

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: 85

IRRC Number: 3117

(3) PA Code Cite: 40 Pa. Code §§ 3.62, 3.63, 3.64, 5.103, 11.111

(4) Short Title: Limited Wineries

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

Primary Contact: Rodrigo J. Diaz (717) 783-9454
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(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)

In recent years, the Legislature has amended the Liquor Code to expand the business opportunities for holders of limited winery licenses. During this same period of time, the Board has amended its regulations to reflect some but not all of these changes. This amendment will make the Board's regulations consistent with the Liquor Code as it is currently written and interpreted. These changes include an expansion of the hours limited wineries may be open and an expansion of the products they can sell which, while currently authorized, are inaccurately expressed in the existing regulations.

(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)]. The Board also has the authority to make regulations regarding a limited winery's ability to sell products pursuant to section 505.2(a)(2) of the Liquor Code [47 P.S. § 5-505.2(a)(2)].

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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 amendment 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 amendment. Rather, the amendment will allow the regulations to accurately reflect the state of the law for limited wineries.

(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.

In recent years, the Legislature has amended the Liquor Code to expand the business opportunities for holders of limited winery licenses. During this same period of time, the Board has amended its regulations to reflect some but not all of these changes. The amendment will make the Board's regulations consistent with the Liquor Code as it is currently written and interpreted.

The amendment changes the Board's regulations to reflect the fact that sections 505.2(a)(1) and 505.2(a)(2) of the Liquor Code authorize limited wineries to produce and sell alcoholic cider, wine and wine coolers, section 505.2(a)(1) of the Liquor Code authorizes limited wineries to produce alcoholic cider, wine and wine coolers from any agricultural commodity, not just fruit, and section 505.2(a)(6.1) of the Liquor Code allows for on-premises consumption of wine and alcoholic cider. It also amends the Board's regulations to reflect the fact that section 505.2(a)(6.1) of the Liquor Code authorizes limited wineries to sell food for on and off premises consumption. Further, it amends the Board's regulations to reflect the current hours of operation for limited wineries, which were set at a Board meeting on February 19, 2014, as authorized by section 505.2(a)(6.3) of the Liquor Code.

In addition, the manner in which payment for alcoholic cider, wine and wine coolers may be made has been updated to be consistent with the language found in the Liquor Code and the Board's regulations. The list of items that limited wineries may sell has been updated to reflect the statutory changes found in sections 505.2(a)(6.1) and 505.2(a)(6.2) of the Liquor Code. The rules regarding sampling have been updated to reflect the fact that limited wineries can sell and/or give alcohol for on-premises consumption. Finally, a Liquor Code reference and a regulatory reference have been updated.

As of March 31, 2016, there were approximately 279 active limited winery licenses in effect in Pennsylvania. All license holders will benefit from having the Board's regulations accurately reflect the law.

(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 amendments are designed to accurately reflect existing law, not change it.

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

A comparison of the amendments with the laws of other states would not be appropriate since the amendments are designed to accurately reflect existing law, not change it. The amendments will have no effect on Pennsylvania's ability to compete 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 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 amendment.

(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.)

No input was received or solicited since the amendments are designed to accurately reflect existing law, not change it.

(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?

As of March 31, 2016, there were approximately 279 active limited winery licenses in effect in Pennsylvania. The federal regulation at 31 CFR 121.201, which is referenced by Act 76 of 2012, defines all farms, including grape vineyards, as small businesses if they have annual receipts of \$750,000 or less. It further defines wineries as small businesses if they employ less than 500 employees. Under the latter standard, all entities licensed as limited wineries would be considered small businesses. All license holders will benefit from having the Board's regulations accurately reflect existing law.

(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.

As of March 31, 2016, there were approximately 279 active limited winery licenses in effect in Pennsylvania. All of these licensees are already required to comply with the amendments since the amendments are designed to accurately reflect existing law, not change it. Further, the changes reflect an expansion of the rights given to limited wineries, not a restriction of those rights.

(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 amendments will allow the regulations to accurately reflect the state of the law for limited wineries. Therefore, there will be no financial, economic and social impact on anyone beyond the benefit of having the Board's regulations accurately reflect existing law.

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

The amendments will allow the regulations to accurately reflect the state of the law for limited wineries. Therefore, there will be no cost or adverse effects to offset the benefit of having the Board's regulations accurately reflect existing law.

(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 amendments will allow the regulations to accurately reflect the state of the law for limited wineries. Therefore, there will be no costs to the regulated community associated with compliance.

(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 amendments will allow the regulations to accurately reflect the state of the law for limited wineries. Therefore, there will be no costs to local governments associated with compliance.

(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 amendments will allow the regulations to accurately reflect the state of the law for limited wineries. Therefore, there will be no costs to state government associated with compliance.

(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.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:						
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 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	\$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 2012-2013	FY -2 2013-2014	FY -1 2014-2015	Current FY 2015-2016
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.

The federal regulation at 31 CFR 121.201, which is referenced by Act 76 of 2012, defines all farms, including grape vineyards, as small businesses if they have annual receipts of \$750,000 or less. It further defines wineries as small businesses if they employ less than 500 employees. Under the latter standard, all entities licensed as limited wineries would be considered small businesses. As of March 31, 2016, there were approximately 279 active limited winery licenses in effect in Pennsylvania.

(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.

None.

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

The only impact on small business would be that the Board's regulations will accurately reflect the existing status of the law.

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

The purpose of the amendments is to accurately reflect the current status of the law. The only way to achieve this is through the amendments.

(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 amendment of the current regulations.

(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;

These amendments are not expected to have an adverse impact on small businesses.

b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

The limited wineries are required to file reports only once a year. These amendments have no impact on reporting requirements.

c) The consolidation or simplification of compliance or reporting requirements for small businesses;

The limited wineries file reports at the same time they file either an application for validation or an application for the renewal of their licenses, thus simplifying compliance with reporting requirements. These amendment have no impact on reporting requirements.

- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and

The Board's Regulations do not include design or operational standards; these decisions are entirely within the discretion of the limited winery.

- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

A limited winery is defined in the Liquor Code as a winery that produces less than 200,000 gallons per year. Typically, the limited winery is a small business. These regulations are specifically designed for limited wineries, therefore, it is impossible to exempt these small businesses from the regulations that are specifically designed for them.

(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 amendments.

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

- A. The date by which the agency must receive public comments: N/A
- B. The date or dates on which public meetings or hearings will be held: April 2016
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: June 2016
- D. The expected effective date of the final-form regulation: June 2016
- E. The date by which compliance with the final-form regulation will be required: N/A
- F. The date by which required permits, licenses or other approvals must be obtained: N/A

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FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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Copy below is hereby approved
as to form and legality.

Attorney General:

BY: _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections
attached.

Copy below is hereby certified to be a
true and correct copy of a document
issued, prescribed or promulgated by:

Pennsylvania Liquor Control Board
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 54-85

DATE OF ADOPTION: April 6, 2016

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 6, 2016
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 G. LIMITED WINERY LICENSES

The following sections are proposed to be amended:

- 3.62 Creation
- 3.63 Agents
- 3.64 Additional Board-approved locations

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES
SUBCHAPTER H. RECORDS AND REPORTS—BREWERIES, BONDED WAREHOUSES LIMITED
WINERIES AND LICENSED DISTILLERIES OF HISTORICAL SIGNIFICANCE

The following section is proposed to be amended:

- 5.103 Limited wineries

CHAPTER 11. PURCHASES AND SALES
SUBCHAPTER C. WINES

The following section is proposed to be amended:

- 11.111. Sale by limited winery licensees

RESPONSES OF THE PENNSYLVANIA LIQUOR CONTROL BOARD

TO

Comments about PLCB Regulation #54-85 (IRRC #3117)

Limited Wineries

1. General.

The Board states that the purpose for the proposed rulemaking is to make its regulations consistent with the Liquor Code (“Code”) as it is currently written. In addition to wine and alcoholic ciders, Section 505.2 (a)(1),(2) of the Code authorizes limited wineries licensees to produce and sell wine coolers. 47 P.S. § 5-505.2(a)(1), (a)(2). We note, however, that the Board’s amendments do not address the production or sale of wine coolers. (See §§ 3.62, 3.63, 5.103, and 11.111.) It is our understanding that the Board has excluded wine coolers from its regulations because the term “wine cooler” is not defined in the Code. We recommend the Board define the term and include it in the final rulemaking or explain how the exclusion conforms to the Board’s intent to make its regulations consistent with the Code.

Response: The Board respectfully declines to create a definition for “wine cooler.” A limited winery licensee may sell “wines and wine coolers” that it has produced. It is assumed that a wine cooler is a drink that includes wine, but the legislature did not define that term in the Liquor Code. Therefore, the Board submits that if it were to create such a definition, it would be usurping the legislature’s authority to make law.

However, to reduce confusion, the Board has added the term “wine cooler” to the final form regulation as the Commission suggests.

2. Section 11.111. Sale by limited winery licensees. Statutory authority; Whether the regulation is consistent with statute; Public interest; Clarity.

Proposed Paragraph (a)(3) states the following:

A limited winery may sell wine and alcoholic ciders from 7 a.m. until 2 a.m. of the following morning, Mondays through Saturdays, and from 9 a.m. until 2 a.m. of the following morning on Sundays.

The Board's response to Regulatory Analysis Form (RAF) question #10 indicates that the proposed rulemaking updates the current regulations to reflect the current hours of operation for limited wineries. The Board cites Section 505.2(a)(6.3) of the Code as the authorizing statutory provision for the proposed amendment.

Section 505.2(a)(6.3) states that holders of a limited winery license may:

[s]ell alcoholic cider, wine and wine coolers **only between the hours of nine o'clock antemeridian and eleven o'clock postmeridian**. A limited winery also **may request approval** from the board to extend sales hours in individual locations at other times during the year or beyond the limits set forth in this clause. This request shall be made **in writing**. . . and shall detail the exact locations where sales hours are proposed to be extended, the proposed hours and dates of extended operations and the reason for the proposed extended hours. [Emphasis added.]

47 P.S. § 5-502.2(a)(6.3). Since the sales hours may be extended only by considering a detailed request from a limited winery, we believe the Board's proposal to provide for the expansion of the sales hours for all limited wineries is not authorized by the Code. We recommend the Board delete proposed Paragraph (a)(3) and retain existing Paragraph (a)(4), or explain how the proposed revision to sales hours is consistent with the Code.

Response: While section 505.2(a)(6.3) of the Liquor Code sets forth a limited winery's hours of operation, it also provides the Board with authority to extend those hours upon request. This authority was first provided to the Board by Act 239 of 2004. Subsequent to that date the Board would typically approve such requests provided that the requested hours did not extend beyond the time authorized for retail licensees, i.e., 7:00 a.m. until 2:00 a.m. the following morning, Mondays through Saturdays and from 9:00 a.m. until 2:00 a.m. the following morning on Sundays.

Unfortunately, some requests could not be approved because the request was not received in time. Specifically, requests were addressed

by the Board at its public meetings and said meetings typically occur every two weeks. Therefore, a licensee who did not provide the Board with at least two weeks' notice of its request to change its hours of operation for a specific date, ran the risk of not having its request considered prior to the date in question.

In February of 2014, the Board reached out to Jennifer Eckinger who was (and is) the executive director of the Pennsylvania Winery Association, the trade organization that represents limited wineries. The issue was discussed with her and two possible solutions were offered. One was to delegate the authority to approve individual requests for extension of hours to the Office of Chief Counsel. The other proposal was to have the Board extend the hours of all limited wineries to those of retail license holders.

