

# Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY  
REVIEW COMMISSION

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

(1) Agency: Pennsylvania Liquor Control Board

(2) Agency Number: 54

Identification Number: 81

IRRC Number: 3086

(3) PA Code Cite: 40 Pa. Code § 3.105

(4) Short Title: Economic Development Licenses

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

Primary Contact: Norina K. Blynn (717) 783-9454  
Pennsylvania Liquor Control Board  
401 Northwest Office Building  
Harrisburg, Pennsylvania 17124  
FAX: (717) 787-8820  
Email: [ra-lblegal@pa.gov](mailto:ra-lblegal@pa.gov)

Secondary Contact: Rodrigo J. Diaz (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)

Subsection 461(b.1) of the Liquor Code authorizes the Pennsylvania Liquor Control Board ("Board") to issue, without regard to quota restrictions, economic development restaurant liquor licenses ("EDR") and economic development eating place retail dispenser licenses ("EDE") for the purpose of economic development in a municipality. [47 P.S. § 4-461(b.1)]. The applicant must satisfy certain conditions in order to receive an EDR or EDE license, including proof that the applicant has "exhausted reasonable means for obtaining a suitable license within the county." [47 P.S. § 4-461(b.1)(1)]. The final-form regulation provides specific criterion for an applicant to show that it has met that condition.

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

The Board has the authority to make regulations pursuant to section 207(i) of the Liquor Code [47 P.S. § 2-207(i)].

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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.

No, this regulation is not mandated by any federal or state law or court order, or federal regulation. There are no relevant state or federal court decisions pertaining to this regulatory change.

(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.

Generally speaking, the Liquor Code limits the number of restaurant liquor and eating place retail dispenser licenses the Board may issue in a county. [47 P.S. § 4-461]. This is known as the quota law. There are several exceptions to the quota law, one of which allows the Board to issue an economic development restaurant liquor license (“EDR”) or an economic development eating place retail dispenser license (“EDE”), even if the quota for the county is full. However, the applicant must satisfy certain conditions in order to receive an EDR or EDE license, including proof that the applicant has “exhausted reasonable means for obtaining a suitable license within the county.” [47 P.S. § 4-461(b.1)(1)]. This information must be presented at an administrative hearing. [40 Pa. Code § 3.105]. The regulations do not currently provide any guidelines as to what is meant by “exhausted reasonable means.” As a result, applicants are unsure as to what evidence they are expected to produce. The final-form regulation amends Section 3.105 to provide specific criterion for an applicant to show that it has met that condition.

As to who will benefit, in order to apply for an EDR or EDE license, the proposed licensed premises must be located in a Keystone Opportunity Zone; an area designated as an enterprise zone by the Department of Community and Economic Development; or a municipality in which, after a public hearing, the governing body of the municipality has approved the issuance of the license by ordinance or resolution. [47 P.S. § 4-461(b.1)(2)]. Because of these restrictions, it is unknown how many potential future applicants may benefit from the proposed regulation. As of April 2, 2015, the Board has approved the issuance of twenty-six (26) EDR licenses and one (1) EDE license since it was first authorized to do so in 2002.

(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.

Federal regulations do not address this matter, since the granting of licenses to sell alcohol is a matter strictly within each state’s authority.

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

The final-form regulation is intended to assist applicants who are seeking an economic development license for use in Pennsylvania. While other states have similar programs, it is not expected that the final-form regulation will have any impact on an applicant’s decision to seek a liquor license in Pennsylvania.

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

After diligent research, the Board is unaware of any other regulations, issued by the Board or by another state agency, which would be affected by the promulgation of the final-form regulation.

(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 final-form regulation was developed without communications with or input from the public. The Board's Office of Chief Counsel has been involved in hearings pertaining to the issuance of EDRs and EDEs and, through those hearings, has become aware of the need for more detailed regulations as to when an applicant has "exhausted reasonable means" to obtain an existing license. The final-form regulation was developed in coordination with the Board's Bureau of Licensing.

(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?

It is unknown how many persons, businesses, small businesses and organizations may be affected by the regulation. The regulation clarifies the process for future applicants of an EDR or EDE license. Such applicants are unknown to the Board and therefore cannot be identified or quantified.

