

<h1 style="text-align: center;">Regulatory Analysis Form</h1> <p style="text-align: center;">(Completed by Promulgating Agency)</p> <p style="text-align: center;">(All Comments submitted on this regulation will appear on IRRC's website)</p>		<b>INDEPENDENT REGULATORY REVIEW COMMISSION</b>	
(1) Agency: Pennsylvania Liquor Control Board		2015 MAR - 6 PM 2: 21 IRRC	
(2) Agency Number: 54 Identification Number: 80			
(3) PA Code Cite: 40 Pa. Code § 3.93.			
(4) Short Title: Breweries.			
(5) Agency Contacts (List Telephone Number and Email Address):  Primary Contact: Norina K. Blynn (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>  Secondary Contact: Rodrigo J. Diaz (717) 783-9454 (Same Contact Information)			
(6) Type of Rulemaking (check applicable box):  <input type="checkbox"/> Proposed Regulation <input checked="" type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation		<input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General	
(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)  The purpose of this regulation is to clarify the privileges of breweries with regard to on-premises consumption of the malt or brewed beverages ("beer") produced on the licensed premises. Recent changes to the Liquor Code prompt the need for this regulatory promulgation. The regulation would allow breweries to offer beer it has produced to patrons for on-premises consumption under certain conditions.			
(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.  In addition to section 446(a)(1) of the Liquor Code [47 P.S. § 4-446(a)(1)], which authorizes the Board to establish regulations for breweries, the Board has the authority to make regulations pursuant to section 207(i) of the Liquor Code [47 P.S. § 2-207(i)].			

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(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.

No, this regulation is not mandated by any federal or state law or court order, or federal regulation. There are no relevant state or federal court decisions pertaining to this regulatory change.

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

For many years, section 440 of the Liquor Code prohibited manufacturers from offering beer for on premises consumption:

“No manufacturer shall sell any malt or brewed beverages for consumption on the premises where sold . . . nor shall any manufacturer maintain or operate within the Commonwealth any place or places other than the place or places covered by his or its license where malt or brewed beverages are sold or where orders are taken.”

[47 P.S. § 4-440 (emphasis added)].

In 1998, Act 25 created the brewery pub license, whereby a brewery could operate a restaurant or brewery pub on the licensed premise. [47 P.S. § 4-446(a)(2)]. When Act 25 was enacted, the only location where a brewery could sell its own beer for on-premises consumption was by obtaining a license for a brewery pub.

The statutory changes incorporated in Act 113 of 2011 triggered the need for this regulation. Act 113 amended section 440 of the Liquor Code, allowing a brewery to permit on premises consumption:

A manufacturer may sell malt or brewed beverages produced and owned by the manufacturer to individuals on the licensed premises for consumption on the licensed premises where sold only if it complies with the conditions and regulations placed upon holders of brewery licenses under section 446(a)(1)....

[47 P.S. § 4-440 (emphasis added)]. The reference to section 446(a)(1) is significant to this regulatory promulgation, because section 446(a)(1) provides the Board with the specific authority to clarify under what circumstances a brewery may sell for on premises consumption. Section 446(a)(1) states:

Holders of a brewery license may: (1) Sell malt or brewed beverages produced and owned by the brewery under such conditions and regulations as the board may enforce, to individuals for consumption on the licensed premises in any container or package of any volume and to hotel, restaurant, club and public service liquor licensees.

[47 P.S. § 4-446(a)(1) (emphasis added)].

Although the statutory language now provides that breweries are permitted to offer beer for on premises

consumption, they may only do so “under such conditions and regulations as the board may enforce.” [47 P.S. § 4-446(a)(1)]. Because the Board’s Regulations do not presently address consumption on a brewery’s premises in the absence of a brewery pub license, there has been confusion in the industry in this regard. The purpose of this regulatory promulgation is to provide the industry with guidance as to the lawful consumption of beer on a brewery’s premises.

As of January 15, 2015, there were one hundred sixty-nine (169) breweries with active licenses issued by the Board. Approximately one-third of these breweries also hold retail licenses, which allow them to sell any type of liquor or beer. Another third of these brewers also hold brewery pub licenses, which allows a brewery to sell its own beer for consumption on the brewery pub premises. Therefore, this regulation directly affects the final third of breweries that, without this regulatory change, may not allow patrons to consume beer on the licensed premises.

