

<h1 style="margin: 0;">Regulatory Analysis Form</h1> <p style="margin: 0;">(Completed by Promulgating Agency)</p> <p style="margin: 0;">(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p style="margin: 0;">INDEPENDENT REGULATORY REVIEW COMMISSION</p> <p style="margin: 0; font-size: small;">2017 NOV -4 PM 3:33</p>	
<p>(1) Agency Pennsylvania Liquor Control Board</p>		<p style="margin: 0;">IRRC Number: 3170</p>	
<p>(2) Agency Number: 54 Identification Number: 91</p>			
<p>(3) PA Code Cite: 40 Pa. Code, Chapters 9 and 11</p>			
<p>(4) Short Title: Return of Liquor.</p>			
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Norina Foster, Assistant Counsel (717) 783-9454 Pennsylvania Liquor Control Board 401 Northwest Office Building Harrisburg, Pennsylvania 17124 FAX: (717) 787-8820 Email: ra-lblegal@pa.gov</p> <p>Secondary Contact: Rodrigo Diaz, Chief Counsel Jason M. Worley, Deputy Chief Counsel (Same Contact Information)</p>			
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input checked="" type="checkbox"/> Proposed Regulation</p> <p><input type="checkbox"/> Final Regulation</p> <p><input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation;</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p>	
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>This proposed rulemaking provides guidance to licensees and permittees for returning liquor to the Pennsylvania Liquor Control Board ("PLCB" or "Board") in the ordinary course of business. In addition, it clarifies existing regulations governing the disposition of liquor and malt or brewed beverages under certain circumstances.</p>			
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>Pennsylvania Liquor Code, section 207(i) (47 P.S. § 2-207(i)).</p>			
<p>(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.</p>			

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The proposed rulemaking is not mandated by any federal or state law, court order or federal regulation.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The Liquor Code makes the PLCB the primary wholesaler of liquor in Pennsylvania. As such, the PLCB is responsible for supplying liquor to licensees whose licenses authorize them to offer liquor for resale. However, at present, the Liquor Code does not address the circumstances under which the PLCB may accept returns of liquor from licensees or permittees. Moreover, the PLCB's current regulations are insufficient, since they only address repurchases of liquor returned to the PLCB by licensees going out of business, bankruptcy estates or officers of the law.

To date, returns of liquor by licensees and permittees in the ordinary course of business have been governed by policies and procedures applicable to the operation of the PLCB's Fine Wine & Good Spirits stores. With the recent passage of Act 39 of 2016, which authorizes certain licensees who obtain wine expanded permits to sell wine for off-premises consumption, there is a greater need to provide clear and consistent guidance for all licensees and permittees wishing to return liquor to the PLCB.

Federal laws govern the return of alcoholic beverages sold in interstate or foreign commerce. 27 U.S.C. § 205(d); 27 C.F.R. § 11.31. Such laws generally make it unlawful to sell products with the privilege of returning said products for any reason other than "ordinary and usual commercial reasons" arising after the product has been sold. Id.

Federal regulations define what constitutes "ordinary and usual commercial reasons" for the return of products and outline the conditions and limitations for such returns. 27 C.F.R. §§ 11.32 – 11.46. These federal regulations are not legally applicable to sales transactions between the PLCB and licensees or permittees in Pennsylvania since they do not occur in interstate or foreign commerce. However, the federal regulations do offer significant guidance for the return of liquor, which the PLCB has followed in this proposed rulemaking.

Through this proposed rulemaking, Chapter 11 is amended to address returns for defective or damaged products, errors in products delivered, product which may no longer be lawfully sold, product subject to recall, products that have changed in formula, proof, label or container, and products discontinued by manufacturers or importers. The proposed rulemaking also includes a provision for the return of liquor by an occasional seller, such as a special occasion or wine auction permit holder. Unlike the federal regulations, this proposed rulemaking imposes specific time limits on when products may be returned for each stated reason. These time limits are based on the operational needs of the PLCB and are believed to be reasonable relative to each stated reason for return.

