

# Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY  
REVIEW COMMISSION  
IRRC

(All Comments submitted on this regulation will appear on IRRC's website)

2011 SEP -7 P 3:38

(1) Agency:  
Pennsylvania Liquor Control Board

(2) Agency Number: 54  
Identification Number: 68

IRRC Number: 2913

(3) PA Code Cite: 40 Pa. Code, Chapter 5

(4) Short Title: Limited Winery Reporting

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: James F. Maher (717) 783-9454  
Pennsylvania Liquor Control Board  
401 Northwest Office Building  
Harrisburg, Pennsylvania 17124  
FAX: (717) 787-8820  
Email: ra-lblegal@state.pa.us

Secondary Contact: Christopher L. Herrington (717) 783-9454  
(Same Contact Information)

(6) Type of Rulemaking (check applicable box):

- |  |  |
|--|--|
| <input type="checkbox"/> Proposed Regulation                 | <input type="checkbox"/> Emergency Certification Regulation;   |
| <input type="checkbox"/> Final Regulation                    | <input type="checkbox"/> Certification by the Governor         |
| <input checked="" type="checkbox"/> Final Omitted Regulation | <input type="checkbox"/> Certification by the Attorney General |

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This regulatory change reduces paperwork associated with production reporting by licensed limited wineries. Currently, the regulations require monthly reporting to the Board on paper copies. This change will convert the reporting system to an annual basis, permit the use of electronic reporting, and coordinate production reporting with the license renewal and validation cycles.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Pennsylvania Liquor Code, sections 207(i) [47 P.S. § 2-207(i)].

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

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

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This regulatory change simplifies the production reporting procedure for licensed limited wineries. The Liquor Code defines a "limited winery" as a winery which has an annual production of less than 200,000 gallons. Under the current regulations, which were last amended in 1984, monthly reports must be submitted. This change will convert the reporting system to an annual basis, and coordinate production reporting with the license renewal and validation cycles. Further, amending the regulation to expand the manner by which such reports are submitted to the Board will allow limited wineries to electronically submit their reports with their renewal application, rather than transmit paper reports to the agency. The information in these reports also is used by the Pennsylvania Department of Agriculture.

This regulatory change has been requested by the industry. The people who will first benefit from this change are the licensed limited wineries. As of the date of this submission, there are one hundred seventy-six (176) active licensed limited wineries.

(11) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

The Board has not relied on data to justify this regulation.

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

There no adverse effects anticipated as a result of this regulatory change.

(13) 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.

Each of the one hundred seventy-six (176) licensed limited wineries will be required to change their current production reporting system from a monthly to a calendar year basis.

(14) 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. Explain how the dollar estimates were derived.

The Board anticipates that this regulatory change may reduce the administrative costs of the regulated community.

(15) 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. Explain how the dollar estimates were derived.

The regulation is not expected to have a cost or savings benefit to local governments.

(16) 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. Explain how the dollar estimates were derived.

The implementation of the regulation is not expected to affect the costs or savings of state government.

(17) 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.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Savings</b>	0	0	0	0	0	0
<b>COSTS:</b>						
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Costs</b>	0	0	0	0	0	0
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Revenue Losses</b>	0	0	0	0	0	0

(17a) Provide the past three year expenditure history for programs affected by the regulation.

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulatory change is expected to reduce the administrative costs of the regulated community. It is not expected to have any costs or adverse effects.

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

During the development of this regulation, members of the licensed community, including each of the licensed limited wineries, were provided notice of this rulemaking by U. S. Mail or e-mail and by publication in the *Pennsylvania Bulletin* on July 30, 2011 [41 Pa.B 4104].

(20) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Non-regulatory alternatives were not considered because the benefit for licensed businesses requires a modification to the current regulations.

(21) 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 regulations.

This reporting requirement is not known to be more stringent than federal regulations.

(22) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Wineries are regulated by neighboring states in accordance with their unique and individual systems of alcoholic beverage control. Because of this, the regulatory change should not put Pennsylvania at a competitive disadvantage.

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

The regulation will not affect any other existing or proposed regulations of the Liquor Control Board or any other state agency. The Board has consulted with the Department of Agriculture with regard to the proposed regulatory change.

(24) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This regulatory change is not expected to affect legal, accounting or consulting procedures and should not require any additional reporting, recordkeeping or other paperwork.

(25) 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 particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

(26) Include a schedule for review of the regulation including:

- |   |                            |
|---|----------------------------|
| A. The date by which the agency must receive public comments:                               | <u>None: Final-omitted</u> |
| B. The date or dates on which public meetings or hearings will be held:                     | <u>None</u>                |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>November 2011</u>       |
| D. The expected effective date of the final-form regulation:                                | <u>November 2011</u>       |
| E. The date by which compliance with the final-form regulation will be required:            | <u>November 2011</u>       |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <u>N/A</u>                 |

(27) 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.

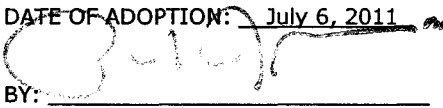
CDL-1

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

RECEIVED  
IRRC

2011 SEP -7 P 3:38  
DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Pennsylvania Liquor Control Board</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. 054-<u>68</u></p> <p>DATE OF ADOPTION: <u>July 6, 2011</u></p> <p>BY: </p> <p>TITLE: <u>Chairman</u> (Executive Officer, Chairman or Secretary)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies:</p> <p>BY: <u>YSDiehl</u> Chief Counsel</p> <p><u>July 1, 2011</u> DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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TITLE 40—LIQUOR

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

*The following section is amended:*

5.103. Limited wineries.



# FINAL-OMITTED RULEMAKING

## LIQUOR CONTROL BOARD

### 40 PA. CODE CHAPTER 5

#### Limited Winery Reporting

The Liquor Control Board ("Board"), under the authority of section 207(i) of the Liquor Code (47 P.S. § 2-207(i)), amends Chapter 5.

#### *Summary*

This regulatory change simplifies the production reporting procedure for licensed limited wineries. The Liquor Code defines a "limited winery" as a winery which has an annual production of less than 200,000 gallons. Under the current regulations, which were last amended in 1984, monthly reports must be submitted. This change will convert the reporting system to an annual basis and coordinate production reporting with the license renewal and validation cycles. Further, amending the regulation to expand the manner by which such reports are submitted to the Board will allow limited wineries to electronically submit their reports with their renewal and validation applications, rather than transmit paper reports to the agency. The information in these reports also is used by the Pennsylvania Department of Agriculture.

#### *Affected Parties*

The rulemaking will affect licensed limited wineries. As of the date of this submission, there are one hundred seventy-six (176) active limited wineries licensed by the Board. All potentially affected parties have been or will be given notice of this rule-making, either by e-mail or U.S. Postal Service mail.

#### *Paperwork Requirements*

The Board anticipates that this regulatory change will reduce the amount of paperwork and, therefore, reduce the administrative costs of the regulated community.

*Fiscal Impact*

This regulatory change is not expected to have any adverse fiscal impact on the regulated community or state and local governments. Administrative costs of the limited wineries may be reduced by converting to an annual reporting cycle.

*Effective Date:*

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

*Contact Person:*

Further information is available by contacting James F. Maher, Assistant Counsel or Christopher Herrington, Deputy Chief Counsel, Office of Chief Counsel, Pennsylvania Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

*Regulatory Review:*

Under section 5a(c) of the Regulatory Review Act, (71 P.S. § 745.5a(c)), the Board submitted a copy of these final-omitted regulations and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC), the Chairpersons of the House and Senate Committees, and the Office of Attorney General on \_\_\_\_\_. A copy of this material is available to the public upon request.

Under section 5a(j.2) of the Regulatory Review Act, on \_\_\_\_\_, these final-form regulations were (deemed) approved by the House and Senate Committees. Under section 5a(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_ and approved the final-omitted regulations.

P.J. Stapleton III  
Chairman

## ANNEX A

### TITLE 40. LIQUOR

#### Part I. LIQUOR CONTROL BOARD

#### CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

#### Subchapter H. RECORDS AND REPORTS—BREWERIES, BONDED WAREHOUSES, LIMITED WINERIES AND LICENSED DISTILLERIES OF HISTORICAL SIGNIFICANCE

##### § 5.103. Limited wineries.

\* \* \*

(c) *Reports [Monthly reports]*. A licensed limited winery shall file [monthly] reports in the manner set forth [on forms provided] by the Board covering operations of their licensed business during the preceding calendar year [month]. The reports shall be signed and sworn to by the licensee or his authorized agent and shall be filed with the Board at the time of the renewal or validation of the license [on or before the 15th day of the month immediately succeeding the month for which the reports are prepared]. A copy of each report shall be retained on the licensed premises for a period of at least 2 years from the date of filing. Failure to file the aforementioned reports shall preclude the Board from renewing or validating the license in question. These reports are in addition to any information or report the licensed limited winery may be required to provide to the Pennsylvania Department of Agriculture pursuant to obligations created through the Agricultural Commodities Marketing Act, 3 Pa.C.S.A. §4501 et seq., and any regulations promulgated thereunder, including 7 Pa. Code §104.75.

**Commonwealth of Pennsylvania  
Pennsylvania Liquor Control Board**

September 7, 2011

**SUBJECT: Final-Omitted Regulations 54-68 (Amendments to Title 40,  
Pennsylvania Code, Section 5.103)**

**TO:** FIONA WILMARTH, ACTING EXECUTIVE DIRECTOR  
INDEPENDENT REGULATORY REVIEW COMMISSION

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

**By Hand Delivery**

Refer to: 3-9454

Submitted herewith are final-omitted amendments to section 5.103 of the regulations of the Pennsylvania Liquor Control Board ("Board"). Enclosed are the regulatory analysis form, signed CDL-1 face sheet, preamble and Annex A. The signed transmittal sheet also is enclosed which indicates delivery of this regulatory change today to the legislative oversight committees and the Office of Attorney General.

An advance notice of this regulatory change has been sent by e-mail or regular U.S. mail to each of the limited wineries licensed by the Board. Only limited wineries will be affected by this regulatory change. Additionally, an advance notice of this regulatory change was published in the Pennsylvania Bulletin on July 30, 2011. [41 Pa. B. 4104].

This regulatory change reduces paperwork associated with production reporting by licensed limited wineries. The regulatory change was requested by a member of the regulated community.

On July 19, 2011, the Board requested that the Independent Regulatory Review Commission ("IRRC") assist the Board by conducting an informal review of

this regulatory change. On August 17, 2011, the Board received the following informal comments from IRRC, which are followed by the Board's responses thereto:

- *The new language being added to § 5.103 (c) would preclude the Board from renewing or validating a license if information or reports that may be required by the Pennsylvania Department of Agriculture (“Agriculture”) “pursuant to obligations created through the Agricultural Commodities Marketing Act, 3 Pa. C.S.A. § 4501 et seq. (Marketing Act), and any regulations promulgated thereunder, including 7 Pa. Code § 104.75” are not filed. What is the LCB’s specific statutory authority for not renewing or validating a license if a licensee is not in compliance with the Marketing Act?*

Response: It was the Board’s intent to notify licensees that their reporting obligations to the Board are separate and distinct from their reporting obligations to Agriculture. It was not the Board’s intent to make compliance with Agriculture’s reporting requirements a prerequisite for license renewal. The language has been amended accordingly.

- *The phrase, “in the manner set forth” is more vague than the existing language, “on forms provided” that is being deleted. How will the Board relay the required report information to limited wineries?*

Response: The intent of the amendment to the regulation is to expand the manner in which the required information is provided to the Board. Currently, the regulation contemplates that the information will be provided to the Board on paper forms. When the regulation becomes effective, the Board intends to require electronic submission along with the limited winery’s renewal application. A letter will be mailed to all limited wineries explaining the new process.

- *Has the LCB informed the Department of the potential changes to the regulation?*

Response: Yes, the Board consulted with the Pennsylvania Department of Agriculture in developing the proposed rulemaking. This information has been added to the Preamble.

- *Regulatory Analysis Form Question #9, pertaining to schedule of review for the regulation, should be updated to reflect accurate dates.*

Response: The Board has utilized the new Regulatory Analysis Form, and has updated the dates pertaining to the schedule of review for the regulation (Question #26 in the new RAF).

Any questions and comments regarding this regulatory submission should be directed to James F. Maher or Christopher L. Herrington at (717) 783-9454.

cc: (w/encl.)

Honorable John Pippy, Chairman, Senate Law and Justice Committee

Honorable Jim Ferlo, Democratic Chairman, Senate Law and Justice Committee

Honorable John Taylor, Chairman, House Liquor Control Committee

Honorable Dante Santoni, Jr., Democratic Chairman, House Liquor Control Committee

Ms. Cheryl Schriner, Executive Director, Senate Law and Justice Committee

Mr. Stephen Bruder, Executive Director, Senate Law and Justice Committee

Ms. Marcia Lampman, Executive Director, House Liquor Control Committee

Ms. Lynn Benka-Davies, Executive Director, House Liquor Control Committee

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

**I.D. NUMBER:** 54-68  
**SUBJECT:** Limited Winery Reporting  
**AGENCY:** Liquor Control Board

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**TYPE OF REGULATION**

- \_\_\_\_\_ Proposed Regulation
- \_\_\_\_\_ Final Regulation
- X  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>
9-7	<u>Susan Thomas</u> (1)	HOUSE COMMITTEE ON LIQUOR CONTROL ( <i>Democrat</i> )
9-7	<u>George Jones</u> (2)	( <i>Republican</i> )
9-7	<u>Ch. [Signature]</u> (3)	SENATE COMMITTEE ON LAW & JUSTICE ( <i>Republican</i> )
9-7	<u>[Signature]</u> (4)	( <i>Democrat</i> )
9/7/11	<u>K Cooper</u> (5)	INDEPENDENT REGULATORY REVIEW COMMISSION
9/7	<u>[Signature]</u> (6)	ATTORNEY GENERAL
_____	_____ (7)	LEGISLATIVE REFERENCE BUREAU