

# Regulatory Analysis Form

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

(1) Agency

Pennsylvania Liquor Control Board

(2) I.D. Number (Governor's Office Use)

054-65

IRRC Number: 2714

(3) Short Title

Special liquor and luxury item orders

(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

Final Order Adopting Regulation

Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

No

Yes: By the Attorney General

Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

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

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

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

## 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 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?

Current regulations prohibit liquor vendors from processing orders for items which the Board sells through its wine and spirits stores. As noted above, this prohibition discourages vendors of rare fine wines and spirits products, or "luxury items," from allowing the Board to sell such items. The proposed regulatory change will allow vendors to process orders for "luxury items" both from the Board as well as from Board licensees and individual customers, thereby permitting vendors of such products to process orders both from the Board and from licensees or other persons, affording the citizens of Pennsylvania greater accessibility to such rare, luxury products.

(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.

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

Consumers of "luxury items," including individuals and fine-dining restaurant licensees, among others, will benefit from greater availability of such products in Pennsylvania.

(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.)

No adverse effects of these regulations are expected.

## 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.)

Vendors of luxury items will have to maintain records of such sales.

(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.

Vendors have advised the Board that current regulations are a disincentive to accepting orders from the Board for "luxury" items. Removing the regulatory barrier has been recommended.

(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 or realize new savings as a result of these regulations.

(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 government is not expected to incur new costs or realize new savings as a result of these regulations.

(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.

State government is not expected to incur new costs as a result of these regulations. Collection of additional mark-up and tax revenues is a probable result.

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(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. Because the market forces of supply and demand and the popularity and availability of certain vintages of fine wine or rare spirits will affect the Board's identification of an item as a "luxury item," fiscal impact is virtually impossible to estimate. It should be noted that in the 2007 fiscal year, the Board's revenue from sales of SLO items, which are similar in nature to "luxury items," was approximately \$70,000,000.00.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>						
<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>						
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>						

## Regulatory Analysis Form

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

See above. The proposed regulations do not have a significant financial component.

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

Program	FY -3	FY -2	FY -1	Current FY

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

Not applicable. See above.

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

Because existing regulations create the obstacles to obtaining luxury items, only regulatory amendments were considered as solutions.

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

Alternative regulatory schemes were not 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.

The regulations do not correspond to any federal regulations.

(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. To the extent the Board competes with retail liquor stores in other states, these regulatory changes may improve Pennsylvania's competitive position.

## 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.

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

(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.

Existing reporting, record keeping, or other paperwork requirements will not change as a direct result of these regulations.

(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.

The regulation is not expected to affect minorities, elderly, small businesses or 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.

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

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

BY \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

\_\_\_\_\_  
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- 065

DATE OF ADOPTION: October 24, 2008

BY:   
TITLE: Chairman  
(Executive Officer, Chairman or  
Secretary)

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

BY: JSDuh

October 24, 2008  
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 13. PROMOTION

*The following Subchapter and sections were amended:*

Subchapter B.

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

[PROMOTION OF SALE OF LIQUOR BY VENDORS]

§ 13.71. Definitions.

§ 13.73. Privileges of vendors' agents.

*The following section was deleted:*

§ 13.77. Agents' order books.

*The following sections were amended:*

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

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

§ 13.86. Agency provisions.

§ 13.87. Records.



## 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)], amends 40 Pa. Code, 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 to obtain certain products that are in short supply and high demand. Obtaining these products is consistent with the statutory mandate of section 207 of the Liquor Code that authorizes the Board to "...buy liquor and alcohol at the lowest price and in the greatest variety reasonably obtainable." [47 P.S. § 2-207(a)]. These products are often rare wines or spirits with limited production, for which the demand, world-wide, is great.

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

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

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

### Summary of Amendments:

The regulatory amendments create a sub-category of stock merchandise, known as "luxury items." These are varieties of wine and spirits that are in short supply or high demand, as may be determined by the Board. Vendors will be allowed to process orders for "luxury items" both from

the Board as well as from Board licensees and other persons, similar to current procedures for SLOs.