Chapter 9 is amended to add a reference to the proposed rulemaking in Chapter 11. The proposed rulemaking in Chapter 9 also limits the applicability of certain provisions governing the disposition of liquor by removing various references to decedent's estates and executors and administrators of decedent's estates. These changes are necessary to eliminate any inconsistencies or possible confusion with respect to section 491(1) of the Liquor Code (47 P.S. § 4-491(1)), which makes it lawful for an executor or an administrator of a decedent's estate to sell privately or at public auction liquor that was an asset of the decedent. The remainder of this proposed rulemaking does not change the substantive

material of the regulation, but organizes and reformats the text to improve understanding of the regulation.

The members of the regulated community will benefit from the guidance and clarity provided by the proposed rulemaking, as they will be able to better understand what is required, and by when, to successfully return product to the PLCB. As of February 27, 2017, there were approximately 14,310 active licensees and permit holders that could be affected by the proposed rulemaking.

In addition, this proposed rulemaking has the potential to provide some cost savings for the PLCB, but such cost savings would be very speculative and not easily quantifiable.

(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 PLCB is guided by federal regulations for industry participants on alcohol product returns (27 C.F.R §§ 11.31 – 11.46). The proposed rulemaking is not known to be more stringent than federal regulations.

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

The retail sale of liquor is regulated by neighboring states in accordance with their unique and individual systems of alcoholic beverage control. Because of this, the regulatory change does not play a role in 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 proposed rulemaking will not affect any other existing or proposed regulations of the PLCB or any other state agency.

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

The sale of alcohol is regulated by the Alcohol and Tobacco Tax and Trade Bureau through the Federal Alcohol Administration Act (27 U.S.C. §§ 201, et seq.) and Title 27 of the Code of Federal Regulations. The PLCB was guided by the limitations placed on the return of liquor by the federal law.

(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?

Federal regulation (relating to small business size standards) provides the following measurements for determining whether a business may be considered to be a "small" business: a full-service restaurant with annual receipts of less than \$7.5 million; a drinking place (alcoholic beverages) with annual receipts of less than \$7.5 million; hotels with annual receipts of less than \$32.5 million; supermarkets or

other grocery stores (except convenience) with annual receipts of less than \$32.5 million; and convenience stores with annual receipts of less than \$29.5 million. (13 C.F.R. § 121.201).

As of February 27, 2017, there were approximately 14,310 licensees and permit holders that could be affected by the proposed rulemaking. Licensees and permittees would only be affected by the proposed rulemaking if they have or purchase liquor that they would like to return to the PLCB for the reasons addressed in the rulemaking. Although some of the PLCB's licensees probably do not fall within the definition of small business, the majority of businesses licensed by the Board would likely be considered small businesses.

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

The affected parties include all licensees and permittees that want to return product to the PLCB. As of February 27, 2017, there were approximately 14,310 active licensees and permit holders that could be affected by the proposed rulemaking. The proposed rulemaking will benefit licensees and permittees by providing clear and consistent guidance regarding the return of liquor to the PLCB.

(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 expected financial, economic and social impact of the proposed rulemaking is that it will be beneficial to those licensees who wish to return product to the PLCB for "ordinary and usual commercial reasons." The PLCB will issue a refund for product that it accepts for return. The refund will be the price of product at the time of purchase or the current price, whichever is lower. The refund will be reduced by the assessment of a handling charge of 12.5% of the refund or \$50.00, whichever is greater. The handling charge is designed to cover the costs associated with processing the return. The handling charge will be waived in situations where the product is defective, is not what the licensee ordered, may no longer be sold, or is subject to a recall. The PLCB may waive the handling charge if the product was purchased by occasional sellers like special occasion permit holders or wine auction permit holders.

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

It is expected that the proposed rulemaking will not have any adverse effects and only minimal costs. The proposed rulemaking increases the number of reasons that the PLCB will accept the return of product and provides clarity to the regulated community. Moreover, the handling charge will be waived in situations where the product is defective, is not what the licensee ordered, may no longer be sold, or is subject to a recall. The PLCB may waive the handling charge if the product was purchased by occasional sellers like special occasion permit holders or wine auction permit holders.