After conferring with her organization, Ms. Eckinger, on behalf of the trade organization that represents limited wineries, requested that the Board extend the hours of operation for limited wineries to match those of retail license holders. At its public meeting of February 19, 2014, the Board approved the Pennsylvania Winery Association's request that winery hours be expanded to match the hours of restaurant liquor license holders. [See attached Meeting Minutes]. Thus, the language in the proposed regulation is not an attempt to expand limited wineries' hours of operation but a reflection that such hours have already been expanded.

As an aside, the Office of Attorney General had raised the same issue when it reviewed the proposed regulation for form and legality. It approved the proposed regulation after the explanation set forth above was provided.

Proposed Subparagraph (a)(4)(1)

The Preamble and the Board's response to RAF question #10 states the payment method for wine and alcoholic ciders is being updated to be consistent with the language in the Code and the Board's regulations. However, the Board does not include the statutory authority for the proposed change. We request the Board clarify its statutory authority for this provision.

Response: Section 505.2(a)(2) provides that a limited winery may sell products it has produced “under such conditions and regulations as the board may enforce...” [47 P.S. § 5-505.2(a)(2)]. This section of the Liquor Code provides the statutory authority for the proposed change.

Section 493(2) of the Liquor Code provides that it shall be unlawful:

For any licensee, his agent, servant or employe, to sell or offer to sell or purchase or receive any liquor or malt or brewed beverages except for cash, excepting credit extended by a hotel or club to a bona fide guest or member, or by railroad or pullman companies in dining, club or buffet cars to passengers, for consumption while enroute, holding authorized credit cards issued by railroad or railroad credit bureaus or by hotel, restaurant, retail dispenser eating place, club and public service licensees, importing distributors or distributors to customers not possessing a license under this article and holding credit cards issued in accordance with regulations of the board or credit cards issued by banking institutions subject to State or Federal regulation: Provided further, That nothing herein contained shall be construed to prohibit the use of checks or drafts drawn on a bank, banking institution, trust company or similar depository, organized and existing under the laws of the United States of America or the laws of any state, territory or possession thereof, in payment for any liquor or malt or brewed beverages if the purchaser is the payor of the check or draft and the licensee is the payee: Provided further, That notwithstanding any other provision of this act to the contrary, it shall be unlawful for an importing distributor or distributor to accept cash for payment of any malt or brewed beverages from anyone possessing a license issued under this article, except it shall be permissible for the importing distributor or distributor to accept money orders or cashiers' checks for payment of any malt or brewed beverages in addition to any other type of payment authorized by the board from anyone possessing a license under this article....

[47 P.S. § 4-493(2) (emphasis added)]. This lengthy statute can be confusing for licensees, who will subsequently write to the Board's Office of Chief Counsel for guidance. Section 211.1 of the Liquor Code provides that "[u]pon request by a licensee, the board or its counsel shall issue a legal opinion regarding any subject matter relating to this act or any regulation promulgated pursuant to it. This legal opinion shall be binding on the enforcement bureau." [47 P.S. § 2-211.1]. These legal opinions – known as Advisory Opinions – serve as a legal defense for the licensee for whom it was issued and have the force and effect of law.

Under the authority of section 211.1, the Board has stated in advisory opinions that acceptable forms of payment for alcohol can include not only checks drawn on the purchaser's account, but also cash, money orders, cashier checks, debit cards and electronic funds transfers. [See attached Advisory Opinion 09-455 for an example]. In developing the amendments to the limited winery regulations, it was determined by the Board that it may be helpful to state in the regulation that these types of payment are acceptable when purchasing product from a limited winery. This provides clarity that licensees who purchase product from limited wineries will not be in violation of section 493(2). It will also eliminate the need for individual limited wineries to ask for specific approval from the Board to accept the payment methods set forth above.

Proposed Paragraph (a)(5)

The Board proposes that visitors at the winery or at one of the additional Board-approved locations may be provided, with or without charge, samples of wine or alcoholic cider, or both, produced by the limited winery. The proposed language also provides for sampling of wine and alcoholic ciders at locations licensed under a farmer's market permit or under the special permit issued for alcoholic cider, wine and food expositions.

In RAF question #10 and in the Preamble, the Board states that the regulation is being amended to reflect changes in the Code. However, there does not appear to be a specific statutory change to support this amendment to the regulation. The Board should clarify the rationale for including sampling at limited wineries and other licensed locations under special permit.

Response: Act 239 of 2004 amended section 505.2 of the Liquor Code to include paragraph (a)(4). This paragraph allows limited winery licensees who have obtained a permit to participate in alcoholic cider, wine and food expositions off the licensed premises. At such expositions, limited wineries are permitted to provide “tasting samples of wines in individual portions not to exceed one fluid ounce. Samples at alcoholic cider, wine and food expositions may be sold or offered free of charge.” [47 P.S. § 5.505.2(a)(4)].

Act 11 of 2011 added paragraph (a)(4.1) to allow limited winery licensees who have obtained a permit to sell wine by the bottle or case at farmers markets. Paragraph (a)(4.1) also provides: “Samples not to exceed one fluid ounce [sic] per brand of wine may be offered free of charge.” [47 P.S. § 5-505.2(a)(4.1)]. Because the statute does not permit a limited winery to offer a sample for a fee – a limited winery at a farmers market may only offer samples free of charge – the Board has amended the final form regulation to better reflect the provisions of the statute.

Existing Subparagraphs (a)(8)(i)(A, C) and (a)(8)(ii)

The Board proposes to delete Pennsylvania-grown fruits, jellies, jams, preserves and mushrooms from the list of items that a limited winery may offer for sale at the winery. We ask the Board to explain how removing Pennsylvania-grown commodities from the list of products that may be offered for sale at limited wineries is in the public interest.

