



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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December 16, 2013

To Texas Brewers and Manufacturers:

This letter is intended to clarify certain issues brought to the Commission's attention with regard to new laws that went into effect after the 83rd Legislative Session.

Brewer's Self Distribution Permit (DA) and Manufacturer's Self Distribution License (DB)

Senate Bills 516 and 517 by Eltife apply to brewers and manufacturers who produce less than 125,000 barrels of malt beverages annually. Under previous law, a brewer or manufacturer who makes less than 75,000 barrels annually can sell any amount of their product direct to retailers. Under SB 516 and SB 517, a brewer or manufacturer who produces less than 125,000 barrels annually can obtain a self-distribution license and/or permit and sell up to 40,000 barrels direct to retailers.

Application for New License/Permit. Brewers and manufacturers who meet these requirements can apply for the Brewer's Self-Distribution Permit (DA) and Manufacturer's Self-Distribution License (DB) using the application form L-LRW Location Packet for Reporting Changes for Wholesalers, Distributors and Manufacturers. <http://www.tabc.state.tx.us/forms/licensing>. If the brewer/manufacturer does not have any entity changes, they will only need to complete the first nine questions and complete the "Warning and Signature" section. The fee for a two-year DA license or DB permit is \$500. The surcharge is \$250.

Grace Period. TABC has been allowing brewers and manufacturers who meet the production criteria to continue to sell their products directly to retailers without holding the new subordinate license or permit. The requirement for holding the new license or permit will go into effect January 1, 2014.

Expiration Date. In accordance with Section 11.09(b) of the Alcoholic Beverage Code, the expiration date for the subordinate self-distribution license or permit will be the same as the expiration date on the primary manufacturer's license or brewer's permit, regardless of when the subordinate was issued.

Brewers and Manufacturers Sales to Consumers

Senate Bill 518 by Eltife applies to manufacturers and brewers who produce less than 225,000 barrels annually. These establishments located in a “wet” area are now authorized to sell malt beverages to visitors of the brewery to drink on-site. In this context, a location is determined to be “wet” for on-premise sales of beer up to 4% ABW if the community has legalized the on-premise sale of beer (BE), wine and beer (BG), mixed beverages (MB), or mixed beverages in restaurants (RM). A location is determined to be “wet” for on-premise sale of ale/malt liquor over 4% ABW if the community has legalized the on-premise sale of wine and beer (BG), mixed beverages (MB), or mixed beverages in restaurants (RM).

The malt beverages must be produced on the premises and no more than 5,000 barrels annually may be sold to consumers. Malt beverages may be sold and consumed on the premises between the hours of 8 am and midnight on any day except Sunday, and between the hours of 10 am and midnight on Sunday. (There is no food service requirement tied to Sunday morning alcohol sales for brewers or manufacturers.)

Texas Products. Texas brewers/manufacturers are NOT authorized to sell or serve other Texas brewer/manufacture product, but they may possess it in bulk for manufacturing purposes.

Out-of-State Products. Texas brewers and manufacturers are authorized to import ale and beer from nonresident brewers and manufacturers and serve it (But May Not Sell It).

Sales and Use Tax Permit. A brewer or manufacturer who intends to sell their products to consumers will be required to obtain a Sales and Use Tax Permit from the Office of the Comptroller. Many Texas brewers and manufacturers may already hold this permit.

Administrative Rule Change. In the coming months, TABC will hold a stakeholders meeting to review Rule 45.103 On-Premise Promotions. Currently, this rule applies to retailers and prohibits happy hour practices and drink specials that can be construed as encouraging over consumption. Because all segments of the manufacturing level now have the authority to sell for on-premise consumption, the agency believes the same restrictions should apply to breweries, wineries and distilleries who sell to consumers.

Product/Label Approval. Product/label approval will be required of the product being sold at the brewery, but not for product being served free (e.g. tasting new batches). Until the agency has adopted an on-line label approval system, please allow up to four weeks for processing.

New Applications. Applications for new permits will need the city/county to certify that the location is “wet” and not in violation of any zoning or distance requirements. It should be noted that if the brewer or manufacturer intends to sell for on-premise consumption, a city or county can refuse to certify a new application or protest a renewal application for a brewer’s permit or manufacturer’s license if the location isn’t “wet” for on-premise consumption or is in violation of any zoning or a distance requirement.

New applicants will also be required to post a 60-day sign notifying the community that they are applying for a permit. They will be required to send notices to residences within 300 feet about their intent to turn in an application.

Producing Malt Beverages for a Specific Retailer

House Bill 3307 by Rep. Charlie Geren requires that a brewer, nonresident brewer, manufacturer or nonresident manufacturer shall verify to TABC on an annual basis that a brewing or manufacturing facility owned or controlled by the permit or license holder is not used to produce malt beverages primarily for a specific retailer or the retailer's affiliates. TABC has proposed new rule section 45.140 which includes the terms of this verification. It should be published in December and adopted as early as January 2014.

Contract Brewing / Alternating Proprietorships

House Bill 3307 by Rep. Charlie Geren authorizes brewers, nonresident brewers, manufacturers and nonsresident manufacturers to engage in the following activities provided both hold a license or permit at the location where the beer/ale is manufactured.

Alternating brewery proprietorship (AP) is defined as two or more parties who take turns using the physical premises of a brewery. Under an AP, each party can sell/serve its product on the premises during the times it has control. Due to the fact that TTB requires the products remain separate, they cannot be sold or served at the same time.

Contract brewing arrangement is defined as two breweries with separate facilities who contract for one to make beer/ale on behalf of the other due to limited capacity or other reasonable business necessity. Under a contract brewing arrangement, the contracting brewery can sell its own product to the consumer on the premises of the producing brewery.

Prohibited Activites. If a person has only a recipe (and no facilities), it's not legal to contract with a brewer to make the beer and then share in production, distribution rights, profits and/or losses. However, it IS legal to sell a recipe and ALL rights associated with it to a brewery for them to own, brew and sell the products.

TTB Brewer's Notice. A TTB Brewer's Notice is required of both parties in a contract brewing arrangement. The producing brewery must hold the Brewer's Notice at the location where the product is being brewed. The contracting brewery (recipe holder) must hold a Brewer's Notice at a location within the United States, but not necessarily in Texas.

Bonds. A bond is required for an entity involved in either of these activities that does not hold any ownership (fee) interest in a brewing facility. A lease on a facility is not considered to be a fee interest. If a location holds both a permit and a license, a bond is required for each.

For additional information, please contact the following:

Inquiries to TABC may be directed to the following e-mail addresses:

Marketing.Practices@tabc.state.tx.us

Excise.Tax@tabc.state.tx.us

Label.Approval@tabc.state.tx.us

Licensing@tabc.state.tx.us

Questions@tabc.state.tx.us

Or to the following people by phone:

Thomas Graham, Director of Tax and Marketing Practices, 512-206-3411

Carolyn Beck, Governmental Relations, 512-206-3347

Sincerely,



Carolyn R. Beck
Governmental Relations

Disclaimer:

The information contained in this letter is current as of December 16, 2013, but is subject to change at any time.

TABC staff has found that the answer to a question is frequently affected by the individual factual circumstances that provide the context for the question and therefore it is often impossible to provide a definitive answer that applies in all situations. Industry members should not rely on or make business decisions based solely on the statements in this letter.

This letter should not be considered as legally binding either by the TABC or anyone subject to TABC's regulation. Industry members are bound by and are responsible for adhering to the Texas Alcoholic Beverage Code and the Texas Alcoholic Beverage Commission Administrative Rules, both of which may be found on the TABC website at: <http://www.tabc.state.tx.us/laws/index.asp>.

The statements in this letter have not been approved by the Commissioners and do not constitute statements of general applicability that implement, interpret or prescribe law or policy. Nor do the statements in this guide constitute statements of general applicability that describe the procedure or practice requirements of TABC.