

RULES AND REGULATIONS

Title 40—LIQUOR

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 13]

Marketing by Vendors and Agents; Special Orders; Luxury Item Orders; Samples and Unlawful Acts

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

Purpose

In accordance with Executive Order 1996-1, the Board has reviewed its regulations and determined that these revisions to 40 Pa. Code are necessary to obtain certain products that are in short supply and high demand. Obtaining these products is consistent with the statutory mandate of section 207 of the Liquor Code that authorizes the Board to "... buy liquor and alcohol at the lowest price and in the greatest variety reasonably obtainable." (47 P. S. § 2-207(a)). These products are often rare wines or spirits with limited production, for which the demand, world-wide, is great.

The Liquor Code references only two categories of liquor that the Board may sell: stock items (47 P. S. § 2-207(a)), consisting of those items sold by means of the Board's wine and spirits stores, and special order items, otherwise known as Special Liquor Orders (SLO), which consist of those items not currently available from the Board's wine and spirits stores (47 P. S. § 3-305(a)). The Board's regulations currently prohibit liquor vendors from processing orders for stock items which the Board carries. See 40 Pa. Code §§ 13.73(b) and 13.76(a) (relating to privileges of vendor's agents; and special order listings).

There is an ever-growing demand for fine wines and spirits which happen to be in limited quantity. Although wine historically has been the product category most characterized by rarity and high prices, there is also a growing market niche for super-premium spirits. Looking forward, the Board has reason to believe that the trend toward rarity and specialty products will continue, both for wine and spirits products. Section 301 of the Liquor Code (47 P. S. § 3-301) makes the Board the sole retailer of wine and spirits. As drafted, these regulations will permit the Board to procure the rare high-quality wine and spirits in furtherance of its statutory mandates.

As the regulations currently stand, if a liquor vendor believes that a rare product has a niche market within this Commonwealth, such as, within certain high-end restaurants or specific cultural or cuisine venues, a vendor may be unwilling to share the products with the Board, by means of the Board's wine and spirits stores, since allowing its product to be sold as a stock item would preclude the vendor from processing orders by means of SLO on behalf of members of the niche market, such as, private individuals or fine-dining restaurant licensees. In making the regulatory change, thereby permitting vendors of the "luxury items" to process orders both from the Board and from licensees or other persons, the Board will be in a better position to acquire the products in furtherance of its statutory mandate. The ability to acquire the products will benefit both individual consumers and licensees of the Board, who will have greater accessibility to the products, at the best possible prices.

Summary of Amendments

The regulatory amendments create a subcategory of stock merchandise, known as "luxury items." These are varieties of wine and spirits that are in short supply or high demand, as may be determined by the Board. Vendors will be allowed to process orders for "luxury items" both from the Board as well as from Board licensees and other persons, similar to current procedures for SLOs.

Affected Parties

The regulatory change will allow vendors to process orders for "luxury items" both from the Board as well as from Board licensees and other persons. Failing to allow vendors to process orders for "luxury items" both from the Board and Board licensees and other persons is expected to result in limiting the Board's access to the rare fine wines and spirits, thereby reducing the availability to the Pennsylvania public at large by means of the Board's wine and spirits stores.

Paperwork Requirements

The regulatory amendments will not significantly increase paperwork for the Board or the regulated community.

Fiscal Impact

Because the market forces of supply and demand and the popularity and availability of certain vintages of fine wine or rare spirits will affect the Board's identification of an item as a "luxury item," fiscal impact is virtually impossible to estimate. In the 2007 Fiscal Year, the Board's revenue from sales of SLO items, which are similar in nature to "luxury items," was approximately \$70,000,000. Over 90% of these sales are to licensees, such as hotels and restaurants.

Effective Date

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

Public Comment/Contact Person

Comments or questions should be addressed to James F. Maher, Assistant Counsel, Office of Chief Counsel, 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 August 7, 2008, the Board submitted a copy of the notice of proposed rulemaking, published at 38 Pa.B. 4629 (August 23, 2008), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Liquor Control Committee and Senate Law and Justice Committee (Committees) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, the Board has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act, on December 17, 2008, these final-form regulations were deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 18, 2008, and approved the final-form regulations.

Findings

The Commission 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) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(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 13, are amended by amending §§ 13.73, 13.86 and 13.87; and by deleting § 13.77 to read as set forth at 38 Pa.B. 4629; and by amending §§ 13.71, 13.78 and 13.79 to read as set forth in Annex A.

(b) The Executive Director of the Board shall certify this order, 38 Pa.B. 4629 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*.

PATRICK J. STAPLETON, III,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 104 (January 3, 2009).)

