

# Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY  
REVIEW COMMISSION**

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

(1) Agency: Pennsylvania Liquor Control Board

(2) Agency Number: 54

Identification Number: 73

IRRC Number: 2999

(3) PA Code Cite: 40 Pa. Code § 11.221 and § 11.222

(4) Short Title: Sale by Licensed Limited Distilleries & Distilleries

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

Primary Contact: Rodrigo J. Diaz (717) 783-9454  
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FAX: (717) 787-8820  
Email: [ra-lblegal@pa.gov](mailto:ra-lblegal@pa.gov)

Secondary Contact: Norina K. Blynn (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 would permit licensed limited distilleries and distilleries to deliver their products directly to consumers, retail licensees, or the Board, similar to licensed limited wineries. While the Liquor Code does not explicitly address the issue, the intent of Act 113 of 2011 was to enable licensed limited distillery and distillery licensees to have the same privileges enjoyed by licensed limited wineries. Consistent with the Board's Regulations concerning limited wineries, this regulatory change would allow licensed limited distilleries and distilleries to deliver their products through the use of properly registered vehicles or through properly licensed transporters. In addition, the regulation identifies other items licensed limited distilleries and distilleries are permitted to sell, as well as the types of payment licensed limited distilleries and distilleries may accept. The regulation also provides more specific information as to how products may be delivered.

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

Pennsylvania Liquor Code, sections 207(i) [47 P.S. § 2-207(i)] and 505.4 [47 P.S. § 5-505.4].

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(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 permits licensed limited distilleries and distilleries to deliver their products directly to consumers, retail licensees, or the Board, similar to licensed limited wineries. While section 505.4 of the Liquor Code does not explicitly address the issue, legislative staff members have confirmed that the intent of Act 113 of 2011 was to enable limited distillery and distillery licensees to have the same privileges enjoyed by limited wineries. Toward that end, the licensed limited distillery language was modeled after section 505.2 of the Liquor Code, which allows the Board to issue limited winery licenses. [*Compare* 47 P.S. § 5-505.4 and 47 P.S. § 5-505.2]. Section 505.4 of the Liquor Code authorizes limited distillery and distillery licensees to sell their products to consumers, retail licensees, and the Board, and does not place any constraints on the manner in which such products are delivered. [47 P.S. § 5-505.4]. Therefore, the promulgation of appropriate regulations would promote clarity and reduce confusion as to whether limited distilleries and distilleries have direct shipping privileges identical to limited wineries. Thus, consistent with section 11.111 of the Board's Regulations, relating to licensed limited wineries, this regulatory change allows licensed limited distilleries and distilleries to deliver their products through the use of vehicles properly registered with the Board or through properly licensed transporters. [*See* 40 Pa. Code § 11.111].

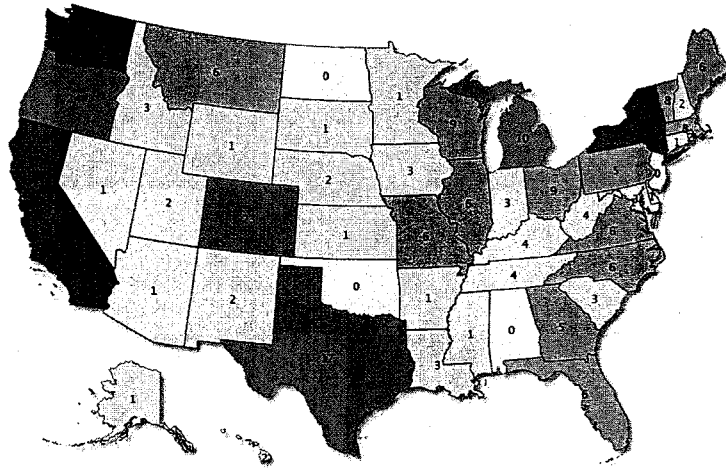
In response to comments offered by the Independent Regulatory Review Commission ("IRRC"), the proposed regulation was expanded to provide guidance to the regulated community as to what other types of products they can sell, what types of payment may be accepted, and how products may be delivered.

(11) 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.

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

Research shows that craft distilling is a growing market, following in the footsteps of small wineries and craft brewing. According to the American Distilling Institute, there were only 76 craft distilleries in the 2007 national market; by 2012, that figure increased to 315 craft distilleries. Pennsylvania's neighbor, New York, had the second highest number of craft distilleries with thirty (30); first place was Washington State with forty-three (43). Below is a chart of the United States, showing how many craft distilleries registered in each state:



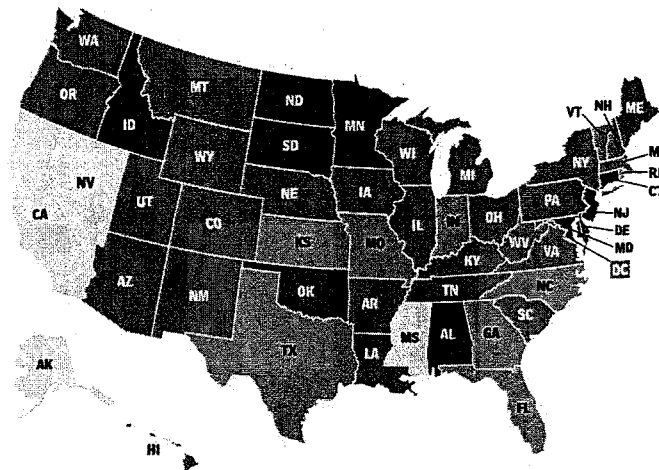
Source: "The U.S. Craft Distilling Market: 2012 Update" © Michael Kinstlick, CEO, Coppersea Distilling, LLC.

According to a Time.com magazine from April 2012, "one of the driving forces behind the current boom was state legislation passed during the last decade."<sup>1</sup> A reduction in license fees prompted significant growth in the number of craft distilleries for New York and Michigan. Another factor is allowing customers to try samples. Since 2009, eleven (11) states<sup>2</sup> have allowed spirits tastings at liquor stores, for a total of thirty-eight (38) states. Tasting rooms and on-site sales are permitted in the majority of states:

#### DISTILLERY PAID TASTING ROOMS & ON-SITE SALES IN THE U.S.

SOURCE: American Distilling Institute 11.25.2012 Preliminary Results

■ Both allowed ■ Tasting only ■ Unknown ■ Neither



Source: The California Artisanal Distiller's Guild website:  
<http://www.cadsp.org/#!/legislation/c13yo>.

<sup>1</sup> "A Booze of One's Own: The Micro Distillery Boom" by Katy Steinmetz, April 6, 2012; available at <http://business.time.com/2012/04/06/craft-distillers/>.

<sup>2</sup> Rhode Island (2012), Kansas (2012), West Virginia (2012), Tennessee (2011), Washington (2011), New Jersey (2010), Virginia (2010), California (2010), Michigan (2010), Maine (2009), and Vermont (2009). <http://www.discus.org/rhode-island-liquor-tasting-bill-signed-into-law/>.

