

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: 89

IRRC Number: 3142

(3) PA Code Cite: 40 Pa. Code §§ 9.95, 11.152

(4) Short Title: Distributors Accepting Credit Cards from Licensees

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

Primary Contact: Rodrigo J. Diaz (717) 783-9454
Pennsylvania Liquor Control Board
401 Northwest Office Building
Harrisburg, Pennsylvania 17124
FAX: (717) 787-8820
Email: ra-lblegal@pa.gov

Secondary Contact: Justin E. Blake (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)

The regulation will authorize malt or brewed beverage distributors and importing distributors to accept credit cards as payment from licensees. The Liquor Code prohibits payment by cash in such transactions but expressly permits the Board to authorize additional forms of payment.

(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)) and, relevant to this particular matter, the express authority in section 493(2) of the Liquor Code (47 P.S. § 4-493(2)).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

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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.

Subsection 493(2) of the Liquor Code (47 P.S. § 4-493(2)) prohibits importing distributors and distributors from accepting cash from anyone possessing a license as payment for malt or brewed beverages. It further provides that money orders and cashier's checks are permissible in such situations, as well as "any other type of payment authorized by the board." In exercise of this authority, the Board is authorizing an additional form of payment.

The regulation will expressly permit distributors and importing distributors to accept credit cards as payment from other licensees of the Board. It will thus allow distributors to use a credit card as payment for malt or brewed beverages when purchasing from an importing distributor, as well as allowing importing distributors and distributors to accept credit cards as payment from licensees. The credit cards must be issued by institutions other than licensees, so as to avoid one licensee extending credit to another licensee. The regulation will only affect those licensees that opt to use or accept credit cards.

Credit cards are widely used by both businesses and consumers, and in fact, importing distributors and distributors are already permitted to accept credit cards as payment from non-licensee purchasers. (47 P.S. § 4-493(2)). By authorizing distributors and importing distributors to accept credit cards from licensees, the Board aims to make such transactions easier and more reliable. Since in credit card transactions the payee instantly receives the funds, while the payer creates a debt obligation to the third-party card issuer, the transaction is instantly complete, and both parties can go their separate ways. This ensures prompt payment and reduces the likelihood of disputes between licensees as compared to transactions involving business checks, which can later "bounce" or be denied for processing by the financial institution due to insufficient funds.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

The proposed regulation is not more stringent than any federal standards since federal regulations do not address this matter.

(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 proposed regulation with the laws of other states would not be appropriate since alcoholic beverage licensing is controlled by neighboring states in accordance with their unique and individual regulatory systems. Nonetheless, the Board has no reason to believe the regulation would negatively impact 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 regulation will not affect any other existing or proposed regulations of the Board, nor is the Board aware of any regulations of another state agency that would be affected.

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

The Board recently received a request for an advisory opinion on this issue from Matthew H. Haverstick, Esq., on behalf of the Commonwealth Licensed Beverage Association, which includes distributors among its members.

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

There is no way to quantify the precise number of entities who will benefit from the regulation since the acceptance of credit cards is voluntary. As of February 4, 2016, there were approximately 1,039 distributor licenses and 153 importing distributor licensees active in Pennsylvania. 31 CFR § 121.201, which is referenced by Act 76 of 2012, defines beer and ale merchant wholesalers as small businesses if they have 100 employees or less. This definition would include most if not all distributors and importing distributors.

(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.

Current and future importing distributors and distributors, as well as licensees that purchase from those entities, will have the opportunity to take advantage of the additional payment method. None will be required to comply because the acceptance of credit cards is voluntary.

(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 proposed regulation will simply expand the payment options available to distributors, importing distributors, and other licensees. Regarding any financial impacts on businesses, it will be at the discretion of each licensee to decide whether the benefits of using or accepting credit cards outweigh any negatives.

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

Again, the use of credit cards is voluntary. It is therefore up to the licensees to determine whether it makes good business sense to use or accept them for payment. The Board anticipates some positive effects for those licensees that do choose to use or accept credit cards because such transactions ensure prompt payment and reduce the likelihood of disputes between licensees resulting from dishonored checks.

