days after receiving notice of the change.

*Note: Readopted Without Changes and Effective: March 27, 2018*

#### **§50.5 Commission Approval of Internet-Based Course of Instruction**

- (a) All internet-based training materials and instruction must be submitted and approved by the commission prior to use.
- (1) Printed screenshots meeting the language comprehension levels required by this section and sequenced and presented as a complete course of instruction must be provided to the commission.
  - (2) Access to the school's web address, secured portal, and delivery platforms must be made available to the commission and the entire course of instruction offered to students must be provided free of charge to the commission.
- (b) An internet-based course of instruction shall be presented at a 6th grade fluency level of 180 words per minute and must be equivalent to 120 minutes of time.
- (c) An internet-based school may provide optional instruction in addition to the mandatory curriculum upon approval by the commission if:
- (1) a request for change is submitted to the commission, with all alterations of the mandatory curriculum and all optional materials clearly identified;
  - (2) the entire proposed course of instruction is submitted with the request, and, if the proposed sequence differs from the mandatory curriculum, a list is included showing where in the proposed sequence each topic in the mandatory curriculum will be presented; and
  - (3) the changes to the sequence and the optional material will not alter the scope or effectiveness of the mandatory curriculum.
- (d) An internet-based school must file a revised course of instruction implementing a change to the mandatory curriculum within 30 days after receiving notice of the change.

*Note: Amended Rule Effective: April 17, 2018*

### **§50.6 Management of Classroom-Based Course of Instruction**

- (a) No more than 50 students may attend a session.
- (b) A student who misses more than 10% of the required 120 minutes of class instruction shall not be allowed to take the Commission Standard Competence Test and may not be given a Seller Server Certificate based on his attendance at that session.
- (c) No alcoholic beverage may be consumed by anyone attending or teaching the session, during the session or during breaks.
- (d) Unless prior approval is received from the commission upon request by the school, each session must be presented in a continuous block of instruction. Instruction may be interrupted by brief breaks, but they must be limited in number and duration. Time spent in a break or taking the Commission Standard Competence Test shall not be included in the 120-minute mandatory curriculum attendance requirement.
- (e) A school seeking approval to offer a course of instruction on a unit basis rather than as a continuous block of instruction must define what material will be taught in each unit. The units must be offered in the sequence of the mandatory curriculum.
  - (1) A student must attend all of the units necessary to receive instruction in the 120-minute mandatory curriculum before he is allowed to take the Commission Standard Competence Test.
  - (2) At the conclusion of a unit, the student must answer five questions on the material in that unit. A student may not receive instruction in the next unit if the student:
    - (A) answers more than one question incorrectly; or
    - (B) has not been in attendance for the complete unit.
  - (3) The questions on a unit test may be short answer, multiple choice, or a combination of those methods.
  - (4) If a student incorrectly answers more than one question on a unit test, the student must attend and complete that unit again before being retested.
  - (5) During a unit retest, the student must be asked questions that are different from those he was previously asked.
  - (6) As long as different questions are asked and the student has attended the unit after each failed test, a school may decide how many times the student may be retested on a unit.
- (f) The Commission Standard Competence Test shall be administered to each student immediately following the conclusion of instruction at the class he attends. No test may be administered at any other place or time.
- (g) The Commission Standard Competence Test shall be administered on a closed-book basis.
- (h) A student must correctly answer at least 70% of the questions asked on the Commission Standard Competence Test administered to him to be eligible to receive a Seller Server Certificate.
- (i) A student who does not correctly answer 70% of the questions asked may be immediately retested once. If the student does not correctly answer 70% of the questions asked on the retest, the student must repeat the course in full.

*Note: Readopted Without Changes and Effective: March 27, 2018*



## §50.7 Management of Internet-Based Course of Instruction

- (a) An internet-based school must verify a student's identity.
  - (1) To verify the student's identity, the school must ask each student a minimum of ten personal validation questions. Students may have no more than 60 seconds to respond to a personal validation question. If a student answers more than 30% of the validation questions incorrectly, the student must be dropped from the course.
  - (2) In lieu of the validation method required in paragraph (1) of this subsection, a school may use another validation method that has been approved by the commission upon request by that school.
- (b) A student may be allowed to reenter a course through the use of a username and password, or by other means approved by the commission that are as effective as password verification.
- (c) An internet-based school may present the course of instruction on a unit basis that is approved by the commission.
  - (1) At the conclusion of a unit, the student must answer five questions on the material in that unit. A student may not proceed to the next unit if the student:
    - (A) answers more than one question incorrectly; or
    - (B) has not viewed all of the multimedia components of a unit.
  - (2) Questions on a unit test must be of a difficulty level that a student cannot correctly answer them without having viewed the material in that unit. The questions on a unit test may be short answer, multiple choice, or a combination of those methods.
  - (3) If a student incorrectly answers more than one question on a unit test, the student must restart and complete that unit again before being retested.
  - (4) During a unit retest, the student must be asked questions that are different from those he was previously asked.
  - (5) As long as different questions are asked and the student has restarted and completed the unit after each failed test, a school may decide how many times the student may be retested on a unit.
- (d) A student must correctly answer at least 70% of the questions asked on the Commission Standard Competence Test administered to him to be eligible to receive a Seller Server Certificate.
- (e) A student who does not correctly answer 70% of the questions asked on the Commission Standard Competence Test administered to him may be immediately retested once. If the student does not correctly answer 70% of the questions asked on the retest, the student must repeat the course in full.
- (f) A student must have adequate access to a help desk to resolve technical issues and the hours must be posted for the student to review before registering for the course. If a request for support is made outside of the posted time period, technical support must contact the requestor and attempt to resolve the issue during the next posted time period that follows the request. Access to technical assistance may be provided by means of:
  - (1) email;
  - (2) direct messaging; or
  - (3) phone with active voicemail.
- (g) Questions by a student about the content of the course of instruction must be answered by the holder of a seller server trainer certificate.

(1) The school must make available to students the days and times a Seller Server Trainer will be available to answer content related questions prior to registering for the course; and

(2) Seller Server Trainers must be available a reasonable amount of time weekly to provide support to students.

(h) An internet-based school may not allow any advertisements to appear during the course of instruction. Advertisements that appear on the website when the course of instruction is not being presented must follow established marketing practices.

*Note: Amended Rule Effective: April 17, 2018*

### **§50.8 Management of In-House Course of Instruction**

An in-house seller server school shall comply with the provisions of §50.6 or §50.7, as appropriate to the method of instruction used. An in-house seller server school shall not offer a course of instruction, and shall not issue a Seller Server Certificate, to anyone who is not an employee.

*Note: Readopted Without Changes and Effective: March 27, 2018*

## **SUBCHAPTER C. SELLER SERVER SCHOOL CERTIFICATES AND REQUIREMENTS**

### **§50.9 Issuance and Control by Schools of Seller Server Certificates**

(a) Order and payment requirements for schools.

(1) All seller server certificate numbers must be ordered and paid for in advance using the order forms and payment methods approved by the commission.

(A) Certificate numbers cost \$2.00 each.