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

There are no persons, groups, or entities that will be required to comply with the final-form regulation. The final-form regulation simply offers additional guidance to those that apply for an EDR or EDE license.

(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.

If there are any individuals, small businesses, businesses and labor communities and other public and private organizations that wish to obtain an EDR or EDE license, the final-form regulation will benefit them by providing greater detail and clarity as to what they need to do to establish that they have exhausted reasonable means to obtain a liquor license.

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

The final-form regulation does not involve any cost to an applicant beyond the time and effort necessary to contact 50% to 75% of all licensees in the county (the percentage depends upon the county class). The benefit of the final-form regulation is that it provides clarity to the applicant, which enables better case preparation and reduces or eliminates the possibility of inconsistent decisions 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 final-form regulation does not require any legal, accounting, or consulting procedures; therefore there are no costs or savings associated with complying with the final-form regulation.

(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; it is not anticipated that any legal, accounting, or consulting services would be required.

(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 the state government; it is not anticipated that any legal, accounting, or consulting services would be required.

(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, local governments, and the state government are 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>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Local Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Savings</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>COSTS:</b>						
<b>Regulated Community</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Local Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Costs</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Local Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Revenue Losses</b>	\$0	\$0	\$0	\$0	\$0	\$0

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

<b>Program</b>	<b>FY -3 2011-2012</b>	<b>FY -2 2012-2013</b>	<b>FY -1 2013-2014</b>	<b>Current FY 2014-2015</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:

(a) An identification and estimate of the number of small businesses subject to the regulation.

It is unknown how many small businesses would be subject to the regulation because the regulation pertains to applicants who are unknown to the Board until an application is submitted.

(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.

The applicant will not have to submit a formal report or record. The applicant will need to keep track of every existing licensee that was contacted with regard to selling its license and what the response was. It is anticipated that the costs of providing such information shall be minimal.

(c) A statement of probable effect on impacted small businesses.

A small business that is interested in obtaining an EDR or EDE license will be positively impacted by the final-form regulation, because now that small business will know exactly what it must demonstrate in order to qualify for such a license.

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

The requirement that an applicant shall have “exhausted reasonable means” to obtain an existing liquor license was established by legislation. There is no less intrusive or less costly alternative methods to provide clarity to the legislation and regulation besides providing clarity via the regulatory amendment.

(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 the clarification of the current regulation through amendment.

(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 the clarification of the current regulation through amendment.

(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.

No data was used for the basis of the proposed 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>          May 2015          </u>  |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>          June 2015          </u> |
| D. The expected effective date of the final-form regulation:                                | <u>          June 2015          </u> |
| E. The date by which compliance with the final-form regulation will be required:            | <u>          N/A          </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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Copy below is hereby approved  
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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. 54-81

DATE OF ADOPTION: April 8, 2015

BY: T. J. [Signature]

TITLE: Chairman  
(Executive Officer, Chairman or Secretary)

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

BY: [Signature]  
Chief Counsel

April 8, 2015  
DATE OF APPROVAL

Check if applicable. No Attorney  
General approval or objection within  
30 days after submission.

TITLE 40—LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 3. LICENSE APPLICATIONS

SUBCHAPTER K. ECONOMIC DEVELOPMENT LICENSES

*The following section is proposed to be amended:*

3.105. Quarterly filing of applications and application hearings.

# RESPONSES OF THE PENNSYLVANIA LIQUOR CONTROL BOARD

TO

Comments about PLCB Regulation #54-81 (IRRC #3086)

## Economic Development Licenses

### 1. Section 3.105. Quarterly filing of applications and application hearings. – Clarity.

This proposed rulemaking establishes the type of evidence an applicant seeking an economic development license must submit to the Board to demonstrate that it has exhausted reasonable means to find a suitable license within the existing county quota law. Under Subsection (e)(1)(3), an applicant must provide, “An explanation as to why it is not economically feasible for the applicant business to pay the amount requested for an existing restaurant liquor or eating place retail dispense license.” The Pennsylvania State Association of Township Supervisors submitted comments contending that this requirement is vague because it does not specify what the Board would consider to be economically feasible or not. We agree that this provision lacks clarity and suggest that the final-form regulation be amended to set forth the criteria an applicant must meet to prove that buying an existing license is not economically feasible.

