

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 authorizes only two (2) categories of liquor that the Board may sell: stock items, 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. The Board's Regulations currently prohibit liquor vendors from processing orders for stock items which the Board carries, but allow such processing for SLO items.

There is an ever-growing demand for fine wines which happen to be in limited quantity. If a liquor vendor believes that such a rare fine wine 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 wines with the Board, via the Board's wine and sprits stores, since allowing its wines 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 citizens or Board licensees). The net result of such a decision by a vendor is that the Board would be precluded from offering the wine to the public at large. 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.

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(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, 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 other persons, 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 fine wines.

(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" 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.

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(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.

(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 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
SAVINGS:						
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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(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.

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.

CDL-1

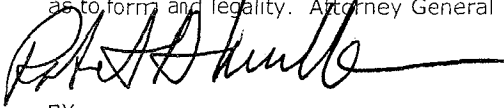
FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
DO NOT WRITE IN THIS SPACE
REVIEW COMMISSION

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



BY _____
(DEPUTY ATTORNEY GENERAL)

JUL 28 2008

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: July 9, 2008



BY: _____

TITLE: Chairman
(Executive Officer, Chairman or
Secretary)

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

BY: JS Diehl

July 3, 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.

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)], proposes to amend 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, for which the demand, world-wide, is great.

The Liquor Code authorizes 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 which happen to be in limited quantity. If a liquor vendor believes that such a rare fine wine 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 spirits 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 citizens or Board 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.

Summary of Amendments:

The proposed regulatory amendments create a new category of liquors, "luxury items." These are varieties of liquor (including wine) 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 proposed 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, thereby reducing the availability to the Pennsylvania public at large via the Board's wine and spirits stores.

Paperwork Requirements:

The proposed 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 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.

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 _____, 2008, 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 Committee on Liquor Control 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 by the agency, the General Assembly and the Governor of comments, recommendations or objections raised prior to final publication of the regulation.

P. J. Stapleton III
Chairman

ANNEX A
TITLE 40. LIQUOR
CHAPTER 13. PROMOTION

Subchapter B.

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 – Liquor items designated by the Board that are in short supply or high demand.

* * *

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 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 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**

August 6, 2008

SUBJECT: Proposed Regulations 54-65 (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. Also enclosed are the signed CDL-1, preamble and regulatory analysis form.

These 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.

RECEIVED
TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE
REGULATORY REVIEW BOARD

AUG -7 AM 11:44

I.D. NUMBER: 54-65
SUBJECT: Luxury SLO
AGENCY: Liquor Control Board

INDEPENDENT REGULATORY
 REVIEW COMMISSION

TYPE OF REGULATION

- X 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>
8-7-08	<u>Archie S. Moore</u> (1)	HOUSE COMMITTEE ON LIQUOR CONTROL (Democrat)
8-7-08	<u>Byron Hall</u> (2)	(Republican)
8-7-08	<u>Cecilia Boyer</u> (3)	SENATE COMMITTEE ON LAW & JUSTICE (Republican)
8/7/08	<u>Rance Jacobsen</u> (4)	(Democrat)
8/7/08	<u>J. Belmont</u> (5)	INDEPENDENT REGULATORY REVIEW COMMISSION
7-9-08	<u>M. Mummert</u> (6)	ATTORNEY GENERAL
<u> </u>	<u> </u> (7)	LEGISLATIVE REFERENCE BUREAU