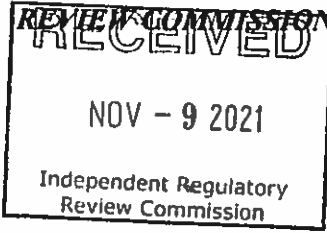


Regulatory Analysis Form (Completed by Promulgating Agency)		INDEPENDENT REGULATORY REVIEW COMMISSION  NOV - 9 2021 Independent Regulatory Review Commission
(All Comments submitted on this regulation will appear on IRRC's website)		
(1) Agency Pennsylvania Liquor Control Board		
(2) Agency Number: 54 Identification Number: 95		IRRC Number: 3323
(3) PA Code Cite: 40 Pa. Code Sections 3.62—3.64, 5.103, 11.111 and 5.401—5.409.		
(4) Short Title: Limited Wineries		
(5) Agency Contacts (List Telephone Number and Email Address): 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 Secondary Contact: Rodrigo Diaz, Chief Counsel Jason M. Worley, Deputy Chief Counsel (Same Contact Information)		
(6) Type of Rulemaking (check applicable box): <input checked="" type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation		<input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General
(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less) This proposed rulemaking gathers regulations pertaining to limited wineries from Chapters 3, 5, and 11 of the Board's Regulations, and places them in a new subchapter in Chapter 5. In addition, the proposed rulemaking revises many of these regulations to make them more consistent with the Liquor Code, which has been amended several times since 2011. All of the proposed changes are intended to provide more clarity to the regulated community and allow for easier navigation of the applicable regulations.		
(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation. Pennsylvania Liquor Code, sections 207(i), sections 488(b)(4), (g), and sections 505.2(a)(2), (3), (4), (6)(i), (6.4). (47 P.S. §§ 2-207(i); 4-488(b)(4), (g); 5-505.2(a)(2), (3), (4), (6)(i), (6.4)).		

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

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

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

Currently, regulations that are specifically applicable to licensed limited wineries are located in three different chapters of the Board's Regulations: Chapter 3 (relating to license applications), Chapter 5 (relating to duties and rights of licensees) and Chapter 11 (purchases and sales). The regulated community would benefit from having, in one location, all of the regulations that apply to them. In addition, the current regulations are out of date and in certain sections, which will be explained below, misleading or incorrect. As such, the regulated community, which consists of 450 active licensed limited wineries as of September 3, 2021, will also benefit by having accurate, up-to-date regulations.

In order to ensure that the regulations include only necessary content, two regulations are deleted completely and not relocated. These regulations are section 3.62 and section 11.111(a)(7). Section 3.62 states, "Under section 505.2 of the Liquor Code (47 P.S. § 5-505.2), holders of a Limited Winery License may produce and sell wines, subject to §§ 3.63, 5.103 and 11.111 (relating to agents; limited wineries; and sale by limited winery licensees)." It is not necessary to have a regulation reiterate what is provided by statute or other regulations. Similarly, section 11.111(a)(7) provides, "Limited winery licensees engaged in the retail and wholesale sales of wine are responsible to conform to the Liquor Code and this title." It is not necessary to have a regulation that tells the regulated community that they must follow the enabling statute and the regulations.

The proposed rulemaking creates Subchapter K, which incorporates existing regulations from chapters 3, 5, and 11 and organizes them to improve accessibility for the regulated community. The two tables below show where the previous content has been relocated and a sequential ordering of the new content in Subchapter K, showing its origins:

Current section	Proposed section	Proposed section	Current section
3.62	Deleted	5.401	New
3.63	5.405(c)	5.402	11.111(a)(6)
3.64	5.408	5.403	11.111(a)(4), (5)
5.103	5.409	5.404	11.111(a)(1)
11.111(a)(1)	5.404	5.405	3.63
11.111(a)(2)	5.407		11.111(a)(10)
11.111(a)(3)	5.407		11.111(b)
11.111(a)(4)	5.403	5.406	11.111(a)(8), (9)
11.111(a)(5)	5.403	5.407	11.111(a)(2)
11.111(a)(6)	5.402		11.111(a)(3)
11.111(a)(7)	Deleted		11.111(a)(10)
11.111(a)(8)	5.406	5.408	3.64

11.111(a)(9)	5.406		11.111(d)
11.111(a)(10)	5.405, 5.407	5.409	5.103
11.111(b)	5.405(c)		11.111(c)
11.111(c)	5.409		
11.111(d)	5.408		

Proposed section 5.401 (relating to definitions) is new content; it has not been relocated from another section. The Board believes the addition of these definitions to the regulations will provide clarity. Section 5.401 includes the following:

- A definition for “limited winery,” which is consistent with the definition provided in section 102 of the Liquor Code, 47 P.S. § 1-102, but also incorporates a minimum production amount of 200 gallons per year, based on language in section 491(2) of the Liquor Code, 47 P.S. § 4-491(2). Section 491(2) allows the manufacture of up to 200 gallons of wine for personal use without the need to obtain a manufacturing license.
- A definition for “original container,” which is based on a definition for the same term that is provided in section 102 of the Liquor Code, 47 P.S. § 1-102. However, because the definition in the Liquor Code is geared towards manufacturers of malt or brewed beverages, it has been modified in section 5.401 to apply to limited wineries.
- A definition for “produce” (verb), which is added because the Board is frequently asked what type of activity is required in order to say that a limited winery “produced” wine. The need for this definition stems from the following provision in section 505.2(a)(2):

[A] limited winery shall not, in any calendar year, purchase alcoholic cider, fermented fruit beverages, mead or wine produced by other limited wineries **in an amount in excess of fifty per centum of the alcoholic cider, fermented fruit beverage, mead or wine produced by the purchasing limited winery in the preceding calendar year.**

47 P.S. § 5-505.2(a)(2) (emphasis added).

- A definition for “tasting sample,” which is added to provide clarification for section 5.402, addressing where a limited winery may provide tasting samples of winery product. This phrase is added for clarity between the verbiage of the Liquor Code and that of the Board’s Regulations. The Liquor Code uses the word “samples” to refer to small quantities offered to consumers who want to taste the product. However, in the Board’s Regulations, “samples” are small bottles of product that may be given to consumers to try at home. See section 13.231 (relating to samples). To reduce confusion, the proposed regulation uses the phrase “tasting sample,” which incorporates the verbiage of the Liquor Code but is distinguished from the section 13.231 sample.
- A definition for “wine cooler,” which is added because the phrase appears in the Liquor Code but is not defined in the Liquor Code. The Board had previously attempted to amend the regulations pertaining to limited wineries, (IRRC #3117, PLCB #54-85), but the final-form regulation was disapproved by IRRC. During that process, the Independent Regulatory Review

Commission ("IRRC") recommended that the Board define the phrase "wine cooler." Based on IRRC's recommendation, the Board is adding a definition to the proposed rulemaking.

- A definition for "winery products," which is added to enhance the readability of the regulation. It is cumbersome to identify the numerous different products that can be made by a limited winery, including alcoholic cider, fermented fruit beverages, mead, wine, and/or wine coolers. The term "winery products" is an umbrella term that incorporates all of these products. For clarity, the winery products must be produced by the limited winery that is engaging in any of the activities covered by this subchapter.