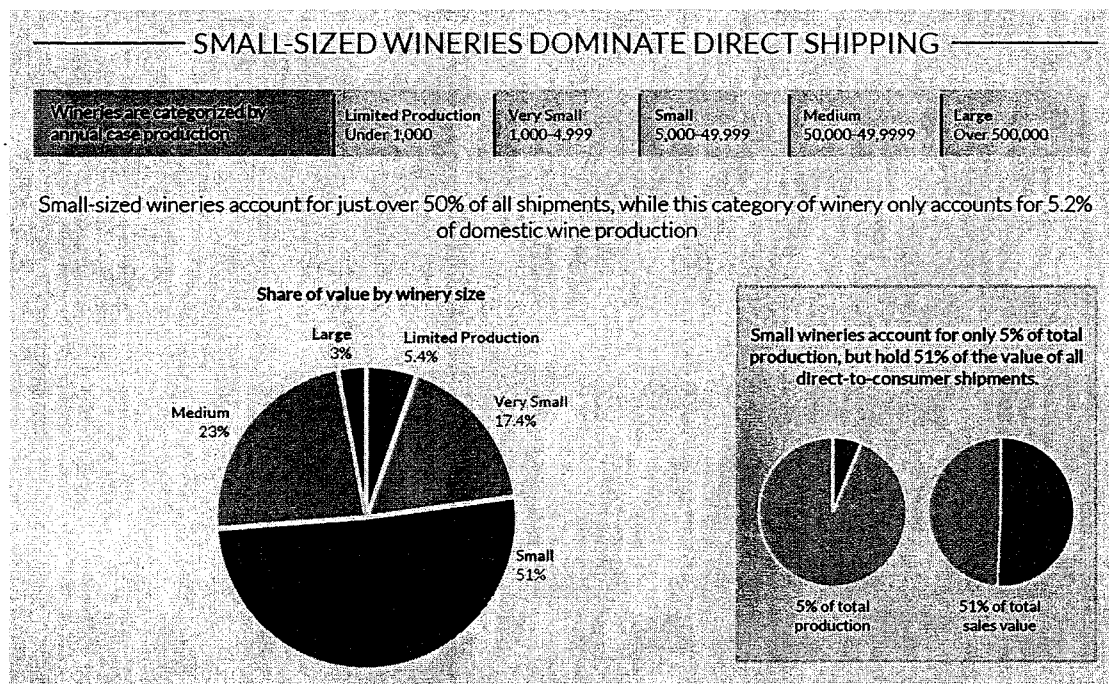
Note that, in 2013, Texas, Florida, and Indiana passed legislation allowing craft distilleries to sell directly to the public. In addition, in August 2013, New Jersey created a craft distillery license which allows the manufacture of up to 20,000 gallons of distilled spirits annually, and allows those craft distilleries to give samples and sell directly to the public.

The economic impact of craft distilleries can be significant. For example, in Portland, Oregon, several craft distillers in the same area of town began to market that area as “Distillery Row,” which serves as a tourist destination. Overall, Oregon’s distilleries generated \$53.3 million in sales in Oregon in 2011.

Tourism is only one type of economic impact that craft distilleries can provide. As with any business, employees are needed to manufacture, package, market, and sell the product. Distilleries also support the local agricultural community. Craft distillers distinguish themselves in the marketplace by offering product unique to the area, using grain and/or fruit produced by local farmers. Therefore, supporting the craft distilleries can have a positive impact on Pennsylvania’s economy.

To anticipate the value that direct shipping can offer limited distilleries, consider the impact direct shipping has had on limited wineries. In April of 2013, Ship Compliant, in conjunction with Wines & Vines Magazine, released the “Direct to Consumer Shipping Report 2013.” The report was based on millions of transactions “that ultimately led to direct shipments from January 2012 through December 2012,”<sup>3</sup> using Wines & Vines Magazine’s database of all 7,400+ wineries across the United States.

The following chart<sup>4</sup> illustrates the importance of direct shipping to small vineyards:



Allowing limited wineries to ship directly to consumers’ homes is clearly a fundamental component of the success of small wineries. Therefore, it is logical to conclude that offering limited distilleries the same access to the market will serve as a fundamental component to the success of limited distilleries.

<sup>3</sup> Direct to Consumer Shipping Report 2013, p.2, available at <http://info.shipcompliant.com/2013-direct-wine-shipping-report>.

<sup>4</sup> Direct to Consumer Shipping Report 2013, p.4.

(13) 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.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

At the time the proposed rulemaking was submitted, notice of the proposed rulemaking was provided to the active and pending licensees at that time: eight (8) active and two (2) pending licensed limited distilleries and two (2) active licensed distilleries.

Since that time (March 2013), the community of limited distilleries and distilleries has grown. There are now twelve (12) active and six (6) pending limited distilleries licensed by the Board and two (2) active distilleries licensed by the Board. In addition, there are two (2) active and one (1) pending distilleries licensed by the Board.

At least two (2) of the licensed limited distilleries have contacted the Office of Chief Counsel for the Board, to inquire as to the progress of the regulations.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

There are now twelve (12) active and six (6) pending limited distilleries licensed by the Board and two (2) active distilleries licensed by the Board. In addition, there are two (2) active and one (1) pending distilleries licensed by the Board. The regulations will affect them in a positive way, in that they will be able to ship their product directly to the homes of Pennsylvania consumers. This ability has provided a significant benefit to limited wineries and it is anticipated that limited distilleries and distilleries will also benefit. In addition, the regulation provides guidance to the regulated community with regard to other items they may sell, the types of payment they may accept, and what is required for the delivery of their product.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

No limited distillery or distillery would be required to make any changes to their operations or processes to be compliant with the proposed rulemaking. If they choose to ship product to Pennsylvania consumers, the regulations will provide guidance on how to deliver their products.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

As set forth in response to question 12, the economic impact of craft distilleries can be significant. Tourism is one type of economic impact that craft distilleries can provide. As with any business, employees are needed to manufacture, package, market, and sell the product. Distilleries also support the local agricultural community. Craft distillers distinguish themselves in the marketplace by offering product unique to the area, using grain and/or fruit produced by local farmers. Therefore, supporting the craft distilleries can have a positive impact on Pennsylvania's economy. It is logical to conclude that offering limited distilleries the same access to the market will serve as a fundamental component to the success of limited distilleries.

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

As noted above, the final form regulation is expected to have a positive fiscal impact on licensed limited distilleries and distilleries. This regulatory change is not expected to have any adverse fiscal impact or other adverse effects on local or state government. However, the effects of direct sales by licensed limited distilleries and distilleries cannot be fully predicted or quantified, as they will ultimately depend on market forces.

(19) 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.

Any costs that may be incurred by the regulated community will likely be offset by the consumer of the product. It is typical for sellers to require buyers to pay the costs of shipping and handling, therefore, it is anticipated that limited distilleries and distilleries will do the same. As for any legal, accounting, or consulting procedures, the regulation does not require any member of the regulated community to undertake such costs.

(20) Provide a specific estimate of the costs and/or savings to the **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.

(21) Provide a specific estimate of the costs and/or savings to the **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.

(22) For each of the groups and entities identified in items (19)-(21) above, 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.

(23) 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>	0	0	0	0	0	0
<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>	0	0	0	0	0	0
<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

(23a) 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

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- An identification and estimate of the number of small businesses subject to the regulation.
- The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- A statement of probable effect on impacted small businesses.

- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

This regulatory change is not expected to have any adverse impact on small businesses. Since it is discretionary for a licensed limited distillery or distillery to take advantage of the option to deliver directly to consumers, retail licensees, or the Board, no costs are associated with compliance of the proposed rulemaking. The rulemaking is expected to have a positive fiscal impact on licensed limited distilleries and distilleries, similar to that experienced by licensed limited wineries. However, the potential additional revenue or cost-savings cannot be quantified, as this will ultimately depend on market forces.

