

RULES AND REGULATIONS

Title 40—LIQUOR

LIQUOR CONTROL BOARD

[40 PA. CODE CHS. 3, 11 and 13]

Vendor Registration and New Year's Eve Meal Package

The Liquor Control Board (Board) amends §§ 3.31, 3.33, 3.63, 3.73, 11.91, 11.92, 13.71—13.75, 13.77—13.79, 13.81, 13.86 and 13.87, relating to registration of vendors' agents and § 13.102 relating to discount pricing practices to read as set forth in Annex A.

The Board no longer has any need to register agents of vendors. The practice of registration and subsequent issuance of photo-identification to vendors' agents is cumbersome to the Board as well as the vendors and their agents. Permitting hotels to offer an open bar to registered overnight guests of their hotel after 7 a.m. on December 31, 1999, until 2 a.m. the following day codifies a policy the Board desires to implement for hotel licensees. The Board realizes that time is of the essence and intends to notify all hotel licensees prior to publication of this final-omitted rulemaking in the *Pennsylvania Bulletin*.

Notice of proposed rulemaking is omitted under section 204(1) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(1)) (CDL) since these regulatory amendments are related to agency practice and procedure and all affected licensees have been notified of these regulatory changes.

Fiscal Impact

These regulatory changes will impose no new costs upon vendors' agents, hotel licensees, the Board or the public. Elimination of vendor registration and issuance of photo-identification will be a cost savings to the Board as well as its vendors.

Paperwork Requirements

These amendments will not impose additional paperwork requirements.

Statutory Authority

The authority for these amendments is section 207(i) of the Liquor Code (47 P. S. § 2-207(i)).

Contact Person

Anyone requiring an explanation of these amendments or information related thereto, should contact Jerry Danyluk, Room 513, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), on November 8, 1999, the Board submitted copies of these amendments with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Liquor Control and Senate Committee on Law and Justice. On the same date, the amendments were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. § 732-101—732-506).

In accordance with section 5(c) of the Regulatory Review Act, these amendments were deemed approved by

the House and Senate Committees on November 28, 1999. IRRC approved the amendments on December 2, 1999.

Findings

The Board finds that:

(1) The notice of proposed rulemaking is omitted under the authority of section 204(1) of the CDL since these regulatory amendments relate to Board policy, practice and procedure and all affected parties have been notified.

(2) The amendment of the Board's regulations in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Board, acting under the enabling statute, orders that:

(a) The regulations of the Board, 40 Pa. Code Chapters 3, 11 and 13, are amended by amending §§ 3.31, 3.63, 3.73, 11.91, 13.71, 13.73, 13.77—13.79, 13.81, 13.86, 13.87 and 13.102; and by deleting §§ 3.33, 11.92, 13.72, 13.74 and 13.75 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of Attorney General for approval as to form and legality as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) That this order shall take effect upon publication in the *Pennsylvania Bulletin*.

JOHN E. JONES, III,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa. B. 6384 (December 18, 1999).)

Fiscal Note: 54-56. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 3. LICENSE APPLICATIONS

Subchapter D. PHOTOGRAPHS AND CRIMINAL HISTORY RECORD INFORMATION CHECKS

PHOTOGRAPHS

§ 3.31. Personal photographs.

(a) A photograph shall be furnished to the Board's representative by the following:

(1) Individuals; members of partnerships; and principal officers of a corporation applying for Retail Liquor Licenses, Retail Dispenser Malt Beverage Licenses, Distributor Licenses and Importing Distributor Licenses, except Public Service and Club Licenses.

(2) Current managers/stewards and proposed managers/stewards.

(b) The photograph shall:

(1) Be 1 1/2 inches square and unmounted with a matte finish.

(2) Bear the name of the individual and the address of the licensed premises.

(3) Be taken within 60 days of the date submitted.

§ 3.33. (Reserved).

Subchapter G. LIMITED WINERY LICENSES

§ 3.63. Agents.

A limited winery licensee may employ individuals to solicit orders, off the licensed premises, for wine produced by it or to promote the sale of wines off the premises. Agents may advertise and promote the sale of merchandise by "missionary work" of only brands sold by the limited winery licensee by whom the agents are employed and may solicit orders from licensees and make deliveries in properly registered vehicles.

Subchapter H. LICENSED DISTILLERIES OF HISTORICAL SIGNIFICANCE

§ 3.73. Agents.

Agents may advertise and promote the sale of merchandise of brands sold by the licensed distillery of historical significance by whom the agents are employed.