In addition, in response to comments made by the Brewers of Pennsylvania and the Independent Regulatory Review Commission, the final-form regulation states clearly that a brewery may offer tastings, for on premises consumption, of the malt or brewed beverages the brewery has produced on the licensed premises. This final-form regulation, therefore, may benefit every licensed brewery in Pennsylvania.

(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 federal regulation governing beer is contained in 27 CFR Chapter 25. Section 25.25 specifically allows for the operation of a “tavern” on the brewery premises, which presumably allows for on-premises consumption. The federal regulation does not provide the level of detail contained in the final-form regulation, since the 21<sup>st</sup> Amendment of the United States Constitution allows states to regulate the transportation, importation, and use of alcohol.

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

Of the states near Pennsylvania:

- Ohio and Virginia allow a brewery to sell beer for on-premises consumption without requiring additional licensure. [Ohio Rev. Code § 4303.022; Va. Code Ann. § 4.1-208].
- New Jersey allows a brewery to sell beer for on-premises consumption, but only in connection with a tour of the brewery; an addition permit is required to offer samples. [N.J. Rev. Stat. § 33:1-10 (2013)].
- Delaware allows on-premises tastings but a brewery may only sell for off-premises consumption. [4 Del. C. § 512C].
- Maryland only allows patrons to consume a sample of six (6) fluid ounces of beer after that person has taken a tour of the brewery; beer sales are restricted to sales for off-premises consumption. [Md. Code, Alc. Bev. § 2-206].
- New York, West Virginia and the District of Columbia require a brewery to obtain an additional license or permit before the brewery may sell beer for on-premises consumption. [NY Alcoh. Bev. Ctrl. L. § 51 (2012); W.V. Code § 11-16-6 (through 1st Spec. Sess. 2013); D.C. Code § 25-110].

Thus, allowing a brewery to offer beer for on-premises consumption, without the need for additional licensure, will improve 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.

After diligent research, the Board is unaware of any other regulations, issued by the Board or by another state agency, which would be affected by the promulgation of the final-form regulation.

(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.)

This regulatory change was requested by Senator McIlhinney's office after he was approached by Brewers of Pennsylvania. Dick Yuengling, of D.G. Yuengling & Son, provided his input to Board Member Tim Holden regarding specifics of the regulation. These communications from the Brewers of Pennsylvania and Dick Yuengling played an important role in the development of the final-form regulation.

(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?

This rulemaking may affect all of the actively licensed Pennsylvania breweries, of which there are approximately 170. The breweries are affected only to the degree that they choose to offer free tastings on the licensed premises or sell beer for consumption on the licensed premises, as the final-form regulation would allow them to do.

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

There are no persons, groups, or entities that will be required to comply with the final-form regulation. The final-form regulation simply offers breweries the chance to sell beer, or offer a tasting, for on-premises consumption without requiring an additional license.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The brewery industry provides a significant fiscal impact on Pennsylvania's economy. Brewers Association, a not-for-profit organization dedicated to America's craft brewers, determined that small and independent American craft brewers contributed \$33.9 billion to the U.S. economy in 2012.\* That figure is calculated from the total impact of craft-brewed beer moving through the three-tier system (breweries, wholesalers and retailers) and all non-beer products, such as food and merchandise sold by brewpubs and breweries. According to the Brewers Association, the craft brewing industry also

provided more than 360,000 jobs, including 108,440 jobs at breweries and brewpubs.

In 2012, Pennsylvania ranked in the top 5 states (bested only by California, Texas, and New York) when looking at the impact of the craft brewing industry on the state's economy. Brewers Association calculated the economic impact of Pennsylvania's craft brewers to be \$2 billion in 2012 alone.

The final-form regulation would provide meaningful support to this important industry. For example, in early 2012, the Commonwealth of Virginia passed a bill allowing breweries to sell beer for on premises consumption. In the eight years before the passage of this bill, the number of breweries increased an average of 2.7 breweries a year. In the two years after the passage of the bill, the number of breweries increased by 33, for an average of 16.5 breweries a year.

The final-form regulation can also have a positive fiscal impact not only on the number of breweries, but also with production volumes. In 2013, states that allowed on premises consumption by breweries had greater production volumes (2.8 gallons produced per adult resident over 21) than states that do not allow on premises consumption (0.5 gallons produced per adult resident over 21).

