

Regulatory Analysis Form

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REGULATORY REVIEW COMMISSION

Bush

IRRC Number:

2066

(1) Agency

Pennsylvania Liquor Control Board

(2) I.D. Number (Governor's Office Use)

054-55

(3) Short Title

Corrections and Revisions

(4) PA Code Cite

40 Pa. Code

(5) Agency Contacts & Telephone Numbers

Primary Contact: Jerry Danyluk (717) 705-2119

Secondary Contact: Danielle Peyakovich (717) 705-6040

(6) Type of Rulemaking (check one)

Proposed Rulemaking
Final Order Adopting Regulation
Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

No
Yes: By the Attorney General
Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

- The regulation will codify the Board's policy of permitting club managers/stewards outside employment.
- The regulation permitting municipalities to set the hours of amusement is being deleted to conform with the Liquor Code.
- Floor plans submitted with licensing applications for transfer of location, extension of premises, or new license will be required, on paper, in an 8 ½ by 11-inch format.
- A site plan on 8 ½ by 11-inch paper will be required with an application for licensing a structure prior to completion of construction.
- References to the surety bond requirement eliminated by Act 155 of 1998 are being deleted from the regulations.
- An erroneous cite to the Malt Beverage Tax Law is being corrected.
- Regulations pertaining to Act 196 of 1996 which governed the manner in which wholesale prices of malt or brewed beverages were discounted are being deleted in response to a federal court case that struck down portions of Act 196 as unconstitutional.
- Upon application, the sale of grain alcohol for non-potable use would be permitted.
- Inaccurate references to the value limit on interior displays in retail licensed establishments are deleted. Serial or model numbers would not be required on these displays.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Pennsylvania Liquor Code, section 207(i) [47 P.S. § 2-207(i)].

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is not mandated by any federal or state law, court order or federal regulation; however, Act 155 of 1998 eliminated surety bonds as a requirement for licensees. Moreover, as a result of a federal court case, *Beer & Pop Warehouse v. Jones*, Civil Action No. 1:97-CV-0753 (M.D. Pa. Jan. 14, 1999), those portions of the Liquor Code dealing with wholesale price reductions on malt or brewed beverages by manufacturers, importing distributors and distributors can no longer be enforced. Therefore, the regulation dealing with the manner of changing wholesale prices of malt or brewed beverages is being deleted.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulation will clarify Board policy permitting outside employment for club managers. By deleting the paragraph in the regulations that permits municipalities to set the hours of amusement in retail establishments, the regulation will be in compliance with section 493(10) of the Liquor Code. [47 P.S. §4-493(10)]. A standard size for required floor plans will enable them to be scanned or faxed. A site plan that depicts licensed areas in relation to property lines or landmarks will enable the agency to determine proximity issues relative to churches, schools or other licensed establishments. Obsolete references to surety bonds will be eliminated. The regulation will correct an erroneous statutory reference, eliminate an unenforceable regulation regarding wholesale beer pricing and establish a method whereby, upon application, an individual or an entity could purchase grain alcohol for reasons other than human consumption. An erroneous reference to the value of interior point-of-sale displays for retail licensees is eliminated. Serial or model numbers on interior displays are no longer necessary and would not be required.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

No public health, safety, environmental or general welfare risks are associated with nonregulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The regulation will clarify the outside employment issue for club managers or stewards. A standard size for floor plans and a site plan that defines the location of a licensed area under construction will benefit the agency in processing plans and complying with the statutory requirements dealing with proximity issues. Correction of an erroneous cite to the Malt Beverage Tax Law, eliminating the references to surety bonds which are no longer required by statute, as well as bringing the regulations into compliance with the Liquor Code and a federal court case will benefit everyone referencing the Liquor Control Board Regulations. Establishing a method for the purchase of grain alcohol for non-potable use will benefit persons and entities desiring to use this product for tasks such as cleaning and sterilization.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

This regulation will have no adverse affects.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Applicants and licensees already have to submit floor plans and site plans when requested. The change requires a standardization of size. It is not possible to quantify the number of applicants who will be submitting floor plans or site plans since the number of transfers of location, extensions of existing licensed premises and construction of new buildings to be licensed varies from year to year.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Since the Board's ban on the retail sale of grain alcohol for beverage purposes (a result of increased sales of this product in college areas), requests from those utilizing grain alcohol for legitimate purposes other than human consumption have been received. This is presently being addressed administratively, and now through the regulatory process.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