Affected Parties:

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

Paperwork Requirements:

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

Fiscal Impact:

Because the market forces of supply and demand and the popularity and availability of certain vintages of fine wine or rare spirits will affect the Board’s identification of an item as a “luxury item,” fiscal impact is virtually impossible to estimate. It should be noted that in the 2007 fiscal year, the Board’s revenue from sales of SLO items, which are similar in nature to “luxury items,” was approximately \$70,000,000.00. Over ninety percent (90%) of these sales are to licensees, such as hotels and restaurants.

Effective Date:

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

Public Comment/Contact Person:

Comments or questions 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 August 7, 2008, the Board submitted a copy of the notice of proposed rulemaking, published at 38 Pa.B. 4629, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Liquor Control Committee and Senate Law and Justice Committee for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act, on \_\_\_\_\_ (blank) \_\_\_\_\_, these final-form regulations were (deemed) approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_ (blank) \_\_\_\_\_ and approved the final-form regulations.

P. J. Stapleton III  
Chairman

ANNEX A  
TITLE 40. LIQUOR  
CHAPTER 13. PROMOTION

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Subchapter B.

**MARKETING BY VENDORS AND AGENTS; SPECIAL ORDERS;  
LUXURY ITEM ORDERS; SAMPLES AND UNLAWFUL ACTS**

**PROMOTION OF SALE OF LIQUOR BY VENDORS**

§ 13.71. Definitions.

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

\* \* \*

**Luxury items – STOCK MERCHANDISE WHICH, BASED UPON  
THEIR SHORT SUPPLY OR HIGH DEMAND, HAVE BEEN  
DESIGNATED AS SUCH BY THE BOARD. SALES OF LUXURY  
ITEMS MAY BE INITIATED AT A STATE LIQUOR STORE OR BY  
A VENDOR OR ITS AGENT ON BEHALF OF A LICENSEE OR  
OTHER PERSON. ~~Liquor items designated by the Board that are in  
short supply or high demand.~~**

**OTHER PERSONS – NON-LICENSEE INDIVIDUALS, SUCH AS  
PRIVATE CITIZENS.**

*Stock merchandise*—Liquors which are obtainable at a State Liquor Store, without placing a special liquor order ~~and which have not been designated as luxury items.~~

\* \* \*

§ 13.73. Privileges of vendors' agents.

(a) Agents may advertise and promote the sale of stock merchandise by “missionary work” of only those brands sold to the Board by the vendor by whom the agents are employed. [The work may include the use of the “Agents Order” form approved by the Board.]

(b) Agents may solicit orders from retail purchasers for stock merchandise or gift certificates for the merchandise.

(c) Agents may solicit from licensees or other persons, orders for those brands of liquor which have been listed with the Special Liquor Purchase Division by the vendors by whom the agents are employed. Special orders obtained by vendors' agents shall be filed with one of the State Liquor Stores as required in this subchapter.

**(d) Agents may solicit from licensees or other persons, orders for those brands of liquor which have been designated by the Board as luxury items. Orders for luxury items obtained by vendors' agents shall be filed with one of the State Liquor Stores as required in this subchapter.**

§ 13.77. Reserved. [Agents' order books.]

[The Board, upon request, will issue order books to vendors for themselves and their agents, in which each special order for liquors shall be entered. Each order shall be prepared in quadruplicate and bear the signature and address of the person from whom it is obtained, and the signature of the agent. In the case of a licensee, the order shall include the license number. The original order shall be forwarded to a State Liquor Store not later than

the business day after the order is obtained. One copy of the order shall be furnished by the licensed vendor or the vendor's agent to the person from whom the order is obtained and one copy shall be retained by the vendor for vendor's records; and the other copy shall remain in the order book. The Board reserves the right to examine the records of any licensed vendor or the vendor's agents.]

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

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

(b) Orders presented at State Liquor Stores by agents on behalf of persons other than licensees, SUCH AS INDIVIDUALS, OR ORDERS PRESENTED BY INDIVIDUAL CUSTOMERS THEMSELVES, shall be at the established retail special liquor order or luxury item prices. No order may be taken for less than two bottles [case quantities].

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



receiving the order or releasing the liquor to the purchaser, accept the checks of licensees in payment.