Allowing breweries to sell beer or offer free tastings on their licensed premises, without requiring the expense of an additional license, will provide valuable support to these important small businesses. As the above data demonstrates, allowing on-premises consumption, by sale or by tasting, contributes to greater production volume, which contributes to more successful breweries.

\* Data provided by Brewers Association can be found at the following webpage:  
<http://www.brewersassociation.org/statistics/economic-impact-data/>

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

With the final-form regulation, a brewery may now offer free tastings on their licensed premises for the cost of a cup or glass and the free beer. The benefit of being able to offer a free tasting far outweighs the minimal cost, since it is likely to lead to increased sales for the brewery.

With regard to on-premises sales, again, the costs are minimal. The regulation requires only seating for ten, which is a modest, one-time investment, and food for each beer-consuming patron. The food may be as simple as potato chips and pretzels, and may be prepared by a third party, eliminating the need for the brewery to install a kitchen or hire kitchen staff.

Finally, please note that the regulation does not require a brewery to do anything, so any cost incurred is purely voluntary.

(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 final-form regulation does not demand compliance from the regulated community, it merely provides clarity for breweries that wish to offer on-premises consumption to their patrons and currently are not able to do so. The requirements of the final-form regulation are minimal; it is not anticipated

that any legal, accounting, or consulting services would be required. A brewery may start with modest offerings, such as free tastings, and expand its offerings as its budget allows.

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

The regulation is not expected to result in any costs or savings for local governments; it is not anticipated that any legal, accounting, or consulting services would be required.

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

The regulation is not expected to result in any costs or savings for the state government; it is not anticipated that any legal, accounting, or consulting services would be required.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Because the regulated community, local governments, and the state government are not required to take any action as a result of this regulatory change, it is not expected to affect legal, accounting or consulting procedures and should not require any additional reporting, recordkeeping or other paperwork.

(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.

	<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>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>						
<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>	\$0	\$0	\$0	\$0	\$0	\$0

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

<b>Program</b>	<b>FY -3 2010-2011</b>	<b>FY -2 2011-2012</b>	<b>FY -1 2012-2013</b>	<b>Current FY 2013-2014**</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.

The number of small businesses subject to the regulation is approximately 170, which includes all actively licensed breweries in Pennsylvania. This estimate is based on the definition of "small business" as defined in Section 3 of the Regulatory Review Act, which adopted the size standards described by the United States Small Business Administration's Small Business Size Regulations under 13 CFR Ch. 1 Part 121. Pursuant to subsector 312120, provided in 13 CFR § 121.201, a brewery could a maximum of 500 employees and still be considered a small business. The Board does not gather employee information from licensees, but it is known that the largest brewery in Pennsylvania is D.G. Yuengling & Son, and it is believed that this brewery has less than 500 employees. Therefore, it is believed that all actively licensed breweries in Pennsylvania will meet the small business definition.

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

The final-form regulation does not require any reporting, recordkeeping or other administrative costs to be incurred for compliance. Compliance with the final-form regulation is voluntary and merely provides guidance for any licensed brewery that wants to offer its patrons beer for on-premises consumption.

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

Based upon data made available from the Brewers Association, in 2013, states that allowed on premises consumption by breweries had greater production volumes (2.8 gallons produced per adult resident over 21) than states that do not allow on premises consumption (0.5 gallons produced per adult resident over 21). It is logical to conclude that greater production volumes have a positive impact on small businesses.

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

There is no less intrusive or less costly alternative method of achieving the purpose of the final-form regulation.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

No special provisions 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.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Non-regulatory alternatives were not considered because the benefit for the regulated community requires the creation of the final-form regulation.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

Non-regulatory alternatives were not considered because the benefit for the regulated community requires the creation of the final-form regulation.

(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.

Data provided by the Brewers Association was relied upon as general support for the proposition that allowing on-premises consumption is helpful to breweries, but such data was not the basis for the regulation. The data from Brewers Association is available on the Brewers Association webpage: <http://www.brewersassociation.org/statistics/economic-impact-data/>.



