

<b>Regulatory Analysis Form</b>		This space for use by IRRC	
(1) Agency  Pennsylvania Liquor Control Board		<p style="text-align: center;">RECEIVED</p> <p style="text-align: center;">2007 MAY 17 PM 2:30</p> <p style="text-align: center;">INDEPENDENT REGULATORY COMMISSION</p> <p style="text-align: center;">IRRC Number: 2613</p>	
(2) I.D. Number (Governor's Office Use)  054-63			
(3) Short Title  Amendments to add two new definitions, establish regulations for management agreements, implement contractor responsibility requirements, revise procedures for wine and spirits tastings in stores, revise rules of hearing procedure and update obsolete regulations about cleaning draft beer systems.			
(4) PA Code Cite  40 Pa. Code		(5) Agency Contacts & Telephone Numbers  Primary Contact: James F. Maher (717) 783-9454  Secondary Contact: Faith S. 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"> <li>• The proposed rulemaking defines the terms "merchant" and "pecuniary interest."</li> <li>• It clarifies that the reputation of stockholders, directors, officers and members of corporate or other business entity licensees will be considered in assessing the reputation of the licensee.</li> <li>• It revises procedures for receiving certificates of completion from applicants for license transfers. Revised procedures effective in November 2004 proved to be more difficult in practice.</li> <li>• It establishes rules and procedures for approval of management agreements and sets a fee for review of such agreements.</li> <li>• It recognizes that licensees are using new technology to assure that malt or brewed beverage dispensing systems are clean.</li> <li>• It codifies the Board's established practice that the purchase price for transfers of licenses that involve changes in ownership must be placed into escrow.</li> <li>• A new regulation is proposed to require tax clearance for all merchant licensees.</li> <li>• It amends regulations on "tasting events" to clarify the amount of alcoholic beverages that may be given. It also allows sponsors of in-store tastings to import into Pennsylvania, products to be tasted rather than making them buy the products from the Board. It also allows partially-consumed bottles being used for tasting to be stored at wine and spirits stores, rather than requiring that they be discarded.</li> <li>• The proposed rulemaking amends hearing procedures related to issuance of subpoenas and the time for filing protests.</li> </ul>			

## Regulatory Analysis Form

(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 regulation is not mandated by any federal or state law or court order or federal regulation.

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

- A continuing concern is the practice of some licensees to hire a management company to conduct their licensed business. This can lead to essential business decisions being made by persons the Board has not approved as reputable and responsible. The Liquor Code requires the Board to be sure that the licensee alone is the one holding a pecuniary interest in a liquor license. These regulations implement a practice already implemented administratively to identify these management contracts and assure that the licensee remains in control of the licensed business.
- The Commonwealth's Contractor Responsibility Program helps assure that persons doing business with the Commonwealth are meeting their tax obligations. To-date, this program has not been applied to merchants that sell liquor and liquor accessories to the Board. These regulations extend this program to those merchants.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

No public health, safety, or environmental risks are associated with nonregulation. It serves the general welfare of the Commonwealth to assure that merchants selling liquor and liquor accessories to the Board are remaining compliant with their Pennsylvania tax obligations. It also recognizes that new technology for beer line sanitation may allow less frequent use of chemical cleaning products.

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

Enforcement of the Liquor Code will be improved by clarifying how to assess the reputation of corporate applicants. Licensees will benefit from clarification of the Board's procedures on approval of management contracts and from updating the regulations about cleaning draft beer systems. The Commonwealth will benefit from improved collection of taxes by requiring the Board's vendors to adhere to the Contractor Responsibility Program.

(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.)

Implementing the Merchant Tax Responsibility Program will require the addition of two (2) additional Technician 1 positions. Program changes will require about 37.5 hours of Applications Developer 2 time in the Bureau of Management Information Systems. The first-year cost increase is estimated to be \$92,082.

In an unlikely, but worst-case scenario, if sponsors of in-store tastings universally choose not to purchase their products from the Board, as permitted by these regulations, the estimated loss of gross revenue would be around \$200,000 annually

## Regulatory Analysis Form

(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 of licensees using management companies, upgrading draft beer systems and by merchants selling liquor and liquor accessories to the Board. Other changes will make minor modifications in how licensees are regulated.

