

Regulatory Analysis Form		This space for use by IRRC
(1) Agency Pennsylvania Liquor Control Board		IRRC Number: 2411
(2) I.D. Number (Governor's Office Use) 054-59		
(3) Short Title Numerous Revisions		
(4) PA Code Cite 40 Pa. Code	(5) Agency Contacts & Telephone Numbers Primary Contact: James Maher (717) 783-9454 Secondary Contact: Faith Diehl (717) 783-9454	
(6) Type of Rulemaking (check one) Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? No <input checked="" type="checkbox"/> Yes: By the Attorney General Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. The regulatory amendments and additions codify numerous agency practices and procedures and further explain various legislative changes to the Liquor Code. <ul style="list-style-type: none"> • The proposed rulemaking defines what may be considered when evaluating a person's reputation. • It explains seating requirements for licensed retail establishments. • It explains the issuance of a certificate of approval, a letter of authority and who must execute a certificate of completion for licensing and the consequences for failing to do so. • It states the record-keeping requirements for alternate brewers' licenses. • It explains brewery pubs' privileges and requirements. • It states requirements for issuing economic development licenses. • It sets forth who may be employed by licensees and who may be appointed as manager in accordance with the Liquor Code. • It defines sweepstakes and who may sponsor sweepstakes promotions. • It eliminates the prohibition of a stage on the licensed premises where entertainment could be seen outside the premises. • It fully explains how municipalities may petition the Board for exemption from the Board's Regulations on noise. • It eliminates the prohibition on selling or furnishing lunch below cost to any consumer. • It explains how clubs and catering clubs may exchange licenses. • It explains that a licensee may request a hearing when the licensee cannot comply with a prior approval for reasons beyond the licensee's control. If the licensee proves its case, it may then be able to transfer to a new location. • It explains how to convert a suspension to a fine. • It sets forth the requirements for a temporary extension of license. • It brings the maximum period for safekeeping of retail licenses, except clubs, to three years as per the Liquor Code. • It fully explains sheriff's sales of liquor licenses. 		

Regulatory Analysis Form

- It defines procedures for intermunicipal transfers of retail licenses.
- It regulates Internet wine sales.
- It replaces vehicle identification emblems with cards for vehicles hauling alcoholic beverages.
- It increases the number of authorized agents that can purchase liquor on behalf of licensees from two to four.
- It eliminates the prohibition on cooperative advertising.
- It eliminates the requirement of Board approval for point-of-sale and advertising novelties.
- It explains advertising by manufacturers on distributor trucks.
- It clarifies limits on bar spending/free drinks
- It defines discount pricing practices.
- It sets forth procedures for tasting events on licensed premises and in state-run liquor stores.
- It sets forth conditions on providing free samples.

(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)].

(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 lack of an explanation as to what may be considered under the term "reputation" is noted in the unreported Commonwealth Court decision, Street Road Bar & Grille, Inc. v. Pennsylvania Liquor Control Board. (§ 1.5).
- The seating regulation (§ 3.1) clarifies an essential element of the definition of "restaurant" and "eating place" in 47 P.S. § 1-102.
- Alternating brewers (§ 3.91) licenses were authorized by 47 P.S. § 4-431.1.
- Brewery pub regulations (§ 3.92) are required by 47 P.S. § 4-446(2).
- Economic development licensing procedures (§ 3.101 – 3.108) implement 47 P.S. § 4-461(b.1).
- Changes to 47 P.S. § 4-493(14) required a change to § 5.21 (prohibited employment).
- Eliminating the elevated stage regulation (§ 5.32(a)) reflects current practices.
- 47 P.S. § 4-493.1 lets municipalities enforce their own noise ordinance; this regulation (§ 5.36) implements the Liquor Code.
- Prohibition of below cost lunches (§ 5.61) became obsolete with repeal of 47 P.S. § 4-493(9).
- Section 5.86 (exchange of club/catering club licenses) effectuates the intent of 47 P.S. §§ 4-401 and 4-472.3.
- Converting a suspension to a fine (§ 7.11 and § 15.62(d)) is authorized by 47 P.S. § 4-468(a)(4).
- Procedures for allowing 'temporary' secondary service areas under 47 P.S. § 4-406.1 are codified (§ 7.25).
- A three-year maximum for safekeeping of licenses (§ 7.31) is required by 47 P.S. § 4-474.1(b).
- Section 7.33 clarifies procedures to protect the "property interest" in liquor licenses conferred by 47 P.S. § 4-468
- The county quota law (47 P.S. § 4-461) permits intermunicipal license transfers and § 7.61 – 7.65 explains how to do it.
- Internet wine sales and shipment, allowed by 47 P.S. § 4-488, are structured by § 9.131 – 9.145.
- Required identification of vehicles licensed to transport alcohol (47 P.S. § 4-492(8), (9)) is simplified (§ 9.22 – 9.29).
- Procedures for licensees to authorize agents to purchase at wholesale (47 P.S. § 3-305(b)) are simplified (§ 11.7).
- Allowed point-of-sale advertising (47 P.S. § 4-493(20)) and advertising novelty giveaways (47 P.S. § 4-493(24)) are explained (§ 13.42 – 13.43; 13.52).
- The current practice of exempting manufacturers from the prohibition of "giving things of value" (47 P.S. § 4-493(24)) when they pay distributors to paint beer logos on their delivery trucks is codified (§ 13.51(d)).
- Allowed exemptions from the Liquor Code's prohibited "inducements" (47 P.S. § 4-493(24)) are clarified for bar spending/free drinks (§ 13.53) and happy hour/daily specials (§ 13.102).
- Allowance of tasting events in distributor licensed premises (47 P.S. § 4-441(b)) and elsewhere is explained (§ 13.202).
- Regulation of tasting events in Wine & Spirits Stores, required by 47 P.S. § 3-305(d), is accomplished (§ 13.203 – 13.211).

Regulatory Analysis Form

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

- Setting forth what evidence may be considered when evaluating “reputation” addresses the issue raised in Street Road Bar & Grille, Inc. v. Pennsylvania Liquor Control Board.
- The provision regarding certificates of completion avoids deadlocks in transfer proceedings.
- Manager appointment provisions (§ 5.23) allow for ‘vacation’ appointments without Board approval, and gives notice of when appointment of a new manager is needed.
- Permissible sweepstakes promotions (§ 5.30) obtain a clear definition, benefiting the regulated community.
- Existing practices about impossibility of completing prior-approved transfers are codified by § 7.3(c) and (d).
- The limitation of cooperative advertising has become obsolete (§ 13.14 and 13.24)
- Standards for ‘sample sizes’ are established (§ 13.212), simplifying the product development process.

(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. However, licensees and their staffs who have a better awareness of what is permitted will improve the overall operation of licensed premises, therefore helping to protect the welfare, health, peace and morals of the communities in which they operate. This effectuates one of the purposes of the Liquor Code.

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

Primary beneficiaries are licensees and their staffs operating across the Commonwealth. The public as a whole benefits from licensed establishments run in conformance with the Liquor Code and the Board’s regulations.

(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.)

There are no adverse effects as a result of this regulation.

(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.)

Compliance will be required mostly of liquor and beer manufacturers and the Board’s licensees. As some of these regulations will affect persons outside Pennsylvania, the number of people having to comply cannot accurately be estimated.

(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.

During the development of these regulations, input was received from the federal Department of the Treasury, Alcohol and Tobacco Taxation and Trade Bureau (“TTB”), the Pennsylvania Beer Wholesalers Association, the Malt Beverage Distributors Association and the Pennsylvania State Police, Bureau of Liquor Control Enforcement.

(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.

Because the proposed regulations primarily codify and organize existing practices, or obligations already imposed by the Liquor Code, the regulated community is not expected to incur new costs or realize new savings.

Regulatory Analysis Form

(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.

Because the proposed regulations primarily codify and organize existing practices, or obligations already imposed by the Liquor Code, local governments are not expected to incur new costs or realize new savings.

(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.

Because the proposed regulations primarily codify and organize existing practices, or obligations already imposed by the Liquor Code, state government is not expected to incur new costs or realize new savings.

(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.

Not Applicable

	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.

Not applicable.

Regulatory Analysis Form

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

Not Applicable.

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.

Not applicable.

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

No nonregulatory alternatives were considered

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

No alternative regulatory schemes were considered.

(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.

None of the provisions contained in these regulations 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?

The Pennsylvania system of liquor regulation is unique, so meaningful comparison to other states is not possible. These regulatory changes will not place Pennsylvania at a competitive disadvantage with other states.

Regulatory Analysis Form

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

These modifications will affect only the Board's existing regulations, and because the proposed regulations primarily codify and organize existing practices, or obligations already imposed by the Liquor Code, impact on the Board's operation will only be benefited by making information more readily accessible to the regulated community.

(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.

(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.

All changes to reporting, record keeping and other paperwork are to simplify or clarify procedures, or eliminate them altogether, as in eliminating the need to get prior Board approval for point-of-sale advertising (§ 13.42 – 13.43).

(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 have been developed to meet the needs of minorities, the elderly, small businesses and farmers.

(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 its publication, in final form, in the Pennsylvania Bulletin.

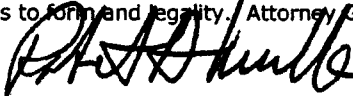
(31) Provide the schedule for continual review of the regulation.

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

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

DO NOT WRITE IN THIS SPACE

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


BY _____
(DEPUTY ATTORNEY GENERAL)

JUN 09 2004
DATE OF APPROVAL

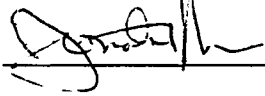
Check if applicable
Copy not approved. Objections
attached.