(B) Certificate numbers must be purchased in minimal lots of 60.

(C) The commission will provide each certified school with a certificate template that the school can use to print the seller server certificates it issues to students. A school may also hire a commission-approved vendor to print the seller server certificates.

(2) As a condition for ordering additional certificate numbers, a school must:

(A) have sessions currently scheduled;

(B) submit the session schedules to the commission; and

(C) account for all previously issued certificate numbers.

(3) A certificate order for a session scheduled to occur within five business days from the date of the order must be submitted using expedited mail or delivery service provider. If the certificate numbers cannot be received electronically by the school, the order must also include a preprinted and prepaid return delivery package or label. The certificate numbers will be delivered electronically to the school through the valid e-mail address provided on the school's application, or using the preprinted and prepaid delivery package or label provided with the order.

(4) No session may be conducted unless the school:

(A) has sufficient certificate numbers available to issue a certificate to each individual attending the session at the time, date and location of the scheduled session;

(B) can print and issue a certificate to each individual attending the session at the time, date, and location where the session is conducted; and

(C) limits the number of individuals attending a session to the number of certificate numbers available at the location on the date and time the session is conducted.

(5) If a school had sufficient certificate numbers to issue to each student in a session, but one or more certificate numbers had to be voided so that a student who should have received a certificate did not receive one on the date of the session, the school must, within five calendar days of the session, submit a written statement to the commission explaining why sufficient certificate numbers were not available and listing the voided certificate numbers.

(b) Requirements for classroom-based or in-house schools issuing seller server certificate to students.

(1) If a student satisfies the requirements for a certificate, the school must issue the student the certificate on the date the student satisfied those requirements and at the location of that session.

(2) If a school fails to comply with the requirements of paragraph (1) of this subsection, the school, at the conclusion of the session where the student satisfied the requirements for a certificate, and on the date and location of that session, must:

(A) provide the student with a written receipt showing the name of the school, the name of the instructor, the instructor's certificate number, the amounts paid by the student, and the date, time and location of the session;

(B) provide the student written notice containing the commission's internet address and informing the student that the student may file a complaint with the commission;

(C) notify the commission in writing, or on forms provided by the commission for internet notification, of the information required to be provided to the student in subparagraph (A) of this paragraph; and

(D) issue the student a certificate within 10 calendar days from the date of the session where the student satisfied the requirements for a certificate.

(c) Requirements for internet-based schools issuing seller server certificate to students.

(1) If a student satisfies the requirements for a certificate, the school must electronically issue the student the certificate within 24 hours of the time the student satisfied those requirements.

(2) If a school fails to comply with the requirements of paragraph (1) of this subsection, the school, within 24 hours of the conclusion of the session where the student satisfied the requirements for a certificate, must electronically provide the student:

(A) a receipt showing the name of the school, the name of the instructor, the instructor's certificate number, the amounts paid by the student, and the date and time of the session;

(B) an explanation of why the certificate is not being issued; and

(C) the commission's internet address and notice that the student may file a complaint with the commission.

(3) If a school fails to comply with the requirements of paragraph (1) of this subsection, the school, within 24 hours of the conclusion of the session where the student satisfied the requirements for a certificate, must electronically provide the commission the information provided to the student under paragraph (2) of this subsection.

(4) If a school fails to comply with the requirements of paragraph (1) of this subsection, the school must issue the student a certificate within 10 calendar days from the date of the session where the student satisfied the requirements for a certificate.

(d) A school that fails to comply with the requirements of subsection (b) or (c) of this section commits a separate violation for each student affected by that failure.

(e) The commission may refuse to issue certificates to a school:

(1) if the commission has a reasonable basis to believe the certificates have been misused or abused or that inadequate security or control may result in the misuse or abuse of certificates;

(2) if the school fails to provide information and records within three business days of a request by the commission; or

(3) if the school has failed to create or maintain information and records required by the commission.

(f) A school may not transfer a certificate to another school, even if the schools are affiliated branch or primary schools.

*Note: Amended Rule Effective: April 17, 2018*

#### **§50.10 Requirements for Records, Reports and Notices**

(a) A school must electronically notify the commission at least three business days in advance of each scheduled session. The notice must include the date, time and location of the session and whether the session will have continuous instruction or be presented as units. The commission may waive the three-day requirement on request for good cause shown on an individual basis, but in no case may a session be taught without prior notification to the commission.

(b) Reports of cancelled classes.

(1) A school must electronically notify the commission of the cancellation of a session prior to the scheduled date of the session unless the cancellation cannot reasonably have been anticipated before that date.

(2) When a cancellation cannot reasonably have been anticipated prior to the scheduled date of the session, the school must electronically notify the commission of the cancellation not later than the next business day. The notice must provide an explanation of the circumstances justifying the late notice.

(c) A school shall maintain the Commission Standard Competence Test in a secure manner and in a secure location at all times and restrict access to ensure that the test is not available to students or the public before or after it is administered. A school must electronically notify the commission of any breach of security involving the test within 24 hours of discovering the breach.

(d) Access to commission's portal to file reports and notices.

(1) Each certified school is provided with information and security access to the commission's secure portal when an original certificate or renewal is issued. Access to the secure portal may be terminated without notice if a security breach or malicious virus is detected.

(2) The commission may require or perform periodic audits to ensure secure portals are used for authorized purposes.

(3) A breach of security or misuse of the secure portal will result in immediate termination of access pending investigation.

- (e) Reports of seller training.
  - (1) For each session taught, a school shall electronically file a report of seller training not later than 14 calendar days after the date the class was held.
  - (2) Each report of seller training shall include all students who successfully completed the session and received a passing grade on the commission standard competence course.
  - (3) Each report of seller training shall contain each student's name, commission-approved personal identification number, date of birth, test score and certificate number.
  - (4) The report of seller training must be personally signed by the certified trainer who actually taught the session.
  - (5) The trainer shall personally verify that on the date indicated each student included in the report satisfactorily completed the session and received a passing grade on the Commission Standard Competence Test.
- (f) Required records.
  - (1) Each school must maintain, at the school's primary site or at a designated branch site, the reports and notices required in this section.
  - (2) For each student attending a session, the school must maintain the information required by this paragraph.
    - (A) The student's first and last names and middle initial.
    - (B) The student's mailing address.
    - (C) The student's e-mail address, if available.
    - (D) Any information required to assign the student a commission-approved personal identification number.
    - (E) The student's score on the Commission Standard Competence Test.
  - (3) All records, reports and documents required in this section shall be maintained for four years.
  - (4) Records, reports and documents required by this section may be maintained electronically in a methodical and organized manner.
  - (5) All records, reports and documents shall be made available to the commission upon request. Failure to provide the material within five business days of the request is cause for cancellation or suspension of the school's certificate.
  - (6) Failure to submit any record, report or notice to the commission as and when required is cause for cancellation or suspension of the school's certificate.
  - (7) Significant and/or repeated errors in submitting information to the commission are cause for cancellation or suspension of the school's certificate.
  - (8) If a school ceases operation, all records and reports shall be provided to the commission.
  - (9) The commission may monitor sessions unannounced.
  - (10) The commission may conduct audits unannounced.
  - (11) An internet-based school must maintain all contracts it has to receive traffic that has been redirected from another domain.
- (g) The executive director may develop standard practices relating to the implementation of this chapter. The standard practices will provide guidance to schools and individuals affected by this chapter regarding technical details required to efficiently and effectively implement this chapter. The standard practices will be provided to certified schools and will be posted on the commission's website. The standard practices may not conflict with or alter the provisions of this chapter.