(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 regulated community would only incur a minimal handling charge of 12.5% or \$50.00, whichever is greater, of the cost of any product accepted for return. The current regulations have referenced a 12.5%

handling charge since the 1950s, so this is not a new cost to licensees. Moreover, the handling charge will be waived in situations where the product is defective, is not what the licensee ordered, may no longer be sold, or is subject to a recall. The PLCB may waive the handling charge if the product was purchased by occasional sellers like special occasion permit holders or wine auction permit holders. No legal, accounting or consulting procedures are required.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This proposed rulemaking is not expected to result in costs or savings to local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

This proposed rulemaking is not expected to result in any significant overall costs or savings to state government. Any potential costs or savings would be very speculative and not easily quantifiable.

(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.

This proposed rulemaking is not expected to require any additional measures for implementation by local governments or state governments other than the PLCB. The regulated community will be required to provide proof or evidence to support the reasons for return in some instances and may be required to do so in other instances. However, this proof or evidence would consist mostly of documentation of purchases that is already required to be retained by the regulated community for two years, pursuant to section 493(12) of the Liquor Code. 47 P.S. § 4-493(12). The PLCB will also have some recordkeeping obligations as a result of the proposed rulemaking, but the PLCB already has substantial measures in place relative to purchases and tracking returns. There will be no other new paperwork requirements.

(22a) Are forms required for implementation of the regulation?

No.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

N/A.

(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:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

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

Program	FY -3 2013-2014	FY -2 2014-2015	FY-1 2015-2016	Current FY
	\$0	\$0	\$0	\$0

(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.

Federal regulation (relating to small business size standards) provides the following measurements for determining whether a business may be considered to be a “small” business: a full-service restaurant with annual receipts of less than \$7.5 million; a drinking place (alcoholic beverages) with annual receipts of less than \$7.5 million; hotels with annual receipts of less than \$32.5 million; supermarkets or other grocery stores (except convenience) with annual receipts of less than \$32.5 million; and convenience stores with annual receipts of less than \$29.5 million. (13 C.F.R. § 121.201).

As of February 27, 2017, there were approximately 14,310 licensees and permit holders that could be affected by the proposed rulemaking. Licensees and permittees would only be affected by the proposed rulemaking if they have or purchase liquor that they would like to return to the

PLCB for the reasons addressed in the rulemaking. Although some of the PLCB's licensees probably do not fall within the definition of small business, the majority of businesses licensed by the Board would likely be considered small businesses. However, it is not anticipated that the proposed rulemaking would have an adverse impact.

- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

The regulated community will be required to provide proof or evidence to support the reasons for return in some instances and may be required to do so in other instances. However, this proof or evidence would consist mostly of documentation of purchases that is already required to be retained by the regulated community for two years, pursuant to section 493(12) of the Liquor Code. 47 P.S. § 4-493(12). The PLCB will also have some recordkeeping obligations as a result of the proposed rulemaking, but the PLCB already has substantial measures in place relative to purchases and tracking returns. There will be no other new paperwork requirements. No professional skills are necessary as the proposed rulemaking does not require the preparation of any reports or records.

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

Any effect on impacted small businesses is likely to be positive, as the proposed rulemaking expands and clarifies the reasons for the return of product to the PLCB.

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

The proposed rulemaking is not intrusive or costly, therefore a less intrusive or less costly alternative method is not available.

(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 such special provisions have been developed to meet the particular needs of affected groups because it is believed that these groups do not have particular needs when it comes to the return of liquor.

(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.

No other alternative regulatory provisions were considered. Because Chapter 9 already included some regulatory provisions for the return of alcohol, under very limited circumstances, the PLCB believes that nothing less than a regulatory promulgation, addressing additional rules allowing for the return of alcohol, would be appropriate.

(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;

With regard to this proposed rulemaking, there are no compliance or reporting requirements for small businesses.

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

The only schedule or deadline in the proposed rulemaking requires that, under certain circumstances, products be returned within 15 or 30 days of product delivery or pick up. The PLCB believes these are reasonable deadlines.

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

With regard to this proposed rulemaking, there are no 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

The proposed rulemaking does not establish any performing, design, or operational standards.

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

There are no requirements contained in the proposed rulemaking unless a licensee or permittee wants to return liquor to the PLCB. There is no exemption for small businesses from this requirement if the small businesses want to return liquor to the PLCB.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

The PLCB has not relied on data to justify this proposed rulemaking.