The proposed rulemaking establishes section 5.402 (relating to tasting samples) which is based, in part, on the current regulatory provisions at section 11.111(a)(6) (relating to sales by limited winery licensees) of the Board's Regulations. Section 11.111(a)(6) states that visitors may be provided samples of wine "without charge." However, section 505.2(a)(4) of the Liquor Code states that samples may be sold or offered free of charge. Therefore, this proposed regulation provides that "The limited winery may provide tasting samples of winery products in accordance with section 505.2(a) of the Liquor Code (47 P.S. § 5-505.2(a)) and section 13.211 (relating to tasting events)." The proposed regulation also provides that "To the extent possible, section 505.2 of the Liquor Code and section 13.211 will be construed together; however, when there is a conflict between these two sections, including with regard to locations where tasting samples may be provided, the volume of each tasting sample that may be provided, and whether a fee may be charged for a tasting sample, the provisions of section 505.2 of the Liquor Code will prevail." In this way, it is clear that limited wineries may continue offering tasting samples in a manner that is consistent with the provisions of the Liquor Code and the Board's Regulations regarding tasting events, depending on the specific circumstances involved with the offering being made.

Section 5.402 also clarifies that tasting samples may not be provided at a limited winery's storage facilities. Section 505.2(a)(6.4) of the Liquor Code, 47 P.S. § 5-505.2(a)(6.4), allows a limited winery licensee to have up to two Board-approved storage locations. The section provides that only the limited winery licensee and its employees may be present at the storage locations. Therefore, no customers or potential customers should be present at the storage locations, and as a result, no tasting samples may be provided. This section also directs the limited winery licensee to operate the storage locations "under such conditions and regulations as the board may enforce."

The proposed rulemaking establishes section 5.403 (relating to sales generally) to give general information regarding sales by a limited winery. This section was based on the current regulation at section 11.111(a)(4). The proposed rulemaking provides that a limited winery may sell winery products during the time periods or circumstances set forth in section 505.2(a)(6.3) of the Liquor Code. (47 P.S. § 5-505.2(a)(6.3)). In addition, this section incorporates the types of payment that a limited winery may accept, which is currently found at section 11.111(a)(5). A limited winery may accept, from licensees, checks drawn on their account, cash, money orders, cashier checks, debit cards and electronic funds transfers. From unlicensed individuals, a limited winery may accept all of the aforementioned methods as well as credit cards issued by banking or financial institutions subject to State or Federal regulations.

The Board notes that Act 39 of 2016 specifically amended the Liquor Code to allow distributors and importing distributors to accept credit cards from licensees. No similar amendment was made to allow limited wineries to accept credit cards from licensees. In light of this legislative inaction, the Board decided not to allow limited wineries to accept credit cards for payment by licensees.

Proposed section 5.403 adds new language to clarify requirements that exist in the Liquor Code for alcoholic cider, fermented fruit beverages, and mead. These products are considered malt or brewed beverages, not wine, and are treated differently under the Liquor Code. For instance, malt or brewed beverages are subject to the brand registration requirements set forth at section 445 of the Liquor Code (47 P.S. § 4-445), as well as the distribution provisions set forth at section 431 of the Liquor Code (47 P.S. § 4-431). The proposed rulemaking explains that a limited winery may sell alcoholic cider, fermented fruit beverages, and mead to importing distributors, distributors, or any other licensee that is authorized, under the Liquor Code, to sell, possess, or store malt or brewed beverages. However, a limited winery shall not sell wine or wine coolers to importing distributors, distributors, or any other licensee that is not authorized, under the Liquor Code, to sell, possess, or store alcoholic beverages other than malt or brewed beverages.

The proposed rulemaking includes section 5.404 (relating to sales for on-premises consumption) which updates the types of liquor or malt or brewed beverages a limited winery may sell for consumption on the premises. Currently, section 11.111(a)(1) of the Board's Regulations provides that there may be no consumption of liquor or malt or brewed beverages on the licensed premises. However, Act 11 amended section 505.2(a)(6.1) of the Liquor Code to allow limited wineries to sell, for on-premises consumption, any winery products they could sell for off-premises consumption. (47 P.S. § 5-505.2(a)(6.1)). In addition, Act 39 amended the Liquor Code to allow limited winery licensees to sell malt or brewed beverages and liquor for on-premises consumption, provided that the malt or brewed beverages and liquor are produced by Pennsylvania-licensed manufacturers. (47 P.S. § 5-505.2(a)(6.1)). Proposed section 5.404(c) requires that, if the limited winery licensee sells malt or brewed beverages through a malt or brewed beverage dispensing system – also known as a draft beer system – the limited winery must comply with section 5.51 (relating to cleaning of malt or brewed beverage dispensing systems), 5.52 (relating to certificate or record required), 5.53 (relating to pressure maintenance), and 5.54 (relating to responsibility for condition of equipment). The limited winery licensee will be held to the same standard of beer line cleaning as other retail dispensers who sell beer by draft. In addition, proposed section 5.404(d) provides that a limited winery that chooses to sell wine or wine coolers through a wine dispensing system must comply with section 11.103 (relating to dispensing system sanitation).

Proposed section 5.405 (relating to sales for off-premises consumption) pertains to sales for off-premises consumption. This section begins with a reference to section 505.2(a) of the Liquor Code. Subsection (b) is based on current section 11.111(a)(10) (relating to sale by limited winery licensees) and has been expanded to allow the acceptance of orders by Internet. Subsection (b) references proposed section 5.407 (relating to delivery of products). Subsection (c) incorporates the regulatory language regarding agents, which is currently located at section 3.63 (relating to agents). Subsections (d) and (e) clarify who may sell winery products at wine expositions and farmers markets, as well as where those sales must occur.

Proposed section 5.406 (relating to sales of other items) updates the list of items that limited wineries may sell. Currently found at section 11.111(a)(8), the list is amended to reflect the statutory changes found in sections 505.2(a)(6.1) and 505.2(a)(6.2) of the Liquor Code. 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 current reference to fruits, jellies, jams, preserves and mushrooms, as well as cheese, crackers, breads, nuts and preserved meats, is moot since each of

these items is permissible under the limited winery's general authority to sell food. Proposed section 5.406 also incorporates current section 11.111(a)(9), which explains the process for a limited winery to follow if it wants to sell something that is not on the regulatory list.

Proposed section 5.407 (relating to delivery of products) sets forth rules pertaining to the delivery of winery products by or for limited wineries. Subsection (a) identifies general rules for all deliveries by a limited winery. Subsection (b) pertains to a limited winery utilizing its own vehicles to deliver its winery products, whereas subsection (c) pertains to a limited winery utilizing a transporter-for-hire licensee to deliver its winery products.

Subsection (d) addresses a change in the law regarding the delivery of wine or wine coolers to an unlicensed individual. Act 39 amended the Liquor Code to require limited winery licensees – and all other wine manufacturers – to obtain a direct wine shipping license before shipping wine to Pennsylvania consumers. (47 P.S. § 5-505.2(a)(2.1)). Subsection (d) clarifies that the delivery of alcoholic cider, fermented fruit beverages or mead, does not require a direct wine shipping license. Finally, subsection (e) incorporates language from current section 11.111(a)(10), that limited wineries are responsible for ensuring that winery products are not delivered to minors or visibly intoxicated persons, and that proper receipts are provided in accordance with section 5.409 (relating to records, receipts, and reports).

Proposed section 5.408 (relating to additional Board-approved locations) is largely based on current section 3.64 (relating to additional Board-approved locations). The proposed rulemaking includes a subsection of new material at subsection (e). Subsection (e) refers licensees to four other sections in the Board's Regulations—sections 3.51 through 3.54—and was included to reduce confusion among licensees as to what may or may not be an appropriate location for an additional Board-approved location. Subsections (j) and (k) also offer new guidance to clarify to licensees what arrangements are and are not consistent with the Liquor Code when multiple licensees want to operate additional Board-approved locations.

