

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p> <p>RECEIVED</p> <p>MAY 10 2021</p> <p>Independent Regulatory Review Commission</p>
(1) Agency: Pennsylvania Liquor Control Board		IRRC Number: 3255
(2) Agency Number: 54 Identification Number: 101		
(3) PA Code Cite: 40 Pa. Code, Chapter 5, Chapter 9		
(4) Short Title: Cleaning Beer Dispensing Systems		
(5) Agency Contacts (List Telephone Number and Email Address):		
<p>Primary Contact: Norina Foster, Assistant Counsel (717) 783-9454 Pennsylvania Liquor Control Board 401 Northwest Office Building Harrisburg, Pennsylvania 17124 FAX: (717) 787-8820 Email: ra-lblegal@pa.gov</p> <p>Secondary Contact: Rodrigo Diaz, Chief Counsel Jason M. Worley, Deputy Chief Counsel (Same Contact Information)</p>		
(6) Type of Rulemaking (check applicable box):		
<input type="checkbox"/> Proposed Regulation <input checked="" type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation		<input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General
(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)		
<p>The PLCB amends its regulations regarding the cleaning of malt or brewed beverage dispensing systems, which delivers what is commonly known as "draft beer." In this amendment, the frequency of dispensary system cleaning is decreased from every seven days to every fourteen days. The amendment also clarifies that every licensee using such a dispensary system for selling malt or brewed beverages ("beer") – including but not limited to limited wineries, limited distilleries, and distilleries – is subject to this regulation.</p>		
(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.		
Pennsylvania Liquor Code, section 207(i) (47 P.S. § 2-207(i)).		
(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.

The regulation is 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.

A dispensing system begins with beer that is stored in a keg. Pressurized gas enters the keg and forces the beer up and into a plastic hose, whose length it travels until it reaches a faucet. The beer waits in the plastic hose until the faucet is opened, whereupon the beer is poured into a container. For purposes of this amendment, the dispensing system runs from the keg to the faucet.

A dispensing system is, because of its function, usually wet and located in a dark area. As a result, dispensing systems can readily harbor bacteria, yeast, mold, and “beer stones,” which occur when organic compounds in the beer bind with compounds in the brewing water and form calcium oxalate, the chemical name for beer stones. Cleaning the dispensing system is necessary to prevent these items from spoiling the beer.

However, the licensee incurs costs for cleaning the dispensing system, as well as the loss of the beer that is present in the hose. Therefore it is important to find the right frequency for cleaning, so as to avoid requiring the licensee to incur unnecessary expense and avoid needless waste of beer.

The Pennsylvania Restaurant and Lodging Association (“PLRA”) and the Brewers of Pennsylvania (“BOP”) asked the PLCB to consider revising the cleaning frequency requirement from once every seven days to once every fourteen days. PRLA and BOP note that the Brewer’s Association, an organization of more than 5,000 U.S. brewery members, advocates cleaning a dispensing system every fourteen days.¹ Based on this information, this amendment changes the frequency of cleaning the dispensing system from once every seven days to once every fourteen days. Licensees are still required to maintain clean dispensary systems, under sections 5.51(b) (relating to cleaning of malt or brewed beverage dispensing systems) and 5.54 (relating to responsibility for condition of equipment), regardless of how often the lines are cleaned.

Section 5.51(a) is also amended to clarify that all licensees who use a dispensing system are subject to the regulation. The current language—“A licensee that uses a malt or brewed beverage dispensing system in its licensed premises shall clean the system at its sole expense”—was proposed in 2007 and finalized in 2010. At that time, Pennsylvania-licensed limited wineries, limited distilleries, and distilleries did not have the authority to serve malt or brewed beverages on their licensed premises.

However, Act 39 of 2016 gave Pennsylvania-licensed manufacturers the right to sell, for on-premises consumption, products made by other Pennsylvania-licensed manufacturers. As a result, Pennsylvania-licensed limited wineries, limited distilleries, and distilleries may sell beer produced by Pennsylvania-licensed breweries for on-premises consumption. 47 P.S. §§ 5-505.2(a)(6.1), 5-505.4(b)(1), 5-505.4(c)(1). The amendment clarifies that if the Pennsylvania-licensed manufacturer serves beer via a

¹ <https://www.brewersassociation.org/educational-publications/draught-beer-quality-manual/>.

dispensing system, the manufacturer is subject to the regulation regarding the cleaning of the dispensing system.