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

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

(a) Licensed vendors and their agents shall place special orders for liquor at State Liquor Stores [on the prescribed order book forms signed by the licensee or an authorized agent, or in the case of a retail sale, by the customer].

(b) Except by special permission of the Board, no special order merchandise may be delivered to a State Liquor Store until the licensed vendor has received from the Board a formal purchase order calling for the delivery of the liquor. Each case of liquor so delivered shall have clearly marked thereon, in addition to the information required by Federal or State

regulations, the purchase order number, the store order number, the brand and size, the code number as called for in the purchase order, and other information the Board may prescribe.

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

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

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

**(f) Except by special permission of the Board, no luxury item order merchandise may be delivered to a State Liquor Store until the licensed vendor has received from the Board a formal purchase order calling for**

the delivery of the liquor. Each case of liquor so delivered shall have clearly marked thereon, in addition to the information required by Federal or State regulations, the purchase order number, the store order number, the brand and size, the code number as called for in the purchase order, and other information the Board may prescribe.

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

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

\* \* \*

§ 13.86. Agency provisions.

Licensed vendors and their agents shall, except as otherwise restricted in this title, be considered the agents of the persons from whom they obtain special liquor orders or luxury item orders. Neither the Commonwealth nor the Board will be responsible for the proper disposition of moneys collected from a licensee or other person by a licensed vendor or his agents, and under no circumstances will the Commonwealth or the Board be responsible for actions of a licensed vendor or his agents.

§ 13.87. Records.

(a) Every licensed vendor shall maintain and keep complete records of all operations in this Commonwealth for 2 years, which shall be open to inspection by authorized representatives of the Board during normal business hours. These records shall include salaries or commissions of all

agents and other employees [employees] working in this Commonwealth, expenses of the employees [employees] supported by detailed vouchers, all promotional and advertising expenditures, special order sales, luxury item sales and stock merchandise requests.

(b) The agents of vendors operating in this Commonwealth shall maintain complete records covering their operations in this Commonwealth. The records shall also be open to inspection by authorized representatives of the Board during normal business hours.

Commonwealth of Pennsylvania  
Pennsylvania Liquor Control Board

October 24, 2008

**SUBJECT:** Final- Regulations 54-65 (Amendments to Title 40, Pennsylvania Code) – IRRC No. 2714

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

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

**By Hand Delivery**

Refer to: 3-9454

Submitted herewith are final-form amendments to the regulations of the Pennsylvania Liquor Control Board ("Board"). Also enclosed are the signed CDL-1, preamble and regulatory analysis form. The signed transmittal sheet also is enclosed.

The proposed version of these regulations was provided to the Legislative Oversight Committees and the Independent Regulatory Review Commission ("IRRC") on August 7, 2008. Comments were received on October 22, 2008 from the Independent Regulatory Review Commission ("IRRC") and on August 26, 2008 from Ms. Debbie Chappell of Wolff Strategies. The comments and the Board's responses to these comments are as follows:

**Comments of the Independent Regulatory Review Commission**

**1. General Comments. - Implementation procedures; Clarity.**

*The type of product to which the regulation applies*

The Preamble states that the purpose of this proposed regulation is to facilitate the Board's access to **fine wines** that a vendor might otherwise reserve for special orders only. However, the regulation applies to "**liquor**," which includes wine but is a substantially broader category. The Board should clarify the category to which the regulation applies: fine wines, liquor, or both.

Response:

The Board's intent was to allow the Board to designate certain liquor items (i.e., both wine and spirits) as luxury items. Accordingly, the Preamble has been amended to reflect the Board's intent, which is memorialized in the final-form regulations.

*The process for sale and purchase of luxury items*

While the proposed regulation defines "luxury items," it does not explain the process for their sale. For example, in the Preamble, the Board says that individual consumers will benefit from being able to purchase luxury items from a state store. However, Chapter 13, Subchapter B applies to "promotion of sale **by vendors.**" (Emphasis added.) Section 13.73 (d) allows vendors to "obtain" orders of luxury goods from licensees and "other persons," but it does not specify how private citizens will be able to access luxury items. Section 13.79 (e) states that "licensed vendors and their agents shall place luxury item orders for liquor at State Liquor Stores." How does this sentence reflect the statement in the Preamble that vendors can process orders from **both the Board and from licensees or other persons?** (Emphasis added.)

