

<b>Regulatory Analysis Form</b>		<b>This space for use by IRRC</b> 2005 MAY 24 AM 11:48 IRRC Number: 2477	
(1) Agency Pennsylvania Liquor Control Board			
(2) I.D. Number (Governor's Office Use) 054-062			
(3) Short Title Point System for Certain Licensees			
(4) PA Code Cite 40 Pa. Code		(5) Agency Contact Telephone Numbers Primary Contact: James Maher (717) 783-9454 Secondary Contact: Faith Diehl (717) 783-9454	
(6) Type of Rulemaking (check one) Proposed Rulemaking Final Order Adopting Regulation Final Order, Proposed Rulemaking Omitted <input checked="" type="checkbox"/>		(7) Is a 120-Day Emergency Certification Attached? No <input checked="" type="checkbox"/> Yes: By the Attorney General Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. The regulatory amendments and additions codify numerous agency practices and procedures and further explain various legislative changes to the Liquor Code.  The proposed rulemaking enumerates "non-enhanced violations."  It establishes a range of three to five points for 31 enumerated violations of the Liquor Code or the Board's Regulations.  It establishes a range of one to three points for all other violations of the Liquor Code or the Board's Regulations that have not been enumerated in Act 239 of 2004 (section 479) or this section.  It directs removal of three points from the record for each 12 months a licensee operates without assessment of additional points.			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions.  Pennsylvania Liquor Code, sections 207(i) and 479(c) [47 P.S. §§ 2-207(i); 4-479(c)].			

(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.

Act 239 of 2004 created a point system for violations by licensees in cities of the first class. Upon accumulation of certain numbers of points, licensees will be subject to various consequences including receiving education in responsible alcohol management. If higher point totals are accumulated, ultimately, the license may be revoked.

Act 239 requires that the Pennsylvania Liquor Control Board ("Board") adopt regulations about the assessment of points for non-enhanced violations. These proposed regulations enumerate what these non-enhanced violations are. The proposed regulations also provide for a range of points for non-enhanced violations that may be assessed by an Administrative Law Judge upon adjudication of a citation.

### **Regulatory Analysis Form**

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

The General Assembly created a "point system" for licensees in cities of the first class to systematize the assessment of penalties for licensees committing unlawful acts relative to liquor and malt or brewed beverages. Penalties for certain violations were specified in the legislation, but regulations were directed to specify points to be assessed for others.

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

No public health, safety, environmental or general welfare risks are associated with nonregulation.

(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 residents of cities of the first class as a whole benefit from licensed establishments run in conformance with the Liquor Code and the Board's regulations.

(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.)

Licensees in Philadelphia who are persistently noncompliant with the Liquor Code and the Board's Regulations may be adversely affected by being required to transfer their license, or having it suspended or revoked. Because this is an entirely new procedure, there is no way to estimate the number of people who will be adversely affected.

(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.)

Compliance will be required by the Board's licensees in cities of the first class. There currently are about 2,000 licensees in the potentially affected class

(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 these regulations, input was received from the Office of Administrative Law Judge, Pennsylvania Liquor Control Board and the Bureau of Liquor Control Enforcement, Pennsylvania State Police.

(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 this is an entirely new procedure, there is no way to estimate the costs or savings to the regulated community.

### Regulatory Analysis Form

(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.

Because this is an entirely new procedure, there is no way to estimate the costs or savings 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.

Because this is an entirely new procedure, there is no way to estimate the costs or savings to state government.

(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.

Not Applicable

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS: N/A</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>						
<b>COSTS: N/A</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>						
<b>REVENUE LOSSES: N/A</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>						

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

Not applicable.

## Regulatory Analysis Form

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

**Not Applicable.**

Program	FY -3	FY -2	FY -1	Current FY
N/A				

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

Not applicable.

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

Because the regulations are required by statute, no nonregulatory alternatives were considered

(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.

(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.

None of the provisions contained in these regulations are more stringent than federal standards.

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

The Pennsylvania system of liquor regulation is unique, so meaningful comparison to other states is not possible. These regulatory changes will not place Pennsylvania at a competitive disadvantage with other states.