The affected parties include any licensee that sells draft beer, including licensed restaurants, hotels, and clubs, as well as licensed breweries, limited wineries, distilleries and limited distilleries. As of April 6, 2021, there were approximately 15,000 active licensees that could potentially serve draft beer.

(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 rulemaking is not known to be more stringent than federal regulations.

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

Regulations pertaining to the cleaning of beer dispensing systems are governed by neighboring states in accordance with their unique and individual systems of alcoholic beverage control. Because of this, the rulemaking does not play a role in 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.

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

(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.)

The PLCB has developed this rulemaking, in part, in response to a request from two industry groups. The PLCB has carefully considered all comments, recommendations or objections to the rulemaking received during the statutory public comment period and has responded as required.

(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?

The affected parties include any licensee that sells draft beer, including licensed restaurants, hotels, and clubs, as well as licensed breweries, limited wineries, distilleries and limited distilleries. As of April 6, 2021, there were approximately 15,000 active licensees that could potentially serve draft beer. It is anticipated that the regulation will have a positive effect on licensees, since it will effectively halve the annual expenses of cleaning the dispensing system.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

As of April 6, 2021, there were approximately 15,000 active licensees that could potentially serve draft

beer. These include clubs (2,690), eating place retail dispensers (337), hotels and restaurants (10,952), breweries (597), limited wineries (421) and distilleries or limited distilleries (124). If any of these licensees serve beer through a dispensing system, they will be required to comply with the regulation.

(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 licensee incurs costs for cleaning the dispensing system, as well as the loss of the beer that is present in the hose. The rulemaking changes the frequency of cleaning the dispensing system from once every seven days to once every fourteen days. It is anticipated that the rulemaking will benefit licensees, since it will effectively halve the annual expenses of cleaning the dispensing system.

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

The regulation benefits the regulated community by reducing the burden of cleaning the dispensary system on a weekly basis and only requiring cleaning every fourteen days. This will reduce the cost to licensees by half.

(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 regulated community would not incur any legal, accounting or consulting procedures as a result of this regulation. It is estimated that those members of the regulated community that utilize dispensing systems for beer may be able to halve their cleaning costs. Dollar estimates are set forth in response to Question 23.

(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 rulemaking is not expected to result in costs or savings for local governments. No legal, accounting or consulting procedures are 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 rulemaking is not expected to result in costs or savings for state government. No legal, accounting or consulting procedures are 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.

The rulemaking is not expected to affect legal, accounting or consulting procedures and should not require any additional reporting, recordkeeping or other paperwork. Similarly, the regulation is not expected to require any additional governmental measures in order to implement the regulation.

(22a) Are forms required for implementation of the regulation?

No.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

N/A

(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.

There is no data available regarding how many members of the regulated community provide draft beer for their customers, nor how many types of draft beer are available at each licensed establishment. However, for the purposes of estimation, assume that each of the approximately 15,000 licensed entities has three dispensing systems (admittedly, three is an arbitrary number; some licensees may not have any and some will have many more). The average total cost to clean one draft beer line is between \$6 and \$12, according to Micro Matic, a beer line cleaning service. <https://www.micromatic.com/beer-line-cleaning-roi>.

Currently, the estimated cost for all licensees to clean three dispensing systems every week ranges from \$14,040,000 to \$28,080,000 (15,000 x 3 x 52 x \$6 or \$12). Under the regulation, the estimated cost ranges from \$7,020,000 to \$14,040,000 (15,000 x 3 x 26 x \$6 or \$12). This results in a collective savings for the regulated community of \$7 to \$14 million per year.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:						
Regulated Community	\$7 – \$14 Million	\$14 - \$28 Million	\$21 - \$42 Million	\$28 - \$56 Million	\$35 - \$70 Million	\$42 - \$84 Million
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$7 – \$14 Million	\$14 - \$28 Million	\$21 - \$42 Million	\$28 - \$56 Million	\$35 - \$70 Million	\$42 - \$84 Million
COSTS:						
Regulated Community	\$7 – \$14 Million	\$14 - \$28 Million	\$21 - \$42 Million	\$28 - \$56 Million	\$35 - \$70 Million	\$42 - \$84 Million

Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$7 – \$14 Million	\$14 - \$28 Million	\$21 - \$42 Million	\$28 - \$56 Million	\$35 - \$70 Million	\$42 - \$84 Million
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 2017-2018	FY -2 2018-2019	FY -1 2019-2020	Current FY 2020-2021
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.
- (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.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

(a) Federal regulation (relating to small business size standards) provides the following measurements for determining whether a business may be considered to be a “small” business: a full-service restaurant with annual receipts of less than \$7.5 million; a drinking place (alcoholic beverages) with annual receipts of less than \$7.5 million; hotels with annual receipts of less than \$32.5 million; and all other amusement and recreation industries with annual receipts of less than \$7.5 million. (13 C.F.R. § 121.201). In addition, the following manufacturers are considered to be a “small” business: breweries with less than 1,250 employees; wineries with less than 1,000 employees; and distilleries with less than 1,000 employees. (*Id.*). It is estimated that most of the regulated community impacted by this regulation would fall within the definition of “small business.”

(b) The regulation does not change the language pertaining to reporting or recordkeeping for cleaning of dispensing systems. The extent of the required recordkeeping is set forth in section 5.52(b), which provides: “The licensee shall maintain and keep a record of the date of each cleaning and the method utilized.” (40 Pa. Code § 5.52(b)). However, by reducing the frequency of cleaning, the regulation effectively reduces the amount of recordkeeping required. No professional skills are required to prepare this record.

(c) The regulation is anticipated to have a positive impact on small businesses. The regulated community is still required to keep their dispensing systems clean, but the frequency of cleaning will be changed from every seven days to every fourteen days, in keeping with the industry standard established by the Brewer's Association. This change is anticipated to save small businesses time and money.

(d) The regulation establishes a less intrusive and less costly method of achieving clean dispensing systems than the current regulation requires, while at the same time protecting the public from unsanitary beer dispensing systems. There are no other less intrusive or less costly alternatives that would still achieve the purpose of the 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.

The PLCB has not identified any group that may need any special provisions or accommodations.

(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.

No alternative regulatory provisions were considered and rejected, since this regulation involves an amendment of an existing regulation. The least burdensome acceptable alternative, which still requires clean dispensing systems, has been selected.

(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.

The regulation is intended to minimize adverse impact on small businesses by reducing the requirement to clean the dispensing system from every seven days to every fourteen days. As a result:

(a) The regulation creates less stringent compliance and reporting requirements for small businesses, since the compliance for cleaning beer dispensing systems is now required every fourteen days, not every seven days;

(b) The regulation creates less stringent schedules or deadlines for compliance or reporting requirements because the schedule for cleaning dispensing systems is being changed from every seven

days to every fourteen days and therefore the reporting of cleaning is also changed from every seven days to every fourteen days;

(c) The compliance or reporting requirements are already quite minimal: "The licensee shall maintain and keep a record of the date of each cleaning and the method utilized." (40 Pa. Code § 5.52(b)). Since cleanings of the dispensing system will be required every fourteen days instead of every seven days, the recordkeeping requirements will effectively be reduced in half;

(d) The requirement of cleaning the dispensing systems every fourteen days instead of every seven days is the operational standard established by the Brewer's Association, a national trade organization;

(e) The regulation does not provide for exemption from all or any part of the requirements contained in the 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.

