

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 16. ECONOMIC REGULATION

### PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

#### CHAPTER 35. ENFORCEMENT SUBCHAPTER C. MINORS

##### 16 TAC §35.21

The Texas Alcoholic Beverage Commission proposes amendments to §35.21, relating to Assist Defined.

Section 35.21 is an interpretive rule clarifying the use of the word "assist" in Alcoholic Beverage Code §61.71(a)(12) and §106.09(a). Those subsections provide that a person may not employ a person under 18 years old to sell, serve, prepare, handle or dispense alcoholic beverages, or to assist in doing so. The rule provides that merely being employed to work where alcoholic beverages are sold does not by itself mean that the minor is assisting in the prohibited activities, if the minor does not have a direct and immediate connection with any particular sale of alcoholic beverages.

The proposed amendments are mostly grammatical and stylistic. The list of prohibited activities is modified to track the language of the relevant Alcoholic Beverage Code ("Code") subsections.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for the rule continues to exist but that changes to the current rule are appropriate.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the rule will more clearly reflect the Code provisions it interprets.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280, or by email to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, February 23, 2017, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §§5.31, 61.71, and 106.09, and Government Code §2001.039.

*§35.21. Assist Defined.*

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

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

Filed with the Office of the Secretary of State on January 25, 2017.

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Assistant General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489



#### CHAPTER 45. MARKETING PRACTICES SUBCHAPTER C. STANDARDS OF IDENTITY FOR MALT BEVERAGES

##### 16 TAC §45.80

The Texas Alcoholic Beverage Commission proposes amendments to §45.80, relating to Net Contents.

Section 45.80 prescribes how the net contents of a malt beverage must be stated on the label.

Currently, subsection (a) applies to ale and malt liquor, while subsection (b) applies to beer. The requirements differ. The rule also requires that all fractions be expressed in their lowest de-

nominations, and allows the net contents to be blown, branded or burned on the bottle instead of being stated on the label.

The proposed amendments delete current subsection (b) and apply the same standards to beer as are currently applied to ale and malt liquor in subsection (a). A new paragraph (5) is added to subsection (a) to account for containers larger than one gallon. Grammatical changes are also made.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for the rule continues to exist but that changes to the current rule are appropriate.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the same standards will apply to all malt beverages.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280, or by email to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, February 23, 2017, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and Government Code §2001.039.

*§45.80. Net Contents.*

(a) Net contents of malt beverages [~~liquors~~] shall be stated as follows:

(1) if less than one pint, the net contents shall be stated in fluid ounces or fractions of a pint;

(2) if one pint, one quart or one gallon, the net contents shall be so stated;

(3) if more than one pint, but less than one quart, the net contents shall be stated in fractions of a quart, or in fluid ounces, or in pints and fluid ounces;

(4) if more than one quart, but less than one gallon, the net contents shall be stated in fractions of a gallon, or in fluid ounces, or in quarts, pints and fluid ounces; and

(5) if more than one gallon, the net contents shall be stated in gallons and fractions thereof, or in barrels, fractions of barrels, or barrels and fractions thereof.

(b) [Net contents of beer shall be stated as follows:]

(1) ~~one barrel;~~

(2) ~~1/2 barrel;~~

(3) ~~1/4 barrel;~~

(4) ~~1/8 barrel;~~

(5) ~~32 fluid ounces;~~

(6) ~~24 fluid ounces;~~

(7) ~~16 fluid ounces;~~

(8) ~~12 fluid ounces;~~

(9) ~~8 fluid ounces; and~~

(10) ~~7 fluid ounces.~~

[(e)—] All fractions shall be expressed in their lowest denominations.

(c) [(d)] The net contents need not be stated on any label if the net contents are displayed by having the same blown, branded, or burned in the container in letters or figures in such manner as to be plainly legible under ordinary circumstances and such statement is not obscured in any manner in whole or in part.

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

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## SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

### 16 TAC §45.107

The Texas Alcoholic Beverage Commission proposes amendments to §45.107, relating to Alcoholic Beverages Utilized for Cooking Purposes at On-Premise Locations.

Section 45.107 establishes the conditions under which wine and beer retailer's permittees and mixed beverage permit holders can possess and use certain alcoholic beverages on their premises for cooking purposes.

Subsection (a) of the current rule implements Alcoholic Beverage Code §25.09(b), which authorizes the Commission to adopt a rule allowing a wine and beer retailer's permittee to possess and use alcoholic beverages in excess of 17 percent by volume on the licensed premises for cooking purposes. The Commission does not propose making any changes to subsection (a).

Subsection (b) of the current rule implements Alcoholic Beverage Code §28.06(e), which authorizes the Commission to adopt a rule allowing a mixed beverage permittee to possess and use alcoholic beverages that are not covered by an invoice on the permitted premises for cooking purposes. The Commission

does not propose making any substantive changes to subsection (b), but does propose making grammatical and structural changes.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for the rule continues to exist but that changes to the current rule are appropriate.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the rule will be clearer.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280, or by email to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, February 23, 2017, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, by Alcoholic Beverage Code §25.09(b), which authorizes the Commission to adopt a rule allowing a wine and beer retailer's permittee to possess and use alcoholic beverages in excess of 17 percent by volume on the licensed premises for cooking purposes, and by Alcoholic Beverage Code §28.06(e), which authorizes the Commission to adopt a rule allowing a mixed beverage permittee to possess and use alcoholic beverages that are not covered by an invoice on the permitted premises for cooking purposes.

The proposed amendments affect Alcoholic Beverage Code §§5.31, 25.09, and 28.06, and Government Code §2001.039.

§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[; tax stamped by and invoiced by] a local distributor's permittee, [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. [Alcoholic beverages purchased at retail without a tax stamp may not be served or sold in liquid form.]

(3) An alcoholic beverage used for cooking purposes and purchased by a mixed beverage permittee [for cooking purposes] 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 [for cooking purposes] at retail without a tax stamp must be stored separately from alcoholic beverages purchased from[; tax stamped by and invoiced by] a local distributor's permittee [Local Distributor's Permittee].

(5) No alcoholic beverage used for cooking purposes and [Alcoholic beverages] purchased by a mixed beverage permittee [for cooking purposes] at retail without a tax stamp may [not] be sold, served or consumed in liquid form by staff or customers of the permittee.

[(6) All receipts for the purchase of alcoholic beverages purchased for cooking purposes at retail without a tax stamp must be retained on the premises until the bottle is empty and disposed of.]

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

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## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 17. RESOURCE PLANNING SUBCHAPTER B. BOARD APPROVAL