(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.

Input has been received from representatives of services that clean draft beer dispensing systems, and from those who supply and install maintenance systems for such systems.

(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.

The regulated community is not expected to incur new costs. The modification of regulations requiring weekly cleaning of beer dispensing systems may afford licensees some savings.

(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.

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.

Cost: State government will incur new administrative costs in assuring merchant tax clearance and regulating management contracts. If sponsors of in-store tastings all choose not to purchase their products from the Board, as permitted by these regulations, the estimated loss of gross revenue is approximately \$200,000 annually.

Savings: There may be improved tax collection from the merchants selling liquor and liquor accessories to the Board.

(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.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>						
<b>COSTS:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>	92,082	95,712	97,766	99,864	102,007	104,198
<b>Total Costs</b>	92,082	95,712	97,766	99,864	102,007	104,198
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>	200,000	200,000	200,000	200,000	200,000	200,000
<b>Total Revenue Losses</b>	200,000	200,000	200,000	200,000	200,000	200,000

## Regulatory Analysis Form

(20a) Explain how the cost estimates listed above were derived.

The proposed regulations were reviewed by the Office of the Budget that staffs the Comptroller's Office of the Pennsylvania Liquor Control Board. The cost estimates were provided by that office.

(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	N/A	N/A	N/A

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The costs of implementing the Merchant Tax Responsibility Program are unavoidable. This program coordinates with the Contractor Responsibility Program mandated by the Governor. It is believed that the lost revenues for tasting samples not purchased in Pennsylvania will be offset by increased sales of more profitable, high-end products. Revenue losses cannot be accurately estimated.

(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. 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.

No effect on the existing or promulgated regulations of the Board is anticipated. These regulations should not affect the regulations of other agencies.

(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 have been 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.

The Board's forms on disclosure of management agreements is attached. No other paperwork requirements will be significantly affected.

(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)

RECEIVED

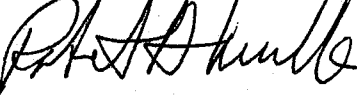
2007 MAY 17 PM 2:30

DO NOT WRITE IN THIS SPACE

#2613

INDEPENDENT REGULATORY  
REVIEW COMMISSION

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

BY:   
(DEPUTY ATTORNEY GENERAL)

MAY 11 2007

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- 063

DATE OF ADOPTION: April 18, 2007

BY: 

TITLE: Chairman  
(Executive Officer, Chairman or  
Secretary)

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

BY: FS Diehl

April 13, 2007  
DATE OF APPROVAL

(Chief Counsel, Independent  
Agency)

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

## TITLE 40—LIQUOR

## CHAPTER 1. GENERAL PROVISIONS

*The following sections were amended:*

§1.1 Definitions.

§1.5 Reputation: Use of criminal and citation history.

## CHAPTER 3. LICENSE APPLICATIONS

*The following section was amended:*

§3.8. Certificate of Completion; [certificate of approval;] letter of authority.

*The following Subchapter and sections (underlined) were added:*

Subchapter M. MANAGEMENT CONTRACTS

§3.140. Management contracts.

§3.142. Reporting.

§3.144. Board approval and licensee responsibility.

## CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

*The following sections were amended:*

§ 5.23. Appointment of managers.

§5.91. Required report.

*The following sections were amended:*

§ 5.51. Cleaning of [coils, tap rods and connections] malt or brewed beverage dispensing systems.

§ 5.52. Certificate or record required.

§ 5.53. Pressure maintenance.

§ 5. 54. Responsibility for condition of equipment.

## CHAPTER 7. TRANSFER, EXTENSION, SURRENDER, EXCHANGE AND SUSPENSION OF LICENSES

*The following section was amended:*

§7.2. Transfers of ownership.

## CHAPTER 11. PURCHASES AND SALES

*The following section (underlined) was added:*

§11.144. Merchant tax responsibility.

## CHAPTER 13. PROMOTION

*The following sections were amended:*

§ 13.43 Interior display.