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- 59

DATE OF ADOPTION: _____

BY: 

TITLE: Chairman
(Executive Officer, Chairman or
Secretary)

#2411

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

BY: 

DATE OF APPROVAL
5/20/04
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
(Chief Counsel, Independent
Agency)
(Strike inapplicable title)

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

TITLE 40—LIQUOR

CHAPTER 1. GENERAL PROVISIONS

The following Subchapters and sections (underlined) were added:

§1.5. Reputation: Use of criminal and citation history

CHAPTER 3. LICENSE APPLICATIONS
SUBCHAPTER A. GENERAL PROVISIONS

§3.1. Definitions

§3.8. Certificate of completion; Certificate of approval; Letter of authority

§3.13. Retail liquor and retail malt and brewed beverage licenses, importing distributor and distributor licenses

The following Subchapters and sections (underlined) were added:

SUBCHAPTER J. MALT OR BREWED BEVERAGE MANUFACTURERS

§3.91. Alternate brewers' license

§3.92. Brewery pubs

Subchapter K. Economic Development Licenses

§3.101. Economic development Licenses

§3.102. Approval for economic development license

§3.103. Filing criteria for provisional economic development license

(continued on page 2)

- §3.104. Municipal standing before the Board
- §3.105. Quarterly filing of applications and application hearings
- §3.106. Criteria for issuance of a permanent economic development license
- §3.107 Failure to meet the minimum requirement
- §3.108. Subsequent transfers

Chapter 5. Duties And Rights Of Licensee
Subchapter B. Employees of Licensees

Employment Of Others

- §5.21 [Employment of criminals] Prohibited employment
- §5.23. Appointment of managers
- §5.30. Definitions
- §5.32. Restrictions/exceptions

Subchapter C. Amusement And Entertainment

The following section was added:

- §5.36. Municipal noise ordinances

SUBCHAPTER E. [Lunch] Reserved

- §5.61. [Food items permitted] Reserved

Subchapter F. Clubs
Other Requirements

The following section was added:

- §5.86. Permitted exchange of club and catering club licenses

CHAPTER 7. TRANSFER, EXTENSION, SURRENDER, ECHANGE OF LICENSES

SUBCHAPTER A. TRANSFER OF LICENSES

§7.3. Transfers of location

The following section was added:

- §7.11. Conversion of suspension to fine

SUBCHAPTER B. EXTENSION OF LICENSES

The following section was added:

- §7.25. Temporary extension of licensed premises

SUBCHAPTER C. SURRENDER OF LICENSES

§7.31. Surrender of licenses in certain cases

The following section was added:

- §7.33 Sheriff's sale of a liquor license

The following Subchapter and sections (underlined) were added:

SUBCHAPTER F. INTERMUNICIPAL TRANSFER OF RETAIL LICENSES

§.7.61. Criteria for intermunicipal transfer of retail licenses

§7.62. Refusal of an intermunicipal transfer by receiving municipality

§7.63. Municipal standing before the Board

§7.64. Appeal of Board decision

§7.65 Subsequent transfers

(continued on page 3)

CHAPTER 9. TRANSPORTATION, IMPORTATION, DISPOSITION AND STORAGE
SUBCHAPTER A. TRANSPORTATION OF LIQUOR, MALT OR BREWED BEVERAGES OR ALCOHOL

VEHICLES

- §9.22. Identification of vehicles
- §9.23. Vehicle identification [emblems] cards
- §9.24. Application for vehicle identification [emblem] card
- §9.26. Issuance and replacement of [emblems] cards
- §9.28. Use of vehicles
- §9.29. Expiration and termination

The following Subchapter and sections (underlined) were added:

SUBCHAPTER H. IMPORTATION OF WINE PURCHASED VIA THE INTERNET

§9.131. Scope

§9.132. Definitions

§9.141. Requirements for licensure as a direct shipper

§9.142. Records to be maintained

§9.143. Sales of wine

§9.144. Products shipped

§9.145. Direct shipper's website

CHAPTER 11. PURCHASES AND SALES

SUBCHAPTER A. GENERAL PROVISIONS

RETAIL AND WHOLESALE PURCHASE-GENERAL

- §11.7. Authorized agents of cardholder
- §11.33. Purchase of alcohol by AN and AE permittees

CHAPTER 13. PROMOTION

SUBCHAPTER A. ADVERTISING

GENERAL PROVISIONS

§13.14. [Cooperative advertising] Reserved.

§13.24. [Cooperative advertising] Reserved.

ADVERTISING OF BRAND NAMES

§13.42. Window and doorway display

§13.43. Interior display

GIVING AND ACCEPTING THINGS OF VALUE

§13.51. General prohibition

§13.52. Advertising novelties

The following section was added:

§13.53. Bar spending/free drinks

§13.102. Discount pricing practices

(continued on page 4)

The following Subchapters and sections (underlined) were added:

SUBCHAPTER D. TASTING EVENTS

GENERAL PROVISIONS

§13.201. Definitions

Tasting Events

§13.202 Tasting events

IN-STORE TASTING EVENTS

§13.203. General requirements

§13.204 Prior approval

§13.205. Procurement of wine and/or spirits

§13.206. Duration of in-store tasting events

§13.207. Tastings per consumer

§13.208. Food, supplies and equipment

§13.209. Participation by Board employees

§13.210 Disposal of unused liquor and empty containers

§13.211. Advertising

-

SUBCHAPTER E. SAMPLES

§13.212 General provisions

-

**CHAPTER 15. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEEDURE REGARDING
MATTERS BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGE**

SUBCHAPTER E PENALTIES

§15.62. Suspensions and revocations

-

Title 40 -- Liquor

The Pennsylvania Liquor Control Board (Board), under the authority of Section 207(i) of the Pennsylvania Liquor Code [47 P.S. §2-207(i)], proposes to amend 40 Pa. Code, Chapter 3, §§3.1, 3.8, 3.13, Chapter 5, §§5.21, 5.23, 5.30, 5.32, 5.61, Chapter 7, §§7.3, 7.31, Chapter 9, §§9.22, 9.23, 9.24, 9.26, 9.28, 9.29, Chapter 11, §§11.7, 11.33, Chapter 13, §§13.14, 13.24, 13.42, 13.43, 13.51, 13.52, 13.102 and Chapter 15 § 15.62.

The Board proposes to add §1.5 to Chapter 1, §§3.91, 3.92, 3.101- 3.107 to Chapter 3, §§5.36, 5.86 to Chapter 5, §§7.11, 7.25, 7.33, 7.61-7.65 to Chapter 7, §§9.131, 9.132, 9.141- 9.145 to Chapter 9 and §§ 13.53, 13.201- 13.212 of Chapter 13.

Purpose:

In accordance with Executive Order 1996-1, the Board has reviewed its regulations and determined that these revisions to Title 40 Pa. Code are necessary in order to codify its practices and procedures with regard to various legislative changes to the Liquor Code.

Summary of Amendments:

The regulatory amendments and additions codify numerous agency practices and procedures and further explain various legislative changes to the Liquor Code. The following are summaries of the proposed regulatory changes:

- The proposed rulemaking defines what may be considered when evaluating a person's reputation.
- It explains seating requirements for licensed retail establishments.
- It explains the issuance of a certificate of approval, a letter of authority and who must execute a certificate of completion for licensing and the consequences for failing to do so.
- It states the record-keeping requirements for alternate brewers' licenses and explains brewery pubs' privileges and requirements.
- It states requirements for issuing economic development licenses.
- The regulation sets forth whom licensees may employ and who may be appointed as manager in accordance with the Liquor Code.
- The proposed rulemaking defines sweepstakes and who may sponsor sweepstakes promotions.
- It eliminates the prohibition of a stage on the licensed premises where entertainment could be seen outside the premises.
- It fully explains how municipalities may petition the Board for exemption from the Board's Regulations on noise.
- It eliminates the prohibition on selling or furnishing lunch below cost.
- It explains how clubs and catering clubs may exchange their licenses.
- It explains that a licensee may request a hearing when the licensee cannot comply with a prior approval for reasons beyond the licensee's control.

- It explains how to convert a suspension to a fine.
- It sets forth the requirements for a temporary extension of license.
- It sets the maximum period for safekeeping of retail licenses, except clubs, to three years as per the Liquor Code.
- It fully explains sheriff's sales of liquor licenses.
- It defines procedures for intermunicipal transfers of retail licenses.
- It regulates Internet wine sales.
- It replaces vehicle identification emblems with cards for vehicles hauling alcoholic beverages.
- It increases the number of authorized agents who may purchase liquor on behalf of licensees from two to four.
- It eliminates prohibitions on cooperative advertising and the requirement for prior Board approval for point-of-sale and advertising novelties.
- It explains advertising by manufacturers on distributor trucks.
- It clarifies limits on bar spending/free drinks.
- It defines discount-pricing practices.
- It regulates tasting events on licensed premises and in Wine and Spirits Stores.
- It sets forth conditions on providing free samples.

Affected Parties:

The proposed regulations will affect Internet wine purchasers and sellers, retail and wholesale licensees and applicants for licenses issued by the Board.

Paperwork Requirements:

The proposed regulatory amendments will not significantly increase paperwork for the agency or the regulated community. In several cases, existing paperwork will be eliminated.

Fiscal Impact:

Because the proposed regulations primarily codify and organize existing practices, or obligations under the Liquor Code, they will not have a fiscal impact on the licensees of the Board or applicants for licenses, the Commonwealth or its subdivisions.

Effective Date:

This regulation will become effective upon its publication in final form in the *Pennsylvania Bulletin*.

Public Comment/Contact Person:

Written comments, suggestions or objections will be accepted for 30 days after publication of the proposed regulation in the *Pennsylvania Bulletin*. Comments should

be addressed to James Maher, Office of Chief Counsel, Pennsylvania 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 _____, 2004, the agency 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 of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, 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. The Act specifies detailed procedures for review, prior to final publication of the regulation, by the agency, the General Assembly and the Governor of comments, recommendations or objections raised.