These changes do not represent any significant costs to the regulated community. Floor plans in a standard size should not impose any significant costs since inexpensive technology exists for shrinking or enlarging plans. Site plans do not represent additional costs as they are routinely submitted (for buildings prior to or under construction) but often do not contain the necessary information to establish the location of the areas to be licensed in relation to the property upon which the structure will be constructed.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Local governments will not be affected by this regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The regulation will not impose costs upon state government.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$ N/A	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:	N/A					
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	N/A					
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

This caption is not applicable to this regulation.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
	N/A			

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

No adverse effects are associated with this regulation.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Nonregulatory alternatives were not considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Alternative regulatory schemes were not considered.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No provisions associated with these regulatory amendments are more stringent than federal standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

This regulation will not put Pennsylvania at a competitive disadvantage with other states. It may eliminate illegal out-of-state retail purchases of grain alcohol.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation will not affect existing or proposed regulations of the promulgating agency or other state agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No public hearings or informational meetings will be scheduled regarding this regulation.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The regulation will not change existing reporting, record keeping or other paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special provisions were warranted.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will become effective upon publication in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

Review of the regulations is ongoing and any changes to the regulation will be addressed through the rulemaking process.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

#2066

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Copy below is hereby approved
as to form and legality. Attorney General

BY _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

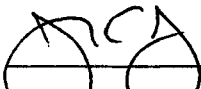
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Pennsylvania Liquor Control Board
(AGENCY)

DOCUMENT/FISCAL NOTE
NO. 054-55

DATE OF ADOPTION: 10/30/00

BY: 

TITLE: Chairman
(Executive Officer, Chairman or
Secretary)

Copy below is hereby approved
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or Independent Agencies:

BY: Yvonne S. Diell

10-30-00

DATE OF APPROVAL

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
(Chief Counsel, Independent
Agency)
(Strike inapplicable title)

Check if applicable. No
Attorney General approval or
objection within 30 days after
submission.

NOTICE OF FINAL RULEMAKING
PENNSYLVANIA LIQUOR CONTROL BOARD
TITLE 40 PA CODE - PENNSYLVANIA LIQUOR CONTROL BOARD REGULATIONS

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

Subchapter B. EMPLOYES OF LICENSEES

Sec. 5.16. Appointment of managers.

Subchapter C. AMUSEMENT AND ENTERTAINMENT

Sec. 5.31. Amusement permit.

**CHAPTER 7. TRANSFER, EXTENSION, SURRENDER, EXCHANGE AND SUSPENSION OF
LICENSES**

Subchapter A. TRANSFER OF LICENSES

Sec. 7.1. Filing of applications for transfer.

Sec. 7.5. Transfers on death of the Licensee.

Sec. 7.6. Transfer of partnership licenses.

To be added to Regulations

Sec. 7.8. Floor plans.

Sec. 7.9. Site plans.

Subchapter B. EXTENSION OF LICENSES

Sec. 7.22. Application.

Sec. 7.23. Approval.

Subchapter D. EXCHANGE OF LICENSES

Sec. 7.41. Applications and bonds.

CHAPTER 9. TRANSPORTATION, IMPORTATION, DISPOSITION AND STORAGE

Subchapter A. TRANSPORTATION OF LIQUOR, MALT OR BREWED BEVERAGES OR ALCOHOL

Sec. 9.12. Applications for Transporter-for-Hire Licenses.

Subchapter E. IMPORTATION AND DISTRIBUTION OF MALT OR BREWED BEVERAGES

Sec. 9.91. Importation.

CHAPTER 11. PURCHASES AND SALES

Subchapter A. GENERAL PROVISIONS

Sec. 11.1. Definitions.

Sec. 11.2. Who may purchase.

Sec. 11.3. Sales at retail.

Subchapter L. MANNER OF CHANGING PRICES OF MALT OR BREWED BEVERAGES

Sec. 11.201. Generally.

Sec. 11.203. Hearing procedures.

Sec. 11.204. Refusal to grant price increase.

Sec. 11.205. Noncompliance.

CHAPTER 13. PROMOTION

Subchapter A. ADVERTISING

Sec. 13.43. Interior display.