§ 13.51 General prohibition

§13.201. Definitions

§13.211 Tasting events



§13.223. Procurement of wine or spirits, or both.

§13.228. Disposal and storage of partially-used liquor and empty containers.

CHAPTER 17. SPECIAL RULES OF PRACTICE AND PROCEDURE FOR MATTERS BEFORE  
THE BOARD

*The following sections were amended:*

§17.5. Subpoenas.

§17.7. Exhibits.

§17.13 Protests/intervention procedure

## 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, Chapters 1, 3, 5, 7, 11, 13 and 17.

### 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 under the Liquor Code.

### Summary of Amendments:

The regulatory amendments add two new definitions, establish regulations for management agreements, implement contractor responsibility requirements, revise procedures for wine and spirits tastings in stores and revise rules of hearing procedure. Obsolete regulations about cleaning draft beer systems are updated. The following are summaries of the proposed regulatory changes:

- The proposed rulemaking defines the terms “merchant” and “pecuniary interest.”
- It clarifies that the reputation of stockholders, directors, officers and members of corporate or other business entity licensees will be considered in assessing the reputation of the licensee.
- It revises procedures for receiving certificates of completion from applicants for license transfers. Revised procedures effective in November 2004 proved to be more difficult in practice.
- It establishes rules and procedures for approval of management agreements and sets a fee for review of such agreements.
- It recognizes that licensees are using new technology to assure that malt or brewed beverage dispensing systems are clean.
- It codifies the Board’s established practice that the purchase price for transfers of licenses that involve changes in ownership must be placed into escrow.
- A new regulation is proposed to require tax clearance for all merchant licensees.
- It amends regulations on “tasting events” to clarify the amount of alcoholic beverages that may be given. It also allows sponsors of in-store tastings to import into Pennsylvania, products to be tasted rather than making them buy the products from the Board. It also allows partially-consumed bottles being used for tasting to be stored at wine and spirits stores, rather than requiring that they be discarded.
- The proposed rulemaking amends hearing procedures related to issuance of subpoenas and the time for filing protests.

Affected Parties:

The proposed regulations will affect licensees and applicants for licenses issued by the Board. It will affect merchants that sell or propose to sell liquor and liquor accessories to the Board. It will affect anyone participating in a hearing before the Board.

Paperwork Requirements:

The proposed regulatory amendments will not significantly increase paperwork for the agency or most of the regulated community. Merchants that sell or propose to sell liquor and liquor accessories to the Board will have to present evidence that they do not have any outstanding or unresolved tax liabilities to the Commonwealth.

Fiscal Impact:

Implementing a requirement of tax clearance for merchant licensees will require the addition of two (2) additional Technician 1 positions. Program changes will require about 37.5 hours of Application Developer 2 time in the Bureau of Management Information Systems. The first-year cost increase is estimated to be \$92,082.

In an unlikely, but worst-case scenario, if sponsors of in-store tastings universally choose not to purchase their products from the Board, as permitted by these regulations, the estimated loss of gross revenue would be around \$200,000 annually.

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 F. Maher, Assistant Counsel, 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 \_\_\_\_\_, 2007, 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.

P. J. Stapleton III  
Chairman

ANNEX A  
TITLE 40. LIQUOR  
PART I. LIQUOR CONTROL BOARD  
CHAPTER 1. GENERAL PROVISIONS

**§ 1.1. Definitions.**

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

\* \* \*

Merchant - an importer, winery, limited winery brewery, distillery or vendor desiring to sell spirits or wine to the Board, or, any seller of products the Board is permitted to sell in its stores under section 305 of the Liquor Code. [47 P.S. § 3-305].

\* \* \*

Pecuniary interest—the capability of a person to control the business of the licensee. There is a rebuttable presumption of a pecuniary interest where a person controls a substantial portion of the proceeds of the licensed business or where control is exercised by

- (a) Employing a majority of the employees of the licensee;
- (b) Independently making day-to-day decisions about the operation of the business, or
- (c) Having final authority to decide how the licensed business is conducted.

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

(a) 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.

(b) When considering the reputation of a corporation, partnership, limited liability company or other business entity, the Board may consider the reputation of its stockholders, directors, officers, managers or members.