#### Response:

Before addressing this specific concern, it may be helpful to understand the statutory context of economic development licenses (EDLs). The statutory language permitting the issuance of an EDL is set forth in section 461 of the Liquor Code, which begins by establishing a quota: “No additional restaurant, eating place retail dispenser or club licenses shall be issued within a county if the total number of restaurant and eating place retail dispenser license is greater than **one license for each three thousand inhabitants** of the county...” [47 P.S. § 4-461 (emphasis added)]. This is known as the quota law.

The General Assembly created exceptions to this limitation by allowing the Board to issue certain licenses regardless of the quota, such as licenses for

public venues, performing arts facilities, continuing care retirement communities, airport restaurants, municipal golf courses, and other entities. These exceptions to the quota only need to satisfy the definition for that particular category; no other effort or showing is required to qualify for a license.

Although EDLs are also an exception to the quota restrictions, the General Assembly did not simply add the definition of an EDL to the aforementioned list of exceptions. Instead, EDLs were given a separate subsection under section 461, with unique restrictions and requirements.

The General Assembly restricted the Board's ability to issue an EDL by first requiring that "a license may **only be issued** under this subsection if the applicant has **exhausted reasonable means** for obtaining a suitable license within the county." [47 P.S. § 4-461(b.1)(1) (emphasis added)]. Moreover, the Board may not issue "more than two licenses total in each county of the first through fourth class and no more than one license total in each county of the fifth through eighth class per calendar year." [47 P.S. § 4-461(b.1)(3)].

In addition, EDLs are subject to requirements that are not imposed on other licensees. For example, EDLs must sell food and nonalcoholic beverages equal to 70% or more of the combined gross sales of food and alcoholic beverages. [47 P.S. § 4-461(b.1)(4)]. If the licensee fails to meet this requirement, the Board is prohibited from validating or renewing the license.<sup>1</sup> [47 P.S. § 4-461(b.1)(8)]. If the Board refuses to renew a license based, at least in part, on the fact that the licensee failed to meet this requirement, the licensee's appeal of the Board's refusal to renew shall not act as a supersedeas. [47 P.S. § 4-461(b.1)(7)].

Finally, EDLs are not transferrable with regard to ownership or location. If the business is not successful, the license cannot be transferred to another person or relocated; the investment of \$25,000 or \$50,000 for the EDL cannot be recouped on the market. [47 P.S. § 4-461(b.1)(6)].

The reality is that if an applicant could obtain a license on the market for a lower cost or the same cost of an EDL, the applicant would surely do so, not

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<sup>1</sup> A license is validated or renewed every year; these two processes alternate. [47 P.S. § 4-470(a); 40 Pa. Code § 3.3]. The primary distinction between the two is that upon receiving an application for renewal, the Board may object to the renewal of the license. [47 P.S. § 4-470(a)].

only to pay a lower price, but also to avoid the restrictions imposed on the EDL that are not imposed upon other licensees. It is safe to presume that *every* applicant for an EDL is willing to deal with the restrictions of an EDL because the cost of an EDL is less than the cost of a license on the market.

Therefore, the requirement that an applicant must have “exhausted reasonable means” for obtaining a license in the market must mean something more simply showing that licenses on the private market cost more than an EDL. The Board, through the proposed regulation, has identified four (4) steps for applicants to follow in order to show that they have exhausted reasonable means to obtain an existing license:

- Contact existing licensees to see if their licenses are available for purchase;
- Offer to purchase licenses in safekeeping and provide offered and requested amounts;
- Explain why it is not economically feasible for the applicant to pay the amount requested for an existing license; and
- Estimate the expected economic benefits to the community if the application is granted.

The comment at issue pertains to the third step; further details were requested as to what the Board would consider “economically feasible” for an applicant.