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

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

- | | |
|---|----------------------|
| A. The length of the public comment period: | <u>30 days</u> |
| B. The date or dates on which any public meetings or hearings will be held: | <u>June 17, 2021</u> |
| C. The expected date of delivery of the final-form regulation: | <u>August 2021</u> |
| D. The expected effective date of the final-form regulation: | <u>August 2021</u> |
| E. The expected date by which compliance with the final-form regulation will be required: | <u>August 2021</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

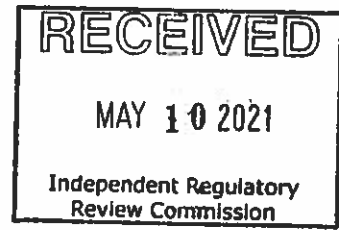
(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

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

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)



DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality.</p> <p>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. 54-101</p> <p>DATE OF ADOPTION: <u>April 14, 2021</u></p> <p>BY: <u>[Signature]</u></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>[Signature]</u> Chief Counsel</p> <p><u>April 14, 2021</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

PART I. LIQUOR CONTROL BOARD

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

Subchapter D. SANITARY CONDITIONS AND LIGHTING
AND CLEANING OF MALT OR BREWED BEVERAGE DISPENSING SYSTEMS

FINAL FORM RULEMAKING

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 5]

Cleaning of Malt or Brewed Beverage Dispensary Systems

The Liquor Control Board (“PLCB”), under the authority of section 207(i) of the Liquor Code (47 P.S. § 2-207(i)), amends § 5.51 (relating to cleaning of malt or brewed beverage dispensing systems) to read as set forth in Annex A.

Summary

The PLCB amends its regulations regarding the cleaning of malt or brewed beverage dispensing systems, which delivers what is commonly known as “draft beer.” In this amendment, the frequency of dispensary system cleaning is decreased from every seven days to every fourteen days. The amendment also clarifies that every licensee using such a dispensary system for selling malt or brewed beverages (“beer”) – including but not limited to limited wineries, limited distilleries, and distilleries – is subject to this regulation.

A dispensing system begins with beer that is stored in a keg. Pressurized gas enters the keg and forces the beer up and into a plastic hose, whose length it travels until it reaches a faucet. The beer waits in the plastic hose until the faucet is opened, whereupon the beer is poured into a container. For purposes of this amendment, the dispensing system runs from the keg to the faucet.

A dispensing system is, because of its function, usually wet and located in a dark area. As a result, dispensing systems can readily harbor bacteria, yeast, mold, and “beer stones,” which occur when organic compounds in the beer bind with compounds in the brewing water and form calcium oxalate, the chemical name for beer stones. Cleaning the dispensing system is necessary to prevent these items from spoiling the beer.

However, the licensee incurs costs for cleaning the dispensing system, as well as the loss of the beer that is present in the hose. Therefore it is important to find the right frequency for cleaning, so as to avoid requiring the licensee to incur unnecessary expense and avoid needless waste of beer.

The Pennsylvania Restaurant and Lodging Association (“PLRA”) and the Brewers of Pennsylvania (“BOP”) asked the PLCB to consider revising the cleaning frequency requirement from once every seven days to once every fourteen days. PRLA and BOP note that the Brewer’s Association, an organization of more than 5,000 U.S. brewery members, advocates cleaning a dispensing system every fourteen days.¹ Based on this information, this amendment changes the

¹ <https://www.brewersassociation.org/educational-publications/draught-beer-quality-manual/>.

frequency of cleaning the dispensing system from once every seven days to once every fourteen days. Licensees are still required to maintain clean dispensary systems, under sections 5.51(b) (relating to cleaning of malt or brewed beverage dispensing systems) and 5.54 (relating to responsibility for condition of equipment), regardless of how often the lines are cleaned.

Section 5.51(a) is also amended to clarify that all licensees who use a dispensing system are subject to the regulation. The current language—“A licensee that uses a malt or brewed beverage dispensing system in its licensed premises shall clean the system at its sole expense”—was proposed in 2007 and finalized in 2010. At that time, Pennsylvania-licensed limited wineries, limited distilleries, and distilleries did not have the authority to serve malt or brewed beverages on their licensed premises.

However, Act 39 of 2016 gave Pennsylvania-licensed manufacturers the right to sell, for on-premises consumption, products made by other Pennsylvania-licensed manufacturers. As a result, Pennsylvania-licensed limited wineries, limited distilleries, and distilleries may sell beer produced by Pennsylvania-licensed breweries for on-premises consumption. 47 P.S. §§ 5-505.2(a)(6.1), 5-505.4(b)(1), 5-505.4(c)(1). The amendment clarifies that if the Pennsylvania-licensed manufacturer serves beer via a dispensing system, the manufacturer is subject to the regulation regarding the cleaning of the dispensing system.