*Note: Amended Rule Effective: April 17, 2018*

### **§50.11 Grounds for Refusing to Process Application**

(a) The commission may refuse to process an original or renewal application for a school certificate under this chapter, if the applicant or any individual who must submit a personal history sheet with the application:

- (1) does not meet the minimum qualifications;
- (2) fails to submit a complete application;
- (3) fails to pay the required fees;
- (4) falsifies, misrepresents, or fails to provide or verify a material fact, disclosure or document required by the commission on the application;
- (5) fails to provide or produce information requested by the commission, and the time for providing the information has passed;
- (6) had a final disposition of a felony conviction within five years of the date of application;
- (7) conducts business in a manner that warrants the cancellation or suspension of the certificate for 24 months following the cancellation or suspension;
- (8) conducted seller server training courses and allowed students to participate in a seller server training program with the expectation that they would receive a valid commission authorized certificate while the primary seller server certificate was under suspension; or
- (9) is the owner of the primary seller server certificate and is residentially domiciled with a person whose primary seller server certificate was cancelled for cause within the 12-month period preceding the owner's application.

(b) The commission may refuse to process an original or renewal application for a seller server trainer certificate under this chapter without a hearing, if the applicant:

- (1) does not meet the minimum qualifications;
- (2) fails to submit a complete application;
- (3) fails to pay the required fees;
- (4) falsifies, misrepresents, or fails to provide or verify a material fact, disclosure or document required by the commission on the application;
- (5) fails to provide or produce information requested by the commission, and the time for providing the information has passed;
- (6) had a final disposition of a felony conviction within five years of the date of application;
- (7) conducts business in a manner that warrants the cancellation or suspension of the certificate for 24 months following the cancellation or suspension; or
- (8) used a trainer who conducted seller server training courses and allowed students to participate in a seller server training program with the expectation that they would receive a valid commission authorized certificate while the primary seller server certificate was under suspension.

*Note: Amended Rule Effective: April 17, 2018*

### **§50.12 Suspension or Cancellation of School's Certificate**

(a) The commission may suspend or cancel a school's certificate, if the commission finds after notice and opportunity for a hearing that a school or a trainer employed by the school has

violated a provision of this chapter.

(b) In deciding whether to suspend or cancel a school's certificate, the commission may consider:

- (1) the seriousness of the violation;
- (2) the school's history of violations;
- (3) the effect of the violation on a student or others;
- (4) the school's attempt to rectify the violation;
- (5) whether the school has implemented any changes to prevent similar violations; and
- (6) other factors pertinent to the situation.

(c) Before suspending or cancelling a school's certificate, the commission may allow a school an opportunity to correct an alleged violation. The commission may require the school to submit a corrective action plan analyzing how and why the alleged violation occurred, proposing actions designed to prevent similar violations, and describing how restitution will be provided to students or others affected by the violation. If the commission accepts the corrective action plan, the commission may require periodic reports on the plan's implementation and may monitor and/or audit the school to assess compliance with the plan.

*Note: Readopted Without Changes and Effective: March 27, 2018*

### **§50.13 Grounds for Suspension or Cancellation of School's Certificate**

(a) The commission, after notice and hearing, may suspend or cancel a school's certificate if the school, or a trainer employed by or under contract to the school:

- (1) fails to verify an individual's qualifications to receive a certificate;
- (2) signs a certificate when the trainer did not personally instruct the student;
- (3) fails to follow or provide instruction required by the mandatory curriculum;
- (4) provides fewer than the required number of hours of instruction;
- (5) issues more than 50 seller server certificates for a single session, unless the school has an internet-based seller server school certificate;
- (6) issues a seller server certificate or provides instruction on a date when the school's or instructor's certification is expired, suspended or cancelled;
- (7) fails to administer or require a student to take and/or make a passing score on the Commission Standard Competence Test before issuing a seller server certificate to the student;
- (8) uses, discloses, or sells personal or financial information obtained from a student or the commission for a purpose or in a manner not authorized by this chapter;
- (9) falsifies, alters or destroys a record required by the commission, regardless of whether there was intent to deceive the commission or another;
- (10) violates any section of this chapter or the standard practices of the commission that, in the opinion of the commission, warrants suspension or cancellation;
- (11) has engaged in an ongoing course of conduct or activities that undermine the purpose and intent of this chapter;
- (12) fails to control, monitor, and supervise instructors and classroom instruction to prevent a violation of law or the requirements of this chapter;
- (13) fails to implement control and security measures to protect personal or financial information obtained from a student or the commission from accidental, intentional, or malicious use or disclosure;

(14) allows a session to be taught by someone who does not hold current trainer certification;

(15) falsifies, makes a material misstatement, or fails to disclose required information on any document or record required by this chapter;

(16) counterfeits a certificate issued under this chapter; or

(17) violates any provision of this chapter.

(b) The commission, after notice and hearing, may suspend or cancel a school's certificate if a trainer employed by or under contract to the school, a responsible person assigned by the school to a session, the owner or governing body of a school, or the administration of a college or university has failed to supervise or exercise control of its employees or facilities, and the failure has resulted in actual harm or increased risk to the health or safety of students or the public.

(c) The commission, after notice and hearing, may suspend or cancel a school's certificate if the quality of instruction falls below minimum commission standards as determined by the commission through:

(1) direct observation of instruction by commission auditors or agents;

(2) consistent failure of the school to impart basic knowledge and understanding to students, as measured by student failures, student violations, or student surveys or reports; or

(3) complaints received from any person.

(d) The commission, after notice and hearing, may suspend or cancel a school's certificate if the school engages in any of these acts or practices:

(1) presenting the course of instruction as its own when it is not;

(2) causing confusion or misunderstanding as to the source, sponsorship, approval or certification of the course of instruction or services provided by a school or instructor;

(3) causing confusion or misunderstanding as the affiliation, connection or association with, or certification by, the commission or a school certified by the commission;

(4) representing that a school or course of instruction is sponsored, approved, certified or accredited by the commission when it is not;

(5) representing that an individual is affiliated with, employed by or represents a school certified by the commission when the individual is not;

(6) representing that a course of instruction has been approved by the commission when it has not; or

(7) advertising services or other courses of instruction during the time allocated for instruction or completion of a course of instruction approved by the commission.

*Note: Amended Rule Effective: April 17, 2018*

#### **§50.14 Prohibited Relationships**

(a) No licensee or permittee of the commission, or his spouse, agent, servant, or employee, or any subsidiary or affiliate, may directly or indirectly conduct, sponsor, or support a seller training program approved under this chapter except as provided in the Texas Alcoholic Beverage Code, §106.14(c) and (d).