The Liquor Code requires a restaurant liquor license applicant to have a location that is at least four hundred (400) square feet in size, and which can accommodate thirty (30) persons at one time. An applicant for an eating place retail dispenser license must have a location that is at least three hundred (300) square feet in size and is able to accommodate thirty (30) persons at one time. This leaves a large spectrum of potential applicants, from national chain restaurants and venues that can accommodate hundreds of patrons at one time, to a small, locally-owned specialty restaurant, such as a small pizza shop. Suffice to say, what is economically feasible for a large venue or national chain may not be economically feasible for a small pizza shop. Thus, creating a rigid set of benchmarks for the establishment of economic feasibility is not possible.

However, to provide additional guidance, the Board has added to the regulation a list of factors that an applicant may refer to in order to establish

that obtaining a license in the marketplace is not economically feasible. These factors are:

- The applicant's capital and financial resources;
- The applicant's projected revenue and expenses for its business, as well as actual revenue and expenses if the business is currently in operation; and
- Any other factors the applicant considered when deciding that obtaining a liquor license in the marketplace was not economically feasible.

It is anticipated that the addition of the above-listed factors will provide applicants with necessary guidance; the Board has in fact considered such factors when evaluating the twenty-seven (27) applications it has approved since 2002.

**2. Implementation procedures; Timetables for compliance; Extent to which reports, forms or other paperwork are required.**

In order for this Commission to evaluate the effort that will be required for an applicant to comply with this rulemaking, we request the following information related to the number of licenses in each county of the Commonwealth:

- The number of active restaurant liquor licenses;
- The number of restaurant liquor licenses in safekeeping;
- The number of active eating place retail dispenser licenses; and
- The number of active [sic] eating place retail dispenser licenses in safekeeping.

**Response:**

Appendix A to this memo includes the information requested pertaining to restaurants, and Appendix B includes the information requested pertaining to eating place retail dispenser licenses. For the sake of convenience, each county's class has been incorporated into each chart.

The Board is aware that an applicant who wishes to obtain an EDL will be required to exert more effort in some counties than in other counties. This dissimilarity is intentional, and is consistent with the provisions of the Liquor Code.

As discussed above, the number of liquor licenses that are available in each county are regulated by section 461 of the Liquor Code; the statute provides for a ratio of one license per three thousand (3,000) county inhabitants. The Liquor Code was initially enacted without a limit to the number of licenses that can be issued. Subsequently the Liquor Code was amended to create a more stringent quota of the number of licenses that could be issued, while allowing existing licenses to remain. As a result, all but one county (Juniata) is at or above its quota. Each county's quota statistics are set forth in a table provided at Appendix C. This table also includes the number of EDLs in each county, so that the Commission can see where these licenses are most popular.

## APPENDIX A

### Restaurant Liquor Licenses in Each County

County	County Class	Active	Inactive	Safekeeping
Philadelphia	1	1406	193	117
Allegheny	2	1380	93	142
Bucks	2A	319	21	25
Delaware	2A	305	25	25
Lancaster	2A	194	21	12
Montgomery	2A	373	26	37
Berks	3	254	15	23
Chester	3	173	11	22
Cumberland	3	66	11	8
Dauphin	3	179	14	27
Erie	3	236	10	19
Lackawanna	3	320	24	30
Lehigh	3	157	5	24
Luzerne	3	489	39	50
Northampton	3	167	16	21
Westmoreland	3	328	19	31
York	3	145	11	15
Beaver	4	133	16	16
Butler	4	96	3	9
Cambria	4	133	15	14
Centre	4	64	6	4
Fayette	4	148	10	27
Franklin	4	42	3	1
Monroe	4	107	9	12
Schuylkill	4	191	11	26
Washington	4	195	14	22
Adams	5	48	3	3
Blair	5	71	9	11
Lebanon	5	56	6	4
Lycoming	5	90	8	9
Mercer	5	89	3	5