Fiscal Note: Fiscal Note 54-65 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 13. PROMOTION

Subchapter B. MARKETING BY VENDORS AND AGENTS; SPECIAL ORDERS; LUXURY ITEM ORDERS; SAMPLES AND UNLAWFUL ACTS

§ 13.71. Definitions.

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

Agent—An individual employed by a licensed vendor, to promote the sale of liquor through State Liquor Stores. A person who is a licensee or the holder of a Malt or Brewed Beverage License, or an officer, director, agent or employee of either a licensee or such a licensee, or who is not at least 21 years of age, and of good character, is not eligible to be an agent of a vendor under this subchapter.

Licensed vendor—A licensee holding a Manufacturer or Importer License, or a vendor's permit, and selling liquors to the Board.

Licensee—A natural person, partnership, association or corporation holding a Hotel, Restaurant, Club or Public Service Liquor License issued by the Board.

Luxury items—Stock merchandise which, based upon their short supply or high demand, have been designated as such by the Board. Sales of luxury items may be initiated at a State Liquor Store or by a vendor or its agent on behalf of a licensee or other person.

Miniature—A container containing less than 6 ounces of a liquor, as prepared for the market.

Other persons—Nonlicensee individuals, such as private citizens.

Special order listing—The formal filing with the Board, on its prescribed form, of information the Board requires as to brand, age, proof, type, blend, cost, and the like, of liquors to be sold through the Special Liquor Order Division. The listing does not become effective until approved by the Board or its authorized representative.

Stock merchandise—Liquors which are obtainable at a State Liquor Store, without placing a special liquor order.

Vendor's permit—A permit issued to a nonresident vendor under section 208(j) of the Liquor Code (47 P. S. § 2-208(j)). An application for the permit shall be filed with the Board accompanied by proper fees in accordance with section 614-A of The Administrative Code of 1929 (71 P. S. § 240.14A). A permit will be issued for the calendar year only.

§ 13.78. Special and luxury item orders: requirements and conditions.

(a) Orders obtained in accordance with this subchapter and presented by licensed vendors or their agents to State Liquor Stores for licensees shall be filled at the established wholesale case prices prescribed by the Board for sales to licensees. The wholesale prices apply only when the retail value of the order equals or exceeds the minimum retail value established by the Board.

(b) Orders presented at State Liquor Stores by agents on behalf of persons other than licensees, such as individuals, or orders presented by individual customers themselves, shall be at the established retail special liquor order or luxury item prices. No order may be taken for less than two bottles.

(c) A licensed vendor or the vendor's agents may not obtain an order from either a licensee or other person unless there is obtained at the same time a sum not less than the amount required by the Board for deposit on special order sales under the Liquor Code. State Liquor Stores may, at the time of receiving the order or releasing the liquor to the purchaser, accept the checks of licensees in payment.

(d) A licensed vendor or the vendor's agent may not extend credit to a licensee or any other person.

§ 13.79. Special orders and luxury item orders: restrictions.

(a) Licensed vendors and their agents shall place special orders for liquor at State Liquor Stores.

(b) Except by special permission of the Board, special order merchandise may not be delivered to a State Liquor Store until the licensed vendor has received from the Board a formal purchase order calling for the delivery of the liquor. Each case of liquor so delivered shall have clearly marked thereon, in addition to the information required by Federal or State regulations, the purchase order number, the store order number, the brand and size, the code number as called for in the purchase order, and other information the Board may prescribe.

(c) Liquor sold to licensees will be released only at the State Liquor Store, to the licensee or the licensee's agent as named on the Wholesale Purchase Permit Card of the licensee.

(d) Special orders placed by a licensed vendor or the vendor's agent for a retail customer may be released by the State Liquor Store.

(e) Licensed vendors and their agents shall place luxury item orders for liquor at State Liquor Stores.

(f) Except by special permission of the Board, luxury item order merchandise may not be delivered to a State Liquor Store until the licensed vendor has received from the Board a formal purchase order calling for the delivery of the liquor. Each case of liquor so delivered shall have clearly marked thereon, in addition to the information required by Federal or State regulations, the purchase order number, the store order number, the brand and size, the code number as called for in the purchase order, and other information the Board may prescribe.

(g) Liquor sold to licensees will be released only at the State Liquor Store, to the licensee or the licensee's agent as named on the Wholesale Purchase Permit Card of the licensee.

(h) Luxury item orders placed by a retail customer, a licensed vendor or the vendor's agent for a retail customer, may be released by the State Liquor Store.

[Pa.B. Doc. No. 09-196. Filed for public inspection February 6, 2009, 9:00 a.m.]