CHAPTER 3. LICENSE APPLICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

**§ 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 will issue a [certificate of approval] letter of operating authority to the applicant. [The Board will also issue a letter of authority which shall authorize the applicant to operate the licensed premises for no more than 30 days.] The letter of operating authority confers upon the applicant the immediate right to operate the licensed premises and the immediate responsibility as a licensee. The letter of operating

authority may list conditions the applicant shall complete before a license is issued. [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 15 days of completion of transactions necessary to complete the process,]

(b) Within the time specified by the Board in the letter of operating authority, the applicant shall submit a 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)] (c) If the certificate of completion is not submitted or discloses modified arrangements, the Board may request additional information or documentation, as it deems necessary.

[(c) 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.]

(d) If the certificate of completion is not submitted, or additional information the Board has requested is not provided, or if such additional information indicates that the application does not conform to the Liquor Code or the Board's Regulations, the Board

may rescind its approval, order divestiture of individuals, or take other remedial action as it deems necessary.

### **Subchapter M. MANAGEMENT CONTRACTS**

#### **§ 3.140. Management contracts.**

- (a) A licensee may contract with another person to manage its licensed premises.
- (b) Management contracts shall reserve to the licensee the capability to direct its own business.
- (c) Management contracts shall be in writing, and a copy shall be maintained on the licensed premises where it shall be available for inspection by the Board.
- (d) Management contracts may not give a pecuniary interest to a management company.

#### **§ 3.142. Reporting.**

(a) Licensees or applicants for licenses that have management contracts shall file the following:

(i) On forms supplied by the Board, the identity of all persons who are parties to the management contract;



(ii) On forms supplied by the Departments of Revenue and Labor and Industry, tax certification and clearance statements for the person providing management services. (47 P.S. § 4-477(g)).

(b) Licensees or applicants for licenses that enter into, modify or terminate management contracts shall, within 30 days, file a written notice with the Board that this has occurred. The changes shall be reported on forms which will be furnished upon request by the Board.

(c) Licensees filing notice of the establishment or modification of a management contract shall pay a fee of \$350.00. No fee is payable when a licensee gives notice to the Board that a management contract has been terminated.

**§ 3.144. Board approval and licensee responsibility.**

(a) The Board may refuse the involvement of a person providing management services. The Board's refusal may be based upon:

- i. The creation by the management contract of a pecuniary interest in the license;
- ii. Facts upon which the Board could refuse a person's involvement in the license

(b) The licensee's use of a management company will not affect the licensee's responsibility for violations of the Liquor Code or the Board's regulations.

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

SUBCHAPTER B. EMPLOYES OF LICENSEES  
EMPLOYMENT OF OTHERS

§ 5.23. Appointment of managers.

\* \* \*

(i) If approved by the Board, management contracts may permit the manager for the licensed premises to be employed by the management company; however, licensee shall have unfettered discretion in all aspects of management of the licensed business, including the employment of the manager and sales of food, alcoholic and nonalcoholic beverages. Licensee's discretion includes control of the manager's hiring, firing, discipline, salary and duties. The manager is an agent of the licensee.

\* \* \*

SUBCHAPTER D. SANITARY CONDITIONS AND LIGHTING AND CLEANING  
OF [COILS] MALT OR BREWED BEVERAGE DISPENSING SYSTEMS

\* \* \*

CLEANING OF [COILS] MALT OR BREWED BEVERAGE DISPENSING  
SYSTEMS

\* \* \*

§ 5.51. Cleaning of [coils, tap rods and connections] malt or brewed beverage dispensing systems.

(a) [Coils, tap rods and connections, used in drawing malt or brewed beverages in licensed establishments, shall be thoroughly cleaned at least once every 7 days at the sole expense of the licensee dispensing the beverages on draft. The cleaning of coils, tap rods and connections by one licensee for another licensee is prohibited.] A licensee that uses a malt or brewed beverage dispensing system in its licensed premises must clean the system at its sole expense. One licensee may not clean a malt or brewed beverage dispensing system for another licensee.