## APPENDIX A

### Restaurant Liquor Licenses in Each County (cont.)

County	County Class	Active	Inactive	Safekeeping
Armstrong	6	59	6	9
Bedford	6	20	2	1
Bradford	6	29	1	5
Carbon	6	64	8	14
Clarion	6	33	1	3
Clearfield	6	66	5	4
Clinton	6	26	3	4
Columbia	6	42	3	2
Crawford	6	77	6	7
Elk	6	25	3	4
Greene	6	20	1	7
Huntingdon	6	13	2	1
Indiana	6	64	1	7
Jefferson	6	29	1	3
Lawrence	6	56	2	7
McKean	6	39	8	3
Mifflin	6	19	3	3
Northumberland	6	72	3	19
Perry	6	20	2	2
Pike	6	40	3	9
Somerset	6	61	4	3
Susquehanna	6	35	2	5
Tioga	6	27	1	1
Venango	6	29	2	4
Warren	6	32	0	7
Wayne	6	52	5	5
Juniata	7	6	1	0
Snyder	7	14	1	2
Union	7	10	0	4
Wyoming	7	23	1	1
Cameron	8	8	0	1
Forest	8	9	0	0
Fulton	8	1	1	0
Montour	8	10	1	3
Potter	8	16	3	1
Sullivan	8	6	2	2

## APPENDIX B

### Eating Place Retail Dispenser Licenses in Each County

County	County Class	Active	Inactive	Safekeeping
Philadelphia	1	124	11	8
Allegheny	2	20	1	6
Bucks	2A	11	1	0
Delaware	2A	26	2	4
Lancaster	2A	10	0	0
Montgomery	2A	22	1	0
Berks	3	5	0	2
Chester	3	9	0	0
Cumberland	3	8	0	0
Dauphin	3	6	4	2
Erie	3	10	0	0
Lackawanna	3	22	0	0
Lehigh	3	23	2	1
Luzerne	3	17	3	2
Northampton	3	8	0	0
Westmoreland	3	10	1	2
York	3	11	1	0
Beaver	4	0	1	0
Butler	4	2	0	0
Cambria	4	2	0	1
Centre	4	1	0	1
Fayette	4	2	1	2
Franklin	4	3	1	0
Monroe	4	11	0	1
Schuylkill	4	1	0	0
Washington	4	0	0	0
Adams	5	5	1	0
Blair	5	13	1	1
Lebanon	5	3	0	1
Lycoming	5	6	0	0
Mercer	5	0	1	0

**APPENDIX B**

**Eating Place Retail Dispenser Licenses in Each County (cont.)**

<b>County</b>	<b>County Class</b>	<b>Active</b>	<b>Inactive</b>	<b>Safekeeping</b>
Armstrong	6	0	0	0
Bedford	6	2	1	0
Bradford	6	2	0	0
Carbon	6	2	0	0
Clarion	6	0	0	0
Clearfield	6	2	0	0
Clinton	6	6	0	0
Columbia	6	0	0	0
Crawford	6	0	0	0
Elk	6	5	1	0
Greene	6	0	0	0
Huntingdon	6	5	0	0
Indiana	6	0	0	1
Jefferson	6	6	0	1
Lawrence	6	4	0	2
McKean	6	3	0	0
Mifflin	6	3	0	0
Northumberland	6	3	0	1
Perry	6	0	0	0
Pike	6	1	0	0
Somerset	6	1	0	0
Susquehanna	6	0	0	0
Tioga	6	0	0	0
Venango	6	2	0	0
Warren	6	2	0	0
Wayne	6	4	0	0
Juniata	7	0	0	0
Snyder	7	1	0	0
Union	7	0	0	0
Wyoming	7	2	1	0
Cameron	8	1	0	0
Forest	8	0	0	0
Fulton	8	1	0	1
Montour	8	0	0	0
Potter	8	0	0	0
Sullivan	8	0	0	0

