

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION
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2011 SEP -1 P 3 37

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency:

Pennsylvania Liquor Control Board

(2) Agency Number: 54

Identification Number: 66

IRRC Number: 2911

(3) PA Code Cite: 40 Pa. Code, Chapter 3

(4) Short Title: Brewery Pub Location

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: James F. Maher (717) 783-9454
Pennsylvania Liquor Control Board
401 Northwest Office Building
Harrisburg, Pennsylvania 17124
FAX: (717) 787-8820
Email: ra-lblegal@state.pa.us

Secondary Contact: Christopher L. Herrington (717) 783-9454
(Same Contact Information)

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
 Final Regulation
 Final Omitted Regulation

- Emergency Certification Regulation;
 Certification by the Governor
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This regulatory change allows a brewery pub to sell beer produced and owned by the brewery with which it is licensed, without regard to the location in Pennsylvania where the beer is produced.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Pennsylvania Liquor Code, sections 207(i) and 446 [47 P.S. §§ 2-207(i), 4-446].

(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.

Section 446(2) of the Liquor Code [47 P.S. § 4-446(2)] directs the Board to establish the “conditions and regulations” under which a brewery may operate a brewery pub. The regulations are not mandated by any federal or state law, court order or federal regulation.

(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.

This regulatory change recognizes the growth and evolution of “craft” brewing of beer in Pennsylvania. As a result of such growth, certain breweries have reached the point where demand for their beer at their brewery pubs has outstripped their capacity to produce beer at the adjacent brewery. While the logical solution would be for the brewery to open another brewery to address the demand for beer at the brewery pub, the Board’s Regulations preclude the sale of beer produced at the second brewery by the original brewery pub because the second brewery would not be deemed adjacent to the original brewery pub. This regulatory change resolves this issue.

This regulatory change has been requested by the industry. The people who will have the first opportunity to benefit from this change are the licensed breweries in Pennsylvania which have established brewery pubs. As of the date of this submission, there are ninety (90) active licensed breweries in the state. Of these licensed breweries, twenty-one (21) also have brewery pubs with active licenses.

(11) 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.

The Board has not relied on data to justify this regulation.

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

There no adverse effects anticipated as a result of this regulatory change.

(13) 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.

No persons, groups or entities will be required to comply with this regulation, because it represents a relaxation of the current regulations. A licensed brewery is not required to operate a brewery pub.

(14) 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 Board does not anticipate that this regulatory change will affect the costs or savings of the regulated community. If this change produces increased business opportunities, it should positively affect the revenues of the regulated community.

(15) 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. Explain how the dollar estimates were derived.

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

(16) 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. Explain how the dollar estimates were derived.

The implementation of the regulation is not expected to affect the costs or savings of state government.

(17) 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:	\$	\$	\$	\$	\$	\$
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(17a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY

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

The regulatory change is expected only to benefit local business. It is not expected to have any costs or adverse effects.

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

This regulatory change was requested by a member of the regulated community. Notice of this final rulemaking has been given to all licensed breweries by U. S. Mail or e-mail and by publication in the *Pennsylvania Bulletin* on July 30, 2011 [41 Pa.B 4104].

By letter dated August 15, 2011, Mr. Bill Covaleski, Brewmaster and President, Victory Brewing Company located in Downingtown, Pennsylvania, stated that he enthusiastically supports the proposed regulatory change. Mr. Covaleski's letter supports the belief that this change will benefit the growth of "craft" brewing in the Commonwealth.

(20) 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 licensed businesses requires a modification to the current regulations.

(21) 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.

Federal regulations do not address brewery pub licensing and operation.

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

Brewery pubs are regulated by neighboring states in accordance with their unique and individual systems of alcoholic beverage control. Because brewery pubs are local businesses, similar to restaurants, the regulatory change should not put Pennsylvania at a competitive disadvantage.

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

The regulation will not affect any other existing or proposed regulations of the Pennsylvania Liquor Control Board or any other state agency.

(24) 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.

This regulatory change is not expected to affect legal, accounting or consulting procedures and should not require any additional reporting, recordkeeping or other paperwork.

(25) 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.

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

- | | |
|---|-----------------------------|
| A. The date by which the agency must receive public comments: | <u>None - Final-omitted</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>None</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>November 2011</u> |
| D. The expected effective date of the final-form regulation: | <u>November 2011</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>November 2011</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u></u> |

(27) 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.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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2011 SEP -7 P 3:37
DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. 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. 054- <u>66</u></p> <p>DATE OF ADOPTION: <u>July 6, 2011</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: <u>FSDiuhl</u> Chief Counsel</p> <p><u>July 1, 2011</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

CHAPTER 3. LICENSE APPLICATIONS

The following section is amended:

3.92. Brewery pubs.

FINAL-OMITTED RULEMAKING

LIQUOR CONTROL BOARD

40 PA. CODE CHAPTER 3

Brewery Pub Location

The Liquor Control Board (“Board”), under the authority of section 207(i) and 446 of the Liquor Code (47 P.S. §§ 2-207(i), 4-446), amends Chapter 5.

