

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

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

(1) Agency: Pennsylvania Liquor Control Board

(2) Agency Number: 54

Identification Number: 80

IRRC Number: 3082

(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: ra-lblegal@pa.gov

Secondary Contact: Rodrigo J. Diaz (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)

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 specific 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 September 9, 2014, there were one hundred seventy (170) 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, the proposed 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 proposed 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 proposed regulation, since the 21st 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 proposed 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 proposed 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 proposed 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 proposed regulation. The proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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.

	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

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

Program	FY -3 2010-2011	FY -2 2011-2012	FY -1 2012-2013	Current FY 2013-2014**
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 proposed regulation, including the type of professional skills necessary for preparation of the report or record.

The proposed regulation does not require any reporting, recordkeeping or other administrative costs to be incurred for compliance. Compliance with the proposed 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 proposed 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 proposed 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 proposed 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: November 2014
- B. The date or dates on which public meetings or hearings will be held: December 2014
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: December 2014
- D. The expected effective date of the final-form regulation: January 2015
- E. The date by which compliance with the final-form regulation will be required: January 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)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved
as to form and legality.

Attorney General:


BY: _____
(DEPUTY ATTORNEY GENERAL)

OCT 16 2014
DATE OF APPROVAL

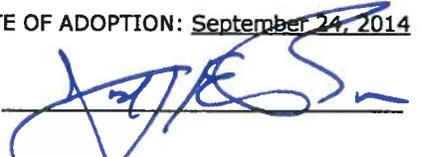
Check if applicable
Copy not approved. Objections
attached.

Copy below is hereby certified to be a true
and correct copy of a document issued,
prescribed or promulgated by:

Pennsylvania Liquor Control Board
(AGENCY)

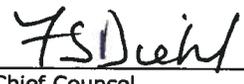
DOCUMENT/FISCAL NOTE NO. 54-80

DATE OF ADOPTION: September 24, 2014

BY: 

TITLE: Chairman
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form
and legality. Executive or Independent
Agencies:

BY: 
Chief Counsel

September 24, 2014
DATE OF APPROVAL

Check if applicable. No Attorney
General approval or objection within
30 days after submission.

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.

PROPOSED 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)), 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 on the licensed premises. 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 September 9, 2014, there were one hundred seventy (170) 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, the proposed 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 proposed regulation, therefore, may benefit every licensed brewery in Pennsylvania.

Paperwork Requirements

The proposed 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 proposed 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 2012.¹ 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 proposed 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 proposed 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.

Public Comments

Interested persons are invited to submit written comments about the proposed rulemaking to Rodrigo 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, within thirty (30) days after publication of the proposed regulation in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Please note that all public comments will be posted on the Independent Regulatory Review Commission's website. No personal information will be redacted from the public comments received.

Regulatory Review

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

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on _____, 2014, the Board submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Liquor Control Committee and Senate Committee on Law and Justice. A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within thirty (30) days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the agency, the General Assembly and the Governor of comments, recommendations or objections raised.

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 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 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
October 28, 2014**

**SUBJECT: Proposed 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

Submitted herewith is a courtesy copy of proposed amendments to chapter 3 of the regulations of the Pennsylvania Liquor Control Board. Also enclosed are copies of the regulatory analysis form, signed CDL-1 face sheet, preamble and Annex A (regulatory text).

These amendments are being delivered today to the legislative oversight committees, the Independent Regulatory Review Commission and to the Legislative Reference Bureau. They have been approved by the Office of Attorney General as to form and legality.

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.

cc with enclosures:

Honorable Charles McIlhinney, 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 Paul Costa, Democratic Chairman, House Liquor Control Committee
Ms. Gail Reinard, 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

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

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

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TYPE OF REGULATION

- X 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>
10/28/14	<u>Quay Kopp</u> (1)	SENATE LAW & JUSTICE COMMITTEE (Majority)
10-28-14	<u>A. Rybarczyk</u> (2)	SENATE LAW & JUSTICE COMMITTEE (Minority)
10-28-14	<u>Eileen Krich</u> (3)	HOUSE LIQUOR CONTROL COMMITTEE (Majority)
10/28/14	<u>Kia Zickler</u> (4)	HOUSE LIQUOR CONTROL COMMITTEE (Minority)
10/29/14	<u>Bob F. Hoff</u> (5)	INDEPENDENT REGULATORY REVIEW COMMISSION
10/28/14	<u>C. O'neil</u> (6)	LEGISLATIVE REFERENCE BUREAU