

Regulatory Analysis Form

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REVIEW & REVISION

IRRC Number: 2229

(1) Agency

Pennsylvania Liquor Control Board

(2) I.D. Number (Governor's Office Use)

#54-57

(3) Short Title

Responsible Alcohol Management

(4) PA Code Cite

40 Pa. Code

(5) Agency Contacts & Telephone Numbers

Primary Contact: Jerry Danyluk (717) 705-2119

Secondary Contact: Danielle Peyakovich (717) 705-6040

(6) Type of Rulemaking (check one)

Proposed Rulemaking

Final Order Adopting Regulation

Final Order, Proposed Rulemaking Omitted ☒

(7) Is a 120-Day Emergency Certification Attached?

No ☒

Yes: By the Attorney General

Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

This regulation is being promulgated in support of that portion of Act 141 of 2000, that implements a responsible alcohol management program for restaurants, retail dispenser eating places (beer only restaurants), clubs, catering clubs, distributors and importing distributors. The regulation serves to define terms and procedures associated with responsible alcohol management. The regulation outlines the procedure for certification of providers of alcohol server education and sets forth provider responsibilities. The regulation further explains new employee orientation, certification of licensees by the Board, acceptable types of signage, as well as licensee record keeping associated with the program.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Pennsylvania Liquor Code, section 207(i) [47 P.S. § 2-207(i)].

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The General Assembly of the Commonwealth of Pennsylvania passed SB 1531 which the Governor signed into law as Act 141 of 2000 on December 20, 2000. A portion of Act 141 requires regulations for the implementation of the Act with regard to responsible alcohol management. There are no deadlines for action; however, the responsible alcohol management portion of Act 141 became effective June 18, 2001.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulation is mandated by Act 141 of 2000 and serves to further explain those portions of the act that deal with responsible alcohol management.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

No environmental or general welfare risks are associated with nonregulation. However, licensees, managers and beverage alcohol servers who are educated in responsible alcohol management with regard to dealing with underage drinking and visibly intoxicated patrons as well as knowledge of the laws of the Commonwealth pertaining to these issues could help to reduce the safety and health risks associated with underage drinking, intoxication and drunken driving.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The benefits associated with this regulation are actually derived from that portion of Act 141 of 2000 that deals with responsible alcohol management. The public will benefit from responsible licensee practices that reduce the incidences of service to minors and visibly intoxicated patrons, both of which have been linked conclusively to impaired driving, property damage and violence. Licensees will also benefit if they take advantage of the program by potentially receiving a mitigation of sanctions by the Administrative Law Judge in the case of an employee who serves a minor or visibly intoxicated person. This benefit for licensees is the potential of reducing fines from a range of \$1000-\$5000 to \$50-\$1000.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

There will be no adverse effects as a result of this regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

This is a voluntary program for licensees and their employees. Licensees may be required to attend responsible alcohol management classes conducted by the Board's Bureau of Alcohol Education as a result of adjudication by an administrative law judge. The approximate number cannot be determined at this time.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

During the development of this regulation, members of the licensee community were consulted including the Pennsylvania Licensed Beverage Association (Tavern Association). The training on Intervention for Servers of Alcohol (TIPS) national program office was consulted regarding suggested regulation for providers of the training. Finally, University of Minnesota Alcohol Epidemiology Department and the Responsible Hospitality Institute, a national licensee and public health organization, were consulted on the substance of the regulations and the total program.

(17) 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.

Because the program is voluntary, the regulated community (Pennsylvania retail licensees) would not incur any specific costs or savings unless they choose to take advantage of the program. If they participate, the server/seller training would typically cost the retail licensee \$25-\$40 per employee, based on a review of training fees across the country. Cost for Manager/Owner training is being borne by the PLCB, therefore, the cost is measured in time spent in training, which is approximately six hours. Savings to the regulated community could be the reduction in administrative sanctions by an Administrative Law Judge in terms of reduced fines, i.e., \$1000-\$5000 to \$50-\$1000.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The regulation will not have a cost or savings benefit to local governments.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The regulation furthers the objectives of the statute promulgated by the General Assembly. The annual cost associated with implementation of the statute and these regulations was estimated to be \$400,000.