**TITLE 40 --- LIQUOR
LIQUOR CONTROL BOARD
[40 PA CODE CHS. 5, 7, 9, 11 AND 13]**

The Liquor Control Board (Board) under the authority of section 207(i) of the Liquor Code (47 P.S. § 2-207(i)), adopts amendments to §§ 5.16, 5.31, 7.1, 7.5, 7.6, 7.22, 7.23, 7.41, 9.12, 9.91, 11.1, 11.2, 11.3, 11.201, 11.203, 11.204, 11.205, 13.43 and adds §§ 7.8 and 7.9.

Purpose

The Board regulations amended by this order will codify the Board's policy permitting outside employment for club managers or stewards, rescind the ability of municipalities to set the hours of amusement for retail licensees in contravention of the Liquor Code, delete references to surety bond requirements that were eliminated by statute, correct erroneous cites to the Malt Beverage Tax Law, delete the 120-day requirement for discounting wholesale beer prices as a result of a federal court decision that struck down corresponding portions of Act 196 of 1996, permit the sale of grain alcohol for nonpotable use, eliminate inaccurate references to cost limits on interior displays and eliminate the requirement that interior displays bear serial or model numbers.

Comments

Notice of proposed rulemaking was published at 29 Pa.B. 5301-5307 (October 9, 1999), with a 30-day written public comment period.

The Board received four written comments from managers of hotels and a written comment from the President of the Pennsylvania Travel Council in support of its proposed regulatory change to §13.102. This regulatory amendment would have allowed hotels to offer an open bar to their overnight guests as part of a meal package on December 31, 1999, until 2 AM on January 1, 2000. The amendment to §13.102, as well as amendments to §§3.31, 3.33, 3.63, 3.73, 11.91, 11.92, 13.71-13.75, 13.77-13.79, 13.81, 13.86 and 13.87 relating to registration of vendors' agents, which were previously included with these regulatory amendments, were filed as a final rulemaking with proposed rulemaking omitted on

November 8, 1999. These amendments took effect upon their publication in the Pennsylvania Bulletin at 29 Pa.B. 6337-6339 (December 18, 1999).

The Independent Regulatory Review Commission (IRRC) submitted comments relative to the proposed rulemaking as follows:

1. As a general comment, IRRC referenced that portion of the rulemaking dealing with vendor registration as an area not addressed in these comments since a separate final omitted regulation was submitted by the Board on November 8, 1999.

2. IRRC commented on several sections of the regulations that refer to forms and noted that the Board uses expressions such as "form furnished by the Board" or "transfer form" throughout its regulations. IRRC suggested that for the sake of clarity, the Board should consider providing a brief description of the forms after each of the aforementioned phrases. IRRC suggested this would help licensees obtain and use the appropriate form. However, only the Board's Bureau of Licensing furnishes forms to licensees and applicants for licenses and permits. In doing so, licensing takes steps to insure that the appropriate and correct forms are furnished. Because the Board issues over seventy different types of licenses or permits and each of those licenses or permits could require a variety of actions such as transfer of location or ownership, correction to license, renewal, etc., describing the forms in the regulations would serve no useful purpose. Identifying forms in the regulations would also restrict the Board's ability to change or eliminate a form without a regulatory change.

3. IRRC suggested that in §7.5 -- Death of the licensee, the comma between "transfer form" and the word "application" should be deleted. However, the transfer form and application are separate forms, therefore only the reference to the bond is deleted.

4. IRRC suggested that §7.9 -- Site plans, needed clarification. The proposed language states that the site plan submitted by an applicant for a new license or transfer of an existing license must depict the location of the proposed licensed premises in relation to identifiable property lines or easily identifiable landmarks. IRRC recommends that the term "easily identifiable landmarks" should be defined since the term is unclear. Therefore, "or reference points" was added after "landmarks".

5. IRRC states that the term "maximum value" as used in §13.43(b) and (c), referencing the value of interior displays, is vague and suggested that "maximum value as set by the Board" would better define the term. The Board agrees and the referenced section is being amended.

6. IRRC recommends clarification of §13.87 -- Records. Since subsection (b) states, "[T]he records shall also be open to inspection by authorized representatives of the Board during normal business hours," the IRRC questions whether the phrase "normal business hours" refers to the standard hours of operation of the vendor or the Board. Although it is recognized that business may be conducted at all hours of the day or night, "normal business hours" is a general term similar to "nine to five". It references a generally recognized standard for conducting business so as not to inconvenience either party. This section was amended by a final regulation with proposed rulemaking omitted as referenced above and published in the Pennsylvania Bulletin at 29 Pa.B. 6337-6339.

