

PROPOSED RULEMAKING

LIQUOR CONTROL BOARD

[40 PA. CODE CHS. 3, 5 AND 11]

Limited Wineries

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 Chapters 3, 5 and 11 (relating to license applications; duties and rights of licensees; and purchases and sales).

Summary

In recent years, the Liquor Code (47 P. S. §§ 1-101—10-1001) has been amended to expand the business opportunities for holders of limited winery licenses. During this same time period, the Board amended its regulations to reflect some, but not all, of these changes. This proposed rulemaking will make the Board's regulations consistent with the Liquor Code.

This proposed rulemaking reflects that section 505.2(a)(1) and (2) of the Liquor Code (47 P. S. § 5-505.2(a)(1) and (2)) authorizes limited wineries to produce and sell alcoholic cider in addition to wine, section 505.2(a)(1) of the Liquor Code authorizes limited wineries to produce wine and alcoholic cider from any agricultural commodity, not just fruit, and section 505.2(a)(6.2) of the Liquor Code allows for on-premises consumption of wine and alcoholic cider. This proposed rulemaking reflects that section 505.2(a)(6.1) of the Liquor Code authorizes limited wineries to sell food for on-premises and off-premises consumption. Further, this proposed rulemaking reflects the current hours of operation for limited wineries, which are authorized by section 505.2(a)(6.3) of the Liquor Code.

In addition, the manner in which payment for wine and alcoholic cider may be made is proposed to be amended to be consistent with the Liquor Code. The list of items that limited wineries may sell is proposed to be updated to reflect section 505.2(a)(6.1) and (6.2) of the Liquor Code. Proposed amendments regarding sampling reflect that limited wineries can sell or give alcohol, or both, for on-premises consumption. Finally, a Liquor Code reference and a regulatory reference are proposed to be updated.

Affected Parties

The affected parties include present and future holders of limited winery licenses.

Paperwork Requirements

The proposed rulemaking would not require additional paperwork to be filed.

Fiscal Impact

The proposed rulemaking is intended to make the Board's regulations consistent with the Liquor Code. Therefore, a fiscal impact is not anticipated.

Effective Date

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

Public Comments

Interested persons are invited to submit written comments about this proposed rulemaking to Rodrigo Diaz, Executive Deputy Chief Counsel, or Justin Blake, Assis-

tant Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001 within 30 days after publication in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Public comments will be posted on the Independent Regulatory Review Commission's (IRRC) web site. Personal information will not be redacted from the public comments received.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 2, 2015, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to 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 Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

TIM HOLDEN,
Chairperson

Fiscal Note: 54-85. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 3. LICENSE APPLICATIONS

Subchapter G. LIMITED WINERY LICENSES

§ 3.62. Creation.

Under section 505.2 of the Liquor Code (47 P. S. § 5-505.2), holders of a [**Limited Winery License**] **limited winery license** may produce and sell wines **and alcoholic ciders**, subject to §§ 3.63, 5.103 and 11.111 (relating to agents; limited wineries; and sale by limited winery licensees).

§ 3.63. Agents.

A limited winery licensee may employ individuals to solicit orders, off the licensed premises, for wine **and alcoholic cider** produced by it or to promote the sale of wines **and alcoholic ciders** 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.

§ 3.64. Additional Board-approved locations.

(a) Additional locations, as authorized by section [**505.2(3) of the Liquor Code (47 P. S. § 5-505.2(3))**] **505.2(a)(3) of the Liquor Code (47 P. S. § 5-505.2(a)(3))**, may not be used by a limited winery licensee in the operation of a licensed business unless approved by the Board.

(1) An application for an additional location shall be made to the Board, accompanied by a \$220 fee. A renewal application shall be submitted annually and be accompanied by a \$75 fee.

(2) Applications for additional Board-approved locations may be submitted on a prior approval basis. If plans are approved, the necessary construction or alterations shall be completed within 6 months of the approval. Business may not be transacted until the premises has been reinspected and the Board has approved the completed construction or alterations.

(3) Portions of an additional Board-approved location premises shall be contiguous.

(4) Additional Board-approved locations of a limited winery license shall be under the control of a manager appointed in accordance with [§ 5.16] § 5.23 (relating to appointment of managers).

