

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: 76

IRRC Number: 3027

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

(4) Short Title: Limited Winery Pricing

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

Primary Contact: Norina Blynn (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: Rodrigo Diaz, Executive Deputy Chief Counsel (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)

Act 272 of 1968 first authorized the Board to issue licenses to limited wineries. In 1982, the Board amended section 11.111(a)(10) of its regulations to prohibit a limited winery from selling a specific code of wine which is listed for sale as a stock item by the Board at a price which is lower than that charged by the Board. [40 Pa. Code § 11.111(a)(10)]. This regulatory change amends section 11.111(a)(10) of the Board's Regulations, allowing licensed limited wineries to sell their wines at prices lower than the Board's prices for the same items, benefiting licensed limited wineries.

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

Pennsylvania Liquor Code, sections 207(i) and 505.2 [47 P.S. §§ 2-207(i); 5-505.2].

(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.

The rulemaking amends section 11.111 of the Board's Regulations by removing the prohibition on limited wineries selling a specific code of wine listed for sale by the Board as a stock item at a price lower than that charged by the Board.

Act 272 of 1968 first authorized the Board to issue licenses to limited wineries. License holders could produce no more than fifty thousand (50,000) gallons of wine per year and could sell their wines directly to the Board, to licenses, and to the general public. In 1982, the Board amended section 11.111(a)(10) of its regulations to prohibit a limited winery from selling a specific code of wine, which is listed for sale as a stock item by the Board, at a price which is lower than that charged by the Board. [40 Pa. Code § 11.111(a)(10)]. The regulatory change amends section 11.111(a)(10) of the Board's Regulations, to allow licensed limited wineries to sell a specific code of wine at a price which is lower than the Board's price for the same code. This regulatory change will benefit licensed limited wineries that may be able to sell their wines at lower prices than 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?

Licensed limited wineries and pricing 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. To the contrary, since it provides limited wineries with more price flexibility, it should make limited wineries more competitive with other states.

(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.)

The Board has not received any comments, recommendations or objections to the regulations, as proposed, during the statutory public comment period.

(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?

Those affected by this amendment include the approximately two hundred sixty-two (262) limited wineries currently licensed by the Board, of which two hundred twenty-six (226) are currently active, that will have increased pricing flexibility as a result of the regulatory amendment. However, no licensee will be required to take any action due to this change.

(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 person, group or entity will be required to take any action in order to comply with the regulation.

(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.

The Board does not anticipate that this regulatory change will have any adverse fiscal impact on the regulated community, since licensed limited wineries will have increased pricing flexibility, and no licensee will be required to take any action due to this change.

This regulatory change is not expected to have a substantial, adverse fiscal impact on state and local governments, although there may be a nominal fiscal impact on Board revenues if increased licensed limited winery sales lead to reduced sales by the Board.

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

The Board does not anticipate that this regulatory change will have any adverse fiscal impact on the regulated community, since licensed limited wineries will have increased pricing flexibility, and no licensee will be required to take any action due to this change.

This regulatory change is not expected to have a substantial, adverse fiscal impact on state and local governments, although there may be a nominal fiscal impact on Board revenues if increased licensed limited winery sales lead to reduced sales by the Board.

(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.

The Board does not anticipate that this regulatory change will have any adverse fiscal impact on the regulated community, since licensed limited wineries will have increased pricing flexibility and no licensee or member of the regulated community will be required to take any action due to this change. In fact, some licensed limited wineries may have increased sales as a result of the regulatory amendment.

(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.

This regulatory change is not expected to have any adverse fiscal impact on 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.

Although this regulatory change is not expected to have a substantial, adverse fiscal impact on state government, there may be a nominal fiscal impact on Board revenues if increased licensed limited winery sales lead to reduced sales by the Board. However, it is impossible to quantify the impact.

(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.

The Board does not anticipate that this regulatory change will affect the amount of paperwork or administrative costs of the regulated community or state or local governments, as no licensee or member of the regulated community will be required to take any action in order to comply with the regulation.

(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	Minimal	Minimal	Minimal	Minimal	Minimal	Minimal
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:						
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:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	Minimal	Minimal	Minimal	Minimal	Minimal	Minimal
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

(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.

No special regulatory methods to minimize any adverse impact on small businesses were considered because there is not expected to be any adverse fiscal impact on any small business or affected licensee.

(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 regulation will not require any licensee or member of the regulated community to take any action in order to comply with the 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.

No special regulatory methods to minimize any adverse impact on small businesses were considered because there is not expected to be any adverse fiscal impact on any small business or affected licensee.

(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>September 2013</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>January 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>March 2014</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>March 2014</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

The regulation will become effective upon its publication, in final form, in the Pennsylvania Bulletin.

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

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DO NOT WRITE IN THIS SPACE

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. 054-76

DATE OF ADOPTION: December 9, 2013

BY: _____

TITLE: Chairman
(Executive Officer, Chairman or
Secretary)

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

BY: FSDuehl

December 9, 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
SUBCHAPTER C. WINES

The following Section is proposed to be amended:

11.111. Sale by limited winery licensees.

PROPOSED RULEMAKING

LIQUOR CONTROL BOARD

40 PA. CODE CHAPTER 11

Limited Winery Pricing

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

Summary

The proposed rulemaking will amend section 11.111 of the Board's Regulations by removing the prohibition on limited wineries selling a specific code of wine listed for sale by the Board as a stock item at a price lower than that charged by the Board.