- (25) List any special provisions which 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.

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 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.

- (27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

Non-regulatory alternatives were not considered because the benefit for the regulated community requires a modification to the current regulation.

- (28) 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.



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

- |   |                          |
|---|--------------------------|
| A. The date by which the agency must receive public comments:                               | <u>N/A</u>               |
| B. The date or dates on which public meetings or hearings will be held:                     | <u>February 27, 2014</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>March 2014</u>        |
| D. The expected effective date of the final-form regulation:                                | <u>April 2014</u>        |
| E. The date by which compliance with the final-form regulation will be required:            | <u>April 2014</u>        |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <u>N/A</u>               |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

Review of the regulations is ongoing and any changes will be through the rulemaking process.

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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. 054-73

DATE OF ADOPTION: January 15, 2014

BY: \_\_\_\_\_

TITLE: Chairman  
(Executive Officer, Chairman or  
Secretary)

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

BY: \_\_\_\_\_

January 15, 2014  
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

*The following subchapter is proposed to be added:*

**SUBCHAPTER N. LICENSED LIMITED DISTILLERIES AND DISTILLERIES**

*The following sections are proposed to be added:*

**11.221. Sale by licensed limited distilleries and distilleries.**

**11.222. Additional conditions**

# **RESPONSES OF THE PENNSYLVANIA LIQUOR CONTROL BOARD**

## **TO**

### **Comments about PLCB Regulation #54-73 (IRRC #2999)**

#### **Sale by Licensed Limited Distilleries and Distilleries**

- 1. Whether the regulation is consistent with the intent of the General Assembly; Implementation procedures; Need; Clarity.**

Act 113 of 2011 (Act 113) made numerous amendments to the Liquor Code. 47 P.S. §§ 1-101, *et seq.* Included in the amendments were changes to Section 505.4 (47 P.S. § 5-505.4), related to distilleries. The Board states that although Section 505.4 of the Liquor Code does not explicitly address the issues addressed by the rulemaking, legislative staff members have confirmed the intent of Act 113 was to enable distilleries to have the same privileges enjoyed by limited wineries. The intent of this rulemaking is to permit licensed limited distilleries and distilleries (distilleries) to deliver their product directly to consumers, retail licensees or the Board, similar to limited wineries. We have reviewed the sections of the Liquor Code and the Board's regulations that address limited wineries (47 P.S. § 5-505.2 and 40 Pa. Code § 11.111) and raise the following concerns.

One of the purposes of a regulation is to expand upon the statutory framework provided by the General Assembly in their enactment of a piece of legislation. This proposal provides little guidance beyond what already exists in statute and the Board's other regulations. As written, we question the need for this rulemaking. We note that the Board's limited wineries regulations include more detailed information that provides meaningful direction to the regulated community. If the intent of Act 113 is to enable distilleries to have the same privileges enjoyed by limited wineries, we suggest that this proposal more closely follow the regulatory framework found under the limited wineries regulations at § 11.111. In order to make the rulemaking consistent with [the] intent of the General Assembly, we ask the Board to consider adding provision related to the sale of food, liquor by the glass, tasting samples and the hours in which these activities can occur. We believe a more detailed regulation will assist with the implementation of the rulemaking and improve its overall clarity.

**RESPONSE:** The Board, in consideration of the above comment, has expanded the proposed regulation section 11.221 and added a new section, § 11.222, to more

closely follow the regulatory framework found under the limited wineries regulations at § 11.111. Section 11.221 now includes a list of the types of items a limited distillery or distillery may sell on the licensed premises, similar to that provided in section 11.111(a)(8) for limited wineries. Section 11.222 is patterned after section 11.212, which pertains to sales by licensed distilleries of historical significance, but is tailored to align with the Liquor Code as it was amended by Act 113 of 2011.

With regard to adding provisions relating to the sale of food, liquor by the glass, tasting samples and the hours in which these activities can occur, the Board respectfully submits that the inclusion of these provisions is unnecessary inasmuch as they are already incorporated into the Liquor Code, to wit:

- Section 505.4(b)(4) provides that “the holder of a limited distillery license may sell food for consumption on or off the licensed premise and at the limited distillery’s additional board-approved locations, and may sell by the glass, at the licensed premises and at the limited distillery’s additional board-approved locations, only liquor that may otherwise be sold by the bottle.” [47 P.S. § 5-505.4(b)(4)].
- Section 505.4(b)(5) and 505.4(c)(2) provide that the holder of a limited distillery license or a distillery license “may provide tasting samples of liquor that in total do not exceed one and one-half (1.5) fluid ounces.... Samples may be sold or provided free of charge and may only be provided between the hours of nine o’clock antemeridian and eleven o’clock postmeridian.” [47 P.S. §§ 5-505.4(b)(5), 5-505.4(c)(2)].
- Section 505.4(b)(1) and section 505.4(c)(1) provide that limited distilleries and distilleries “may sell bottled liquors produced on the licensed premises to the board, to entities licensed by the board and to the public between the hours of nine o’clock antemeridian and eleven o’clock postmeridian....” [47 P.S. §§ 5-505.4(b)(1), 505.5.4(c)(1)].

## **2. Determining whether the regulation is in the public interest.**

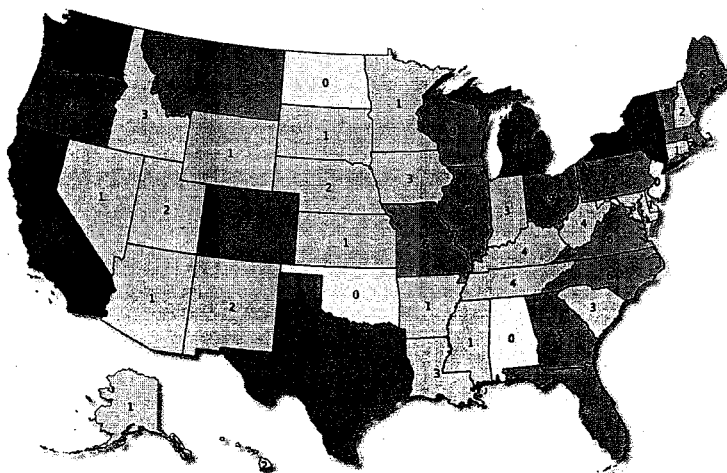
Section 5.2 of the Regulatory Review Act directs this Commission to determine whether a regulation is in the public interest. 71 P.S. § 745.5(b). When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed rulemaking and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide

under Section 5 of the Regulatory Review Act in the Regulatory Analysis Form (RAF). 71 P.S. § 745.5(a).

The Board's response to Section 12 of the RAF is not sufficient to allow this Commission to determine if the regulation is in the public interest. In the RAF submitted with the final-form rulemaking, the Board should provide information comparing this regulation to the regulation of licensed limited distilleries and distilleries in other states.

