

RULES AND REGULATIONS

Title 40—LIQUOR

LIQUOR CONTROL BOARD

[40 PA. CODE CHS. 1 AND 13]

Discount Pricing Practices

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), amends §§ 1.1 and 13.102 (relating to definitions; and discount pricing practices).

Summary

Section 13.102 formerly limited a licensee to a “happy hour” period of no more than 2 consecutive hours per business day. The amendments to § 13.102 are necessary so that the Board’s regulations pertaining to happy hour limitations are consistent with the Liquor Code (47 P. S. §§ 1-101—10-1001). In particular, the act of June 28, 2011 (P. L. 55, No. 11) (Act 11) and the act of December 22, 2011 (P. L. 530, No. 113) (Act 113) allow a licensee to have up to 4 hours of discounted drinks in 1 day, but no more than 14 hours per week. In addition, the amendments to the Liquor Code place a burden on the licensees to post a notice of happy hours at least 7 days prior to the happy hour.

Affected Parties

As of October 9, 2015, there were approximately 15,915 actively licensed retail licensees who are affected by Acts 11 and 113.

Paperwork Requirements

This final-form rulemaking is not expected to affect legal, accounting or consulting procedures and should not require additional reporting, recordkeeping or other paperwork. Act 11 requires the posting of a notice of the licensee’s happy hours. Section 13.102 does not place additional reporting or paperwork requirements on licensees.

Fiscal Impact

This final-form rulemaking is not expected to have fiscal impact on the regulated community or State and local governments.

Effective Date

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

Public Comments

Comments about the final-form rulemaking may be submitted to Rodrigo Diaz, Executive Deputy Chief Counsel, or Norina Blynn, 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 (71 P. S. § 745.5(a)), on April 21, 2015, the Board submitted a copy of the notice of proposed rulemaking, published at 45 Pa.B. 2478 (May 23, 2015), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Liquor Control Committee and the Senate Committee on Law and Justice for review and comment.

Under section 5(c) of the Regulatory Review Act, the Board shall submit to IRRC and the House and Senate

Committees copies of comments received during the public comment period, as well as other documents when requested. The Board has considered comments from IRRC, which are in a separate comment and response document.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on December 9, 2015, 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 December 10, 2015, 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.

(3) The amendments made to this final-form rulemaking do not enlarge the purpose of the proposed rulemaking published at 45 Pa.B. 2478.

Order

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

(a) The regulations of the Board, 40 Pa. Code Chapters 1 and 13, are amended by amending §§ 1.1 and 13.102 to read as set forth in Annex A.

(*Editor’s Note:* The amendments to § 1.1 were not included in the proposed rulemaking published at 45 Pa.B. 2478.)

(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*.

TIM HOLDEN,
Chairperson

(*Editor’s Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 45 Pa.B. 7350 (December 26, 2015).)

Fiscal Note: Fiscal Note 54-69 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 1. GENERAL PROVISIONS

§ 1.1. Definitions.

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

Alcohol—Absolute alcohol, ethyl alcohol, cane spirits, Cuban spirits, grain spirits, fruit spirits, high wines and other spirits by whatever name or designation given.

Board—The Liquor Control Board of the Commonwealth.

Examiner—An individual learned in the law appointed by the Governor under the Liquor Code.

Liquor Code—The Liquor Code (47 P. S. §§ 1-101—10-1001).

Pecuniary interest—An interest that sounds in the attributes of proprietorship. There is a rebuttable presumption of a pecuniary interest when a person receives 10% or more of the proceeds of the licensed business or when control is exercised by one or more of the following:

- (i) Employing a majority of the employees of the licensee.
- (ii) Independently making day-to-day decisions about the operation of the business.
- (iii) Having final authority to decide how the licensed business is conducted.

Retail licensee—A licensee that holds a hotel license, a restaurant liquor license, an eating place retail dispenser license, a club license or a catering club license.

CHAPTER 13. PROMOTION

Subchapter C. SOLICITATION FOR THE PURCHASE OF ALCOHOLIC BEVERAGES

§ 13.102. Discount pricing practices.

(a) *General.* Retail licensees may discount the price of alcoholic beverages for not more than 4 consecutive or nonconsecutive hours in a day and not more than 14 hours in a week. Retail licensees may not engage in discount pricing practices between 12 midnight and the legal closing hour. Retail licensees shall post on the licensed premises notice of happy hours. The notice shall be posted so that it is readily visible to the public. The notice shall be posted no less than 7 days prior to the happy 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 a happy 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) and if the price of the drink does not change during the offering. For purposes of this section, a specific type of alcoholic beverage means either a specific registered brand of malt or brewed beverages, a type of wine, a type of distilled spirits or a mixed drink. Examples of permissible drink discounts are found in Board Advisory Notice 16.

(3) Events conducted under the authority of subsection (b) may not be counted against the 4-hour daily or the 14-hour weekly limitation on happy hours in subsection (a).

[Pa.B. Doc. No. 16-71. Filed for public inspection January 15, 2016, 9:00 a.m.]