Proposed section 5.409 (relating to records, receipts, and reports) is based substantially upon current section 5.103 (relating to records, invoices and reports). The term “invoices” has been replaced with “receipts” because it is a more accurate term to describe the paperwork that accompanies a purchase of a winery product. Invoices are issued prior to payment; receipts are issued after payment. A licensee cannot sell products off of the licensed premises; therefore, there should never be a situation where a product is shipped with an invoice for the recipient to pay after the product is received. A licensee can only ship products for which payment has already been received. That being the case, the proper terminology for the document that accompanies the product is “receipt,” not “invoice.”

In proposed section 5.409, current subsection 5.103(a) was broken into subsections for easier comprehension. The phrase “agricultural commodity” replaces the word “fruits” to be consistent with section 505.2(a)(1). 47 P.S. § 5-505.2(a)(1). The last sentence of current subsection 5.103(a) is deleted since it is actually a repeat of a sentence that occurs earlier in that section.

Proposed subsection 5.409(b) is based on current subsection 5.103(b) and addresses receipts and identifies what information the sales receipt should include. Proposed subsection 5.409(c) is based on current subsection 5.103(b)(5) and sets forth how receipts are to be used during a delivery. Proposed subsection 5.409(d) pertains to reports and is based on the text at current subsection 5.103(c), but broken into paragraphs and subparagraphs for greater readability.

<p>(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.</p> <p>The proposed rulemaking is not known to be more stringent than federal regulations.</p>
<p>(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?</p> <p>Regulations pertaining to alcoholic beverage control are governed by neighboring states in accordance with their unique and individual systems of alcoholic beverage control. Because of this, the proposed rulemaking does not play a role in Pennsylvania's ability to compete with other states.</p>
<p>(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.</p> <p>The regulation will not affect any other existing or proposed regulations of the Liquor Control Board or any other state agency.</p>
<p>(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.)</p> <p>A draft copy of the proposed regulation was provided to the Pennsylvania Wine Association (PWA), a non-profit trade association and an advocate on behalf of the state's growing multi-billion dollar wine industry. The President of PWA provided thoughts and suggestions to the Board. Where it was possible, those suggestions were incorporated into the proposed rulemaking or language was made clearer. A few suggestions were not possible because they conflict with existing state and federal laws.</p>
<p>(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?</p> <p>As of September 3, 2021, there were 450 limited wineries with an active license from the Board. It is estimated that all of these qualify as small businesses. The effect on these limited wineries is minimal; it is hoped that the gathering of regulations into one subchapter and the removal of misleading or incorrect provisions will be beneficial to the regulated community.</p>
<p>(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.</p> <p>As of September 3, 2021, there were 450 limited wineries with an active license from the Board.</p>
<p>(17) Identify the financial, economic and social impact of the regulation on individuals, small</p>

businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

Aside from benefit expected to inure to the small businesses that are also active limited winery licensees, the proposed regulation is not expected to have any financial, economic or social impact on individuals, small businesses, businesses, labor communities, and other public and private organizations.

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

There are no costs or adverse effects that are not already in existence and required by the Liquor Code.

(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 proposed rulemaking does not result in costs or savings for the regulated community. 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.

The proposed rulemaking does not result in costs or savings for local governments. No legal, accounting or consulting procedures are 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 proposed rulemaking is not expected to result in costs or savings for state government. No legal, accounting or consulting procedures are 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.

The proposed rulemaking is not expected to affect legal, accounting or consulting procedures and should not require any additional reporting, recordkeeping or other paperwork. Similarly, the regulation is not expected to require any additional governmental measures in order to implement the regulation.

(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.

There is no data available regarding how the regulated community, local government and state government will recoup any savings or incur any costs.

	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:	\$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:						
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 2018-2019	FY -2 2019-2020	FY -1 2020-2021	Current FY 2021-2022
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.

(a) Federal regulation (relating to small business size standards) provides that wineries with fewer than 1000 employees are considered to be a "small" business. (13 C.F.R. § 121.201). It is estimated that almost all of the regulated community impacted by this proposed regulation would fall within the definition of "small business."

(b) The proposed regulation does not require any additional reporting, recordkeeping or other administrative activities; these activities are already required by sections 488 and 512 of the Liquor Code (47 P.S. §§ 4-488, 5-512).

(c) The proposed regulation is anticipated to have a positive impact on small businesses. Because the proposed regulation complies all regulations pertaining specifically to limited wineries into one subchapter, the regulated community will have improved accessibility to the regulations they must follow. In addition, regulations have been updated to be consistent with the amendments to the Liquor Code, which will reduce confusion among the regulated community.

(d) With the numerous changes that have been made to the Liquor Code, which directly impact the privileges that are available to limited wineries, only a reorganization and recalibration of the existing regulations would achieve the purpose of providing comprehensive, organized regulations for the regulated community.

(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.

The PLCB has not identified, within the regulated community, a subgroup that may need any special provisions or accommodations. As stated in response to question 24, it is estimated that almost of all of the regulated community falls within the category of small business, and a significant number of them are probably farmers in the sense that they grow the agricultural commodities used to make wine. There is no subgroup that has an identifiable need that is different from the entire group.

(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 alternative regulatory provisions were considered and rejected, since this proposed regulation

involves the compilation and organization of existing regulations while at the same time updating them to be consistent with current law. The least burdensome acceptable alternative has been selected.

(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 performance 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 proposed rulemaking is not expected to have an adverse impact on small businesses. Nonetheless, in the interest of submitting a completed form, the PLCB submits the following answers:

- (a) The compliance and reporting requirements are established in sections 488 and 512 of the Liquor Code (47 P.S. §§ 4-488, 5-512).
- (b) The proposed rulemaking does not establish any schedules or deadlines for compliance or reporting requirements.
- (c) The proposed rulemaking does not contain any compliance or reporting requirements that would need to be consolidated or simplified for small businesses.
- (d) The proposed rulemaking does not establish any performing standards for small businesses to replace design or operations standards.
- (e) The proposed rulemaking does not establish any new requirements; therefore, there is nothing from which small businesses could be given an exemption.

(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 regulation.

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

- A. The length of the public comment period: 30 days
- B. The date or dates on which any public meetings or hearings

will be held:	<u>April 2022</u>
C. The expected date of delivery of the final-form regulation:	<u>June 2022</u>
D. The expected effective date of the final-form regulation:	<u>August 2022</u>
E. The expected date by which compliance with the final-form regulation will be required:	<u>August 2022</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.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

RECEIVED

NOV - 9 2021

Independent Regulatory
Review Commission

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved
as to form and legality.

Attorney General:

BY: Amy M. Elliott
(DEPUTY ATTORNEY GENERAL)
11/2/2021
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. 54-95

DATE OF ADOPTION: 10/06/2021

BY: T. Holder

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

10/06/2021
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

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

CHAPTER 11. PURCHASES AND SALES

PROPOSED RULEMAKING
LIQUOR CONTROL BOARD
40 PA. CODE CHS. 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 delete §§ 3.62—3.64 (relating to limited winery licenses), § 5.103 (relating to limited wineries), and § 11.111 (relating to sale by limited winery licensees), and add §§ 5.401—5.409 (relating to limited wineries) to read as set forth in Annex A.

Summary

This proposed rulemaking gathers regulations pertaining to limited wineries from Chapters 3, 5, and 11 of the Board's Regulations, and places them in a new subchapter in Chapter 5. In addition, the proposed rulemaking revises many of these regulations to make them more consistent with the Liquor Code, which has been amended several times since 2011. All of the proposed changes are intended to provide more clarity to the regulated community and allow for easier navigation of the applicable regulations.

Currently, regulations that are specifically applicable to licensed limited wineries are located in three different chapters of the Board's Regulations: Chapter 3 (relating to license applications), Chapter 5 (relating to duties and rights of licensees) and Chapter 11 (purchases and sales). The regulated community would benefit from having, in one location, all of the regulations that apply to them. In addition, the current regulations are out of date and in certain sections, which will be explained below, misleading or incorrect. As such, the regulated community, which consists of 450 active licensed limited wineries as of September 3, 2021, will also benefit by having accurate, up-to-date regulations.

In order to ensure that the regulations include only necessary content, two regulations are deleted completely and not relocated. These regulations are section 3.62 and section 11.111(a)(7). Section 3.62 states, "Under section 505.2 of the Liquor Code (47 P.S. § 5-505.2), holders of a Limited Winery License may produce and sell wines, subject to §§ 3.63, 5.103 and 11.111 (relating to agents; limited wineries; and sale by limited winery licensees)." It is not necessary to have a regulation reiterate what is provided by statute or other regulations. Similarly, section 11.111(a)(7) provides, "Limited winery licensees engaged in the retail and wholesale sales of wine are responsible to conform to the Liquor Code and this title." It is not necessary to have a regulation that tells the regulated community that they must follow the enabling statute and the regulations.

The proposed rulemaking creates Subchapter K, which incorporates existing regulations from chapters 3, 5, and 11 and organizes them to improve accessibility for the regulated community.

The two tables below show where the previous content has been relocated and a sequential ordering of the new content in Subchapter K, showing its origins:

Current section	Proposed section
3.62	Deleted
3.63	5.405(c)
3.64	5.408
5.103	5.409
11.111(a)(1)	5.404
11.111(a)(2)	5.407
11.111(a)(3)	5.407
11.111(a)(4)	5.403
11.111(a)(5)	5.403
11.111(a)(6)	5.402
11.111(a)(7)	Deleted
11.111(a)(8)	5.406
11.111(a)(9)	5.406
11.111(a)(10)	5.405, 5.407
11.111(b)	5.405(c)
11.111(c)	5.409
11.111(d)	5.408

Proposed section	Current section
5.401	New
5.402	11.111(a)(6)
5.403	11.111(a)(4), (5)
5.404	11.111(a)(1)
5.405	3.63 11.111(a)(10) 11.111(b)
5.406	11.111(a)(8), (9)
5.407	11.111(a)(2) 11.111(a)(3) 11.111(a)(10)
5.408	3.64 11.111(d)
5.409	5.103 11.111(c)

Proposed section 5.401 (relating to definitions) is new content; it has not been relocated from another section. The Board believes the addition of these definitions to the regulations will provide clarity. Section 5.401 includes the following:

- A definition for “limited winery,” which is consistent with the definition provided in section 102 of the Liquor Code, 47 P.S. § 1-102, but also incorporates a minimum production amount of 200 gallons per year, based on language in section 491(2) of the Liquor Code, 47 P.S. § 4-491(2). Section 491(2) allows the manufacture of up to 200 gallons of wine for personal use without the need to obtain a manufacturing license.
- A definition for “original container,” which is based on a definition for the same term that is provided in section 102 of the Liquor Code, 47 P.S. § 1-102. However, because the definition in the Liquor Code is geared towards manufacturers of malt or brewed beverages, it has been modified in section 5.401 to apply to limited wineries.
- A definition for “produce” (verb), which is added because the Board is frequently asked what type of activity is required in order to say that a limited winery “produced” wine. The need for this definition stems from the following provision in section 505.2(a)(2):

[A] limited winery shall not, in any calendar year, purchase alcoholic cider, fermented fruit beverages, mead or wine produced by other limited wineries in an amount in excess of fifty per centum of the alcoholic cider, fermented fruit beverage, mead or wine produced by the purchasing limited winery in the preceding calendar year.

47 P.S. § 5-505.2(a)(2) (emphasis added).

- A definition for “tasting sample,” which is added to provide clarification for section 5.402, addressing where a limited winery may provide tasting samples of winery product. This phrase is added for clarity between the verbiage of the Liquor Code and that of the Board’s Regulations. The Liquor Code uses the word “samples” to refer to small quantities offered to consumers who want to taste the product. However, in the Board’s Regulations, “samples” are small bottles of product that may be given to consumers to try at home. See section 13.231 (relating to samples). To reduce confusion, the proposed regulation uses the phrase “tasting sample,” which incorporates the verbiage of the Liquor Code but is distinguished from the section 13.231 sample.
- A definition for “wine cooler,” which is added because the phrase appears in the Liquor Code but is not defined in the Liquor Code. The Board had previously attempted to amend the regulations pertaining to limited wineries, (IRRC #3117, PLCB #54-85), but the final-form regulation was disapproved by IRRC. During that process, the Independent Regulatory Review Commission (“IRRC”) recommended that the Board define the phrase “wine cooler.” Based on IRRC’s recommendation, the Board is adding a definition to the proposed rulemaking.
- A definition for “winery products,” which is added to enhance the readability of the regulation. It is cumbersome to identify the numerous different products that can be made by a limited winery, including alcoholic cider, fermented fruit beverages, mead, wine, and/or wine coolers. The term “winery products” is an umbrella term that incorporates all of these products. For clarity, the winery products must be produced by the limited winery that is engaging in any of the activities covered by this subchapter.

The proposed rulemaking establishes section 5.402 (relating to tasting samples) which is based, in part, on the current regulatory provisions at section 11.111(a)(6) (relating to sales by limited winery licensees) of the Board’s Regulations. Section 11.111(a)(6) states that visitors may be provided samples of wine “without charge.” However, section 505.2(a)(4) of the Liquor Code states that samples may be sold or offered free of charge. Therefore, this proposed regulation provides that “The limited winery may provide tasting samples of winery products in accordance with section 505.2(a) of the Liquor Code (47 P.S. § 5-505.2(a)) and section 13.211 (relating to tasting events).” The proposed regulation also provides that “To the extent possible, section 505.2 of the Liquor Code and section 13.211 will be construed together; however, when there is a conflict between these two sections, including with regard to locations where tasting samples may be provided, the volume of each tasting sample that may be provided, and whether a fee may be charged for a tasting sample, the provisions of section 505.2 of the Liquor Code will prevail.” In this way, it is clear that limited wineries may continue offering tasting samples in a manner that is consistent with the provisions of the Liquor Code and the Board’s Regulations regarding tasting events, depending on the specific circumstances involved with the offering being made.

Section 5.402 also clarifies that tasting samples may not be provided at a limited winery’s storage facilities. Section 505.2(a)(6.4) of the Liquor Code, 47 P.S. § 5-505.2(a)(6.4), allows a limited

winery licensee to have up to two Board-approved storage locations. The section provides that only the limited winery licensee and its employees may be present at the storage locations. Therefore, no customers or potential customers should be present at the storage locations, and as a result, no tasting samples may be provided. This section also directs the limited winery licensee to operate the storage locations “under such conditions and regulations as the board may enforce.”

The proposed rulemaking establishes section 5.403 (relating to sales generally) to give general information regarding sales by a limited winery. This section was based on the current regulation at section 11.111(a)(4). The proposed rulemaking provides that a limited winery may sell winery products during the time periods or circumstances set forth in section 505.2(a)(6.3) of the Liquor Code. (47 P.S. § 5-505.2(a)(6.3)). In addition, this section incorporates the types of payment that a limited winery may accept, which is currently found at section 11.111(a)(5). A limited winery may accept, from licensees, checks drawn on their account, cash, money orders, cashier checks, debit cards and electronic funds transfers. From unlicensed individuals, a limited winery may accept all of the aforementioned methods as well as credit cards issued by banking or financial institutions subject to State or Federal regulations.

The Board notes that Act 39 of 2016 specifically amended the Liquor Code to allow distributors and importing distributors to accept credit cards from licensees. No similar amendment was made to allow limited wineries to accept credit cards from licensees. In light of this legislative inaction, the Board decided not to allow limited wineries to accept credit cards for payment by licensees.

Proposed section 5.403 adds new language to clarify requirements that exist in the Liquor Code for alcoholic cider, fermented fruit beverages, and mead. These products are considered malt or brewed beverages, not wine, and are treated differently under the Liquor Code. For instance, malt or brewed beverages are subject to the brand registration requirements set forth at section 445 of the Liquor Code (47 P.S. § 4-445), as well as the distribution provisions set forth at section 431 of the Liquor Code (47 P.S. § 4-431). The proposed rulemaking explains that a limited winery may sell alcoholic cider, fermented fruit beverages, and mead to importing distributors, distributors, or any other licensee that is authorized, under the Liquor Code, to sell, possess, or store malt or brewed beverages. However, a limited winery shall not sell wine or wine coolers to importing distributors, distributors, or any other licensee that is not authorized, under the Liquor Code, to sell, possess, or store alcoholic beverages other than malt or brewed beverages.

The proposed rulemaking includes section 5.404 (relating to sales for on-premises consumption) which updates the types of liquor or malt or brewed beverages a limited winery may sell for consumption on the premises. Currently, section 11.111(a)(1) of the Board’s Regulations provides that there may be no consumption of liquor or malt or brewed beverages on the licensed premises. However, Act 11 amended section 505.2(a)(6.1) of the Liquor Code to allow limited wineries to sell, for on-premises consumption, any winery products they could sell for off-premises consumption. (47 P.S. § 5-505.2(a)(6.1)). In addition, Act 39 amended the Liquor Code to allow limited winery licensees to sell malt or brewed beverages and liquor for on-premises consumption, provided that the malt or brewed beverages and liquor are produced by Pennsylvania-licensed manufacturers. (47 P.S. § 5-505.2(a)(6.1)).

Proposed section 5.404(c) requires that, if the limited winery licensee sells malt or brewed beverages through a malt or brewed beverage dispensing system – also known as a draft beer system – the limited winery must comply with section 5.51 (relating to cleaning of malt or brewed beverage dispensing systems), 5.52 (relating to certificate or record required), 5.53 (relating to pressure maintenance), and 5.54 (relating to responsibility for condition of equipment). The limited winery licensee will be held to the same standard of beer line cleaning as other retail dispensers who sell beer by draft. In addition, proposed section 5.404(d) provides that a limited winery that chooses to sell wine or wine coolers through a wine dispensing system must comply with section 11.103 (relating to dispensing system sanitation).

Proposed section 5.405 (relating to sales for off-premises consumption) pertains to sales for off-premises consumption. This section begins with a reference to section 505.2(a) of the Liquor Code. Subsection (b) is based on current section 11.111(a)(10) (relating to sale by limited winery licensees) and has been expanded to allow the acceptance of orders by Internet. Subsection (b) references proposed section 5.407 (relating to delivery of products). Subsection (c) incorporates the regulatory language regarding agents, which is currently located at section 3.63 (relating to agents). Subsections (d) and (e) clarify who may sell winery products at wine expositions and farmers markets, as well as where those sales must occur.

Proposed section 5.406 (relating to sales of other items) updates the list of items that limited wineries may sell. Currently found at section 11.111(a)(8), the list is amended to reflect the statutory changes found in sections 505.2(a)(6.1) and 505.2(a)(6.2) of the Liquor Code. 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 current reference to fruits, jellies, jams, preserves and mushrooms, as well as cheese, crackers, breads, nuts and preserved meats, is moot since each of these items is permissible under the limited winery’s general authority to sell food. Proposed section 5.406 also incorporates current section 11.111(a)(9), which explains the process for a limited winery to follow if it wants to sell something that is not on the regulatory list.

Proposed section 5.407 (relating to delivery of products) sets forth rules pertaining to the delivery of winery products by or for limited wineries. Subsection (a) identifies general rules for all deliveries by a limited winery. Subsection (b) pertains to a limited winery utilizing its own vehicles to deliver its winery products, whereas subsection (c) pertains to a limited winery utilizing a transporter-for-hire licensee to deliver its winery products.

Subsection (d) addresses a change in the law regarding the delivery of wine or wine coolers to an unlicensed individual. Act 39 amended the Liquor Code to require limited winery licensees – and all other wine manufacturers – to obtain a direct wine shipping license before shipping wine to Pennsylvania consumers. (47 P.S. § 5-505.2(a)(2.1)). Subsection (d) clarifies that the delivery of alcoholic cider, fermented fruit beverages or mead, does not require a direct wine shipping license. Finally, subsection (e) incorporates language from current section 11.111(a)(10), that limited wineries are responsible for ensuring that winery products are not delivered to minors or visibly intoxicated persons, and that proper receipts are provided in accordance with section 5.409 (relating to records, receipts, and reports).

Proposed section 5.408 (relating to additional Board-approved locations) is largely based on current section 3.64 (relating to additional Board-approved locations). The proposed rulemaking includes a subsection of new material at subsection (e). Subsection (e) refers licensees to four other sections in the Board's Regulations—sections 3.51 through 3.54—and was included to reduce confusion among licensees as to what may or may not be an appropriate location for an additional Board-approved location. Subsections (j) and (k) also offer new guidance to clarify to licensees what arrangements are and are not consistent with the Liquor Code when multiple licensees want to operate additional Board-approved locations.

Proposed section 5.409 (relating to records, receipts, and reports) is based substantially upon current section 5.103 (relating to records, invoices and reports). The term “invoices” has been replaced with “receipts” because it is a more accurate term to describe the paperwork that accompanies a purchase of a winery product. Invoices are issued prior to payment; receipts are issued after payment. A licensee cannot sell products off of the licensed premises; therefore, there should never be a situation where a product is shipped with an invoice for the recipient to pay after the product is received. A licensee can only ship products for which payment has already been received. That being the case, the proper terminology for the document that accompanies the product is “receipt,” not “invoice.”

In proposed section 5.409, current subsection 5.103(a) was broken into subsections for easier comprehension. The phrase “agricultural commodity” replaces the word “fruits” to be consistent with section 505.2(a)(1). 47 P.S. § 5-505.2(a)(1). The last sentence of current subsection 5.103(a) is deleted since it is actually a repeat of a sentence that occurs earlier in that section.

Proposed subsection 5.409(b) is based on current subsection 5.103(b) and addresses receipts and identifies what information the sales receipt should include. Proposed subsection 5.409(c) is based on current subsection 5.103(b)(5) and sets forth how receipts are to be used during a delivery. Proposed subsection 5.409(d) pertains to reports and is based on the text at current subsection 5.103(c), but broken into paragraphs and subparagraphs for greater readability.