(b) [The following methods of cleaning coils, tap rods and connections have been approved by the Board:

(1) Live steam.

(2) Hot water and soda solution, followed by thorough rinsing with hot water.

(3) Another method which thoroughly cleans the coils, tap rods and connections, and leaves them in a sanitary condition.]

The method of cleaning will leave the entire malt or brewed beverage dispensing system in a clean and sanitary condition. The cleaning method used will include cleaning the entire system with a chemical cleaning solution or other cleaning method

approved by the Board. The following alternative cleaning methods have Board approval:

(1) Live steam.

(2) Hot water and soda solution, followed by thorough rinsing with hot water.

(c) The frequency of cleaning for the malt or brewed beverage dispensing system shall be as follows:

(1) Once every seven days for the valves, joints, faucets, couplers, hose fittings, washers, o-rings, empty beer detectors (known as "FOBs") and draft foam control units.

(2) Once every seven days for the dispensing lines, except if the licensee has an operating ultrasonic, electromagnetic or other system that retards the growth of yeast and bacteria in the dispensing lines. If such a system is installed and operating, licensee must follow the cleaning frequency and cleaning method guidelines of the system's manufacturer.

(3) The Board may approve different cleaning frequencies.

§ 5.52. Certificate or record required.

(a) [Coils, tap rods and connections] The malt or brewed beverage dispensing system may be cleaned for the licensee by a person, other than another licensee, thoroughly equipped to do so by a method enumerated in § 5.51 [(relating to cleaning of coils, tap

rods and connections)]. The licensee [should] shall obtain from the cleaner a certificate showing the date cleaned, the name of the person by whom cleaned and the method utilized. The certificate shall be kept on file at the licensed premises at all times for inspection by the Board.

(b) [Coils, tap rods and connections] The malt or brewed beverage dispensing system may be cleaned by the licensee [himself by a method enumerated in § 5.51]. The licensee shall maintain and keep a record of the date of each cleaning and the method utilized. This record shall also be kept on file at all times for inspection by the Board.

**§ 5.53. Pressure maintenance.**

[Where an airline pump is used for pressure, the intake shall be from outside the building and an air filter or satisfactory air cleansing device shall be provided. The use of carbon dioxide is recommended in lieu of air, as this is conducive to the maintenance of normal flavor in that it is much less susceptible than air to the growth of organisms and chemical changes which may impair flavor.] If a compressed gas or other pressurizing system is used in the malt or brewed beverage dispensing system, it shall be designed to preserve the normal flavor of the malt or brewed beverage and not introduce contaminants into the system.

**§ 5.54. Responsibility for condition of equipment.**

The licensee has the sole responsibility of maintaining equipment used in dispensing malt or brewed beverages on draft in a clean and sanitary condition. The mere fact that records

of licensees [indicating] indicate that [coils, tap rods and connections have] the malt or brewed beverage dispensing system has been cleaned [are] is no defense to [disciplinary] enforcement action under the law and the provisions of this subchapter if the [coils, tap rods or connections are] malt or brewed beverage dispensing system is at any time found to be in an [insanitary] unsanitary condition.

## CHAPTER 7. TRANSFER, EXTENSION, SURRENDER, EXCHANGE AND SUSPENSION OF LICENSES

### Subchapter A. TRANSFER OF LICENSES

§ 7.2. **Transfers of ownership.** Where an application is filed for transfer of a license from one person to another [at the same address], a bill of sale of the business or fixtures shall be executed by the licensee and shall be exhibited to the Board or its representative. The purchase price of the business, either in the form of cash or legal obligation as security for the purchase price, shall be placed in escrow with an attorney or financial institution, to be paid to the original licensee upon the approval of the transfer by the Board. The actual transfer of ownership of the business may not pass until approval of the transfer of license has been given. The transferee shall exhibit a deed or lease for the premises, or bill of sale, or both, as the case may be. The license may not change hands until the license transfer has been approved by the Board and the original licensee may continue the operation of the business and may sell liquor or malt or brewed beverages until formal approval of the transfer is given. If the original licensee does not continue

operation of the business under the license, no liquor or malt or brewed beverages may be sold and the license shall be surrendered to the Board until the transfer is approved.

