

<h1 style="margin: 0;">Regulatory Analysis Form</h1> <p style="margin: 0;">(Completed by Promulgating Agency)</p>		<p><b>INDEPENDENT REGULATORY REVIEW COMMISSION</b></p>
<p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p><b>RECEIVED</b></p> <p>Independent Regulatory Review Commission</p> <p>January 23, 2024</p>
<p>(1) Agency Pennsylvania Liquor Control Board</p>		<p>IRRC Number: 3395</p>
<p>(2) Agency Number: 54 Identification Number: 92</p>		
<p>(3) PA Code Cite: 40 Pa. Code §§ 3.72—3.73, 5.104, 5.501—5.509, 9.12, 9.33, 11.34, 11.211—11.212 and 11.221—11.222.</p>		
<p>(4) Short Title: Distilleries</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: <a href="mailto:ra-lblegal@pa.gov">ra-lblegal@pa.gov</a></p> <p>Secondary Contact: Jason M. Worley, Acting Chief Counsel (Same Contact Information)</p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input checked="" type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <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 gathers regulations pertaining to distilleries, limited distilleries, and distilleries of historical significance (“DHS”) from Chapters 3, 5, 9, and 11, and places them in a new subchapter in Chapter 5. It will be more convenient for the regulated community to have their industry-specific regulations in one location. The proposed rulemaking amends the regulations to be consistent with the Liquor Code, which has been amended several times since 2011. The proposed changes are intended to provide clarity to the regulated community and allow for easier navigation of the applicable regulations.</p>		
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>Pennsylvania Liquor Code, sections 207(i) and 505.4 (47 P.S. §§ 2-207(i), 5-505.4).</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.

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.

This proposed rulemaking is modeled after the Board's regulations for limited wineries. See 52 Pa.B. 4090. However, that regulation focused only on limited wineries and did not include winery licensees, and this proposed rulemaking is applicable to not only limited distilleries but also distilleries and DHS.

When a draft version of this proposed rulemaking was shared with industry members, the Board was asked why this proposed rulemaking applies to all three types of distillery licensees, since the Board's regulations for limited wineries are not applicable to wineries. Industry members suggested that this proposed rulemaking should likewise be restricted to only limited distilleries, but the Board respectfully declines to adopt this suggestion as explained herein.

Wineries were not included in the limited winery regulations because wineries cannot sell directly to the public. The Liquor Code provides that wineries may only sell to other Board-licensed wineries. 47 P.S. §§ 1-102, 5-501. There was no reason to include wineries in the Board's limited winery regulations because the regulations address activities that wineries cannot engage in.

However, all three types of distilleries—limited distilleries, distilleries, and DHS—are statutorily authorized to sell product to the Board, to the Board's licensees, and to the public. 47 P.S. § 5-505.4. Therefore, it is appropriate to regulate them collectively, with exceptions where necessary because of distinctions made in the Liquor Code.

Industry members also questioned the inclusion of DHS licensees. The Liquor Code describes DHS as follows:

The board may issue a distillery of historical significance license to any distillery which was established prior to January 1, 1875. The holder of the license may manufacture and sell liquor produced on the licensed premises to the board, to entities licensed by the board and to the public under such conditions and regulations as the board may enforce. Production at the distillery of historical significance shall be limited to an amount not to exceed twenty thousand (20,000) gallons per year. The distillery does not need to establish continuous operation since January 1, 1875, in order to qualify for a license under this section.

47 P.S. § 5-505.4(a). Currently there are no DHS licensees, which is why industry members questioned the inclusion of the DHS in this proposed rulemaking.

The Board believes it is appropriate to include the DHS license because the Board cannot state with absolute certainty that there won't be a DHS license holder in the future. Moreover, the General Assembly may amend the definition of a DHS in a manner that generates more DHS licensees – for

example, change the date of establishment from January 1, 1875, to January 1, 1955.

Of the ten existing regulations addressed in this proposed rulemaking, half are dedicated exclusively to DHS licenses (sections 3.72, 3.73, 5.104, 11.211, and 11.212). Rather than ignore the DHS regulations and add regulations exclusively for distilleries and limited distilleries, the Board proposes to delete DHS regulations and incorporate the topics addressed by those regulations into a new subchapter.

It is cumbersome to continually reiterate each type of distillery license, particularly given that the proposed rulemaking aims to regulate these licensees as a group to the greatest extent possible. To improve readability, the capitalized “Distilleries” will be used to refer collectively to distillery, limited distillery, and DHS licensees.

The regulatory text in each of the following sections has been deleted and those sections have been reserved: sections 3.72 (relating to creation), 3.73 (relating to agents), 5.104 (relating to licensed distilleries of historical significance), 11.211 (relating to sale by licensed distilleries of historical significance), 11.212 (relating to additional conditions), 11.221 (relating to sale by licensed limited distilleries and distilleries) and 11.222 (relating to additional conditions). The subject matter of these sections has been relocated as follows:

<u>Existing section:</u>	<u>Subject matter relocated to:</u>
3.72	5.503
3.73	5.505
5.104	5.509
11.211	5.503, 5.505, 5.509
11.212	5.503, 5.505, 5.507
11.221	5.506
11.222	5.503, 5.505, 5.507

The proposed rulemaking creates Subchapter L, which applies to all Distilleries licensed under section 505.4 of the Liquor Code (47 P.S. § 5-505.4). The proposed rulemaking creates section 5.501 (relating to definitions), defining terms particular to this subchapter that have not already been defined by the Liquor Code.

