

PROPOSED RULEMAKING

DEPARTMENT OF GENERAL SERVICES

[70 PA. CODE CH. 110]

Metrology Calibration and Testing Fees

The Department of General Services (Department) proposes to amend § 110.2 (relating to State Metrology Laboratory fee schedule) to read as set forth in Annex A.

Authority

This proposed rulemaking is authorized under 3 Pa.C.S. §§ 4101—4194 (relating to Consolidated Weights and Measures Act) (act). Section 4178 of the act (relating to fees) requires that Department establish, by regulation, fees for metrology laboratory calibration, type evaluation and other testing services.

Need for this Proposed Rulemaking

This proposed rulemaking fulfills the statutory requirement for the Department to establish, charge and collect the fees described in section 4178 of the act. Currently, the State Metrology Laboratory (Laboratory) provides these services based upon a fee schedule established in 2010. This proposed rulemaking will allow the Commonwealth to charge an appropriate fee for the services provided, thus ensuring that the cost of performing these testing services is borne by the parties who are receiving the services and not by taxpayers.

This proposed rulemaking will increase the fees charged for metrology laboratory calibration, type evaluation and other services performed by the Laboratory. This proposed rulemaking will also allow for future automatic yearly percentage fee increases in the schedule of fees based upon the sum of the percentages of: 1) the general pay increases in the AFSCME Council 13 Master Agreement with the Commonwealth; 2) the “step” service increment increase; and 3) the yearly increase in benefit cost as calculated annually by the Office of Administration, Bureau of Employee Benefits and Services.

These automatic fee increases will allow the Department to keep pace with increasing metrology testing costs.

This proposed rulemaking also updates the description fields to accurately reflect the parameters and ranges covered under the National Institute of Standards and Technology (NIST), Office of Weights and Measures’ Certificate of Metrological Traceability and the NIST National Voluntary Laboratory Accreditation Program Scope of Accreditation used by the Laboratory.

The Department is satisfied there is a need for this proposed rulemaking, and that it is otherwise consistent with Executive Order 1996-1, “Regulatory Review and Promulgation.”

Summary of this Proposed Rulemaking

This proposed rulemaking will increase the fees charged for metrology laboratory calibration, type evaluation and other services performed by the Laboratory. This proposed rulemaking will allow for future automatic percentage increases in the schedule of fees based upon the sum of the percentages of: 1) the general pay increases set forth in the AFSCME Council 13 Master Agreement with the Commonwealth; 2) the “step” service increment increase; and 3) the yearly increase in benefit

cost as calculated annually by the Office of Administration, Bureau of Employee Benefits and Services. This proposed rulemaking also updates description fields to accurately reflect the parameters and ranges used by the Laboratory.

Persons Likely to be Affected

Persons engaged in the business of selling, installing, servicing and repairing various types of commercial weighting and measuring devices will be charged fees according to the proposed fee schedule. Laboratory customers, including small businesses, have benefitted from the fees that have not increased since 2010 despite increased salary and benefits for Laboratory employees and increasing costs to maintain or replace Laboratory equipment.

Proposed amendments to description fields accurately reflect the parameters and ranges used by the Laboratory and should not affect any group or entity.

Fiscal Impact

Commonwealth

The estimated annual revenue to the Commonwealth/Department from this proposed rulemaking is approximately \$610,137. This proposed rulemaking should not result in additional costs to the Commonwealth.

Political subdivisions

No other government entity will incur any costs or realize any savings.

General public

This proposed rulemaking will not impose costs and will not have fiscal impact on the general public. The proposed fee increase will ensure that the cost of performing Laboratory testing services is borne by the parties who are receiving the services and not by taxpayers.

Private sector

Persons engaged in the business of selling, installing, servicing and repairing various types of commercial weighting and measuring devices will be charged fees according to the proposed fee schedule. The anticipated fee per user is estimated to be \$1,329, which is a \$784 increase from the current \$545 average fee per user. Laboratory customers, including small businesses, have benefitted from the fees that have not increased since 2010 despite increased salary and benefits for Laboratory employees and increasing costs to maintain or replace Laboratory equipment.