The Board received no other comments, either in support of or in opposition to the proposed amendments, during the public comment period.

Fiscal Impact

These final-form regulations will not impose additional costs on the regulated community, the State or local governments.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 17, 1999, the Board submitted a copy of the notice of proposed rulemaking to IRRC and the Chairpersons of the House Committee on Liquor Control and the Senate Committee on Law and Justice for review and comment. These final-form regulations were submitted to the Chairpersons of the House Committee on Liquor Control, Senate Committee on Law and Justice and IRRC on _____, 2000.

These final-form regulations were (deemed) approved by the House Committee on Liquor Control on _____, 2000, and were (deemed) approved by the Senate Committee on Law and Justice on _____, 2000, and were approved by IRRC on _____, 2000, in accordance with section 5(c) of the Regulatory Review Act.

Contact Person

Persons requiring an explanation of the final-form regulation or information related thereto should contact Jerry Danyluk, Liquor Control Board, 513 Northwest Office Building, Harrisburg, PA 17124-0001.

Findings

The Board finds that:

- (1) Public notice of intention to adopt amendments to the administrative regulations 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, at 1 Pa. Code §§ 7.1 and 7.2.
- (2) The adoption of the final-form regulations set forth in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

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

(a) The regulations of the Board, 40 Pa. Code Chapters 5, 7, 9, 11, and 13, are amended by adding §§ 7.8 and 7.9 and amending §§ 5.16, 5.31, 7.1, 7.6, 7.22, 7.23, 7.41, 9.12, 9.91, 11.1, 11.2, 11.3, 11.201, 11.203, 11.204, and 11.205 to read as set forth at 29 Pa.B. 5301-5307 and by amending §§ 7.5 and 13.43 as set forth in Annex A. Amendments to §§3.31, 3.33, 3.63, 3.73, 11.91, 11.92, 13.71-13.75, 13.77-13.79, 13.81, 13.86, 13.87 and 13.102 previously published at 29 Pa.B. 5301-5307 was filed separately as a final rulemaking with proposed rulemaking omitted and were effective upon publication in the Pennsylvania Bulletin at 29 Pa.B. 6337-6339 (December 18, 1999).

(b) The Board shall submit this order, 29 Pa. B. 5301-5307 and Annex A to the Attorney General for approval as to form and legality as required by law.

(c) The Board shall certify this order, 29 Pa.B. 5301-5307 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the Pennsylvania Bulletin.

John E. Jones III
Chairman

ANNEX A

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

Subchapter B. EMPLOYES OF LICENSEES

§ 5.16. Appointment of managers.

* * * *

(d) A club manager or steward may be engaged in employment outside his or her duties as manager or steward except as provided in section 493(11) of the Liquor Code. (47 P.S. §4-493(11)).

Subchapter C. AMUSEMENT AND ENTERTAINMENT

§ 5.31. Amusement permit.

* * * *

[(d) *Hours for amusement.*

(1) A licensee holding an amusement permit may permit dancing, theatricals, floor shows and motion pictures in the licensed establishment only during the hours when the sale of liquor or malt or brewed beverages is permitted.

(2) Paragraph (1) does not apply to a licensee or licensed establishment located in a municipality which has, by ordinance, resolution or other appropriate action in accordance with law, fixed the hours for the amusement in licensed establishments. The hours so fixed are controlling when certified copies of the ordinance, resolution or other appropriate action in accordance with law, are filed by the municipality with the Board.]

CHAPTER 7. TRANSFER, EXTENSION, SURRENDER, EXCHANGE AND
SUSPENSION OF LICENSES

Subchapter A. TRANSFER OF LICENSES

§ 7.1. Filing of applications for transfer.

Licenses issued by the Board, under Article IV of the Liquor Code (47 P.S. §§ 4-401-4-498), may be transferred in accordance with this subchapter. Applications for transfer of licenses may be filed at any time, but when filed within 30 days of the expiration date of the license term, the transfer [shall apply] **applies** to the renewal license only, except in the case of death. Applications for transfer shall be made on the regular transfer form, which shall be accompanied

by the application for license[, proper bond] and remittance of proper fees in accordance with the applicable provisions of section 614-A of The Administrative Code of 1929 (71 P.S. § 240.14A).

§ 7.5. Transfers on death of the Licensee.

On the death of the licensee, the license may be transferred immediately to the surviving spouse or to the administrator or executor of the estate of the licensee, upon presentation of the transfer form, application, [bond transfer or] filing fee, and short form certificate from the registrar of wills. If it is desired to transfer the license to a person designated by and acting for the administrator or executor, the transfer [form] application [and the bond] and fee [or both], with written evidence of the designation, shall be submitted by the administrator or executor. The Board will be notified in writing within 30 days of the death of a licensee.

§ 7.6. Transfer of partnership licenses.

If one or more partners voluntarily retire, an application for correction of license shall be executed and filed by all the partners, including the retiring partner. In the case of death of a partner, the application for correction of license shall be executed and filed by the surviving partners, and by the administrator or executor of the estate of the deceased partner, if any, and be accompanied by a short form certificate from the Registrar of Wills. If there is no administrator or executor, the application for correction of license shall be executed and filed by the surviving partners together with documentary evidence of the death of the deceased partner. These requirements also apply if the license is held jointly by husband and wife. [Applications for correction of license shall be accompanied by an approved bond rider executed by the applicant and the surety company on the current license bond.] Applications for correction of a license under this section shall be accompanied by the proper fee in accordance with the applicable provisions of section 614-A of The Administrative Code of 1929 (71 P. S. § 240.14A).

§ 7.8. Floor plans.

Applicants for new licenses or for transfer of location of existing licenses shall submit floor plans with the application depicting all areas to be licensed. Floor plans are required for existing structures, as well as for structures proposed for construction and are to depict room dimensions. Floor plans shall be reproduced on paper and are not to exceed 8 ½ by 11 inches. A separate floor plan is required for each floor used in conjunction with the licensed business.

§ 7.9. Site plan.

Applicants for new licenses or for transfer of location of existing licenses shall submit site plans when the structure the applicant intends to occupy has not been constructed at the time the application is filed with the Board. Site plans shall be reproduced on paper in an 8 ½ by 11-inch format and shall depict the location of the proposed licensed premises in relation to identifiable property lines or easily identifiable landmarks or reference points with measurements to the property lines, landmarks or reference points.

Subchapter B. EXTENSION OF LICENSES

§ 7.22. Application

(a) To obtain Board approval, an application for extension of license describing the additional premises shall be filed with the Board[, to which shall be attached a bond rider covering the premises, properly executed by the surety who executed the bond filed with the application for the current license].

* * * *

§ 7.23. Approval.

The additional premises for which it is desired to extend a license shall be completely equipped for the carrying on of the type of business permitted under the license, but no sales of liquor or malt or brewed beverages, storage or similar activity may take place in the additional premises until approval has been given by the Board. Where the extension of premises involves physical alterations or new construction, the Board may grant prior approval for the extension, as similarly provided in section 403(a) of the Liquor Code (47 P. S. § 4-403(a)). The application for extension of license [should] shall be accompanied by a written request for consideration, together with floor plans [in duplicate] as set forth in section 7.8 (relating to floor plans) clearly showing the [restaurant, hotel or club] premises as it will be after the alterations or construction are completed. If the additional premises the applicant intends to license has not been constructed at the time the application is filed with the Board, a site plan shall be submitted as set forth in section 7.9 (relating to site plans). Approval may be in the form of a new license, giving the additional address or a letter authorizing the use of additional premises. In the case of distributors and importing distributors of malt or brewed beverages, no sales of malt or brewed beverages may be made in a warehouse except that in which the office or principal place of business of the licensee is maintained.

Subchapter D. EXCHANGE OF LICENSES

DISTRIBUTOR AND IMPORTING DISTRIBUTOR LICENSES

§ 7.41. Applications [and bonds].

An application for the exchange of Distributor or Importing Distributor Licenses shall be filed on a form furnished by the Board and will be considered by the Board only at the times indicated in section 7.42 (relating to effective dates). [The application shall be accompanied by a bond executed on the standard form furnished by the Board, in the penal sum required for the type of license sought.]

CHAPTER 9. TRANSPORTATION, IMPORTATION, DISPOSITION AND STORAGE

**Subchapter A. TRANSPORTATION OF LIQUOR, MALT OR BREWED BEVERAGES
OR ALCOHOL**

LICENSES

§ 9.12. Applications for Transporter-for-Hire Licenses.