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

- | | |
|---|---------------------|
| A. The length of the public comment period: | <u>30 Days</u> |
| B. The date or dates on which any public meetings or hearings will be held: | <u>August 2017</u> |
| C. The expected date of delivery of the final-form regulation: | <u>October 2017</u> |
| D. The expected effective date of the final-form regulation: | <u>October 2017</u> |
| E. The expected date by which compliance with the final-form regulation will be required: | <u>October 2017</u> |
| F. The expected 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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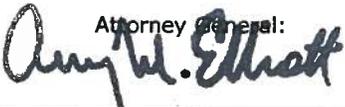
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FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(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)
MAY 01 2017
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. 54-91
DATE OF ADOPTION:
March 8, 2017
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
March 8, 2017
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 F. DISPOSITION OF LIQUOR AND MALT
OR BREWED BEVERAGES UNDER CERTAIN CONDITIONS

The following sections are proposed to be amended:

- 9.111. Alcoholic beverages held by estates; legal process; licensees who have discontinued business.
- 9.112. Information to be furnished by bankruptcy estates or officers of the law.
- 9.113. Licensees who have discontinued business or sold their licensed business.
- 9.114. Repurchase of liquor by the Board.

CHAPTER 11. PURCHASES, SALES, AND RETURNS

Subchapter H. RETURN OF LIQUOR TO THE BOARD BY LICENSEES

The following sections are proposed to be added:

- 11.161. General provisions.
- 11.162. Defective products.
- 11.163. Error in products delivered.
- 11.164. Products which may no longer be lawfully sold.
- 11.165. Product subject to recall.
- 11.166. Change in product.
- 11.167. Discontinued products.
- 11.168. Occasional sellers.
- 11.169. Products not accepted.

PROPOSED RULEMAKING

LIQUOR CONTROL BOARD

40 PA. CODE CHAPTERS 9 AND 11

RETURN OF LIQUOR TO THE BOARD

The Liquor Control Board (“PLCB” or “Board”), under the authority of sections 207(i) of the Liquor Code (47 P.S. § 2-207(i)), proposes to amend §§ 9.111, 9.112, 9.113, and 9.114 (relating to the disposition of liquor and malt or brewed beverages under certain circumstances) and add §§ 11.161, 11.162, 11.163, 11.164, 11.165, 11.166, and 11.167 (relating to the return of liquor to the Board).

Summary

This proposed rulemaking provides guidance to licensees and permittees for returning liquor to the PLCB in the ordinary course of business. In addition, it clarifies existing regulations governing the disposition of liquor and malt or brewed beverages under certain circumstances.

The Liquor Code makes the PLCB the primary wholesaler of liquor in Pennsylvania. As such, the PLCB is responsible for supplying liquor to licensees and permittees whose licenses or permits authorize them to offer liquor for resale. However, at present, the Liquor Code does not address the circumstances under which the PLCB may accept returns of liquor from licensees or permittees. Moreover, the PLCB’s current regulations are insufficient, since they only address repurchases of liquor returned to the PLCB by licensees going out of business, bankruptcy estates or officers of the law.

To date, returns of liquor by licensees or permittees in the ordinary course of business have been governed by policies and procedures applicable to the operation of the PLCB’s Fine Wine & Good Spirits stores. With the recent passage of Act 39 of 2016, which authorizes certain licensees who obtain wine expanded permits to sell wine for off-premises consumption, there is a greater need to provide clear and consistent guidance for all licensees and permittees wishing to return liquor to the PLCB.

Federal laws govern the return of alcoholic beverages sold in interstate or foreign commerce. 27 U.S.C. § 205(d); 27 C.F.R. § 11.31. Such laws generally

make it unlawful to sell products with the privilege of returning said products for any reason other than “ordinary and usual commercial reasons” arising after the product has been sold. Id.

Federal regulations define what constitutes “ordinary and usual commercial reasons” for the return of products and outline the conditions and limitations for such returns. 27 C.F.R. §§ 11.32 – 11.46. These federal regulations are not legally applicable to sales transactions between the PLCB and licensees or permittees in Pennsylvania since they do not occur in interstate or foreign commerce. However, the federal regulations do offer significant guidance for the return of liquor, which the PLCB has followed in this proposed rulemaking.