Jonathan H. Newman
Chairperson

ANNEX A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 1. GENERAL PROVISIONS

§ 1.5. Reputation: Use of criminal and citation history.

When considering whether a person is reputable or the repute of a person under any section of the Liquor Code or this Title, the Board may consider whether that person has been convicted of any crimes including misdemeanors and felonies, the person's history regarding licenses issued by the Board, including the citation history of the licenses, and any other factor the Board deems appropriate.

CHAPTER 3. LICENSE APPLICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

§ 3.1. Definitions.

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

Authorized agent--An individual whose signature appears on the reverse side of a Wholesale Liquor Purchase Permit Card, provided the individual is regularly employed in the business or establishment of a permit holder.

Bar/Counter—A smooth flat surface affixed to the premises on which drinks and food are served.

Bench—A long seat for more than one person.

Booth—A table usually surrounded by one or two benches, serving as partitions.

Chair—A single seat with back, often with arms, and supported on legs or a pedestal.

Eating space—A space no less than 18 inches wide by 12 inches deep, which is suitable for a service setting of plate, utensils and drink.

Permit holder--A retail liquor licensee, registered pharmacist, hospital, State-owned institution, manufacturing pharmacist or chemist, manufacturer of products for nonbeverage purposes, or other person to whom a Wholesale Liquor Purchase Permit has been issued by the Board.

Retail liquor licensee--A person, partnership, association or corporation holding a hotel, restaurant, club or public service liquor license or other license issued under the Liquor Code for the sale of liquor and malt or brewed beverages at retail.

Seating--The number of patrons able to be served meals in a restaurant or eating place retail dispenser premises where a stool, chair, booth or bench is provided to sit on, and where an eating space is provided.

Stool--A backless and armless single seat supported on legs or a pedestal.

Table--A piece of furniture having a smooth flat top supported by one or more vertical legs.

§ 3.8. Certificate of completion; Certificate of approval; Letter of authority;

(a) Upon Board approval of an application for new license, transfer of a license or extension of premises, the Board shall issue a certificate of approval to the applicant. The Board shall also issue a letter of authority which shall authorize the applicant to operate the licensed premises for no more than thirty (30) days. If the application is for an extension of premises, the letter of authority shall be effective immediately. If the application is for a new license, the letter of authority shall be effective when the applicant acquires the right to occupy the premises. If the application is for the transfer of a license, the letter of authority shall be effective upon completion of the underlying financial transaction. Within [within] 15 days of completion of transactions necessary to complete the process, the applicant shall submit a [certification] certificate of completion to the Board, indicating that the financial arrangements were completed as reported or modified. The certification shall be on forms provided by the Board. If the application is a transfer application, then the certificate of completion must be signed by the transferor and the transferee. Failure to submit a properly executed certificate of completion may void the approval.

(b) If the [certification] certificate of completion discloses modified arrangements, the Board may request information or documentation, as it deems necessary.

If the certified modifications are such that the eligibility of the applicant or premises would not be affected, the Board will take no action against the applicant.

SUBCHAPTER B. NOTICE POSTING

§ 3.13. Retail liquor and retail malt and brewed beverage licenses, importing distributor and distributor licenses.

(a) An applicant for a retail liquor license, retail malt and brewed beverage license, importing distributor, distributor license or for the transfer or extension of premises of these licenses, whether person to person, place to place, or both, shall post notice.

(b) Except for nonprofit clubs, retail liquor licensees, retail malt and brewed beverage licensees, importing distributor and distributor licensees, reporting a change in officers, directors or stockholders, which would constitute a change in majority ownership or controlling interest, shall post notice of the change. Except for nonprofit clubs, if a corporate licensee is owned by two persons each of whom owns fifty per centum (50%) of the corporation, then any change in ownership shall require posting.

(c) The filing of an application for extension of premises shall be governed by Chapter 7, Subchapter B (relating to extension of licenses).

SUBCHAPTER J. MALT OR BREWED BEVERAGE MANUFACTURERS.

§ 3.91. Alternate brewers' license.

Records required to be maintained shall be the same as are required by a licensed manufacturer of malt or brewed beverages under Section 5.101 of these regulations.

§ 3.92. Brewery pubs.

(a) The board shall be authorized to issue a brewery pub license to the holder of a brewery license. A brewery pub license may only be issued in those municipalities in which the board may issue or transfer a malt and brewed beverage retail dispenser license.

(b) The holder of a brewery pub license shall have all the rights and be subject to the same conditions and qualifications as those imposed on holders of a malt and brewed beverage retail dispenser license except as set forth in this section.

(c) The brewery pub license shall be issued to premises immediately adjacent to but separate and distinct from the brewery premises.

(d) Sales of alcoholic beverages at the brewery pub premises shall be limited to sale of malt or brewed beverages produced at and owned by the adjacent brewery and sale of wine produced by the holder of a Pennsylvania limited winery license.

(e) A brewery pub license may not be issued to a brewery that has already acquired a restaurant, hotel or malt and brewed beverage retail dispenser license. If a brewery, which has a brewery pub license, applies for and acquires a restaurant, hotel or malt and brewed beverage retail dispenser license, then the brewery pub license shall be cancelled upon approval of the restaurant, hotel or malt and brewed beverage retail dispenser license.

(f) Any citations which may be issued pursuant to section 471 of the Liquor Code for activity relating to the brewery pub shall be issued against the brewery license.

SUBCHAPTER K. ECONOMIC DEVELOPMENT LICENSES

§ 3.101. Economic development licenses.

The Board may issue restaurant and eating place retail dispenser licenses without regard to county quota restrictions for the purpose of economic development in a municipality for premises situated within any of the following:

(1) A keystone opportunity zone ("KOZ") established under the authority of the act of October 6, 1998 (P.L. 705, No. 92), known as the "Keystone Opportunity Zone and Keystone Opportunity Expansion Zone Act;" (73 P.S. § 820.101, et seq.).

(2) An enterprise zone ("EZ"), as designated by the Department of Community and Economic Development; or,

(3) A municipality that has approved the issuance of a restaurant or eating place retail dispenser license for the purpose of local economic development.

§ 3.102. Approval for economic development license.

(a) An applicant must request written certification from the KOZ or EZ authority that the proposed licensed premises is situated in a zone or an area designated for economic development.

(b) An applicant must request approval from the municipality for a KOZ, EZ or local economic development license.

(1) The municipality will hold at least one public hearing on the applicant's request for an economic development license.

(2) The municipality shall, within 45 days of a request for approval, render a decision by ordinance or resolution to approve or disapprove the applicant's request for an economic development license.

(3) If the municipality finds that the issuance of the license would promote economic development, it may approve the request; however, it must refuse the request if it finds that the approval of the request would adversely affect the welfare, health, peace and morals of the municipality or its residents.

(4) If the receiving municipality denies the applicant's request for approval of an economic development license, the applicant may appeal the decision of the municipality to the court of common pleas in the county in which the proposed licensed premises is located.

§ 3.103. Filing criteria for provisional economic development license.

A license application may be filed with the Board for premises situated within either a KOZ, an EZ or a municipality that has approved the issuance of such a license for the purpose of local economic development; provided that the applicant submits the following with its application:

(1) The required initial application surcharge fee as determined by county class, the appropriate license fee and application-processing fee;

(2) Written certification from the KOZ or EZ authority or from the municipality that the proposed licensed premises is situated in a zone or an area designated for economic development; and,

(3) Municipal approval in the form of an ordinance or resolution, including the applicant's name and exact address, approving the issuance of an economic development license.

§3.104. Municipal standing before the Board.

(a) The receiving municipality may file a protest against the issuance of a license for economic development into its municipality and such municipality shall have standing in a hearing to present testimony in support of or against the issuance of a license.

(b) If the Board receives a protest from the receiving municipality, the Board may, in its discretion, refuse an application for an economic development license.

(c) A protest must be filed within 30 days of the filing of the application.

§ 3.105. Quarterly filing of applications and application hearings.

(a) Issuance of economic development licenses is limited to two licenses per calendar year in counties of the first through fourth class and one license per calendar year in counties of the fifth through eighth class. Quarterly filing periods are established for all counties as follows:

1st Quarter – January 1 through March 31

2nd Quarter – April 1 through June 30

3rd Quarter – July 1 through September 30

4th Quarter – October 1 through December 31

(b) At the end of the first quarter, every properly filed license application in a county will be subject to an administrative hearing before a Board Hearing Examiner. Second quarter applications will be held in abeyance until after hearings are held for first quarter applications and a determination is made by the Board as to the availability of a license within the county.

(c) If a vacancy continues to exist in a county after hearings are held and a determination has been made by the Board, properly filed applications for the next quarter will be scheduled for hearings.

(d) In addition to any objections to, or support of, an application for the issuance of a license, each applicant must establish at the administrative hearing, that it has exhausted reasonable means to find a suitable license within the existing county quota law.

(e) Upon approval of an application, the applicant will receive a provisional license for 120 days.

(f) In the event of an appeal from the Board's decision regarding the issuance or renewal of an economic development license, the appeal will act as a supersedeas and will preclude the processing of additional applications for vacancies in that county.

§ 3.106. Criteria for issuance of a permanent economic development license.

(a) After 90 days from the date of issuance of the provisional license, the licensee may file an application with the Board for a permanent license. The licensee must certify that for a period of 90 consecutive days since the granting of the provisional license, the licensee's sales of food and nonalcoholic beverages were equal to or greater than 70% of the combined gross sales of food and alcoholic beverages.

(b) Upon submission of certification, the Board shall issue a permanent economic development license.

(c) The economic development license will be governed by the license district in which it is situated for the purpose of validation and renewal. Validation and renewal applications will require submission of certification that during the license year immediately preceding its

application for renewal or validation, the licensee met or exceeded the 70% minimum requirement.