**APPENDIX C**

**County Population, Quota Limit, and Number of Licenses over Quota**

	<b>2010 County Population</b>	<b>County Class</b>	<b>Quota</b>	<b>Total of R &amp; E Licenses</b>	<b>No. of Licenses over Quota</b>	<b>No. of Active EDLs</b>
Philadelphia	1,526,006	1	508	1859	1351	
Allegheny	1,223,348	2	407	1642	1235	
Bucks	625,249	2A	208	377	169	1
Delaware	558,979	2A	186	387	201	
Lancaster	519,445	2A	173	237	64	
Montgomery	799,874	2A	266	459	193	1
Berks	411,442	3	137	299	162	
Chester	498,886	3	166	215	49	6
Cumberland	235,406	3	78	93	15	2
Dauphin	268,100	3	89	232	143	
Erie	280,566	3	93	275	182	
Lackawanna	214,437	3	71	396	325	
Lehigh	349,497	3	116	212	96	3
Luzerne	320,918	3	106	600	494	
Northampton	297,735	3	99	212	113	
Westmoreland	365,169	3	121	391	270	
York	434,972	3	144	183	39	1
Beaver	170,539	4	56	166	110	
Butler	183,862	4	61	110	49	
Cambria	143,679	4	47	165	118	
Centre	153,990	4	51	76	25	
Fayette	136,606	4	45	190	145	
Franklin	149,618	4	49	50	1	
Monroe	169,842	4	56	140	84	
Schuylkill	148,289	4	49	229	180	
Washington	207,820	4	69	231	162	
Adams	101,407	5	33	60	27	
Blair	127,089	5	42	106	64	
Lebanon	133,568	5	44	70	26	
Lycoming	116,111	5	38	113	75	1
Mercer	116,638	5	38	98	60	

**APPENDIX C**

**County Population, Quota Limit, and Number of Licenses over Quota (cont.)**

	<b>2010 County Population</b>	<b>County Class</b>	<b>Quota</b>	<b>Total of R &amp; E Licenses</b>	<b>No. of Licenses over Quota</b>	<b>No. of Active EDLs</b>
Armstrong	68,941	6	22	74	52	
Bedford	49,762	6	16	26	10	
Bradford	62,622	6	20	37	17	
Carbon	65,249	6	21	88	67	
Clarion	39,988	6	13	37	24	
Clearfield	81,642	6	27	77	50	
Clinton	39,238	6	13	39	26	
Columbia	67,295	6	22	47	25	
Crawford	88,765	6	29	90	61	1
Elk	31,946	6	10	38	28	
Greene	38,686	6	12	28	16	
Huntingdon	45,913	6	15	21	6	
Indiana	88,880	6	29	73	44	
Jefferson	45,200	6	15	40	25	
Lawrence	91,108	6	30	71	41	
McKean	43,450	6	14	53	39	
Mifflin	46,682	6	15	28	13	
Northumberland	94,528	6	31	98	67	
Perry	45,969	6	15	24	9	
Pike	57,369	6	19	53	34	
Somerset	77,742	6	25	69	44	
Susquehanna	43,356	6	14	42	28	
Tioga	41,981	6	13	29	16	
Venango	54,984	6	18	37	19	
Warren	41,815	6	13	41	28	1
Wayne	52,822	6	17	66	49	1
Juniata	24,636	7	8	7	-1	
Snyder	39,702	7	13	18	5	1
Union	44,947	7	14	14	0	1
Wyoming	28,276	7	9	28	19	
Cameron	5,085	8	1	10	9	
Forest	7,716	8	2	9	7	
Fulton	14,845	8	4	4	0	
Montour	18,267	8	6	14	8	
Potter	17,457	8	5	20	15	
Sullivan	6,428	8	2	10	8	

## FINAL-FORM RULEMAKING

### LIQUOR CONTROL BOARD

#### 40 PA. CODE CHAPTER 3

##### Subchapter K. Economic Development Licenses

The Liquor Control Board (“Board”), under the authority of section 207(i) of the Liquor Code (47 P.S. § 2-207(i)), amends Chapter 3.

##### *Summary*

Generally speaking, the Liquor Code limits the number of restaurant liquor and eating place retail dispenser licenses the Board may issue in a county. [47 P.S. § 4-461]. This is known as the quota law. There are several exceptions to the quota law, one of which allows the Board to issue an economic development restaurant liquor license (“EDR”) or an economic development eating place retail dispenser license (“EDE”), even if the quota for the county is full. However, the applicant must satisfy certain conditions in order to receive an EDR or EDE license, including proof that the applicant has “exhausted reasonable means for obtaining a suitable license within the county.” [47 P.S. § 4-461(b.1)(1)]. This information must be presented at an administrative hearing. [40 Pa. Code § 3.105]. The regulations do not currently provide any guidelines as to what is meant by “exhausted reasonable means.” As a result, applicants are unsure as to what evidence they are expected to produce. The final-form regulation amends Section 3.105 to provide specific criterion for an applicant to show that it has met that condition.

