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Amended February 5, 2014 – Statute changes to allow for all malt beverages promotions to be prearranged and preannounced.

January 27, 2014

MARKETING PRACTICES ADVISORY – MPA053

Promotional Activity Prearrangement/Preannouncement for Alcoholic Beverages

To: Alcoholic Beverage Industry

This Advisory is amended to announce an amendment to the Alcoholic Beverage Code as passed by the 83rd Texas Legislature. Section 102.15(b) of the Texas Alcoholic Beverage Code (Code), effective September 1, 2013 allows the holder of a manufacturer's or distributor's license to prearrange and preannounce beer promotions at all on and off premise retailer locations.

Prior to this statute change, BEER manufacturers and/or distributors were not authorized to prearrange/preannounce beer promotional activities or purchases of beer for consumer consumption. Thus such activities had to be spontaneous and neither pre-arranged with the retailer nor pre-announced to the consumer.

Along with Section of 102.15(b) of the Code, Rule 45.113 has been amended to allow beer manufacturers and distributors to pre-announce (i.e., advertise, whether inside the account or outside the account in print, TV, radio, email, internet/digital media, flyers, etc.) to the consumer promotional activities and where their products may be legally purchased, including a specific date, time and location. In addition, the amendment allows manufacturers and distributors to prearrange the promotional activities, thus giving the retailer notice that the upper-tier member plans to conduct the promotional activity at the retailer's premise. Promotional activities refer to activities beyond just the product's availability for sale. Examples of promotional activities include, but are not limited to bar spending, sampling, novelty item giveaways, and appearances by agents or promotional permit holders.

Under current law, Section 102.07(g) of the Texas Alcoholic Beverage Code (Code), LIQUOR manufacturers and wholesalers may pre-arrange with retailers promotional activities designed to promote liquor products and may pre-announce such events to the consumer (See MPB023). In addition, the 83rd Legislature also amended 102.07(g) to allow LIQUOR manufacturers and wholesalers to not only preannounce the purchase of distilled spirits and wine for consumer consumption also ale and malt liquor products.

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Please note, all promotional activities must be conducted in compliance with tied-house statutes.

This advisory supersedes any previous advisory explaining the prohibition of prearrangement and preannouncement for beer prior to the amendment of Rule 45.113.

This opinion is of the staff of the Commission. We hope this opinion will assist you in your endeavors. If you would like additional information or have questions regarding this advisory, you may contact me in writing at P.O. Box 13127, Austin, TX 78711, by email at marketing.practices@tabc.state.tx.us, by phone at 512-206-3411 or by facsimile at 512-206-3349.

Sincerely,



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cc: Sherry Cook, Administrator
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