The proposed rulemaking also creates section 5.502 (relating to tasting samples) based on the privileges available to distilleries and limited distilleries found in section 505.4 of the Liquor Code (47 P.S. § 5-505.4). Its purpose in the proposed rulemaking is to extend to DHS licensees the ability to offer samples. Subsection 505.4(a) of the Liquor Code, which establishes the Board’s authority to issue a DHS license, provides that “The holder of the license may manufacture and sell liquor produced on the licensed premises to the board, to entities licensed by the board and to the public **under such conditions and regulations as the board may enforce.**” (47 P.S. § 5-505.4(a) (emphasis added). The proposed rulemaking clarifies that only limited distilleries may offer samples at additional Board-approved locations, liquor and food expositions, and farmers markets. The Liquor Code does not extend these privileges to distilleries, and therefore the Board does not believe it is appropriate to extend these privileges to DHS licensees.

The proposed rulemaking creates section 5.503 (relating to sales generally). This section clarifies the days and hours that a Distillery may sell its product, and what types of payment the Distillery may accept from licensees or unlicensed individuals.

The proposed rulemaking includes section 5.504 (relating to sales for on-premises consumption) which updates the types of liquor or malt or brewed beverages a limited distillery or distillery may sell for consumption on the premises. Act 39 of 2016 amended the Liquor Code to allow limited distilleries and distillery licensees to sell alcoholic ciders, fermented fruit beverages, mead, wines and wine coolers, produced by a licensed limited winery, liquor produced by a licensed distillery or limited distillery and malt or brewed beverages produced by a licensed brewery. (47 P.S. § 5-505.4(b)(1)). The proposed rulemaking does not extend these privileges to DHS licensees, as the Board believes such privileges are more appropriately given through legislation.

In addition, the proposed rulemaking clarifies that any limited distillery or distillery selling malt or brewed beverages through a malt or brewed beverage dispensing system will be required to 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. Limited distilleries or distilleries will be held to the same standard of beer line cleaning as other retail dispensers who sell beer by draft. Similarly, a limited distillery or distillery 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.

Proposed section 5.505 (relating to sales for off-premises consumption) pertains to sales for off-premises consumption. The section also incorporates the regulatory language regarding agents, which is currently located at section 3.73 (relating to agents). These provisions are consistent with the Liquor Code and are included in the regulations to provide DHS licensees with the same privileges as limited distilleries and distilleries. The General Assembly has extended additional privileges to limited distilleries, such as being permitted to sell at additional Board-approved locations, at a liquor and food exposition, and at farmers markets. The proposed rulemaking does not extend these privileges to DHS licensees, as the Board believes such privileges are more appropriately given through legislation.

Proposed section 5.506 (relating to sales of other items) is substantially similar to existing regulation 11.221. This section clarifies what sales of other items are permitted and extends that privilege to DHS licensees.

Proposed section 5.507 (relating to delivery of products) includes information contained in existing regulation 11.222 but has been expanded to include responsibilities pertaining to delivery. The Distillery is required to retain a signed copy of the sales receipt. The copy shall be signed by the recipient who must be 21 years of age or older.

Proposed section 5.508 (relating to licensed premises and additional board-approved locations) provides a signpost to other regulations that pertain to licensed locations that Distilleries might not otherwise be aware of. Subsection (b) provides guidance to limited distilleries with regard to additional Board-approved locations.

Proposed section 5.509 (relating to records and receipts) is an expansion of now-deleted section 5.104. 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 product. Invoices are commonly understood to be issued prior to payment; receipts are issued after payment. A Distillery cannot sell products prior to receiving payment; 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 Distillery 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 addition to the newly proposed sections in Chapter 5, Subchapter L, three regulations have been amended to make the Board’s regulations consistent with the provisions of the Liquor Code:

- Section 9.12 (relating to applications for transporter-for-hire licenses) has been amended at subsection (c). The amendment allows transporter-for-hire licensees, Class C, to transport liquor from all Distilleries, not just DHS licensees, to all Distillery customers. This amendment is appropriate since all Distilleries are authorized to sell to the Board, licensees of the Board, and the public.
- Section 9.33 (relating to importation by distilleries) has been updated in multiple subsections to bring the section into conformity with the Liquor Code. The amendments remove the requirement that a Distillery may not purchase liquor from another Commonwealth manufacturer unless the purchasing Distillery holds an importer license; this is no longer required by the Liquor Code. The section was further updated with regard to bulk sales, vendor permits, and paperwork requirements.
- Section 11.34 (relating to prohibited purchases and sales). The amendment deletes subsection (c), which provides: “Distillers may not sell alcohol to anyone in this Commonwealth, except to alcohol permittees in accordance with this subchapter, or to the Board.” With the passage of Act 113 of 2011, which created limited distilleries and distilleries, this language is no longer consistent with the Liquor Code.

The affected parties include all present and future holders of a limited distillery license, a distillery license, or a DHS license. As of November 29, 2023, there are eight active distillery licensees, 215 active limited distillery licensees, and zero active DHS licensees that could be affected by this proposed rulemaking.

(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 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?

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 rulemaking 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 regulation will not affect any other existing or proposed regulations of the Liquor Control Board 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.)

A draft copy of the proposed regulation was provided to the Pennsylvania Distillers Guild (PDG) and American Distilled Spirits Alliance (ADSA). The PDG provided an e-mail response; the ADSA spoke with counsel for the Board via telephone. Both groups were primarily concerned with a section in the draft regulations pertaining to safety—the safety of the distilled products and the safety of the distillery itself. Both groups advised the Board that Distilleries are already heavily regulated in this regard. Because of this feedback, the Board eliminated the section on safety from the proposed regulations. The ADSA also raised the aforementioned issues regarding the inclusion of DHS and distillery licensees, however, the Board declined to adopt the ADSA’s approach on this matter.

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

As of November 29, 2023, there are eight active distillery licensees, 215 active limited distillery licensees, and zero active DHS licensees that could be affected by this proposed rulemaking.

(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.

As of November 29, 2023, there were eight active distillery licensees, 215 active limited distillery licensees, and zero active DHS licensees with an active license from the Board.

(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.