A public commentator even questioned whether luxury items can still be ordered and shipped directly from the vendor/agent or whether they must be ordered at the state store.

Given these clarity concerns, the final-form regulation needs to clearly specify who is permitted to sell and buy luxury items and the sale and purchase process.

Response:

In order to help clarify that this process is accessible by vendors, their agents, individual members of the public and licensees, the title of the subsection has been changed from "PROMOTION OF SALE BY VENDORS" to "MARKETING BY VENDORS AND AGENTS; SPECIAL ORDERS; LUXURY ITEM ORDERS; SAMPLES AND UNLAWFUL ACTS."

Additionally, as a response to this comment and to comment number three (3), below, a definition of "other persons" has been added to section 13.71. Taken together, the Board believes that the regulation is now clear that the Special Liquor Order and the Luxury Item Order process are equally accessible by private citizens, licensees, vendors and vendor's agents.

Any person or entity, whether a private citizen, a licensee or a vendor or its agent, must place orders for SLO or luxury items via the Board's wine and spirits store system. This assures collection of mark-up and taxes. In

practice, such orders may be placed at a wine and spirits store or by calling the Board's order hotline. Further, vendors and their agents may utilize the vendor portal of the Board's website to place such orders. All orders are delivered to the wine and spirits store for pick-up by the ultimate purchaser.

## 2. Section 13.71. Definitions. - Clarity.

### *Stock merchandise*

The proposed regulation defines this term as liquors available from a liquor store without placing a special liquor orders (SLO) "**and which have not been designated as luxury items.**" (Emphasis added.) Are SLOs and luxury items two completely different things or are luxury items a sub-category of SLOs? Can a luxury item also be stock merchandise? If a luxury item can be stock merchandise as well as a sub-category of SLOs, then how does this reflect the existing language in Section 13.76 (a) which states that "[i]t is the intent of this section that vendors shall not compete on special order with items sold to the Board as stock merchandise?"

The final-form regulation should clarify the difference between stock merchandise, SLOs and luxury items.

### Response:

"Luxury" items represent a different class of products from SLO items. The Liquor Code recognizes only two (2) categories of liquor: stock items (consisting of those items sold via the Board's wine and spirits stores), and special order items, otherwise known as SLO, which consist of those items not currently available from the Board's wine and spirits stores. The two (2) categories are mutually exclusive. Luxury items are a subset of stock items which are sold by the Board via its wine and spirits stores, but unlike stock items, vendors and their agents can place orders for luxury items for licensed and unlicensed customers. The definition of "luxury item" has been amended to clarify the Board's intent. The final-form regulations do not conflict with, and, in fact, are consistent with, section 13.76(a) of the Board's Regulations.



### **3. Section 13.73. Privileges of vendors' agents. - Clarity.**

Subsection (d) refers to "other persons" from whom agents may solicit orders. While the term "other persons" is used throughout the existing regulation, it is not defined. To improve clarity, the final-form regulation should include a definition for this term.

Response:

A definition of "other persons" has been added to section 13.71, to clarify that the term includes non-licensee individuals, such as private citizens.

### **4. Section 13.79. Special orders and luxury item orders; restrictions. Implementation procedures.**

Subsection (g) refers to the release of "liquor sold to licensees." However, this subsection does not mention how liquor sold to "other persons," as mentioned in section 13.73(d), would be released. The final-form regulation should clarify this issue.

Response:

Initially, it should be noted that the Board, for the sake of consistency, utilized the language from existing section 13.79(c) and placed it into new section 13.79(g). For clarity, the Board has defined "other persons" in section 13.71 of the final-form regulations. The release of "luxury item" orders to such individuals is covered by proposed subsection 13.79(h).

### **Comments of Ms. Debbie Chappell, Wolff Strategies**

On August 26, 2008, this commentator questioned whether luxury items can still be ordered and shipped directly from the vendor/agent or whether they must be ordered at the state store.