Subchapter C. WINES

AGENTS OF SACRAMENTAL WINE LICENSEES

§ 11.91. Employment of agents.

A sacramental wine licensee may employ individuals to solicit orders for sacramental wines or to promote the sale of the wines.

§ 11.92. (Reserved).

CHAPTER 13. PROMOTION

Subchapter B. PROMOTION OF SALE OF LIQUOR BY VENDORS

§ 13.71. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Agent—An individual employed by a licensed vendor, to promote the sale of liquor through State Liquor Stores. A person who is a licensee or the holder of a Malt or Brewed Beverage License, or an officer, director, agent or employe of either a licensee or such a licensee, or who is not at least 21 years of age, and of good character, is not eligible to be an agent of a vendor under this subchapter.

Licensed vendor—A licensee holding a Manufacturer or Importer License, or a vendor's permit, and selling liquors to the Board.

Licensee—A natural person, partnership, association or corporation holding a Hotel, Restaurant, Club or Public Service Liquor License issued by the Board.

Miniature—A container containing less than 6 ounces of a liquor, as prepared for the market.

Special order listing—The formal filing with the Board, on its prescribed form, of information the Board requires as to brand, age, proof, type, blend, cost, and the like, of liquors to be sold through the Special Liquor Order Division. The listing does not become effective until approved by the Board or its authorized representative.

Stock merchandise—Liquors which are obtainable at a State Liquor Store, without placing a special liquor order.

Vendor's permit—A permit issued to a nonresident vendor under section 208(j) of the Liquor Code (47 P. S. § 2-208(j)). An application for the permit shall be filed with the Board accompanied by proper fees in accordance

with section 614-A of The Administrative Code of 1929 (71 P. S. § 240.14A). A permit will be issued for the calendar year only.

§ 13.72. (Reserved).

§ 13.73. Privileges of vendors' agents.

(a) Agents may advertise and promote the sale of stock merchandise by "missionary work" of only those brands sold to the Board by the vendor by whom the agents are employed. The work may include the use of the "Agents Order" form approved by the Board.

(b) Agents may solicit orders from retail purchasers for stock merchandise or gift certificates for the merchandise.

(c) Agents may solicit from licensees or other persons, orders for those brands of liquor which have been listed with the Special Liquor Purchase Division by the vendors by whom the agents are employed. Special orders obtained by vendors' agents shall be filed with one of the State Liquor Stores as required in this subchapter.

§ 13.74. (Reserved).

§ 13.75. (Reserved).

§ 13.77. Agents' order books.

(a) The Board, upon request, will issue order books to vendors for themselves and their agents, in which each special order for liquors shall be entered. Each order shall be prepared in quadruplicate and bear the signature and address of the person from whom it is obtained, and the signature of the agent. In the case of a licensee, the order shall include the license number. The original order shall be forwarded to a State Liquor Store not later than the business day after the order is obtained. One copy of the order shall be furnished by the licensed vendor or the vendor's agent to the person from whom the order is obtained and one copy shall be retained by the vendor for vendor's records; and the other copy shall remain in the order book. The Board reserves the right to examine the records of any licensed vendor or the vendor's agents.

§ 13.78. Special orders: requirements and conditions.

(a) Orders obtained in accordance with this subchapter and presented by licensed vendors or their agents to State Liquor Stores for licensees shall be filed at the established wholesale case prices prescribed by the Board for sales to licensees. The wholesale prices apply only when the retail value of the order equals or exceeds the minimum retail value established by the Board.

(b) Orders presented at State Liquor Stores by agents on behalf of persons other than licensees shall be at the established retail special liquor order prices. No order may be taken for less than case quantities.

(c) A licensed vendor or the vendor's agents may not obtain an order from either a licensee or other person unless there is obtained at the same time a sum not less than the amount required by the Board for deposit on special order sales under the Liquor Code. State Liquor Stores may, at the time of receiving the order or releasing the liquor to the purchaser, accept the checks of licensees in payment.

(d) A licensed vendor or the vendor's agent may not extend credit to a licensee or any other person.

§ 13.79. Special orders: restrictions.

(a) Licensed vendors and their agents shall place special orders for liquor at State Liquor Stores on the

prescribed order book forms signed by the licensee or an authorized agent, or in the case of a retail sale, by the customer.

(b) Except by special permission of the Board, no special order merchandise may be delivered to a State Liquor Store until the licensed vendor has received from the Board a formal purchase order calling for the delivery of the liquor. Each case of liquor so delivered shall have clearly marked thereon, in addition to the information required by Federal or State regulations, the purchase order number, the store order number, the brand and size, the code number as called for in the purchase order, and other information the Board may prescribe.

(c) Liquor sold to licensees will be released only at the State Store, to the licensee or the licensee's agent as named on the Wholesale Purchase Permit Card of the licensee.

(d) Special orders placed by a licensed vendor or the vendor's agent for a retail customer may be released by the State Liquor Store for delivery to the customer.

§ 13.81. Samples of liquor.

(a) Each agent of a licensed vendor may not use more than one case of each brand of liquor sold by the vendor as samples during any calendar month. The samples shall be purchased only through the Board, at a sum equal to the cost price to the Board plus 25% and any required taxes. The purchase of samples at retail in any State Store is prohibited. A separate order for samples shall be placed for each agent, and the name of the agent shall appear on the order. The vendor (or the vendor's authorized supervisor) may be permitted to purchase and distribute to the vendor's agents the prescribed allotment for all agents under the vendor's supervision. The vendor shall, upon request, file with the Board a statement giving the name of the vendor's authorized supervisor, together with the territories and names of all agents under his supervision.

(b) The samples described in subsection (a) shall be restricted in size to half pints of distilled spirits, and to half bottles or smaller sizes of wine, except when operating conditions do not permit supplying the sizes, in which cases the Board may, upon proper application setting forth satisfactory reasons, permit the use of other sizes as samples.

(c) Sample bottles, before leaving the State Liquor Store, shall have affixed thereto a separate label, or lettering on the commercial label, at least 1/4 inch high, reading: "Sample. Not to be sold. Possession of this bottle by licensee unlawful."

(d) Each licensed vendor shall keep a permanent stock ledger record of all the samples purchased by him, the names of the agents to whom samples were issued, and the quantity and brand. Each authorized supervisor of a vendor shall keep in his office in this Commonwealth a permanent stock ledger record of all samples purchased and distributed by him to his agents as provided in this section. A requisition shall be prepared for each package removed from sample stock, bearing the signature of the agent receiving the merchandise.

§ 13.86. Agency provisions.

Licensed vendors and their agents shall, except as otherwise restricted in this title, be considered the agents of the persons from whom they obtain special liquor orders. Neither the Commonwealth nor the Board will be responsible for the proper disposition of moneys collected from a licensee or other person by a licensed vendor or

his agents, and under no circumstances will the Commonwealth or the Board be responsible for actions of a licensed vendor or his agents.

§ 13.87. Records.

(a) Every licensed vendor shall maintain and keep complete records of all operations in this Commonwealth for 2 years, which shall be open to inspection by authorized representatives of the Board during normal business hours. These records shall include salaries or commissions of all agents and other employees working in this Commonwealth, expenses of the employees supported by detailed vouchers, all promotional and advertising expenditures, special order sales, and stock merchandise requests.

(b) The agents of vendors operating in this Commonwealth shall maintain complete records covering their operations in this Commonwealth. The records shall also be open to inspection by authorized representatives of the Board during normal business hours.

§ 13.102. Discount pricing practices.

(a) *General.* Retail licensees may discount the price of alcoholic beverages for a consecutive period of time not to exceed 2 hours in a business day, but may not engage in discount pricing practices between 12 midnight and the legal closing hour. Retail licensees may not engage in the following discount pricing practices unless specifically excepted in subsection (b):

(1) The sale or serving, or both, of more than one drink of liquor, wine, or malt or brewed beverages at any one time to any one person, for the price of one drink.

(2) The sale or serving, or both, of an increased volume of one drink of liquor, wine, or malt or brewed beverages without a corresponding and proportionate increase in the price for the drink.

(3) The sale or serving, or both, of an unlimited or indefinite amount of liquor, wine, or malt or brewed beverages for a set price.

(4) The pricing of alcoholic beverages in a manner which permits the price to change within the 2-hour period.

(b) *Exceptions.* Nothing in subsection (a) prohibits:

(1) The sale or serving, or both, of an unlimited or indefinite amount of liquor, wine or malt or brewed beverages for a fixed price for catered events which have been arranged at least 24 hours in advance.

(2) The offering for sale of one specific type of alcoholic beverage or drink per day or a portion thereof at a reduced price, if the offering does not violate subsection (a).

(3) The sale, serving or offering of an unlimited or indefinite amount of alcoholic beverages as part of a meal package after 7 a.m. on December 31, 1999, until 2 a.m. on the following day by a hotel licensee to registered overnight guests of the hotel.

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