Affected Parties

The affected parties include any licensee that sells draft beer, including licensed restaurants, hotels, and clubs, as well as licensed breweries, limited wineries, distilleries and limited distilleries. As of April 6, 2021, there were approximately 15,000 active licensees that could potentially serve draft beer.

Paperwork Requirements

This amendment does not impose any new paperwork requirements on licensees.

Fiscal Impact

It is anticipated that the fiscal impact would be beneficial to licensees, since it will effectively halve the annual expenses of cleaning the dispensing system.

Effective Date

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

Contact Person

Questions regarding this final-form should be addressed to Rodrigo Diaz, Chief Counsel, Jason Worley, Deputy Chief Counsel, or Norina Foster, Assistant Counsel, Office of Chief Counsel,

Pennsylvania Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 28, 2020, the Board submitted a copy of the notice of proposed rulemaking, published at 50 Pa.B. 1650 (March 21, 2020) and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Liquor Control Committee and Senate Committee on Law and Justice for review and comment.

Under section 5a(c) of the Regulatory Review Act, the Board is required to provide IRRC and the Committees with copies of the comments received during the public comment period, as well as other documents when requested. The Board received comments from the Pennsylvania State Police, Bureau of Liquor Control Enforcement, the Pennsylvania Restaurant and Lodging Association, the Pennsylvania Licensed Beverage & Tavern Association and IRRC. The Board has responded individually to each of the commenters, except for IRRC; the response to IRRC's comments is set forth in a separate document.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective _____.

TIM HOLDEN,
Chairperson

RESPONSES OF THE PENNSYLVANIA LIQUOR CONTROL BOARD

TO

Comments about Board Regulation #54-101 (IRRC #3255)

Cleaning of Malt or Brewed Beverage Dispensing Systems

1. Section 5.51. Cleaning of malt or brewed beverage dispensing systems. – Protection of the public health, safety and welfare.

Subsection (c) changes the frequency of required cleaning of malt or brewed beverage dispensing systems from once every seven days to once every 14 days. While the PA State Police Bureau of Liquor Control Enforcement Bureau (Bureau), the agency responsible for enforcing the Board's regulations, supports the proposed change, the Bureau asks the Board to evaluate the public safety aspect and consider a more comprehensive change to the final regulation. The Bureau states that "the timeframes between cleanings and the methodology used for such cleanings are important" The Bureau cites examples of the need to disassemble and hand scrub certain parts and other specific cleanings that are recommended quarterly and semi-annually. Is there a need to provide specific cleaning requirements as a result of lengthening the timeframe for cleaning a dispensing system? We ask the Board to explain how the timeframes and cleaning requirements in the final regulation adequately protect the public health, safety and welfare.

Response: The Board changed the timeframe for cleaning beer lines from seven days to fourteen days but did not change the requirement that the beer lines must be clean and sanitary. The regulation currently provides: "The method of cleaning must leave the entire malt or brewed beverage dispensing system in a clean and sanitary condition." 40 Pa. Code § 5.51(b). Therefore, the risk to public health, safety and welfare is minimal.

The Bureau cited the Brewers Association's 4th Edition of the "Draught Beer Quality Manual" which "makes [a] number of recommendations related to cleaning frequency tasks." Specifically, the Manual recommends the following:

Draught Line Cleaning: Minimum Every Two Weeks (14 days)

- Clearly posted documentation of line cleaning and servicing records is recommended in all keg coolers.
- Push beer from lines with warm water.
- Clean lines with 2% caustic solution for routine cleaning of well-maintained lines, or with 3% caustic solution for older or more problematic lines. Contact your chemical manufacturer to determine how much chemical is needed to achieve these recommended concentrations. If you use non-caustic-based cleaners, such as acid- or silicate-based cleaners, be sure to use the cleaning concentrations recommended by the manufacturer. For best results, maintain the

cleaning solution temperature between 80°F and 110°F during the cleaning process.

