

RULES AND REGULATIONS

Title 40—LIQUOR

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 11]

Sale by Licensed Limited Distilleries and Distilleries

The Liquor Control Board (Board), under the authority of sections 207(i) and 505.4 of the Liquor Code (47 P. S. §§ 2-207(i) and 5-505.4), adds Chapter 11, Subchapter N (relating to licensed limited distilleries and distilleries) to read as set forth in Annex A.

Summary

The act of December 22, 2011 (P. L. 530, No. 113) (Act 113) made changes to numerous sections of the Liquor Code, including section 505.4, regarding distilleries. Under section 505.4 of the Liquor Code, the Board may issue, effective February 20, 2012, a limited distillery license that allows the holder to: operate a distillery that may not produce more than 100,000 gallons of distilled liquor per year; and sell bottled liquors produced on the licensed premises to the Board, licensees and the public.

This final-form rulemaking permits licensed limited distilleries and distilleries to deliver their products directly to consumers, retail licensees or the Board, similar to licensed limited wineries. While section 505.4 of the Liquor Code does not explicitly address the issue, legislative staff members have confirmed that the intent of Act 113 was to enable limited distillery and distillery licensees to have the same privileges as limited wineries. Toward that end, the licensed limited distillery language was modeled after section 505.2 of the Liquor Code (47 P. S. § 5-505.2), which allows the Board to issue limited winery licenses. Section 505.4 of the Liquor Code authorizes limited distillery and distillery licensees to sell their products to consumers, retail licensees and the Board and does not place constraints on the manner in which products are delivered. This final-form rulemaking promotes clarity and reduces confusion as to whether limited distilleries and distilleries have direct shipping privileges identical to limited wineries. Consistent with § 11.111 (relating to sale by limited winery licensees), this final-form rulemaking allows licensed limited distilleries and distilleries to deliver their products through the use of vehicles properly registered with the Board or through properly licensed transporters.

In response to comments by the Independent Regulatory Review Commission (IRRC), the proposed rulemaking was expanded to provide guidance to the regulated community as to what other types of products they can sell, what types of payment may be accepted and how products may be delivered.

Affected Parties

This final-form rulemaking will affect licensed limited distilleries and distilleries. Currently, there are 12 active and 6 pending limited distilleries licensed by the Board and 2 active distilleries licensed by the Board. In addition, there are two active and one pending distilleries licensed by the Board. Potentially affected parties licensed by the Board were given notice of the proposed rulemaking, either by e-mail or United States Postal Service mail. Potentially affected parties licensed by the Board will be given notice of this final-form rulemaking, either by e-mail or United States Postal Service mail.

Paperwork Requirements

This final-form rulemaking is not expected to have an adverse impact on the amount of paperwork required to be completed by the regulated community.

Fiscal Impact

This final-form rulemaking is not expected to have an adverse fiscal impact on the regulated community or State and local governments. The final-form rulemaking is likely to have a positive fiscal impact on limited distilleries and distilleries, similar to that experienced by limited wineries.

Effective Date

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

Contact Person

Comments should be addressed to Rodrigo J. Diaz, Executive Deputy Chief Counsel, or Norina Blynn, Assistant Counsel, Office of Chief Counsel, Pennsylvania Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review:

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 27, 2013, the Board submitted a copy of the notice of proposed rulemaking, published at 43 Pa.B. 2040 (April 13, 2013), to IRRC and the Chairpersons of the House Liquor Control Committee and the Senate Law and Justice Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on February 26, 2014, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on February 27, 2014, and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments to the Board's regulations in the manner provided in this order are necessary and appropriate for the administration of the Liquor Code.

Order

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 40 Pa. Code Chapter 11, are amended by adding §§ 11.221 and 11.222 to read as set forth in Annex A.

(*Editor's Note:* Section 11.222 was not included in the proposed rulemaking published at 43 Pa.B. 2040.)

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

(c) This order shall become effective upon publication in the *Pennsylvania Bulletin*.

JOSEPH E. BRION,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 44 Pa.B. 1534 (March 15, 2014).)

Fiscal Note: Fiscal Note 54-73 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 11. PURCHASES AND SALES

Subchapter N. LICENSED LIMITED DISTILLERIES AND DISTILLERIES

- Sec.
11.221. Sale by licensed limited distilleries and distilleries.
11.222. Additional conditions.

§ 11.221. Sale by licensed limited distilleries and distilleries.

(a) A licensed limited distillery or distillery may sell on the licensed premises liquor produced on the premises in accordance with the Liquor Code and this title.

(b) In addition to the sale of liquor, the following items are permitted to be offered for sale on the licensed premises:

- (1) Liquor accessories as follows:
 - (i) Cork removers and other bottle openers.
 - (ii) Glasses, shot glasses, decanters and flasks.
 - (iii) Pourers and bottle stoppers.
 - (iv) Cocktail mixers, shakers and other cocktail preparation accessories.

(v) Cocktail forks, toothpicks, stirrers, napkins and gift bags.

(2) Publications dealing with liquor.

(3) Promotional items advertising the limited distillery or distillery such as tee shirts, glassware, caps, and the like.

(c) Sales on the licensed premises of merchandise not listed in subsection (b) are subject to Board approval. The approval shall be requested by letter addressed to the Board. A limited distillery or distillery licensee will be advised of approved items through an appropriate means of dissemination.

§ 11.222. Additional conditions.

In addition to the requirements in § 11.221 (relating to sale by licensed limited distilleries and distilleries), the sale of liquor shall conform to the following:

(1) Liquor produced by a licensed limited distillery or distillery may be shipped by transporter-for-hire as provided in Chapter 9, Subchapter A (relating to transportation of liquor, malt or brewed beverages or alcohol).

(2) A licensed limited distillery or distillery may accept checks drawn by the purchaser on his account and from retail customers, credit cards issued by banking or financial institutions, subject to State or Federal regulations.

(3) A licensed limited distillery or distillery may accept orders for the purchase of liquor produced on the licensed premises by mail, Internet or telephone. Delivery of products shall be accomplished through the use of vehicles properly registered by the limited distillery or distillery, as provided in section 491(12) of the Liquor Code (47 P. S. § 4-491(12)), or through a properly licensed transporter-for-hire, as provided in Chapter 9, Subchapter A. It is the responsibility of the limited distillery or distillery licensee to ensure that liquor is not delivered to minors and that proper records and invoices are maintained as set forth in § 5.104 (relating to licensed distilleries of historical significance).

[Pa.B. Doc. No. 14-708. Filed for public inspection April 4, 2014, 9:00 a.m.]