Aside from benefit expected to inure to the small businesses that are also active Distillery 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 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 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 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 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.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Regulated Community</b>	\$0	\$0	\$0	\$0	\$0	\$0

<b>Local Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Savings</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>COSTS:</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Regulated Community</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Local Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Costs</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Local Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Revenue Losses</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

<b>Program</b>	<b>FY -3 2020-2021</b>	<b>FY -2 2021-2022</b>	<b>FY -1 2022-2023</b>	<b>Current FY 2023-2024</b>
N/A	N/A	N/A	N/A	N/A

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

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (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 distilleries 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 regulation would fall within the definition of “small business.”

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



(c) The regulation is anticipated to have a positive impact on small businesses. Because the proposed regulation complies all regulations pertaining specifically to Distilleries 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 that directly impact the privileges that are available to Distilleries, 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 all of the regulated community falls within the category of small business. 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.

As discussed in the answer to question 14, the Board included, in a draft version of the proposed regulations, a section on safety—the safety of the distilled products and the safety of the distillery itself. After the Board received feedback from the regulated community that Distilleries are already heavily regulated in this regard, this section was eliminated from the proposed regulations. Therefore, the Board has selected the least burdensome acceptable alternative.

(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 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 section 512 of the Liquor Code

(47 P.S. § 5-512).

- (b) The rulemaking does not establish any schedules or deadlines for compliance or reporting requirements.
- (c) The rulemaking does not contain any compliance or reporting requirements that would need to be consolidated or simplified for small businesses.
- (d) The rulemaking does not establish any performing standards for small businesses to replace design or operations standards.
- (e) The 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: June 2024
- C. The expected date of delivery of the final-form regulation: May 2024
- D. The expected effective date of the final-form regulation: August 2024
- E. The expected date by which compliance with the final-form regulation will be required: August 2024
- F. The expected date by which required permits, licenses or other approvals must be obtained: August 2024

(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

Independent Regulatory  
Review Commission

January 23, 2024

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved  
as to form and legality.

Attorney General:

BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)  
1/5/2024  
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. 54-92

DATE OF ADOPTION: March 1, 2023

BY: T. J. Hobb

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

March 1, 2023  
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 9. TRANSPORTATION, IMPORTATION, DISPOSITION AND STORAGE

CHAPTER 11. PURCHASES AND SALES

**PROPOSED RULEMAKING**  
**LIQUOR CONTROL BOARD**  
**40 PA. CODE CHS. 3, 5, 9, AND 11**

**Distilleries**

The Liquor Control Board (Board), under the authority of sections 207(i) and 505.4 of the Liquor Code (47 P.S. §§ 2-207(i), 5-505.4), proposes to add §§ 5.501—5.509; to amend § 9.12, § 9.33, and § 11.34; and to reserve §§ 3.72—3.73, § 5.104, §§ 11.211—11.212 and §§ 11.221—11.222, to read as set forth in Annex A.

*Summary*

This proposed rulemaking gathers regulations pertaining to distilleries, limited distilleries, and distilleries of historical significance (“DHS”) from Chapters 3, 5, 9, and 11, and places them in a new subchapter in Chapter 5. It will be more convenient for the regulated community to have their industry-specific regulations in one location. The proposed rulemaking amends the regulations to be consistent with the Liquor Code, which has been amended several times since 2011. The proposed changes are intended to provide clarity to the regulated community and allow for easier navigation of the applicable regulations.

This proposed rulemaking is modeled after the Board’s regulations for limited wineries. See 52 Pa.B. 4090. However, that regulation focused only on limited wineries and did not include winery licensees, and this proposed rulemaking is applicable to not only limited distilleries but also distilleries and DHS.

When a draft version of this proposed rulemaking was shared with industry members, the Board was asked why this proposed rulemaking applies to all three types of distillery licensees, since the Board’s regulations for limited wineries are not applicable to wineries. Industry members suggested that this proposed rulemaking should likewise be restricted to only limited distilleries, but the Board respectfully declines to adopt this suggestion as explained herein.

Wineries were not included in the limited winery regulations because wineries cannot sell directly to the public. The Liquor Code provides that wineries may only sell to other Board-licensed wineries. 47 P.S. §§ 1-102, 5-501. There was no reason to include wineries in the Board’s limited winery regulations because the regulations address activities that wineries cannot engage in.

However, all three types of distilleries—limited distilleries, distilleries, and DHS—are statutorily authorized to sell product to the Board, to the Board’s licensees, and to the public. 47 P.S. § 5-505.4. Therefore, it is appropriate to regulate them collectively, with exceptions where necessary because of distinctions made in the Liquor Code.

Industry members also questioned the inclusion of DHS licensees. The Liquor Code describes DHS as follows:

The board may issue a distillery of historical significance license to any distillery which was established prior to January 1, 1875. The holder of the license may manufacture and sell liquor produced on the licensed premises to the board, to entities licensed by the board

and to the public under such conditions and regulations as the board may enforce. Production at the distillery of historical significance shall be limited to an amount not to exceed twenty thousand (20,000) gallons per year. The distillery does not need to establish continuous operation since January 1, 1875, in order to qualify for a license under this section.

47 P.S. § 5-505.4(a). Currently there are no DHS licensees, which is why industry members questioned the inclusion of the DHS in this proposed rulemaking.

The Board believes it is appropriate to include the DHS license because the Board cannot state with absolute certainty that there won't be a DHS license holder in the future. Moreover, the General Assembly may amend the definition of a DHS in a manner that generates more DHS licensees – for example, change the date of establishment from January 1, 1875, to January 1, 1955.

Of the ten existing regulations addressed in this proposed rulemaking, half are dedicated exclusively to DHS licenses (sections 3.72, 3.73, 5.104, 11.211, and 11.212). Rather than ignore the DHS regulations and add regulations exclusively for distilleries and limited distilleries, the Board proposes to delete DHS regulations and incorporate the topics addressed by those regulations into a new subchapter.

It is cumbersome to continually reiterate each type of distillery license, particularly given that the proposed rulemaking aims to regulate these licensees as a group to the greatest extent possible. To improve readability, the capitalized “Distilleries” will be used to refer collectively to distillery, limited distillery, and DHS licensees.