## CHAPTER 11. PURCHASES AND SALES

### Subchapter F. SALE OF LIQUOR TO THE BOARD

\* \* \*

#### **§ 11.144. Merchant tax responsibility**

(a) A merchant not already licensed by the Board shall provide to the Board, upon forms approved by the Pennsylvania Departments of Revenue and Labor and Industry, the following:

(1) the merchant's personal income tax identification number;

(2) the merchant's sales tax number;

(3) the merchant's corporation tax number;

(4) the merchant's employer withholding tax number; and

(5) the merchant's unemployment compensation account number.

(b) A merchant, at the time of annual renewal and issuance of its license or permit shall, by the filing of an application, waive any confidentiality with respect to tax information regarding said merchant in the possession of the Department of Revenue, the Office of Attorney General or the Department of Labor and Industry, regardless of the source of that information and shall consent to the providing of that information to the Board by the Department of Revenue, the Office of Attorney General or the Department of Labor and Industry.

(c) Upon receipt of any application for the grant, renewal or validation of any merchant's license or permit, the Board shall review the tax status of the applicant. The Board shall request tax information regarding the applicant from the Department of Revenue, the Office of Attorney General and the Department of Labor and Industry and said information shall be provided.

(d) The Board shall not approve any application for the grant, renewal or validation of any merchant's license or permit issued pursuant to this article where the applicant has failed to:

(1) provide any of the information required by subsection (a);

(2) file required tax reports; or

(3) pay any taxes not subject to a timely administrative or judicial appeal or subject to a duly authorized deferred payment plan.



(e) Upon the required submission of the annual fee or upon renewal, validation or issuance of any merchant's license or permit, if the Department of Revenue or the Department of Labor and Industry notifies the Board of noncompliance with the aforementioned provisions, the Board shall not renew, issue or validate the merchant's license or permit. Any appeal of the Board's action shall not act as a supersedeas.

## **CHAPTER 13. PROMOTION**

### **SUBCHAPTER A. ADVERTISING**

#### **ADVERTISING OF BRAND NAMES**

##### **§ 13.43. Interior display.**

(a) A licensee may [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.

### **SUBCHAPTER A. ADVERTISING**

#### **GIVING AND ACCEPTING THINGS OF VALUE**

##### **§ 13.51. General prohibition.**

(a) Except as provided herein [in subsections (b), (c)] and in § 13.52 (relating to advertising novelties), no in-State or out-of-State manufacturer, licensee or group of licensees, their servants, agents or employes, may directly or indirectly, in person, individually or through a trade organization, contribute to or accept from another licensee or group of licensees of a different class, their servants, agents or employes or a trade organization of licensees of a different class, anything of value by means of advertisements, contributions, purchase, sale of tickets, donations or by any device, for any purpose.

\* \* \*

(e) The sponsorship of a tasting upon a licensed premises shall not be considered giving or accepting a thing of value.

#### Subchapter D. TASTING EVENTS

##### § 13.201. Definitions.

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

*Sponsor*--A sponsor of a tasting event may be any licensed vendor, importer, distributor, importing distributor or manufacturer [broker, holder of a limited winery or winery license, or a manufacturer of liquor] or its agent or employee who is 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, 4 fluid ounces of wine (including fortified wine) or 1 1/2 fluid ounces of spirits [liquor].

\* \* \*

## TASTING EVENTS

§ 13.211. Tasting events.

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

(b) Sponsors [Licensed brokers, distributors, importing distributors and manufacturers or their agents] conducting a tasting event shall adhere to the following requirements:

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

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

(3) Products offered will not exceed a standard size alcoholic beverage for that product. For example, if wine is offered, each glass of each wine offered to a participant will not exceed four ounces in volume. A tasting event comparing a brand of Chardonnay from California to a brand of Chardonnay from France would allow the

participant to receive one four-ounce glass of each Chardonnay. [No more than one standard size alcoholic beverage of each product shall be provided to each tasting participant.]

### IN-STORE TASTING EVENTS

§ 13.223. Procurement of wine or spirits, or both.

