

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: 73

IRRC Number: 2999

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

(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
Pennsylvania Liquor Control Board
401 Northwest Office Building
Harrisburg, Pennsylvania 17124
FAX: (717) 787-8820
Email: ra-lblegal@pa.gov

Secondary Contact: Alan Kennedy-Shaffer (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.

(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].

(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 that are similar to the regulations pertaining to delivery by limited wineries would promote clarity and reduce confusion as to whether limited distilleries and distilleries have 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].

This regulatory change is consistent with the preferences and needs of the regulated industry. The rule making will benefit the eight (8) active and two (2) pending limited distilleries licensed by the Board and the two (2) active distilleries licensed by the Board.

(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?

Limited distilleries and distilleries 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.

(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.)

Each of the eight (8) active and two (2) pending licensed limited distilleries and two (2) active licensed distilleries will be provided notice of this rulemaking, either by e-mail or by U.S. Postal Service mail.

(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?

This regulatory change is consistent with the expressed preferences of the regulated industry. The rulemaking will benefit the eight (8) active and two (2) pending limited distilleries and two (2) active distilleries licensed by the Board.

(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.

Each of the limited distilleries and distilleries licensed by the Board, in that they will be permitted to deliver their products directly to consumers, retail licensees, or the Board; no limited distillery or distillery would be required to make any changes to their operations or processes to be compliant with the proposed rulemaking.

(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.

Since it is discretionary for a licensed limited distillery or a 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 proposed 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 governing market forces.

(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 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 governing 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.

Since it is discretionary for a licensed limited distillery or a 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 proposed 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 governing market forces.

(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.

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

(23a) Provide the past three year expenditure history for programs affected by the regulation.

| Program | FY -3 | FY -2 | FY -1 | Current FY |
|----------------|--------------|--------------|--------------|-------------------|
| N/A | N/A | N/A | N/A | N/A |
| | | | | |
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(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:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) 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.
- (c) 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 proposed 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 governing 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>March 2013</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>April 2013</u> |
| D. The expected effective date of the final-form regulation: | <u>May 2013</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>May 2013</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.

CDL-1

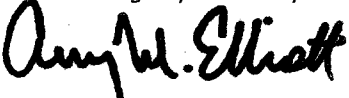
FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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

BY 
(DEPUTY ATTORNEY GENERAL)

MAR 20 2013

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: February 13, 2013

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

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

BY: 

February 13, 2013
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 section is proposed to be added:

11.221. Sale by licensed limited distilleries and distilleries.

PROPOSED 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 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].

Affected Parties

The rulemaking will affect licensed limited distilleries and distilleries. As of the date of this submission, there are eight (8) active and two (2) pending limited distilleries licensed by the Board and two (2) active distilleries licensed by the Board. All potentially affected parties licensed by the Board have been or 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:

Written comments, suggestions or objections will be accepted for 30 days after publication of the proposed regulation in the Pennsylvania Bulletin. Comments should be addressed to Rodrigo J. Diaz, Executive Deputy Chief Counsel, or Alan Kennedy-Shaffer, Assistant Counsel, Office of Chief Counsel, Pennsylvania Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review:

Under section 745.5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on _____, 2013, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Liquor Control Committee and Senate Committee on Law and Justice. A copy is available to the public upon request.

Under Section 745.5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. Comments, recommendations or objections raised shall be reviewed prior to the regulation's final publication.

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.

(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.

Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board
March 27, 2013

SUBJECT: Proposed Regulation Package 54-73
Sale by Licensed Limited Distilleries & Distilleries

TO: DAVID SUMNER, EXECUTIVE DIRECTOR
INDEPENDENT REGULATORY REVIEW COMMISSION

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

By Hand Delivery

Submitted herewith is a ~~courtesy~~ copy of proposed amendments to chapter 11 of the regulations of the Pennsylvania Liquor Control Board. 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, the Independent Regulatory Review Commission and to the Legislative Reference Bureau. They have been approved by the Office of Attorney General as to form and legality.

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

cc with enclosures:

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, 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: 54-73
SUBJECT: Sale by Licensed Limited Distilleries & Distilleries
AGENCY: Pennsylvania Liquor Control Board

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TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

FILING OF REGULATION

| <u>DATE</u> | <u>SIGNATURE</u> | <u>DESIGNATION</u> |
|-------------|------------------|--|
| 2-22-13 | Mary M... (1) | ATTORNEY GENERAL |
| 3/27/13 | B... (2) | HOUSE LIQUOR CONTROL COMMITTEE (Majority) |
| 3/27/13 | Kira Wickles (3) | (Minority) |
| 3/27 | M... (4) | SENATE LAW & JUSTICE COMMITTEE (Majority) |
| 3/27 | J... (5) | (Minority) |
| 3/27/13 | K Cooper (6) | INDEPENDENT REGULATORY REVIEW COMMISSION |
| 3/27/13 | J... (7) | LEGISLATIVE REFERENCE BUREAU |