Paperwork Requirements

This proposed rulemaking will not result in an increase in paperwork for the Laboratory, which already is required to issue invoices, collect payments and transmit payments to the State Treasury. Similarly, under section 4193(c) of the act (relating to disposition of funds), the Treasury Department will not have an increase in paperwork. There will not be an increase in paperwork for the regulated community.

Effective Date

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

Sunset Date

There is no sunset date for this proposed rulemaking. The Department will review the efficacy of this regulation on an ongoing basis.

Public Comment Period and Contact Person

Interested persons are invited to submit written comments regarding this proposed rulemaking within 30 days following publication in the *Pennsylvania Bulletin* to Mary W. Fox, Assistant Counsel, Office of Chief Counsel, Department of General Services, Forum Place, 6th Floor, 555 Walnut Street, Harrisburg, PA 17101, (717) 787-6789.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 15, 2017, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on State Government. 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 Department, the General Assembly and the Governor.

CURTIS M. TOPPER,
Secretary

Fiscal Note: 8-27. No fiscal impact. The fee increases are necessary to cover the associated operating costs of the Laboratory; (8) recommends adoption.

Annex A

TITLE 70. WEIGHTS, MEASURES AND STANDARDS

**PART V. STATE METROLOGY LABORATORY
CHAPTER 110. GENERAL PROVISIONS**

§ 110.2. State Metrology Laboratory fee schedule.

(a) *General.* The State Metrology Laboratory [**shall**] **will** charge a fee for any testing services it provides under authority of the act. These services include actual metrology laboratory calibration, type evaluation and any other services identified in subsection (c).

(b) *Exemptions.*

(1) Agencies of the Commonwealth are exempt from having to pay any of the fees established in this section.

(2) A city or county which is required to procure standards of weights and measures and additional equipment in accordance with section 4123 of the act (relating to city and county standards and equipment) to enforce the act is exempt from having to pay fees with respect to the calibration, evaluation or other testing of those standards and that equipment.

(c) *Schedule of fees.* The State Metrology Laboratory [**shall**] **will** charge the following fees for the indicated [**testing**] **calibration** services:

<i>General type of test</i>	<i>Description</i>	<i>Fee</i>
Precision mass	[Up to ASTM E 617 Class 2 or best calibration but not to a specific class to and including 30 kg. or 50 lb.] ASTM or OIML Class weights calibrated by use of the Mass Code 50 lb to 0.001 lb, 30 kg to 1 mg	[\$30 per weight] \$75 per man-hour
Precision mass	[ASTM E617 Class 3 and 4 and OIML Class F1 and F2 to and including 30 kg. or 50 lb.] ASTM Class 1, 2, 3, 4 OIML Class E ₂ , F ₁ , F ₂ or best calibration not to a specific class 100 lb to 0.001 lb 30 kg to 1 mg	[\$30] \$60 per weight