**RESPONSE:** The Board has amended its response to Section 12 of the RAF and provides that same information here for convenience:

Research shows that craft distilling is a growing market, following in the footsteps of small wineries and craft brewing. According to the American Distilling Institute, there were only 76 craft distilleries in the 2007 national market; by 2012, that figure increased to 315 craft distilleries. Pennsylvania's neighbor, New York, had the second highest number of craft distilleries with thirty (30); first place was Washington State with forty-three (43). Below is a chart of the United States, showing how many craft distilleries registered in each state:



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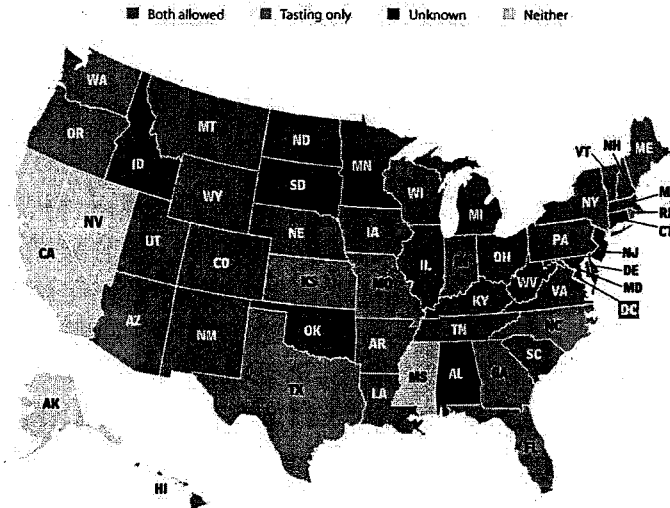
According to a Time.com magazine from April 2012, "one of the driving forces behind the current boom was state legislation passed during the last decade."<sup>1</sup> A reduction in license fees prompted significant growth in the number of craft distilleries for New York and Michigan. Another factor is allowing customers to

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try samples. Since 2009, eleven (11) states<sup>2</sup> have allowed spirits tastings at liquor stores, for a total of thirty-eight (38) states. Tasting rooms and on-site sales are permitted in the majority of states:

#### DISTILLERY PAID TASTING ROOMS & ON-SITE SALES IN THE U.S.

SOURCE: American Distilling Institute 11.25.2012 Preliminary Results



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<http://www.cadsp.org/#!/legislation/c13yo>.

Note that, in 2013, Texas, Florida, and Indiana passed legislation allowing craft distilleries to sell directly to the public. In addition, in August 2013, New Jersey created a craft distillery license which allows the manufacture of up to 20,000 gallons of distilled spirits annually, and allows those craft distilleries to give samples and sell directly to the public.

The economic impact of craft distilleries can be significant. For example, in Portland, Oregon, several craft distillers in the same area of town began to market that area as "Distillery Row," which serves as a tourist destination. Overall, Oregon's distilleries generated \$53.3 million in sales in Oregon in 2011.

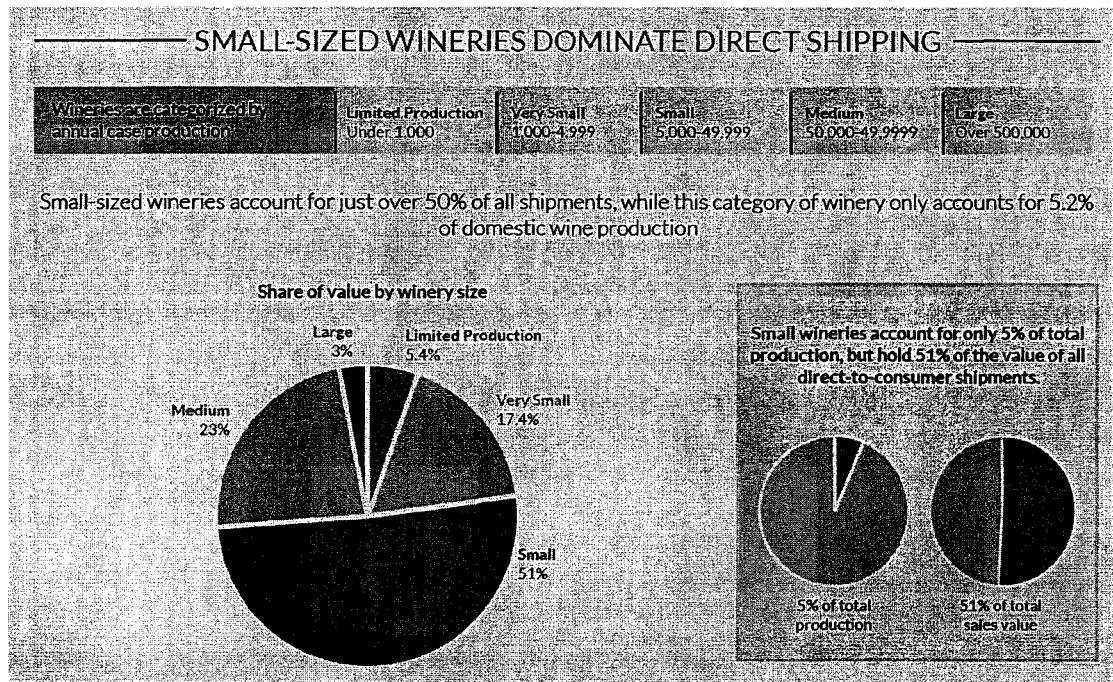
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the area, using grain and/or fruit produced by local farmers. Therefore, supporting the craft distilleries can have a positive impact on Pennsylvania's economy.

To anticipate the value that direct shipping can offer limited distilleries, consider the impact direct shipping has had on limited wineries. In April of 2013, Ship Compliant, in conjunction with Wines & Vines Magazine, released the "Direct to Consumer Shipping Report 2013." The report was based on millions of transactions "that ultimately led to direct shipments from January 2012 through December 2012,"<sup>3</sup> using Wines & Vines Magazine's database of all 7,400+ wineries across the United States.

The following chart<sup>4</sup> illustrates the importance of direct shipping to small vineyards:



Allowing limited wineries to ship directly to consumers' homes is clearly a fundamental component of the success of small wineries. Therefore, it is logical to conclude that offering limited distilleries the same access to the market will serve as a fundamental component to the success of limited distilleries.

<sup>3</sup> Direct to Consumer Shipping Report 2013, p.2, available at <http://info.shipcompliant.com/2013-direct-wine-shipping-report>.

<sup>4</sup> Direct to Consumer Shipping Report 2013, p.4.

**3. Section 11.221. Sale by licensed limited distilleries and distilleries. Protection of the public health, safety and welfare; Implementation procedures; Clarity.**

Subsection (d) states the following:

Mail, Internet and telephone orders may be accepted. Delivery of products must be accomplished through the use of vehicles properly registered by the licensed limited distillery or distillery or through properly licensed transporters. It is the responsibility of the licensed limited distillery or distillery licensee to ensure that liquor is not delivered to minors and that proper invoices and records are maintained.

We raise the following concerns. First, Section 505.4 of the Liquor Code limits the sale of liquor to the hours of 9 a.m. to 11 p.m. Will the acceptance of mail, Internet and telephone orders be limited to the hours specified in the Liquor Code? We ask the Board to explain how it will administer this provision. Second, we question how the Board will monitor the sale of liquor sold by mail, Internet or phone to minors. What procedures are in place to ensure that liquor is not received by those that are not of legal age? Third, what are the standards for properly registered vehicles and transporters? Where can the standards be found? We suggest that the standards, or a reference to where the standards can be found, be added to the rulemaking. Fourth, the limited wineries regulation includes a citation to the Board's record-keeping requirements found at § 5.103. To clarify the requirements that distilleries maintain "proper invoices and records," we suggest that this proposal reference § 5.104.

**RESPONSE:**

**Hours of Operation**

When read as a whole, the provisions of Section 505.4 that speak to limiting the sale of liquor to the hours of 9:00 a.m. and 11:00 p.m. clearly refer to sales occurring at a "brick and mortar" location. As with any manufacturer, a limited distiller will engage in many activities around the clock, including production, packaging, record keeping, and marketing. It was never contemplated by the legislature that all activity relating to the operation of a limited distillery would cease to occur outside the hours of 9:00 a.m. and 11:00 p.m., only that sales to the public would not occur except from 9:00 a.m. to 11:00 p.m. This is true for holders of other manufacturing licenses, such as limited wineries and breweries. As the provision in section 505.4(b)(1) states:



**“The holder of the [limited distillery] license may manufacture and sell bottled liquors produced on the licensed premises to the board, to entities licensed by the board and to the public between the hours of nine o’clock antemeridian and eleven o’clock postmeridian....”**

[47 P.S. § 5-505.4(b)(1) (emphasis added)]. The very next paragraph (b)(2)(i) specifies where such sales may occur:

**“The holder of a limited distillery license may...sell bottle liquors produced by the distillery at no more than two (2) board-approved locations other than the licensed premises....”**

[47 P.S. § 505.4(b)(2)]. Similar provisions exist for distilleries. [47 P.S. §§ 5-505.4(c)(1), (2)].

Placing an order is only the first step in a sales transaction, and the length of time between the beginning of a sale, through the processing and delivery, can take a period of time. Obviously it is not possible for the Board to place time limits on when mail, telephone, and Internet orders can be placed, but rather, when the order may be processed.

As an aside, the Liquor Code provides that a limited winery may only sell wine from 9:00 a.m. to 11:00 p.m. [47 P.S. § 5-505.2(a)(6.3)]. The president of a licensed limited winery once took issue with the closing time of 9:00 p.m. (which is what the Liquor Code provided at the time), stating that there are many evenings where he works into the night, harvesting the grapes and processing the wine. In an advisory opinion<sup>5</sup> issued by the Board’s Office of Chief Counsel, the limited winery was advised that at 9:00 p.m., sales of wine must cease and patrons are required to vacate the premises. [See attached Advisory Opinion]. However, the limited winery was further advised that there was nothing in the Liquor Code that required employees to vacate the premises or cease working. Processing a harvest, or other business-related activities, could occur after 9:00 p.m., and therefore, the Board submits that a similar interpretation should be applied to the hours of operation for a limited distillery.

### **Preventing Access by Minors**

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<sup>5</sup> Pursuant to section 211.1 of the Liquor Code, “Upon written request by a licensee, the board or its counsel shall issue a legal opinion regarding any subject matter relating to this act or any regulation promulgated pursuant to it. This legal opinion shall be binding on the enforcement bureau.”

With regard to monitoring the sale of liquor to prevent access by minors, the Board notes that paragraph (d) of the proposed regulation is nearly identical to the Board's Regulation at 11.111(a)(11). The language that allows limited wineries to deliver wine directly to Pennsylvania consumers' homes has been in place since the mid-1980's, and there has been no indication that the regulation does not adequately prevent minors from gaining access to the delivered product.

In addition, the Board has recently begun offering a delivery service of wine and spirits to Pennsylvania residents. During the fiscal year 2012-2013, one thousand, seven hundred twenty-eight (1,728) orders that included spirits were delivered to Pennsylvania homes. This figure represents approximately forty-five percent (45%) of the total number of home deliveries (3,809) during the same time period. The Board is not aware of a single instance where the delivery was received by a minor.

The Board utilizes the services of United Parcel Service ("UPS") for these deliveries. UPS has a service that requires an adult signature, which means that someone over twenty-one (21) must be present to sign for the order when it is delivered. UPS will not relinquish the package to a minor or leave it at the door. After three (3) delivery attempts, the package is returned to the Board. It is the Board's understanding that Federal Express and DHL have similar services. Since the United States Postal Service does not deliver alcohol, a distillery or limited distillery is most likely to use one of these service providers, particularly because the regulation requires the licensee to ensure that the liquor is not delivered to minors.

Should the distillery choose to deliver its product by use of a transporter-for-hire, such an entity is licensed by the Board and must be aware that allowing a minor to accept a delivery of alcohol is unlawful and places its license in jeopardy. Both the distillery and the transporter-for-hire are strictly liable for any violations of the Liquor Code or the Board's Regulations. [47 P.S. § 5-514]. Delivery to a minor would result in fines up to five thousand dollars (\$5,000) [47 P.S. § 5-519] and/or revocation of the license. [47 P.S. § 5-514]. In addition, the distillery and the transporter-for-hire would be subject to civil and criminal penalties. Therefore, the Board is confident that the potential consequences for allowing a minor to receive delivery are sufficiently dissuasive so as to prevent it from ever occurring.

There are at least five (5) other states, plus the District of Columbia, that allow the direct shipment of spirits to consumers:

- **Alaska:** Direct shipment of any alcoholic beverage may be prohibited by local option; maximum amount of spirits that may be delivered by a person (not limited to a manufacturer) is 10½ liters (presumably at one time; the statute is unclear). [AS § 04.11.010].
- **District of Columbia:** A manufacturer of wine, spirits, or beer may deliver up to one (1) case per month per consumer. [DC Code § 25-772(b)]
- **Hawaii:** Allows an adult to apply for a permit (one per calendar year) to receive a single shipment of liquor from out of state, not to exceed five gallons/19 liters, for personal use and not for resale. [HRS § 281-33.1(a)].
- **Nebraska:** A manufacturer may ship directly to a consumer no more than one case (9 liters) of liquor a month from out of state. [NRS § 53-125.15].
- **New Hampshire:** Manufacturers may ship no more than sixty (60) individual containers of not more than one (1) liter each and not more than twelve (12) cases (nine (9) liters to a case) of spirits to any one consumer in any calendar year. [NH Rev. Stat. § 178.27].
- **North Dakota:** A manufacturer may ship up to nine (9) liters of spirits per month to a North Dakota resident for personal use. [ND Cent. Code § 5-01-16].

It is noteworthy that, like Pennsylvania, New Hampshire is an alcohol beverage control state, where the state has a monopoly over the wholesaling and/or retailing of some or all categories of alcoholic beverages, such as beer, wine, and distilled spirits. In New Hampshire, spirits may only be purchased from one (1) of the seventy-two (72) state-owned retail stores or three (3) agency stores, whose owners are under contract with the state. New Hampshire's law allowing the direct shipment of spirits has been in existence for ten (10) years.

### **Standards for Properly Registered Vehicles**

The standard for properly registered vehicles can be found in the Liquor Code at section 491(12), which provides that it shall be unlawful “[f]or a liquor licensee permitted to deliver liquor, to make any deliveries except in his own vehicles bearing his name, address and license number on each side in letters not smaller than two inches in height, or in the vehicle of another person duly authorized to transport liquor within this Commonwealth.” [47 P.S. § 4-491(12)]. In addition, standards for transporters-for-hire may be found in Chapter 9 of the Board's Regulations. References for both the statute and the regulation have been incorporated into the proposed regulation.

## **Proper Invoices and Records**

A reference to section 5.104 has been incorporated into the proposed regulation.

### **4. Miscellaneous clarity.**

Act 113 expanded the scope of distilleries allowed to operate in the Commonwealth by adding licensed limited distilleries to the Liquor Code. The Board's existing regulations only reference licensed distilleries of historical significance. We ask the Board to review its entire body of regulations to ensure consistency with the Act 113 amendments and make the necessary changes relating to the new type of license added by Act 113.

**RESPONSE:** The Board wishes to clarify that the regulations proposed in the instant matter were determined to be those most sought after by the affected licensed community. By choosing this regulation as the highest priority, the Board did not intend that this would be the only regulation promulgated for distilleries and licensed distilleries. The Board will, in due course, submit a comprehensive body of regulations for the distillery and limited distillery community.

Mailing Date: February 19, 2010

Telephone: 717-783-9454

FAX: 717-787-8820

Mr.  
President, Vineyards, Inc.  
Road  
, Pennsylvania

**Re: Reconsideration of LCB Advisory Opinion**

Dear Mr. :

**ISSUE:** This letter is in response to your letter dated December 30, 2009, wherein you asked the Pennsylvania Liquor Control Board ("Board") to reconsider Advisory Opinion , which was issued in response to an e-mail you submitted on November 3, 2009. In that e-mail, you asked three (3) questions:

- "1. At the primary location, if we were to host a private party... i.e.; wedding or private corporate meeting, must all guests vacate the premises 30 minutes after the 9:00 PM sales limitation even though wine is no longer being sold?
2. At the satellite location/licensed food establishment, must the patrons enjoying a meal vacate the premises by 9:30 PM even though wine is no longer being sold after 9:00 PM?
3. If either of these questions is answered in the affirmative, is there a permit available to extend the food offering time limit and if so, what application is appropriate?"

In Advisory Opinion , dated December 24, 2009, this office advised:

"Section 505.2(a)(6.3) of the Liquor Code provides that limited wineries may operate only between the hours of 9:00 a.m. and 9:00 p.m. [47 P.S. § 5-505.2(a)(6.3)]. However, section 505.2(a)(6.3) permits a limited winery to request approval from the Board to extend sales hours in individual locations beyond the limits of their legal operating hours by submitting such request in writing to the Office of Chief Counsel. In a follow-up phone call conversation with you on December 7, 2009, you advised Board counsel that it would be your intention to remain open for business until 10:00 p.m. on days when the primary location and the satellite location are regularly open to the public. The Board has historically granted requests for the extension of hours at limited winery locations until 10:00 p.m., but for only specifically identified dates. Permission will not be granted for an open-ended extension of hours.

"As to the primary location, while section 499 of the Liquor Code requires Article IV licensees to vacate their premises within one-half (1/2) hour from the time they are legally required to stop selling alcohol, that section does not apply to a limited winery. The winery must nonetheless close by either 9:00 p.m. or 10:00 p.m. as set forth above. [See 47 Pa. C.S. § 505.2(a)(6.3)].

“As for the satellite location, while you mentioned the possibility of patrons enjoying a meal at those premises, it is also important to note that limited winery licensees may only sell items, including food, delineated in section 11.111 of the Board’s Regulations. [40 Pa. Code § 11.111]. Sales of food for on-premises consumption, as well as wine sales by the glass, may only be conducted at the limited winery’s primary location; sales for consumption at satellite locations are prohibited. [See 40 Pa. Code § 11.111(a)(2)].”

In your letter dated December 30, 2009, you ask the Board to reconsider its response concerning the need to vacate the premises after “sales hours.” You indicate that at your primary location, where you harvest the grapes and process the wine, there are many evenings when you work into the night. Your concern is that Advisory Opinion \_\_\_\_\_ would make processing the harvest after 9:00 p.m. illegal.

You further suggest that the Board was incorrect when it stated, in Advisory Opinion 09-491, that “Sales of food for on-premises consumption, as well as wine sales by the glass, may only be conducted at the limited winery’s primary location; sales for consumption at satellite locations are prohibited.” It is your position that there is no authority for limiting the sale of food and wine by the glass to the primary location, and not permitting such sales to occur at the satellite location(s).

The Board’s records indicate that Licensee is holder of Limited Winery License No. LK- (LID \_\_\_\_\_) for premises located at \_\_\_\_\_ Road, \_\_\_\_\_, Pennsylvania. The additional Board-approved location is \_\_\_\_\_ Main Street, \_\_\_\_\_, Pennsylvania.

OPINION: With regard to the hours of operation, section 505.2(a)(6.3) of the Liquor Code provides that holders of a limited winery license may:

Sell alcoholic cider, wine and wine coolers only between the hours of nine o'clock antemeridian and nine o'clock postmeridian. During the period from Thanksgiving Day through New Year's Day, limited winery sales locations may remain open to conform with the closing times of neighboring mall or shopping district businesses but no later than ten o'clock postmeridian. A limited winery also may request approval from the board to extend sales hours in individual locations at other times during the year or beyond the limits set forth in this clause. The request shall be made 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 proposed hours and dates of extended operation and the reason for the proposed extended hours.

[47 P.S. § 5-505.2(a)(6.3)]. As you note in your letter of December 30, 2009, the statute speaks to the hours when sales transactions may be conducted and is silent with regard to the issue of when patrons must vacate the premises. While section 499 of the Liquor Code requires patrons of Article IV licensees to vacate their premises within one-half (1/2) hour from the time the licensee is legally required to stop selling alcohol, that section does not apply to limited wineries, which are Article V licensees.

This distinction reflects the General Assembly’s intent to treat limited wineries differently from Article IV licensees. For example, hotel and restaurant licensees may sell alcohol until 2:00 a.m. and club licensees may sell alcohol until 3:00 a.m. [47 P.S. § 4-406(a)(4)]. However, a limited

winery may only be open between the hours of 9:00 a.m. to 9:00 p.m., with the option of requesting permission from the Board to remain open until 10:00 p.m. [47 P.S. § 5-509, 40 Pa. Code § 111.11 (a)(4)].

Please note that the Board's Regulations use the terms "open" and "sale" interchangeably:

*Sales may be made generally only between the hours of 9 a.m. and 9 p.m. Monday to Saturday.... 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.*

[40 Pa. Code § 111.11(a)(4) (emphasis added)]. Therefore, it is the opinion of this office that when a limited winery location is open, it is permitted to sell wine, and that when it is not permitted to sell wine, the limited winery location is closed. To reiterate the answer to your original question about patrons, when the limited winery location is closed, patrons must vacate the premises.

Please be advised that there is nothing in the Liquor Code that requires employees who are actively engaged in an employment-related activity to vacate the premises or cease working. As mentioned above, section 499 of the Liquor Code requires patrons of Article IV licensees to vacate their premises within one-half (1/2) hour from the time the licensee is legally required to stop selling alcohol. [47 P.S. § 499]. Note that a "patron" is defined as "an individual who purchases food, nonalcoholic beverages, liquor, alcohol or malt or brewed beverages for a consideration from a licensee or any person on the licensed premises *except those actually engaged in an employment related activity.*" [47 P.S. § 1-102 (emphasis added)]. Accordingly, even if section 499 applied to limited wineries, your employees could continue with employment-related activities after the winery closed. Therefore, Advisory Opinion does not make processing the harvest after 9:00 p.m. illegal.

As to the issue of selling food and wine by the glass at satellite locations, this office's previously stated position is that wine may be sold by the glass at the primary winery location but not at a satellite location. This position is based on the fact that, while sections 505.2(a)(6.1) and 505.2(a)(4) of the Liquor Code specifically mention sales by the glass when discussing wine sales at the main winery and when the winery is selling under the authority of a wine exposition permit, section 505.2(a)(3) does not mention sales of wine by the glass when discussing sales at satellite locations. This has been the office's position since shortly after limited wineries were given the ability to sell wine by the glass at their primary location by Act 239 of 2004, and this office shall continue to adhere to its consistent position in this matter, absent legislative change. Therefore, no food or wine may be sold for on-premises consumption at a Board-approved satellite location.

In your original letter, you asked if there is a permit available to extend the "food offering time limit." Please note that the General Assembly has provided a mechanism for this in section 505.2(a)(5), which allows holders of a limited winery license to:

[a]pply for and hold a hotel liquor license, a restaurant liquor license or a malt and brewed beverages retail license to sell for consumption at the restaurant or limited winery on the licensed winery premises, liquor, wine and malt or brewed beverages regardless of the place of manufacture under the same conditions and regulations as any other hotel liquor license, restaurant liquor license or malt and brewed beverages

retail license.

[47 P.S. § 5-505.2(a)(5)]. Such a license would permit you to apply for extended hours sales and Sunday sales, like any other retail licensee. [See 47 P.S. § 4-406].

THIS OPINION APPLIES ONLY TO THE FACTUAL SITUATION DESCRIBED HEREIN AND DOES NOT INSULATE THE LICENSEE OR OTHERS FROM CONSEQUENCES OF CONDUCT OCCURRING PRIOR TO ITS ISSUANCE. THE PROPRIETY OF THE PROPOSED CONDUCT HAS BEEN ADDRESSED ONLY UNDER THE LIQUOR CODE AND REGULATIONS. THE LAWS AND POLICIES ON WHICH THIS OPINION IS BASED ARE SUBJECT TO CHANGE BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Very truly yours,

FAITH S. DIEHL  
CHIEF COUNSEL

cc: Pennsylvania State Police,  
Bureau of Liquor Control Enforcement  
Jerry W. Waters, Sr., Director, Office of Regulatory Affairs  
Jane Melchior, Director, Bureau of Licensing  
Tisha Albert, Assistant Director, Bureau of Licensing  
Ernest Valtri, PLCB Wine Advisory Council  
The Honorable Senator Charles McIlhenny  
Timothy C. Wolfson, President, PLCB Wine Advisory Council

LCB Advisory Opinion No.

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## **FINAL FORM RULEMAKING**

### **LIQUOR CONTROL BOARD**

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

##### **Sale by Licensed Limited Distilleries & Distilleries**

The Liquor Control Board ("Board"), under the authority of section 207(i) of the Liquor Code (47 P.S. § 2-207(i)) and section 505.4 of the Liquor Code (47 P.S. § 5-505.4), proposes to amend Chapter 11 of the Board's Regulations.

##### *Summary*

On December 22, 2011, Governor Corbett signed Act 113 of 2011 (formerly House Bill No. 242) into law. Act 113 of 2011 made changes to numerous sections of the Liquor Code, including section 505.4 (relating to distilleries). Pursuant to section 505.4, the Board may issue, effective February 20, 2012, a limited distillery license that will allow the holder thereof to operate a distillery that shall not produce more than one hundred thousand (100,000) gallons of distilled liquor per year, and sell bottled liquors produced on the licensed premises to the Board, to licensees, and to the public. [47 P.S. § 5-505.4].

This regulatory change permits licensed limited distilleries and distilleries to deliver their products directly to consumers, retail licensees, or the Board, similar to licensed limited wineries. While section 505.4 of the Liquor Code does not explicitly address the issue, legislative staff members have confirmed that the intent of Act 113 of 2011 was to enable limited distillery and distillery licensees to have the same privileges enjoyed by limited wineries. Toward that end, the licensed limited distillery language was modeled after section 505.2 of the Liquor Code, which allows the Board to issue limited winery licenses. [*Compare* 47 P.S. § 5-505.4 and 47 P.S. § 5-505.2]. Section 505.4 of the Liquor Code authorizes limited distillery and distillery licensees to sell their products to consumers, retail licensees, and the Board, and does not place any constraints on the manner in which such products are delivered. [47 P.S. § 5-505.4]. Therefore, the promulgation of appropriate regulations would promote clarity and reduce confusion as to whether limited distilleries and distilleries have direct shipping privileges

identical to limited wineries. Thus, consistent with section 11.111 of the Board's Regulations, relating to licensed limited wineries, this regulatory change allows licensed limited distilleries and distilleries to deliver their products through the use of vehicles properly registered with the Board or through properly licensed transporters. [See 40 Pa. Code § 11.111].

In response to comments offered by the Independent Regulatory Review Commission ("IRRC"), the proposed regulation was expanded to provide guidance to the regulated community as to what other types of products they can sell, what types of payment may be accepted, and how products may be delivered.

#### *Affected Parties*

The rulemaking will affect licensed limited distilleries and distilleries. As of the date of this submission, there are twelve (12) active and six (6) pending limited distilleries licensed by the Board and two (2) active distilleries licensed by the Board. In addition, there are two (2) active and one (1) pending distilleries licensed by the Board. All potentially affected parties licensed by the Board at the time of the proposed rulemaking were given notice of the proposed rulemaking, either by e-mail or U.S. Postal Service Mail. All potentially affected parties licensed by the Board will be given notice of this rulemaking, either by e-mail or U.S. Postal Service mail.

#### *Paperwork Requirements*

This regulatory change is not expected to have any adverse impact on the amount of paperwork required to be completed by 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. In fact, the proposed rulemaking is likely to have a positive fiscal impact on limited distilleries and distilleries, similar to that experienced by limited wineries.

#### *Effective Date:*

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

*Contact Person:*

Comments should be addressed to Rodrigo J. Diaz, Executive Deputy Chief Counsel, or Norina Blynn, Assistant Counsel, Office of Chief Counsel, Pennsylvania Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

*Regulatory Review:*

Under section 5 of the Regulatory Review Act (71 P.S. § 745.5), on March 27, 2013, the Board submitted a copy of this proposed rulemaking, published on April 13, 2013 at 43 Pa.B.2040, and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the House Liquor Control Committee and the Senate Law and Justice Committee.

Under section 5a(c) of the Regulatory Review Act, the Board is required to provide IRRC and the Committees with copies of the comments received during the public comment period, as well as other documents when requested. The Board received comments from IRRC, the response to which is set forth in a separate document. IRRC received a comment from Thomas Cavaliere in support of the proposed regulation. The Board did not receive comments from the Committees or the public.

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 these proposed regulations.

Joseph E. Brion  
Chairman

**ANNEX A**

**TITLE 40. LIQUOR**

**Part I. LIQUOR CONTROL BOARD**

**CHAPTER 11. PURCHASES AND SALES**

**Subchapter N. LICENSED LIMITED DISTILLERIES AND  
DISTILLERIES**

**§ 11.221. Sale by licensed limited distilleries and distilleries.**

(a) A licensed limited distillery or distillery may sell on the licensed premises liquor produced on the premises in accordance with the Liquor Code and this title.

