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#3082

December 4, 2014

VIA FEDERAL EXPRESS

Rodrigo Diaz, Executive Deputy Chief Counsel  
Office of Chief Counsel  
Pennsylvania Liquor Control Board  
Northwest Office Building  
Forster Street  
Harrisburg, PA 17124

RE: 40 Pa. Code § 3.93 Proposed Amended Regulation to "Breweries"

Dear Executive Deputy Chief Counsel Diaz:

I am writing this comment on behalf of the Brewers of Pennsylvania. The Brewers of Pennsylvania is a trade group consisting of over 50 breweries throughout the Commonwealth of Pennsylvania, many of which will be affected by this proposed regulation. Initially, we would like to commend and thank the Pennsylvania Liquor Control Board for taking action in considering amendment to regulations affecting breweries. It is our hope and belief that this new amendment will have a positive impact on our industry and foster continued growth. The Pennsylvania brewing industry is one of the leaders in the United States in domestically owned brewing production as well as boasting award winning breweries and the oldest brewery in the United States.

While this new regulation is designed to support growth of smaller brewers, some of the language is inconsistent with current Pennsylvania law, including the Pennsylvania Liquor Code, current Code regulations, Advisory Notices and Pennsylvania Liquor Control Board Advisory Opinions. This inconsistency will create confusion among brewers of all sizes and may lead to conflicting enforcement practices. Specifically, in § 3.93(c)(2) and § 3.93(d), there is the requirement that any consumption or tastings shall consist of "malt or brewed beverages produced on the licensed premises by the brewery". Throughout the Liquor Code, the Pennsylvania Liquor Control Board's regulations, Advisory Notices and Legal Opinions issued by the Pennsylvania Liquor Control Board, Office of Chief Counsel, there is a consistency that malt or brewed beverages **owned** by the brewery can be consumed or otherwise sold. There is no requirement that the malt or brewed beverage products have to be produced on the premises where it is consumed or sold.



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December 4, 2014  
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Pursuant to 47 P.S. §4-446, “(h)olders of a brewery license may 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.” (Emphasis added). 47 P.S. §4-446(1). In the statute there is no reference to limiting the sale of malt or brewed beverages to only products produced on the licensed premises. Further, breweries are permitted to use their brewery location in Pennsylvania to receive, store and distribute malt or brewed beverages manufactured outside of the Commonwealth. 47 P.S. § 4-446(3).

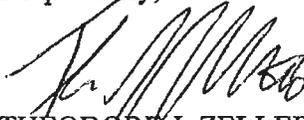
Pursuant to the Pennsylvania Code; namely, Title 40 Pa. Code § 13.201 and § 13.211, tastings of samples may be conducted by breweries upon licensed or unlicensed premises as long as the products used “shall be legally procured and properly registered and taxes on the products shall be paid”. 41 Pa. Code § 13.211. Again, there is no requirement that those products be produced on the licensed premises. Pursuant to Legal Advisory Notice No. 10, Sixth revision, as well as several Legal Advisory Opinions including, without limitation, PLCB Advisory Opinion No. 12-353, samples and tastings may be conducted by breweries on their licensed premises if the products are legally procured and owned by the brewery without any requirement that the product be produced on the licensed premises. Finally, in recognition of the growing craft brewing industry, Section 3.92 of the Pennsylvania Liquor Code allows sales of brewed or malt beverages at brewery pub premises as long as those malt and brewed beverages are produced at and owned by the brewery or a brewery which is under the common control with a brew pub. This has permitted breweries to transfer products among several locations and dispense the products accordingly. Title 40 Pa. Code § 3.92; See also, PLCB Advisory Opinion No. 14-232.

In light of the aforesaid, we respectfully request that the proposed regulation be slightly amended to remove the requirement that malt or brewed beverages be produced at the brewery in order for it to be sold or sampled at the licensed premises. Such language should be replaced with language already existing in the Code that allows such samples and sales to be made with products which are “produced and owned by the brewery,” which is the exact language used by the Pennsylvania Legislature in the statute enabling the Pa.L.C.B. to regulate this subject matter. 47 P.S. § 4-446. I have attached for your consideration a revised regulation consistent with the above.

Rodrigo Diaz, Executive Deputy Chief Counsel  
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Should you require any further information, please do not hesitate to contact me.  
On behalf of the Brewers of Pennsylvania, thank you for your time and consideration.

Respectfully,



THEODORE J. ZELLER III

TJZ:rds

cc: Norina K. Blynn, Assistant Counsel  
William Covaleski, President, Brewers of Pennsylvania, Victory Brewing Company  
Jessica Paar, Vice President, Brewers of Pennsylvania, Sam Adams Brewery  
David A. Casinelli, Treasurer, Brewers of Pennsylvania, D.G. Yuengling & Son, Inc.  
Christopher Trogner, Secretary, Brewers of Pennsylvania, Troegs Brewing Company

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.

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**§ 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 sell alcohol for on-premises consumption 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 sell alcohol for on-premises consumption 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 and owned ~~on the licensed premises~~ by the brewery; and

(3) 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 beverage produced and owned on the licensed premises by the brewery in accordance with the provisions of § 13.301 and § 13.211 (regarding definitions and tasting events).