## Regulatory Analysis Form

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

These modifications will affect only the Board's existing regulations.

(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.

(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.

The proposed regulatory amendments will require the Board and the Office of Administrative Law Judge to keep records of the points assessed to and removed from license records. Additional correspondence between the Board and Licensees will be required when several action levels are reached. Additional legal proceedings may be necessary when licenses are placed in safekeeping or revoked.

(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 needs of 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

The Pennsylvania Liquor Control Board (Board), under the authority of Section 207(i) of the Pennsylvania Liquor Code [47 P.S. § 2-207(i)], amends 40 Pa. Code, Chapter 3, by adding Subchapter J and §§ 3.101 and 3.105.

### Purpose:

Act 239 of 2004 created a point system for violations by licensees in cities of the first class. Upon accumulation of certain numbers of points, licensees will be subject to various consequences including receiving education in responsible alcohol management. If higher point totals are accumulated, ultimately, the license may be revoked. This point system expires on December 31, 2006, unless extended by statute.

Act 239 established a system of points to be assessed for enumerated violations of the Liquor Code [47 P.S. § 1-101 *et seq.*]. The Act required that the Pennsylvania Liquor Control Board (“Board”) adopt regulations setting the assessment of points for a category of violations described as “non-enhanced violations.” These regulations enumerate what these non-enhanced violations are. The regulations also provide for a range of points for non-enhanced violations that may be assessed by an Administrative Law Judge (“ALJ”) upon adjudication of a citation.

These are being submitted as final-omitted regulations. The Commonwealth Documents Law (“CDL”) [45 P.S. §§ 1201-1208], establishes three (3) circumstances under which an agency is permitted to promulgate a final-omitted regulation. These are when: (1) comments from the public are not appropriate, necessary or beneficial, (2) all persons subject to the regulation are named or given personal notice, or (3) notice is impracticable, unnecessary or contrary to the public interest. [45 P.S. § 1204; “The Regulatory Review Process in Pennsylvania,” IRRC, February 2003, pg.18].

Licensees are already aware that even a single adjudicated citation for a violation of the Liquor Code may result in the revocation of, or decision by the Board not to renew their license. *Slovak-American Citizens Club v. Pennsylvania Liquor Control Board*, 120 Cmwlth. 528, 549 A.2d 251 (1988). Thus, the point system creates a system for implementing the Board's existing plenary discretion in licensing.

The Board considers that, by the terms of section 479, the regulated community is already on notice that at least one (1) point will be assessed for any violations not enumerated in subsections 479(b) and (d) of the Liquor Code. [47 P.S. § 4-479(b) and (d)]. Additionally, when a licensee in Philadelphia receives a citation, the cover letter from the Office of Administrative Law Judge now explains that points may be assessed if the citation is adjudicated against the licensee. In these ways, the Board believes that persons subject to the regulation are given actual notice of it in accordance with law. [45 P.S. § 1204(2)].

Because the statute became effective on February 6, 2005, and will expire on December 31, 2006, unless extended, the Board believes that expedited adoption of these implementing regulations is in the public interest. Delaying implementation to follow the notice of proposed rulemaking system is impracticable and contrary to the public interest under these circumstances. [45 P.S. § 1201

For these reasons, the final-omitted rulemaking process serves both the public interest in prompt effectuation of the purpose of Act 239, and the regulated community's receipt of fair notice of the potential consequences of an adjudicated citation



Summary of Amendments:

The regulations implement the direction of the General Assembly in Act 239 of 2004, at new Liquor Code section 479(c). The following are summaries of the regulatory changes:

- The rulemaking enumerates “non-enhanced violations.”
- It establishes a range of three to five points for 31 enumerated violations of the Liquor Code or the Board’s Regulations.
- It establishes a range of one to three points for all other violations of the Liquor Code or the Board’s Regulations that have not been enumerated in Act 239 of 2004 (section 479) or this section.
- It directs removal of three points from the record for each 12 months a licensee operates without assessment of additional points.

Affected Parties:

The regulations will affect all licensees in Philadelphia, the Commonwealth’s only city of the first class.