Act 272 of 1968 first authorized the Board to issue licenses to limited wineries. License holders could produce no more than fifty thousand (50,000) gallons of wine per year and could sell their wines directly to the Board, to licenses, and to the general public. In 1982, the Board amended section 11.111(a)(10) of its regulations to prohibit a limited winery from selling a specific code of wine which is listed for sale as a stock item by the Board at a price which is lower than that charged by the Board. [40 Pa. Code § 11.111(a)(10)]. The proposed regulatory change would amend section 11.111(a)(10) of the Board's Regulations to allow licensed limited wineries to sell a specific code of wine at a price which is lower than the Board's price for the same code. This regulatory change will benefit licensed limited wineries that may be able to sell their wines at lower prices than the Board.

Response to Comments:

On December 4, 2013, the Independent Regulatory Review Commission ("IRRC") notified the Board and the legislative oversight committees that it had no objections, comments, or recommendations to offer on the proposed regulation.

Affected Parties

Those affected by this proposed amendment include the approximately two hundred sixty-two (262) limited wineries currently licensed by the Board, of which two hundred twenty-six (226) are currently active, that will have increased pricing flexibility as a result of the regulatory amendment. However, no licensee will be required to take any action due to this change.

Paperwork Requirements

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

Fiscal Impact

The Board does not anticipate that this regulatory change will have any adverse fiscal impact on the regulated community, since licensed limited wineries will have increased pricing flexibility but no licensee will be required to take any action due to this change.

This regulatory change is not expected to have a substantial, adverse fiscal impact on state and local governments, although there may be a nominal fiscal impact on Board revenues if increased licensed limited winery sales lead to reduced sales by the Board.

Effective Date

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

Contact Person

Questions regarding these final form regulations should be addressed to Norina Blynn, Assistant Counsel, or Rodrigo Diaz, Executive Deputy Chief Counsel, Office of Chief Counsel, Pennsylvania Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review

Under section 5a of the Regulatory Review Act (71 P.S. § 745.5a), on September 24, 2013, the Board submitted a copy of this proposed rulemaking, published on October 5, 2013 at 43 Pa.B.5826, 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. No comments were received from IRRC, the Committees or the public.

Under section 5a(j.2) of the Regulatory Review Act, on _____, these proposed 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 C. WINES

§ 11.111. Sale by limited winery licensees.

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

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

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

(3) Wine sold and destined to points within this Commonwealth shall be in sealed original containers.

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

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

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

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

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

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

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

sale on the licensed premises:

- (i) Pennsylvania-grown fruits and the following products produced from the fruits:
 - (A) Juices.
 - (B) Juice concentrates.
 - (C) Jellies, jams and preserves.
 - (ii) Pennsylvania-grown mushrooms.
 - (iii) Home winemaking equipment and supplies.
 - (iv) Wine serving and storage accessories as follows:
 - (A) Cork removers.
 - (B) Wine glasses and decanters.
 - (C) Wine racks.
 - (D) Serving baskets and buckets.
 - (E) Bottle stoppers.
 - (v) Publications dealing with wine and winemaking.
 - (vi) Cheese, crackers, breads, nuts and preserved meats for consumption off the premises.
 - (vii) Gift packages consisting of any combination of the items listed in subparagraphs (i)—(vi).
 - (viii) Promotional items advertising the limited winery such as tee shirts, glassware, caps and the like.
- (9) Sales on the licensed premises of merchandise not listed in paragraph (8) is subject to Board approval. The approval shall be requested by letter addressed to the Board. A limited winery licensee will be advised of approved items through an appropriate means of dissemination.
- (10) [A specific code of wine which is listed for sale as a stock item by the Board in State Liquor Stores may not be offered for sale at a licensed winery location at a price which is lower than that charged by the Board.] [Reserved]
- (11) Mail or telephone orders may be accepted. Delivery of products shall be accomplished through the use of vehicles properly registered by the limited winery licensees or through properly licensed transporters. It is the responsibility of the limited winery licensee to insure that wine is not delivered to minors and that proper invoices are maintained under § 5.103 (relating to limited wineries).
- (b) The employment of an agent by a limited winery is governed by § 3.63 (relating to agents).
 - (c) Records, sales invoices and reports shall be kept as prescribed in § 5.103.
 - (d) The use of additional Board-approved locations by limited winery licensees is governed by § 3.64 (relating to additional Board-approved locations).

Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board
December 9, 2013

SUBJECT: Proposed Regulation Package 54-76
(Title 40, Pennsylvania Code, Section 11.111)

TO: DAVID SUMNER
EXECUTIVE DIRECTOR
INDEPENDENT REGULATORY REVIEW COMMISSION

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

Telephone: 717-783-9454

Submitted herewith is a copy of final form amendments to section 11.111 of the regulations of the Pennsylvania Liquor Control Board, related to limited winery pricing. Also enclosed are 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 and to your office on September 24, 2013. No comments were received from your office, the Committees or the public.

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: 54-76
SUBJECT: Limited Winery Pricing
AGENCY: Pennsylvania Liquor Control Board

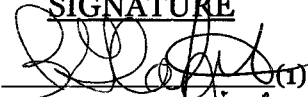

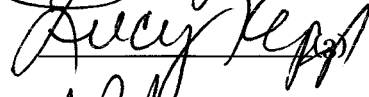
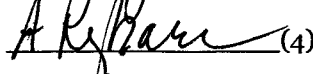

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TYPE OF REGULATION

- ___ 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

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
12/9	 (1)	HOUSE LIQUOR CONTROL COMMITTEE (Majority)
12/9	 (2)	HOUSE LIQUOR CONTROL COMMITTEE (Minority)
12/9	 (3)	SENATE LAW & JUSTICE COMMITTEE (Majority)
12/9	 (4)	SENATE LAW & JUSTICE COMMITTEE (Minority)
12/9/13	 (5)	INDEPENDENT REGULATORY REVIEW COMMISSION
___	___ (6)	ATTORNEY GENERAL
___	___ (7)	LEGISLATIVE REFERENCE BUREAU