

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p> <p>2015 APR 21 PM 2:03</p>	
<p>(1) Agency Pennsylvania Liquor Control Board</p>		<p>IRRC</p>	
<p>(2) Agency Number: 054 Identification Number: 69</p>		<p>IRRC Number: 3094</p>	
<p>(3) PA Code Cite: 40 Pa. Code § 13.102</p>			
<p>(4) Short Title: Discount Pricing Practices</p>			
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Norina K. Blynn, Assistant Counsel Pennsylvania Liquor Control Board 401 Northwest Office Building Harrisburg, PA 17124 Telephone: (717) 783-9454; E-mail: ra-lblegal@pa.gov; Fax (717)787-8820</p> <p>Secondary Contact: Rodrigo J. Diaz, Executive Deputy Chief Counsel (Same contact information)</p>			
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input checked="" type="checkbox"/> Proposed Regulation</p> <p><input type="checkbox"/> Final Regulation</p> <p><input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation;</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p>	
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>Act 11 and Act 113 of 2011 were legislative efforts to amend the discount pricing practices in effect for retail licensees. The proposed regulation change would harmonize the Board's Regulations with the Liquor Code. Specifically, the proposed regulation will update the number of hours prices may be discounted, and note that the discount may be for non-consecutive time periods. The proposed regulation also requires a licensee to post a notice of its discounting periods at least seven (7) days prior to their occurrence.</p>			
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>Pennsylvania Liquor Code, section 207(i) [47 P.S. § 2-207(i)].</p>			

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(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulation is not mandated by federal law or court order, or federal regulation. There are no relevant state or federal court decisions. However, Acts 11 and 113 of 2011 have superseded portions of the relevant regulation, which is why it is being amended.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Currently, the Board's Regulation describes the manner in which discount pricing practices were regulated prior to Acts 11 and 113 of 2011. Act 11 and Act 113 of 2011 were legislative efforts to amend the discount pricing regulations in effect for retail licensees. To the extent that they are, in part, inconsistent with the Board's Regulations, those regulations are superseded. The proposed regulatory change would harmonize the Board's Regulation with the Liquor Code. Retail licensees will benefit in that they will not be misled by an incorrect regulation.

(11) 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 regulations.

These regulations do not correspond to any federal regulations.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Retail licensees (hotels, restaurants, eating places & clubs) are regulated by neighboring states in accordance with their unique and individual systems of alcoholic beverage control. Because retail licensees are local businesses, the regulatory change should not put Pennsylvania at a competitive disadvantage. Further, the proposed regulation does not change current law; rather it amends existing regulations to reflect current law.

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

The regulations will not affect the proposed or existing regulations of the Board or any other state agency.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Input was not received from the public or any other groups outside the Board. The purpose of the proposed regulation is to amend the existing regulations, to conform with the changes to the law effectuated by Acts 11 and 113 of 2011.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

There are presently 14,242 active retail licensees (hotel, restaurant, eating place and club licensees). They will be affected only in the sense that the Board's Regulations will now accurately describe the law as effectuated by Acts 11 and 113 of 2011.

(16) List the persons, groups or entities, including small businesses that will be required to comply with the regulation. Approximate the number that will be required to comply.

There are presently 14,242 active retail licensees (hotel, restaurant, eating place and club licensees). They will be required to comply with the proposed regulations if they choose to discount the price of alcohol at their premises. However, they are already under the obligation because of Acts 11 and 113 of 2011.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

There is no significant impact. Licensees will benefit slightly in that there will be less confusion as to the rules pertaining to discounting alcohol prices.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulation is intended to provide consistency and clarity between the Liquor Code and the Board's Regulations. It is not expected to have any costs or adverse effects.

(19) 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. Explain how the dollar estimates were derived.

The Board does not anticipate that this regulatory change will affect the costs or savings of the regulated community since the regulatory change is simply to reflect the change in the law effectuated by Acts 11 and 113 of 2011.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Local governments are not expected to incur new costs or realize new savings as a result of this regulation.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The implementation of the regulation is not expected to affect the costs or savings of state government.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This regulation is being amended so that it is consistent with Acts 11 and 113 of 2011, and does not impose any additional paperwork or recordkeeping beyond that which is now required by the Liquor Code.

