

Notice Regarding Percentage Volume of Texas Grapes Required by Texas Alcoholic Beverage Code, Section 16.011

Texas Alcoholic Beverage Code, Section 16.011 (Section 16.011), establishes an exception to the bar on the sale of alcoholic beverages in dry areas for wineries that sell or dispense wine that contains seventy five percent (75%), by volume, of Texas grown grapes or fruit. Texas Agriculture Code, Section 12.039 (Section 12.039), provides that the commissioner of agriculture may reduce the percentage by volume of fermented juice of grapes or other fruit grown in this state that wine containing that particular variety of grape or other fruit must contain under Section 16.011. The commissioner has received a report from the Texas Wine Marketing Research Institute (TWMRI), Texas Grape Production and Demand Report 2010 (Report), as provided for in Section 12.039. The Report issued by the TWMRI is based in part on responses to surveys sent to Texas wineries, and other research. The Report does not include information from the annual United States Department of Agriculture (USDA) grape production report, which is issued in January of each year. Upon review of the TWMRI Report, and the recommendation made in the Report, the commissioner has determined that there is sufficient information to set the percentage of Texas grown grapes and fruit that is required to be in wine produced by wineries located in dry areas of Texas at seventy-five percent (75%), the percentage required by Section 16.011, to for the 2011 calendar year. The setting of the percentage requirement at the statutory seventy five percent (75%) is based upon several factors, although data is limited. First, the Report indicates that, of wineries responding to the TWMRI survey statewide, approximately 58% of wine grapes processed in Texas are Texas grapes. To maintain the intent of the statutory prohibition of locally-determined dry area alcohol sales, combined with the limited exception enacted for wines meeting a high threshold of Texas grape content, the established level for dry area wineries should be higher than what is already being met by wineries statewide. Second, the level established in previous years was based in part on grape production factors limited by weather or natural causes. The Report indicates that there were no similar circumstances this year due to growth in production and few adverse weather conditions, resulting in a very good production year. It was also noted that, while some wineries are having difficulties obtaining Texas grapes, citing cost of Texas grapes and availability of certain varieties, most wineries were able to obtain sufficient Texas grapes to meet their needs. Third, as noted below, for situations where a winery is not able to obtain enough Texas grapes to meet their needs, the commissioner will review individual appeals for reduction of the level set for calendar year 2011. Because the TWMRI Report does not include the annual USDA grape production information, the commissioner has again requested that Tim Dodd, the Director of the TWMRI, review the USDA report when it becomes available and submit to the commissioner at that time a recommendation for any needed adjustments to the 75% rate, as a result of the USDA data. The commissioner will review any such request and make adjustments to the rate, as deemed necessary. Any change to the rate will be published in the <eti>Texas Register<et> and posted on the Texas Department of Agriculture website.

In accordance with Section 12.039(g), if a winery in a dry area of Texas finds that a particular variety of grape or other fruit is not available to a level sufficient for the winery to meet the winery's planned production for the relevant year, the winery may submit

documentation or other information requested by the commissioner substantiating that the winery has not been able to acquire those grapes or other fruit grown in this state in an amount sufficient to meet the winery's production needs and to comply with requirements of Section 16.011. If the commissioner determines that there is not a sufficient quantity of that variety of grapes or other fruit grown in this state to meet the needs of that winery, the commissioner may reduce the percentage requirement for wine bottled during the remainder of the calendar year that contains that variety of grape or fruit.

<p>Filed with the Office of the Secretary of State on December 20, 2010.

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture*n