(b) A licensee or permittee of the commission may be a member of an advisory board, but not the governing board of a nonprofit agency which sponsors a seller training program.

(c) Persons engaged in the manufacturing or wholesaling of alcoholic beverages for national distribution may contribute to the development of a curriculum of seller training being developed



for national use; provided, that any such contribution or involvement shall not be directly or indirectly tied to the actual offering of training to employees of any retailer, group of retailers, or the general public. Such involvement by an alcoholic beverage manufacturer shall be in a primarily noncommercial manner consistent with the spirit and intent of the provisions of the Texas Alcoholic Beverage Code and the rules of the commission prohibiting the tied-house and prohibiting the furnishing of things of value to a retailer of alcoholic beverages.

(d) No licensee, permittee, or other person engaged in the manufacturing or wholesaling level of the alcoholic beverage industry, or any agent, servant, or employee of any of those, may directly or indirectly conduct or sponsor a seller training program for retail level employees or members of the general public.

*Note: Readopted Without Changes and Effective: March 27, 2018*

### **§50.15 Application for Primary Classroom-Based Seller Server School Certificate**

(a) Applicant and Application. An applicant for an original or renewal primary classroom-based seller server school certificate must complete all sections of the application on forms provided by the commission. The applicant must provide a valid e-mail address and must agree to maintain a currently valid e-mail address on file with the commission at all times.

(b) Disclosure of Owners, Officers, Directors, Managers and Instructors.

(1) The applicant for an original certificate or change of ownership for a primary classroom-based seller server school must disclose all individuals and legal entities having an ownership interest, and all officers, directors, managers, and instructors.

(2) A legal entity must provide its formation and registration documents and must be authorized to transact business in this state.

(3) A personal history sheet must be completed and submitted with the application for each individual owner, and each individual shareholder, partner, officer, director, and manager.

(4) An individual required to submit a personal history sheet must at the same time submit an authorization for a criminal history background check.

(5) Additional information may be required by the commission to verify ownership or qualifications of the applicant.

(c) The applicant must sign and verify that:

(1) the applicant has authority to act on behalf of all owners;

(2) the applicant has personally completed or reviewed the application and has personal knowledge of and is responsible for its content;

(3) all parts of the application that apply are complete;

(4) each fact, disclosure, and statement made in the application is true and correct at the time the application is submitted;

(5) the applicant acknowledges that an application for a certificate is a government document and is subject to verification by the commission; and

(6) the applicant acknowledges that providing false or misleading information or omitting a material fact may result in the refusal of the application, cancellation of a school's certificate, or criminal prosecution.

(d) Incomplete applications or applications submitted without required fees will not be accepted for processing or returned to the applicant.

(e) An applicant must:

(1) keep an exact copy of the application submitted to the commission; and

(2) complete and correct any deficiencies within ten business days after being notified of the deficiency.

(f) The application for a primary classroom-based seller server school certificate must designate:

(1) a certified trainer responsible for the oversight, operation, training and compliance at the primary seller server school;

(2) an individual responsible for the day-to-day operations and facilities of the primary seller server school;

(3) the principal site of the school; and

(4) all branch classroom-based seller server school certificates the applicant has or for which application is being made.

(g) The holder of a primary classroom-based seller server school certificate must apply for a branch classroom-based seller server school certificate for each site, other than the designated principal site, where records required by this chapter are maintained.

*Note: Readopted Without Changes and Effective: March 27, 2018*

#### **§50.16 Application for Branch Classroom-Based Seller Server School Certificate**

(a) A branch classroom-based seller server school certificate is required for each site, other than a principal site designated pursuant to §50.15(f)(3) of this chapter, where records required by this chapter are maintained.

(b) An applicant for an original or renewal branch classroom-based seller server school certificate must be an applicant for or hold a current primary classroom-based seller server school certificate.

(c) An application for a branch classroom-based seller server school certificate must indicate the primary classroom-based seller server school certificate with which it is associated.

(d) An applicant may submit more than one application for a branch seller server school certificate, but each application must be completed and submitted on forms provided by the commission.

(e) The owners, shareholders, officers and directors of the primary seller server school and the branch seller server school must be the same.

(f) The application for a branch seller server school certificate must designate:

(1) a certified trainer responsible for the oversight, operation, training and compliance at the branch seller server school;

(2) the individual responsible for the day-to-day operations and facilities of the branch seller server school; and

(3) the applicant for or holder of the associated primary classroom-based seller server school certificate.

(g) A personal history sheet must be completed and submitted with the application for each certified trainer and responsible individual designated pursuant to subsection (f) of this section. A copy of a personal history sheet is acceptable if the original was included as part of the primary school application.

(h) An individual required to submit a personal history sheet must at the same time submit an authorization for a criminal history background check.

(i) Additional information may be required by the commission to verify ownership or qualifications of the applicant.

- (j) The applicant must sign and verify that:
  - (1) the applicant has personally completed or reviewed the application and is responsible for its content;
  - (2) all parts of the application are completed; and
  - (3) each fact, disclosure, and statement made in the application is true and correct at the time the application is submitted.
- (k) Incomplete applications or applications submitted without required fees will neither be accepted for processing nor returned to the applicant.
  - (l) An applicant must:
    - (1) keep an exact copy of the application submitted to the commission; and
    - (2) complete and correct any deficiencies within ten business days after being notified of the deficiency.

*Note: Readopted Without Changes and Effective: March 27, 2018*

### **§50.17 Application for Primary Internet-Based Seller Server School Certificate**

- (a) An applicant for an original or renewal primary internet-based seller server school certificate must complete all sections of the application on forms provided by the commission.
- (b) An applicant for an original certificate or change of ownership for an internet-based seller server school must disclose all individual owners, individuals and legal entities having an ownership interest, and all officers, directors, managers, and instructors.
  - (1) A legal entity must provide its formation and registration documents and must be authorized to transact business in this state.
  - (2) A personal history sheet must be completed and submitted with the application for each individual disclosed on the application.
  - (3) An individual required to submit a personal history sheet must at the same time submit an authorization for a criminal history background check.
  - (4) Additional information may be required by the commission to verify ownership or qualifications of the applicant.
- (c) The applicant must sign and verify that:
  - (1) the applicant has authority to act on behalf of all owners;
  - (2) the applicant has personally completed or reviewed the application and has personal knowledge of and is responsible for its content;
  - (3) all parts of the application that apply are complete;
  - (4) each fact, disclosure, and statement made in the application is true and correct at the time the application is submitted;
  - (5) the applicant acknowledges that an application for a certificate is a government document and is subject to verification by the commission; and
  - (6) the applicant acknowledges that providing false or misleading information or omitting a material fact may result in the refusal of the application, cancellation of a certificate, or criminal prosecution.
- (d) Incomplete applications or applications submitted without required fees will neither be accepted for processing nor returned to the applicant.
- (e) An applicant must:
  - (1) keep an exact copy of the application submitted to the commission; and

(2) complete and correct any deficiencies within 10 business days after being notified of the deficiency.

(f) An applicant for an internet-based seller server school certificate must verify that the security measures implemented and maintained by the school meet state and federal standards for the transmission and protection of personal identification information and financial information of individuals accessing the website.