Response: Act 11 of 2011 amended paragraph 505.2(a)(6.1), which now permits limited winery licensees to “Sell food for consumption on or off the licensed premises...” [47 P.S. § 5-505.2(a)(6.1)]. The statute does not authorize any restriction as to the source or type of food. Thus, the specific reference to fruits, jellies, jams, preserves and mushrooms is moot since each of these items is permissible under the limited winery’s general authority to sell food

Proposed Paragraph (a)(9)

The Board should provide the statutory authority for accepting Internet orders of wine and alcoholic ciders.

Response: Section 505.2(a)(2) provides that a limited winery may sell products it has produced “under such conditions and regulations as the board may enforce....” [47 P.S. § 5-505.2(a)(2)(emphasis added)]. This section of the Liquor Code provides the statutory authority for the proposed change. Under its authority to issue Advisory Opinions, referenced earlier, the Board has allowed limited wineries to accept orders over the Internet for years. [See attached Advisory Opinion 09-278]

3. Miscellaneous Clarifications:

- The proposed rulemaking uses the following terms: sample, alcoholic cider, wine and food expositions, farmer’s market, and agricultural commodity. To improve clarity, we recommend the Board define these terms in the final-form regulation.

Response: A definition for “sample” has been added to Paragraph 11.111(a)(4), since that is the only location where the word “sample” has been used in this regulatory submission. The word “sample” is used elsewhere in the Board’s Regulations (40 Pa. Code § 13.231), but that section refers to a significantly different program. For this reason, the requested definition for “sample” was restricted to Paragraph 11.111(a)(4).

The other words are already defined in the Liquor Code: alcoholic cider is defined in section 102 [47 P.S. § 1-102], and the remaining terms are defined in section 505.2 [47 P.S. § 5-505.2].

- The Board should revise its response to RAF question #8 to include specific statutory citations for all of the proposed changes.

Response: The response to RAF question #8 now reads as follows:

The Board has the authority to make regulations pursuant to section 207(i) of the Liquor Code [47 P.S. § 2-207(i)]. The Board also has the authority to make regulations regarding a limited winery's ability to sell products pursuant to section 505.2(a)(2) of the Liquor Code [47 P.S. § 5-505.2(a)(2)].

- The Preamble and Board's response to RAF question #10 should be revised to refer to Section 505.2(a)(6.1) of the Code which allows for on or off premises consumption of wine and alcoholic cider, not Section 505.2(a)(6.2) which authorizes licensees to sell wine or liquor-scented candles acquired or produced by the limited winery.

Response: The answer to RAF question #10 has been revised to refer to Section 505.2(a)(6.1) instead of Section 505.2(a)(6.2).

- The Board's response to RAF questions #26 and #27 are identical. The Board should revise its response to RAF question #27.

Response: The answer to RAF question #27 has been revised.

- In proposed Section 11.111 (a)(5) we recommend the Board insert the word "limited" after "the" and before "winery."

Response: The insertion has been made.

PENNSYLVANIA LIQUOR CONTROL BOARD
MEETING MINUTES

WEDNESDAY, FEBRUARY 19, 2014
NORTHWEST OFFICE BUILDING, CONFERENCE ROOM 117, HARRISBURG, PA

Joseph E. "Skip" Brion, Chairman
Robert S. Marcus, Board Member
Tim Holden, Board Member
John E. Metzger, Acting Executive Director
John Stark, Board Secretary

Office of Chief Counsel
Bureau of Licensing
Bureau of Human Resources
Bureau of Purchasing and Contracting

Bureau of Retail Operations
Bureau of Product Selection/Marketing
Financial Report
Other Issues

PUBLIC MEETING – 11:00 A.M

Board Secretary John K. Stark indicated that a quorum of the Board was present and Chairman Brion called the meeting to order.

CALL TO ORDER *Chairman Brion*

Pledge of Allegiance to the Flag

OLD BUSINESS..... *Secretary Stark*

A. Motion to approve the Previous Board Meeting Minutes of the January 15, 2014 meeting.

Motion Made: Board Member Marcus
Seconded: Board Member Holden

Board Decision: Unanimously approved (3-0 vote) previous Board Minutes.

B. Announcements read by Chairman Brion for Ratification of Board Actions.

The follow Board Actions approved on February 6, 2014 were decided by Notational Voting by Board Members, Mr. Brion, Mr. Marcus and Mr. Holden since the Board's last public meeting.

Office of Chief Counsel:

Application for Conversion of Suspension to Fine:
Transferor: Walking Miles, LLC
1550 Adams Avenue
Philadelphia, PA 19124-4556
Restaurant Liquor License No. R-250
LID 58998

Note: Board Minutes are not officially approved until all required signatures are affixed.

NEW BUSINESS

From the Office of Chief Counsel.....Faith Smith Diehl, Chief Counsel

- (1) **Buchanan Beer and Beverage, Inc.** Request to Terminate Conditional
D-3715 (LID 46729) Licensing Agreement
11320 Old Route 16
Waynesboro, Pennsylvania 17268-9438

Motion Made: Board Member Marcus
Seconded: Board Member Holden

Board Decision: Unanimously agreed (3-0 vote) to Terminate Conditional Licensing Agreement.

- (2) **Section 505.2(a)(6.3) of the Liquor Code** Proposal to expand limited wineries'
Operating Hours for Limited Wineries hours of operation

Motion Made: Board Member Marcus
Seconded: Board Member Holden

Board Decision: Unanimously agreed (3-0 vote) to Expand hours of operation to match Restaurant
Liquor License.

*From the Bureau of Licensing Jerry Waters, Director of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing*

- (1) **700 S. 5th Street Associates, LLC** Request for Hearing – *Nunc Pro*
R-622 (LID No. 58378) Case No. 13-9187 *Tunc* – Renewal & Validation –
700-02 South 5th Street Restaurant
Philadelphia, Philadelphia County

Motion Made: Board Member Marcus
Seconded: Board Member Holden

Board Decision: Unanimously agreed (3-0 vote) to Deny Nunc Pro Tunc Relief.