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CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

Subchapter H. RECORDS AND REPORTS—BREWERIES, BONDED WAREHOUSES, LIMITED WINERIES AND LICENSED DISTILLERIES OF HISTORICAL SIGNIFICANCE

§ 5.103. Limited wineries.

(a) *Records.* A holder of a [**Limited Winery License**] **limited winery license** obtained under § 3.62 (relating to creation) shall maintain and keep on the licensed premises daily permanent records which shall conform to the requirements of section 512 of the Liquor Code (47 P. S. § 5-512). The records [**shall**] **must** include complete details concerning the source of [**fruits**] **agricultural commodities** used in the production of wines and **alcoholic ciders**. Electronic media recordkeeping, maintained and based upon generally accepted accounting principles, [**shall**] **will** be permitted [**in lieu**] **instead** of hard copy records. The recordkeeping system utilized by the licensee [**shall**] **must** have the capability to provide for the reconciling of required data. Entries shall be verifiable by supporting original documents. The records [**shall**] **must** include complete details concerning the source of [**fruits**] **agricultural commodities** used in the production of wines and **alcoholic ciders**.

(b) *Sales invoice.* In addition to the records prescribed in subsection (a), except as otherwise provided in this part, a sales invoice shall be prepared at the licensed premises for each sale. The sales invoice shall be prepared in accordance with the following:

(1) The sales invoice [**shall**] **must** be imprinted or affixed with the name and address of the limited winery.

(2) The sales invoice [**shall**] **must** show the name and address of the recipient of the merchandise, date of sale, number of units, size and type of package, brand name, selling price of the wine **or alcoholic cider, or both**, and the net cost to the customer. The name and address of private individuals is not required on sales invoices covering quantities of 16 liters or less; [**in lieu**] **instead** of preparing sales invoices for the sales, the transactions may be entered individually on a counter sheet maintained in columnar form showing the information required on sales invoices, other than name and address of the purchaser. The counter sheet shall be

totalled daily and the totals entered into the sales register noted in section 512 of the Liquor Code [(47 P. S. § 5-512)].

(3) The sales invoice [**shall**] **must** show the Commonwealth sales tax, where applicable, as a separate entry.

(4) The sales invoice may include other items permitted for sale by limited wineries if the sale of wines **or alcoholic cider, or both**, is listed separately from other permitted items sold by the licensee.

(5) An invoice shall be prepared for any amount of wine **or alcoholic cider, or both**, shipped to customers [**via**] **by** Transporter-for-Hire, Class C carriers. The invoice shall be prepared only for persons 21 years of age or older, and limited winery licensees shall request the signature of a recipient, 21 years of age or older, from the transporter making the deliveries and a return acknowledgment of delivery to the recipient. Copies of acknowledgments of delivery shall be maintained on the licensed premises for 2 years.

(6) When a sale requires the preparation of an invoice, one copy shall be given to the recipient of the merchandise and a copy retained on the licensed premises for 2 years.

(c) *Reports.* A licensed limited winery shall file reports in the manner set forth by the Board covering operations of their licensed business during the preceding calendar year. The reports shall be signed and sworn to by the licensee or his authorized agent and shall be filed with the Board at the time of the renewal or validation of the license. A copy of each report shall be retained on the licensed premises for at least 2 years from the date of filing. Failure to file the reports will preclude the Board from renewing or validating the license in question. These reports are in addition to information or reports the licensed limited winery may be required to provide to the Department of Agriculture under 3 Pa.C.S. Chapter 45 (relating to Agricultural Commodities Marketing Act) and regulations promulgated thereunder, including 7 Pa. Code § 104.75 (relating to accounting and payment).

CHAPTER 11. PURCHASES AND SALES

Subchapter C. WINES LIMITED WINERIES

§ 11.111. Sale by limited winery licensees.

(a) A limited winery licensee, licensed under § 3.62 (relating to creation), may sell wines **and alcoholic ciders** produced on the licensed premises in accordance with the Liquor Code and this part, under the conditions in this subsection.

(1) [**There may be no sales for consumption on the licensed premises.**] **Sales may be made by the glass, bottle or any other open or closed container.**

(2) Wine **and alcoholic cider** sold under a limited winery license may be shipped by transporter-for-hire or in a vehicle properly registered with the Board, as provided in Chapter 9, Subchapter A (relating to transportation of liquor, malt or brewed beverages or alcohol).