Affected Parties

The affected parties include all present and future holders of a limited winery license. As of September 3, 2021, there are approximately 450 active limited winery licensees that could be affected by this proposed rulemaking.

Paperwork Requirements

The proposed regulation would not require any additional paperwork to be filed.

Fiscal Impact

The proposed regulatory changes are intended to make the Board's Regulations consistent with the Liquor Code. Therefore, no fiscal impact is anticipated.

Effective Date

This proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comments

Interested persons are invited to submit written comments about this proposed rulemaking to Rodrigo Diaz, Chief Counsel, Jason M. Worley, Deputy Chief Counsel, or Norina Foster, Assistant Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001, or RA-lblegal@pa.gov, within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. ***E-mail is preferred.*** When commenting, individuals should indicate if they wish to be apprised of future developments regarding this proposed rulemaking, and include a name, address and e-mail address. Comments submitted by facsimile will not be accepted.

Public comments will be posted on the Independent Regulatory Review Commission's (IRRC) website. Personal information will not 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 _____, 2021, the Board 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 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 Board, the General Assembly and the Governor.

TIM HOLDEN,
Chairperson

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 3. LICENSE APPLICATIONS

Subchapter G. [LIMITED WINERY LICENSES] Reserved.

§ 3.61. [Reserved].

§ 3.62. [Creation.] Reserved.

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

§ 3.63. [Agents.] Reserved.

[A limited winery licensee may employ individuals to solicit orders, off the licensed premises, for wine produced by it or to promote the sale of wine 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.] Reserved.

[(a) Additional locations, as authorized by section 505.2(3) of the Liquor Code (47 P.S. § 5-505.2(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 (relating to appointment of managers).

(5) Additional Board-approved locations of a limited winery license shall be enclosed by soundly constructed walls, with controlled points of access and egress directly accessible to the general public from a public thoroughfare.

(6) Limited winery licensees shall provide Board officers conducting licensing investigations of additional locations with the following:

(i) Leases which contain percentage agreements.

(ii) Management agreements.

(iii) Employee agreements.

(iv) Commission agreements.

(b) Limited winery licensees shall notify the Board immediately upon discontinuing use of an additional location.]

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

5.101. Breweries.

5.102. Bonded warehouses.

5.103. [Limited wineries.] Reserved.

5.104. Licensed distilleries of historical significance.

§ 5.103. [Limited wineries.] Reserved.

[(a) Records. A holder of a 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 include complete details concerning the source of fruits used in the production of wines. Electronic media recordkeeping, maintained and based upon generally accepted accounting principles, shall be permitted in lieu of hard copy records. The recordkeeping system utilized by the licensee shall have the capability to provide for the reconciling of required data. Entries shall be verifiable by supporting original documents. The records shall include complete details concerning the source of fruits used in the production of wines.

(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 be imprinted or affixed with the name and address of the limited winery.

(2) The sales invoice shall 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 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 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 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 is listed separately from other permitted items sold by the licensee.

(5) An invoice shall be prepared for any amount of wine shipped to customers via 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). |

SUBCHAPTER K. LIMITED WINERIES

5.401. Definitions.

5.402. Tasting samples.

5.403. Sales generally.

5.404. Sales for on-premises consumption.

5.405. Sales for off-premises consumption.

5.406. Sales of other items.

5.407. Delivery of products.

5.408. Additional Board-approved locations.

5.409. Records, receipts, and reports.

5.401. Definitions.

For purposes of this subchapter, the following definitions shall apply:

“Limited winery” shall mean a winery that produces at least 200 gallons per year but not more than 200,000 gallons per year of winery products for each full calendar year that the limited winery holds an active limited winery license from the Commonwealth of Pennsylvania.

“Original container” shall mean all bottles, casks, kegs, cans, boxes or other suitable containers that have been securely capped, sealed or corked by the limited winery at the place of manufacture, with the name and address of the limited winery affixed to the bottle, cask, keg or other container.

“Produce” shall mean to manufacture winery products from agricultural commodities, including preparation for fermentation, fermentation, blending, preserving, filtering, and packaging the winery products.

“Tasting sample” shall mean an individual portion of a winery product, in an open container, offered to allow a consumer to sample the flavor of the winery product.

“Wine cooler” shall mean a beverage made from combining wine with a non-alcoholic beverage, such as fruit juice or a carbonated beverage, resulting in a beverage with lower alcohol by volume than the original wine, and shall not include a malt or brewed beverage.

“Winery products” shall mean all alcoholic products including alcoholic cider, fermented fruit beverages, mead, wine, and/or wine coolers that have been produced by the limited winery.

5.402. Tasting samples.

(a) The limited winery may provide tasting samples of winery products in accordance with section 505.2(a) of the Liquor Code (47 P.S. § 5-505.2(a)) and section 13.211 (relating to tasting events). To the extent possible, section 505.2 of the Liquor Code and section 13.211 will be construed together; however, when there is a conflict between these two sections, including with regard to locations where tasting samples may be provided, the volume of each tasting sample that may be provided, and whether a fee may be charged for a tasting sample, the provisions of section 505.2 of the Liquor Code will prevail.

(b) Tasting samples may not be provided at a limited winery's storage facilities since only the limited winery and its employees may be present at those locations, in accordance with section 505.2(a)(6.4) of the Liquor Code (47 P.S. § 5-505.2(a)(6.4)).

5.403. Sales generally.

(a) A limited winery may sell winery products during the time periods or circumstances set forth in section 505.2(a)(6.3) of the Liquor Code (47 P.S. § 5-505.2(a)(6.3)).

(b) A limited winery may accept the following methods of payment:

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

(2) From unlicensed individuals: all of the methods of payment listed in (b)(1), and also credit cards issued by banking or financial institutions subject to State or Federal regulations.

(c) A limited winery that manufactures alcoholic cider, fermented fruit beverages, and mead, which are defined as "malt or brewed beverages" in section 102 of the Liquor Code (47 P.S. § 1-102), must register these brands with the Board as required by section 445 of the Liquor Code (47 P.S. § 4-445).

(1) A limited winery may self-distribute alcoholic cider, fermented fruit beverages, and mead to importing distributors, distributors, or any other licensee that is authorized, under the Liquor Code, to sell, possess, or store malt or brewed beverages.

(2) A limited winery may choose to grant territorial distribution rights and name a distributor or an importing distributor as the primary or original supplier of the product in accordance with section 431(b) of the Liquor Code (47 P.S. § 4-431(b)).

(d) A limited winery shall not sell wine or wine coolers to importing distributors, distributors, retail dispensers or any other licensee that is not authorized, under the Liquor Code, to sell, possess, or store any alcoholic beverages other than malt or brewed beverages.

5.404. Sales for on-premises consumption.

(a) A limited winery may sell winery products on the licensed premises and at additional Board-approved locations in accordance with the Liquor Code and this part. Sales of winery products for on-premises consumption may be made by the glass, bottle or any other open or closed container.

(b) A limited winery may sell, only for on-premises consumption, malt or brewed beverages and liquor produced by Pennsylvania-licensed manufacturers, pursuant to section 505.2(a)(6.1) of the Liquor Code. (47 P.S. § 5-505.2(a)(6.1)).

(c) A limited winery that chooses to sell malt or brewed beverages through a malt or brewed beverage dispensing system, defined in section 5.50 of these regulations (relating to definition), must comply with sections 5.51 (relating to cleaning of malt or brewed beverage dispensing systems), 5.52 (relating to certificate or record required), 5.53 (relating to pressure maintenance), and 5.54 (relating to responsibility for condition of equipment) of the Board's Regulations.