<i>General type of test</i>	<i>Description</i>	<i>Fee</i>
Ordinary mass, Small	<p>[NIST Class F and ASTM E617 Classes 5, 6, 7 and OIML Class M1, M2 and M3 to and including 5 kg. or 10 lb.]</p> <p>NIST Class F</p> <p>ASTM 5, 6, 7</p> <p>OIML M₁, M₁₋₂, M₂, M₂₋₃, M₃</p> <p>10 lb to 0.001 lb</p> <p>5 kg to 1 mg</p>	<p>[\$6] \$20 per weight (without adjustment)</p> <p>[\$10] \$35 per weight (with adjustment)</p>
Ordinary mass, Medium	<p>[NIST Class F and ASTM E617 Classes 5, 6 and 7 from 10 kg. or 20 lb. to 50 kg. or 100 lb.]</p> <p>NIST Class F</p> <p>ASTM 5, 6, 7</p> <p>OIML M₁, M₁₋₂, M₂, M₂₋₃, M₃</p> <p>100 lb to >10 lb</p> <p>50 kg to >5 kg</p>	<p>[\$10] \$20 per weight (without adjustment)</p> <p>[\$20] \$35 per weight (with adjustment)</p>
Ordinary mass, Large	<p>[NIST Class F and ASTM E617 Classes 5, 6 and 7 from 100 kg. or 200 lb. to 2500 kg. or 5500 lb.]</p> <p>NIST Class F</p> <p>ASTM 5, 6, 7</p> <p>OIML M₁, M₁₋₂, M₂, M₂₋₃, M₃</p> <p>6,000 lb to >100 lb</p> <p>2,500 kg to >50 kg</p>	<p>[\$20] \$40 per weight (without adjustment)</p> <p>[\$40] \$65 per weight (with adjustment)</p>
Ordinary mass	<p>Weight Carts</p> <p>2,000 lb to 6,000 lb</p>	[\$210] \$290 per cart
Volume transfer	<p>[5 gallon/20 liter test measures]</p> <p>Test Measures</p> <p>5 gallon</p> <p>5 liter to 20 liter</p>	[\$45] \$110 per measure (includes adjustment)
Volume transfer	<p>[10 gallon to 50 gallon]</p> <p>Provers</p> <p>10 gallon to 100 gallon</p> <p>40 liter to 378 liter</p>	[\$150] \$405 per prover (includes adjustment)
[Volume transfer	51 to 100 gallon	\$150 per prover (includes adjustment)]

<i>General type of test</i>	<i>Description</i>	<i>Fee</i>
Volume transfer	[Greater than 100 gallon] Provers 101 gallon to 1,500 gallon 379 liter to 5,000 liter	[\$150] \$405 plus \$1 per each additional gallon over 100 gallons (includes adjustment)
Gravimetric Calibrations	[Metal Test Measures to 5 gallon or 20 liter or 1 cubic foot] Test Measures 1 gallon to 10 gallon 5 liter to 20 liter	[\$180] \$760 per item
Gravimetric Calibrations	Provers 11 gallon to 130 gallon 21 liter to 500 liter	\$1,515 per item
Length Calibrations	Metal Tapes [or Rules] to 200 feet	[\$15] \$35 per point tested
Timing Devices	Stopwatches to 24 hours	[\$30] \$65
Wheel Load Weighers	NIST Handbook 44 Class III Scales to 20,000 lb	[\$20] \$65 per scale
Force Gauges	to 50 lbf	\$165 per gauge
Special Tests		\$75 per man-hour

(d) *Cost increase.*

(1) Beginning July 1, 2017, and each July 1 thereafter, the costs in subsection (c) will increase by the sum of the percentages of all of the following:

(i) The general pay increases in the AFSCME Council 13 Master Agreement/Memorandum of Understanding with the Commonwealth.

(ii) The “step” service increment increase.

(iii) The yearly increase in benefit cost as calculated annually by the Office of Administration, Bureau of Employee Benefits and Services.

(2) The Department of General Services will make the costs available for public inspection no later than June 1 by posting a copy of the costs for the subsequent fiscal year on the Department of General Services’ publicly accessible web site.

[(d)] (e) *Payment of fees.* A nonrefundable deposit for the estimated fee shall be submitted when the [**testing**] **calibration** request is made. Fees are payable at the time the metrology service is provided, regardless of whether the item [**tested**] **calibrated** is certified or approved.

(f) *Minimum fee.* The Pennsylvania Standards Laboratory has a minimum fee for service of \$50.

[Pa.B. Doc. No. 17-879. Filed for public inspection May 26, 2017, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

Acceptance of Rulemaking Petition for Study

On May 17, 2017, the Environmental Quality Board accepted a rulemaking petition for study under 25 Pa. Code Chapter 23 (relating to Environmental Quality Board policy for processing petitions—statement of policy). The petition, submitted by the Delaware Riverkeeper Network, requests the amendment of 25 Pa. Code § 93.9e (relating to Drainage List E) to upgrade the existing and designated uses of Zones 3 and 4 of the Delaware River to include fish propagation for the warm water fishes use and fish maintenance and propagation for the migratory fishes.