(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 § 13.81 (relating to samples of liquor) [or], by [legal] purchase from the Board or the sponsor may provide and transport the wine and spirits from its own stock.

§ 13.228. Disposal and storage of partially-used liquor [unused alcohol] and empty containers.

(a) At the conclusion of the in-store tasting event, sponsors shall either discard unused portions of opened liquor containers at the State Liquor Store or may re-seal the partially-consumed liquor containers. The resealed partially-used containers shall be placed in storage at the store for use at a subsequent store tasting or may be removed from the premises. No partially-consumed liquor containers will be placed in storage at a store for more than 15 days. After 15 days, partially-used containers of liquor may be discarded by the Board.

(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) Resealed partially-used [Unused product, bottles or] containers may not be furnished to employees of the Board or any other person and may only be used for a subsequent in-store tasting.

## CHAPTER 17. SPECIAL RULES OF PRACTICE AND PROCEDURE FOR MATTERS BEFORE THE BOARD

### Subchapter A. GENERAL

§ 17.5. **Subpoenas.** (a) Issuance. [Issuance] Except for subpoenas issued upon the Board's own motion, issuance of subpoenas shall be as follows:

(1) Subpoenas for the attendance of witnesses or for the production of documents will be issued only upon written application to the Board, with a copy of the application to the opposing party.

§ 17.7. **Exhibits.** (a) Exhibits to be presented in connection with a hearing shall be submitted in five copies each at the time of the hearing unless otherwise directed by the

Board.

(b) Subsection (a) supersedes 1 Pa. Code § 33.15 (relating to number of copies).

(c) Documents that the Board, a party, petitioner or intervener expects to offer as exhibits may be presented to the Board's Hearing Examiner and all other parties of record in advance of a hearing. Such documents are not evidence unless admitted into the record by the Hearing Examiner at the hearing. Presentation of documents to the other parties before a hearing is encouraged.

\* \* \*

#### Subchapter B. LICENSE APPLICATIONS

§ 17.13. Protests/intervention procedure.

\* \* \*

(b) Time. A protest or petition to intervene shall be filed with the Board within 30 days of the posting of notice of application as required by Chapter 3 Subchapter B (relating to notice posting). The Board may accept an untimely filed protest or petition to intervene, but only upon good cause shown.

**Commonwealth of Pennsylvania  
Pennsylvania Liquor Control Board**

May 17, 2007

**SUBJECT: Proposed Regulations 54-63 (Amendments to Title 40, Pennsylvania Code)**

**TO:** KIM KAUFMAN, EXECUTIVE DIRECTOR  
INDEPENDENT REGULATORY REVIEW COMMISSION

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

**By Hand Delivery**

Refer to: 3-9454

Submitted herewith are proposed regulations of the Pennsylvania Liquor Control Board for your review and fiscal note. Also enclosed are the signed CDL-1, preamble and regulatory analysis form.

These proposals have been approved for form and legality by the Office of Attorney General.

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

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

**I.D. NUMBER:** 54-63  
**SUBJECT:** Definitions and Procedures  
**AGENCY:** Liquor Control Board

INDEPENDENT REGULATORY  
REVIEW COMMISSION

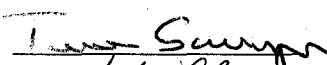

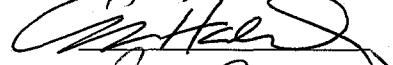

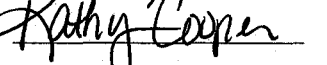
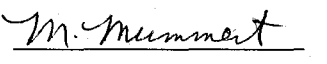
2007 MAY 17 PM 2:30

RECEIVED

**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>
5/1/07		HOUSE COMMITTEE ON LIQUOR CONTROL ( <i>Republican</i> ) ( <i>Democrat</i> )
5/17/07		
5/17/07		SENATE COMMITTEE ON LAW & JUSTICE ( <i>Republican</i> ) ( <i>Democrat</i> )
5/12/07		
5/17/07		INDEPENDENT REGULATORY REVIEW COMMISSION
4-20-07		ATTORNEY GENERAL
_____	_____	LEGISLATIVE REFERENCE BUREAU