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

- A. The date by which the agency must receive public comments:           N/A
- B. The date or dates on which public meetings or hearings will be held:           February 26, 2015
- C. The expected date of promulgation of the proposed regulation as a final-form regulation:           N/A
- D. The expected effective date of the final-form regulation:           April 2015
- E. The date by which compliance with the final-form regulation will be required:           April 2015
- F. The date by which required permits, licenses or other approvals must be obtained:           N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

Review of the regulations is ongoing and any changes will be through the rulemaking process.


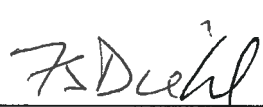
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FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)

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<p>Copy below is hereby approved as to form and legality.</p> <p>Attorney General:</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Pennsylvania Liquor Control Board</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. 54-80</p> <p>DATE OF ADOPTION: <u>Jan 28, 2015</u></p> <p>BY: _____ </p> <p>TITLE: <u>Chairman</u> (Executive Officer, Chairman or Secretary)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies:</p> <p>BY: _____ </p> <p>Chief Counsel</p> <p><u>1/28/15</u> DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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TITLE 40—LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 3. LICENSE APPLICATIONS

SUBCHAPTER J. MALT OR BREWED BEVERAGE MANUFACTURERS

*The following section is proposed to be added:*

3.93. Breweries.

# RESPONSES OF THE PENNSYLVANIA LIQUOR CONTROL BOARD

TO

Comments about PLCB Regulation #54-80 (IRRC #3082)

## Brewery Privileges

1. **Whether the regulation is consistent with the intent of the General Assembly; Possible conflict with or duplication of statutes or existing regulations; Need for the regulation; Reasonableness of the requirements.**

Subsection (c) sets forth the conditions that the holder of a brewery license must meet if it plans to allow on-premises consumption of alcohol. The Brewers of Pennsylvania submitted comments noting that Subsections (c)(2) and (d) contain language that is not consistent with Pennsylvania law, Board regulations and Board advisory opinions. The language at issue in both sections reads as follows: “malt or brewed beverages produced on the licensed premises by brewery.” (Emphasis added.) We agree that this language is not consistent with Section 446(a)(1) of the Liquor Code. 47 P.S. § 4-446(a)(1). That section of the Code states, in part, that holders of a brewery license may, “sell malt or brewed beverages produced and owned by the brewery.” (Emphasis added.) We ask the Board to amend the final-form rulemaking to be consistent with the Liquor Code and the intention of the General Assembly.

In addition, we ask the Board to explain the need and rationale for the conditions set forth in Subsection (c). Without this information, we are unable to determine if the requirements being imposed are reasonable and in the public interest.

**RESPONSE:** As to the comments submitted by the Brewers of Pennsylvania, and endorsed by the Independent Regulatory Review Commission (“IRRC”), the Board has amended the language in the final-form regulation as requested. The language in Subsections 3.93(c)(2) and (d) now refer to “malt or brewed beverages produced and owned by the brewery.”

In regards to IRRC’s comments about the rationale for the limitations set forth in subsection (c), the Board offers the following:

- (1) Such consumption may occur only between 10:00 a.m. and midnight;

A brewery pub license holder is currently permitted to have the same hours of sale as those of an eating place retail dispenser [40 Pa. Code § 3.92], and is subject to the same seating and food requirements. Specifically, retail licensees, including eating place retail dispensers, are permitted to sell alcoholic beverages between the hours of 7:00 a.m. of any weekday and 2:00 a.m. of the following day, except Sunday. [47 P.S. §§ 4-406(a)(2), 4-492(5)]. With the acquisition of a Sunday sales permit, a retail licensee may sell alcoholic beverages on Sundays between the hours of 11:00 a.m. and 2:00 a.m. Monday. [47 P.S. §§ 4-406(a)(3), 4-432(f)]. In return, a brewery pub license holder must have enough food to feed thirty (30) persons at any one time, and enough seating for thirty (30) persons as well.

To the extent that some breweries wished to have beer available for on-premises consumption without providing the seating and food that is required of an eating place retail dispenser, it was deemed appropriate to limit the hours of such operations. Reducing the sales hours to 10:00 a.m. to midnight provides the manufacturers with a limited opportunity for sales on the licensed premises, commensurate with the limited seating and food requirements that will be imposed upon them.

(2) The only alcohol that may be consumed on the licensed premises shall be the malt or brewed beverages produced ~~on the licensed premises~~ AND OWNED by the brewery;

With the change requested by the Brewers of Pennsylvania and IRRC, this language is consistent with the provisions of section 446(a)(1) and the Board's Regulation pertaining to brewery pubs. [47 P.S. § 4-446(a)(1), 40 Pa. Code § 3.92(d)].

(3) The brewery must have at least ten seats on the licensed premises for use by patrons while they are consuming alcohol; and

As stated above, hotels, restaurants, and eating place retail dispensers are required to have accommodations for thirty (30) people at the same time. [47 P.S. § 1-102]. The Board simply believes that a business that is selling alcohol for on-premises consumption should provide food to accompany said alcohol and a place for those who are consuming the alcohol to sit. Reducing the seating requirement from thirty (30) people to ten (10) people was reasonable, since a brewery's ability to sell alcohol is more limited than that of hotels, restaurants, and eating place retail dispensers.

(4) The brewery must make food available to each patron who is consuming alcohol on the licensed premises, while that person is consuming alcohol. Such food shall, at a minimum, consist of potato chips, pretzels, and other similar foods. Such food may be prepared by the brewery or by a third party.

For the safety of the patrons and the community, the Board believes strongly that any entity that allows the on-premises consumption of alcohol should also have available some type of food for the patrons, to slow down the effects of the alcohol. However, the Board wanted to balance the need to provide food with the burden of requiring a brewery to invest in a full-service kitchen. Therefore, the hybrid approach calls for snack food that can be readily supplied without much burden, and allows the brewery to bring in food prepared by a third party.

**FINAL-FORM RULEMAKING**

**LIQUOR CONTROL BOARD**

**40 PA. CODE CHAPTER 3**

**Subchapter J. Malt or Brewed Beverage Manufacturers**

The Liquor Control Board (“Board”), under the authority of section 207(i) of the Liquor Code (47 P.S. § 2-207(i)) and section 446(a)(1) of the Liquor Code (47 P.S. § 4-446(a)(1)), amends Chapter 3.

*Summary*

The purpose of this regulation is to clarify the privileges of breweries with regard to on-premises consumption of the malt or brewed beverages (“beer”) produced and owned by the brewery. Recent changes to the Liquor Code prompt the need for this regulatory promulgation.

For many years, section 440 of the Liquor Code prohibited manufacturers from offering beer for on premises consumption:

**“No manufacturer shall sell any malt or brewed beverages for consumption on the premises where sold . . . nor shall any manufacturer maintain or operate within the Commonwealth any place or places other than the place or places covered by his or its license where malt or brewed beverages are sold or where orders are taken.”**

[47 P.S. § 4-440 (emphasis added)].

In 1998, Act 25 created the brewery pub license, whereby a brewery could operate a restaurant or brewery pub on the licensed premise. [47 P.S. § 4-446(a)(2)]. When Act 25 was enacted, the only location where a brewery could sell its own beer for on-premises consumption was by obtaining a license for a brewery pub. Said brewery pub was to be operated under such conditions and regulations as the Board deemed appropriate. Ultimately, those conditions became 40 Pa. Code § 3.92.

The statutory changes incorporated in Act 113 of 2011 triggered the need for this regulation. Act 113 amended section 440 of the Liquor Code, allowing a brewery to permit on premises consumption:

**A manufacturer may sell malt or brewed beverages produced and owned by the manufacturer to individuals on the licensed premises for consumption on the licensed premises where sold only if it complies with the conditions and regulations placed upon holders of brewery licenses under section 446(a)(1)....**

[47 P.S. § 4-440 (emphasis added)]. The reference to section 446(a)(1) is significant to this regulatory promulgation, because section 446(a)(1) provides the Board with the specific authority to clarify under what circumstances a brewery may sell for on premises consumption. Section 446(a)(1) states:

Holders of a brewery license may: (1) Sell malt or brewed beverages produced and owned by the brewery **under such conditions and regulations as the board may enforce**, to individuals for consumption on the licensed premises in any container or package of any volume and to hotel, restaurant, club and public service liquor licensees.

[47 P.S. § 4-446(a)(1) (emphasis added)].

Although the statutory language now provides that breweries are permitted to offer beer for on premises consumption, they may only do so “under such conditions and regulations as the board may enforce.” [47 P.S. § 4-446(a)(1)]. Because the Board’s Regulations do not presently address consumption on a brewery’s premises in the absence of a brewery pub license, there has been confusion in the industry in this regard. The purpose of this regulatory promulgation is to provide the industry with guidance as to the lawful consumption of beer on a brewery’s premises.

