

PROPOSED RULEMAKING

LICQUOR CONTROL BOARD

[40 PA. CODE CH. 5]

Responsible Alcohol Management Program

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), proposes to amend Chapter 5 (relating to duties and rights of licensees).

Summary

This proposed rulemaking implements section 471.1 of the Liquor Code (47 P. S. § 4-471.1).

The following is a summary:

- The proposed rulemaking explains how training providers are approved to train retail licensees in responsible alcohol service practices.
- It defines qualifications for certifying and decertifying instructors.
- The effect of Responsible Alcohol Management Program (RAMP) certification is explained, as are requirements for signs to be posted in licensed premises.
- It explains training of managers and owners and how managers shall train their staff for a licensee to be "RAMP-Certified."

Affected Parties

This proposed rulemaking will affect retail and wholesale licensees and applicants for certification as training providers and instructors.

Paperwork Requirements

This proposed rulemaking will not significantly increase paperwork for the Board or the regulated community.

Fiscal Impact

RAMP training and certification has been in effect under section 471.1 of the Liquor Code since 2002. The current annual cost of this program to the Board is \$1,011,551.37.

Effective Date

This proposed rulemaking will become effective upon its publication in final-form in the *Pennsylvania Bulletin*.

Public Comment/Contact Person

Written comments, suggestions or objections will be accepted for 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments should be addressed to James F. Maher, Assistant Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review:

Under section 5(a) of the Regulatory Review Act (act) (71 P. S. § 745.5(a)), on December 28, 2007, the agency submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Liquor Control Committee and Senate Committee on Law and Justice. A copy of this material is available to the public upon request.

Under section 5(g) of the act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The act specifies detailed procedures for review by the agency, the General Assembly and the Governor of comments, recommendations or objections raised prior to final-form publication of the regulations.

PATRICK J. STAPLETON, III,
Chairperson

Fiscal Note: 54-60. No fiscal impact; (8) recommends adoption. This proposed rulemaking implements the Responsible Alcohol Management Program as mandated in the 2002 Liquor Code amendments. There are no new costs to the Liquor Control Board; funds for this program are included in the Board's budget.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

Subchapter I. RESPONSIBLE ALCOHOL MANAGEMENT PROGRAM

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GENERAL

§ 5.201. Purpose.

This subchapter implements the program authorized under section 471.1 of the Liquor Control (47 P. S. § 4-471.1), regarding responsible alcohol management. This provision authorizes the Board to establish a four-part program including:

- (1) New employee orientation.
- (2) Training for alcohol service personnel.
- (3) Manager/owner training.
- (4) Display of responsible alcohol service signage.

§ 5.202. Definitions.

When used in this subchapter, the following words and phrases, have the following meanings, unless the context clearly indicates otherwise:

Certify—To approve and confirm the approval in writing.

Instructor—An individual who is a provider or is an agent of a provider and who is certified by the Board to instruct students in responsible server practices.

Manager/owner training—Training conducted by the Board or its employees for individuals who manage or own licensed premises.

New employee—An individual who has not been employed at the licensed premises seeking certification in any capacity during the preceding year.

Provider—A person certified by the Board to provide instructors and a course of study in responsible server practices.

RAMP—Responsible Alcohol Management Program—The program and office in the Board's Bureau of Alcohol Education that manages the program.

Responsible server practices—Procedures and practices used by alcohol service personnel to prevent the furnishing or selling of alcoholic beverages to minors and visibly intoxicated persons.

COURSE OF STUDY**§ 5.211. Course of study for alcohol service personnel.**

The course of study offered by a provider must, at a minimum:

- (1) Explain that alcohol is a drug and its effect on the human body and behavior, especially driving ability.
- (2) Specify factors leading to alcohol intoxication, as well as the effects of alcohol in combination with drugs (legal and illegal).
- (3) Examine cases, statutes and court decisions pertaining to liquor liability, driving under the influence, minors unlawfully frequenting licensed premises, furnishing alcoholic beverages to minors and visibly intoxicated persons and the penalties associated with violations of statutes and regulations.
- (4) Teach servers how to effectively intervene and recognize customers showing signs of visible intoxication or becoming disruptive.
- (5) Show options for determining validity of age identification documents.
- (6) Demonstrate proper incident documentation.
- (7) Provide recommended policies for licensed establishments to promote safe and responsible consumption of alcoholic beverages.

PROVIDERS**§ 5.221. Provider certification.**

- (a) The Board may certify a person as a provider if the person:
 - (1) Files an application on forms provided by the Board.
 - (2) Pays a \$500 nonrefundable application fee.
 - (3) Submits a course of study outline meeting the Board's requirements as set forth in § 5.211 (relating to course of study for alcohol service personnel).

(4) Sends a copy of the teaching materials planned for use along with the application.

(5) Uses only Board-certified instructors as teachers.

(b) If the applicant meets the minimum requirements for certification, the Board will issue a Notice of Certification to the provider. The provider may then hold itself out as a Board-certified RAMP instruction provider. The period of certification shall be 2 years from the date of issuance of the Notice of Certification.

(c) Renewal of certification shall be submitted to the Board at least 30 days prior to the expiration of the provider's current certification. The same forms, provided by the Board, shall be used for renewals as for initial certification. The same fee will be submitted with the renewal application as is submitted for the original certification.

§ 5.222. Provider changes.

A provider shall report changes in ownership or management of the provider, the employment status of instructors and changes in the course of study by letter or e-mail to RAMP, no later than 30 days after the change.

INSTRUCTORS**§ 5.231. Instructor certification.**

RAMP will have a procedure to confirm a candidate's competency to begin and continue working as an instructor. Part of this procedure will include observation of an instructor's training sessions.

(1) A person desiring certification as an instructor shall submit an application on forms issued by the Board and shall pay a \$100 nonrefundable application fee.

(2) The minimum qualifications of an instructor include the following:

- (i) Possessing a high school diploma or GED.
- (ii) Possessing a minimum of 2 years of experience, full-time, in the field of education, law, law enforcement, substance abuse prevention, hospitality or alcohol service training.
- (iii) Being 21 years of age or older.
- (iv) Having no arrests that are related to alcohol, narcotics or other controlled substances in the previous 10 years.

(v) Attending manager/owner training once in the year preceding the date the application for instructor certification is filed.

(3) If the applicant meets the minimum requirements for certification, it will issue to the instructor a Notice of Certification. The period of certification shall be 2 years from the date of issuance of the Notice of Certification.

(4) Renewal of certification shall be submitted to the Board at least than 30 days prior to the expiration of the instructor's current certification. The same forms, provided by the Board, shall be used for renewals as for initial certification. The same fee will be submitted with the renewal application as is submitted for the original certification.

§ 5.232. Instructor responsibilities.

Instructors shall have the responsibility to do the following:

- (1) Provide students with current and accurate information.

(2) Schedule training sessions in locations throughout this Commonwealth.

(3) Conduct at least two training sessions per quarter unless the Board approves a lower quarterly minimum.

(4) Train a minimum of 225 students per year unless the Board approves a lower annual minimum.

(5) Provide accurate records of attendance and course completion to RAMP by letter or e-mail.

(6) Attend instructor meetings twice per year as scheduled by RAMP.

(7) Attend manager/owner training at least once per year.

§ 5.233. Minimum standards of training.

(a) Instructors shall conduct training sessions conforming to the provider's course of study and using the provider's training materials.

(1) Each training session shall consist of at least 2 1/2 hours of instructional time.

(2) The ratio of students per instructor may not exceed 40 to 1.

(b) Instructors shall notify RAMP of the following by letter or e-mail:

(1) At least 7 days in advance of scheduling any training session.

(2) Immediately of any training session cancellation.

(3) Immediately of any changes to the training schedule.

(c) Instructors shall obtain the student information indicated in paragraphs (1)—(3) at the beginning of the training session. An instructor shall send a completed attendance sheet to RAMP within 7 days of the end of the training session, including the following information from each student:

(1) Name.

(2) Home address.

(3) Home telephone number.

(4) Student identification number issued by RAMP.

(5) Pass/fail score on the test.

(6) Licensed establishment name, address and licensee identification.

(7) Time and location of training.

(d) At the conclusion of the training, the instructor shall administer a standardized test prepared by RAMP, insuring that students complete the examination as a "closed book exam," without access to references to aid in the completion of the examination.

(e) The instructor shall grade examinations and notify students of their grades. A test score of 80% or better is required to pass. A student who does not pass may, at the first opportunity, schedule training and take the test again.

TRAINING/ORIENTATION

§ 5.241. Manager/owner training.

(a) Manager/owner training will be conducted by the Board.

(b) This training will include the following:

(1) Instruction on how to monitor employees;

(2) Proper service of alcohol.

(3) How to develop an appropriate alcohol service policy.

(c) The Board will maintain records establishing the names of individuals who have successfully undergone manager/owner training.

§ 5.242. New employee orientation.

(a) Licensees applying for certification of compliance under section 471.1 of the Liquor Code (47 P. S. § 4-471.1) shall conduct new employee orientation within 30 days of the employee's hire, in accordance with a checklist of responsible server practices provided by RAMP including:

(1) Penalties for furnishing or selling alcohol to minors.

(2) Acceptable forms of identification.

(3) Practices for checking identification.