Paperwork Requirements:

The regulatory amendments will require the Board and the Office of Administrative Law Judge to keep records of the points assessed to and removed from

license records. Additional correspondence between the Board and licensees will be required when several action levels are reached. Additional legal proceedings may be necessary when licenses are placed in safekeeping or revoked.

*Fiscal Impact:*

Because the proposed regulations implement a procedure that has not previously existed in Pennsylvania, anticipated fiscal impact cannot be estimated with any confidence. If these regulations, and the statutory provisions they parallel, cause an increase in appeals of Administrative Law Judge decisions to the Board, this will increase costs to the Board and licensees. In 2003, there were 19 appeals to the Board filed by licensees in Philadelphia. In 2004, there were seven appeals filed by licensees in Philadelphia. The number of appeals is likely to increase.

*Effective Date:*

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

*Contact Person:*

Further information may be requested from James F. Maher, Assistant Counsel, Office of Chief Counsel, Pennsylvania Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review:

Under section 5a(c) of the Regulatory Review Act, (71 P.S. § 745.5a(c)), the Board submitted a copy of these tolled final-omitted regulations, with revisions, and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC), the Chairpersons of the House and Senate Committees, and the Office of Attorney General on May 24, 2005. A copy of this material is available to the public upon request.

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 the final-omitted regulations.

Jonathan H. Newman  
Chairman

**ANNEX A**  
**TITLE 40. LIQUOR**  
**PART I. LIQUOR CONTROL BOARD**  
**CHAPTER 3. LICENSE APPLICATIONS**

\* \* \*

**Subchapter L. POINT SYSTEM FOR CERTAIN LICENSEES**

**3.121 Statutory authority and applicability.**

Section 479 of the Liquor Code establishes a numerical system for assessment of points against the record of a license for licensees in cities of the first class. (47 P.S. § 4-479). Every liquor and malt beverage license that has been cited for a violation under section 471 of the Liquor Code shall have points assessed to the license record as of the date of final adjudication.

**3.122 Points Assessment.**

(a) The violations described in this section shall be known as “non-enhanced violations.” If a licensee or the licensee’s agent is adjudicated to have violated two or more non-enhanced violations arising from the same core of operative facts, points shall be assessed only for the violation for which the greatest number of points may be assessed.

(b) Where a range of points is given, the Administrative Law Judge shall assess any whole number of points for the violation within that range.

(c) The following violations will be assessed three to five points:

(1) Supplied false information on applications or notices. (47 P.S. §§ 4-403, 4-436, 4-471).

- (2) Verification of an application by an unauthorized person. (47 P.S. § 4-403).
- (3) Offered, conferred or agreed to confer upon an enforcement officer of the Bureau of Liquor Control Enforcement or offered to pay or paid a commission, profit or remuneration to a member, or employee of the Board or other employee of the Commonwealth. (47 P.S. §§ 4-471, 4-491(14)).
- (4) Cashed, received, handled or negotiated payroll and other checks. (47 P.S. § 4-493(15)).
- (5) Sales by a club of malt or brewed beverages for consumption off-premises. (47 P.S. §§ 4-407, 4-442(a)).
- (6) Failure by a club to properly admit members; failed to conduct business through officers regularly elected, failed to hold regular meetings; failed to operate for the mutual benefit of the entire membership; or club officers and trustees not elected in accordance with the charter and bylaws. (47 P.S. § 1-102).
- (7) Sales by a club of liquor or malt or brewed beverages to non-members or as part of a catered event without providing the required service of food. (47 P.S. §§ 4-401(b), 4-406(a)(1), 4-442(a); 40 Pa. Code § 5.83(a)).
- (8) Held an event, contest or tournament on the licensed premises which involved the consumption of alcoholic beverages. (40 Pa. Code § 5.32(e)(3)).
- (9) Permitted malt or brewed beverages to be consumed on the licensed premises of a distributor or importing distributor, except as part of a lawful tasting. (47 P.S. § 4-441(b)).
- (10) Distributor or importing distributor licensee acquisition or maintenance of an interest in property used by another licensee. (47 P.S. §§ 4-411, 4-443).