- Using an electric pump, caustic solution should be circulated through the lines for a minimum of 15 minutes at a steady flow rate that ideally exceeds the flow rate of the beer. If a pressurized cleaning canister is used (though not recommended), the solution needs to be left standing in the lines for no less than 20 minutes before purging with clean water.
- Disassemble, service, and hand-clean faucets; hand-clean couplers.
- After cleaning, flush lines with cool fresh water until pH matches that of your tap water and no visible debris is being carried from the lines.

Acid Cleaning: Every Quarter (Three Months)

- Acid cleanings should be in addition to caustic cleanings, not as a replacement.
- Push beer or caustic cleaner from lines with warm water.
- Clean lines with acid line-cleaner chemical mixed to manufacturer's guidelines. Maintain a solution temperature of 80–110°F.
- Circulate the acid solution through the lines for 15 minutes at a steady flow rate that ideally exceeds the flow rate of the beer. If a pressurized cleaning canister is used (though not recommended), the solution needs to be left standing in the lines for no less than 20 minutes before purging with clean water. After acid cleaning, flush lines with cool fresh water until the pH matches that of your tap water and no visible debris is being carried from the lines.

Hardware Cleaning: Semi-Annual (Every Six Months)

- Disassemble, service, and hand-clean all FOB devices (a.k.a. beer savers, foam detectors).
- Disassemble, service, and hand-clean all couplers.

(Draught Beer Quality Manual p. 78).

But the Draught Beer Quality Manual acknowledges, in a quote that the Bureau included in its comment, that even those recommendations are not appropriate for every situation: "More aggressive cleaning schedules and practices may be needed for older systems, problematic systems, or when proper line cleaning practices have historically not been in place." (Draught Beer Quality Manual p. 65). Therefore, even if the Board were to adopt all of the cleaning practices above, there would probably still be some licensees without clean beer lines.

The Board points out that the Draught Beer Quality Manual is in its fourth edition. According to its Preface, the first edition was published in August of 2009. That means every two and a half years, a new edition is published. If the Board ties its regulations to the standards set forth in the Draught Beer Quality Manual, the regulations might be out of

date in just a few short years. Indeed, on page 65, there is a hint of future changes to come: “The Draught Beer Quality Subcommittee is working with brewing industry researchers to complete further studies on line-cleaning chemistry, including additives such as ethylenediaminetetraacetic acid, or EDTA.” (Draught Beer Quality Manual p. 65).

Moreover, if the Board were to include, in the regulations, every step that must be completed to accomplish clean beer lines, it could very well be accused of over-regulating. The Board declines to do so, because it is in the licensee’s own interest to keep its beer lines clean. Typically, if beer lines are not clean, the beer will not taste “right” and the customer will stop drinking that beer, either switching to another drink or another bar.

Licensees may continue to clean their beer lines every seven days if they choose, or may extend their cleanings to every fourteen days if they can do so and still maintain clean lines. The main concern is that the beer lines are clean. If they are not, the Bureau may issue a citation.

2. Miscellaneous clarity.

The Board states in response to Regulatory Analysis Form (RAF) Question #19, regarding costs and/or savings to the regulated community, that dollar estimates are not available. However, the Board provides an estimate of the costs and savings of the regulation in response to RAF Question # 23. We ask the Board to update its response to RAF Question #19 in the final regulation.

Response: The Board apologizes for the oversight. RAF Question #19 has been updated in the final regulation.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

Subchapter D. SANITARY CONDITIONS AND LIGHTING AND CLEANING OF
MALT OR BREWED BEVERAGE DISPENSING SYSTEMS

CLEANING OF MALT OR BREWED BEVERAGE SYSTEMS

§ 5.51. Cleaning of malt or brewed beverage dispensing systems.

(a) [A] Any licensee, including but not limited to a retail licensee, a brewery, a limited winery, a limited distillery or a distillery, that uses a malt or brewed beverage dispensing system in its licensed premises shall clean the system at its sole expense. One licensee may not clean a malt or brewed beverage dispensing system for another licensee.

(b) The method of cleaning must leave the entire malt or brewed beverage dispensing system in a clean and sanitary condition. The cleaning method used must include cleaning the entire system with a chemical cleaning solution or other cleaning method approved by the Board. The following alternative cleaning methods have Board approval:

(1) Live steam.