The regulatory text in each of the following sections has been deleted and those sections have been reserved: sections 3.72 (relating to creation), 3.73 (relating to agents), 5.104 (relating to licensed distilleries of historical significance), 11.211 (relating to sale by licensed distilleries of historical significance), 11.212 (relating to additional conditions), 11.221 (relating to sale by licensed limited distilleries and distilleries) and 11.222 (relating to additional conditions). The subject matter of these sections has been relocated as follows:

<b><u>Existing section:</u></b>	<b><u>Subject matter relocated to:</u></b>
3.72	5.503
3.73	5.505
5.104	5.509
11.211	5.503, 5.505, 5.509
11.212	5.503, 5.505, 5.507
11.221	5.506
11.222	5.503, 5.505, 5.507

The proposed rulemaking creates Subchapter L, which applies to all Distilleries licensed under section 505.4 of the Liquor Code (47 P.S. § 5-505.4). The proposed rulemaking creates section 5.501 (relating to definitions), defining terms particular to this subchapter that have not already been defined by the Liquor Code.

The proposed rulemaking also creates section 5.502 (relating to tasting samples) based on the privileges available to distilleries and limited distilleries found in section 505.4 of the Liquor Code (47 P.S. § 5-505.4). Its purpose in the proposed rulemaking is to extend to DHS licensees the ability to offer samples. Subsection 505.4(a) of the Liquor Code, which establishes the Board's authority to issue a DHS license,

provides that “The holder of the license may manufacture and sell liquor produced on the licensed premises to the board, to entities licensed by the board and to the public **under such conditions and regulations as the board may enforce.**” (47 P.S. § 5-505.4(a) (emphasis added). The proposed rulemaking clarifies that only limited distilleries may offer samples at additional Board-approved locations, liquor and food expositions, and farmers markets. The Liquor Code does not extend these privileges to distilleries, and therefore the Board does not believe it is appropriate to extend these privileges to DHS licensees.

The proposed rulemaking creates section 5.503 (relating to sales generally). This section clarifies the days and hours that a Distillery may sell its product, and what types of payment the Distillery may accept from licensees or unlicensed individuals

The proposed rulemaking includes section 5.504 (relating to sales for on-premises consumption) which updates the types of liquor or malt or brewed beverages a limited distillery or distillery may sell for consumption on the premises. Act 39 of 2016 amended the Liquor Code to allow limited distilleries and distillery licensees to sell alcoholic ciders, fermented fruit beverages, mead, wines and wine coolers, produced by a licensed limited winery, liquor produced by a licensed distillery or limited distillery and malt or brewed beverages produced by a licensed brewery. (47 P.S. § 5-505.4(b)(1)). The proposed rulemaking does not extend these privileges to DHS licensees, as the Board believes such privileges are more appropriately given through legislation.

In addition, the proposed rulemaking clarifies that any limited distillery or distillery selling malt or brewed beverages through a malt or brewed beverage dispensing system will be required to 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. Limited distilleries or distilleries will be held to the same standard of beer line cleaning as other retail dispensers who sell beer by draft. Similarly, a limited distillery or distillery 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.

Proposed section 5.505 (relating to sales for off-premises consumption) pertains to sales for off-premises consumption. The section also incorporates the regulatory language regarding agents, which is currently located at section 3.73 (relating to agents). These provisions are consistent with the Liquor Code and are included in the regulations to provide DHS licensees with the same privileges as limited distilleries and distilleries. The General Assembly has extended additional privileges to limited distilleries, such as being permitted to sell at additional Board-approved locations, at a liquor and food exposition, and at farmers markets. The proposed rulemaking does not extend these privileges to DHS licensees, as the Board believes such privileges are more appropriately given through legislation.

Proposed section 5.506 (relating to sales of other items) is substantially similar to existing regulation 11.221. This section clarifies what sales of other items are permitted and extends that privilege to DHS licensees.

Proposed section 5.507 (relating to delivery of products) includes information contained in existing regulation 11.222 but has been expanded to include responsibilities pertaining to delivery. The Distillery is required to retain a signed copy of the sales receipt. The copy shall be signed by the recipient who must be 21 years of age or older.

Proposed section 5.508 (relating to licensed premises and additional board-approved locations) provides a signpost to other regulations that pertain to licensed locations that Distilleries might not otherwise be aware of. Subsection (b) provides guidance to limited distilleries with regard to additional Board-approved locations.

Proposed section 5.509 (relating to records and receipts) is an expansion of now-deleted section 5.104. 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 product. Invoices are commonly understood to be issued prior to payment; receipts are issued after payment. A Distillery cannot sell products prior to receiving payment; 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 Distillery 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 addition to the newly proposed sections in Chapter 5, Subchapter L, three regulations have been amended to make the Board’s regulations consistent with the provisions of the Liquor Code:

- Section 9.12 (relating to applications for transporter-for-hire licenses) has been amended at subsection (c). The amendment allows transporter-for-hire licensees, Class C, to transport liquor from all Distilleries, not just DHS licensees, to all Distillery customers. This amendment is appropriate since all Distilleries are authorized to sell to the Board, licensees of the Board, and the public.
- Section 9.33 (relating to importation by distilleries) has been updated in multiple subsections to bring the section into conformity with the Liquor Code. The amendments remove the requirement that a Distillery may not purchase liquor from another Commonwealth manufacturer unless the purchasing Distillery holds an importer license; this is no longer required by the Liquor Code. The section was further updated with regard to bulk sales, vendor permits, and paperwork requirements.
- Section 11.34 (relating to prohibited purchases and sales). The amendment deletes subsection (c), which provides: “Distillers may not sell alcohol to anyone in this Commonwealth, except to alcohol permittees in accordance with this subchapter, or to the Board.” With the passage of Act 113 of 2011, which created limited distilleries and distilleries, this language is no longer consistent with the Liquor Code.

#### *Affected Parties*

The affected parties include all present and future holders of a limited distillery license, a distillery license, or a DHS license. As of November 29, 2023, there are eight active distillery licensees, 215 active limited distillery licensees, and zero active DHS licensees that could be affected by this proposed rulemaking.

#### *Paperwork Requirements*

The proposed regulation would require minimal paperwork to be kept.

#### *Fiscal Impact*

The proposed regulatory changes are intended to make the Board's Regulations consistent with the Liquor Code. It is anticipated that there will be minimal fiscal impact.

*Effective Date*

This proposed rulemaking will become effective six months after publication of the final-form in the *Pennsylvania Bulletin*.

*Public Comments*

Interested persons are invited to submit written comments about this proposed rulemaking to Jason M. Worley, Acting Chief Counsel, or Norina Foster, Assistant Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001, within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. 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 \_\_\_\_\_, 2024, 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 H. [LICENSED DISTILLERIES OF HISTORICAL SIGNIFICANCE] RESERVED.**

**§ 3.72. [Creation] Reserved.**

[ Under section 505.3 of the Liquor Code (47 P. S. § 5-505.3), distilleries of historical significance established more than 100 years prior to January 1, 1975, which hold a license under section 505 of the Liquor Code (47 P. S. § 5-505) may sell liquor produced on the licensed premises subject to §§ 3.73, 5.104, 11.211 and 11.212 (relating to agents; licensed distilleries of historical significance; sale by licensed distilleries of historical significance; and additional conditions).]

**§ 3.73. [Agents] Reserved.**

[ Agents may advertise and promote the sale of merchandise of brands sold by the licensed distillery of historical significance by whom the agents are employed.]

\* \* \* \* \*

**CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES**

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

**§ 5.104. [Licensed distilleries of historical significance] Reserved.**

[ (a) Records. A distillery of historical significance which holds a license obtained under section 505 of the Liquor Code (47 P. S. § 5-505) 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).

(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 invoices shall be prepared in accordance with the following:

(1) The sales invoice shall be imprinted or affixed with the name and address of the distillery of historical significance.

(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 liquor and the net cost to the customer. The name and address of private individuals will not be required on sales invoices covering quantities of 4 wine gallons 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 shall indicate liquor transported via transporter-for-hire, Class C carriers. The distillery 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 acknowledgements of delivery shall be maintained on the licensed premises for a period of 2 years.

(5) The sales invoice covering the sale of liquor may not include the sale of other commodities.

(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 a period of 2 years.

(c) Monthly reports. A licensed distillery of historical significance shall file monthly reports on forms provided by the Board covering all operations of their licensed business during the preceding month. The reports shall be signed and sworn to by the licensee or his authorized agent and shall be filed with the Board on or before the 15th day of the month immediately succeeding the month for which the reports are prepared. A copy of each report shall be retained on the licensed premises for a period of at least 2 years from the date of filing.]

\* \* \* \* \*

**SUBCHAPTER L. DISTILLERIES OF HISTORICAL SIGNIFICANCE,  
LIMITED DISTILLERIES, AND DISTILLERIES**

**§ 5.501. Definitions.**

**§ 5.502. Tasting samples.**

**§ 5.503. Sales generally.**

**§ 5.504. Sales for on-premises consumption.**

**§ 5.505. Sales for off-premises consumption.**

**§ 5.506. Sales of other items.**

**§ 5.507. Delivery of products.**

**§ 5.508. Licensed premises and additional Board-approved locations.**

**§ 5.509. Records and receipts.**

**§ 5.501. Definitions.**

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

**“Distilled liquor” shall mean any potable distillate from grains, wine, fruits, vegetables or molasses.**

**“Distillery,” when capitalized and used in this subchapter, shall mean all manufacturers licensed under section 5-505.4 of the Liquor Code (47 P.S. § 5-505.4), including distilleries of historical**

significance, limited distilleries, and distilleries, unless otherwise indicated. Distilleries shall manufacture a minimum of 100 gallons of distilled liquor or distillery products per calendar year.

“Distillery products” shall mean all potable alcoholic products containing distilled liquor that have been produced by a Distillery.

“Original container” shall mean all bottles, barrels or casks, or other suitable containers that have been securely capped or sealed by the Distillery at the place of manufacture, with the name and address of the Distillery affixed to the bottle, barrel or cask, or other container.

“Produce” shall mean to distill, blend, rectify, redistill, or reduce the proof of distilled liquor.

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

#### § 5.502. Tasting samples.

(a) A Distillery may provide tasting samples of distillery products it has produced in accordance with section 505.4 of the Liquor Code (47 P.S. § 5-505.4) and section 13.211 (relating to tasting events). To the extent possible, section 505.4 of the Liquor Code and section 13.211 shall be construed together. When there is a conflict between the 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 505.4 of the Liquor Code shall prevail.

(b) Only limited distilleries may offer tasting samples at additional Board-approved locations, liquor and food expositions, and farmers markets.

#### § 5.503. Sales generally.

(a) A Distillery may sell distillery products between the hours of nine o'clock antemeridian and twelve o'clock antemeridian Monday through Saturday and Sunday between the hours of nine o'clock antemeridian through eleven o'clock postmeridian.

(b) A Distillery may accept the following methods of payment from licensees and unlicensed individuals: checks drawn on their account, cash, money orders, cashier checks, debit cards, electronic funds transfers and credit cards issued by banking or financial institutions, subject to State or Federal regulations.

#### § 5.504. Sales for on-premises consumption.

(a) A Distillery may sell for consumption on the licensed premises distillery products it has produced in accordance with the Liquor Code and this part. Sales of distillery products for on-premises consumption may be made by the glass, bottle or any other open or closed container.

(1) A limited distillery may also sell, for on-premises consumption at its additional Board-approved locations, distillery products it has produced.