(d) A limited winery that chooses to sell wine or wine coolers through a wine dispensing system must comply with section 11.103 (relating to dispensing system sanitation) of the Board's Regulations.

5.405. Sales for off-premises consumption.

(a) A limited winery may sell winery products for off-premises consumption as permitted by section 505.2(a) of the Liquor Code (47 P.S. § 5-505.2(a)).

(b) A limited winery may accept orders for the purchase of its winery products in person or via mail, telephone, or the Internet. A limited winery shall make deliveries of winery products in accordance with section 5.407 (relating to delivery of products).

(c) A limited winery may employ individuals, known as agents, to solicit orders for winery products or promote the sale of winery products.

(1) Agents may only advertise and promote the sale of winery products produced by the limited winery that has employed the agent. Agents may solicit orders from licensees and make deliveries on behalf of the limited winery in accordance with section 5.407 (relating to delivery of products).

(2) Agents may only sell, as that word is defined by section 102 of the Liquor Code (47 P.S. § 1-102), the limited winery's products on the limited winery's licensed premises, additional Board-approved location, or a location that is covered by the limited winery's wine exposition permit or farmer's market permit.

(d) Wine expositions. Pursuant to section 505.2(a)(4) of the Liquor Code (47 P.S. § 5-505.2(a)(4)), a limited winery may obtain a permit to participate in alcoholic cider, fermented fruit beverages, mead, wine and food expositions off the licensed premises.

(1) Only the limited winery, including its employees and agents, may sell its winery products at a wine and food exposition.

(2) Sales of the limited winery's products must occur on a location within the exposition that is covered by the limited winery's wine exposition permit.

(e) Farmers markets. Pursuant to section 505.2(a)(4.1) of the Liquor Code (47 P.S. 5-505.2(a)(4.1)), a limited winery may obtain a permit to participate in one or more farmers' markets at any given time and an unlimited number throughout the year.

(1) Only the limited winery, including its employees and agent, may sell its winery products at a farmers market.

(2) Sales of the limited winery's products must occur on a location within the farmers market that is covered by the limited winery's farmers market permit.

5.406. Sales of other items.

(a) In addition to the sale of food, wine- or liquor-scented candles, and any other item authorized by section 505.2(a) of the Liquor Code (47 P.S. § 5-505.2(a)), the following items are permitted to be offered for sale on the licensed premises and at additional Board-approved locations:

(1) Home winemaking, cider making, fermented fruit beverage making and/or mead making equipment and supplies.

(2) Serving and storage accessories as follows: cork removers, wine glasses and decanters, wine racks, serving baskets and buckets, and bottle stoppers.

(3) Publications dealing with wine and winemaking, alcoholic cider and cider making, fermented fruit beverages and fermented fruit beverage making, and mead and mead making.

(4) Promotional items advertising the limited winery including but not limited to tee shirts, glassware, caps, and the like.

(b) If a limited winery wants to sell, on the licensed premises or additional Board-approved location, an item that is not listed in subsection (a), the limited winery shall request, in writing, Board approval to sell that item. The Board will advise the limited winery, in writing, whether approval to sell the item is granted, with or without conditions, or denied.

5.407. Delivery of products.

(a) The only winery products a limited winery is authorized to deliver are those it has produced. A limited winery may not deliver any liquor or malt or brewed beverages, as those terms are defined in section 102 of the Liquor Code (47 P.S. § 1-102), that were manufactured by another entity.

(1) A limited winery shall ensure that winery products sold and delivered to points within this Commonwealth are sealed in original containers and labeled as required by applicable law.

(2) A limited winery may deliver food or other non-alcoholic items that have already been purchased by the customer. A limited winery may not offer for sale items from the delivery vehicle.

(3) The limited winery shall include, with the delivery of any winery products, a sales receipt in accordance with section 5.409(b) (relating to records, receipts, and reports).

(b) A limited winery may utilize its own vehicle(s) to deliver its winery products.

(1) A limited winery's vehicle(s) must be identified in accordance with section 9.22 (relating to identification of vehicles).

(2) A limited winery may utilize the same vehicle to deliver alcoholic cider, fermented fruit beverages or mead as well as wine or wine coolers.

(c) A limited winery may utilize a transporter-for-hire licensee to deliver its winery products.

(1) Alcoholic cider, fermented fruit beverages, and mead may be delivered by a Transporter-for-Hire Class A, B, or C, in accordance with sections 9.1 (relating to definitions) and 9.11 (relating to transportation-for-hire).

(2) Wine or wine coolers must be delivered by a Transporter-for-Hire Class A or Class C, but not Class B, in accordance with sections 9.1 (relating to definitions) and 9.11 (relating to transportation-for-hire).

(d) Prior to delivering wine or wine coolers to an unlicensed individual in Pennsylvania, a limited winery shall obtain a direct wine shipping license pursuant to section 488 of the Liquor Code (47 P.S. § 4-488).

(1) A direct wine shipping license is required whether the delivery of wine or wine coolers is accomplished by the limited winery or by a transporter-for-hire.

(2) A direct wine shipping license is not required for the lawful delivery of wine or wine coolers to another licensee, or for the lawful delivery of alcoholic cider, fermented fruit beverages, or mead.

(e) It is the limited winery's responsibility to ensure that its winery products are not delivered to minors or visibly intoxicated persons and that proper receipts are provided under § 5.409 (relating to records, receipts, and reports).

5.408. Additional Board-approved locations.

(a) A limited winery may not use additional locations, as authorized by section 505.2(a)(3) of the Liquor Code (47 P.S. § 5-505.2(a)(3)), in the operation of a licensed business unless the additional location is approved by the Board.

(b) Applications and fees.

(1) A limited winery seeking Board approval of an additional location shall submit an application to the Board, accompanied by payment of a \$220 fee. Board approval is valid for that calendar year.

(2) If a limited winery wants to continue use of the additional Board-approved location, it shall submit a renewal application on an annual basis, accompanied by payment of a \$75 fee.

(c) If the additional location requires physical alterations or new construction, the Board may grant prior approval for the additional location, as similarly provided in section 403(a) of the Liquor Code (47 P.S. § 4-403(a)). The limited winery may not produce or sell any winery products at the location until the additional location has been re-inspected and the Board has approved the completed alterations or construction and issued the limited winery a license for the additional location.

(d) Portions of an additional Board-approved location must be contiguous.

(e) The licensed premises and any additional Board-approved locations of a limited winery are subject to the following regulations:

(1) Section 3.51 (relating to connection with a residence);

(2) Section 3.52 (relating to connection with another business);

(3) Section 3.53 (relating to restriction on storage and sales where Board has approved connection with other business); and

(4) Section 3.54 (relating to separation between licensed premises and other business).

(f) The limited winery shall appoint a manager for each additional Board-approved location in accordance with section 5.23 (relating to appointment of managers).

(g) Additional Board-approved locations of a limited winery license shall be enclosed by soundly constructed walls, with controlled points of access and egress directly accessible to the general public. The application shall be subject to the provisions of section 468(e)(2) of the Liquor Code, 47 P.S. § 4-468(e)(2).

(h) A limited winery shall provide Board officers who are conducting licensing investigations of additional locations with the following:

(1) leases or other evidence of the right to occupy the premises;

(2) management agreements;

(3) employee agreements;

(4) commission agreements; and

(5) any other agreement the board may deem necessary.