(d) An appeal of the Board's decision refusing to grant or renew a license will not act as a supersedeas if the decision is based, in whole or in part, on the licensee's failure to demonstrate that its food and nonalcoholic beverages were at least 70% of its combined gross sales of food and alcoholic beverages.

§ 3.107. Failure to meet the minimum requirement.

(a) Failure to meet the 70% minimum requirement as set forth herein, as submitted upon renewal or validation application will result in an investigation by the Bureau of Licensing. If the investigation discloses that the licensee failed to meet the 70% minimum requirement, the license will be cancelled.

(b) An appeal of the Board's decision refusing to grant or renew a license will not act as a supersedeas if the decision is based, in whole or in part, on the licensee's failure to demonstrate that its food and nonalcoholic beverages were at least 70% of its combined gross sales of food and alcoholic beverages.

§ 3.108. Subsequent Transfers.

Neither an economic development license nor a provisional license shall be transferable with regard to ownership or location.

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEE

SUBCHAPTER B. EMPLOYEES OF LICENSEES

EMPLOYMENT OF OTHERS

§ 5.21. [Employment of criminals] Prohibited employment.

A retail licensee may not employ in his licensed establishment a person who is precluded by section 493(14) of the Liquor Code (47 P. S. § 4-493(14)) from frequenting the establishment, except minors employed in accordance with §§ [5.11-5.15] 5.12-5.14.

§ 5.23. Appointment of managers.

(a) [A corporation holding one or more licenses shall appoint an individual as manager for each licensed establishment. An individual holding more than one license shall appoint a manager for each licensed establishment.] The operation of a licensed business requires a manager. A licensee shall appoint an individual as manager for each licensed establishment. The manager shall devote full time and attention to the licensed business.

(b) [Approval] Appointment and/or approval by the Board of a manager will not exempt the licensee from the penalties provided by law [and this part] and Board Regulations for violations committed in the licensed establishment or in the course of the operation of the licensed business.

* * * *

(e) [This section may not be construed to prohibit the designation as manager of a reputable employe by a licensee when the designation is not intended to relieve the licensee of his responsibility for giving his full attention to the operation of the licensed establishment. The purpose and intent of this subsection is to permit the licensee, without Board approval, to designate one of his employes as the person in charge of the business during short periods of time when the licensee is absent from the licensed premises.] The licensee, without Board approval, may designate one of its employes as the person in charge of the business for a period of time not to exceed 15 calendar days, when the manager is absent from the licensed premises.

(f) [The following governs licensees in the Armed Forces of the United States:

(1) Notwithstanding anything to the contrary in this part, individuals licensed to sell liquor or malt or brewed beverages in this Commonwealth who may, during an emergency in which a state of war is declared or imminent, enlist or be inducted into the Armed Forces of the United States or who may be required by the Federal government to enter a tour of duty with the Armed Forces; and who furnish to the Board documentary proof of the service, or evidence that the service is about to begin, may appoint a manager for their respective licensed establishments, subject to this section.

(2) Appointments of managers under this subsection shall be subject to approval by the Board and, when approved, shall be effective only during the period the licensee is required by the Federal government to be in the Armed Forces of the United States. Reenlistment in the Armed Forces, after the emergency has ended, will not be considered justification for the appointment of a manager.] The manager appointed by a licensee shall be a reputable person. The licensee shall submit an application for appointment of a manager to the Board. If there is a change of manager, the licensee shall give the Board written notice within 15 calendar days of the change together with full information for the new individual who is appointed as manager. Each notice of the appointment of a manager or notice of a change of manager shall be accompanied by a fee of \$60.00.

(g) When a background investigation is conducted to obtain or verify information regarding an individual appointed as manager, an additional fee of \$75.00 for a total fee of \$135.00 will be assessed. An individual may not act in the capacity of manager after the licensee has been notified that the Board has disapproved the individual. The designated manager shall devote full time to the licensed business and may not be employed or engaged in another business unless prior approval is obtained from the Board.

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

§ 5.30. Definitions.

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

Audio/video playback device—A device which emits a musical recording, or in the case of a video jukebox, emits a musical recording accompanied by recorded video images on a screen that does not exceed 24 inches by 30 inches.

Event/tournament/contest—A competitive endeavor involving skill, speed, strength or endurance. The term includes a competitive endeavor involving physical attributes of contestants.

Game—A device, such as a pinball, shuffleboard, bowling or video machine which provides the player with amusement and no other form of award excepting free plays.

Instrumental music—Music generated by instruments played by musicians without vocal accompaniment.

Sweepstakes -- A chance promotion in which tickets or game pieces are distributed; the winner or winners being selected in a random drawing. Permissible sweepstakes shall provide that:

(1) no purchase is necessary to enter;

(2) entrants must be 21 years of age or older;

(3) retail licensed premises may only be involved as pick-up or drop-off points for entry forms and not for the conducting of drawings or the awarding of prizes; and

(4) alcoholic beverages may not be part of the prize.

§ 5.32. Restrictions/exceptions.

* * * *

(b) [A licensee may not maintain on the licensed premises a platform or stage level with or elevated above the floor and used by musicians or entertainers, if the platform or stage or the entertainment produced thereon can be seen from outside the licensed premises.]

[(c)] A licensee may not permit an employe, servant, agent, event/tournament/contest participant or a person engaged directly or indirectly as an entertainer in the licensed establishment or a room or place connected therewith, to be in contact or associate with the patrons in the establishment, room or place for a lewd, immoral, improper or unlawful purpose. A copy of this restriction shall be constantly and conspicuously displayed on the wall of the dressing room used by the entertainers, as well as in a conspicuous location visible to employes, servants, agents and event/tournament/contest participants.

[(d)] (c) A licensee may not directly or indirectly employ a minor person under 18 years of age as an entertainer in the licensed establishment, or in a room or place connected therewith, nor may a licensee permit in the establishment, room or place, a minor person under 18 years of age to act as an entertainer.

[(e)] (d) A hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub or malt beverage eating place licensee may not hold or permit to be held, on the licensed premises an event, tournament or contest; nor advertise, offer, award or permit the award on the licensed premises of trophies, prizes or premiums, for any purpose except as follows:

(1) A hotel, restaurant, club or malt beverage eating place licensee may permit to be held within the licensed premises an event sanctioned by the State Athletic Commission under 5 Pa.C.S. Part I, Subparts A and B (relating to general provisions; and boxing) or under 5 Pa.C.S. Part I, Subpart C (relating to the Wrestling Act). Only malt or brewed beverages, as generally permitted by the class of license involved, may be sold, served or delivered on that portion of the licensed premises where the event is held, and not sooner than 1 hour before, and not later than 1 hour after the event. Service of malt or brewed beverages at these events will be conducted only with the prior written approval of the State Athletic Commission filed with the Board. Drinks shall be dispensed in that portion of the licensed premises where the event is conducted only in paper or plastic cups.

(2) A hotel, restaurant, club or malt beverage eating place licensee may hold or permit to be held within the licensed premises or in a bowling alley immediately adjacent thereto as provided in sections 406(a)(1) and 442(b) of the Liquor Code (47 P. S. §§ 4-406(a)(1) and 4-442(b)), a bowling tournament or bowling contest. Liquor and malt or brewed beverages, as generally permitted by the class of license involved, may be served, sold or delivered at the bowling tournament or bowling contest by the licensee.

(3) A hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub or malt beverage eating place licensee may permit the conduct of events on the licensed premises by groups constituting a league. Liquor and malt or

brewed beverages, as generally permitted by the class of license involved, may be sold, served or delivered at the events on the licensed premises.

(4) Hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub or malt beverage eating place licensees may permit the conduct of tournaments and contests on the licensed premises for the benefit of, and officially sponsored by, bona fide charitable organizations.

(i) A charitable organization for the purposes of this section is defined as one qualified, approved by and registered with the Department of State and operated under 49 Pa. Code Part I, Subpart B (relating to charitable organizations).

(ii) Charitable organization functions shall be operated in accordance with the Solicitation of Funds For Charitable Purposes Act (10 P. S. § § 162.1—162.24) and, if applicable, the Local Option Small Games of Chance Act (10 P. S. § § 311—327), and the Bingo Law (10 P. S. § § 301—308.1).

(5) Hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub and malt beverage eating place licensees may conduct self-sponsored tournaments, events or contests on their own licensed premises so long as the activities are in conformance with the applicable provisions of this subchapter.

[(f)] (e) For an activity conducted under this subchapter, the following apply:

(1) There may not be lewd, immoral or improper conduct by the licensee, its servants, agents, employes, patrons or event, contest or tournament participants.

(2) There may not be unlawful gambling directly or indirectly associated with an activity on the licensed premises. A licensee will be held strictly liable for unlawful gambling on the licensed premises.

(3) There may not be an event, contest or tournament which involves the consumption of alcoholic beverages by an event, tournament or contest participant.

(4) The price of a ticket or evidence of admission to an event, tournament or contest may not include a charge or assessment for alcoholic beverages or entitle the holder thereof to receive an alcoholic beverage anywhere on the licensed premises except for alcoholic beverages included in a meal package offering as provided for in Chapter 13 (relating to promotion).

(5) A licensee or sponsoring charity may advertise an event, tournament or contest.

(6) Hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub and malt beverage eating place licensees, as well as governing bodies of professional golf, skiing, tennis, bowling, pocket billiards and nonlicensee sponsors as provided in subsection (e) may award prizes to contestants or participants of events, tournaments or contests.

(7) The total value of all prizes for any given event, tournament or contest may not exceed \$500. The total value of all prizes awarded in any 7-day period may not exceed \$5,000.

(8) Golf, skiing, tennis, pocket billiards or bowling events, tournaments, contests and events sanctioned by the State Athletic Commission are exempted from the prize value restrictions in this section.

(9) Licensees shall maintain on the licensed premises for 2 years, from the date of the event, an itemized list of all prizes for each event, tournament, contest indicating each prize, its value and the name and address of the recipient.