(g) The presentation and course progress platform used by an internet-based seller server school must be reviewed and approved by the commission to ensure:

(1) the course of instruction contains all topics required by the mandatory curriculum; and

(2) each topic must be completed before the next topic may be accessed.

(h) An applicant for a primary internet-based training school certificate must designate a primary domain and must list:

(1) all domains the school uses to provide any course of instruction that includes the mandatory curriculum;

(2) all domains under common ownership with the school that redirect students to the primary designated domain or to any other domain under common ownership with the designated primary domain; and

(3) all domains, whether or not under common ownership, with which the school has a contractual relationship to redirect students to the designated primary domain or to any domain under common ownership.

(i) The applicant must agree to update the list required by subsection (h) of this section within 24 hours of a change during the term of the certificate and failure to keep the list current is grounds for cancellation of the primary internet-based training school certificate.

(j) A primary internet-based training school must obtain a branch internet-based training school certificate for each domain that is under common ownership with the designated primary domain but that offers a different course of instruction from that offered at the designated primary domain.

(k) A primary internet-based training school is not required to obtain a branch internet-based or branch mobile application training school certificate for a domain that is under common ownership with the designated primary domain but that either merely redirects students to the designated primary domain or to another domain that is under common ownership with the primary domain.

(l) A primary internet-based training school is required to obtain:

(1) a branch mobile application training school certificate for each delivery platform that is under common ownership with the designated primary internet based program. This includes, but is not limited to, programs designed for specific mobile devices or custom programming as a delivery platform for the mandatory curriculum and internet based testing; or

(2) a branch internet-based training school certificate for each delivery domain that is under common ownership with the designated primary internet-based program but provides a different course of instruction than that which is approved on the designated primary domain.

(m) A primary internet-based training school must require that before any domain redirects a student to the designated primary domain or to any domain under common ownership with it, and before charging the student, the redirecting domain must inform the student:

(1) that he will be transferred to another site;

(2) of the name of the school that will actually provide the course of instruction;

(3) of the name of the school that will appear on his certificate upon successful completion of the course;

(4) that the school to which he will be redirected will solicit private, personally identifiable information from the student; and

(5) that the student may refuse to be transferred without incurring fees.

*Note: Amended Rule Effective: April 17, 2018*

### **§50.18 Application for Branch Internet-Based or Branch Mobile Application Seller Server School Certificate.**

(a) A branch internet-based seller server school certificate is required for each domain that offers a different course of instruction from the course of instruction approved for the designated primary domain.

(b) A branch mobile application seller server school certificate is required for each delivery platform supported on mobile phones, PDAs, tablets or other delivery device approved by the commission. For a branch mobile application seller server school:

(1) the mandatory curriculum may be completed with or without Internet access;

(2) the Commission Standard Competence Test and all unit testing must be completed through an internet connection; and

(3) the Commission Standard Competence Test and all unit testing may not be stored in the mobile application or on any device not directly managed by the Primary Seller Server Training school.

(c) An applicant for an original or renewal branch internet-based or branch mobile application seller server school certificate must be an applicant for or already hold a current primary internet-based seller server school certificate.

(d) An application for a branch internet-based or branch mobile application seller server school certificate must indicate the primary internet-based seller server school certificate with which it is affiliated.

(e) An applicant may submit more than one application for a branch seller server school certificate or branch mobile application seller server school certificate, but each application must be completed and submitted on forms provided by the commission.

(f) A personal history sheet must be completed and submitted with the application for each certified instructor. A copy is acceptable if the original was included as part of the primary school application.

(g) An authorization for a criminal history background check is required for each individual required to submit a personal history sheet and who has not previously submitted the authorization.

(h) An individual required to submit a personal history sheet must at the same time submit an authorization for a criminal history background check.

(i) The applicant must sign and verify that:

(1) the applicant has personally completed or reviewed the application and is responsible for its content;

(2) all parts of the application are completed; and

(3) each fact, disclosure, and statement made in the application is true and correct at the time the application is submitted.

(j) Incomplete applications or applications submitted without required fees will neither be

accepted for processing nor returned to the applicant.

- (k) An applicant must:
  - (1) keep an exact copy of the application submitted to the commission; and
  - (2) complete and correct any deficiencies within ten business days after being notified of the deficiency.

*Note: Amended Rule Effective: April 17, 2018*

### **§50.19 Application for Primary In-House Seller Server School Certificate**

- (a) Application. An application for an original or renewal primary in-house seller server school certificate must be completed and submitted on forms provided by the commission.
- (b) An applicant for a primary in-house seller server school certificate must satisfy the requirements of paragraph (1) or (2) of this subsection.
  - (1) Be the current holder of a retail permit or license issued by the commission and employ a minimum of 150 individuals. The duties of the permit or license holder's employees must include the preparation, sale, service, or delivery of alcoholic beverages to ultimate consumers.
  - (2) Be a hotel management or holding company that owns or operates a minimum of five hotels which employ a minimum of 200 individuals whose duties include preparation, sale, service, or delivery of alcoholic beverages to ultimate consumers. The primary in-house seller server school must be managed and controlled by the hotel management or holding company and not the owned or managed hotels.
- (c) Disclosure of Owners, Officers, Directors, Managers and Instructors.
  - (1) An applicant whose owners, officers, directors and managers are an exact match to those previously provided to the commission in connection with a license or permit currently held by the applicant is exempt from the requirements of paragraphs (2), (3) and (4) of this subsection. However, the applicant must identify the license or permit application where the information requested in those paragraphs can be found.
  - (2) The applicant for an original certificate or change of ownership for an in-house seller server school must disclose all individual owners, individuals and legal entities having an ownership interest, and all officers, directors, managers, and instructors.
  - (3) A legal entity must provide the formation and registration documents and must be authorized to transact business in this state.
  - (4) A personal history sheet must be completed and submitted with the application for each individual who is an owner or holds an ownership interest in a legal entity, and each partner, officer, director, manager, and trainer if:
    - (A) the applicant has not previously provided a personal history sheet for the individual; or
    - (B) the information previously provided is no longer true and correct.
  - (5) An individual required to submit a personal history sheet must at the same time submit an authorization for a criminal history background check.
  - (6) Additional information may be required by the commission to verify ownership or qualifications of an applicant or individual.
- (d) An applicant for a primary in-house seller server school must designate:
  - (1) a certified trainer responsible for the oversight, operation, training and compliance at the seller server school; and

- (2) an individual responsible for the day-to-day management and operations at the seller server school.
- (e) The applicant must sign and verify that:
- (1) the applicant has authority to act on behalf of all owners;
  - (2) the applicant has personally completed or reviewed the application and has personal knowledge of and is responsible for its content;
  - (3) all parts of the application that apply are complete;
  - (4) each fact, disclosure, and statement made in the application is true and correct at the time the application is submitted;
  - (5) the applicant acknowledges that an application for a certificate is a government document and is subject to verification by the commission; and
  - (6) the applicant acknowledges that providing false or misleading information or omitting a material fact may result in the refusal of the application, cancellation of a certificate, or criminal prosecution.
- (f) Incomplete applications or applications submitted without required fees will neither be accepted for processing nor returned to the applicant.
- (g) An applicant must:
- (1) keep an exact copy of the application submitted to the commission; and
  - (2) complete and correct any deficiencies within ten business days after being notified of the deficiency.

