

The Texas Alcoholic Beverage Commission (TABC) adopts amendments to 16 TAC §§33.70-33.72, 33.76, 33.77, and 33.81, relating to Events at a Temporary Location. The amendments are adopted without changes to the proposed text as published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 6984). The amended rules will not be republished.

REASONED JUSTIFICATION. The amendments are necessary to implement legislation. Senate Bill 926 (88th Regular Session) authorized the temporary sale of wine and malt beverages by a mixed beverage permit holder in certain high-capacity facilities that are open to the public during certain motor vehicle racing events. Senate Bill 1375 (88th Regular Session) authorized a distiller's and rectifier's permit holder to conduct samplings or tastings at certain temporary events. Sections 71, 112, 122, 128, and 247 of House Bill 1545 (86th Regular Session) authorized various permit holders to sell different alcoholic beverages at certain temporary events. These bills all required TABC to adopt implementing rules.

The amendments to §§33.72, 33.77(f), and 33.81 implement SB 926 by: (1) acknowledging that mixed beverage permittees may sell wine and malt beverages for more than four consecutive days at an authorized temporary event, as provided in Alcoholic Beverage Code §28.20(c); (2) clarifying the recordkeeping and reporting obligations of mixed beverage permittees who sell wine or malt beverages in a county other than the county in which the temporary event premises is located, consistent with Alcoholic Beverage Code §28.20(e); (3) clarifying that if an authorized temporary event is held in a county that includes more than one territory, as that term is defined by Alcoholic Beverage Code §102.71(5), the mixed beverage permittee must purchase malt beverages from the distributor holding the territorial agreement covering the temporary event location; and (4) clarifying that if an authorized temporary event is held in a county other than the county in which the mixed beverage permit holder's premises is located, the mixed beverage permittee must purchase wine from a wholesaler authorized to sell wine in the county covering the temporary event location.

The amendments to §§33.70, 33.71, 33.76, and 33.77(d) implement SB 1375 and HB 1545 by: (1) changing the scope and applicability of Chapter 33, Subchapter E to include temporary events conducted under Chapter 14 of the Alcoholic Beverage Code; (2) acknowledging that certain temporary events are eligible for File and Use Notification even if sponsored by a distiller's and rectifier's permittee or winery permittee; (3) providing that distilled spirits samplings or tastings at temporary events conducted in accordance with Alcoholic Beverage Code §14.09 may be conducted using File and Use Notification, without the need to obtain prior approval from the Commission; and (4) clarifying the requirements to verify the wet/dry status of the governing jurisdiction where the temporary event will be held.

SUMMARY OF COMMENTS. TABC received one comment from the Texas Distilled Spirits Association supporting the amendments to §33.71.

COMMENT: The commenter supports the proposed changes to §33.71, which allow distillers to “conduct distilled spirits sampling or tasting at a civic or distilled spirits festival, farmers’ market celebration or similar event...without obtaining prior approval...by submitting a notice on forms provided by the commission.” The commenter states that “[b]ecause a distiller cannot

sell bottles at these temporary events, TDSA agrees that notifying the commission, without needing prior approval, is the best solution for participating in temporary events.”

AGENCY RESPONSE: TABC appreciates the comment.

STATUTORY AUTHORITY. TABC adopts the amendments under §§5.31, 14.09(g), 16.12(c), 25.16(c), 28.19(c), 28.20(g), 32.25(d), and 69.18(c) of the Alcoholic Beverage Code. Section 5.31 authorizes TABC to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code. Section 14.09(g) requires TABC to adopt rules to implement distilled spirits sampling at temporary events. Section 28.20(g) requires TABC to adopt rules implementing temporary sales at certain racing facilities. Sections 16.12(c), 25.16(c), 28.19(c), 32.25(d), and 69.18(c) require TABC to adopt rules implementing temporary sales by various permittees at a temporary event location.

CERTIFICATION. The amended rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

<rule>

§33.70. Scope and Applicability.

- (a) This subchapter relates to Chapters 14, 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”).

§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, unless the event is conducted pursuant to Chapters 14 or 16 of the Alcoholic Beverage Code; and
 - (5) the owner of the premises where the event will be held has authorized the sale or service 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.

(e) Notwithstanding subsections (a)(1)-(4) and (d) of this section, holders of a distiller's and rectifier's permit may conduct distilled spirits samplings or tastings at a civic or distilled spirits festival, farmers' market, celebration, or similar event in accordance with Alcoholic Beverage Code §14.09 without obtaining prior approval from the Commission by submitting a notice on forms provided by the commission.

§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, except as provided by subsection (b) of this section.

(b) Temporary Event Approvals issued to holders of a mixed beverage permit for events conducted in accordance with Alcoholic Beverage Code §28.20 may be effective for:

(1) no more than five consecutive days; or

(2) up to six consecutive days if necessary to accommodate the postponement of a scheduled racing event due to an act of nature.

(c) 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.

(d) 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.

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

(f) 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.

(g) 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.

(h) 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.

§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, unless the event is conducted pursuant to Chapters 14 or 16 of the Alcoholic Beverage Code;
- (E) the owner of the premises where the event will be held has authorized the sale or service of alcohol at the event; and
- (F) verifies the wet/dry status of the governing jurisdiction where the event will be held.

(b) Except as provided by §33.71(e) of this title, 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, type of event, and a copy of any invitation to the event or obituary for a funeral related event.

§33.77. Request for Temporary Event Approval.

(a) A request for a Temporary Event Approval shall be made on forms provided by the commission and shall be signed and sworn to by the requester.

(b) The requester 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 (including wet/dry status), 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.

(f) Upon written notice to the commission, the effective dates for a racing event conducted pursuant to Alcoholic Beverage Code §28.20 may be extended if necessary to accommodate the postponement of a scheduled racing event due to an act of nature. The effective dates may not exceed six consecutive days, as provided in §28.20(c).

§33.81. Purchase of Alcoholic Beverages for a Temporary Event.

(a) This section applies to holders of Mixed Beverage Permits when selling alcoholic beverages at an event authorized by a Temporary Event Approval or under a File and Use Notification.

(b) Except as provided by subsection (c) of this section, a Mixed Beverage Permit holder purchasing alcoholic beverages for an event at a temporary location in a county other than the county in which the premises covered by its primary permit is located must:

(1) purchase the alcoholic beverages from a seller authorized under this code to sell the alcoholic beverages to members of the retail tier in the county in which the permit holder sells the alcoholic beverages under this section; and

(2) keep a record of the amount of alcoholic beverages purchased and sold under this section, by type, for no less than two years following the last day of the event.

(c) If the temporary event is held in a county that includes more than one territory, as that term is defined by Alcoholic Beverage Code §102.71(5), a Mixed Beverage Permit holder must purchase malt beverages from the distributor holding the territorial agreement covering the temporary event location.

(d) Except as restricted by subsection (e) for certain events, this section does not preclude a Mixed Beverage Permit holder from transporting alcoholic beverages in stock at its primary location to a temporary event.

(e) Holders of Mixed Beverage Permits who sell wine and malt beverages at an event authorized by Alcoholic Beverage Code §28.20 in a county other than the county in which the premises covered by the permit is located must:

(1) purchase all wine and malt beverages sold at the event from a distributor or wholesaler authorized to sell the beverages in the county in which the permit holder sells the alcoholic beverages under this subsection;

(2) comply with subsections (b)(2) and (c) of this section; and

(3) report to the commission, on forms provided by the commission, the amount of beverages purchased and sold at the event.