[(g)] (f) The restrictions in this section apply not only to the licensee, but to partners, officers, directors, servants, agents and employes of a licensee.

(g) Municipalities may petition the Board for exemption from the Board's Regulations regarding the enforcement of section 5.32(a) for all licensees within an identifiable area in accordance with section 493.1(b) of the Liquor Code. (47 P.S. § 4-493.1(b)).

(h) A manufacturer, manufacturer's representative or licensee may sponsor sweepstakes promotions.

SUBCHAPTER C. AMUSEMENT AND ENTERTAINMENT

§ 5.36. Municipal noise ordinances.

(a) A municipality that desires exemption from the Board's Regulation regarding amplified music being heard off the licensed premises (40 Pa. Code § 5.32), must, pursuant to 47 P.S. § 4-493.1(b), file a petition with the Board, requesting approval. With its petition, the municipality will file:

(1) A copy of the municipality's noise ordinance currently in effect;

(2) The municipality's resolution

(i) Confirming the municipality's support of the petition to substitute the municipal noise ordinance for the Board's Regulation;

(ii) Citing the municipal noise ordinance and

(iii) Stating the municipality's intention to enforce the ordinance in place of the Board's Regulations.

(3) A complete written description of the boundary lines for the proposed exempted noise area;

(4) One copy of a geographical map, the minimum size of which will be 36" x 36", including the designated boundary lines of the proposed exempted noise area within the municipality;

(5) Three copies of the geographical map (above), the size of which will be 8½" x 11½";

(6) Identification of a proposed location, within the proposed exempted noise area, to be used by the Board to hold the required public hearing within the proposed exempted area; and

(7) Identification of a local print publication of general circulation that would satisfy the Sunshine Law "notice" requirement for announcement of the required public hearing.

(b) A date for a public hearing will be set and public notice given in advance of the hearing: The hearing must comply with all notice, recording and public participation requirements of 65 Pa. C. S. Ch. 7 (relating to open meetings).

(c) Within 60 days after receipt of the petition, the Board shall disapprove the petition for an exemption in its entirety or may approve an area more limited for which the petition will be granted if the Board finds that granting the petition will have an adverse effect on the welfare, health, peace and morals of the residents living in the vicinity of the identified area; otherwise the Board shall approve the petition.

(d) The Board may place additional conditions on the petition's approval such as limiting the duration of the approval and any other condition the Board deems appropriate.

(e) There shall be a right to appeal to the court of common pleas in the same manner provided by this act for appeals from refusals to grant licenses.

(f) A municipality may rescind any existing exemption from the Board's Regulations regarding amplified music by notifying the Board of its intention to do so in writing, 15 days prior to the rescission date. Such notice must be accompanied by an ordinance or resolution authorizing the rescission.

(g) A rescission of an existing exemption which does not rescind the entire exempted area shall be treated as a new petition for exemption with the Board and shall follow the procedures set forth above.

SUBCHAPTER E. [LUNCH] RESERVED

§ 5.61. [Food items permitted.] Reserved.

[Under section 493(9) of the Liquor Code (47 P. S. § 4-493(9)), the Board authorizes the giving, or selling at below fair retail cost, of food items for consumption on the premises, to consumers.

This section does not permit licensees to furnish, give or sell below a fair cost any lunch to any consumer.]

SUBCHAPTER F. CLUBS

OTHER REQUIREMENTS

§ 5.86. Permitted exchange of club and catering club licenses.

(a) Upon application pursuant to Chapter Three hereof, the Board may issue to a club, a club liquor license in exchange for a club malt beverage retail dispenser license in any municipality which has approved the granting of liquor licenses.

(b) Upon application pursuant to Chapter Three hereof, and upon approval of the Board, a club holding a club liquor license may surrender its license, and receive a catering club liquor license in its place.

(c) Upon application pursuant to Chapter Three hereof, and upon approval of the Board, a club holding a catering club liquor license may surrender its license and receive a club liquor license in its place.

(d) Upon application pursuant to Chapter Three hereof, and upon approval of the Board, a club holding a club malt beverage retail dispenser license may surrender said license, and receive in place thereof a catering club malt beverage retail dispenser license.

(e) Upon application pursuant to Chapter Three hereof, and upon approval of the Board, a club holding a catering club malt beverage retail dispenser license may surrender said license and receive in place thereof, a club malt beverage retail dispenser license.

(f) The Bureau of Licensing shall set the fee for filing an application for exchange of club licenses.

(g) Exchange of licenses may only occur within a municipality that has approved the granting of such licenses.

CHAPTER 7. TRANSFER, EXTENSION, SURRENDER EXCHANGE OF LICENSES

SUBCHAPTER A. TRANSFER OF LICENSES

§ 7.3. Transfers of location.

* * * *

(c) Effect of failure to achieve full compliance. When a request for the transfer of a license has received prior approval by the Board, and thereafter, a licensee is unable to achieve full compliance based on the plans submitted under prior approval, a hearing may be held to determine whether full compliance with licensee's plans was impossible for reasons outside the licensee's control and if so, an application for transfer to another location will be considered.

(d) If a prior approval for transfer was originally granted for transfer to a different municipality, the five-year moratorium on a transfer from the municipality to which the transfer was effected is measured from the date the license becomes operational. (47 P.S. § 4-461(a)).

§ 7.11. Conversion of suspension to fine.

(a) When a license application for transfer is pending and the transferor has an outstanding license suspension imposed by the Office of Administrative Law Judge that has not yet been served and cannot be served because the premises is not in operation, the transferee must either serve the suspension upon the approval of the transfer, or request that the suspension be converted to a fine to be paid by the transferee upon the approval of the transfer.

(b) If the transferee prefers to pay a fine in lieu of serving a suspension, it shall make a request to the Office of Chief Counsel that a fine be set by the Board.

(c) For purposes of making a determination as to the amount of the fine, the transferee's request to the Office of Chief Counsel shall include all of the following:

(1) A letter requesting that a fine be set in lieu of the suspension;

(2) A statement that the transferor cannot serve the suspension because the premises is not in operation;

(3) The transferor's federal tax return for its last year of operation, showing the licensed business's profit or loss;

(4) The number of days the transferor was open in its last year of operation;

(5) Other financial documents as requested by the Office of Chief Counsel; and

(6) A copy of the Administrative Law Judge's Adjudication and Order that resulted in the suspension. This document is obtainable from the Office of Administrative Law Judge.

(d) The fine will be calculated by application of the following formula: Gross earnings of the transferor divided by 365 (or the number of days in operation in the transferor's last year of operation) multiplied by .50. The resulting figure is the amount of the fine per day of suspension, subject to the following exceptions:

(1) If the amount is less than \$100.00 per day, a fine of \$100.00 per day will be set.

(2) If the suspension was issued for a citation that required a minimum fine amount of \$1,000.00 per day, then a minimum fine of \$1,000.00 per day will be set.

(e) In its discretion, the Board may set a fine in the absence of one or more of the documents described in (c)(1) through (c)(6) of this section.

(f) The Board shall act on the request by accepting the request and setting the amount of the fine, or rejecting the request, or making a counteroffer and informing the transferee of its decision in writing.

(g) If the transferee rejects the Board's decision, the original suspension will remain in effect, to be served by the transferee if the transfer is approved.

(h) If after the Board approves a conversion to a fine, the transfer application is denied, then the Board's decision regarding the suspension conversion to a fine is rendered a nullity and the unserved suspension remains in effect for the transferor.

SUBCHAPTER B. EXTENSION OF LICENSES

§ 7.25. Temporary extension of licensed premises.

(a) The Board has discretion to approve a temporary extension of a licensed premises upon filing of an application accompanied by appropriate plans or surveys setting forth the metes and bounds, the names of abutting streets and a plotting of the proximity of the principal licensed premises.

(b) The application will describe the entire scope of business to be conducted at the temporarily extended licensed premises and include the specific dates and hours business will be conducted.

(c) A nonrefundable fee of \$220.00 shall accompany an application for temporary extension of licensed premises.

(d) The additional premises for which it is desired to temporarily extend a license shall be completely equipped for the carrying on of the type of business permitted under the license, but no sales or storage of liquor or malt or brewed beverages may take place in the temporarily extended premises until approval has been given by the Board.

(e) Approval may be in the form of a new license, giving the additional address/location or a letter authorizing the use of the additional temporary premises extension. Board approval or letter of authorization shall be maintained on the temporarily extended licensed premises.

SUBCHAPTER C. SURRENDER OF LICENSES

§ 7.31. Surrender of licenses in certain cases.

* * * *

(d) A license surrendered to the Board, or a renewal thereof in possession of the Board, will not be held for the benefit of the licensee for a period exceeding [2] three years from the date of surrender, except [when, in the opinion of the Board, circumstances beyond the control of the licensee prevent reactivation and except] as provided in section 474 of the Liquor Code (47 P.S. § 4-474) with regard to club licenses. Unless an application for transfer or request for reissue of the license from safekeeping is pending, failure [Failure] of the licensee to reactivate the license and resume operation of the licensed business or to effect a transfer of the license within the [2] three-year period shall [be sufficient cause for] result in revocation of the license. The Board shall extend the period for an additional year if, at the end of the three-year period, the licensed premises are unavailable due to fire, flood or other similar natural disaster.

* * * *

§ 7.33 Sheriff's sale of a liquor license

Where a license is subject to a writ of execution:

(a) Any writ of execution must identify the liquor license by type and number, and may be filed in any county where jurisdiction would be appropriate. The Pennsylvania Liquor Control Board may not be listed as Garnishee. Notification to the Board upon the filing of a writ of execution is not required.

(b) Sheriff's seizure of the original license is not required. Licenses seized should be sent to the Bureau of Licensing for safekeeping within 15 days of seizure. If the debtor satisfies the judgment prior to sale, the sheriff may return the original license to the named licensee.