### *Affected Parties*

As of January 15, 2015, there were one hundred sixty-nine (169) breweries with active licenses issued by the Board. Approximately one-third of these breweries also hold retail licenses, such as a restaurant liquor license, which allow them to sell any type of liquor or beer. Another third of these brewers also hold brewery pub licenses, which allows a brewery to sell its own beer for consumption on the brewery pub premises. Therefore, this regulation most directly affects the final third of breweries that, without this regulatory change, may not allow patrons to consume beer on the licensed premises.

In addition, in response to comments received from the Brewers of Pennsylvania and the Independent Regulatory Review Commission, the final-form regulation states clearly that a brewery may offer tastings, for on premises consumption, of the malt or brewed beverages the brewery has produced and owned by the brewery. This final-form regulation, therefore, may benefit every licensed brewery in Pennsylvania.

### *Paperwork Requirements*

The final-form regulation seeks to clarify the privileges inherent with the issuance of a brewery license. Therefore, no additional paperwork on behalf of any brewery licensee is required. In fact, as a result of this final-form regulation, some breweries may decide to discontinue holding a brewery pub license. Such a decision would result in less paperwork for that brewery, as the additional brewery pub license paperwork would not need to be filed.

### *Fiscal Impact*

The brewery industry provides a significant fiscal impact on Pennsylvania's economy. Brewers Association, a not-for-profit organization dedicated to America's craft brewers, determined that small and independent American craft brewers contributed \$33.9 billion to the U.S. economy in 2012.<sup>1</sup> That figure is calculated from the total impact of craft-brewed beer moving through the three-tier system (breweries, wholesalers and retailers) and all non-beer products, such as food and merchandise sold by brewpubs and breweries. According to the Brewers Association, the craft brewing industry also provided more than 360,000 jobs, including 108,440 jobs at breweries and brewpubs.

In 2012, Pennsylvania ranked in the top 5 states (bested only by California, Texas, and New York) when looking at the impact of the craft brewing industry on the state's economy. Brewers Association calculated the economic impact of Pennsylvania's craft brewers to be \$2 billion in 2012 alone.

The final-form regulation would provide meaningful support to this important industry. For example, in early 2012, the Commonwealth of Virginia passed a bill allowing breweries to sell beer for on premises consumption. In the eight years before the passage of this bill, the number of breweries increased an average of 2.7 breweries a year. In the two years after the passage of the bill, the number of breweries increased by 33, for an average of 16.5 breweries a year.

The final-form regulation can also have a positive fiscal impact not only on the number of breweries, but also with production volumes. In 2013, states that allowed on premises consumption by breweries had greater production volumes (2.8 gallons produced per adult resident over 21) than states that do not allow on premises consumption (0.5 gallons produced per adult resident over 21).

#### *Effective Date*

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

#### *Contact Person*

Comments should be addressed to Rodrigo J. Diaz, Executive Deputy Chief Counsel, or Norina Blynn, Assistant Counsel, Office of Chief Counsel, Pennsylvania Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

#### *Regulatory Review*

Under section 5 of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 28, 2014, the Board submitted a copy of this final-form rulemaking, published on November 8, 2014 at 44 Pa.B. 7075, and a copy of a Regulatory Analysis Form to the Independent Regulatory Review

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<sup>1</sup> Data provided by Brewers Association can be found at the following webpage:  
<http://www.brewersassociation.org/statistics/economic-impact-data/>



Commission (IRRC) and to the Chairpersons of the House Liquor Control Committee and Senate Committee on Law and Justice.

Under section 5a(c) of the Regulatory Review Act, the Board is required to provide IRRC and the Committees with copies of the comments received during the public comment period, as well as other documents when requested. The Board received a comment from the Brewers of Pennsylvania and a comment from IRRC, the responses to which are set forth in a separate document. The Board did not receive comments from the Committees or the public.

Under section 5a(j.2) of the Regulatory Review Act, on \_\_\_\_\_, these final form regulations were deemed approved by the House and Senate Committees. Under section 5a(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_, and approved these final-form regulations.

Joseph E. Brion  
Chairman

ANNEX A

TITLE 40. LIQUOR

Part I. LIQUOR CONTROL BOARD

Chapter 3. LICENSE APPLICATIONS

Subchapter J. MALT OR BREWED BEVERAGE MANUFACTURERS

Sec.

