

Comments of the Independent Regulatory Review Commission



Pennsylvania Liquor Control Board Regulation #54-85 (IRRC #3117)

Limited Wineries

November 25, 2015

We submit for your consideration the following comments on the proposed rulemaking published in the September 26, 2015 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Liquor Control Board (Board) to respond to all comments received from us or any other source.

1. General.

The Board states that the purpose for the proposed rulemaking is to make its regulations consistent with the Liquor Code (“Code”) as it is currently written. In addition to wine and alcoholic ciders, Section 505.2 (a)(1),(2) of the Code authorizes limited wineries licensees to produce and sell wine coolers. 47 P.S. §5-505.2(a)(1), (a)(2). We note, however, that the Board’s amendments do not address the production or sale of wine coolers. (See §§ 3.62, 3.63, 5.103, and 11.111.) It is our understanding that the Board has excluded wine coolers from its regulations because the term “wine cooler” is not defined in the Code. We recommend the Board define the term and include it in the final rulemaking or explain how the exclusion conforms to the Board’s intent to make its regulations consistent with the Code.

2. Section 11.111. Sale by limited winery licensees. Statutory authority; Whether the regulation is consistent with statute; Public interest; Clarity.

Proposed Paragraph (a)(3) states the following:

A limited winery may sell wine and alcoholic ciders from 7 a.m. until 2 a.m. of the following morning, Mondays through Saturdays, and from 9 a.m. until 2 a.m. of the following morning on Sundays.

The Board’s response to Regulatory Analysis Form (RAF) question #10 indicates that the proposed rulemaking updates the current regulations to reflect the current hours of operation for limited wineries. The Board cites Section 505.2(a)(6.3) of the Code as the authorizing statutory provision for the proposed amendment.

Section 505.2(a)(6.3) states that holders of a limited winery license may:

[s]ell alcoholic cider, wine and wine coolers **only between the hours of nine o'clock antemeridian and eleven o'clock postmeridian**. A limited winery also **may request approval** from the board to extend sales hours in individual locations at other times during the year or beyond the limits set forth in this clause. This request shall be made **in writing** . . . and shall detail the exact locations where sales hours are proposed to be extended, the proposed hours and dates of extended operations and the reason for the proposed extended hours. [Emphasis added.]

47 P.S. § 5-502.2(a)(6.3). Since the sales hours may be extended only by considering a detailed request from a limited winery, we believe the Board's proposal to provide for the expansion of the sales hours for all limited wineries is not authorized by the Code. We recommend the Board delete proposed Paragraph (a)(3) and retain existing Paragraph (a)(4), or explain how the proposed revision to sales hours is consistent with the Code.

Proposed Subparagraph (a)(4)(i)

The Preamble and the Board's response to RAF question #10 states the payment method for wine and alcoholic ciders is being updated to be consistent with the language in the Code and the Board's regulations. However, the Board does not include the statutory authority for the proposed change. We request the Board clarify its statutory authority for this provision.

Proposed Paragraph (a)(5)

The Board proposes that visitors at the winery or at one of the additional Board-approved locations may be provided, with or without charge, samples of wine or alcoholic cider, or both, produced by the limited winery. The proposed language also provides for sampling of wine and alcoholic ciders at locations licensed under a farmer's market permit or under the special permit issued for alcoholic cider, wine and food expositions.

In RAF question #10 and in the Preamble, the Board states that the regulation is being amended to reflect changes in the Code. However, there does not appear to be a specific statutory change to support this amendment to the regulation. The Board should clarify the rationale for including sampling at limited wineries and other licensed locations under special permit.

Existing Subparagraphs (a)(8)(i)(A,C) and (a)(8)(ii)

The Board proposes to delete Pennsylvania-grown fruits, jellies, jams, preserves and mushrooms from the list of items that a limited winery may offer for sale at the winery. We ask the Board to explain how removing Pennsylvania-grown commodities from the list of products that may be offered for sale at limited wineries is in the public interest.

Proposed Paragraph (a)(9)

The Board should provide the statutory authority for accepting Internet orders of wine and alcoholic ciders.

3. Miscellaneous Clarifications:

- The proposed rulemaking uses the following terms: sample, alcoholic cider, wine and food expositions, farmer’s market, and agricultural commodity. To improve clarity, we recommend the Board define these terms in the final-form regulation.
- The Board should revise its response to RAF question #8 to include specific statutory citations for all of the proposed changes.
- The Preamble and Board’s response to RAF question #10 should be revised to refer to Section 505.2(a)(6.1) of the Code which allows for on or off premises consumption of wine and alcoholic cider, not Section 505.2(a)(6.2) which authorizes licensees to sell wine or liquor-scented candles acquired or produced by the limited winery.
- The Board’s response to RAF questions #26 and #27 are identical. The Board should revise its response to RAF question #27.
- In proposed Section 11.111 (a)(5) we recommend the Board insert the word “limited” after “the” and before “winery.”