(d) Licenses may not be transferred without Board approval. Purchase at a sheriff's sale is not a transfer of the license but instead, only grants to purchaser the right to apply for the transfer of the license. Prospective purchases of a license are subject to the following conditions:

(1) Any sale of a license is subject to approval by the Board. Renewal and transfer applications may be obtained from the Bureau of Licensing.

(2) The Board's Bureau of Licensing should be provided with the purchaser's current address immediately upon purchase.

(3) A license renewal application must be filed 60 days prior to the expiration date of the license (47 P.S. §4-470). If filed later than that date, or within two years after the expiration, a late filing fee will be assessed for the renewal application.

(4) It shall be the purchaser's responsibility to review all letters from the Board and to take all necessary steps to renew and/or transfer the license in a timely manner.

(5) Licenses not renewed within two years after expiration will cease to exist and shall not be reactivated.

(6) Transfer and renewal of the license will not be approved without tax clearance certificates from the Departments of Revenue and Labor & Industry for both the previous license holder and the purchaser [47 P.S. §4-477].

(7) Any pending citations issued against the license shall be satisfied prior to transfer.

(d) The purchaser shall obtain the seal of the sheriff or the prothonotary on Board transfer or renewal applications in lieu of the signature of the previous license holder. The sheriff's bill of sale and writ of execution shall accompany the transfer or renewal application when filed.

SUBCHAPTER F. INTERMUNICIPAL TRANSFER OF RETAIL LICENSES.

§7.61. Criteria for intermunicipal transfer of retail licenses.

(a) Restaurant, eating place retail dispenser, and club licenses may be transferred from one municipality to another municipality within the same county, without approval from the receiving municipality, provided:

(1) The number of existing licenses in the receiving municipality does not exceed one license per 3,000 inhabitants as determined at the date of filing of the application; and,

(2) The applicant submits the appropriate application forms and associated fees to the Bureau of Licensing.

(b) If the number of existing licenses in the receiving municipality exceeds one license per 3,000 inhabitants or if the population of the receiving municipality is less than 3,000 inhabitants and the receiving municipality has an existing license:

(1) The applicant must request approval from the receiving municipality for the intermunicipal transfer of the license;

(2) Upon request for approval of an intermunicipal transfer of a license by the applicant, at least one public hearing shall be held by the receiving municipality for the purpose of receiving comments and recommendations of interested individuals residing within the municipality concerning the applicant's intent to transfer the license into the municipality;

(3) The receiving municipality shall, within 45 days of a request for approval, render a decision by ordinance or resolution to approve or disapprove the applicant's request for an intermunicipal transfer; and

(4) The receiving municipality must approve the request unless it finds that doing so would adversely affect the welfare, health, peace and morals of the municipality or its residents.

(5) The applicant must submit to the Board, along with its application for transfer, a copy of the receiving municipality's approval of the intermunicipal transfer of the license in the form of an ordinance or resolution which includes the applicant's name and exact address.

§7.62. Refusal of an intermunicipal transfer by receiving municipality.

If the receiving municipality refuses to grant approval for the intermunicipal transfer of the license, an applicant may appeal the decision to the court of common pleas in the county in which the proposed licensed premises is located. Such appeal is from the decision of the municipality.

§7.63. Municipal standing before the Board.

(a) The receiving municipality may file a protest against the approval of an intermunicipal transfer of a license into its municipality and such municipality shall have standing in a hearing to present testimony in support of or against the transfer of a license.

(b) If the Board receives a protest from the receiving municipality, the Board may, in its discretion, refuse an application for an intermunicipal transfer of a license.

(c) A protest must be timely filed.

§7.64. Appeal of Board decision.

(a) The receiving municipality may file an appeal of the Board decision granting the license, within 20 days of the date of the Board's decision, to the court of common pleas in the county in which the proposed licensed premises is located.

(b) The applicant may file an appeal of the Board's decision denying the license, within 20 days of the date of the Board's decision, to the court of common pleas in the county in which the proposed licensed premises is located.

§7.65. Subsequent transfers.

Licenses transferred from one municipality to another may not be transferred out of the receiving municipality for a period of five years from the date of operation in the receiving municipality.

CHAPTER 9. TRANSPORTATION, IMPORTATION, DISPOSITION AND STORAGE

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

VEHICLES

§ 9.22. Identification of vehicles.

Except for Transporter-for-Hire, Class C Licensees, persons transporting liquor, malt or brewed beverages, or alcohol under the authority of a transporter-for-hire license issued by the Board, except as provided in § 9.30 (relating to temporary use of vehicles), shall maintain a Board-issued vehicle identification card inside of each vehicle used. Licensees of the Board whose licenses authorize the transportation of liquor, malt or brewed beverages, or alcohol in the regular operation of their licensed business shall [have affixed] display on each side of each vehicle used in the operation of the business their name, address including the street name and number as shown on the license and the license number as shown on the license in letters no

smaller than 4 inches in height. The license identification number shall be preceded by the letters "P.L.C.B."

§ 9.23. Vehicle identification [emblems] cards.

A licensee whose license authorizes the transportation of liquor, malt or brewed beverages, or alcohol in the regular operation of his licensed business and who desires to transport liquor, malt or brewed beverages, or alcohol shall obtain a vehicle identification [emblem] card from the Board. Each vehicle shall be lettered in accordance with § 9.22 (relating to identification of vehicles). A vehicle identification [emblem] card is not required of a retail licensee, or his authorized agent named on his Wholesale Purchase Permit Cards, for the transportation of liquor purchased at a State Liquor Store for use in the licensed business, or the transportation of alcohol purchased at a State Store by an alcohol permittee; or the transportation of liquor purchased at a State Store by holders of Pharmacy Permits, Hospital Pharmacy Permits, or Chemists and Manufacturing Pharmacists Permits.

§ 9.24. Application for vehicle identification [emblem] card.

(a) Application for [self-adhering] a vehicle identification [emblems] card shall be made on forms furnished by the Board and filed with the original or renewal application for licenses required by statute and when additional vehicles are intended to be used in connection with the license.

(b) A charge of \$10 will be made for each vehicle identification [emblem] card.

§ 9.26. Issuance and replacement of [emblems] cards.

(a) Vehicle identification [emblems] cards will be issued only for vehicles which are either owned or leased by the licensee or, in the case of a transporter-for-hire, utilized under contract with an unlicensed transporter.

(b) [Vehicle identification emblems shall be affixed to the lower right corner of the windshield of each vehicle, as viewed from the inside of the vehicle.

(c) If the vehicle identification [emblem] card becomes marred, defaced, damaged or is misplaced/lost, application for a new [emblem] card shall be made immediately, accompanied by a fee of \$10 and filed with the Board.

§ 9.28. Use of vehicles.

(a) A licensee engaged in the purchase or sale of liquor, malt or brewed beverages, or alcohol may not use or permit to be used a vehicle assigned a vehicle identification [emblem] card for the transportation of a liquor, malt or brewed beverages, or alcohol other than that used in the

operation of its licensed business. Subject to the limitations of their respective licenses, transporter-for-hire licensees may transport liquor, malt or brewed beverages or alcohol in vehicles owned or leased by the transporter-for-hire licensees and operated by drivers employed by the transporter-for-hire licensees or operated by drivers employed by unlicensed transporters who are under contract with the transporter-for-hire licensees.

* * * *

(c) A licensee may not sell, lease or permit the use by another of a vehicle for which a vehicle identification [emblem] card has been issued without first obscuring or defacing the lettering on the vehicle as described in § 9.22 (relating to identification of vehicles) [and removing and destroying the vehicle identification emblem affixed thereto].

§ 9.29. Expiration and termination.

Vehicle identification [emblem] card shall expire on the date indicated by the Board unless the license of the licensee has been previously revoked or terminated by the Board, which action automatically terminates the validity of the vehicle identification [emblem] card issued to the licensee. If the license is suspended by the Board, the use of the vehicle identification [emblem] card shall be suspended for a like period.

SUBCHAPTER H. IMPORTATION OF WINE PURCHASED VIA THE INTERNET

§ 9.131. Scope.

This subchapter is to be applied in conjunction with the Liquor Code and sets forth the nature and kind of proof required thereunder.

§ 9.132. Definitions.

Consumer—A person, 21 years of age or older at the time that the order is placed, who resides in the Commonwealth and is ordering wine via the Internet from a direct shipper for personal consumption, not for resale.

Direct shipper—A person or legal entity outside the Commonwealth who obtains a license from the Board to accept orders placed for wine within this Commonwealth via the Internet and who ships or facilitates in any way the shipment of wine by a delivery agent or common carrier to a Wine and Spirits Store.

§ 9.141. Requirements for licensure as a direct shipper.

(a) The direct shipper is a legal entity licensed in another state as a producer, supplier, importer, wholesaler, distributor or retailer of wine that completes an application for license and files the same with the Board.

(b) The direct shipper agrees to submit to the jurisdiction of the Board, any other Commonwealth agency, the Board of Claims and the courts of this Commonwealth for any dispute arising out of direct shipper's conduct of business with the Board or consumers.

(c) The laws of the Commonwealth of Pennsylvania shall govern any dispute or issue arising from or involving any transaction or dealing between direct shipper and the Commonwealth.

(d) The direct shipper agrees to indemnify the Board from any cause of action arising from its conduct of business in the Commonwealth.

(e) The direct shipper agrees to notify the Board if any of its licenses or permits, by which it is licensed in another state, are suspended, revoked, terminated or not renewed by the issuing authority.

(f) Failure by the direct shipper to remain licensed in another state could result in citation by the Pennsylvania State Police, Bureau of Liquor Control Enforcement or nonrenewal of the direct shipper license by the Board.

§ 9.142. Records to be maintained.

(a) The Commonwealth shall have the right to audit, at reasonable times and at a site designated by the Commonwealth, and direct shipper shall give full and free access to the Commonwealth and/or its authorized representative to the books, documents and records of direct shipper to the extent that the books, documents or records relate to the sale by direct shipper to consumers and to the collection of taxes and fees and the submission of same to the Commonwealth.

(b) The direct shipper agrees to maintain records, which will support the products, including brands, vintages, volumes and sizes sold to consumers and the collection and submission of taxes and fees regarding the products sold.

(c) The direct shipper shall maintain all books, documents and records described herein for three years from the date of the sale.

§ 9.143. Sales of wines.

(a) The direct shipper must possess a valid license issued by the Board.

(b) The direct shipper may sell to consumers only those classes, varieties and brands of wine not available for sale by the Board to consumers. Those items that may not be sold by direct shippers are listed on the Board's website and are subject to change. Direct shippers may not ship or sell via the Wine and Spirits Stores any other items, alcoholic or nonalcoholic, to consumers other than wine not listed on the Board's website.

(c) The direct shipper may only process orders received via the Internet.

(d) Consumers may not purchase, and direct shipper may not sell, more than nine liters of wine to a single consumer per month.

(e) The direct shipper must provide the Consumer with an Internet Wine Order which is a numbered receipt listing consumer's name, address, phone number and date of birth; the name, address, phone number and date of birth of any other person authorized to pick up the product at the Wine and Spirits Store; selling price, total volume, and a complete and accurate description of product(s) purchased; 18% emergency tax; 6% sales tax; 1% Philadelphia/Allegheny County only sales tax, if applicable; fees collected; and the address of the Wine and Spirits Store to which the product is being shipped.

(f) Two copies of the Internet Wine Order must be with the product package and a copy must also be forwarded to the Board electronically within one business day from the date of the placement of the order.

(g) The direct shipper must collect the 18% emergency tax, the appropriate Pennsylvania sales tax, and the Board's handling fee of \$4.50.

(h) The direct shipper must remit to the Board by the tenth calendar day of the following month, the amount of taxes and fees collected from the prior month's sales. This remittance must be accompanied by a list detailing the numbered receipts being remitted.

(i) Failure to submit the appropriate fees and taxes will subject direct shipper to citation by the Pennsylvania State Police, Bureau of Liquor Control Enforcement, which may result in civil penalties, and/or criminal penalties.

(j) The direct shipper agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of direct shipper or its subsidiaries to the Commonwealth against any payments due direct shipper under any contract with the Commonwealth.

(k) Annually, the direct shipper must provide to the Board by the fifteenth day of the following January, a total of all sales of wine to Consumers by the number of units and the dollar amount.

§ 9.144. Products shipped.

- (a) All wine shipped to a consumer must be shipped to a Wine and Spirits Store.
- (b) All shipments must be delivered to a Wine and Spirits Store by a transporter-for-hire licensed by the Board.
- (c) Each package so shipped must be clearly identified as containing alcoholic beverages.
- (d) Each package must clearly identify the direct shipper on the outside of the package and must have with the package a copy of the Internet Wine Order.
- (e) Each order by a Consumer must be packaged separately.
- (f) All packaging materials must be sufficient to protect the product from damage during normal handling.
- (g) The direct shipper agrees that any missing product, incorrect product, or damage to product, including but not limited to breakage, defaced labels, leakage or other defects, noted on the Internet Wine Order will be the responsibility of the direct shipper.
- (h) The direct shipper agrees that any wine that is not picked up by the Consumer within 30 days of receipt by the Wine and Spirits Store becomes the property of the Board.
- (i) The direct shipper must provide a “call tag” with each order shipped.

§ 9.145. Direct shipper’s website.

- (a) The direct shipper’s website must contain language that the direct shipper is solely responsible for the fitness of the product and that the Board neither endorses direct shipper nor its product(s).
- (b) The direct shipper’s website must explain fully the direct shipper’s policy on the return of wine purchased by consumers.
- (c) The direct shipper’s website must inform consumers that it will not sell to anyone who is less than 21 years of age on the date of order, and that product will not be released to anyone who cannot demonstrate that they are 21 years of age or older, or to anyone who is not a Pennsylvania resident, or to anyone who is under the influence of alcohol or other drugs.
- (d) The direct shipper’s website must contain the following language:

DISCLAIMER

Consumers must be 21 years of age or older on the date of order and residents of Pennsylvania. All wine purchased must be for personal consumption and not for resale. Consumers must select a Wine and Spirits Store for delivery of their order. The Consumer must pick up the product in person at the selected Wine and Spirits Store or designate at the time of order an individual(s) who will be permitted to pick up the order. Whoever picks up the order must be 21 and a Pennsylvania resident. When the order is picked up, the person must present photo identification and be prepared to sign an affidavit that he or she is 21 years of age or older, a Pennsylvania resident and that the wine is for personal use not for resale. The entire order must be picked up; no partial order pick-ups will be permitted.

The Pennsylvania Liquor Control Board endorses no Direct Shipper nor does it provide any warranties either express or implied, as to the fitness or merchantability of any product purchased over the Internet or assumes any liability for the use or misuse of any product. The Pennsylvania Liquor Control Board will not accept any returns. All requests for the return of any product ordered over the Internet for any reason must be made directly to the Direct Shipper. For any product damaged after receipt at the Wine and Spirits Store, Consumer will be fully reimbursed for the entire cost of the order by the Board. Any order not picked up within 30 days of receipt at the Wine and Spirits Store becomes the property of the Pennsylvania Liquor Control Board.

(e) The direct shipper's website must require the consumer to indicate that he/she has read the Board's disclaimer and agrees to its terms and conditions before consumer may complete his/her order. The direct shipper must maintain a copy of the consumer's acceptance of the disclaimer for a period of two years.

(f) If the direct shipper wishes to be linked to the Board's website, it must sign a linking agreement in the form provided by the Board.

CHAPTER 11. PURCHASES AND SALES

SUBCHAPTER A. GENERAL PROVISIONS

RETAIL AND WHOLESALE PURCHASE--GENERAL

§11.7. Authorized agents of cardholder.

(a) A permit holder may authorize up to [two] four agents to make purchases in his behalf for use in his business or establishment, subject to the following:

(1) Only individuals regularly employed in the business or establishment of a permit holder or licensed transporters-for-hire may be designated as agents.

(2) The signature of the agents shall appear in ink on the Wholesale Liquor Purchase Permit Card in the space provided.

(b) A permit holder may appoint [an] authorized [agent] agents in place of [either of the two] those whose [signature] signatures originally appeared on the Wholesale Liquor Purchase Permit Card by crossing out the name of the deposed agent in ink and having [the third] another party or parties properly sign the card. [Additional agents may not be appointed in this manner, and a permit holder is not allowed more than two agents.]

(c) If a permit holder desires to make more [than one change in his authorized agent] changes in the designation of authorized agents than space permits on the Wholesale Liquor Purchase Permit Card, the permit holder shall obtain a duplicate Wholesale Liquor Purchase Permit Card by obtaining at the State Store, where the card is on deposit, a form as prescribed by the Board, which shall be completed by the permit holder and returned with a fee of \$10. The manager of the State Store will forward the form to the Bureau of Licensing of the Board. A new card will be forwarded to the store. During the time required for this transaction, purchase at wholesale may be made by the permit holder or an authorized agent at the store where the old card is on deposit. Upon receipt of the new card, the store manager shall immediately notify the permit holder. The old card will then become void and shall be forwarded to the Bureau of Licensing by the manager. The manager shall deliver the new Wholesale Liquor Purchase Permit Card to the permit holder when he visits the store and requests delivery. The new card is not valid until properly signed in accordance with § 11.6 (relating to signature on cards).

§ 11.33. Purchase of alcohol by AN and AE permittees.

* * * *

(c) Alcohol may be purchased in bulk by AN or AE permittees from distillers located outside this Commonwealth through the Board, subject to the following:

(1) AN and AE Permittees desiring to purchase alcohol in bulk shall submit their order for the purchases, in duplicate, to the Board on forms provided by the Board, obtainable from the Purchasing Division of the Board. Bulk purchases of 190 proof alcohol by AN permittees will be allowed only in quantities of 25 wine gallons or more and in containers of at least 5-gallon capacity. AE permittees may purchase alcohol in bulk, without restrictions as to size of containers or quantity purchased. [An order submitted by an AN permittee shall be accompanied by a remittance in the amount of \$5. A service charge will not be required of AE permittees.] Immediately upon receipt from a permittee of a bulk purchase order for alcohol, the Board will, if approved, note thereon its approval and send it to the designated distiller, notifying the distiller to make shipment to the Board at the destination indicated in the order.

* * * *

CHAPTER 13. PROMOTION

SUBCHAPTER A. ADVERTISING

GENERAL PROVISIONS

§ 13.14. [Cooperative advertising.] Reserved.

[There may be no cooperative advertising between a producer, manufacturer, bottler, importer or wholesaler and a retailer of distilled spirits.]

§ 13.24. [Cooperative advertising.] Reserved.

[There may be no cooperative advertising between a producer, bottler, importer, or wholesaler and a retailer of wine.]

ADVERTISING OF BRAND NAMES

§ 13.42. Window and doorway display.

(a) A licensee may, without board approval, [not] install or permit to be installed any electrically operated signs or devices, lithographs, framed pictures, cardboard displays, statuettes, plaques, placards, streamers or similar items advertising brand names and intended for window and doorway display on the licensed premises [until the licensee has submitted detailed information

to the Board on Form PLCB-948, and obtained Board approval. The signs may not exceed 600 square inches in display area and shall carry a serial number permanently affixed to the display for identification purposes. A photograph or sketch of the display sign shall accompany the application form].

(b) Such advertising may not exceed 600 square inches in display area. When the [approved sign] advertising material is of maximum size, no background material may be used. When installing [approved] signs of smaller size, the combined area of the sign and background or decoration may not exceed the maximum area of 600 square inches.

[(c) Brand name advertising matter may not be painted or affixed in any manner to the inside or outside of the glass in show windows or doorways of licensed establishments.]

§ 13.43. Interior display.

(a) A licensee may, without board approval, [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 the licensee has submitted detailed information to the Board on forms provided by the Board, and obtained Board approval. A photograph or sketch of the display sign shall accompany the application form].

(b) When the [approved sign] point-of-sale material, 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.

* * * *

GIVING AND ACCEPTING THINGS OF VALUE

§ 13.51. General prohibition.

* * * *

(d) After prior written agreement, manufacturers may reimburse importing distributors or distributors for the cost of affixing the manufacturers' beer brand logos to importing distributors' or distributors' delivery vehicles.

* * * *

§ 13.52. Advertising novelties.

* * * *

(b) Advertising novelties may not contain [any] obscene or pornographic matter or references.

(c) Nominal value, as used in this subsection, means an amount not to exceed a monetary limit established and disseminated by the Board. Advertising novelties provided by manufacturers or any class of licensee shall not be used as equipment by any hotel, restaurant, club, retail dispenser, importing distributor, or distributor licensee. Notwithstanding any other provisions of this section, licensees may sell glasses at not less than cost and provide metal keg connectors and tap knobs to other licensees and to holders of special occasion permits. Manufacturers or importers may furnish, give, rent, loan or sell wine lists or menus to retail licensees. Such wine lists/menus may involve cooperative endeavors related to cost sharing and advertisement between manufacturers/importers and retail licensees. Wine lists/menus for on-premises use may contain preprinted prices.

(d) Advertising banners/signs for exterior use are considered advertising novelties if the banners/signs conspicuously advertise the alcoholic beverage products sold by the licensee or the name of the manufacturer of alcoholic beverage products sold by the licensee. Exterior advertising banners/signs must comply with the provisions of section 498 of the Liquor Code. (47 P.S. § 4-498).

(e) Advertising banners/signs that are used for interior display are not subject to the advertising novelty cost limit, but are subject to the point of sale advertising cost limit as set forth by the Board.

(f) Licensees of any class may sell promotional items advertising their own business only, such as tee shirts, mugs, caps and other similar items, to the general public.

§ 13.53. Bar Spending/Free Drinks.

Representatives of manufacturers and licensees may give or purchase an alcoholic beverage for consumers in retail licensed premises provided the giving of the alcoholic beverage is not contingent upon the purchase of any other alcoholic beverage and is limited to one standard-sized alcoholic beverage per patron in any such offering. A standard-sized alcoholic beverage is 12 fluid ounces of a malt or brewed beverage, four fluid ounces of wine (including fortified wine) and one and one-half fluid ounces of liquor.

§ 13.102. Discount pricing practices.

* * * *

(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). For purposes of this section, a specific type of alcoholic beverage shall mean 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.

[(3) The sale, serving or offering of an unlimited or indefinite amount of alcoholic beverages as part of a meal package after 7 a.m. on December 31, 1999, until 2 a.m. on the following day by a hotel licensee to registered overnight guests of the hotel.]

SUBCHAPTER D. TASTING EVENTS

GENERAL PROVISIONS

§ 13.201. Definitions.

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

In-store tasting events. – Tastings/tasting events held upon the premises of a State Liquor Store.

Sponsor – A sponsor of a tasting event may be any licensed broker, holder of a limited winery or winery license, or a manufacturer of liquor or its agent 21 years of age or older.

Standard size alcoholic beverage – A standard size alcoholic beverage is 12 fluid ounces of a malt or brewed beverage, four fluid ounces of wine (including fortified wine), or one and one-half fluid ounces of liquor.

Tastings/tasting events – A presentation of alcoholic products to the public for the purpose of market research, disseminating product information and education of the public as to quality and availability.

TASTING EVENTS

§ 13.202. Tasting events.

(a) Tastings may be conducted by licensed brokers, distributors, importing distributors and manufacturers or their agents upon licensed or unlicensed premises.

(b) licensed brokers, distributors, importing distributors and manufacturers or their agents conducting a tasting event must adhere to the following requirements:

(1) Products used shall be legally procured and properly registered and taxes on such products shall be paid.

(2) Purchase requirements shall not be associated with the tasting.

(3) No more than one standard size alcoholic beverage of each product shall be provided to each tasting participant.

IN-STORE TASTING EVENTS

§ 13.203. General requirements.

(a) Sponsors may conduct an in-store tasting event at the discretion of the Board.

(b) Only one sponsor may conduct an in-store tasting event at any one store at any one time unless otherwise approved by the Board.

(c) Sponsors must observe all state and federal laws and regulations governing liquor and wine during in-store tasting events.

§ 13.204. Prior approval.

(a) Sponsors must obtain approval from the Board in order to conduct an in-store tasting event prior to the date of the proposed event.

(b) Prior to the in-store tasting event, sponsors may be required to demonstrate evidence of liability insurance in an amount to be determined by the Board and sign and submit a Pennsylvania Liquor Control Board Indemnity Against Liability form to the Board.

(c) Prior to the in-store tasting event, sponsors must provide the Board with a list of products to be tasted by consumers.

(d) The Board will determine the time, date, and location of the in-store tasting event and will notify the sponsor of same.

§ 13.205. Procurement of wine and/or spirits.

(a) Wine or spirits used during the in-store tasting events must be procured by the sponsor in accordance with the sampling process as specified in section 13.81 or by legal purchase.

(b) A maximum of four products per sponsor per in-store tasting event may be made available for tasting by consumers.

(c) Wine and spirits used during an in-store tasting event must be dispensed from original containers prepared by the manufacturer with labels visible to the consumer.

§ 13.206. Duration of in-store tasting events.

The duration of an in-store tasting event is limited to a maximum of two consecutive hours.

§ 13.207. Tastings per consumer.

(a) In the case of wine, only one ounce may be served to any one consumer for each product tasted. No consumer shall be furnished more than four ounces of wine.

(b) In the case of spirits, only one-quarter ounce may be served to any one consumer for each product tasted. No consumer shall be furnished more than one ounce of spirits.

§ 13.208. Food, supplies and equipment.

(a) The sponsor is responsible for providing all supplies and equipment associated with an in-store tasting event subject to Board approval, including, but not limited to, dump buckets, water glasses, tasting containers, and tables.

(b) The sponsor must provide food, such as cheese and crackers, for consumption by consumers during the in-store tasting event.

(c) The sponsor must be in compliance with applicable municipal health codes.

§ 13.209. Participation by Board employees.

(a) Board employees shall not pour, dispense or serve tastings to the public; nor shall they encourage consumer participation in the event.

(b) Board employees may give general information, such as sponsor, time and date, regarding the in-store tasting event to the public.

(c) On-duty employees of the State Liquor Store where the in-store tasting event is being conducted shall not consume beverage alcohol.

§ 13.210. Disposal of unused alcohol and empty containers.

(a) At the conclusion of the in-store tasting event, Sponsors must discard unused portions of opened liquor containers at the State Liquor Store.

(b) Sponsors shall dispose of all empty liquor containers in accordance with section 491(5) of the Liquor Code (47 P.S. § 4-491(5)).

(c) Unused product, bottles or containers shall not be furnished to employees of the Board.

§ 13.211. Advertising.

Advertising of the in-store tasting event by the sponsor is subject to prior Board approval.

SUBCHAPTER E. SAMPLES

§ 13.212. General provisions.

(a) Samples may be provided by manufacturers or their representatives, licensed distributors and importing distributors to unlicensed customers. Samples of liquor to licensed customers shall conform to section 13.81.

(b) Samples shall be in unopened containers of the smallest commercially available size.

(c) Providing samples shall not be conditioned upon any purchase requirement.

(d) Samples shall not be opened or consumed on state liquor store premises or distributor or importing distributor licensed premises.

(e) Samples are limited to one container per patron in any offering.

**CHAPTER 15. SPECIAL RULES OR ADMINISTRATIVE PRACTICE AND
PROCEDURE REGARDING MATTERS BEFORE THE OFFICE OF
ADMINISTRATIVE LAW JUDGE**

Subchapter E. PENALTIES

§ 15.62. Suspensions and revocations.

* * * *

(d) When a license application for transfer is pending and the transferor has an outstanding license suspension imposed by the Office of Administrative Law Judge that has not yet been served and cannot be served because the premises is not in operation, the transferee must either serve the suspension upon approval of the transfer, or request that the suspension be converted to a fine to be paid by the transferee upon approval of the transfer, subject to section 7.11 of these Regulations.

Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board
June 18, 2004

SUBJECT: Proposed Regulations 54-59 (Amendments to Title 40, Pennsylvania Code)

TO: ROBERT E. NYCE, EXECUTIVE DIRECTOR
INDEPENDENT REGULATORY REVIEW COMMISSION

FROM: FAITH S. DIEHL
CHIEF COUNSEL
PENNSYLVANIA LIQUOR CONTROL BOARD



By Hand Delivery

Refer to: 3-9454

Submitted herewith are proposed amendments to the regulations of the Pennsylvania Liquor Control Board. Also enclosed are the signed CDL-1, preamble, regulatory analysis form and executed transmittal sheet.

Questions and comments should be directed to James Maher at (717) 783-9454.

15

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

I.D. NUMBER: 54-59
SUBJECT: Corrections and Revisions
AGENCY: Liquor Control Board

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>
6-18-04	<u>Monica Armstrong</u>	HOUSE COMMITTEE ON LIQUOR CONTROL (Republican)
6-18-04	<u>Kathy Shaver</u>	(Democrat)
6-18-04	<u>Maie M. Kiddle</u>	SENATE COMMITTEE ON LAW & JUSTICE (Republican)
6-18-04	<u>Wanda Wiggan</u>	(Democrat)
6/18/04	<u>J. S. S. S.</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
5-20-04	<u>M. Mummert</u>	ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU