

# Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY  
REVIEW COMMISSION

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

(1) Agency:

Pennsylvania Liquor Control Board

(2) Agency Number: 54

Identification Number: 71

IRRC Number: 2945

(3) PA Code Cite: 40 Pa. Code, Chapter 11

(4) Short Title: Limited Winery Container Size Restrictions

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

Primary Contact: Alan Kennedy-Shaffer (717) 783-9454  
Pennsylvania Liquor Control Board  
401 Northwest Office Building  
Harrisburg, Pennsylvania 17124  
FAX: (717) 787-8820  
Email: [ra-lblegal@state.pa.us](mailto:ra-lblegal@state.pa.us)

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

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

- Proposed Regulation  
 Final Regulation  
 Final Omitted Regulation

- Emergency Certification Regulation;  
 Certification by the Governor  
 Certification by the Attorney General

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

This regulatory change removes the container size restrictions imposed upon licensed limited wineries. Currently, containers of wine sold by limited wineries for delivery within the Commonwealth must be not less than three-sixteenths (3/16) liters nor more than five (5) liters. The regulation does not permit a limited winery to sell in larger keg containers which could be tapped by retail licensees and sold in draught form. This change will remove all container size restrictions applicable to licensed limited wineries, thereby permitting limited wineries to sell their wine in kegs and any other sized containers, as the marketplace may demand.

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

Pennsylvania Liquor Code, sections 207(g) and 207(i) [47 P.S. §§ 2-207(g), 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 removes the container size restrictions imposed upon licensed limited wineries. The Liquor Code defines a "limited winery" as a winery which has an annual production of less than two hundred thousand (200,000) gallons. [47 P.S. § 5-505.2]. Under the current regulation, containers of wine sold by licensed limited wineries for delivery within the Commonwealth must be not less than three-sixteenths (3/16) of a liter nor more than five (5) liters, except that sparkling grape wine may be sold in glass containers larger than five (5) liters. These size limitations do not apply to out-of-state sales conducted by licensed limited wineries.

This regulatory change has been requested by the regulated industry. The rulemaking will affect the one hundred eighty (180) currently active limited wineries licensed by the Board including one hundred seventy-two (172) located within Pennsylvania, and eight (8) located outside of the Commonwealth. Selling wine in kegs may reduce the bottling and labeling costs of limited wineries, which may, in turn, result in overall cost-savings for consumers who purchase such wine at licensed establishments.

(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?

The rulemaking will affect the one hundred eighty (180) currently active limited wineries licensed by the Board including one hundred seventy-two (172) located within Pennsylvania, and eight (8) located outside of the Commonwealth. In that the proposal eliminates an existing restriction, it is unlikely that anyone will be adversely affected. In fact, selling wine in kegs may reduce the bottling and labeling costs of limited wineries, which may, in turn, result in overall cost-savings for consumers who purchase such wine at licensed establishments.

(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 eighty (180) currently active limited wineries licensed by the Board, in that they will be permitted to sell their wines in containers of any size; no limited winery would be required to make any changes to their currently licensed manufacturing operations or processes to be compliant with the proposed rulemaking.

(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.

Since it is discretionary for a licensed limited winery to take advantage of the removal of the container size restrictions, no costs are associated with compliance of the proposed rulemaking. The proposed rulemaking is expected to have a positive fiscal impact on licensed limited wineries. Further, selling wine in kegs may reduce the bottling and labeling costs of limited wineries, which may, in turn, result in overall cost-savings for consumers who purchase such wine at licensed establishments. However, the potential additional revenue or cost-savings cannot be quantified, as this will ultimately depend on governing market forces.

(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 result in any costs or savings for 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 regulation is not expected to result in any costs or savings for 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>	Positive, but unable to quantify	Positive, but unable to quantify	Positive, but unable to quantify	Positive, but unable to quantify	Positive, but unable to quantify	Positive, but unable to quantify
<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>
N/A	N/A	N/A	N/A	N/A

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

As noted above, the proposed rulemaking is expected to have a positive fiscal impact on licensed limited wineries and retail licensees, who will be able to capitalize on a growing market trend. Further, selling wine in kegs may reduce the bottling and labeling costs of limited wineries, which may, in turn, result in overall cost-savings for those retail licensees buying such kegs, and for consumers who purchase such wine at licensed establishments.

This regulatory change is not expected to have any adverse fiscal impact on local or state government. It should be noted that limited wineries may sell their products to the Board, to retail licensees and to the public. Further, pursuant to section 305(i) of the Liquor Code [47 P.S. § 3-305(i)] and section 11.104 of the Board's Regulations [40 Pa. Code § 11.104], the Board is not authorized to sell wine in similar keg containers. Accordingly, sales by limited wineries are not expected to have any adverse fiscal impact on the Board's, or the Commonwealth's, revenue.

(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.

Each of the licensed limited wineries will be provided notice of this rulemaking, either by e-mail or by U.S. Postal Service mail.

(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 the regulated community requires a modification to the current regulation.

(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.

The amended regulation 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.

(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.

Because the regulated community is not required to take any action as a result of this regulatory change, it 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>June 2012</u>           |
| D. The expected effective date of the final-form regulation:                                | <u>June 2012</u>           |
| E. The date by which compliance with the final-form regulation will be required:            | <u>June 2012</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 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. 054-7

DATE OF ADOPTION: May 16, 2012

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

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

BY: 

May 10, 2012  
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 11. PURCHASES AND SALES  
SUBCHAPTER C. WINES  
LIMITED WINERIES

*The following Section is proposed to be amended:*

11.111. Sale by limited winery licensees.

## **FINAL-OMITTED RULEMAKING**

### **LIQUOR CONTROL BOARD**

#### **40 PA. CODE CHAPTER 11**

##### **Limited Winery Container Size Restrictions**

The Liquor Control Board ("Board"), under the authority of sections 207(g) and 207(i) of the Liquor Code (47 P.S. §§ 2-207(g), 2-207(i)), amends Chapter 11.

##### *Summary*

This regulatory change removes the container size restrictions imposed upon licensed limited wineries. The Liquor Code defines a "limited winery" as a winery which has an annual production of less than two hundred thousand (200,000) gallons. [47 P.S. § 5-505.2]. Under the current regulation, section 11.111(a)(3), containers of wine sold by licensed limited wineries for delivery within the Commonwealth must be not less than three-sixteenths (3/16) of a liter nor more than five (5) liters, except that sparkling grape wine may be sold in glass containers larger than five (5) liters. [40 Pa. Code § 11.111(a)(3)]. These size limitations do not apply to out-of-state sales conducted by licensed limited wineries.

The Board has been approached by industry members who would like to sell draught wine from limited wineries at their premises, which is becoming a popular trend in the retail marketplace. The current regulation does not permit a limited winery to sell its wine in larger keg containers which could be tapped by retail licensees and sold in draught form. This change will remove all container size restrictions applicable to licensed limited wineries, thereby permitting limited wineries to sell their wine in kegs and other containers larger than five (5) liters in volume. The minimum container size restriction is also being removed, consistent with the Board's desire to allow limited wineries to sell in containers of any size, as the marketplace may demand.

##### *Affected Parties*

The rulemaking will affect licensed limited wineries. As of the date of this submission, there are one hundred eighty (180) active limited wineries licensed by



the Board, including one hundred seventy-two (172) located within Pennsylvania, and eight (8) located outside of the Commonwealth. All potentially affected limited wineries have been or will be notified of this rule-making, either by e-mail or by U.S. Postal Service mail.

### *Paperwork Requirements*

The Board does not anticipate that this regulatory change will affect the amount of paperwork or administrative costs of the regulated community.

### *Fiscal Impact*

This regulatory change is not expected to have any adverse fiscal impact on the regulated community. In fact, this regulatory change is expected to have a positive fiscal impact on licensed limited wineries and retail licensees, who will be able to capitalize on a growing market trend. Further, selling wine in kegs may reduce the bottling and labeling costs of limited wineries, which may, in turn, result in overall cost-savings for those retail licensees buying such kegs, and for consumers who purchase such wine at licensed establishments.

This regulatory change is also not expected to have any adverse fiscal impact on state and local governments. It should be noted that limited wineries may sell their products to the Board, to retail licensees and to the public. However, pursuant to section 305(i) of the Liquor Code [47 P.S. § 3-305(i)] and section 11.104 of the Board's Regulations [40 Pa. Code § 11.104], the Board is not authorized to sell wine in similar keg containers.

### *Effective Date*

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

### *Contact Person*

Further information is available by contacting Alan Kennedy-Shaffer, 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.

Joseph E. Brion  
Chairman

## ANNEX A

### TITLE 40. LIQUOR

#### Part I. LIQUOR CONTROL BOARD

#### CHAPTER 11. PURCHASES AND SALES

#### Subchapter C. WINES

#### LIMITED WINERIES

##### § 11.111. Sale by limited winery licensees.

(a) A limited winery licensee, licensed under § 3.62 (relating to creation), may sell wines produced on the licensed premises in accordance with the Liquor Code and this part, under the conditions in this subsection.

(1) There may be no sales for consumption on the licensed premises.

(2) Wine sold under a limited winery license may be shipped by transporter-for-hire or in a vehicle properly registered with the Board, as provided in Chapter 9, Subchapter A (relating to transportation of liquor, malt or brewed beverages or alcohol).

(3) Wine sold and destined to points within this Commonwealth shall be in sealed original containers [of not less than 3/16 liters nor more than 5 liters except that sparkling grape wine (as defined in 27 CFR 4.21(b)(1)—(3) (relating to the standards of identity)) may be sold in glass containers larger than 5 liters. These container size restrictions do not apply to wines sold for delivery outside this Commonwealth].

(4) Sales may be made generally only between the hours of 9 a.m. and 9 p.m. Monday to Saturday, inclusive, and 10 a.m. to 6 p.m. on Sunday. During the period from the Thanksgiving Day holiday through New Year's Day, limited winery sales locations may remain open until 10 p.m. of sales day to conform with the closing times of neighboring mall or shopping district businesses. Additionally, a limited winery may request approval from the Board to extend sales hours in individual locations at other times during the year, or beyond the limits set in this section. The request shall be in writing, to the Board's Office of the Chief Counsel, and shall detail the exact locations where sales hours are proposed to be extended. The licensee shall also set forth the proposed hours and dates of extended operation, as well as the reason for, and justification of, the proposed extended sales hours.

(5) While there may be no sales on credit, a limited winery may accept:

(i) From licensees and retail customers, checks drawn on their account.

(ii) From retail customers, credit cards issued by banking or financial institutions subject to State or Federal regulations.

(6) Visitors on the licensed premises may be provided without charge with samples of wine produced by the limited winery for tasting and with crackers, nuts, cheese, bread sticks and bread cubes to be used in conjunction with tastings.

(7) Limited winery licensees engaged in the retail and wholesale sales of wine are responsible to conform to the Liquor Code and this title.

(8) In addition to the sale of wines, the following items are permitted to be offered for sale on the licensed premises:

(i) Pennsylvania-grown fruits and the following products produced from the fruits:

(A) Juices.

(B) Juice concentrates.

(C) Jellies, jams and preserves.

(ii) Pennsylvania-grown mushrooms.

(iii) Home winemaking equipment and supplies.

(iv) Wine serving and storage accessories as follows:

(A) Cork removers.

(B) Wine glasses and decanters.

(C) Wine racks.

(D) Serving baskets and buckets.

(E) Bottle stoppers.

(v) Publications dealing with wine and winemaking.

(vi) Cheese, crackers, breads, nuts and preserved meats for consumption off the premises.

(vii) Gift packages consisting of any combination of the items listed in subparagraphs (i)—(vi).

(viii) Promotional items advertising the limited winery such as tee shirts, glassware, caps and the like.

(9) Sales on the licensed premises of merchandise not listed in paragraph (8) is subject to Board approval. The approval shall be requested by letter addressed to the Board. A limited winery licensee will be advised of approved items through an appropriate means of dissemination.

(10) A specific code of wine which is listed for sale as a stock item by the Board in State Liquor Stores may not be offered for sale at a licensed winery location at a price which is lower than that charged by the Board.

(11) Mail or telephone orders may be accepted. Delivery of products shall be accomplished through the use of vehicles properly registered by the limited winery

licensees or through properly licensed transporters. It is the responsibility of the limited winery licensee to insure that wine is not delivered to minors and that proper invoices are maintained under § 5.103 (relating to limited wineries).

(b) The employment of an agent by a limited winery is governed by § 3.63 (relating to agents).

(c) Records, sales invoices and reports shall be kept as prescribed in § 5.103.

(d) The use of additional Board-approved locations by limited winery licensees is governed by § 3.64 (relating to additional Board-approved locations).

**Commonwealth of Pennsylvania  
Pennsylvania Liquor Control Board**

May 16, 2012

**SUBJECT: Final-Omitted Regulation Package 54-71  
(Amendments to Title 40, Pennsylvania Code, Section 11.111)**

**TO: DAVID SUMNER, 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 is a copy of final-omitted amendments to section 11.111 of the regulations of the Pennsylvania Liquor Control Board for your review and consideration. Also enclosed are copies of the regulatory analysis form, signed CDL-1 face sheet, preamble and Annex A (regulatory text).

These amendments are being delivered today to the legislative oversight committees and to the Office of Attorney General for approval as to form and legality.

Any questions and comments about this regulatory submission should be directed to Alan Kennedy-Shaffer, Assistant Counsel, or Christopher L. Herrington, Deputy Chief Counsel, 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 Schriener, 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:** 54-71  
**SUBJECT:** Limited Winery Container Size Restrictions  
**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>
5/16	<u>[Signature]</u> (1)	HOUSE COMMITTEE ON LIQUOR CONTROL ( <i>Republican</i> )
5/16	<u>[Signature]</u> (2)	( <i>Democratic</i> )
5/16	<u>[Signature]</u> (3)	SENATE COMMITTEE ON LAW & JUSTICE ( <i>Republican</i> )
5/16	<u>[Signature]</u> (4)	( <i>Democratic</i> )
5/16/12	<u>[Signature]</u> (5)	INDEPENDENT REGULATORY REVIEW COMMISSION
5/16	<u>[Signature]</u> (6)	ATTORNEY GENERAL
5/16	<u>[Signature]</u> (7)	LEGISLATIVE REFERENCE BUREAU