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Amended December 2, 2010 – Corrected List Number
November 16, 2010

MARKETING PRACTICES BULLETIN – MPB039

16 TAC 45.121 Credit Law Requirements Update

Dear Alcoholic Beverage Industry Members:

This bulletin is intended to announce recent amendments to 16 TAC 45.121 Credit Law Requirements. The rule will become effective November 18, 2010.

In accordance with statutory provisions, the commission made a commitment to align the delinquent list publication date with the credit law payment due date. Subsequently, the commission will continue to initiate the rule making process yearly in September to reduce the publication date by 2 days each year over a period of five years. Initial changes to 16 TAC 45.121 were made September 5, 2009. This year's changes were adopted on October 26, 2010 and will become effective on November 18, 2010.

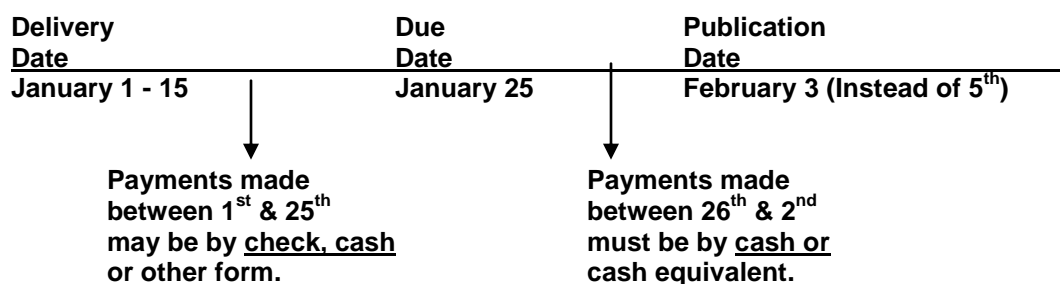
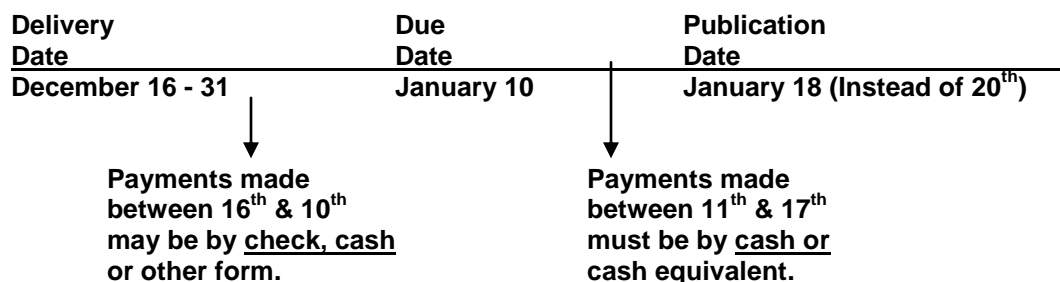
Primary changes to credit law requirements are as follows:

- Delinquent List for the delivery period of the 1st – 15th will be published and effective on the 3rd of the following month. [Please note the delinquent list will no longer be published on the 5th.]
- Delinquent List for the delivery period of the 16th – end of the month will be published and effective on the 18th of following month. [Please note the delinquent list will no longer be published on the 20th.]
- For initial changes see Bulletin MPB030:
http://www.tabc.state.tx.us/marketing_practices/advisories/MPB030.pdf.
- We will allow an adjustment period through December 1-15th delivery period. The new publication/effective date for the delivery period of December 16th- 31st will be effective on January 18, 2011. Enforcement of Rule 16 TAC 45.121 recent amendments will begin with the December 16th-31st delivery period and be effective on List # ~~4449-1473~~. This will enable the industry to make the necessary changes to their business practices.

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Payment Calendar



We hope this notification will assist you in evaluating your business practices and making necessary changes to adapt to the provisions of the amended rule. If you would like additional information or have questions regarding this bulletin, you may contact me in writing at P.O. Box 13127, Austin, TX 78711, by phone at 512-206-3302 or by facsimile at 512-206-3212.

Kind Regards,



Dexter K. Jones
Assistant Chief of Compliance and Director of Marketing Practices

xc: Alan Steen, Administrator
Executive Management
Regional Personnel

Attachments:
16 TAC 45.121 Credit Law Requirements

§45.121. Credit Restrictions and Delinquent List for Liquor.

(a) Purpose. This rule implements §§102.32, 11.61(b)(2), and 11.66 of the Texas Alcoholic Beverage Code (Code).

(b) Definitions.

(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 day it is required to be paid by §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.

(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--A wholesaler, class B wholesaler, winery, wine bottler, or local distributor and their agents, servants and employees.

(c) Invoices. 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.

(1) The Seller's copy of the invoice must be signed by the Retailer to verify receipt of alcoholic beverages and accuracy of invoice.

(2) The Seller and Retailer must retain invoices in compliance with the requirements of §206.01 of the Code.

(3) Invoices may be created, signed and retained in an electronic or internet based inventory system, and may be retained on or off the licensed premise.

(d) Delinquent Payment Violation. A Retailer who makes a delinquent payment to a Seller for the delivery of alcoholic beverages violates this section unless an exception applies.

(1) A Retailer who violates this section must pay a delinquent amount, and a Seller may accept payment, only in cash or cash equivalent financial transaction or instrument.

(2) A Retailer whose permit or license expires or is cancelled for cause, voluntarily cancelled [expires], suspended or placed in suspension while on the delinquent list will be disqualified from applying for or being issued an original or renewal permit or license until all delinquent payments are satisfied. 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 www.tabc.state.tx.us.

(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 on or 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 [to] any of Retailer's licensed locations from the date any violation occurs until all delinquent payment are paid in full.

(2) A prohibited purchase or acceptance of a delivery of alcoholic beverages is a violation of this section.

(h) Exception. 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.

(1) 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.

[(D) bank statement or records showing the check cleared Retailer's account and funds were withdrawn from Retailer's account in the amount of the check.]

(2) A disputed delinquent payment 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.

(3) 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 the violation(s) is/are 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 <http://www.tabc.state.tx.us>. 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) The Delinquent List will be published the 3rd [5th] day of the month for purchases made from the 1st to the 15th day of the preceding month, for which payment was not made on or before the 25th day of the preceding month. The Delinquent List will be published the 18th [20th] day of the month for purchases made between the 16th and the last day of the preceding month for which payment was not made on or before the 10th day of the 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, Sunday or a state or federal holiday, will be the next regular business day. A payment sent by U.S. postal service or other mail delivery service is deemed made on the date postmarked or proof of date delivered to the mail delivery service. A payment hand delivered to an individual authorized to accept payment on behalf of the Seller is deemed made when the authorized individual takes possession of the payment.