(1) IN ADDITION TO THE SALE OF LIQUOR, THE FOLLOWING  
ITEMS ARE PERMITTED TO BE OFFERED FOR SALE ON THE  
LICENSED PREMISES:

i. LIQUOR ACCESSORIES AS FOLLOWS:

(a) CORK REMOVERS OR OTHER BOTTLE OPENERS.

(b) GLASSES, SHOT GLASSES, DECANTERS, AND FLASKS.

(c) POURERS AND BOTTLE STOPPERS.

(d) COCKTAIL MIXERS, SHAKERS, AND OTHER COCKTAIL  
PREPARATION ACCESSORIES.

(e) COCKTAIL FORKS, TOOTHPICKS, STIRRERS, NAPKINS,  
AND GIFT BAGS.

- ii. PUBLICATIONS DEALING WITH LIQUOR.
- iii. PROMOTIONAL ITEMS ADVERTISING THE LIMITED DISTILLERY OR DISTILLERY SUCH AS TEE SHIRTS, GLASSWARE, CAPS AND THE LIKE.
- iv. SALES ON THE LICENSED PREMISES OF MERCHANDISE NOT LISTED IN PARAGRAPH (2) ARE SUBJECT TO BOARD APPROVAL. THE APPROVAL SHALL BE REQUESTED BY LETTER ADDRESSED TO THE BOARD. A LIMITED DISTILLERY OR DISTILLERY LICENSEE WILL BE ADVISED OF APPROVED ITEMS THROUGH AN APPROPRIATE MEANS OF DISSEMINATION.

~~(b) — Liquor produced by a licensed limited distillery or distillery may be shipped by common carrier or transporter for hire, as provided in Chapter 9 Subchapter A (relating to transportation of liquor, malt or brewed beverages or alcohol).~~

~~(c) — A licensed limited distillery or distillery may accept checks drawn by the purchaser on his account, and from retail customers, credit cards issued by banking or financial institutions, subject to State or Federal regulations.~~

~~(d) — Mail, Internet or telephone orders may be accepted. Delivery of products shall be accomplished through the use of vehicles properly registered by the limited distillery or distillery, or through properly licensed transporters. It shall be~~

the responsibility of the limited distillery or distillery licensee to ensure that liquor is not delivered to minors and that proper invoices and records are maintained.

**§ 11.222. ADDITIONAL CONDITIONS.**

IN ADDITION TO THE REQUIREMENTS SET FORTH IN § 11.221 (RELATING TO SALE BY LICENSED LIMITED DISTILLERIES AND DISTILLERIES), THE SALE OF LIQUOR SHALL CONFORM TO ALL OF THE FOLLOWING:

- (1) LIQUOR PRODUCED BY A LICENSED LIMITED DISTILLERY OR DISTILLERY MAY BE SHIPPED BY TRANSPORTER-FOR-HIRE, AS PROVIDED IN CHAPTER 9 SUBCHAPTER A (RELATING TO TRANSPORTATION OF LIQUOR, MALT OR BREWED BEVERAGES OR ALCOHOL).
- (2) A LICENSED LIMITED DISTILLERY OR DISTILLERY MAY ACCEPT CHECKS DRAWN BY THE PURCHASER ON HIS ACCOUNT, AND FROM RETAIL CUSTOMERS, CREDIT CARDS ISSUED BY BANKING OR FINANCIAL INSTITUTIONS, SUBJECT TO STATE OR FEDERAL REGULATIONS.
- (3) A LICENSED LIMITED DISTILLERY OR DISTILLERY MAY ACCEPT ORDERS FOR THE PURCHASE OF LIQUOR PRODUCED ON THE LICENSED PREMISES VIA MAIL, INTERNET OR TELEPHONE.

DELIVERY OF PRODUCTS SHALL BE ACCOMPLISHED THROUGH  
THE USE OF VEHICLES PROPERLY REGISTERED BY THE LIMITED  
DISTILLERY OR DISTILLERY, AS PROVIDED IN SECTION 491(12)  
OF THE LIQUOR CODE [47 P.S. § 4-491(12)], OR THROUGH  
PROPERLY LICENSED TRANSPORTER-FOR-HIRE, AS PROVIDED  
IN CHAPTER 9 SUBCHAPTER A (RELATING TO TRANSPORTATION  
OF LIQUOR, MALT OR BREWED BEVERAGES OR ALCOHOL). IT  
SHALL BE THE RESPONSIBILITY OF THE LIMITED DISTILLERY  
OR DISTILLERY LICENSEE TO ENSURE THAT LIQUOR IS NOT  
DELIVERED TO MINORS AND THAT PROPER RECORDS AND  
INVOICES ARE MAINTAINED AS SET FORTH IN § 5.104 (RELATING  
TO LICENSED DISTILLERIES OF HISTORICAL SIGNIFICANCE).

**Commonwealth of Pennsylvania**  
**Pennsylvania Liquor Control Board**  
January 24, 2014

**SUBJECT: Final Form Regulation Package 54-73**  
**(Title 40, Pennsylvania Code, Sections 11.221 and 11.222)**

**TO:** DAVID SUMNER  
EXECUTIVE DIRECTOR  
INDEPENDENT REGULATORY REVIEW COMMISSION

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

Telephone: 717-783-9454

Submitted herewith are copies of amendments to section 11.221 and a new section 11.222 of the regulations of the Pennsylvania Liquor Control Board, relating to licensed limited distilleries and distilleries. Enclosed documents include copies of the signed CDL-1 face sheet, preamble and Annex A (regulatory text), and regulatory analysis form.

The proposed version of these regulations was provided to the legislative oversight committees, the Independent Regulatory Review Commission and to the Legislative Reference Bureau on March 27, 2013. The Board received comments from IRRC, the response to which is set forth in a separate document. IRRC received a comment from Thomas Cavaliere in support of the proposed regulation.

Any questions and comments about this regulatory submission should be directed to Norina Blynn, Assistant Counsel, or Rodrigo Diaz, Executive Deputy Chief Counsel, at (717) 783-9454.

**Enclosures**

cc: Honorable Charles McIlhinney, 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 Paul Costa, Democratic Chairman, House Liquor Control Committee  
Ms. Gail Reinard, Legislative Director (R), Senate Law and Justice Committee  
Mr. Stephen Bruder, Executive Director (D), Senate Law and Justice Committee  
Ms. Marcia Lampman, Executive Director (R), House Liquor Control Committee  
Ms. Lynn Benka-Davies, Executive Director (D), House Liquor Control Committee



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

**I.D. NUMBER:** 54-73

**SUBJECT:** Sales by Licensed Limited Distilleries and Distilleries

**AGENCY:** Pennsylvania Liquor Control Board

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**TYPE OF REGULATION**

\_\_\_\_\_ Proposed Regulation

  X   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

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**FILING OF REGULATION**

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
1-24-14		SENATE LAW & JUSTICE COMMITTEE (Majority)
1-24-14	(2)	SENATE LAW & JUSTICE COMMITTEE (Minority)
1/24/14	(3)	HOUSE LIQUOR CONTROL COMMITTEE (Majority)
1/24/14	(4)	HOUSE LIQUOR CONTROL COMMITTEE (Minority)
1/24/14	(5)	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____ (6)	ATTORNEY GENERAL
_____	_____ (7)	LEGISLATIVE REFERENCE BUREAU

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