Under 25 Pa. Code § 93.4d(a) (relating to processing of petitions, evaluations and assessments to change a designated use), the Department of Environmental Protection (Department) is required to publish a notice of intent to assess candidate waters. The Department’s assessment notice for this rulemaking petition will appear in a future issue of the *Pennsylvania Bulletin*.

The previously-referenced petition is available to the public by contacting the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, and is accessible on the Department’s web site at www.dep.pa.gov (select “Public Participation,” then “Envi-

ronmental Quality Board (EQB),” then “2017 Meetings,” under “Meeting Agendas/Minutes/Handouts,” see “May 17, 2017”).

PATRICK McDONNELL,
Chairperson

[Pa.B. Doc. No. 17-880. Filed for public inspection May 26, 2017, 9:00 a.m.]

LIQUOR CONTROL BOARD

[40 PA. CODE CHS. 9 AND 11]

Return of Liquor

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P.S. § 2-207(i)), proposes to amend §§ 9.111—9.114 (relating to disposition of liquor and malt or brewed beverages under certain conditions) and add §§ 11.231—11.239 (relating to return of liquor to the Board by licensees) to read as set forth in Annex A.

Summary

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

The Liquor Code (47 P.S. §§ 1-101—10-1001) makes the Board the primary wholesaler of liquor in this Commonwealth. The Board is responsible for supplying liquor to licensees and permittees whose licenses or permits authorize them to offer liquor for resale. However, the Liquor Code currently does not address the circumstances under which the Board may accept returns of liquor from licensees or permittees. Moreover, the Board's current regulations are insufficient, since they only address repurchases of liquor returned to the Board by licensees going out of business, bankruptcy estates or officers of the law.

To date, returns of liquor by licensees or permittees in the ordinary course of business have been governed by policies and procedures applicable to the operation of the Board's Fine Wine & Good Spirits stores. With the passage of the act of June 8, 2016 (P.L. 273, No. 39), which authorizes certain licensees who obtain wine expanded permits to sell wine for off-premises consumption, there is a greater need to provide clear and consistent guidance for all licensees and permittees wishing to return liquor to the Board.

Federal laws and regulations govern the return of alcoholic beverages sold in interstate or foreign commerce. Federal laws and regulations generally make it unlawful to sell products with the privilege of returning the products for any reason other than ordinary and usual commercial reasons arising after the product has been sold. See section 105(d) of the Federal Alcohol Administration Act (27 U.S.C.A. § 205(d)) and 27 CFR 11.31 (relating to general).

Federal regulations define what constitutes “ordinary and usual commercial reasons” for the return of products and outline the conditions and limitations for returns. See 27 CFR 11.32—11.46 (relating to rules for the return of distilled spirits, wine, and malt beverages). These Federal regulations are not legally applicable to sales transactions

between the Board and licensees or permittees in this Commonwealth since they do not occur in interstate or foreign commerce. However, the Federal regulations do offer significant guidance for the return of liquor, which the Board has followed in this proposed rulemaking.

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

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

Affected Parties

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

Paperwork Requirements

The regulated community will be required to provide proof or evidence to support the reasons for return in some instances and may be required to do so in other instances. However, this proof or evidence would consist mostly of documentation of purchases that is already required to be retained by the regulated community for 2 years, under section 493(12) of the Liquor Code (47 P.S. § 4-493(12)). The Board will also have some recordkeeping obligations as a result of this proposed rulemaking, but the Board already has substantial measures in place relative to purchases and tracking returns. There will not be other new paperwork requirements.

Fiscal Impact

The Board will issue a refund for product that it accepts for return. The refund will be the price of product at the time of purchase or the current price, whichever is lower. The refund will be reduced by the assessment of a handling charge of 12.5% of the refund or \$50, whichever is greater. The handling charge will be waived in situations when the product is defective, is not what the

licensee ordered, may no longer be sold or is subject to a recall. The Board may waive the handling charge if the product was purchased by occasional sellers like special occasion permit holders or wine auction permit holders.

