

Comments of the Independent Regulatory Review Commission



Pennsylvania Liquor Control Board Regulation #54-93 (IRRC #3224)

Proof of Recycling

May 8, 2019

We submit for your consideration the following comments on the proposed rulemaking published in the March 9, 2019 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Liquor Control Board (Board) to respond to all comments received from us or any other source.

1. Section 5.43. Proof of recycling. – Reasonableness of requirements; and Whether a less costly or less intrusive alternative method of achieving the goal of the regulation has been considered for regulations impacting small business.

Representative John Lawrence and the Pennsylvania Restaurant and Lodging Association (PRLA) express concerns about the unintended consequences of the proposed rulemaking. They claim that the new recordkeeping requirements are overly burdensome especially for those licensees who voluntarily recycle at drop off locations. The potential for additional penalties, coupled with changes in the recycling industry, especially glass recycling, may result in licensees reevaluating their decision to recycle or to discard broken bottles in the trash. Licensees that abandon recycling efforts would contradict the purpose of the amendments to Act 77 of 1994 (Act 77) found in Section 491(5) which, according to Representative Lawrence and PRLA, is to encourage it.

“It shall be unlawful--

(5) Failure to Properly Dispose of Empty Liquor Containers. For any restaurant, hotel or club licensee, his servants, agents or employes, to fail to break any package in which liquors were contained, except those decanter packages that the board determines to be decorative, within twenty-four hours after the original contents were removed therefrom, **unless the licensee participates in either a municipal recycling program, in accordance with the act of July 28, 1988 (P.L. 556, No. 101),⁵ known as the “Municipal Waste Planning, Recycling and Waste Reduction Act,” or a voluntary recycling program** 47 P.S. § 4-491(5) [Emphasis added].

In response to Regulatory Analysis Form #10, the Board explains that the intent behind the new requirements in Subsection (c) paragraph (3), which applies to licensees that recycle voluntarily

at drop off locations, is to “ensure that the licensee has made the effort to become informed as to how to recycle in the county.” Under proposed Subsection (d), licensees that pay a municipality or private entity for curbside recycling and those that voluntarily recycle at drop off locations must maintain the “proof in writing” as part of their operating records in conformance with Section 493(12) (relating to Failure to have records on premises) of the Liquor Code.

Commentators are concerned that a minor oversight in recordkeeping could subject a licensee to additional penalties under the Liquor Code. Failure to provide “proof in writing” could result in a fine, suspension and/or revocation of license. 47 P.S. § 4-471 (a) and (b). The Board should explain the reasonableness of the record keeping requirements and how the penalties for noncompliance are consistent with the Board’s stated intent. It should also address how the Board’s approach supports licensees’ efforts to recycle.

Representative Lawrence submits that “proof in writing” could be met by simply requiring licensees to post a placard indicating whether they participate in a municipal recycling program or a voluntary recycling program. PRLA contends that the proposed rulemaking does not recognize the challenges that have evolved since the enactment of Act 77 and calls for a “more holistic legislative fix.” Given the diverse viewpoints on how to improve upon the rulemaking, we would encourage the Board, as it prepares the final rulemaking, to communicate with the regulated community regarding its concerns. We will review the Board’s response to the issues raised by commentators as part of our consideration of the final regulation.

2. Miscellaneous Clarity.

- The Board’s response to RAF #14 states that it circulated a copy of the proposed regulation to the Bureau of Liquor Code Enforcement. The Board does not indicate whether it sought input from the regulated community in the development of the regulation. In the RAF to the final form regulation, the Board should specify the extent to which it conducted outreach to licensees.
- Section 5.43 (c)(3) contains a “Proof of Recycling” form within the text of the Annex. Section 2.12 of the *Pennsylvania Code and Bulletin Style Manual* recommends forms not be codified in the Pennsylvania Code. The manual recommends that the form be referred to in the regulation or the regulation should list the information to be required. Moreover, we are concerned that a licensee may not know how to obtain this form. The Board should either remove it from the Annex and make it available on its website or explain how incorporating it into the rulemaking is beneficial to the regulated community.
- Section 5.43 (c)(4)(A) requests the name, location and hours of operation of the recycling facility where a licensee disposes recyclable materials. This information is similar to the information already required on the “Proof of Recycling Form.” § 5.43(c)(3) Since the Board wishes to have a licensee provide *at least two* additional records from the municipality with oversight of the drop off locations, we suggest the Board clarify the provision by removing the redundant information and revising the form in Section 5.43(c)(3) to include hours of operation of the recycling facility.