(4) Penalties for furnishing or selling alcohol to visibly intoxicated customers.

(5) Practices for refusing service of alcohol to visibly intoxicated customers.

(6) Procedures for handling situations when criminal activity is occurring in or about the premises.

(b) The licensee is responsible for ensuring that the owner, manager or designated trainer conducts the new employee orientation.

§ 5.243. Records.

(a) The licensee shall keep the following records:

(1) Certification status of its employees, managers and owners, consisting of the name of the employee, manager or owner, date of hire, date of training and the name of the trainer.

(2) Date of premises certification.

(3) Records of its new employee orientation program.

(4) Responsible alcohol service signs it posted, where and when the signs were posted, revised and reposted.

(b) These records shall be maintained as part of the licensee's operating records required to be kept for 2 years in accordance with section 493(12) of the Liquor Code (47 P. S. § 4-493(12)).

PROHIBITED CONDUCT

§ 5.251. Prohibited conduct.

(a) The Board may decertify providers and instructors for violating any of the provisions of this subchapter or engaging in the following conduct:

(1) Discrimination or harassment based on age, race, sex, disability, national origin or religion.

(2) An act that is in violation of the Liquor Code or this title.

(3) An act resulting in a misdemeanor or felony conviction.

(4) An act resulting in admittance into an Accelerated Rehabilitative Disposition (ARD) Program if the underlying activity is related to alcoholic beverages, narcotics or controlled substances.

(5) Being under the influence of alcoholic beverages, narcotics or controlled substances during training presentations, examinations or breaks.

(6) Knowingly permitting students to be under the influence of alcoholic beverages, narcotics or controlled substances during training presentations, examinations or breaks.

(7) Cheating or condoning cheating by students.

(8) Knowingly providing false information on reports submitted to the Board.

(9) Having three or more unsatisfactory evaluations regarding the presentation of the course of study from class observations conducted by RAMP.

(b) The Board will send a Notice of Decertification to a provider or instructor by certified United States mail. Appeal of the Board's decision to decertify a provider shall be as set forth in 2 Pa.C.S. § 702 (relating to appeals).

(c) The Board will send a Notice of Decertification by certified United States mail to an instructor and to the provider. Appeal of the Board's decision to decertify an instructor shall be as set forth in 2 Pa.C.S. § 702.

(d) The Board will not consider a provider's or instructor's application for recertification until 1 year after the date of decertification.

SIGNS

§ 5.261. Signs

(a) Signs for posting in the licensed premises will be provided by the Board. A licensee may use its own signs provided that they are equivalent in size and content to the Board's signs.

(b) The following signs shall be posted, notifying patrons about:

(1) Acceptable forms of identification as described in section 495(a) of the Liquor Code (47 P. S. § 4-495(a)).

(2) The licensee's duty to refuse service to minors and visibly intoxicated patrons under section 493(1) of the Liquor Code (47 P. S. § 4-493(1)).

(c) The design of the signs must be such that they are legible from a distance of 10 feet. Signs shall be located where patrons will easily see them.

(d) The licensee is responsible for the posting and maintenance of signs.

CERTIFICATION

§ 5.271. Premises certification.

(a) A licensee may request that the Board certify that it complies with section 471.1 of the Liquor Code (47 P. S. § 4-471.1). The request may be made by personal contact, telephone or written communication to RAMP.

(b) Certification or recertification will be issued by the Board after investigation and approval of the licensed premises.

(c) There is no fee for certification or recertification.

(d) If the Board finds that a licensee has met the requirements of section 471.1 of the Liquor Code, the licensee shall be issued a Certificate of Compliance valid for 2 years.

(e) If the Board finds that a licensee has not met the requirements of section 471.1 of the Liquor Code or this subchapter, and the licensee's compliance with section 471.1 of the Liquor Code or this subchapter was not mandated by the Office of Administrative Law Judge, by statute, by regulation or by a conditional licensing agreement, the Board will refuse certification or decertify the licensee.

(f) If the Board finds that a licensee has not met the requirements of section 471.1 of the Liquor Code or this subchapter and the licensee's compliance with section 471.1 of the Liquor Code or this subchapter was required by the Office of Administrative Law Judge, by statute, by regulation or by a conditional licensing agreement, the Board will refuse the application for certification or decertify the licensee and refer the matter to the Pennsylvania State Police, Bureau of Liquor Control Enforcement.

(g) The Board will send a Notice of Decertification to the licensee by certified United States mail. Appeal of the Board's decision to decertify a licensee shall be as set forth in 2 Pa.C.S. § 702 (relating to appeals).

(h) A licensee may apply for recertification at any time after the date of decertification.

(i) The Office of Administrative Law Judge will take official notice of the Board's records with regard to the licensee's certification.

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