[(3) **Wine sold and destined to points within this Commonwealth shall be in sealed original containers.**

(4) **Sales may be made generally only between the hours of 9 a.m. and 9 p.m. Monday to Saturday, inclusive, and 10 a.m. to 6 p.m. on Sunday. During the period from the Thanksgiving Day holiday**

through New Year's Day, limited winery sales locations may remain open until 10 p.m. of sales day to conform with the closing times of neighboring mall or shopping district businesses. Additionally, a limited winery may request approval from the Board to extend sales hours in individual locations at other times during the year, or beyond the limits set in this section. The request shall be in writing, to the Board's Office of the Chief Counsel, and shall detail the exact locations where sales hours are proposed to be extended. The licensee shall also set forth the proposed hours and dates of extended operation, as well as the reason for, and justification of, the proposed extended sales hours.]

(3) A limited winery may sell wine and alcoholic ciders from 7 a.m. until 2 a.m. of the following morning, Mondays through Saturdays, and from 9 a.m. until 2 a.m. of the following morning on Sundays.

[(5)] (4) While there may be no sales on credit, a limited winery may accept:

(i) From licensees and retail customers, checks drawn on their account, **cash, money orders, cashier checks, debit cards and electronic funds transfers.**

(ii) From retail customers, credit cards issued by banking or financial institutions subject to State or Federal regulations.

[(6)] (5) Visitors [**on the licensed premises**] at the winery or at one of the additional Board-approved locations may be provided, with or without charge [**with**], samples of wine or alcoholic cider, or both, produced by the limited winery [**for tasting and with crackers, nuts, cheese, bread sticks and bread cubes to be used in conjunction with tastings**]. Samples may also be provided, with or without charge, at locations licensed under a farmer's market permit or under the special permit available for participation in alcoholic cider, wine and food exhibitions. Samples may not be provided at a limited winery's storage facilities since only the licensee and its employees may be present at those locations.

[(7)] (6) Limited winery licensees engaged in the retail and wholesale sales of wine or alcoholic cider, or both, are responsible to conform to the Liquor Code and this title.

[(8)] (7) In addition to the sale of wines and alcoholic ciders, the following items are permitted to be offered for sale on the licensed premises:

(i) [**Pennsylvania-grown fruits and the following products produced from the fruits:**] Food for on premises and off premises consumption.

(A) [**Juices.**] Nonalcoholic beverages.

(B) Juice concentrates.

[(C)] **Jellies, jams and preserves.**

(ii) **Pennsylvania-grown mushrooms.**]

[(iii)] (ii) Home winemaking equipment and supplies.

[(iv)] (iii) Wine and alcoholic cider serving and storage accessories as follows:

(A) Cork removers.

(B) Wine and alcoholic cider glasses and decanters.

(C) Wine and alcoholic cider racks.

(D) Serving baskets and buckets.

(E) Bottle stoppers.

[(v)] (iv) Publications dealing with wine and winemaking and alcoholic cider and cider making.

[(vi)] **Cheese, crackers, breads, nuts and preserved meats for consumption off the premises.**]

(v) **Wine-scented or liquor-scented candles acquired or produced by the limited winery.**

[(vii)] (vi) Gift packages consisting of any combination of the items listed in subparagraphs (i)—[(vi)] (v).

[(viii)] (vii) Promotional items advertising the limited winery such as tee shirts, glassware, caps, and the like.

[(9)] (8) Sales on the licensed premises of merchandise not listed in paragraph [(8) is] (7) are subject to Board approval. The approval shall be requested by letter addressed to the Board. A limited winery licensee will be advised of approved items through an appropriate means of dissemination.

[(10)] (9) Mail, **Internet** or telephone orders may be accepted. Delivery of products shall be accomplished through the use of vehicles properly registered by the limited winery licensees or through properly licensed transporters. It is the responsibility of the limited winery licensee to insure that wine [**is**] and alcoholic cider are not delivered to minors and that proper invoices are maintained under § 5.103 (relating to limited wineries).

(b) The employment of an agent by a limited winery is governed by § 3.63 (relating to agents).

(c) Records, sales invoices and reports shall be kept as prescribed in § 5.103.

(d) The use of additional Board-approved locations by limited winery licensees is governed by § 3.64 (relating to additional Board-approved locations).

[Pa.B. Doc. No. 15-1723. Filed for public inspection September 25, 2015, 9:00 a.m.]