

The Texas Alcoholic Beverage Commission (TABC) proposes to amend 16 TAC §45.4, relating to Product Registration Required. The proposed amendment is necessary to implement Senate Bills 1322 and 1932 from the 88th Regular Session. SB 1322 authorized the sale of vintage distilled spirits by a vintage distilled spirits seller, while SB 1932 authorized the secondary sale of wine by a wine collection seller.

Currently, §45.4(a) prohibits alcoholic beverages from being sold in the state prior to the product being registered with TABC unless the type of alcoholic beverage is excepted from the registration requirement under §45.4(b). Pursuant to §101.671 of the Alcoholic Beverage Code, distilled spirits and wine are generally required to have a Certificate of Label Approval (COLA) issued by the United States Alcohol and Tobacco Tax and Trade Bureau in order to be registered with TABC and the registrant must be an authorized TABC permittee. Pursuant to §§1.04(31)(B) and 111.001(2)(B) of the Alcoholic Beverage Code, vintage distilled spirits sellers and wine collection sellers may not hold a TABC-issued permit. Thus, due to the nature of the distilled spirits and wine authorized by SB 1322 and SB 1932, the products are ineligible to receive a COLA and the authorized sellers are unable to apply for product registration. For these reasons, requiring registration of these products would be impracticable under the current regulatory framework. Therefore, the proposed amendment to §45.4 adds products sold by a vintage distilled spirits seller pursuant to Alcoholic Beverage Code §§22.19 or 23.07, and by a wine collection seller pursuant to Alcoholic Beverage Code §§111.002 or 111.003, to the list of products that do not require registration with TABC prior to being sold within the state.

TABC presented the proposed amendments at a stakeholder meeting on December 7, 2023, and received no comments.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Andrea Maceyra, Chief of Regulatory Affairs, has determined that during each year of the first five years the proposed amendments are in effect, there will be no fiscal impact on state or local governments because of enforcing or administering the amended rules, other than that imposed by statute. Mrs. Maceyra made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or

complying with the proposed amendments. Mrs. Maceyra also does not anticipate any measurable effect on local employment or the local economy because of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mrs. Maceyra expects that enforcing or administering the amended rules will have the public benefit of ensuring current rules align with new legislation and the prerequisites for product registration. Mrs. Maceyra does not expect the proposed amendments will impose economic costs on persons required to comply with the amended rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TABC has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TABC is not required to prepare a regulatory flexibility analysis.

GOVERNMENT GROWTH IMPACT STATEMENT. TABC has determined that for each year of the first five years that the proposed amendments are in effect, they:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TABC has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TABC will consider any written comments on the proposal that are received by TABC no later than 5:00 p.m., central time, on March 11, 2024. Send your comments to rules@tabc.texas.gov or to the Office of the General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127. TABC staff will hold a public hearing to receive oral comments on the proposed amendments at 10:00 a.m. on February 22, 2024. Interested persons should visit the TABC's public website at www.tabc.texas.gov, or contact TABC Legal Assistant Kelly Johnson at (512) 206-3367, prior to the meeting date to receive further instructions.

STATUTORY AUTHORITY. TABC proposes the amendments pursuant to TABC's rulemaking authority under Texas Alcoholic Beverage Code §5.31. Section 5.31 authorizes TABC to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code. TABC also proposes new §45.4(b)(5) pursuant to Section 2 of SB 1932, which requires TABC to adopt rules necessary to implement Chapter 111 of the Texas Alcoholic Beverage Code.

CROSS-REFERENCE TO STATUTE. The proposed amendments implement Alcoholic Beverage Code §§22.01, 22.19, 23.01, 23.07, 28.07, and 111.001-.005.

<rule>

§45.4. Product Registration Required.

(a) (No change).

(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;

(4) by a vintage distilled spirits seller pursuant to Code §§22.19 or 23.07; and

(5) by a wine collection seller pursuant to Code §§111.002 or 111.003.

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.