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(20) 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.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	NONE	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government	\$200,000	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000
Total Savings						
COSTS:	\$200,000	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	NONE					
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

The regulations are being promulgated to fulfill a statutory requirement. The regulations establish a new responsible alcohol management program for voluntary participation by retail licensees. The Board anticipates an annual interest that would require costs of about \$400,000 from the State Stores Fund. Actual costs will be determined by the extent of participation by licensees. Greater participation could increase costs beyond \$400,000 and less participation would reduce costs below \$400,000.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Not Applicable				

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The regulation establishes a new responsible alcohol management program, participation is voluntary and costs are determined by the extent of participation. The benefit derived will be improved alcohol management by the Board's licensees.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Nonregulatory alternatives were not considered since these regulations were mandated by Act 141 Of 2000.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered.

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(24) 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 regulation.

Federal regulations do not address responsible alcohol management.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The regulation is similar to several other states that provide an incentive to complete a Responsible Alcohol Management Program, including Oregon, Alabama, and Florida. Some states such as Maryland, Washington and Alaska require mandatory training. The regulation would not put Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation will not affect existing or proposed regulations of the Liquor Control Board but it will enhance the current training offered by the Board to its licensees.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No public hearings or informational meetings will be scheduled.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Yes, the Liquor Control Board will be required to keep records of persons trained in manager/owner and server/seller training for the purpose of certifying licensees as being in compliance with the responsible alcohol management program. The Board will also keep records of providers and instructors certified for the program. Participating retail licensees will be required to keep records of employee orientation and server/seller training. There is also an application requirement for those licensees desiring to be certified as being in compliance with the responsible alcohol management program.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, 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.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will become effective upon its publication in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

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

Title 40---LIQUOR
LIQUOR CONTROL BOARD
[40 PA. CODE Chapter 5]

The Liquor Control Board (Board) amends Title 40 Pa. Code by adding §§ 5.201, 5.202, 5.203, 5.204, 5.505, 5.206, and 5.207 to Chapter 5 as set forth in Annex A.

The additional sections are necessary in order to supplement legislative changes to the Liquor Code, specifically the addition of § 471.1 (47 P.S. § 471.1) by Act 141 of 2000, which addresses responsible alcohol management. The regulations define terms and establish guidelines for implementing a responsible alcohol management program as required by the act. They outline the procedure for certification of providers of alcohol server education and set forth provider responsibilities. The regulations explain new employee orientation, certification of licensees by the Board, acceptable types of signage, and licensee record keeping associated with the program.

Notice of proposed rulemaking is omitted under section 204(1) of the act of July 31, 1968 (P.L.769, No.240) (45 P.S. § 1204(1)) (CDL) since these regulatory amendments arise from the interpretation of a self-executing Act of Assembly, and further, are related to agency practice and procedure.

Fiscal Impact

The regulations are being promulgated to fulfill a statutory requirement. The regulations establish a new responsible alcohol management program for voluntary participation by retail licensees. The Board anticipates an annual interest that would require costs of about \$400,000 from the State Stores Fund. Actual costs will be determined by the extent of participation by licensees. Greater participation could increase costs beyond \$400,000 and less participation would reduce costs below \$400,000.

Paperwork Requirements

The Board will be required to keep records of persons trained in manager/owner and server/seller training for the purpose of certifying licensees as being in compliance with the responsible alcohol management program. The Board will also keep records of providers and instructors certified for the program. Participating licensees will be required to keep records of employee orientation and server/seller training. There is also an application requirement for those licensees desiring to be certified as being in compliance with the responsible alcohol management program.

Statutory Authority

The authority for these amendments is section 207(i) of the Liquor Code (47 P.S. § 2-207(i)).

Contact Person

Anyone requiring an explanation of these regulations or information related thereto should contact Jerry Danyluk, Room 513, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71P.S. §745.5(f)), on November 1, 2001, the Board submitted copies of these amendments with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Liquor Control, and Senate Committee on Law and Justice. On the same date, the amendments were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§732-101—732-506). In accordance with section 5(c) of the Regulatory Review Act, these amendments were (deemed) approved by the House Liquor Control Committee on _____, 2001, (deemed) approved by the Senate Law and Justice Committee on _____, 2001, and approved by IRRC on _____, 2001.