Through this proposed rulemaking, Chapter 11 is amended to address returns for defective or damaged products, errors in products delivered, product which may no longer be lawfully sold, product subject to recall, products that have changed in formula, proof, label or container, and products discontinued by manufacturers or importers. The proposed rulemaking also includes a provision for the return of liquor by an occasional seller, such as a special occasion or wine auction permit holder. Unlike the federal regulations, this proposed rulemaking imposes specific time limits on when products may be returned for each stated reason. These time limits are based on the operational needs of the PLCB and are believed to be reasonable relative to each stated reason for return.

Chapter 9 is amended to add a reference to the proposed rulemaking in Chapter 11. The proposed rulemaking in Chapter 9 also limits the applicability of certain provisions governing the disposition of liquor by removing various references to decedent’s estates and executors and administrators of decedent’s estates. These changes are necessary to eliminate any inconsistencies or possible confusion with respect to section 491(1) of the Liquor Code (47 P.S. § 4-491(1)), which makes it lawful for an executor or an administrator of a decedent’s estate to sell privately or at public auction liquor that was an asset of the decedent. The remainder of this proposed rulemaking does not change the substantive material of the regulation, but organizes and reformats the text to improve understanding of the regulation.

Affected Parties

The affected parties include all licensees and permittees that want to return product to the PLCB. As of February 27, 2017, there were approximately 14,310 active licensees and permit holders that could be affected by the proposed

rulemaking. The members of the regulated community will benefit from the guidance and clarity provided by the proposed rulemaking, as they will be able to better understand what is required, and by when, to successfully return product to the PLCB.

Paperwork Requirements

The regulated community will be required to provide proof or evidence to support the reasons for return in some instances and may be required to do so in other instances. However, this proof or evidence would consist mostly of documentation of purchases that is already required to be retained by the regulated community for two years, pursuant to section 493(12) of the Liquor Code. 47 P.S. § 4-493(12). The PLCB will also have some recordkeeping obligations as a result of the proposed rulemaking, but the PLCB already has substantial measures in place relative to purchases and tracking returns. There will be no other new paperwork requirements.

Fiscal Impact

The PLCB will issue a refund for product that it accepts for return. The refund shall be the price of product at the time of purchase or the current price, whichever is lower. The refund will be reduced by the assessment of a handling charge of 12.5% of the refund or \$50.00, whichever is greater. The handling charge will be waived in situations where the product is defective, is not what the licensee ordered, may no longer be sold, or is subject to a recall. The PLCB may waive the handling charge if the product was purchased by occasional sellers like special occasion permit holders or wine auction permit holders.

Effective Date

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

Public Comments

Interested persons are invited to submit written comments about the proposed rulemaking to Rodrigo Diaz, Chief Counsel, Jason M. Worley, Deputy Chief Counsel, or Norina Foster, Assistant Counsel, Office of Chief Counsel, Pennsylvania Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001, within 30 days after publication of the proposed regulation in the

Pennsylvania Bulletin. If commenting, please indicate if you wish to be apprised of future developments regarding this rulemaking, and include your name, address, and e-mail. 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 _____, 2017, the PLCB submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to 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 rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the PLCB, 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 F. DISPOSITION OF LIQUOR AND MALT
OR BREWED BEVERAGES UNDER
CERTAIN CONDITIONS

Sec.

9.111. Alcoholic beverages held by estates; legal process; licensees who have discontinued business.

9.112. Information to be furnished by bankruptcy estates or officers of the law.

9.113. [Repurchase of liquor by the Board.] Licensees who have discontinued business or sold their licensed business.

9.114. [Licensees who have sold their licensed business.] Repurchase of liquor by the Board.

9.115. Sales prohibited.

§ 9.111. Alcoholic beverages held by estates; legal process; licensees who have discontinued business.

(a) *Liquor.*

(1) Liquor purchased from a State Liquor Store and forming part of [the estate of a decedent or bankrupt or liquor so purchased and] a bankruptcy estate or in the custody of the law under legal process[,], may not be sold except to the Board as provided in this subchapter.