Summary

This regulatory change recognizes the growth and evolution of “craft” brewing of beer in Pennsylvania. As a result of such growth, certain breweries have reached the point where demand for their beer at their brewery pubs has outstripped their capacity to produce beer at the adjacent brewery. While the logical solution would be for the brewery to open another brewery to address the demand for beer at the brewery pub, the Board’s Regulations preclude the sale of beer produced at the second brewery by the original brewery pub because the second brewery would not be deemed adjacent to the original brewery pub. This regulatory change resolves this issue.

Affected Parties

The rulemaking will affect licensed breweries. As of the date of this submission, there are ninety (90) active licensed breweries in the state. Of these licensed breweries, twenty-one (21) also have brewery pubs with active licenses. All potentially affected parties have been given notice of this rule-making, either by e-mail or U.S. Postal Service mail.

Paperwork Requirements

This regulatory change is not expected to affect legal, accounting or consulting procedures and should not require any additional reporting, recordkeeping or other paperwork.

Fiscal Impact

This regulatory change is not expected to have any fiscal impact on the regulated community or state and local governments. Sales revenues for licensed breweries may be increased as a result of this change.

Effective Date:

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

Contact Person:

Further information is available by contacting James F. Maher, Assistant Counsel or Christopher L. Herrington, Deputy Chief 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 final-omitted regulations 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 _____. 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.

P.J. Stapleton III
Chairman

ANNEX A

TITLE 40. LIQUOR

Part I. LIQUOR CONTROL BOARD

Chapter 3. License Applications

**Subchapter J. MALT OR BREWED BEVERAGE
MANUFACTURERS**

§ 3.92. Brewery pubs.

(a) The Board will be authorized to issue a brewery pub license to the holder of a brewery license. A brewery pub license may only be issued in those municipalities in which the Board may issue or transfer a malt and brewed beverage retail dispenser license.

(b) The holder of a brewery pub license shall have all the rights and be subject to the same conditions and qualifications as those imposed on holders of a malt and brewed beverage retail dispenser license except as set forth in this section.

(c) The brewery pub license will be issued to premises immediately adjacent to but separate and distinct from the brewery premises.

(d) Sales of alcoholic beverages at the brewery pub premises shall be limited to sales of malt or brewed beverages produced at and owned by the brewery adjacent to it, or a brewery which is under common control with the brewery pub. [the adjacent brewery.] A brewery pub licensee may sell, for on-premises consumption, [Pennsylvania] wine manufactured by [it has purchased either from the Board or] the holder of a Pennsylvania limited winery license.

(e) A brewery pub license may not be issued to a brewery that has already acquired a restaurant, hotel or malt and brewed beverage retail dispenser license. If a brewery, which has a brewery pub license, applies for and acquires a restaurant, hotel or malt and brewed beverage retail dispenser license, the brewery pub license will be cancelled upon approval of the restaurant, hotel or malt and brewed beverage retail dispenser license.


(f) Any citations which may be issued pursuant to section 471 of the Liquor Code (47 P. S. § 4-471) for activity relating to the brewery pub will be issued against the brewery license.

**Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board**

September 7, 2011

**SUBJECT: Final-Omitted Regulations 54-66 (Amendments to Title 40,
Pennsylvania Code, Section 3.92)**

**TO: FIONA WILMARTH, ACTING EXECUTIVE DIRECTOR
INDEPENDENT REGULATORY REVIEW COMMISSION**

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

By Hand Delivery

Refer to: 3-9454

Submitted herewith are final-omitted amendments to section 3.92 of the regulations of the Pennsylvania Liquor Control Board ("Board"). Enclosed are the regulatory analysis form, signed CDL-1 face sheet, preamble and Annex A. The signed transmittal sheet also is enclosed which indicates delivery of this regulatory change today to the legislative oversight committees and the Office of Attorney General.

An advance notice of this regulatory change has been sent by e-mail or regular U.S. mail to each of the breweries licensed by the Board. Only breweries will be affected by this regulatory change. Additionally, an advance notice of this regulatory change was published in the Pennsylvania Bulletin on July 30, 2011. [41 Pa. B. 4104].

By letter dated August 15, 2011, Mr. Bill Covaleski, Brewmaster and President, Victory Brewing Company located in Downingtown, Pennsylvania, stated that he enthusiastically supports the proposed regulatory change. Mr. Covaleski's letter supports the belief that this change will benefit the growth of "craft" brewing in the Commonwealth. A copy of Mr. Covaleski's letter is included herewith.