- (11) Sales by distributor or importing distributor in quantities of less than a case of 24 containers, each container holding seven fluid ounces or more, or a case of 12 containers, each holding 24 fluid ounces or more. (47 P.S. § 4-441(b)).
- (12) Purchase of malt or brewed beverages by a distributor or an importing distributor after license expiration or failure to renew or validate the license. (47 P.S. § 1-102).
- (13) Failed to be a bona fide restaurant providing sufficient food items, eating utensils, dishes and seating in a location with a total area of 400 square feet available to the public in one or more rooms. (47 P.S. §§ 1-102, 4-491(6)).
- (14) Failed to be a bona fide eating place providing sufficient food items, eating utensils, dishes, and seating; in a location with a total area of 300 square feet available to the public in one or more rooms. (47 P.S. §§ 1-102, 4-442(b)).
- (15) Failed to maintain a permanent partition at least four feet high between the licensed eating place and other business. (40 Pa. Code § 3.54).
- (16) Permitted entertainment outside of lawful service hours or on Sunday before 11:00 a.m. or after 2:00 a.m. on the following Monday. (47 P.S. § 4-493(10)).
- (17) Permitted entertainment to occur without an amusement permit. (47 P.S. § 4-493(10)).
- (18) Permitted entertainment while the license or amusement permit was suspended by order of an Administrative Law Judge. (47 P.S. § 4-493(10)).
- (19) Furnished false information concerning sale of food and beverages when applying for a Sunday sales permit; or concealing the pecuniary interest of others; or concealing the source of funds when applying for a license. (47 P.S. §§ 4-403(h), 4-

404, 4-406(a)(3), 4-432(a), 4-432(f), 4-436(j), 4-468(a), 4-471; 40 Pa. Code § 11.172).

(20) Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises. (47 P.S. § 4-471).

(21) Failed to operate as a bona fide hotel (47 P.S. §§ 1-102, 4-461(c)).

(22) Interfered with a liquor control enforcement officer, police officer or board employee in the administration of the law or other governmental function (47 P.S. § 4-471).

(23) Altered an expired liquor license to show it as current and valid (47 P.S. § 4-471(a)).

(24) Consumption of liquor or malt or brewed beverages by licensee or its agents while tending bar or otherwise serving liquor or malt or brewed beverages (47 P.S. § 4-493(28)).

(25) Sold alcoholic beverages during a period of license or special permit suspension (47 P.S. §§ 4-406(a)(3), 4-491(1), 4-492(2), (3), 4-493(16)).

(26) Permitted another person to operate a business on the licensed premises (40 Pa. Code § 3.52(a)).

(27) Permitted another person or entity to own and/or operate the licensed premises (47 P.S. §§ 4-404; 4-436(f)).

(28) Sold alcoholic beverages after the license is submitted for safekeeping (47 P.S. §§ 4-467, 4-491(1), 4-492(2), 4-492(3), 4-493(16); 40 Pa. Code § 7.31).

(29) Sold alcoholic beverages after the license has expired (47 P.S. §§ 4-491(1), 4-492(2), 4-492(3), 4-493(16)).

(30) Sold beer products for takeout in excess of 192 fluid ounces in a single sale (except for distributor) (47 P.S. §§ 4-401(a), 4-407, 4-442(a)).

(31) Sold untaxed cigarettes (47 P.S. § 4-471).

(d) For any violation of the Liquor Code or the Board's Regulations that has not been specified in section 479 of the Liquor Code or this section, the Administrative Law Judge shall assess one to three points.

(e) Points will be assessed to the license record by the Board and the Office of Administrative Law Judge, effective on the date of final adjudication. Final adjudication means when the Administrative Law Judge has rendered a decision on the citation notwithstanding any appeals of that decision. If the decision is reversed or modified on appeal, the assessment of points will be correspondingly adjusted.

(f) Points assigned to any license record shall be removed at the rate of three points for each 12 consecutive months of operation of the licensed premises in which such license has not been assessed points.



Commonwealth of Pennsylvania  
Pennsylvania Liquor Control Board  
May 24, 2005

**SUBJECT: Final-omitted Regulations 54-62 (IRRC #2477) Point System for  
Certain Licensees**

**TO:** MARY S. WYATTE, ESQ.  
ACTING EXECUTIVE DIRECTOR  
INDEPENDENT REGULATORY REVIEW COMMISSION

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

**By Hand Delivery**

Refer to: 3-9454

On May 3, 2005, the Independent Regulatory Review Commission ("IRRC") suggested revisions to the final-omitted regulation No. 54-62 referenced above, that was submitted for your review on April 11, 2005. Additionally, by memo dated May 2, 2005, Chief Deputy Attorney General Robert A. Mulle advised that the review of this regulation by the Office of Attorney General ("OAG") would be tolled pending receipt of a more complete explanation for submittal of this as a final-omitted regulation.

Accordingly, the Pennsylvania Liquor Control Board ("Board") requests that the time for review of the regulations be tolled in accordance with section 5.1(g) of the Regulatory Review Act [71 P.S. § 745.5a(g)]. Tolling will permit consideration by IRRC and the OAG of the following revisions:

- Revised title from "Numerous Revisions" to "Point System for Certain Licensees."
- Corrected subchapter labeling.
- Revised section numbering.
- Correct citation in section 3.105(c)(8).
- Amended preamble to expand the explanation for final-omitted filing and remove references to "proposed" regulations.

Mary S. Wyatte, Esq.  
May 24, 2005  
Page 2

In accordance with IRRC regulation 307.5 [1 Pa. Code § 307.5], the Board is simultaneously submitting with this tolling request a revised final-omitted regulation package consisting of a Preamble, Annex A and Regulatory Analysis Form. These revised documents address the suggestions made by IRRC and the request of OAG for a better explanation for the final-omitted filing. Should you have any questions, please call Assistant Counsel James F. Maher at (717) 783-9454.

Cc: (w/encl.)

Honorable John Rafferty, Chairman, Senate Committee on Law and Justice  
Honorable Sean Logan, Democratic Chairman, Senate Committee on Law and Justice  
Honorable Ron Raymond, Chairman, House Committee on Liquor Control  
Honorable Robert Donatucci, Democratic Chairman, House Committee on Liquor  
Control

Robert A. Mulle, Chief Deputy Attorney General  
Mr. Mark Meyer, Senate Committee on Law and Justice  
Mr. Ken Varhola, Senate Committee on Law and Justice  
Mr. Jay Wiederhold, Executive Director (R), House Committee on Liquor Control  
Ms. Lynn Benka-Davies, Executive Director (D), House Committee on Liquor Control  
Ms. M. Lois Hein, Governor's Office of the Budget  
Barbara Adams, Governor's Office of General Counsel  
Ms. Donna Cooper, Governor's Office  
Major Leonard McDonald, Pennsylvania State Police, Bureau of Liquor Control  
Enforcement

RECEIVED  
2005 MAY 24 AM 11:51  
REGULATORY COMMISSION

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

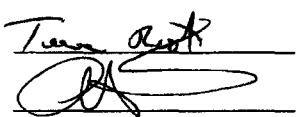
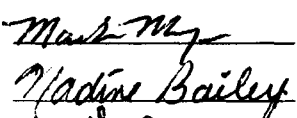
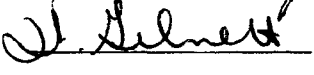
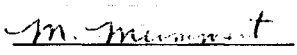
**I.D. NUMBER:** 54-62  
**SUBJECT:** Point System for Certain Licensees  
**AGENCY:** Liquor Control Board

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**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  
 Delivery of Tolled Regulation  
a.  With Revisions  
b.  Without Revisions
- 

**FILING OF REGULATION**

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
5/24 5-24		HOUSE COMMITTEE ON LIQUOR CONTROL ( <i>Republican</i> ) ( <i>Democrat</i> )
5/24/05 5/24/05		SENATE COMMITTEE ON LAW & JUSTICE ( <i>Republican</i> ) ( <i>Democrat</i> )
5/24/05		INDEPENDENT REGULATORY REVIEW COMMISSION
5-24-05		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU