

RULES AND REGULATIONS

Title 40—LIQUOR

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 11]

Purchases, Sales and Returns; General Provisions

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P.S. § 2-207(i)), amends §§ 11.1 and 11.3—11.5 to read as set forth in Annex A.

Summary

The Board submits this final-form rulemaking to update its regulations in Chapter 11 (relating to purchases, sales and returns). This final-form rulemaking is undertaken as part of a larger effort to update the Board's regulations. The intent behind this final-form rulemaking is to eliminate obsolete language in Chapter 11 to provide streamlined regulations for the regulated community. This final-form rulemaking also eliminates a \$50 minimum purchase requirement for holders of a Wholesale Liquor Purchase Permit Card. With this amendment, card holders will receive a discount on every liquor purchase from the Board regardless of the purchase amount.

Section 11.1 (relating to definitions) includes two definitions: "Manufacturer" and "State, territory or county of origin." The first sentence for "Manufacturer" is left unchanged. The second sentence is deleted, since it modifies the definition of "Manufacturer" for Subsection L, which no longer exists. The definition of "state, territory or county of origin" is deleted since this phrase does not appear anywhere in the Board's regulations.

Section 11.3 (relating to sales at retail) is amended in the title so that the new title of this section is "Sales of ethyl alcohol at retail." This new title more accurately reflects the contents of the section after subsection (b) is deleted. Subsection (b) is deleted because ethyl alcohol is no longer procured by the special order process. Subsection (a) accurately describes the process for obtaining ethyl alcohol at retail.

Section 11.4 (relating to sales at wholesale) is amended in the title so that the new title of this section is "Sales at wholesale for United States Armed Forces facilities." This new title more accurately reflects the contents of the section after subsections (a) and (b) are deleted. Subsections (a) and (b) are deleted because ethyl alcohol is no longer procured by the process described in these subsections. The current process is set forth in § 11.33 (relating to purchase of alcohol by AN and AE permittees).

Section 11.5 (relating to issuance of Wholesale Liquor Purchase Permit Cards) is amended by deleting, in subsection (a), the phrase "if the retail cost of the order is \$50 or more." By deleting this phrase, a retail liquor licensee or a United States Armed Forces facility will be able to obtain all liquor purchases—not just those that cost \$50 or more—at the discounted rate allowed by the wholesale liquor purchase permit card. This amendment was requested by the Pennsylvania Tavern Association.

In addition, § 11.5 is amended by the deletion of subsection (b). This subsection describes a special form of Wholesale Liquor Purchase Permit Card that is issued to pharmacists, State-owned institutions and to certain manufacturers of non-beverage products. The type of card

issued to these entities is called a Wholesale Alcohol Purchase Permit Card and its use is covered in §§ 11.21—11.23 (relating to wholesale alcohol purchase permits). Since the information in this subsection is superfluous, it is deleted.

Affected Parties

The affected parties include those retail licensees and United States Armed Forces facilities that will be entitled to a discount on every purchase of liquor with their Wholesale Liquor Purchase Permit Card. As of June 10, 2021, there were approximately 13,500 of these licensees.

Paperwork Requirements

This final-form rulemaking does not impose any new paperwork requirements on licensees.

Fiscal Impact

This final-form rulemaking will have a positive impact on licensees since it removes a minimum purchase requirement before licensees may receive a 10% licensee discount.

Effective Date

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

Contact Person

Questions regarding this final-form rulemaking should be addressed to Rodrigo Diaz, Chief Counsel, Jason Worley, Deputy Chief Counsel, or Norina Foster, 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 11, 2021, the Board submitted a copy of the proposed rulemaking, published at 51 Pa.B. 1997 (April 10, 2021), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Liquor Control Committee and Senate Committee on Law and Justice for review and comment.

Under section 5a(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), 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. The Board did not receive any comments from the public or from IRRC.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on August 31, 2021, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(e) of the Regulatory Review Act, the final-form rulemaking was approved by IRRC effective August 31, 2021.

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), referred to as the Commonwealth Documents Law and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(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 amending §§ 11.1 and 11.3—11.5 to read as set forth in Annex A.

(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:* See 51 Pa.B. 6115 (September 18, 2021) for IRRC's approval order.)

Fiscal Note: 54-102. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 11. PURCHASES, SALES AND RETURNS

Subchapter A. GENERAL PROVISIONS

RETAIL AND WHOLESALE PURCHASE—GENERAL

§ 11.1. Definitions.

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

Manufacturer—A person engaged in the manufacture, rectification or compounding of liquors, other than wines, or an agent or representative of the manufacturer.

§ 11.3. Sales of ethyl alcohol at retail.

State liquor stores may stock ethyl alcohol, 190 proof, for retail sales subject to the following:

(1) An individual or entity desiring to purchase ethyl alcohol shall file an application on forms provided by the Board.

(2) The Board may approve the application of an individual or entity who swears or affirms that the alcohol will be purchased for nonpotable use only.

§ 11.4. Sales at wholesale for United States Armed Forces facilities.

Under section 305(b) of the Liquor Code (47 P.S. § 3-305(b)), wholesale sales of liquor may be made to a United States Armed Forces facility which is located on a United States Armed Forces installation within this Commonwealth. The sales shall be conducted under the authority and regulations of the United States Armed Forces. The sales shall be made under terms and conditions agreed upon by the Board and United States Armed Forces facility representatives.

(1) The Board may accept checks in payment for sales of liquor to a United States Armed Forces facility under terms and conditions as the Board deems appropriate.

(2) Direct delivery of liquor to a United States Armed Forces facility may be accomplished under terms set forth by the Board.

§ 11.5. Issuance of Wholesale Liquor Purchase Permit Cards.

As evidence of the privilege given to a retail liquor licensee and a United States Armed Forces facility to purchase liquor from State Liquor Stores at wholesale, the Board will issue to the licensee and a United States Armed Forces facility a Wholesale Liquor Purchase Permit Card, which allows the purchase of liquors at wholesale.

[Pa.B. Doc. No. 21-1688. Filed for public inspection October 8, 2021, 9:00 a.m.]