(b) A limited distillery or distillery may sell, for on-premises consumption, alcoholic ciders, fermented fruit beverages, mead, wines and wine coolers, produced by a licensed limited winery, distilled liquor produced by a licensed distillery or limited distillery and malt or brewed beverages produced by a licensed brewery, in accordance with section 505.4(b)(1) and (c)(1) of the Liquor Code (47 P.S. § 5-505.4(b)(1), (c)(1)).

(c) A limited distillery or distillery 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 distillery or distillery 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.

#### § 5.505. Sales for off-premises consumption.

(a) A Distillery may sell for consumption off the licensed premises only distillery products it has produced in accordance with the Liquor Code and this part.

(b) A Distillery may accept orders for the purchase of its distillery products in person or via mail, telephone, or the Internet. A Distillery shall make deliveries of its distillery products in accordance with section 5.507 (relating to delivery of products).

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

(1) Agents may only advertise and promote the sale of distillery products produced by the Distillery that has employed the agent. Agents may solicit orders and make deliveries on behalf of the Distillery in accordance with section 5.507 (relating to delivery of products).

(2) Agents may sell, as that word is defined by section 102 of the Liquor Code (47 P.S. § 1-102), distillery products only at locations where the Liquor Code authorizes the Distillery to sell distillery products.

(d) *Liquor and food exposition.* Pursuant to section 505.4(b)(8) of the Liquor Code (47 P.S. § 5-505.4(b)(8)), a limited distillery may obtain a permit to participate in liquor and food expositions off the licensed premises.

(1) Only the limited distillery, including its agents, may sell its distillery products at a liquor and food exposition.

(2) Sales of the limited distillery's distillery products must occur on a location within the exposition that is covered by the limited distillery's liquor and food exposition permit.

(e) *Farmers markets.* Pursuant to section 505.4(b)(9) of the Liquor Code (47 P.S. 5-505.4(b)(9)), a limited distillery may obtain a permit to participate in more than one farmers market at any given time and an unlimited number throughout the year.

(1) Only the limited distillery, including its agents, may sell its distillery products at a farmers market.

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

#### § 5.506. Sales of other items.

(a) In addition to the sale of food, a Distillery is permitted to offer for sale on the licensed premises the following items:

(1) Liquor accessories as follows:

(i) Cork removers and other bottle openers.

(ii) Glasses, shot glasses, decanters and flasks.

(iii) Pourers and bottle stoppers.

(iv) Cocktail mixers, shakers and other cocktail preparation accessories.

(v) Cocktail forks, toothpicks, stirrers, napkins and gift bags.

(2) Publications dealing with liquor.

(3) Promotional items advertising the Distillery such as tee shirts, glassware, caps, and the like.

(b) A limited distillery is also permitted to offer the items listed in subsection (a) for sale at additional Board-approved locations, at a liquor and food exposition where the limited distillery has a permit, or at a farmers market where the limited distillery has a permit.

(c) If a Distillery wants to sell an item that is not listed in subsection (a), the Distillery shall request, in writing, Board approval to sell that item. The Board will advise the Distillery, in writing, whether approval to sell the item is granted, with or without conditions, or denied.

#### § 5.507. Delivery of products.

(a) The only distillery products a Distillery is authorized to deliver are those it has produced. A Distillery 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 Distillery shall ensure that distillery products sold and delivered to points within this Commonwealth are sealed in original containers and labeled as required by applicable law.

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

(3) A Distillery shall include, with the delivery of any distillery products, a sales receipt in accordance with section 5.509(b) (relating to records, receipts, and reports).

(b) A Distillery may utilize its own vehicle(s) to deliver its distillery products.

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

(c) A Distillery may utilize a transporter-for-hire licensee to deliver its distillery products. Distillery products 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) It is a Distillery's responsibility to ensure that its distillery products are not delivered to minors or visibly intoxicated persons and that proper records and receipts are provided under § 5.509 (relating to records, receipts, and reports).

§ 5.508. Licensed premises and additional Board-approved locations.

(a) A Distillery's licensed premises and any additional Board-approved locations of a limited distillery 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).

(b) Limited distilleries.

(1) A limited distillery may not use additional locations, as authorized by section 505.4(b)(2) of the Liquor Code (47 P.S. § 5-505.4(b)(2)), in the operation of a licensed business unless the additional location is approved by the Board.

(2) Applications and fees.

(I) A limited distillery 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.

(II) If a limited distillery 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.

(3) 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)). Until the additional location has been re-inspected and the Board has approved the completed alterations or construction and issued the limited distillery a license for the additional location, the limited distillery may not produce or sell at the location its distillery products or any alcoholic ciders, fermented fruit beverages, mead, wines and wine coolers, produced by a licensed limited winery, distilled liquor produced by a licensed distillery or limited distillery or malt or brewed beverages produced by a licensed brewery.

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

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

(6) Additional Board-approved locations of a limited distillery 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).

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

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

(ii) management agreements;

(iii) employee agreements;

(iv) commission agreements; and

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

(8) The Board may grant permission for two or more limited distilleries to share a single, additional Board-approved location, in accordance with section 505.4(b)(2)(ii) of the Liquor Code (47 P.S. § 5-505.4(b)(2)(ii)). The Board shall not grant permission for a limited distillery to share a single, additional Board-approved location with a brewery, limited winery, distillery, or distillery of historical significance.

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

#### § 5.509. Records and receipts.

(a) Records. A Distillery shall maintain and keep on the licensed premises in hard copy or electronic media consistent with generally accepted accounting procedures, for a period of at least 2 years,

**complete and accurate daily records that shall conform to the requirements of section 512 of the Liquor Code (47 P.S. § 5-512).**

**(1) The recordkeeping system utilized by a Distillery shall have the capability to provide for the reconciling of required data. Entries shall be verifiable by supporting original documents.**

**(b) Receipts. In addition to the records prescribed in subsection (a), a Distillery shall prepare a sales receipt at the licensed premises for each sale. The sales receipt shall include:**

**(1) The name and address of the Distillery;**

**(2) The name and address of the recipient of the distillery product if the distillery product is being delivered off the licensed premises to the recipient;**

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

**(4) Any items other than the distillery product that are sold by the Distillery shall be listed on the receipt separately from the products.**

**(c) Any distillery product that is delivered shall be accompanied by two copies of a sales receipt that includes the information identified in section 5.509(b)(1-4) (relating to records, receipts, and reports). The Distillery shall require the person who is delivering the distillery product 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 distillery product shall give an unsigned copy of the sales receipt to the recipient of the distillery product and shall give the signed copy of the sales receipt to the Distillery to be retained on the Distillery's licensed premises for 2 years.**

**(2) Delivery shall be accomplished in accordance with section 5.507 (relating to delivery of products).**

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## **CHAPTER 9. TRANSPORTATION, IMPORTATION, DISPOSITION AND STORAGE**

### **Subchapter A. TRANSPORTATION OF LIQUOR, MALT OR BREWED BEVERAGES OR ALCOHOL**

#### **§ 9.12. Applications for Transporter-for-Hire Licenses.**

(a) Transporter-for-Hire License, Class A. An application for a Transporter-for-Hire License, Class A, shall be filed [on forms furnished by] with the Board and shall be accompanied by application and license fees in accordance with section 614-A of The Administrative Code of 1929 (71 P. S. § 240.14A). The license will be issued for the calendar year and the license fee will be prorated quarterly, in accordance with section 508 of the Liquor Code (47 P. S. § 5-508).



(b) Transporter-for-Hire License, Class B. An application for a Transporter-for-Hire License, Class B, shall be accompanied by application and license fees in accordance with section 614-A of The Administrative Code of 1929. The licenses will be issued for the calendar year.

(c) Transporter-for-Hire License, Class C. An application for Transporter-for-Hire License, Class C, shall be accompanied by application and license fees in accordance with section 614-A of The Administrative Code of 1929. The license will be issued for the calendar year. To secure this license, the applicant shall demonstrate that he maintains a fleet of vehicles primarily engaged in general parcel consignment, servicing all points within this Commonwealth and shall demonstrate that he can transport liquor from points in this Commonwealth to Board facilities, from Pennsylvania licensed **[limited winery locations to limited winery customers and from distilleries of historical significance to distillery] manufacturers to their** customers.

\* \* \* \* \*

## Subchapter B. IMPORTATION OF LIQUOR

### § 9.33. Importation by distilleries.

(a) A distillery holding a Manufacturer License may not import liquor from outside this Commonwealth **[nor purchase liquor from a resident manufacturer]** unless the distiller also holds an Importer License. When both licenses are held, liquor may be imported **[or purchased from a Commonwealth manufacturer]**, in bulk, to be used in the manufacture, rectification, blending and reduction in proof for straight bottling. Liquors which have been rebottled, as well as rectified and manufactured products, may be sold to the Board, exported to other states, or sold to **[the holder of an Importer License] the public, other manufacturing licensees and retail licensees** within this Commonwealth. The importation **[or purchase of liquor]** shall be for the sole use and benefit of the holder of the Manufacturer License, and the liquor so imported **[or purchased]** may not be resold in its original state.

**[ (b) Commonwealth manufacturers holding Importer Licenses may purchase liquor in bulk from other manufacturers in this Commonwealth in accordance with the procedure in subsection (c).**

(c) **(b)** Bulk sales will be permitted only in quantities of 50 gallons or more for each sale. Manufacturers desiring to purchase liquor in bulk shall place their orders with the Purchasing Division of the Board. An order shall include the following:

- (1) The name and address of the **[manufacturer] purchaser.**
- (2) The name and address of the person or firm to which the order is directed.
- (3) A description of the liquor desired.
- (4) The manner in which the liquor is to be packed, including the size and number of containers.
- (5) The manner in which the liquor is to be shipped, including the name of the carrier **[. If the carrier is a trucking company, it], which** shall hold a valid transporter-for-hire license issued by the Board.

**[ (d) (c)** Every order shall be accompanied by a remittance in the amount of \$5.

[ (e) ] **(d)** Upon approval by the Board of an order from a manufacturer, the order will be forwarded to the person or firm to which directed and the vendor will be notified to make shipment to the Board at the destination given in the order. The Board will also furnish the purchaser with a notice of release **[in duplicate, both copies of]** which shall be signed by the purchaser and surrendered to the carrier upon delivery of the liquor. The carrier shall then sign the original in the space provided **[and forward it to the Board, retaining the other copy] and retain it** for his file.

[ (f) ] **(e)** The Board will not be liable to a vendor for the purchase price of liquor purchased in bulk or for transportation charges or claims, in connection therewith.

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## **CHAPTER 11. PURCHASES AND SALES**

### **Subchapter A. GENERAL PROVISIONS**

#### **§ 11.34. Prohibited purchases and sales.**

(a) A permittee or other person may not purchase alcohol for repackaging or resale in its original state, except as provided in subsection (b).

(b) The prohibition does not apply to sales or transfers of alcohol between affiliates or subsidiaries holding Manufacturer Licenses and alcohol permits as required in this subchapter where the alcohol is used by the licensees solely for the blending and rectification of liquor.

**[(c) Distillers may not sell alcohol to anyone in this Commonwealth, except to alcohol permittees in accordance with this subchapter, or to the Board.]**

\* \* \* \* \*

### **Subchapter M. [LICENSED DISTILLERIES OF HISTORICAL SIGNIFICANCE] RESERVED.**

#### **§ 11.211. [Sale by licensed distilleries of historical significance] Reserved.**

**[(a) A licensed distillery of historical significance may sell on the licensed premises liquor produced on the premises in accordance with the Liquor Code and this title.**

**(b) The employment of agents by licensed distilleries of historical significance is governed by § 3.73 (relating to agents).**

**(c) Records, sales, invoices and reports shall be kept, as prescribed in § 5.104 (relating to licensed distilleries of historical significance).]**

**§ 11.212. [Additional conditions] Reserved.**

**[ In addition to the requirements set forth in § 11.211 (relating to sale by licensed distilleries of historical significance), the sale of liquor shall conform to all of the following:**

**(1) Liquor produced by a licensed distillery of historical significance may be shipped by common carrier or transporter-for-hire, as provided in Chapter 9 Subchapter A (relating to transportation of liquor, malt or brewed beverages or alcohol).**

**(2) There shall be no sales for consumption of liquor on the licensed premises.**

**(3) Liquor sold shall be in sealed containers of not less than 6 ounces nor more than 1 gallon.**

**(4) A licensed distillery of historical significance may accept checks drawn by the purchaser on his account, and from retail customers, credit cards issued by banking or financial institutions, subject to State or Federal regulations.**

**(5) Sales may be made 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.**

**(6) Mail or telephone orders may be accepted. Delivery of products shall be accomplished through the use of vehicles properly registered by the distillery of historical significance or through properly licensed transporters. It shall be the responsibility of the distillery licensee to insure that liquor is not delivered to minors and that proper invoices are maintained in accordance with § 5.104 (relating to licensed distilleries of historical significance).]**

**\* \* \* \* \***

**Subchapter N. [LICENSED LIMITED DISTILLERIES AND DISTILLERIES] RESERVED.**

**§ 11.221. [Sale by licensed limited distilleries and distilleries] Reserved.**

**[(a) A licensed limited distillery or distillery may sell on the licensed premises liquor produced on the premises in accordance with the Liquor Code and this title.**

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

**(1) Liquor accessories as follows:**

**(i) Cork removers and other bottle openers.**

**(ii) Glasses, shot glasses, decanters and flasks.**

**(iii) Pourers and bottle stoppers.**

**(iv) Cocktail mixers, shakers and other cocktail preparation accessories.**

(v) Cocktail forks, toothpicks, stirrers, napkins and gift bags.

(2) Publications dealing with liquor.

(3) Promotional items advertising the limited distillery or distillery such as tee shirts, glassware, caps, and the like.

(c) Sales on the licensed premises of merchandise not listed in subsection (b) are subject to Board approval. The approval shall be requested by letter addressed to the Board. A limited distillery or distillery licensee will be advised of approved items through an appropriate means of dissemination.]

§ 11.222. [Additional conditions] Reserved.

[ In addition to the requirements in § 11.221 (relating to sale by licensed limited distilleries and distilleries), the sale of liquor shall conform to the following:

(1) Liquor produced by a licensed limited distillery or distillery may be shipped by transporter-for-hire as provided in Chapter 9, Subchapter A (relating to transportation of liquor, malt or brewed beverages or alcohol).

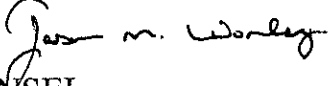
(2) A licensed limited distillery or distillery may accept checks drawn by the purchaser on his account and from retail customers, credit cards issued by banking or financial institutions, subject to State or Federal regulations.

(3) A licensed limited distillery or distillery may accept orders for the purchase of liquor produced on the licensed premises by mail, Internet or telephone. Delivery of products shall be accomplished through the use of vehicles properly registered by the limited distillery or distillery, as provided in section 491(12) of the Liquor Code (47 P. S. § 4-491(12)), or through a properly licensed transporter-for-hire, as provided in Chapter 9, Subchapter A. It is the responsibility of the limited distillery or distillery licensee to ensure that liquor is not delivered to minors and that proper records and invoices are maintained as set forth in § 5.104 (relating to licensed distilleries of historical significance).]

**Commonwealth of Pennsylvania**  
**Pennsylvania Liquor Control Board**  
January 23, 2024

**SUBJECT: Proposed Regulation Package 54-92**  
**Distilleries**

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

**FROM:** JASON M. WORLEY   
ACTING CHIEF COUNSEL  
PENNSYLVANIA LIQUOR CONTROL BOARD

**By E-Mail**

The Pennsylvania Liquor Control Board is submitting proposed amendments to Chapters 3, 5, 9, and 11 of its regulations. Attached please find a courtesy 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](mailto: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 Daniel Deasy, Majority Chairman, House Liquor Control Committee  
Honorable Mindy Fee, Minority Chairman, House Liquor Control Committee  
Taylor Wamsher, Executive Director, Senate Law and Justice Committee  
Stephen Bruder, Executive Director, Senate Law and Justice Committee  
Lynn Benka-Davies, Executive Director, House Liquor Control Committee  
Michael Biacchi, Executive Director, House Liquor Control Committee

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

**RECEIVED**

**I.D. NUMBER:** 54-92

Independent Regulatory  
Review Commission

**SUBJECT:** Distilleries


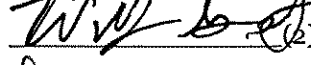
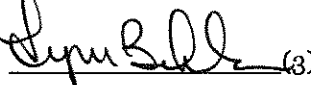

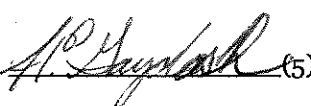
January 23, 2024

**AGENCY:** Pennsylvania Liquor Control Board

**TYPE OF REGULATION**

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

**FILING OF REGULATION**

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
1/23	 (1)	SENATE LAW & JUSTICE COMMITTEE (Majority)
1/23	 (2)	SENATE LAW & JUSTICE COMMITTEE (Minority)
1/23	 (3)	HOUSE LIQUOR CONTROL COMMITTEE (Majority)
1/23	 (4)	HOUSE LIQUOR CONTROL COMMITTEE (Minority)
1/23	 (5)	LEGISLATIVE REFERENCE BUREAU
_____	_____ (6)	INDEPENDENT REGULATORY REVIEW COMMISSION