(23) 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:	\$	\$	\$	\$	\$	\$
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(23a) Provide the past three year expenditure history for programs affected by the regulation.

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

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

No special regulatory methods to minimize any adverse impact on small businesses were considered because there is not expected to be any adverse fiscal impact on any small business.

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

No special provisions have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers, because there is not expected to be any adverse fiscal impact on any groups or persons.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Non-regulatory alternatives were not considered because the regulation will not require any licensee or member of the regulated community to take any action in order to comply with the regulation.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and

e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

No special regulatory methods to minimize any adverse impact on small businesses were considered because there is not expected to be any adverse fiscal impact on any small business.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

The Board has not relied on data to justify this regulation.

(29) Include a schedule for review of the regulation including:

- | | |
|---|-----------------------|
| A. The date by which the agency must receive public comments: | <u>June 2015</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>September 2015</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>October 2015</u> |
| D. The expected effective date of the final-form regulation: | <u>October 2015</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>October 2015</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

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

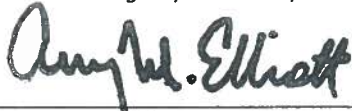
FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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DO NOT WRITE IN THIS SPACE

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

BY: 
(DEPUTY ATTORNEY GENERAL)

NOV 26 2014

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections
attached.

Copy below is hereby certified to
be a true and correct copy of a
document issued, prescribed or
promulgated by:

Pennsylvania Liquor Control Board
(AGENCY)

DOCUMENT/FISCAL NOTE
NO. 054-69

DATE OF ADOPTION October 30, 2014

BY: 

TITLE: Chairman
(Executive Officer, Chairman or
Secretary)

Copy below is hereby approved
as to form and legality. Executive
or Independent Agencies:

BY: 
Chief Counsel

10/30/14
DATE OF APPROVAL

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

TITLE 40—LIQUOR

CHAPTER 13. PROMOTION

The following section is amended:

13.102. Discount Pricing Practices.

54-69

PROPOSED RULEMAKING
LIQUOR CONTROL BOARD
40 PA. CODE CHAPTER 13
Discount Pricing Practices

The Liquor Control Board ("Board"), under the authority of section 207(i) of the Liquor Code (47 P.A. § 2-207(i)), amends Chapter 13.

Summary

Currently, this regulation limits a licensee to a "happy hour" period of no more than two (2) consecutive hours per business day. The proposed changes are necessary so that the Board's Regulations pertaining to happy hour limitations are consistent with the Liquor Code. In particular, the amendments included in Acts 11 and 113 of 2011 allow a licensee to have up to four (4) hours of discounted drinks in one (1) day, but no more than fourteen (14) hours per week. In addition, the amendment to the Liquor Code places a burden on the licensees to post a notice of happy hours at least seven (7) days prior to the happy hour.

To improve the clarity of the regulation, and for the convenience of the regulated community, examples of permissible "daily drink specials" are copied from Board Advisory Notice No. 16 into this amended regulation. The Board plans to withdraw its Advisory Notice No. 16 upon the effectiveness of these regulations.

Affected Parties

There are currently almost 11,400 actively licensed retail licensees who are affected by the provisions of Acts 11 and 113 of 2011.

Paperwork Requirements

This regulatory change is not expected to affect legal, accounting or consulting procedures and should not require any additional reporting, recordkeeping or other paperwork. Act 11 requires the posting of a notice of the licensee's happy hours. This regulation places no additional reporting or paperwork requirements on licensees.

Fiscal Impact

This regulatory change is not expected to have any fiscal impact on the regulated community or state and local governments.

Effective Date

These regulations will become effective upon publication in final form in the *Pennsylvania Bulletin*.

Public Comments

Interested persons are invited to submit written comments about the proposed rulemaking to Rodrigo Diaz, Executive Deputy Chief Counsel, or Norina Blynn, Assistant Counsel, Office of Chief Counsel, Pennsylvania Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001, within thirty (30) days after publication of the proposed regulation in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Please note that all public comments will be posted on the Independent Regulatory Review Commission's website. No personal information will be redacted from the public comments received.

Regulatory Review

Under section 745.5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 21, 2015, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Liquor Control Committee and Senate Committee on Law and Justice. A copy is available to the public upon request.

Under Section 745.5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. Comments, recommendations or objections raised shall be reviewed prior to the regulation's final publication.

Timothy Holden
Chairman

ANNEX A

TITLE 40. LIQUOR

Part I. LIQUOR CONTROL BOARD

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 [a consecutive period of time not to exceed 2 hours in a business day,] not more than 4 hours in a day and not more than 14 hours in a week. [but] 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. Said notice shall be posted in such a manner as to be readily visible to the public, and 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 [the 2-hour] 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 day. 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.] as follows:

(i) A specific brand of beer such as “Blue Hound Pilsner” or “Brendan’s Cream Stout” or “Oil City Light,” but not “all draft” or “all bottled” beer or “all Blue Hound products.”

(ii) Daily wine specials could be “Chardonnay” or “Merlot,” but not “all white wine” or “all red wine” or “all Kendall’s wines.”

(iii) Permissible spirits specials would be “Rum and Cola” or “all brandy drinks,” but not “all well drinks” or “all Jackson’s products.”

Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board
April 21, 2015

SUBJECT: Proposed Regulation Package 54-69
Discount Pricing Practices

TO: DAVID SUMNER, EXECUTIVE DIRECTOR
INDEPENDENT REGULATORY REVIEW COMMISSION

FROM: FAITH S. DIEHL ^{FS}
CHIEF COUNSEL
PENNSYLVANIA LIQUOR CONTROL BOARD

By Hand Delivery

The Pennsylvania Liquor Control Board ("PLCB") is submitting proposed amendments to chapter 13 of its regulations. Enclosed please find a copy of the regulatory analysis form, signed CDL-1 face sheet, preamble and Annex A (regulatory text).

These amendments are being delivered today to the legislative oversight committees and to the Legislative Reference Bureau. They have been approved by the Office of Attorney General as to form and legality.

Any questions and comments about this regulatory submission can be directed to Rodrigo Diaz, Executive Deputy Chief Counsel, or Norina Blynn, Assistant Counsel, at (717) 783-9454.

cc with enclosures:

Honorable Charles McIlhinney, Majority Chairman, Senate Law and Justice Committee
Honorable James Brewster, Minority Chairman, Senate Law and Justice Committee
Honorable Chris Ross, Majority Chairman, House Liquor Control Committee
Honorable Paul Costa, Minority Chairman, House Liquor Control Committee
Gail Reinard, Executive Director, Senate Law and Justice Committee
Victor Wills, Executive Director, Senate Law and Justice Committee
Shauna Boscaccy, Executive Director, House Liquor Control Committee
Lynn Benka-Davies, Executive Director, House Liquor Control Committee

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

I.D. NUMBER: 54-69
SUBJECT: Discount Pricing Practices
AGENCY: Liquor Control Board



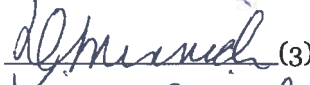


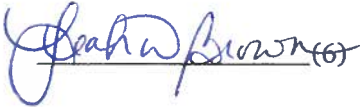
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TYPE OF REGULATION

- Proposed Regulation
- 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>
4/21/15	 (1)	SENATE LAW & JUSTICE COMMITTEE (Majority)
4/21/15	 (2)	SENATE LAW & JUSTICE COMMITTEE (Minority)
4/21/15	 (3)	HOUSE LIQUOR CONTROL COMMITTEE (Majority)
4/21/15	 (4)	HOUSE LIQUOR CONTROL COMMITTEE (Minority)
4/21/15	 (5)	INDEPENDENT REGULATORY REVIEW COMMISSION
4-21-15	 (6)	LEGISLATIVE REFERENCE BUREAU