Effective Date

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, 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) web site. 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 May 4, 2017, 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

Fiscal Note: 54-91. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 9. TRANSPORTATION, IMPORTATION, DISPOSITION AND STORAGE

Subchapter F. DISPOSITION OF LIQUOR AND MALT OR BREWED BEVERAGES UNDER CERTAIN CONDITIONS

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

(a) *Liquor.*

(1) Liquor purchased from a State Liquor Store and forming part of [**the estate of a decedent or bankrupt or liquor so purchased and**] a **bankruptcy estate or**

in the custody of the law under legal process[,] may not be sold except to the Board as provided in this subchapter.

(2) Liquor purchased from a State Liquor Store by a licensee of the Board and in the possession of the licensee at the time [**he discontinues business,**] **the licensed business is discontinued** by transfer of [**his**] the license or otherwise[,] may be sold by the licensee or may be repurchased from [**him**] **the licensee** by the Board, but only [**under this subchapter**] **in accordance with this subchapter and Chapter 11, Subchapter O (relating to return of liquor to the Board by licensees).**

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

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

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

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

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

[(1) *Executors and administrators.*

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

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

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

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

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

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

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

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

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

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

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

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

(i) Name and address of licensee.

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

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

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

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

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

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

(a) *Discontinuance without transfer of license.* A licensee who has discontinued business without transfer of the license shall provide the Board with all of the following information:

(1) Name and address of licensee.

(2) Written statement under oath that the licensee has discontinued the licensed business and the date thereof. If the business has been discontinued due to the death of the licensee, the following additional information shall be provided:

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

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

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

(b) *Sale of licensed business.*

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

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

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

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

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

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

(a) Upon receipt of the information required under §§ 9.112 and 9.113 (relating to information to be furnished by bankruptcy estates or officers of the law; and licensees who have discontinued business or sold their licensed business) and verification thereof, the Board may, in its discretion, arrange to repurchase some or all of the liquor purchased from State Liquor Stores, at the price paid by the licensee or the then-available price to licensees, whichever is lower, minus a handling charge equal to the greater of 12.5% or \$50.

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

CHAPTER 11. PURCHASES [AND], SALES AND RETURNS

(*Editor's Note:* The following subchapter is proposed to be added and printed in regular type to enhance readability.)

Subchapter O. RETURN OF LIQUOR TO THE BOARD BY LICENSEES

Sec.	
11.231.	General provisions.
11.232.	Defective products.
11.233.	Error in products delivered.
11.234.	Products that may no longer be lawfully sold.
11.235.	Product subject to recall.
11.236.	Change in product.
11.237.	Discontinued products.
11.238.	Occasional sellers.
11.239.	Products not accepted.

§ 11.231. General provisions.

(a) The Board may, in its discretion, accept the return of liquor purchased from the Board for ordinary and usual commercial reasons arising after the product has been sold. Sections 11.232—11.239 specify ordinary and usual commercial reasons for the return of products, and

outline the conditions and limitations for returns. If the Board accepts the returned product, the licensee will receive either the price paid or the then-available price, whichever is lower, less handling charges in accordance with § 9.114 (relating to repurchase of liquor returned to the Board). The Board will not accept the return of product purchased from a third party, even if the third party purchased the product from the Board.

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

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

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

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

(4) Product sought to be returned for any other reason that is not included in §§ 11.232—11.239.

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

§ 11.232. Defective products.

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

§ 11.233. Error in products delivered.

(a) A discrepancy between products ordered and products delivered may be corrected, within 15 days of product delivery or pick up, by returning the incorrect product for a refund, which may then be applied toward the purchase of the correct product. The licensee will be required to provide proof of the order and the discrepancy in question. The payment of a handling charge will be waived for returns under this section.

(b) The Board will consider, as acceptable proof of the order, a printed copy of an order that includes the details

as to what product was ordered and in what quantities, and that also indicates when the order was submitted to or received by the Board, or both.

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

§ 11.234. Products that may no longer be lawfully sold.

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

§ 11.235. Product subject to recall.

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

§ 11.236. Change in product.

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

§ 11.237. Discontinued products.

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

§ 11.238. Occasional sellers.

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

§ 11.239. Products not accepted.

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

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