On July 19, 2011, the Board requested that the Independent Regulatory Review Commission (“IRRC”) assist the Board by conducting an informal review of this regulatory change. On August 17, 2011, the Board received the following informal comments from IRRC, which are followed by the Board’s responses thereto:

- *To improve clarity, we suggest that the phrase “immediately adjacent to but” be deleted from § 3.92(c). If the Board accepts this suggestion, we recommend adding the word “immediately” before the word “adjacent” in Subsection (d).*

Response: The purpose and intent of subsections 3.92(c) and 3.92(d) are distinct. While subsection 3.92(d) pertains to restrictions on the sales of malt or brewed beverages by the brewery pub, subsection 3.92(c) pertains to the licensing of the brewery pub premises. Currently, subsection 3.92(c) provides that the Board will issue a brewery pub license to premises immediately adjacent to but separate and distinct from the brewery premises.

The suggested change to subsection 3.92(c) would require that the Board issue a brewery pub license “to premises separate and distinct from the brewery premises.” This change would yield results which are not intended by the Board related to the licensing of such brewery pub locations. What was intended was a change in the regulation that would allow a brewery pub to sell malt or brewed beverages produced at any of its Pennsylvania breweries, not just the adjacent brewery. IRRC’s proposed change would allow the licensure of a brewery pub at locations that are completely independent of the brewery. This is not what the Board intended. Accordingly, the Board has decided not to incorporate this suggested change.

- *Regulatory Analysis Form Question #9, pertaining to schedule of review for the regulation, should be updated to reflect accurate dates.*

Response: The Board has utilized the new Regulatory Analysis Form, and has updated the dates pertaining to the schedule of review for the regulation (Question #26 in the new RAF).

Fiona Wilmarth – Independent Regulatory Review Commission (54-66)

September 7, 2011

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Any questions and comments regarding this regulatory submission should be directed to James F. Maher or Christopher L. Herrington at (717) 783-9454.

cc: (w/encl.)

Honorable John Pippy, Chairman, Senate Law and Justice Committee

Honorable Jim Ferlo, Democratic Chairman, Senate Law and Justice
Committee

Honorable John Taylor, Chairman, House Liquor Control Committee

Honorable Dante Santoni, Jr., Democratic Chairman, House Liquor Control
Committee

Ms. Cheryl Schriener, Executive Director, Senate Law and Justice Committee

Mr. Stephen Bruder, Executive Director, Senate Law and Justice Committee

Ms. Marcia Lampman, Executive Director, House Liquor Control
Committee

Ms. Lynn Benka-Davies, Executive Director, House Liquor Control
Committee



Mr. James F. Maher

Liquor Control Board
Office of Chief Counsel
401 Northwest Office Building
Harrisburg, PA 17124

August 15, 2011

Dear Mr. Maher,

I write you today to express my company's enthusiastic support of the Liquor Control Board's recent change to section 3.92 of its regulations [40 Pa. Code § 3.92] as announced by your offices last week.

The Board has correctly identified Pennsylvania's craft breweries as growing and evolving employers within the Commonwealth's manufacturing sector. The Board has correctly cited the previous hardship and impediment to continued growth that GP licensees suffered in expanding their output to meet growing consumer demand. Now, by permitting GP licensees to receive beer brewed at their properly licensed facilities that are not located adjacent to the GP licensed premises, new brewery facilities are likely to be constructed, providing brewery employment for many.

New manufacturing operations and new employment opportunities are of benefit to all Pennsylvania residents.

Additionally, by removing the need for a G and GP licensee to secure an R license to move their beer from their non-adjacent licensed premise to the GP licensed premise for sale to the public, the Board has alleviated the unnatural demand for R licenses stimulated by brewers intent on simply retailing their beer as a GP license permits. With the demand for R licenses presently spreading to grocery stores, this regulatory change is beneficial to all foodservice operators within the Commonwealth.

On behalf of the 190 employees of Victory Brewing Company, I commend the Board's decision-making on this regulatory action.

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OFFICE OF CHIEF COUNSEL

Sincerely,

Bill Covaleski
Brewmaster & President
Victory Brewing Company

President
Brewers Of Pennsylvania

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

I.D. NUMBER: 54-66
SUBJECT: Brewery Pub Location
AGENCY: Liquor Control Board

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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>
9-7	<u>Susan Thomas</u> (1)	HOUSE COMMITTEE ON LIQUOR CONTROL (<i>Democrat</i>)
9-7	<u>Joseph M. ...</u> (2)	(<i>Republican</i>)
8-7	<u>Chad ...</u> (3)	SENATE COMMITTEE ON LAW & JUSTICE (<i>Republican</i>)
9-7	<u>...</u> (4)	(<i>Democrat</i>)
9-7/11	<u>K Cooper</u> (5)	INDEPENDENT REGULATORY REVIEW COMMISSION
9/7	<u>...</u> (6)	ATTORNEY GENERAL
_____	_____ (7)	LEGISLATIVE REFERENCE BUREAU