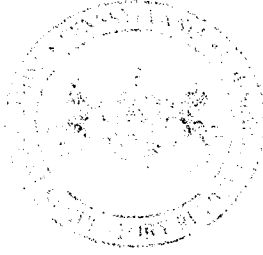


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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

September 1, 2004

Honorable Jonathan H. Newman, Chairman
Pennsylvania Liquor Control Board
502 Northwest Office Building
Harrisburg, PA 17124

Re: Regulation #54-59 (IRRC #2411)
Pennsylvania Liquor Control Board
Revisions to Codify Practices and Procedures Resulting from Legislative Amendments

Dear Chairman Newman:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Nyce", is written over a faint, larger version of the same signature.

Robert E. Nyce
Executive Director
sfh

Enclosure

cc: Honorable Joe Conti, Chairman, Senate Law and Justice Committee
Honorable Sean F. Logan, Minority Chairman, Senate Law and Justice Committee
Honorable Ron Raymond, Majority Chairman, House Liquor Control Committee
Honorable Robert C. Donatucci, Democratic Chairman, House Liquor Control Committee

Comments of the Independent Regulatory Review Commission

on

Pennsylvania Liquor Control Board Regulation #54-59 (IRRC #2411)

Revisions to Codify Practices and Procedures Resulting from Legislative Amendments

September 1, 2004

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Pennsylvania Liquor Control Board (Board) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on August 2, 2004. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

Chapter 3. License Applications. Subchapter A. General Provisions.

1. Section 3.1. Definitions. – Need; Clarity.

The following eight definitions are being added to this section: “bar/counter,” “bench,” “booth,” “chair,” “eating space,” “seating,” “stool” and “table.” These definitions are not used in the body of either the existing or proposed regulations. The definitions of “bench,” “chair” and “eating space” are only used in other proposed definitions. What is the need for adding these eight definitions?

Subchapter J. Malt or Brewed Beverage Manufacturers.

2. Section 3.92. Brewery pubs. – Consistency with statute; Clarity.

This section establishes the provisions for the issuance and operation of a brewery pub license. Subsection (d) allows a brewery pub to sell wine produced by the holder of a Pennsylvania limited winery license. However, 47 P.S. § 4-446(2) states that the wine must be purchased from either the holder of a Pennsylvania limited winery license or from the Board. The statute also requires the wine purchases to be consumed on the premises of the brewery pub. These provisions are not reflected in the proposed regulation. The Board should include these provisions in the final-form version of the regulation.

Subchapter K. Economic Development Licenses.

3. Section 3.101. Economic development licenses. – Clarity.

This section establishes areas where economic development licenses may be issued. Subsection (a)(1) provides a citation to the applicable Keystone Opportunity Zone (KOZ) statute. Under Subsection (a)(2), a statutory citation is not provided for an Enterprise Zone (EZ). For clarity and consistency, a citation to applicable EZ statutes or regulations should be inserted into the final-form regulation.

4. Section 3.102. Approval for economic development license. – Clarity.

This section describes the application process for economic development licenses. The phrase “KOZ or EZ authorities” is used in Subsection (a). Who qualifies as the “KOZ or EZ authorities?”

5. Section 3.104. Municipal standing before the Board. – Clarity.

This section permits a municipality receiving an economic development license to file a protest with the Board. Can the decision of the Board be appealed? If so, where would the appeal be filed?

6. Section 3.105. Quarterly filing of applications and application hearings. – Clarity.

This section establishes filing requirements for counties and appeal procedures for applicants. We have 2 concerns.

First, Subsection (b) should include a cross-reference to the Board’s hearing provisions.

Second, Subsection (e) should include the same language that is in the corresponding statutory provisions. It states that an applicant will receive a provisional license for 120 days. The same provision is included in 47 P.S. § 4-461(b.2), which also includes the phrase “exclusive of periods of safekeeping.” The final-form regulation should be amended to mirror the corresponding statutory provision.

Chapter 5. Duties and Rights of Licensees. Subchapter C. Amusement and Entertainment.

7. Section 5.30. Definitions. – Clarity.

This section adds a definition of “sweepstakes” which includes conditions for permissible sweepstakes. The conditions are substantive. Substantive provisions in a definition are not enforceable. Therefore, the conditions should be moved to Section 5.32(h), relating to sweepstakes promotions.

8. Section 5.36. Municipal noise ordinances. – Clarity.

Subsection (d) contains the phrase “any other condition the Board deems appropriate.” What “other conditions” would the Board deem appropriate?

Subchapter F. Clubs.

9. Section 5.86. Permitted exchange of club and catering club licenses. – Consistency with statute; Clarity.

Subsections (a) through (e) list five different types of exchanges that may occur. The exchanges are:

- club liquor license for a club malt beverage retail dispenser license;
- club liquor license for a catering club liquor license;
- catering club license for a club liquor license;
- club malt beverage retail dispenser license for a catering club malt beverage retail dispenser license; and
- catering club malt beverage retail dispenser license for a club malt beverage retail dispenser license.