Response:

Any person or entity, whether a private citizen, a licensee or a vendor or its agent, must place orders for SLO or luxury items via the Board's wine and spirits store system. This assures collection of mark-up and taxes. In practice, such orders may be placed at a wine and spirits store or by calling the Board's order hotline. Further, vendors and their agents may utilize the vendor portal of the Board's website to place such orders. All

Kim Kaufman Memo

October 24, 2008

Page 5

orders are delivered to the wine and spirits store for pick-up by the ultimate purchaser.

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

cc: (w/encl.)

Honorable Sean Logan, Chairman, Senate Committee on Law and Justice

Honorable John Rafferty, Republican Chairman, Senate Committee on Law  
and Justice

Honorable Ron Raymond, Chairman, House Committee on Liquor Control

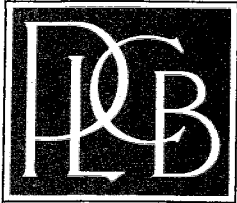
Honorable Robert Donatucci, Democratic Chairman, House Committee on  
Liquor Control

Mr. Mark Meyer, Senate Committee on Law and Justice

Mr. Ken Varhola, Senate Committee on Law and Justice

Ms. Marcia Lampman, Executive Director, (R) House Committee on Liquor  
Control

Ms. Lynn Benka-Davies, Executive Director (D) House Committee on  
Liquor Control



# PENNSYLVANIA LIQUOR CONTROL BOARD

Harrisburg, Pennsylvania 17124-0001

IN THE PUBLIC INTEREST

October 27, 2008

Telephone: (717) 783-9454

FAX: (717) 787-8820

Ms. Debbie Chappell  
Wolff Strategies  
116 Pine Street, Fifth Floor  
Harrisburg, Pennsylvania 17101  
VIA E-MAIL: [dchappell@triadstrategies.com](mailto:dchappell@triadstrategies.com)

**RE: Final-Form Regulations 54-65 - Luxury SLO**

Dear Ms. Chappell:

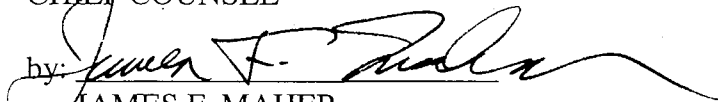
Your e-mail of August 26, 2008 to Ms. Lynn Benka-Davies, Executive Director (D) of the House Committee on Liquor Control raised questions and provided comments on changes proposed to the regulations of the Pennsylvania Liquor Control Board ("Board"). [40 Pa. Code § 1.1 *et seq.*].

As required by the Regulatory Review Act, a copy of your e-mail was sent, within five (5) business days of receipt, to the Independent Regulatory Review Commission ("IRRC"), the Senate Committee on Law and Justice and the House Committee on Liquor Control. [71 P.S. § 745.5(c)].

On October 27, 2008, a final-form version of the regulations was delivered to the Independent Regulatory Review Commission ("IRRC"), the Senate Committee on Law and Justice and the House Committee on Liquor Control. A copy of this final-form version is enclosed. Also enclosed is a copy of a memorandum to Mr. Kim Kaufman, Executive Director, IRRC, including responses to IRRC's comments and to yours.

Very truly yours,

FAITH S. DIEHL  
CHIEF COUNSEL

by:   
JAMES F. MAHER  
Assistant Counsel

Encl.

cc: ~~Kim Kaufman~~  
Executive Director, Independent Regulatory Review Commission



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Ms. Debbie Chappell  
Wolff Strategies  
116 Pine Street, Fifth Floor  
Harrisburg, Pennsylvania 17101  
**VIA E-MAIL:** [dchappell@triadstrategies.com](mailto:dchappell@triadstrategies.com)

## **RE: Amended Annex A for Final-Form Regulations 54-65 - Luxury SLO**

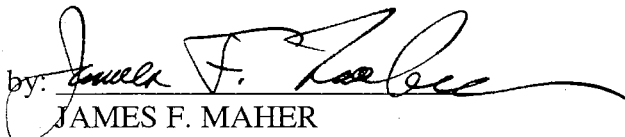
Dear Ms. Chappell:

In the package of final-form regulations distributed today, the formatting of Annex A was incorrect. A corrected Annex A is attached. Kindly replace the earlier Annex A with this revised Annex A in the package already distributed. [1 Pa. Code § 307.3a (a)].