In order to apply for an EDR or EDE license, the proposed licensed premises must be located in a Keystone Opportunity Zone; an area designated as an enterprise zone by the Department of Community and Economic Development; or a municipality in which, after a public hearing, the governing body of the municipality has approved the issuance of the license by ordinance or resolution. [47 P.S. § 4-461(b.1)(2)]. Because of these restrictions, it is unknown how many potential future applicants may benefit from the final-form regulation. As of April 2, 2015, the Board has approved the issuance of twenty-six (26) EDR licenses and one (1) EDE license since it was first authorized to do so in 2002.

##### *Affected Parties*

The affected parties include all future applicants for an EDR or an EDE. The final-form regulation will provide clarity as to what is expected of the applicant before it applies for an EDR or an EDE.

##### *Paperwork Requirements*

The final-form regulation seeks to clarify what is expected of an applicant for an EDR or an EDE. The applicant typically testifies at an administrative hearing as to what efforts it made

to obtain an already existing license. The applicant may wish to take notes as to its efforts, in order to help establish that it has “exhausted reasonable means,” but the final-form regulation would not require any additional paperwork to be filed.

#### *Fiscal Impact*

There is no anticipated fiscal impact with the final-form regulation. The final-form regulation is offered to provide clarity to applicants for an EDR or EDE license.

#### *Effective Date*

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

#### *Public Comments*

Interested persons are invited to submit written comments about the final-form rulemaking to Rodrigo 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, within thirty (30) days after publication of the final-form regulation in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Please note that all public comments will be posted on the Independent Regulatory Review Commission’s website. No personal information will be redacted from the public comments received.

#### *Regulatory Review:*

Under section 5 of the Regulatory Review Act (71 P.S. § 745.5), on November 5, 2014, the Board submitted a copy of this rulemaking, published on December 6, 2014 at 44 Pa.B. 7559, 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 the Pennsylvania State Association of Township Supervisors; the Board’s response to this comment is set forth in a separate document.

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 final-form regulations.

Tim Holden  
Chairman

## TITLE 40. LIQUOR

### PART I. LIQUOR CONTROL BOARD

#### CHAPTER 3. LICENSE APPLICATIONS

##### Subchapter K. ECONOMIC DEVELOPMENT LICENSES

#### § 3.105. Quarterly filing of applications and application hearings.

(a) Issuance of economic development licenses is limited to two licenses per calendar year in counties of the first through fourth class and one license per calendar year in counties of the fifth through eighth class.

(b) Quarterly filing periods are established for all counties as follows:

1st Quarter—January 1 through March 31

2nd Quarter—April 1 through June 30

3rd Quarter—July 1 through September 30

4th Quarter—October 1 through December 31

(c) At the end of the first quarter, every properly filed license application in a county will be subject to an administrative hearing before a Board hearing examiner in accordance with section 464 of the Liquor Code (47 P. S. § 4-464). Second quarter applications will be held in abeyance until after hearings are held for first quarter applications and a determination is made by the Board as to the availability of a license within the county.

(d) If a vacancy continues to exist in a county after hearings are held and a determination has been made by the Board, properly filed applications for the next quarter will be scheduled for hearings.

(e) In addition to any objections to, or support of, an application for the issuance of a license, an applicant shall [establish] provide evidence at the administrative hearing, that it has exhausted reasonable means to find a suitable license within the existing county quota law. Such evidence shall include the following:

(i) Evidence that the applicant, or the applicant's agent, made contact with existing restaurant liquor licensees, if a restaurant liquor economic development license is sought, or existing eating place retail dispenser licensees, if an eating place retail dispenser economic development license is sought, in the county.

(A) The purpose of the contact shall be to inquire as to the availability of the licensee's license for purchase.

(B) In counties of the first through fourth class, the number of licensees contacted by the applicant or the applicant's agent must be equal to or greater than fifty per centum (50%) of all the existing restaurant liquor or eating place retail dispenser licensees in the county.