*Note: Readopted Without Changes and Effective: March 27, 2018*

#### **§50.20 Application for Branch In-House Seller Server School Certificate**

- (a) Subsections (b) - (l) of this section apply to applications for branch classroom-based in-house seller server school certificates. Subsections (m) - (y) of this section apply to applications for branch internet-based in-house or branch mobile application in-house seller server school certificates.
- (b) An applicant for an original classroom-based in-house branch seller server school certificate must be an applicant for or currently hold a primary in-house seller server school certificate.
- (c) An applicant for a branch classroom-based in-house seller server school certificate renewal or change of ownership must hold a current primary in-house seller server school certificate.
- (d) An applicant may submit one or more applications for a branch classroom-based in-house seller server school certificate, but each application must be separately completed and submitted on forms provided by the commission.
- (e) The owners, shareholders, officers and directors of the primary in-house seller server school and the branch classroom-based in-house seller server school must be the same.
- (f) The application for a branch classroom-based in-house seller server school certificate must designate:
- (1) a certified trainer responsible for the oversight, operation, training and compliance at the branch classroom-based in-house seller server school; and
  - (2) an individual responsible for the day-to-day operations and management of the branch classroom-based in-house seller server school.
- (g) A personal history sheet must be completed and submitted with the application for each

trainer and responsible individual, if the individual has not previously provided a personal history sheet with the original or renewal application for the primary in-house seller server school.

(h) An individual required to submit a personal history sheet must at the same time submit an authorization for a criminal history background check.

(i) Additional information may be required by the commission to verify ownership or qualifications of an applicant or individual.

(j) The applicant must sign and verify that:

(1) the applicant has authority to act on behalf of all owners;

(2) the applicant has personally completed or reviewed the application and has personal knowledge of and is responsible for its content;

(3) all parts of the application that apply are complete;

(4) each fact, disclosure, and statement made in the application is true and correct at the time the application is submitted;

(5) the applicant acknowledges that an application for a certificate is a government document and is subject to verification by the commission; and

(6) the applicant acknowledges that providing false or misleading information or omitting a material fact may result in the refusal of the application, cancellation of a certificate, or criminal prosecution.

(k) Incomplete applications or applications submitted without required fees will neither be accepted for processing nor returned to the applicant.

(l) An applicant must:

(1) keep an exact copy of the application submitted to the commission; and

(2) complete and correct any deficiencies within ten business days after being notified of the deficiency.

(m) A branch internet-based in-house training school certificate is required for each domain that offers a different course of instruction from the course of instruction approved on the designated primary domain.

(n) A branch mobile application in-house training school certificate is required for each delivery platform supported on mobile phones, PDAs, tablets or other delivery device approved by the commission. For a branch mobile application seller server school:

(1) the mandatory curriculum may be completed with or without Internet access;

(2) the Commission Standard Competence Test and all unit testing must be completed through an internet or intranet connection; and

(3) the Commission Standard Competence Test and all unit testing may not be stored in the mobile application nor on any device not directly managed by the Primary Seller Server Training School.

(o) An applicant for an original internet-based or mobile application in-house branch seller server school certificate must be an applicant for or currently hold a primary in-house seller server school certificate.

(p) An applicant for an internet-based or mobile application in-house branch seller server school certificate renewal or change of ownership must hold a current primary in-house seller server school certificate.

(q) An applicant may submit one or more applications for a branch internet-based or mobile application in-house seller server school certificate, but each application must be separately completed and submitted on forms provided by the commission.



(r) The owners, shareholders, officers and directors of the primary in-house seller server school and the branch internet-based or mobile application in-house seller sever school must be the same.

(s) The application for a branch internet-based or mobile application in-house seller server school certificate must designate:

(1) a certified trainer responsible for the oversight, operation, training and compliance at the branch in-house seller server school; and

(2) an individual responsible for the day-to-day operations and management of the branch in-house seller server school.

(t) A personal history sheet must be completed and submitted with the application for each trainer and responsible individual, if the individual has not previously provided a personal history sheet with the original or renewal application for the primary in-house seller server school.

(u) An individual required to submit a personal history sheet must at the same time submit an authorization for a criminal history background check.

(v) Additional information may be required by the commission to verify ownership or qualifications of an applicant or individual.

(w) The applicant must sign and verify that:

(1) the applicant has authority to act on behalf of all owners;

(2) the applicant has personally completed or reviewed the application and has personal knowledge of and is responsible for its content;

(3) all parts of the application that apply are complete;

(4) each fact, disclosure, and statement made in the application is true and correct at the time the application is submitted;

(5) the applicant acknowledges that an application for a certificate is a government document and is subject to verification by the commission; and

(6) the applicant acknowledges that providing false or misleading information or omitting a material fact may result in the refusal of the application, cancellation of a certificate, or criminal prosecution.

(x) Incomplete applications or applications submitted without required fees will neither be accepted for processing nor returned to the applicant.

(y) An applicant must:

(1) keep an exact copy of the application submitted to the commission; and

(2) complete and correct any deficiencies within ten business days after being notified of the deficiency.

*Note: Amended Rule Effective: April 17, 2018*

### **§50.21 Renewal Application**

(a) An application for renewal of a certificate issued under this subchapter must be submitted on forms provided by the commission. The applicant must verify that the individual owner, or a designated representative of the owning legal entity, has attended any mandatory training offered or sponsored by the commission, and has completed the commission's liquor law class, during the term of the expiring certificate.

(b) Any information that has changed since the original or last renewal application was submitted must be completed and corrected on forms provided for an original application.

(c) Except as otherwise provided by subsection (d) of this section, a renewal application must be submitted before the date the certificate expires.

(d) Notwithstanding subsection (c) of this section, the commission may accept a renewal application and the certificate holder may continue to operate for 30 days following the expiration date, if:

(1) neither the primary nor any associated branch school is currently under a suspension order; and

(2) the required fees and late fee are submitted with the renewal application.

(e) A certificate holder who fails to submit a renewal as required by this section or pay the required fees must apply for an original application.

(f) A certificate issued under this subchapter may not be renewed if the school has not held at least 20 sessions during the term of the expiring certificate.

*Note: Amended Rule Effective: April 17, 2018*

### **§50.22 Expiration and Fees**

(a) Primary seller server school certificate.

(1) A primary certificate will expire on the second anniversary of the date it is issued.

(2) The two-year fee for an original primary certificate is \$1000.

(3) The two-year fee for a renewal primary certificate is \$500.

(4) A late fee of \$100 must be submitted with a renewal submitted after the date the certificate expired.

(5) No fees will be refunded after a certificate is issued.

(6) Fees cannot be prorated for a term of less than two years.

(7) Applications must be completed within one year of the date the application was received by the commission, or the application shall be deemed void. All fees are nonrefundable.

(8) If the applicant does not meet the deadline established in paragraph (7) of this subsection, the applicant must reapply for a new certificate by complying with requirements and procedures, including payment of fees.

(b) Branch seller server school certificate.

(1) A branch certificate will expire on the date the primary certificate expires.

(2) The two-year fee for each original classroom based or classroom-based in-house branch certificate is \$200, and for each internet-based or mobile application in-house branch certificate is \$50.

(3) The two-year fee for each renewal classroom based or classroom-based in-house branch certificate is \$100, and for each internet-based or mobile application in-house branch certificate is \$25.

(4) Fees for branch certificates that will expire in less than two years as a result of the primary certificate's expiration are not prorated.

(5) Applications must be completed within one year of the date the application was received by the commission, or the application shall be deemed void. All fees are nonrefundable.

(6) If the applicant does not meet the deadline established in paragraph (5) of this subsection, the applicant must reapply for a new certificate by complying with requirements and procedures, including payment of fees.

(c) No certificate will be issued until all fees and late fees are paid. A fee is paid on the date funds are available and transferred from the applicant's account.

- (d) The filing fee for a change of ownership is \$100.

*Note: Amended Rule Effective: April 17, 2018*

### **§50.23 Change of Ownership or Location**

(a) A change of ownership is any agreement to transfer ownership or control of a school. A change of control is presumed if:

- (1) more than 50% of an individual owner's interest is sold or transferred;
- (2) more than 50% of a legal entity's interest is sold or transferred; or
- (3) there is a change in directors, officers, shareholders, or other governing body that results in significant changes in operations, management or key instructors.

(b) A certificate issued under this subchapter may not be sold or transferred to an individual or legal entity not currently listed on the application.

(c) Individuals and legal entities currently listed on a certificate application may purchase, sell, or transfer ownership or an interest in the certificate, but only to another listed owner.

(d) A sale or transfer of an ownership interest in a school that does not result in a change of control under subsection (a) of this section does not require an original application. The sale or transfer is effective upon submission of:

- (1) a change of ownership form;
- (2) documents providing evidence of the sale or transfer; and
- (3) payment of the required fee.

(e) A sale or transfer that results in a change of ownership in a primary seller server school as described in subsection (a) of this section requires submission of an original application.

(f) The sale or transfer of an ownership interest in a branch school certificate to an individual or legal entity not currently the primary school permit holder requires the purchaser to submit an original application for a primary school certificate.

*Note: Readopted Without Changes and Effective: May 29, 2018*

### **§50.24 Notice of Change of Location**

The holder of a certificate issued under this subchapter must comply with §33.33 of this title.

*Note: Readopted Without Changes and Effective: March 27, 2018*

## **SUBCHAPTER D. SELLER SERVER TRAINER CERTIFICATE**

### **§50.25 Seller Server Trainer Certificate**

(a) Applicant Minimum Qualifications. An applicant for an original or renewal seller server trainer certificate must:

- (1) submit documentation issued by an agency of the United States, this or another state of the United States that proves the applicant is a United States citizen or is legally authorized to work in the United States at the time of application;
- (2) not be disqualified to receive a seller server school certificate under §50.12 of this chapter;
- (3) be at least 21 years of age;
- (4) submit a completed application on a commission approved form;

(5) pay the fee required for a seller server trainer certificate; and  
(6) not have had a final disposition of a felony conviction within five years of the date of application.

(b) An applicant for an original seller server trainer certificate must submit with the application:

(1) a certificate of completion issued by the provider of the commission standard trainer training and signed by the instructor of the training; and

(2) documentation establishing that the applicant has at least:

(A) 2 years experience in teaching or training; or

(B) 15 hours of post secondary education in a related field.

(c) Expiration and Fees.

(1) A seller server trainer certificate will expire on the second anniversary of the date it is issued.

(2) The two-year fee for an original seller server trainer certificate is \$100, and for a renewal is \$50.

(3) A late fee of \$50 must be submitted with a renewal application submitted after the date the certificate expired.

(4) No fees will be refunded after a certificate is issued.

(5) Fees cannot be prorated for a term of less than two years.

(6) Applications must be completed within one year of the date the application was received by the commission, or the application shall be deemed void. All fees are nonrefundable.

(7) If the applicant does not meet the deadline established in paragraph (6) of this subsection, the applicant must reapply for a new certificate by complying with requirements and procedures, including payment of fees.

(d) The holder of a seller server trainer certificate may renew the certificate if:

(1) a renewal application is submitted, on forms provided by the commission, prior to the expiration of the current certificate;

(2) the required two-year fee is submitted with the application;

(3) the applicant verifies that the applicant attended all mandatory training offered or sponsored by the commission and completed the commission's liquor law course during the two-year term of the expiring certificate; and

(4) the applicant has instructed at least 20 sessions during the term of the expiring certificate.

(e) Notwithstanding subsection (d)(1) of this section, the commission may accept a renewal application and the seller server trainer certificate holder may continue to operate for 30 days following the expiration date of his certificate, if:

(1) the holder of the seller server trainer certificate is not currently under a suspension order; and

(2) the required fees and late fees are submitted with the renewal application.

*Note: Amended Rule Effective: April 17, 2018*

## **§50.26 Trainer Standards and Requirements**

(a) The holder of a seller server trainer certificate is qualified to:

(1) apply for a seller server school certificate issued under this chapter; and

(2) be employed by a certified seller server school to teach the mandatory curriculum to individuals seeking a seller server certificate.

(b) The holder of a seller server trainer certificate must:

(1) ensure that no more than 50 students attend a session of a classroom-based course of instruction, unless the course is being offered by an internet-based school;

(2) require each student to sign a roster of class attendance before instruction begins;

(3) ensure that each student attends each segment of training;

(4) instruct on all required topics;

(5) administer, monitor, and grade the Commission Standard Competence Test;

(6) document the test results;

(7) complete, sign, and issue seller server certificates to students who pass the test, on the date and location of the session; and

(8) ensure that all students who successfully complete the session and pass the Commission Standard Competence Test are reported to the commission as required by this chapter:

(A) by timely delivering all information, documents, and test results to the seller server school for entry in the commission's database; or

(B) by entering the information in the commission's database.

(9) conduct himself in an ethical, professional, and lawful manner;

(10) provide students with the rules of conduct and requirements of the course, and the consequences of breaking rules or failing to meet the requirements;

(11) remain in the classroom at all times except during breaks;

(12) provide instruction on all topics and subjects included in the mandatory curriculum and maintain a pace that will ensure a high quality of instruction and comprehension by students;

(13) make reasonable use of visual aids and demonstrations but not allow these tools to be a substitute for trainer participation;

(14) avoid the use of language or conduct that would be offensive to a reasonable person;

(15) verify all students' qualifications to receive a certificate, unless the course is being offered by an internet-based school;

(16) provide the required number of minutes of instruction;

(17) issue no more than 50 seller server certificates for a single session;

(18) not issue a seller server certificate or provide instruction on a date when the school's or instructor's certification is expired, suspended or cancelled;

(19) require a student to correctly answer 70% of the questions asked on the Commission Standard Competence Test before issuing a seller server certificate to the student;

(20) not use, disclose, or sell personal or financial information obtained from a student or the commission for a purpose or in a manner not authorized by this chapter;

(21) not falsify, alter or destroy a record required by the commission, regardless of whether there was intent to deceive the commission or another;

(22) not violate any section of this chapter or the standard practices of the commission that, in the opinion of the commission, warrant suspension or cancellation;

(23) not engage in an ongoing course of conduct or activities that undermine the purpose and intent of this chapter;

(24) implement control and security measures to protect personal or financial information obtained from a student or the commission from accidental, intentional, or malicious use or disclosure; or

(25) not counterfeit a certificate issued under this chapter.