Mailing Date: November 30, 2009

Telephone: 717-783-9454

FAX: 717-787-8820

Andrew P. Muha
Muha Distributors, Inc.
t/a Sudz and More
506 Sunshine Avenue
Central City, PA 15926-1229
VIA E-MAIL: apmuha@aol.com

RE: Payment by Licensees for Purchases of Beer

Dear Mr. Muha:

ISSUE: Your e-mail of October 10, 2009, asks if a licensee could pay in cash for beer if the cash payment is made at the distributorship and occurs prior to the delivery of the beer. You also inquire about bounced checks from licensees and whether you can accept cash from a licensee who has bounced a check. Records of the Pennsylvania Liquor Control Board ("Board") reflect that you are President of Muha Distributors, Inc. t/a Sudz and More, holder of Distributor License No. D-3942 (LID 49455), for premises located at 506 Sunshine Avenue, Central City, Pennsylvania 15926-1229.

OPINION: Act 39 of 2005 amended Section 493(2) of the Liquor Code, so that distributors could no longer accept cash from retail licensees (hotels, restaurants, clubs, eating place retail dispensers) at the time the beer was delivered to the retail licensee. The purpose of this change was to protect the employees of distributors from the risks of carrying large amounts of cash.

Distributors and importing distributors CAN accept the following as payment for malt or brewed beverages if the buyer is licensed by the Board.

- A check or certified check if the payor of the check is the licensed entity purchasing the malt or brewed beverages and the payee of the check is the distributor or importing distributor selling the malt or brewed beverages.
- Cashier's check.

- Money Order.
- Debit Card.
- Electronic Transfer of Funds.
- Prepayment in cash so long as it occurs prior to delivery.

Distributors and importing distributors CANNOT accept the following as payment for malt or brewed beverages if the buyer is licensed by the Board.

- Cash on delivery.
- Credit Cards.
- A check or certified check if the payor is someone other than the licensed entity purchasing the malt or brewed beverages or if the payee is someone other than the distributor or importing distributor selling the malt or brewed beverages.
- On Credit.

As to your question regarding forms needed to report the tender by a licensee of a check for which there is insufficient funds, the Board's Regulations provide as follows:

(a) A person licensed by the Board under Article IV of the Liquor Code (47 P.S. §§ 4-401-4-497) who receives in payment for malt or brewed beverages any check, draft or similar order for the payment of money, which is subsequently dishonored by the bank, banking institution, trust company or other depository upon which drawn, for any reason, shall so notify the Board within 20 days of dishonor, by letter, through the United States mail, addressed to the Investigative Unit, Liquor Control Board, Harrisburg, Pennsylvania 17124.

(b) A separate letter or notice shall be submitted for each dishonored instrument and shall contain all of the following:

- (1) The name and business address of the licensee giving the notice.
- (2) The name and business address of the maker of the instrument.
- (3) The date and amount of the instrument and institution upon which drawn.
- (4) The date received in payment for malt or brewed beverages.
- (5) The date of notice of nonpayment or dishonor and the reason

therefor.

- (6) The name of the payee on the instrument.
- (7) A list of endorsements, if any.
- (8) Other relevant remarks.

[40 Pa. Code § 11.181].

Section 493(26) of the Liquor Code makes it unlawful for any retail liquor licensee or any retail dispenser, distributor or importing distributor to issue any check for the purchase of malt or brewed beverages when such licensee does not have sufficient funds or credit within its banking institution for the payment of such check. [47 P.S. § 4-493(26)]. This section further provides that any licensee who receives a check for payment of malt or brewed beverages, which is subsequently dishonored by the bank, shall, within five (5) days of receipt of notice of dishonor thereafter notify the person who presented the check. [Id.; 40 Pa. Code § 11.182]. For the first violation of each calendar year, should such check be honored within ten (10) days from the day it was issued, an administrative warning shall be issued to the maker in lieu of a citation. [Id.]

Section 496 of the Liquor Code provides that any person who is a licensee and receives a check for malt or brewed beverages which is subsequently dishonored by the bank for any reason whatsoever shall within twenty (20) days of receipt of notice of such dishonor notify the Board thereof. [47 P.S. § 4-496, 40 Pa. Code § 11.181]. Further, section 11.183 of the Board's Regulations requires that a person licensed by the Board who receives a check or similar order in payment for malt or brewed beverages sold by him, shall give instructions in writing to the banking institution or other depository instructing that the banking institution give notice to him when an instrument has been dishonored by the banking institution. [40 Pa. Code § 11.183].

The above sections provide for requirements which must be followed upon receipt of notice of dishonor of a check or similar instrument from a licensee's banking institution, deposited for the purchase of malt or brewed beverages sold by the licensee. The point at which the licensed entity receives notice of dishonor from its bank is the point at which it must comply with the above requirements.

With respect to whether you may accept cash only from a licensee who has bounced a check, be advised that while nothing in the Liquor Code or the

Board's Regulations would prohibit you from imposing restrictions on what forms of payment would be acceptable in such situations, as noted above, you would continue to be prohibited from accepting cash on delivery from licensees. In other words, while you could require prepayment in cash so long as it occurs prior to delivery, you would be prohibited from accepting cash from licensees at the time of delivery.

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

Very truly yours,

FAITH S. DIEHL
CHIEF COUNSEL

cc: Pennsylvania State Police,
Bureau of Liquor Control Enforcement
Jerry W. Waters, Sr., Director, Office of Regulatory Affairs
Jane Melchior, Director, Bureau of Licensing
Tisha Albert, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 09-455

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Mailing Date: July 22, 2009

Telephone: 717-783-9454

FAX: 717-787-8820

Tom Glatz

VIA E-MAIL: tomglatz@hotmail.com

RE: Direct Shipment of Wine by Limited Wineries

Dear Mr. Glatz:

ISSUE: This office is in receipt of your e-mail correspondence of July 10, 2009, wherein you ask whether holders of a limited winery licenses are able to sell and ship wine to both customers within and outside of the Commonwealth of Pennsylvania.