(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.

There is no way to specifically estimate the costs and/or savings to the regulated community. However, there will be no new costs to the regulated community for compliance. The only new obligation created by the regulation will be to maintain as business records any written agreements to honor certain entity's credit cards.

(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 new action as a result of the regulatory change, it is not expected to affect legal, accounting or consulting procedures and should not require any additional reporting or other paperwork. Although distributors and importing distributors that accept credit cards will need to maintain as business records any written agreements with card issuers, the Board believes such recordkeeping will not entail any significant additional costs.

(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 2011-2012	FY -2 2012-2013	FY -1 2013-2014	Current FY 2014-2015
N/A	N/A	N/A	N/A	N/A

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

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

There is no adverse impact on small businesses.

(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.

None.

(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 considered, but the Board believes it is in the public interest to provide the regulatory community with notice and an opportunity to comment.

(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.

The regulation merely offers an additional payment option to the affected licensees. To the extent there are any perceived adverse consequences to accepting credit cards, small businesses may maintain the status quo by not accepting credit cards.

(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 as 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>April 2016</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>June 2016</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>July 2016</u> |
| D. The expected effective date of the final-form regulation: | <u>October 2016</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>October 2016</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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FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved
as to form and legality.

Attorney General:

BY: 
(DEPUTY ATTORNEY GENERAL)

MAR 02 2016

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. 54-89

DATE OF ADOPTION: February 10, 2016

BY: 

TITLE: Chairman
(Executive Officer, Chairman or Secretary)

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

BY: 
Chief Counsel

February 10, 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 9. TRANSPORTATION, IMPORTATION, DISPOSITION AND STORAGE
SUBCHAPTER E. IMPORTATION AND DISTRIBUTION OF MALT OR
BREWED BEVERAGES

The following section is proposed to be amended:

9.95 Sales.

CHAPTER 11. PURCHASES AND SALES
SUBCHAPTER G. CREDIT CARDS

The following section is proposed to be added:

11.152 Sales by Importing Distributors and Distributors.

PROPOSED RULEMAKING

LIQUOR CONTROL BOARD

40 PA. CODE CHAPTERS 9 AND 11

Distributors and Importing Distributors Accepting Credit Cards

The Liquor Control Board (“Board”), under the authority of sections 207(i) and 493(2) of the Liquor Code (47 P.S. §§ 2-207(i), 4-493(2)), proposes to amend Chapters 9 and 11.

Summary

The Board proposes to amend its regulations pertaining to the types of payment importing distributors (“IDs”) and distributors (“Ds”) are allowed to accept from other Board licensees. Subsection 493(2) of the Liquor Code (47 P.S. § 4-493(2)) prohibits IDs and Ds from accepting cash from anyone possessing a license as payment for malt or brewed beverages. It further provides that money orders and cashier’s checks are permissible in such situations, as well as “any other type of payment authorized by the board.” *Id.* In exercise of this authority, the Board is authorizing an additional form of payment.

The regulation will expressly permit IDs and Ds to accept credit cards as payment from other licensees of the Board. It will thus allow Ds to use a credit card as payment for malt or brewed beverages when purchasing from an ID, as well as allowing IDs and Ds to accept credit cards as payment from retail licensees. The credit cards must be issued by institutions other than licensees, so as to avoid one licensee extending credit to another licensee.

Credit cards are widely used by both businesses and consumers, and in fact, IDs and Ds are already permitted to accept credit cards as payment from non-licensee purchasers. By authorizing IDs and Ds to accept credit cards from licensees, the Board aims to make transactions between IDs and Ds, as well as other licensees, easier and more reliable. Since in credit card transactions the payee instantly receives the funds, while the payor creates a debt obligation to the third-party card issuer, the transaction is instantly complete, and both parties can go their separate ways. This ensures prompt payment and reduces the likelihood of disputes between licensees as compared to transactions involving business checks, which can later “bounce” or be denied for processing by the financial institution due to insufficient funds.

Affected Parties

The affected parties include all ID and D licensees as well as licensees that purchase malt or brewed beverages from IDs and Ds.

Paperwork Requirements

This rulemaking will not require any additional paperwork to be filed. It will, however, require IDs and Ds to maintain as business records all written agreements with credit card issuers.

Fiscal Impact

There is no anticipated fiscal impact of the rulemaking, since the acceptance of credit cards as a form of payment is voluntary.

Effective Date

This regulatory change will become effective upon publication in final form in the *Pennsylvania Bulletin*.

Public Comments

Interested persons are invited to submit written comments about the proposed rulemaking to Rodrigo Diaz, Chief Counsel, or Justin Blake, 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 proposed 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(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 8, 2016, 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 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within thirty (30) days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the agency, the General Assembly and the Governor of comments, recommendations or objections raised.

Tim Holden
Chairman

ANNEX A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 9. TRANSPORTATION, IMPORTATION, DISPOSITION AND STORAGE

Subchapter E. IMPORTATION AND DISTRIBUTION OF MALT OR
BREWED BEVERAGES

§ 9.95. Sales.

(a) Sales of malt or brewed beverages may not be made at any time in a warehouse except those in which the principal office or place of business of the licensee is maintained. Delivery shall be made only from the licensed premises of the distributor or importing distributor.

(b) Sales of malt or brewed beverages by distributors or importing distributors shall be for cash, checks or drafts under section 493(2) of the Liquor Code (47 P. S. § 4-493(2)).

(c) Distributors and importing distributors may accept from purchasers debit card payments which provide for instant electronic transfer of funds from payor to payee. Debit card transactions which provide for instant electronic funds transfer shall be considered a cash equivalent which complies with the Liquor Code.

(d) Distributors and importing distributors may accept credit cards as payment from licensees, as set forth in section 11.152 of this title.

CHAPTER 11. PURCHASES AND SALES

Subchapter G. CREDIT CARDS

§ 11.151. General.

(a) The Board will provide for and authorize certain credit cards to be honored in Pennsylvania Liquor Stores.

(b) The Board will establish conditions of purchase applicable to credit card transactions.

§ 11.152. Sales by Importing Distributors and Distributors.

Importing distributors and distributors may accept credit cards as payment from other licensees of the board for any purchases, including malt or brewed beverages. For purposes of this section, the term "credit cards" refers only to credit cards issued by companies other than licensees which guarantee payment of the credit, provided the importing distributor or distributor

has entered into a written agreement to honor the credit cards of the particular company and the agreement is retained in the records of the importing distributor or distributor.

Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board
March 8, 2016

SUBJECT: Proposed Regulation Package 54-89
Distributors Accepting Credit Cards from Licensees

TO: DAVID SUMNER, EXECUTIVE DIRECTOR
INDEPENDENT REGULATORY REVIEW COMMISSION

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

By Hand Delivery

The Pennsylvania Liquor Control Board ("PLCB") is submitting proposed amendments to chapters 9 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).

These amendments are being delivered today to the legislative oversight committees and to the Legislative Reference Bureau. They have been approved by the Office of Attorney General as to form and legality only.

If you have any questions and comments about this regulatory submission, feel free to contact this office at (717) 783-9454. If I am not available, you can discuss this matter with Justin Blake, 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
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: 54-89
SUBJECT: Distributors Accepting Credit Cards from Licensees
AGENCY: Liquor Control Board

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TYPE OF REGULATION

- X 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>
3/7/16 3/8/16 ^{DB}	<u>M. Medalla</u> (1)	SENATE LAW & JUSTICE COMMITTEE (Majority)
3/8/16 ^{RLG}	<u>Renee Mandell</u> (2)	SENATE LAW & JUSTICE COMMITTEE (Minority)
3/8/16	<u>Roger Merinich</u> (3)	HOUSE LIQUOR CONTROL COMMITTEE (Majority)
3/8/16	<u>Lee Thomas</u> (4)	HOUSE LIQUOR CONTROL COMMITTEE (Minority)
3/8/16 ^{CMM}	<u>Courina Inant</u> (5)	LEGISLATIVE REFERENCE BUREAU
3/8/16	<u>K Cooper</u> (6)	INDEPENDENT REGULATORY REVIEW COMMISSION