(a) *Transporter-for-Hire License, Class A.* An application for a Transporter-for-Hire License, Class A, shall be filed on forms furnished by the Board and shall be accompanied by application and license fees in accordance with section 614-A of The Administrative Code of 1929 (71 P.S. § 240.14A) [and an approved corporate surety bond in the penal amount as established in section 506 of the Liquor Code (47 P.S. § 5-506)]. The license will be issued for the calendar year and the license fee will be prorated quarterly, in accordance with section 508 of the Liquor Code (47 P.S. § 5-508).

(b) *Transporter-for-Hire License, Class B.* An application for a Transporter-for-Hire License, Class B, shall be accompanied by application and license fees in accordance with section 614-A of The Administrative Code of 1929[, and an approved corporate surety bond in the penal amount as established in section 492(8) of the Liquor Code (47 P.S. § 4-492(8))]. The licenses will be issued for the calendar year.

(c) *Transporter-for-Hire License, Class C.* An application for Transporter-for-Hire License, Class C, shall be accompanied by application and license fees in accordance with section 614-A of The Administrative Code of 1929[, and an approved corporate surety bond in the penal amount as established in section 506 of the Liquor Code]. The license will be issued for the calendar year. To secure this license, the applicant shall demonstrate that he maintains a fleet of vehicles primarily engaged in general parcel consignment, servicing all points within this Commonwealth and shall demonstrate that he can transport liquor from points in this Commonwealth to Board facilities, from Pennsylvania licensed limited winery locations to limited winery customers and from distilleries of historical significance to distillery customers.

**Subchapter E. IMPORTATION AND DISTRIBUTION OF MALT OR BREWED
BEVERAGES**

GENERAL PROVISIONS

§ 9.91. Importation.

* * * *

(b) This section does not prohibit the importation of malt or brewed beverages by either of the following:

(1) A resident of this Commonwealth, for personal use only and not for sale, provided that the malt or brewed beverages are in original containers and that the tax thereon has been paid, or provisions for the payment have been made under the [Pennsylvania]Malt Beverage Tax Law [(47 P.S. §§ 103—120.3)] (72 P.S. §§ 9001- 9016).

* * * *

(c) Sales of malt or brewed beverages intended to be transported for delivery or use in this Commonwealth shall be consummated outside this Commonwealth and shall be paid for in full prior to or at the time of delivery to the consignee in this Commonwealth, who shall pay transportation charges. The beverages shall also be tax paid in accordance with section [409] 9003 of the [Pennsylvania] Malt Beverage Tax Law [(47 P.S. § 409)(Repealed)] (72 P.S. § 9003), and the transporter shall be considered the agent of the consignee.

CHAPTER 11. PURCHASES AND SALES

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:

[Market conditions or other good cause - Factors that affect the wholesale price of malt or brewed beverages, including, but not limited to, the following: the availability and cost of raw materials, labor, transportation, weather, natural disaster, or other extraordinary events affecting supply and demand.]

* * * *

§ 11.2. [Who may purchase.] (Reserved).

(a) A person legally qualified to purchase liquor at retail in this Commonwealth may purchase alcohol directly at State Liquor Stores, or by special order through the State Store system under § 11.4 (relating to sales at wholesale.)

[(b) Purchasers at wholesale shall comply with § 11.4.]

§ 11.3. Sales at retail.

(a) 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.

* * * *

**Subchapter L. [MANNER OF CHANGING PRICES OF MALT OR BREWED
BEVERAGES] RESERVED**

§ 11.201. [Generally] (Reserved).

(a) This subchapter implements the manner in which wholesale prices of malt or brewed beverages shall be changed by manufacturers, importing distributors and distributors, in accordance with the provisions of Act 196 of 1996 (Act 196), and for active supervision by the investigative unit specified in Act 196, to be known as Special Investigations, within which is Malt Beverage Compliance. Malt Beverage Compliance is responsible for all aspects of the implementation of Act 196 as specified in this subchapter as well as any other duties specified in this title and as the Board may from time to time prescribe.

(b) Manufacturers, importing distributors and distributors shall file their wholesale prices (commonly referred to in the malt beverage industry as "case one" prices) for all configurations sold, including volume discount price structures, with Malt Beverage Compliance between February 1 and April 1 of every calendar year. These wholesale prices shall be those in effect on April 1 of the calendar year in which the prices are reported to Malt Beverage Compliance.

(c) Manufacturers, importing distributors and distributors that do not sell for resale shall so indicate, in writing, to Malt Beverage Compliance by April 1 of each year.

(d) The reporting requirements specified in this subchapter are in addition to those contained in section 447 of the Liquor Code. (47 P.S. § 4-447). Price information reported to Malt Beverage Compliance is public information and will be available for inspection upon written request to: Malt Beverage Compliance, Northwest Office Building, Harrisburg, PA 17124-0001.]

§ 11.203. [Hearing procedures] (Reserved).

(a) When a wholesale price is increased within 120 days of a price reduction due to market conditions or any good cause, sales may be made at the new price and Malt Beverage Compliance shall be notified in writing within 48 hours after the change in price. A hearing will be scheduled as soon as possible before a Board Hearing Examiner to determine if the wholesaler can show by admissible evidence that market conditions or other good cause justifies the price increase.

(b) Malt Beverage Compliance will:

(1) Upon receipt of a notice of price increase, conduct a prehearing investigation by visiting the premises of the applicant, completing a price increase report and obtaining any other relevant documentation.

(2) Notify the applicant for price increase of its right to waive the hearing and provide a copy of the waiver of hearing form to the applicant.

(3) Complete its report promptly and submit the report to the Board, upon receipt of a signed waiver of hearing.

(4) Notify the applicant of the time and place of the scheduled hearing if the hearing is not waived.

(5) Immediately send written notice to the applicant by certified mail (return receipt requested) following the Board meeting announcing the decision.

(c) Hearings held before an examiner of the Board shall be conducted under 1 Pa. Code Part II (relating to the Rules of Administrative Practice and Procedure). After accepting evidence, the examiner shall submit a report and recommendation within 7 working days to the Board for its determination. The decisions by the Board relating to price changes are final. Appeals shall be filed with the Commonwealth Court pursuant to 42 Pa.C.S. §763 (relating to direct appeals from government agencies) within 30 days of the Board's decision.

(d) A person who can demonstrate a direct interest in an application to raise a wholesale price under this section may file a request to intervene in these proceedings. The request shall include the name, address, telephone number and a statement of the direct interest and reasons for intervention of the person filing. The request shall be received by Malt Beverage Compliance at least 48 hours before the hearing to be considered. Notice of hearing will be provided in writing to persons meeting the filing requirements.

(e) The hearing examiner has the discretion to receive evidence from anyone filing a timely request to intervene. A recommendation on the party status of those requesting intervention will be included in the examiner's report for the Board's consideration.

(f) Upon waiver of hearing, the applicant and anyone requesting intervention shall submit an affidavit of testimony regarding the price change to Malt Beverage Compliance. The affidavits and investigative report will be submitted by Malt Beverage Compliance to the Board for a decision at its next public meeting.]

§ 11.204. [Refusal to grant price increase] (Reserved).

[If the Board refuses to grant the price increase requested, the manufacturer, importing distributor or distributor shall without regard to its right of appeal:

(1) Immediately revert to the price charged before the increase denied by the Board.

(2) Refund, to all wholesale customers, the total difference between the increased price charged for the product purchased and the price which was in effect prior to the increase.

(3) Provide a written statement to Malt Beverage Compliance within 30 days of the Board's decision with an accounting of the refunds made to its customers.]

§ 11.205. [Noncompliance] (Reserved).

[A manufacturer, importing distributor or distributor who is not in compliance with the reporting requirements of section 447 of the Liquor Code (47 P.S. §4-447) or this subchapter may be granted up to 48 hours by Malt Beverage Compliance to take the necessary steps to come into compliance including, but not limited to, rescinding price changes on its wholesale prices or submitting the proper information, or both. Subsequent noncompliance by the same wholesaler may result in referral to the Pennsylvania State Police, Bureau of Liquor Control Enforcement for

citation proceedings to show cause why the license or privilege to transact business within this Commonwealth should not be suspended or revoked or a fine imposed.]

CHAPTER 13. PROMOTION

Subchapter A. ADVERTISING

ADVERTISING OF BRAND NAMES

§ 13.43. Interior display.

(a) A licensee may not install or permit to be installed electrically operated signs or devices, lithographs, framed pictures, cardboard displays, statuettes, plaques, placards, streamers or similar items advertising brand names and intended for interior display on the licensed premises until [he] the licensee has submitted detailed information to the Board on forms provided by the Board, and obtained Board approval. [A single piece of advertising may not exceed a cost of \$70, and the signs shall carry a serial or model number permanently affixed to the display for identification purposes.] A photograph or sketch of the display sign shall accompany the application form.

(b) When the approved sign, as described in subsection (a), is of maximum value as set by the Board, no background material may be used in conjunction with the installation. [When the approved display piece is of less than the maximum value, the combined cost of the piece of advertising and background or decoration may not exceed \$70.]

[(c) Under the Liquor Code, the total cost of the point-of-sale advertising matter relating to any one brand may not exceed the sum of \$140.]

[(d)] (c) Signs or displays intended for use interchangeable in a window, doorway or in the interior shall meet the requirements for both maximum area, as provided in § 13.42 (relating to window and doorway display) and maximum value as set by the Board.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PENNSYLVANIA 17124-0001

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REGULATORY
REVIEW COMMISSION



JOHN D.W. REILEY
BOARD SECRETARY

October 31, 2000

(717) 787-5867

Honorable Robert E. Nyce, Executive Director
INDEPENDENT REGULATORY REVIEW COMMISSION
333 Market Street, 14th Floor
Harrisburg, PA 17126

Dear Mr. Nyce:

Enclosed for review by the Independent Regulatory Review Commission, pursuant to the Regulatory Review Act, are amendments to Liquor Control Board Regulations that are being entered into final rulemaking (I.D. No. 54-55). The amendments to Title 40 Pa. Code seek to accomplish the following:

- Codify the Board's policy permitting club managers/stewards outside employment;
- Delete paragraphs [40 Pa. Code §5.31(d)(1) and (2)] from the regulations because (d)(1) unnecessarily repeats language already in the Liquor Code and (d)(2) contradicts a newly enacted portion of the Liquor Code [47 P.S. §4-493(10)];
- Eliminate references to surety bond requirements as a result of Act 155 of 1998 which eliminated surety bonds as a requirement for licensees;
- Require floor plans reproduced on paper in an 8½ by 11-inch format for applicants for new licenses and transfer of location of existing licenses;
- Require site plans on paper in 8½ by 11-inch format depicting the location of the licensed premises from applicants whose premises are under construction at the time of application;
- Correct erroneous cites to the Malt Beverage Tax Law;
- Permit individuals or entities to file an application with the Board to purchase grain alcohol for non-potable use;

Honorable Robert E. Nyce
October 31, 2000
Page Two

- Delete those regulations pertaining to Act 196 of 1996 which required that any reduction in the wholesale price of malt or brewed beverages stay in effect for 120 days in response to a federal court case that found those portions to be unconstitutional;
- Eliminate inaccurate references to value limits on interior displays in licensed establishments. Serial or model numbers would not be required on these displays.

As always, the Pennsylvania Liquor Control Board will provide any assistance required in the review of these amendments.

Sincerely,

A handwritten signature in black ink, appearing to read "John D.W. Reiley", written in a cursive style.

JOHN D.W. REILEY
Secretary to the Board

Enclosures

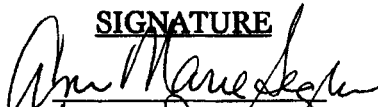

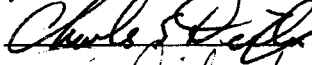
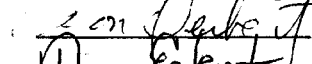
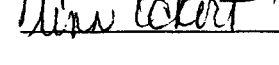
**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 54-55
SUBJECT: Corrections and Revisions
AGENCY: Liquor Control Board

TYPE OF REGULATION

___ Proposed Regulation
X Final Regulation
___ Final Regulation with Notice of Proposed Rulemaking Omitted
___ 120-day Emergency Certification of the Attorney General
___ 120-day Emergency Certification of the Governor

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
10/21/00		HOUSE COMMITTEE ON LIQUOR CONTROL (<i>Republican</i>) (<i>Democrat</i>)
10/31/00		
10/31/00		SENATE COMMITTEE ON LAW & JUSTICE (<i>Republican</i>) (<i>Democrat</i>)
10/31/00		
10/31/00		INDEPENDENT REGULATORY REVIEW COMMISSION
___	___	ATTORNEY GENERAL
___	___	LEGISLATIVE REFERENCE BUREAU