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

Very truly yours,

FAITH S. DIEHL  
CHIEF COUNSEL

by:   
JAMES F. MAHER  
Assistant Counsel

Attachment

cc: ~~Kim Kaufman~~  
Executive Director, Independent Regulatory Review Commission

Commonwealth of Pennsylvania  
Pennsylvania Liquor Control Board

October 27, 2008

**SUBJECT:** Amended Annex A for Final- Regulations 54-65 (Amendments to Title 40, Pennsylvania Code) – IRRC No. 2714

**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

In the package of final-form regulations distributed today, the formatting of Annex A was incorrect. A corrected Annex A is attached. Kindly replace the earlier Annex A with this revised Annex A in the package already distributed. [1 Pa. Code § 307.3a (a)].

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

cc: (w/attachment)

Honorable Sean Logan, Chairman, Senate Committee on Law and Justice  
Honorable John Rafferty, Republican Chairman, Senate Committee on Law  
and Justice

Honorable Ron Raymond, Chairman, House Committee on Liquor Control  
Honorable Robert Donatucci, Democratic Chairman, House Committee on  
Liquor Control

Mr. Mark Meyer, Senate Committee on Law and Justice

Mr. Ken Varhola, Senate Committee on Law and Justice

Ms. Marcia Lampman, Executive Director, (R) House Committee on Liquor  
Control

Ms. Lynn Benka-Davies, Executive Director (D) House Committee on  
Liquor Control

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

RECEIVED  
2008 OCT 27 PM 3:33

**I.D. NUMBER:** 54-65  
**SUBJECT:** Luxury Item Order Process  
**AGENCY:** Liquor Control Board

INDEPENDENT REGULATORY  
REVIEW COMMISSION

**TYPE OF REGULATION**

- \_\_\_\_\_ Proposed Regulation
- X   Final Regulation – Amended Annex A
- \_\_\_\_\_ 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>
10/27/08	<u>Susan Thomas</u> (1)	HOUSE COMMITTEE ON LIQUOR CONTROL ( <i>Democrat</i> )
10/27/08	<u>Deborah Hays</u> (2)	( <i>Republican</i> )
10-27-08	<u>Cecilia Boyer</u> (3)	SENATE COMMITTEE ON LAW & JUSTICE ( <i>Republican</i> )
10/27/08	<u>D. Hard</u> (4)	( <i>Democrat</i> )
10/27/08	<u>Dr. Belmont</u> (5)	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____ (6)	ATTORNEY GENERAL
_____	_____ (7)	LEGISLATIVE REFERENCE BUREAU

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT  
TO THE  
REGULATORY REVIEW ACT

RECEIVED

2008 OCT 27 AM 11:30

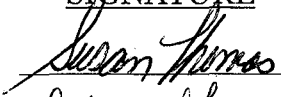
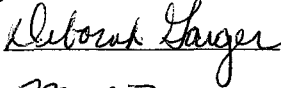
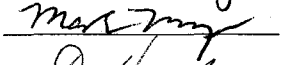
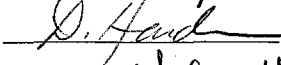

INDEPENDENT REGULATORY  
REVIEW COMMISSION

I.D. NUMBER: 54-65  
SUBJECT: Luxury Item Order Process  
AGENCY: Liquor Control Board

TYPE OF REGULATION

- \_\_\_ Proposed Regulation
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- \_\_\_ 120-day Emergency Certification of the Attorney General
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FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
10/27/08	 (1)	HOUSE COMMITTEE ON LIQUOR CONTROL (Democrat)
10/27/08	 (2)	(Republican)
10/27/08	 (3)	SENATE COMMITTEE ON LAW & JUSTICE (Republican)
10/27/08	 (4)	(Democrat)
10/27/08	 (5)	INDEPENDENT REGULATORY REVIEW COMMISSION
___	___ (6)	ATTORNEY GENERAL
___	___ (7)	LEGISLATIVE REFERENCE BUREAU