Pennsylvania Liquor Control Board ("Board") records indicate that Glatz Wine Cellars Incorporated, 2699 Brodhead Road, Aliquippa, Pennsylvania, holds Limited Winery Liquor License No. LK-240 (LID 58347).

OPINION: As a general rule, it is unlawful for anyone in Pennsylvania to possess alcohol not acquired from a Pennsylvania wine and spirits store, a sacramental wine dealer or a licensed limited winery. [47 P.S. § 4-491(2)]. Similarly, it is unlawful for any person to import alcohol into the Commonwealth except as permitted within the Liquor Code and the Board's Regulations. [47 P.S. § 4-491(8), (11)].

However, there are some exceptions to these laws involving the shipment of wine from registered direct shippers to Pennsylvania residents. First, section 488 of the Liquor Code provides that Pennsylvania residents may purchase wine over the Internet and have it shipped to one of the Board's more than six hundred twenty (620) wine and spirits stores of their choosing, where they may pick it up, provided such purchases are made via the Internet from direct wine shippers, who have been licensed by the Board. [47 P.S. § 4-488]. The following additional conditions apply to such direct wine shipper orders: Pennsylvania residents may only order wines that are not listed in the Board's Internet catalog of available wines; Internet orders will be shipped to wine and spirits stores of the purchaser's choice; the purchaser must be at least twenty-one

(21) years old; and all wines must be for personal use, not for resale; the purchaser or his or her designee must sign an affidavit affirming these facts on receipt of the order; and a direct wine shipper may not ship more than nine (9) liters to a single resident in any one (1) month. Furthermore, the wine will be subject to a shipping charge, and must add a four dollar fifty cent (\$4.50) handling fee, Pennsylvania's eighteen percent (18%) liquor tax, and six percent (6%) sales tax (and an additional one percent (1%) sales tax in Philadelphia & Allegheny counties).

Second, wines not listed for regular sale through the Board's wine and spirits stores may be acquired by residents of the Commonwealth (including licensees of the Board) via special liquor order ("SLO"). [47 P.S. § 3-305]. SLOs may be placed at any of the Board's wine and spirits stores, or via the Bureau of Product Management at (717) 783-7601. SLOs must be shipped to a wine and spirits store operated by the Board and may be either for personal use or, if purchased by a Board licensee, for resale in any licensed establishment. Such wines are subject to both the aforementioned eighteen percent (18%) liquor tax, the six percent (6%) sales tax, and may be subject to an additional one percent (1%) local tax.

Third, section 505.2 of the Liquor Code authorizes the issuance of a limited winery license. Holders of such licenses may sell alcoholic ciders, wines and wine coolers directly to individuals and to brewery, hotel, restaurant, club, public service liquor licensees and to Pennsylvania winery licensees. [47 P.S. § 5-505.2]. As a result of recent court rulings, any in-state limited winery or out-of state entity that applies for and obtains a limited winery license from the Board may also ship wine directly to Pennsylvania residents, at their homes, who have placed orders to such entities via telephone or the Internet. The purchaser must be at least twenty-one (21) years old and such wines are subject to the state sales tax, but not the eighteen percent (18%) tax.

With respect to your inquiry concerning the shipment of wine from Pennsylvania to another state, you should contact the appropriate authority in the receiving state as they may have additional information as to specific state laws and regulations concerning the importation of wine across state lines to customers residing in their state.

Finally, the Liquor Code and the Board's Regulations can be found on the Board's website at www.lcb.state.pa.us, "For Licensees," "Legal Issues." At the

same location, you can also access "Legal Advisory Search," which allows you to search letters written to licensees about various legal issues.

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

Should you have any further questions or concerns regarding the Liquor Code or the Board's Regulations, please do not hesitate to again contact this office.

Very truly yours,

FAITH S. DIEHL
CHIEF COUNSEL

cc: Pennsylvania State Police,
Bureau of Liquor Control Enforcement
Jerry W. Waters, Sr., Director, Office of Regulatory Affairs
Jane Melchior, Director, Bureau of Licensing

LCB Advisory Opinion No. 09-278

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FINAL FORM RULEMAKING

LIQUOR CONTROL BOARD

40 PA. CODE CHAPTERS 3, 5 AND 11

Limited Wineries

The Liquor Control Board (“Board”), under the authority of section 207(i) of the Liquor Code (47 P.S. § 2-207(i)), proposes to amend Chapters 3, 5, and 11. The Board also has the authority to make regulations regarding a limited winery’s ability to sell products pursuant to section 505.2(a)(2) of the Liquor Code [47 P.S. § 5-505.2(a)(2)].

Summary

In recent years, the Legislature has amended the Liquor Code to expand the business opportunities for holders of limited winery licenses. During this same period of time, the Board has amended its regulations to reflect some but not all of these changes. This amendment will make the Board’s regulations consistent with the Liquor Code as it is currently written and interpreted. These changes include an expansion of the hours limited wineries may be open and an expansion of the products they can sell, which while currently authorized, are inaccurately expressed in the existing regulations.

The amendment changes the Board’s regulations to reflect the fact that sections 505.2(a)(1) and 505.2(a)(2) of the Liquor Code authorize limited wineries to produce and sell alcoholic cider, wine and wine coolers, section 505.2(a)(1) of the Liquor Code authorizes limited wineries to produce alcoholic cider, wine and wine coolers from any agricultural commodity, not just fruit, and section 505.2(a)(6.1) of the Liquor Code allows for on-premises consumption of wine and alcoholic cider. It also amends the Board’s regulations to reflect the fact that section 505.2(a)(6.1) of the Liquor Code authorizes limited wineries to sell food for on and off premises consumption. Further, it amends the Board’s regulations to reflect the current hours of operation for limited wineries, which were set at a Board meeting on February 19, 2014, as authorized by section 505.2(a)(6.3) of the Liquor Code.