Findings

The Board finds that:

(1) The notice of proposed rulemaking is omitted under the authority of section 204(1) of the CDL since these regulatory amendments arise from the interpretation of a self-executing Act of Assembly, and further relate to Board practice and procedure.

(2) The amendment of the Board's regulations in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Board acting under the enabling statute orders that:

(a) The regulations of the Board, 40 Pa. Code Chapter 5 is amended by adding §§ 5.201, 5.202, 5.203, 5.204, 5.505, 5.206 and 5.207 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of Attorney General for approval as to form and legality as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) That this order shall take effect upon publication in the *Pennsylvania Bulletin*.

JOHN E. JONES, III
Chairperson

Chapter 5. DUTIES AND RIGHTS OF LICENSEES

Subchapter I. Responsible Alcohol Management

§5.201. Definitions.

Alcohol Service Education Provider or provider – An individual or business entity certified by the Board who employs instructors to administer responsible alcohol management classes to alcohol service personnel.

Instructor/Trainer – An individual employed by an alcohol service training provider who is certified by the Board to instruct alcohol service personnel in responsible alcohol management.

New employee orientation - The training of new employees on issues including but not limited to underage drinking and visibly intoxicated patrons, in the manner set forth by the Board.

Responsible server practices – Methods utilized by alcohol service personnel to recognize and prevent attempted illegal activity on the licensed premises including but not limited to violations of the Liquor Code, 47 P.S. §§4-493-495, and Crimes Code, 18 Pa. C.S.A. §§ 6307-6310.3.

PROVIDERS OF ALCOHOL SERVICE PERSONNEL TRAINING

§5.202. Provider certification.

(a) A person or entity desiring to become an Alcohol Server Education Provider must be Board certified. Certification shall be for a two-year period. The Board may certify a provider if it complies with the following:

- (1) Files an application on forms to be provided by the Board, and submits a \$500 nonrefundable application evaluation fee;
- (2) Submits a curriculum to the Board that complies with the standards set forth by the Board;
- (3) Employs Board certified instructors.

(b) Providers shall identify all program instructors on provider Staff Certification Forms issued by the Board, together with a \$100 fee for each instructor. To qualify for Board certification as an instructor, applicants must meet requirements established by the Board.

(c) Instructor certification shall be effective for a period of two years from the date of issuance. Re-application for instructor certification may be made not less than thirty days prior to expiration of the current certification. Termination of employment with the provider shall result in termination of instructor certification for that employee. Upon expiration of the two-year period providers may re-apply for certification not less than thirty days from the expiration of the current certification.

§5.203. Provider responsibilities.

Providers shall:

(a) be responsible for monitoring instructors, classes, students and examinations as prescribed by the Board.

(b) be responsible for maintaining instructor records as required by the Board.

(c) keep, for a period of two-years, complete enrollment records, a record of all students it certifies as having successfully completed its course and the name of the licensee who employs each student at the time of certification. A list consisting of the students each provider certifies and the licensee who employs them must be submitted to the Board within five days of certification. The above records shall be kept and made available for review in the same manner prescribed for the maintenance of business records by Board licensees pursuant to section 493(12) of the Liquor Code. (47 P.S. §4-493(12)).

(d) be responsible for reporting changes in ownership, management, the employment status of instructors or curriculum within 15 days of the change.

§5.204. Penalties for prohibited conduct.

The Board may decertify a provider and its instructors or an individual instructor for violating any of the provisions of this subchapter or engaging in any other prohibited conduct as set forth by the Board. The Board shall not consider application for re-certification until one year has passed from the date of de-certification. Appeals shall be as set forth in the Administrative Agency Act, 2 P.S. §702.

NEW EMPLOYEE ORIENTATION, SIGNAGE, CERTIFICATION OF COMPLIANCE

§5.205. New employee orientation.

(a) Owners or managers who wish to or are ordered to be in compliance with section 471.1 of the Liquor Code shall provide new employee orientation on or before the first day of the employee's employment as a member of the licensee's alcohol service personnel staff. It shall be the sole responsibility of the Licensee to ensure that either the designated manager or owner conducts the training. Licensees shall maintain new employee orientation records consisting of the name of the employee, date of orientation and the name of the individual who trained the employee. Records shall be maintained in the same manner as other business records pursuant to section 493(12) of the Liquor Code.

(b) The Board shall provide licensees with a checklist and appropriate learning materials.

§5.206. Signage.

(a) Signage will be provided by the Board; however, licensees may use other signage provided that it is equivalent in size, number and content to the Board's signage. Signage shall minimally include the following information:

(1) Acceptable forms of identification as described in section 495(a) of the Liquor Code. (47 P.S. §4-495(a));

(2) Refusal of service to minors and visibly intoxicated patrons as per the Liquor Code.

(b) Signage must be prominently displayed in a conspicuous place that can be observed readily by patrons. The signage shall be continuously posted commencing with the date licensee seeks to be certified as in compliance with the responsible alcohol service program. Licensee shall be responsible for the posting and maintenance of the signage at all times.

§5.207. Certification of compliance.

(a) Licensees may be certified by the Board as in compliance with the provisions of section 471.1 of the Liquor Code. Licensees shall file an application for compliance certification to be provided by the Board. If the requirements of section 4-471.1 of the Liquor Code are met, licensees shall be issued a certificate of compliance. Issuance of the certificate shall raise a presumption of compliance from the application mailing date, unless rebutted, in any subsequent legal proceeding in which compliance with section 471.1 of the Liquor Code is at issue. Compliance certification shall be valid for two years. Licensees may apply for re-certification of compliance not less than 60 days prior to expiration of current certification.

(b) If a licensee is found to be non-compliant with section 4-471.1 of the Liquor Code or any of the requirements of this subsection the Board may refuse or revoke certification. If certification is revoked, the Board shall not consider application for re-certification until one year has passed from the date of revocation. Appeals shall be as set forth in the Administrative Agency Act, 2 P.S. §702.

(c) The Office of Administrative Law Judge shall take administrative notice of the Board's records with regard to questions of certification.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PENNSYLVANIA 17124-0001

JOHN D.W. REILEY
BOARD SECRETARY

November 1, 2001

(717) 787-5867

Honorable Robert E. Nyce
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

Dear Mr. Nyce:

In compliance with the Regulatory Review Act [71P.S. §745.5], Final-Omitted Regulation 54-57 is enclosed for review by the Independent Regulatory Review Commission.

This regulation is being promulgated as required by that portion of Act 141 of 2000, that implements a responsible alcohol management program for restaurants, retail dispenser eating places, clubs, catering clubs, distributors and importing distributors.

The regulation defines terms and procedures, explains new employee orientation, certification of licensees by the Board, acceptable signage, as well as licensee recordkeeping associated with the program.

This agency will provide any assistance you may require regarding this regulation.

Sincerely,



JOHN D. W. REILEY
Board Secretary

Enclosure

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

I.D. NUMBER: Regulation 54-57
SUBJECT: Responsible Alcohol Management
AGENCY: Pennsylvania Liquor Control Board

2001 NOV - 1 AM 11:28
REVIEW COMMISSION

TYPE OF REGULATION

___ Proposed Regulation
___ Final Regulation
 X 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>
<u>11-1-01</u>	<u>Sandra Pancoe</u>	HOUSE COMMITTEE ON LIQUOR CONTROL (Republican)
<u>11-1-01</u>	<u>Fran Powers</u>	(Democrat)
<u>11/1/01</u>	<u>Thomas W. Whill</u>	SENATE COMMITTEE ON LAW & JUSTICE (Republican)
<u>11/1/01</u>	<u>[Signature]</u>	(Democrat)
<u>11/1/01</u>	<u>Elena Pagan</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
<u>11/1/01</u>	<u>Mary Mummert</u>	ATTORNEY GENERAL
___	___	LEGISLATIVE REFERENCE BUREAU