(i) The Board may grant permission for two or more limited wineries to share a single, additional Board-approved location, in accordance with section 505.2(a)(3) of the Liquor Code (47 P.S. § 5-505.2(a)(3)).

(j) The Board shall not grant permission for a limited winery and another manufacturer, such as a brewery, limited distillery or distillery, to share a single, additional Board-approved location.

(k) If a limited winery licensee holds, under identical ownership, a manufacturing license other than a limited winery license, such as a brewery, limited distillery or distillery license, each licensee may have an additional Board-approved location at the same property, but each licensee shall have its own separate designated area at such property.

(l) If a limited winery discontinues use of an additional Board-approved location, it shall notify the Board within 15 days of said discontinuance.

5.409. Records, receipts, and reports.

(a) Records. A limited winery shall maintain and keep on the licensed premises daily permanent records that shall conform to the requirements of section 512 of the Liquor Code (47 P.S. § 5-512).

(1) The records shall include complete details concerning the source of any agricultural commodity, as that term is defined in section 505.2(c) (47 P.S. § 5-505.2(c)), used in the production of limited winery products.

(2) Electronic media recordkeeping, maintained and based upon generally accepted accounting principles, may be kept in lieu of hard copy records.

(3) The recordkeeping system utilized by the limited winery shall have the capability to provide for the reconciling of required data.

(4) Entries shall be verifiable by supporting original documents.

(b) Receipts. In addition to the records prescribed in subsection (a), the limited winery shall prepare a sales receipt at the licensed premises for each sale to a private individual when the purchase is for greater than 16 liters in a single transaction. The sales receipt shall include:

(1) The name and address of the limited winery;

(2) The name and address of the recipient of the winery products if the winery products are being delivered off the licensed premises to the recipient;

(3) The winery products' name, the date of sale, the size of the package(s) in milliliters, number of units sold, the price per unit of the winery products, the Commonwealth sales tax and any other taxes applicable, and the total amount paid by the customer; and

(4) Any items other than winery products that are sold by the limited winery shall be listed on the receipt separately from the winery products.

(c) Any winery products that are delivered shall be accompanied by two copies of a sales receipt that includes the information identified in section 5.409(b)(1)–(4). The limited winery shall require the person who is delivering the winery products to obtain the signature of the recipient, 21 years of age or older, on one copy of the sales receipt.

(1) The person delivering the winery products shall give an unsigned copy of the sales receipt to the recipient of the winery product(s) and shall retain the signed copy of the sales receipt on the licensed premises for 2 years

(2) Delivery shall be accomplished in accordance with section 5.407 (relating to delivery of products).

(d) Reports. A limited winery shall file reports, in the manner set forth by the Board, covering operations of their licensed business during the preceding calendar year.

(1) The reports shall be signed and sworn to by the limited winery or his authorized agent and shall be filed with the Board at the time of the renewal or validation of the license.

(i) A copy of each report shall be retained on the licensed premises for at least 2 years from the date of filing.

(ii) Failure to file the reports will preclude the Board from renewing or validating the license in question.

(2) These reports are in addition to information or reports the 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), as well as any reports required under section 488.1 of the Liquor Code.

CHAPTER 11. PURCHASES AND SALES

Subchapter C. WINES

[LIMITED WINERIES]

11.111. [Sale by limited winery licensees.] Reserved.

11.112. [Reserved].

11.111. [Sale by limited winery licensees.] Reserved.

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

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

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

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

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

extended. The licensee shall also set forth the proposed hours and dates of extended operation, as well as the reason for, and justification of, the proposed extended sales hours.

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

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

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

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

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

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

(i) Pennsylvania-grown fruits and the following products produced from the fruits:

(A) Juices.

(B) Juice concentrates.

(C) Jellies, jams and preserves.

(ii) Pennsylvania-grown mushrooms.

(iii) Home winemaking equipment and supplies.

(iv) Wine serving and storage accessories as follows:

(A) Cork removers.

(B) Wine glasses and decanters.

(C) Wine racks.

(D) Serving baskets and buckets.

(E) Bottle stoppers.

(v) Publications dealing with wine and winemaking.

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

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

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

(9) Sales on the licensed premises of merchandise not listed in paragraph (8) is subject to Board approval. The approval shall be requested by letter addressed to the Board. A limited winery licensee will be advised of approved items through an appropriate means of dissemination.

(10) Mail or telephone orders may be accepted. Delivery of products shall be accomplished through the use of vehicles properly registered by the limited winery licensees or through properly licensed transporters. It is the responsibility of the limited winery licensee to insure that wine is not delivered to minors and that proper invoices are maintained under § 5.103 (relating to limited wineries).

(b) The employment of an agent by a limited winery is governed by § 3.63 (relating to agents).

(c) Records, sales invoices and reports shall be kept as prescribed in § 5.103.

(d) The use of additional Board-approved locations by limited winery licensees is governed by § 3.64 (relating to additional Board-approved locations).]

**Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board
November 9, 2021**

**SUBJECT: Proposed Regulation Package 54-95
Limited Wineries**

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

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

By E-Mail

The Pennsylvania Liquor Control Board is submitting proposed amendments to Chapters 3, 5, and 11 of its regulations. Attached please find a copy of the Regulatory Analysis Form, signed CDL-1 face sheet, Preamble and Annex A (regulatory text). The Office of Attorney General has approved these proposed amendments for form and legality.

These amendments have been delivered today to the legislative oversight committees and to the Legislative Reference Bureau. The Transmittal Sheet is attached.

If you have any questions and comments about this regulatory submission, feel free to contact the Office of Chief Counsel, Pennsylvania Liquor Control Board, at RA-LBLegal@pa.gov.

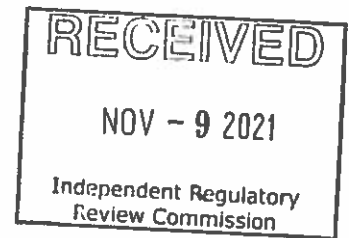
Attachments

cc with attachments:

Honorable Mike Regan, Majority Chairman, Senate Law and Justice Committee
Honorable James Brewster, Minority Chairman, Senate Law and Justice Committee
Honorable Carl Metzgar, Majority Chairman, House Liquor Control Committee
Honorable Daniel Deasy, Minority Chairman, House Liquor Control Committee
Taylor Wamsher, Executive Director, Senate Law and Justice Committee
Stephen Bruder, Executive Director, Senate Law and Justice Committee
Michael Biacchi, 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**

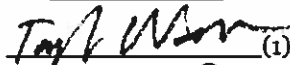


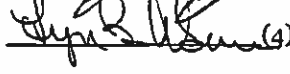
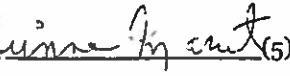
I.D. NUMBER: 54-95
SUBJECT: Limited Wineries
AGENCY: Pennsylvania Liquor Control Board



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

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
11/9/21	 (1)	SENATE LAW & JUSTICE COMMITTEE (Majority)
11/9	 (2)	SENATE LAW & JUSTICE COMMITTEE (Minority)
11/9/21	 (3)	HOUSE LIQUOR CONTROL COMMITTEE (Majority)
11/9/21	 (4)	HOUSE LIQUOR CONTROL COMMITTEE (Minority)
11/9/21	 (5)	LEGISLATIVE REFERENCE BUREAU
___	___ (6)	INDEPENDENT REGULATORY REVIEW COMMISSION