(2) Liquor purchased from a State Liquor Store by a licensee of the Board and in the possession of the licensee at the time [he discontinues business] the licensed business is discontinued by transfer of [his] the license or otherwise[,], may be sold by the licensee or may be repurchased from [him] the licensee by the Board but only[

under this subchapter] **in accordance with this subchapter and with subchapter H.**

(b) *Malt or brewed beverages.* Malt or brewed beverages shall be disposed of in accordance with the following:

(1) Malt or brewed beverages purchased from a licensed distributor or importing distributor or [brewery] **manufacturer**, forming part of [the estate of a decedent or bankrupt,] **a bankruptcy estate** or in the custody of the law under legal process, may be sold only to the licensed distributor, importing distributor or [brewery] **manufacturer** from whom originally purchased. Except and only in the event the Commonwealth or an agency thereof, obtains the custody, possession, right of possession, or the title to the malt or brewed beverages under legal process or under judicial sale, the Commonwealth or the agency may sell such malt or brewed beverages to any distributor of any class or to the [manufacturing brewery] **manufacturer** who or which is licensed and authorized to buy and sell malt or brewed beverages, and such brand or brands of malt or brewed beverages.

(2) Malt or brewed beverages in the possession of a licensee at the time [he discontinues business] **the licensed business is discontinued** by transfer of [his] **the** license or otherwise[,] may be sold only to the transferee of the license or to the distributor, importing distributor or [brewery] **manufacturer** from whom originally purchased.

§ 9.112. Information to be furnished by bankruptcy estates or officers of the law.

Persons other than the purchasers [and] **or** licensees who have discontinued business, who possess and desire to sell liquor purchased from State Liquor Stores, shall file with the Board a sworn statement containing the following as applicable:

(1) [*Executors and administrators.*]

(i) Name and address of the decedent, and date of death.

(ii) Name and address of the executor or administrator, who shall file with the statement a short form certificate from the Registrar of Wills.

(iii) Description of the liquor, including brand name, size and number of containers of each brand.

(2)]**(1)** *Receivers and trustees in bankruptcy.*

(i) Name and address of bankrupt, and date of bankruptcy.

(ii) Name and address of receiver or trustee, who shall file with the statement a certified copy of his appointment or election, and a certified copy of the order of court authorizing or directing the sale of liquor.

(iii) Description of the liquor, including brand name, size and number of containers of each brand.

[(3)]**(2)** *Officers of the law.*

(i) Name and address of debtor, and nature of debt.

(ii) Name and address of sheriff, constable or other officer of the law, who shall file with the statement written evidence of his authority to act, together with the name of court, and number and term or name of magistrate.

(iii) Description of the liquor, including brand name, size and number of containers of each brand.

[(4)] *Licensees who have discontinued business without transfer of license.*

(i) Name and address of licensee.

(ii) Written statement under oath that the licensee has discontinued his licensed business and the date thereof.

(iii) Description of the Liquor, including brand name, size and number of containers of each brand.

(5) *Licensees who have sold their licensed business together with the liquor license.* Reference should be made to § 9.114 (relating to licensees who have sold their licensed business).]

§ 9.113. [Repurchase of liquor by the Board.] Licensees who have discontinued business or sold their licensed business.

[(a) Upon receipt of the information required and verification thereof, the Board may, in its discretion, arrange to repurchase at the price paid by the licensee or the then available price to licensees, whichever is lower, less 12.5% handling charges, all such liquor purchased from State Liquor Stores.

(b) The repurchases will be confined to saleable liquor in the original containers, unopened and with revenue stamps attached, as when originally sold by the State Liquor Stores.]

(a) Licensees who have discontinued business without transfer of the license shall provide the Board with the following information:

(i) Name and address of licensee.

(ii) Written statement under oath that the licensee has discontinued the licensed business and the date thereof.

(A) If the business has been discontinued due to the death of the licensee, the following additional information shall be provided:

(I) Name and address of the decedent, and date of death.

(II) Name and address of the executor or administrator, who shall file with the statement documentary evidence of the death of the licensee.

(iii) Description of the liquor, including brand name, size and number of containers of each brand.

(b) For licensees who sell the licensed business:

(i) The Board may, in its discretion, repurchase the liquor in the licensee's possession at the time of the transfer of the license, in accordance with the provisions of § 9.114 (relating to repurchase of liquor returned to the Board).

(ii) The licensee may sell the liquor to the transferee of the license, in which case the licensee must provide the Board with the following information:

(A) At the time the application for the transfer of the license is filed, a statement that it is the licensee's intention to include the liquor, or a designated quantity thereof, in the sale of the license; and

(B) When the transfer of the license is approved, a sworn statement containing a description of the liquor, including brand name, size, and number of containers of each brand so sold to the transferee.

§ 9.114. [Licensees who have sold their licensed business.] Repurchase of liquor returned to the Board.

[When a licensee sells his licensed business, and transfer of the license is approved, the Board may, in its discretion, repurchase the liquor in his possession at the time of the transfer of the license; or the licensee may, if he so desires, sell the liquor to the transferee of his license, provided the licensee, at the time the application for transfer of his license is filed, notifies the Board in writing of his intention to include the liquor, or a designated quantity thereof, in the sale of his licensed business, and provided further the licensee furnishes a sworn statement containing a description of the liquor, including brand name, size, and number of containers of each brand so sold to the transferee, when the transfer of the license is approved.]

(a) Upon receipt of the information required in sections 9.112 and 9.113 and verification thereof, the Board may, in its discretion, arrange to repurchase some or all of the liquor purchased from State Liquor Stores, at the price paid by the licensee or the then-available price to licensees, whichever is lower, minus a handling charge equal to the greater of 12.5% or \$50.00.

(b) The repurchases will be confined to saleable liquor in the original containers, unopened, as when originally sold by the State Liquor Stores.

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CHAPTER 11. PURCHASES, [AND] SALES, AND RETURNS

Subchap.

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- D. BRANDIES FOR RELIGIOUS USE ... 11.121**
- E. DISTILLERY CERTIFICATE BROKERS ... 11.131**
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- G. CREDIT CARDS ... 11.151**

- H. [[Reserved]]RETURN OF LIQUOR TO THE BOARD BY LICENSEES
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Subchapter H. [[Reserved]]RETURN OF LIQUOR TO THE BOARD BY LICENSEES

Sec.

- 11.161. [[Reserved]]General provisions.
- 11.162. [[Reserved]]Defective products.
- 11.163. [[Reserved]]Error in products delivered.
- 11.164. [[Reserved]]Products which may no longer be lawfully sold.
- 11.165. Product subject to recall.**
- 11.166. Change in product.**
- 11.167. Discontinued products.**
- 11.168. Occasional sellers.**
- 11.169. Products not accepted.**

§ 11.161. [[Reserved]]General provisions.

(a) The Board, in its discretion, may accept the return of liquor purchased from the Pennsylvania Liquor Control Board for “ordinary and usual commercial reasons” arising after the product has been sold. Sections 11.162 through 11.169 specify what are considered “ordinary and usual commercial reasons” for the return of products, and outline the conditions and limitations for such returns. If the Board accepts the returned product, the licensee shall receive either the price paid or the then-available price, whichever is lower, less handling charges in accordance with the provisions of § 9.114 (relating to repurchase of liquor returned to the Board). The Board will not accept the return of product purchased from a third party, even if the third party purchased the product from the Board.

(b) The Board will not accept the return of product for reasons that do not constitute "ordinary and usual commercial reasons," including:

(1) Product sought to be returned because it is overstocked or slow-moving.

(2) Product sought to be returned because there is only a limited or seasonal demand, such as holiday decanters and certain distinctive bottles.

(3) Product sought to be returned because licensee has changed its menu or for other, similar business reasons.

(4) Product sought to be returned for any other reason that is not included in sections 11.162 through 11.169.

(c) Return of product related to the discontinuance or sale of a licensee's business is addressed in section 9.113 (relating to licensees who have discontinued business or sold their licensed business).

§ 11.162. [Reserved]Defective products.

Products that are unmarketable at the time of delivery or pick up because of product deterioration, leaking containers, damaged labels or missing or mutilated tamper evident closures may be returned within 15 days of product delivery for a refund which may then be applied toward the purchase of an equal quantity of the same product. Such returns may be contingent upon verification of the alleged defect, including photographs of the damaged product or any other evidence required by the Board or by the manufacturer of the product. The payment of a handling charge shall be waived for returns under this section.

§ 11.163. [Reserved]Error in products delivered.

(a) Any discrepancy between products ordered and products delivered may be corrected, within 15 days of product delivery or pick up, by returning the incorrect product for a refund, which may then be applied toward the purchase of the correct product. Licensee shall be required to provide proof of the order

and the discrepancy in question. The payment of a handling charge shall be waived for returns under this section.

(b) The Board shall consider, as acceptable proof of the order, a printed copy of any order that includes the details as to what product was ordered and in what quantities, and that also indicates when the order was submitted to and/or received by the Board.

(c) The discrepancy must be proven by presenting the incorrect product along with acceptable proof of the order.

§ 11.164. [Reserved]Products which may no longer be lawfully sold.

Products that may no longer be lawfully sold may be returned for a refund. This includes situations where, due to a change in statute, regulation or administrative procedure over which the licensee has no control, a particular size, brand or product is no longer permitted to be sold. The payment of a handling charge shall be waived for returns under this section.

§ 11.165. Product subject to recall.

Products that have been recalled by the manufacturer may be returned for a refund. The payment of a handling charge shall be waived for returns under this section.

§ 11.166. Change in product.

A licensee's inventory of a product which has been changed in formula, proof, label or container may be exchanged, in the Board's discretion, within 30 days of product delivery or pick up and that refund may then be applied toward the purchase of equal quantities of the new version of that product. A change in vintage does not constitute a change in product for purposes of this section.

§ 11.167. Discontinued products.

When a producer or importer discontinues the production or importation of a product, a licensee's inventory of that product may be returned, in the Board's discretion, for a refund within 30 days of product delivery or pick up.

§ 11.168. Occasional sellers.

The Board may accept the return of products from licensees or permittees who sell alcohol less than 15 days in the course of a year, such as special occasion permit holders and wine auction permit holders. These returns will be for a refund. The payment of a handling charge may be waived, in the Board's discretion, for returns under this section.

§ 11.169. Products not accepted.

Products that are ordered but not accepted by a licensee shall be subject to a handling charge as set forth in the provisions of § 9.114 (relating to repurchase of liquor returned to the Board).

Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board
May 4, 2017

SUBJECT: Proposed Regulation Package 54-91
Return of Liquor to the Board

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 proposed amendments to chapter 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).

Please note that the Office of Attorney General (“OAG”) had questions for the PLCB regarding the proposed amendments prior to approving them for form and legality. A copy of the OAG’s memo, and this office’s response, is provided as well.

These proposed amendments are being delivered today to the legislative oversight committees and to the Legislative Reference Bureau. Any questions and comments about this regulatory submission can be directed to Rodrigo Diaz, Chief Counsel; Jason Worley, Deputy Chief Counsel; or Norina Foster, Assistant Counsel, at (717) 783-9454.

cc with enclosures:

Honorable Charles McIlhinney, Majority Chairman, Senate Law and Justice Committee
Honorable James Brewster, Minority Chairman, Senate Law and Justice Committee
Honorable C. Adam Harris, 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, 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: 54-91
SUBJECT: Return of Liquor to the Board
AGENCY: Pennsylvania Liquor Control Board

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

2017 MAY -4 PM 3:33

RECEIVED
IRRC

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
5/4	<u>[Signature]</u> (1)	SENATE LAW & JUSTICE COMMITTEE (Majority)
5/4/17	<u>[Signature]</u> (2)	SENATE LAW & JUSTICE COMMITTEE (Minority)
5/4/17	<u>[Signature]</u> (3)	HOUSE LIQUOR CONTROL COMMITTEE (Majority)
5/4/17	<u>[Signature]</u> (4)	HOUSE LIQUOR CONTROL COMMITTEE (Minority)
5/4/17	<u>[Signature]</u> (5)	LEGISLATIVE REFERENCE BUREAU
5/4/17	<u>[Signature]</u> (6)	INDEPENDENT REGULATORY REVIEW COMMISSION