In addition, the manner in which payment for wine and alcoholic cider may be made has been updated to be consistent with the language found in the Liquor Code and the Board’s regulations. The list of items that limited wineries may sell

has been updated to reflect the statutory changes found in sections 505.2(a)(6.1) and 505.2(a)(6.2) of the Liquor Code. The rules regarding sampling have been updated to reflect the fact that limited wineries can sell and/or give alcohol for on-premises consumption. Finally, a Liquor Code reference and a regulatory reference have been updated.

Affected Parties

As of March 31, 2016, there were approximately 279 active limited winery licenses in effect in Pennsylvania. All license holders will benefit from having the Board's regulations accurately reflect the law.

Paperwork Requirements

The amendments would not require any additional paperwork to be filed.

Fiscal Impact

The amendments are intended to make the Board's regulations consistent with the Liquor Code. Therefore, no fiscal impact is anticipated.

Effective Date

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

Public Comments

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 2, 2015, the Board submitted a copy of these proposed amendments 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 of this material is available to the public upon request.

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.

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

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 3. LICENSE APPLICATIONS

Subchapter G. LIMITED WINERY LICENSES

§ 3.62. Creation.

Under section 505.2 of the Liquor Code (47 P.S. § 5-505.2), holders of a [**Limited Winery License**] **limited winery license** may produce and sell wines, **WINE COOLERS** and **alcoholic ciders**, subject to §§ 3.63, 5.103 and 11.111 (relating to agents; limited wineries; and sale by limited winery licensees).

§ 3.63. Agents.

A limited winery licensee may employ individuals to solicit orders, off the licensed premises, for wine, **WINE COOLERS** and **alcoholic cider** produced by it or to promote the sale of wines, **WINE COOLERS** and **alcoholic ciders** off the premises. Agents may advertise and promote the sale of merchandise by "missionary work" of only brands sold by the limited winery licensee by whom the agents are employed and may solicit orders from licensees and make deliveries in properly registered vehicles.

§ 3.64. Additional Board-approved locations.

(a) Additional locations, as authorized by section **[505.2(3) of the Liquor Code (47 P.S. § 5-505.2(3))]** **505.2(a)(3) of the Liquor Code (47 P.S. § 5-505.2(a)(3))**, may not be used by a limited winery licensee in the operation of a licensed business unless approved by the Board.

(1) An application for an additional location shall be made to the Board, accompanied by a \$220 fee. A renewal application shall be submitted annually and be accompanied by a \$75 fee.

(2) Applications for additional Board-approved locations may be submitted on a prior approval basis. If plans are approved, the necessary construction or alterations shall be completed within 6 months of the approval. Business may not be transacted until the premises has been reinspected and the Board has approved the completed construction or alterations.

(3) Portions of an additional Board-approved location premises shall be contiguous.

(4) Additional Board-approved locations of a limited winery license shall be under the control of a manager appointed in accordance with [§ 5.16] § 5.23 (relating to appointment of managers).

* * * * *

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

Subchapter H. RECORDS AND REPORTS—BREWERIES, BONDED WAREHOUSES, LIMITED WINERIES AND LICENSED DISTILLERIES OF HISTORICAL SIGNIFICANCE

§ 5.103. Limited wineries.

(a) Records. A holder of a [**Limited Winery License**] **limited winery license** obtained under § 3.62 (relating to creation) shall maintain and keep on the licensed premises daily permanent records which shall conform to the requirements of section 512 of the Liquor Code (47 P.S. § 5-512). The records [**shall**] **must** include complete details concerning the source of [**fruits**] **agricultural commodities** used in the production of wines, WINE COOLERS and **alcoholic ciders**. Electronic media recordkeeping, maintained and based upon generally accepted accounting principles, [**shall**] **will** be permitted [**in lieu**] **instead** of hard copy records. The recordkeeping system utilized by the licensee [**shall**] **must** have the capability to provide for the reconciling of required data. Entries shall be verifiable by supporting original documents. The records [**shall**] **must** include complete details concerning the source of [**fruits**] **agricultural commodities** used in the production of wines, WINE COOLERS and **alcoholic ciders**.

(b) Sales invoice. In addition to the records prescribed in subsection (a), except as otherwise provided in this part, a sales invoice shall be prepared at the licensed

premises for each sale. The sales invoice shall be prepared in accordance with the following:

(1) The sales invoice **[shall] must** be imprinted or affixed with the name and address of the limited winery.

(2) The sales invoice **[shall] must** show the name and address of the recipient of the merchandise, date of sale, number of units, size and type of package, brand name, selling price of the wine, WINE COOLERS or alcoholic cider, ~~or both~~, and the net cost to the customer. The name and address of private individuals is not required on sales invoices covering quantities of 16 liters or less; **[in lieu] instead** of preparing sales invoices for the sales, the transactions may be entered individually on a counter sheet maintained in columnar form showing the information required on sales invoices, other than name and address of the purchaser. The counter sheet shall be totaled daily and the totals entered into the sales register noted in section 512 of the Liquor Code **[(47 P.S. § 5-512)]**.

(3) The sales invoice **[shall] must** show the Commonwealth sales tax, where applicable, as a separate entry.

(4) The sales invoice may include other items permitted for sale by limited wineries if the sale of wines, WINE COOLERS or alcoholic cider, ~~or both~~, is listed separately from other permitted items sold by the licensee.

(5) An invoice shall be prepared for any amount of wine, WINE COOLERS or alcoholic cider, ~~or both~~, shipped to customers **[via] by** Transporter-for-Hire, Class C carriers. The invoice shall be prepared only for persons 21 years of age or older, and limited winery licensees shall request the signature of a recipient, 21 years of age or older, from the transporter making the deliveries and a return acknowledgement of delivery to the recipient. Copies of acknowledgments of delivery shall be maintained on the licensed premises for 2 years.