In the Regulatory Analysis Form, the Board notes that 47 P.S. § 4-401 and § 4-472.3 provide the statutory basis for adding these provisions. Section 4-472.3(a) appears to be the only language that addresses exchanges of licenses. It permits a club to exchange a club liquor license for a club retail dispenser license. This type of exchange is not listed in Subsections (a) through (e). Do the different types of licenses noted in Subsection (a) through (e) fall under the type of license exchange noted in § 4-472.3(a)?

Also, Subsection (f) states that the Bureau of Licensing will set the fee for filing an application for the exchange of club licenses. The final-form regulation should establish the fee and the Preamble should explain how the fee was set.

Chapter 7. Transfer, Extension, Surrender Exchange of Licenses. Subchapter A. Transfer of Licenses.

10. Section 7.10. Conversion of suspension to fine. – Clarity.

Subsection (c) states, “the transferee’s request to the Office of Chief Counsel shall include the following:” However, Subsection (c)(5) states, “Other financial documents as requested by the Office of Chief Counsel.” Because the transferee is making the initial request to the Office of Chief Counsel, how will the transferee know what, if any, additional information is required to be contained in the request?

Subchapter C. Surrender of Licenses.

11. Section 7.33. Sheriff’s sale of a liquor license. – Clarity.

This section establishes procedures to be followed when a license is subject to a writ of execution. Paragraphs (2) and (3)(ii) state that certain actions “should” be performed. The word “should” indicates that the action is optional. The final-form regulation should replace the word “should” with “shall.”

Subchapter F. Intermunicipal Transfer of Retail Licenses.

12. Section 7.63. Municipal standing before the Board. – Clarity.

This section allows a municipality to file a protest against the approval of an intermunicipal transfer of a liquor license. Subsection (c) states that a protest must be timely filed. Provisions for filing a protest are found in Section 17.13, relating to protests/intervention procedure. The final-form regulation should include a cross-reference to this section.

**Chapter 9. Transportation, Importation, Disposition and Storage.
Subchapter H. Importation of Wine Purchased by Means of the Internet.**

13. Section 9.141. Requirements for licensure as a direct shipper. – Clarity.

Subsection (a) is worded as a definition for “direct shipper.” However, “direct shipper” is already defined in Section 9.132 (relating to definitions). It is not needed in both places. If necessary, the language contained in this subsection should be added to the definition contained in Section 9.132 and deleted from this section.

14. Section 9.142. Records to be maintained. – Reasonableness; Clarity.

Subsection (a) establishes audit procedures to be followed when the Commonwealth audits a direct shipper. Does the term “Commonwealth” mean the Board? If it doesn’t, what department would be conducting the audits?

15. Section 9.143. Sales of wines. – Clarity.

Subsection (g) establishes a \$4.50 handling fee. Is this fee to be applied to each bottle ordered or the entire order? The Board should clarify this provision in the final-form version.

16. Section 9.144. Products shipped. – Clarity.

Subsection (i) requires a direct shipper to provide a “call tag” with each order. It is not clear what this term means. The final-form regulation should either define the term “call tag” or include the information that should appear on the tag.

17. Section 9.145. Direct shipper’s website. – Reasonableness; Clarity.

Information that must be present on a direct shipper’s website is included in this section. Subsection (c) pertains to age and residency requirements. It also states that sales will not be made to “anyone who is under the influence of alcohol or other drugs.” The Board has indicated that the intent of this provision is to prohibit a buyer under the influence of drugs or alcohol from picking up an order at a Pennsylvania Wine and Spirits Store. The final-form regulation should be amended to clearly express this intent.

**Chapter 13. Promotion.
Subchapter A. Advertising.**

18. Section 13.52. Advertising novelties. – Clarity.

Subsection (e) contains the phrase, “the point of sale advertising cost limit as set forth by the Board.” The Board should include a cross-reference to this cost limit.

19. Miscellaneous edits. – Clarity.

- Section 3.91, titled “*alternate* brewer’s license,” should read “*alternating* brewer’s license” as defined in 47 P.S. § 1-102.
- The second sentence of Section 3.105(a) and the information that follows it should be separated out and placed into its own subsection.
- Subsection 7.3(c), written as one sentence with several provisions, should be broken into smaller sentences. A similar concern also exists in Subsection 9.142(a).
- In Section 7.65, the phrase “period of” should be included in front of the phrase “5 years” or the “a” before “5 years” should be deleted.
- In Section 11.7(b), “another party” should be inserted in front of “or other parties.”
- The phrase “without Board approval” in Sections 13.42 and 13.43 are not needed and could be deleted to add clarity.

Facsimile Cover Sheet

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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: James Maher, Assistant Counsel
Agency: Liquor Control Board
Phone: 3-9454
Fax: 7-8820
Date: 9/1/04
Pages: 7

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Liquor Control Board's regulation #54-59 (IRRC #2411). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: _____

Date: _____