3.91. Alternate brewers' license.

3.92. Brewery pubs.

3.93. Breweries.

\* \* \* \* \*

**§ 3.93. Breweries.**

(a) The holder of a brewery license may not allow patrons to consume alcohol on the licensed premises except as set forth in this section.

(b) If the holder of a brewery license has obtained a brewery pub, restaurant liquor, eating place retail dispenser or hotel license for use on the licensed premises, it may allow on-premises consumption of alcohol on the licensed premises in conformity with the requirements of the aforementioned brewery pub, restaurant liquor, eating place retail dispenser or hotel license.

(c) If the holder of a brewery license has not obtained a brewery pub, restaurant liquor, eating place retail dispenser or hotel license for use on the licensed premises, it may allow on-premises consumption of alcohol on the licensed premises only under the following conditions:

(1) Such consumption may occur only between 10:00 a.m. and midnight;

(2) The only alcohol that may be consumed on the licensed premises shall be the malt or brewed beverages produced ~~on the licensed premises~~ AND OWNED by the brewery;

(3) The brewery must have at least ten seats on the licensed premises for use by patrons while they are consuming alcohol; and

(4) The brewery must make food available to each patron who is consuming alcohol on the licensed premises, while that person is consuming alcohol. Such food shall, at a minimum, consist of potato chips, pretzels, and other similar foods. Such food may be prepared by the brewery or by a third party.

(d) The holder of a brewery license may offer tastings of malt or brewed beverages produced ~~on the licensed premises~~ AND OWNED by the brewery in accordance with the provisions of § 13.201 and § 13.211 (regarding definitions and tasting events).

**Commonwealth of Pennsylvania**  
**Pennsylvania Liquor Control Board**  
March 6, 2015

**SUBJECT: Final-Form Regulation Package 54-80**  
**Breweries**

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

**FROM:** FAITH S. DIEHL *FSDiehl*  
CHIEF COUNSEL  
PENNSYLVANIA LIQUOR CONTROL BOARD

**By Hand Delivery**

The Pennsylvania Liquor Control Board ("PLCB") is submitting final-form amendments to chapter 3 of its regulations. Enclosed please find a copy of the regulatory analysis form, signed CDL-1 face sheet, preamble and Annex A (regulatory text), as well as the response of the PLCB to comments submitted by the Brewers of Pennsylvania and the Independent Regulatory Review Commission ("IRRC").

The proposed version of these regulations was provided to the legislative oversight committees, IRRC, and the Legislative Reference Bureau on October 28, 2014.

Any questions and comments about this regulatory submission can be directed to Rodrigo Diaz, Executive Deputy Chief Counsel, or Norina Blynn, Assistant Counsel, at (717) 783-9454.

Enclosures

cc with enclosures:

Honorable Charles McIlhinney, Majority Chairman, Senate Law and Justice Committee  
Honorable James Brewster, Minority Chairman, Senate Law and Justice Committee  
Honorable Chris Ross, Majority Chairman, House Liquor Control Committee  
Honorable Paul Costa, Minority Chairman, House Liquor Control Committee  
Gail Reinard, Executive Director, Senate Law and Justice Committee  
Victor Wills, Executive Director, Senate Law and Justice Committee  
Shauna Boscaccy, Executive Director, House Liquor Control Committee  
Lynn Benka-Davies, Executive Director, House Liquor Control Committee

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

**I.D. NUMBER:** 54-80  
**SUBJECT:** Breweries  
**AGENCY:** Liquor Control Board

2015 MAR -6 PM 2: 21

RECEIVED  
IRRC

**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>
3/6	<u>Whompson</u> (1)	SENATE LAW & JUSTICE COMMITTEE (Majority)
3/6	<u>Raue Mandel</u> (2)	SENATE LAW & JUSTICE COMMITTEE (Minority)
3/6	<u>Dixie Mennick</u> (3)	HOUSE LIQUOR CONTROL COMMITTEE (Majority)
3/6	<u>Kira Zickler</u> (4)	HOUSE LIQUOR CONTROL COMMITTEE (Minority)
3/6/15	<u>K Cooper</u> (5)	INDEPENDENT REGULATORY REVIEW COMMISSION