(6) When a sale requires the preparation of an invoice, one copy shall be given to the recipient of the merchandise and a copy retained on the licensed premises for 2 years.

(c) Reports. A licensed limited winery shall file reports in the manner set forth by the Board covering operations of their licensed business during the preceding calendar year. The reports shall be signed and sworn to by the licensee or his authorized agent and shall be filed with the Board at the time of the renewal or

validation of the license. A copy of each report shall be retained on the licensed premises for at least 2 years from the date of filing. Failure to file the reports will preclude the Board from renewing or validating the license in question. These reports are in addition to information or reports the licensed limited winery may be required to provide to the Department of Agriculture under 3 Pa.C.S. Chapter 45 (relating to Agricultural Commodities Marketing Act) and regulations promulgated thereunder, including 7 Pa.Code § 104.75 (relating to accounting and payment).

CHAPTER 11. PURCHASES AND SALES

Subchapter C. WINES

LIMITED WINERIES

§ 11.111. Sale by limited winery licensees.

(a) A limited winery licensee, licensed under § 3.62 (relating to creation), may sell wines, **WINE COOLERS** and alcoholic ciders 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.] Sales may be made by the glass, bottle or any other open or closed container.**

(2) Wine, **WINE COOLERS** and alcoholic cider 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.]

(3) A limited winery may sell wine, WINE COOLERS and alcoholic ciders from 7 a.m. until 2 a.m. of the following morning, Mondays through Saturdays, and from 9 a.m. until 2 a.m. of the following morning on Sundays.

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

(i) From licensees and retail customers, checks drawn on their account, cash, money orders, cashier checks, debit cards and electronic funds transfers.

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

[(6)] (5) Visitors [on the licensed premises] at the LIMITED winery or at one of the additional Board-approved locations may be provided, with or without charge [with], samples of wine, WINE COOLERS or alcoholic cider, ~~or both~~, produced by the limited winery [for tasting and with crackers, nuts, cheese, bread sticks and bread cubes to be used in conjunction with tastings]. Samples may also be provided, with or without charge, at locations licensed ~~under a farmer's market permit or~~ under the special permit available for participation in alcoholic cider, wine and food expositions. SAMPLES MAY ALSO BE PROVIDED, WITHOUT CHARGE, AT LOCATIONS LICENSED UNDER A FARMERS MARKET PERMIT. Samples may not be provided at a limited winery's storage facilities since only the licensee and its employees may be present at those locations.

(I) FOR PURPOSES OF THIS SECTION, A SAMPLE IS DEFINED AN INDIVIDUAL PORTION OF WINE NOT TO EXCEED ONE OUNCE.

[(7)] (6) Limited winery licensees engaged in the retail and wholesale sales of wine, WINE COOLERS or alcoholic cider, ~~or both~~, are responsible to conform to the Liquor Code and this title.

[(8)] (7) In addition to the sale of wines, WINE COOLERS and alcoholic ciders, 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:] Food for on premises and off premises consumption.

(A) [Juices.] Nonalcoholic beverages.

(B) Juice concentrates.

[(C) Jellies, jams and preserves.

(ii) Pennsylvania-grown mushrooms.]

[(iii)] (ii) Home winemaking equipment and supplies.

[(iv)] (iii) Wine, WINE COOLER and alcoholic cider serving and storage accessories as follows:

(A) Cork removers.

(B) Wine, WINE COOLER and alcoholic cider glasses and decanters.

(C) Wine, WINE COOLER and alcoholic cider racks.

(D) Serving baskets and buckets.

(E) Bottle stoppers.

[(v)] (iv) Publications dealing with wine and winemaking and alcoholic cider and cider making.

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

(v) Wine-scented or liquor-scented candles acquired or produced by the limited winery.

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

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

[(9)] (8) Sales on the licensed premises of merchandise not listed in paragraph [(8) is] (7) are 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)] (9) Mail, **Internet** 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] **WINE COOLERS** and **alcoholic cider** are 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
April 8, 2016

SUBJECT: Final Form Regulation Package 54-85
Limited Wineries

TO: DAVID SUMNER, EXECUTIVE DIRECTOR
INDEPENDENT REGULATORY REVIEW COMMISSION

FROM: RODRIGO J. DIAZ 
CHIEF COUNSEL
PENNSYLVANIA LIQUOR CONTROL BOARD

By Hand Delivery

The Pennsylvania Liquor Control Board ("PLCB") is submitting final form amendments to chapters 3, 5, and 11 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 September 2, 2015. The PLCB received comments from the Independent Regulatory Review Commission. The response to these comments is set forth in a separate document.

If you have any questions and comments about this regulatory submission, feel free to contact the Office of Chief Counsel, Pennsylvania Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124, or by telephone at (717) 783-9454. If I am not available, you can discuss this matter with Norina Blynn, Assistant Counsel.

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
Stephen Bruder, Policy Director for the Senate Democrats
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: 54-85
SUBJECT: Limited Wineries
AGENCY: Liquor Control Board

2016 APR -8 PM 2:51

RECEIVED
IRRC

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>
4/8/16	<u>J. Willard</u> (1)	SENATE LAW & JUSTICE COMMITTEE (Majority)
4-8-16	<u>Sam Carr</u> (2)	SENATE LAW & JUSTICE COMMITTEE (Minority)
4/8/16	<u>Susan Thomas</u> (3)	HOUSE LIQUOR CONTROL COMMITTEE (Majority)
4/8/16	<u>Mary Minich</u> (4)	HOUSE LIQUOR CONTROL COMMITTEE (Minority)
4/8/16	<u>K. Cooper</u> (5)	INDEPENDENT REGULATORY REVIEW COMMISSION