(C) In counties of the fifth through eighth class, the number of licensees contacted by the applicant or the applicant's agent must be equal to or greater than seventy-five per centum (75%) of all the existing restaurant liquor or eating place retail dispenser licensees in the county.

(ii) Evidence that the applicant, or the applicant's agent, has offered to purchase any restaurant liquor or eating place retail dispenser licenses in the county that are in safekeeping at the time the application is filed with the Board, including the offered and requested amounts.

(iii) An explanation as to why it is not economically feasible for the applicant business to pay the amount requested for an existing restaurant liquor or eating place retail dispenser license. THE APPLICANT SHALL PROVIDE EVIDENCE OF THE FOLLOWING FACTORS:

(A) THE APPLICANT'S CAPITAL AND FINANCIAL RESOURCES;

(B) THE APPLICANT'S PROJECTED REVENUE AND EXPENSES FOR ITS BUSINESS, AS WELL AS ACTUAL REVENUE AND EXPENSES IF THE BUSINESS IS CURRENTLY IN OPERATION; AND

(C) ANY OTHER FACTORS THE APPLICANT CONSIDERED WHEN DECIDING THAT OBTAINING A LIQUOR LICENSE IN THE MARKETPLACE WAS NOT ECONOMICALLY FEASIBLE.

(iv) A written estimation, with supporting documentation, of the expected economic benefits to the municipality if the application is granted.

(e.1) If the applicant, or any of the applicant's stockholders, directors, officers or members, owns, in whole or in part, a restaurant liquor or eating place retail dispenser license which is in safekeeping with the Board, the Board shall refuse the application. This provision shall only apply if the license in safekeeping is in the same county as the license applied for.

(f) Upon approval of an application, the applicant will receive a provisional license for 120 days, exclusive of periods of safekeeping.

(g) In the event of an appeal from the Board's decision regarding the issuance or renewal of an economic development license, the appeal will act as a supersedeas and will preclude the processing of additional applications for vacancies in that county.

**Commonwealth of Pennsylvania**  
**Pennsylvania Liquor Control Board**  
April 9, 2015

**SUBJECT: Final-Form Regulation Package 54-81**  
**Economic Development Licenses**

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

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

**By Hand Delivery**

The Pennsylvania Liquor Control Board ("PLCB") is submitting final-form amendments to chapter 3 of its regulations. Enclosed please find a copy of the regulatory analysis form, signed CDL-1 face sheet, preamble and Annex A (regulatory text).

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 November 4, 2014. The PLCB received comments from the Independent Regulatory Review Commission and a comment submitted to IRRC by the Pennsylvania Association of Township Supervisors. The response to these comments is set forth in a separate document.

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.

Enclosures

cc with enclosures:

Honorable Charles McIlhinney, Majority Chairman, Senate Law and Justice Committee  
Honorable James Brewster, Minority Chairman, Senate Law and Justice Committee  
Honorable Chris Ross, Majority Chairman, House Liquor Control Committee  
Honorable Paul Costa, Minority Chairman, House Liquor Control Committee  
Gail Reinard, Executive Director, Senate Law and Justice Committee  
Victor Wills, Executive Director, Senate Law and Justice Committee  
Shauna Boscaccy, Executive Director, House Liquor Control Committee  
Lynn Benka-Davies, Executive Director, House Liquor Control Committee

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

**I.D. NUMBER:** 54-81  
**SUBJECT:** Economic Development Licenses  
**AGENCY:** Liquor Control Board

2015 APR -9 PM 3: 23

RECEIVED  
IRRO

**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>
4/9/15	<u>N. Bell</u> (1)	SENATE LAW & JUSTICE COMMITTEE (Majority)
4/9/15	<u>R. Hubbell</u> (2)	SENATE LAW & JUSTICE COMMITTEE (Minority)
4/9/15	<u>D. Minnich</u> (3)	HOUSE LIQUOR CONTROL COMMITTEE (Majority)
4/9/15	<u>K. Zickler</u> (4)	HOUSE LIQUOR CONTROL COMMITTEE (Minority)
4/9/15	<u>K. Cooper</u> (5)	INDEPENDENT REGULATORY REVIEW COMMISSION