(c) The commission, after notice and hearing, may suspend or cancel a seller server trainer certificate if the quality of instruction falls below minimum commission standards as determined by the commission through:

(1) direct observation of instruction by commission auditors or agents;

(2) consistent failure of the trainer to impart basic knowledge and understanding to students, as measured by student failures, student violations, or student surveys or reports; or

(3) complaints received from any person.

*Note: Readopted Without Changes and Effective: March 27, 2018*

### **§50.27 Suspension or Cancellation of Seller Server Trainer Certificate**

The commission, after notice and hearing, may suspend or cancel a seller server trainer certificate if the trainer fails to satisfy a requirement of §50.31 of this chapter or violates any provision of this chapter.

*Note: Readopted Without Changes and Effective: March 27, 2018*

## **SUBCHAPTER E. SELLER SERVER CERTIFICATES**

### **§50.28 Verification and Expiration of Certificate**

(a) The commission can only issue an affidavit verifying that a seller server certificate has been issued to a student if:

(1) the request for verification includes the students name, date of birth, and a commission-approved personal identification number; or

(2) the request for verification includes the student's name, date of birth, and the certificate number of the certificate that is the subject of the verification request, if a commission-approved personal identification number is not available.

(b) A certificate issued under this chapter will expire on the second anniversary of the date it is issued.

(c) Notwithstanding subsection (b) of this section, a certificate with an expiration date falling between March 13, 2020 and May 13, 2020, inclusive, shall not expire and shall remain valid for all purposes for 90 days following the date this emergency rule is filed with the Texas Register. This provision expires by its own terms after 90 days unless it is extended pursuant to Government Code Section 2001.034(c).

*Note: Amended Rule subsection (c) Effective: May 20, 2020, Expires August 17, 2020*

### **§50.29 Seller Server Certificate Requirements**

(a) To receive a seller server certificate from a seller server school certified under this chapter, a student must:

(1) complete either a 120-minute classroom-based course of instruction or an internet-based, self-paced course of instruction;

- (2) complete all required topics of the commission standard competence curriculum;
- and
- (3) pass the Commission Standard Competence Test.
- (b) It is the student's responsibility to verify whether a school or trainer is certified. The certification status of the school or may be verified at the commission's website.
- (c) The commission will not refund any fees paid to a seller server school or instructor.

*Note: Readopted Without Changes and Effective: March 27, 2018*

### **§50.30 Void and Voidable Seller Server Certificates**

- (a) A seller server certificate is void if:
  - (1) the certificate is a forgery or false document; or
  - (2) the certificate has been altered.
- (b) A seller server certificate is voidable if:
  - (1) the school records were entered in error, or the certificate was issued in error and the name on the face of the numbered certificate and the commission records for the numbered certificate do not match;
  - (2) the issuing school did not have a current school certificate;
  - (3) the school's certificate was suspended at the time the certificate was issued;
  - (4) the school did not require the individual to participate in a course of instruction that included the commission standard competence curriculum before the certificate was issued; or
  - (5) the school did not require the individual to take and pass the Commission Standard Competence Test.
- (c) If a seller server certificate is voidable under subsection (b) of this section, the school shall:
  - (1) resolve the error;
  - (2) provide remediation for the affected certificate holders; and
  - (3) report corrected information to the commission within ten business days.
- (d) A school must give notice to each individual holding a void or voidable certificate under this section.
- (e) If a school ceases to exist, all unused certificates held by the school are voided. No refund will be made for certificates voided under this subsection.

*Note: Readopted Without Changes and Effective: March 27, 2018*

### **§50.31 Revocation**

- (a) The commission may revoke a Seller Server certificate under the conditions set forth in this section.
  - (1) If the holder of a Seller Server Certificate sells or serves an alcoholic beverage to a minor or intoxicated person, the certificate holder must be recertified within 30 days of the violation. Recertification requires completing a course of instruction offered by a certified school and passing the Commission Standard Competence Test. If the certificate holder is not recertified within 30 days of the violation, the commission may revoke the certificate.
  - (2) If the holder of a Seller Server Certificate sells or serves an alcoholic beverage to a minor or intoxicated person a second time within a 12 month period, the commission may revoke the certificate. The certificate holder cannot be recertified for a period of 90 days.

Recertification requires completing a course of instruction offered by a certified school and passing the Commission Standard Competence Test.

(3) If the holder of a Seller Server Certificate sells or serves an alcoholic beverage to a minor or intoxicated person a third time within a 12 month period, the commission may revoke the certificate. The certificate holder cannot be recertified for a period of one year.

Recertification requires completing a course of instruction offered by a certified school and passing the Commission Standard Competence Test.

(4) If the holder of a Seller Server Certificate provided false identification to a seller server school or trainer, including, but not limited to, name, social security number, or birth date, the commission may revoke the certificate. The certificate holder cannot be recertified.

(5) If the holder of a Seller Server Certificate did not successfully complete a course of instruction offered by a certified school or did not pass the Commission Standard Competence Test, the commission may revoke the certificate.

(b) Before the commission may revoke a Seller Server Certificate, the commission must give notice to the holder of the certificate that he or she has the right to request a hearing, but that he or she must make such request within 21 days after the receipt of the notice of violation.

*Note: Amended Rule Effective: April 17, 2018*

## **SUBCHAPTER F. CONSUMER DELIVERY**

### **§50.32 Alcohol Delivery Driver Training Program**

(a) The commission shall develop and offer to the public an alcohol delivery driver training program. A person who completes the program will be granted a delivery driver certificate valid for two years from the date of completion of the training program.

(b) The commission may combine the alcohol delivery driver training program with other certifications offered by the commission.

(c) In accordance with Alcoholic Beverage Code §57.08(c), it is a rebuttable presumption that a sale or delivery of an alcoholic beverage to a minor or an intoxicated person was not made with criminal negligence if the delivery driver:

(1) at the time of the delivery held a valid certification from the commission's alcohol delivery driver training program; and

(2) completed the delivery as a result of a technical malfunction of an alcohol delivery compliance software application that otherwise meets the requirements established by the commission.

(d) The commission may suspend or revoke an alcohol delivery driver's certificate for failure to pay the fee for the certification training program, and if the driver:

(1) is determined to be less than 21 years of age;

(2) does not hold a current, valid driver's license;

(3) is charged with a crime; or

(4) violates any statute or rule under the commission's jurisdiction.

*Note: Original Rule Effective: April 14, 2020*