(2) Hot water and soda solution, followed by thorough rinsing with hot water.

(c) The frequency of cleaning for the malt or brewed beverage dispensing system shall be as follows:

(1) Once every [7] 14 days for the faucets.

(2) Once every [7] 14 days for the dispensing lines, valves, joints, couplers, hose fittings, washers, o-rings, empty beer detectors (known as "FOBS") and draft foam control units, except if the licensee has an operating ultrasonic, electromagnetic or other system that retards the growth of yeast and bacteria in the dispensing lines. If such a system is installed and operating, the licensee shall follow the cleaning frequency and cleaning method guidelines of the system's manufacturer.

(3) The Board may approve different cleaning frequencies.



pennsylvania
LIQUOR CONTROL BOARD

April 7, 2021

Major Judith Burroughs, Director
Pennsylvania State Police,
Bureau of Liquor Control Enforcement
3655 Vartan Way
Harrisburg, PA 17110

Re: Amendment to 40 Pa. Code § 5.51

Dear Major Burroughs,

Thank you for the comment submitted by the Pennsylvania State Police, Bureau of Liquor Control Enforcement regarding the Pennsylvania Liquor Control Board's ("PLCB") proposed amendment to section 5.51 of the PLCB's Regulations. The amendment changes the required frequency of cleaning from seven days to fourteen days.

The PLCB considered the suggestion of amending the regulation further to include requirements as to the methodology of cleaning the beer lines. However, the PLCB declines to do so, for reasons that are set forth in the PLCB's responses to comments from the Independent Regulatory Review Commission, which is enclosed with this letter, along with a copy of the final form regulation package. Please note that the three-member Board will be reviewing the final form regulation package at its meeting on April 14, 2021.

Thank you for your interest in this matter.

Sincerely,

RODRIGO J. DIAZ
CHIEF COUNSEL

Enclosures

 **pennsylvania**
LIQUOR CONTROL BOARD

April 7, 2021

Chuck Moran, Executive Director
Pennsylvania Licensed Beverage & Tavern Association
214 Pine Street
Harrisburg, PA 17101
pataverns@pataverns.com

Re: Amendment to 40 Pa. Code § 5.51

Dear Mr. Moran:

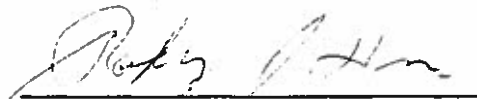
Thank you for your comment regarding the Pennsylvania Liquor Control Board's ("PLCB") proposed amendment to section 5.51 of the PLCB's Regulations. The amendment, which you requested, changes the required frequency of cleaning from seven days to fourteen days.

As the regulation already includes a provision allowing the PLCB to approve different cleaning frequencies, 40 Pa. Code § 5.51(c)(3), it is believed that a provision allowing for "Acts of God" is unnecessary.

A copy of the final form regulation package, including the PLCB's responses to comments from the Independent Regulatory Review Commission, is enclosed with this letter. Please note that the three-member Board will be reviewing the final form regulation package at its April 14, 2021 meeting.

Thank you for your interest in this matter.

Sincerely,



RODRIGO J. DIAZ
CHIEF COUNSEL

Enclosures



April 7, 2021

Daniel LaBert, Executive Director
Adam Harris, Deputy Executive
Director
Brewers of Pennsylvania
1653 Lititz Pike #1010
Lancaster PA 17601

Melissa Bova
Vice President of Government Affairs
Pennsylvania Restaurant & Lodging
Association
100 State Street
Harrisburg, PA 17101

Re: Amendment to 40 Pa. Code § 5.51

Dear Ms. Bova, Mr. LaBert and Mr. Harris:

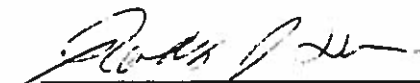
Thank you for your comment regarding the Pennsylvania Liquor Control Board's ("PLCB") proposed amendment to section 5.51 of the PLCB's Regulations. The amendment changes the required frequency of cleaning from seven days to fourteen days.

Although the regulation includes a provision allowing the PLCB to approve different cleaning frequencies, 40 Pa. Code § 5.51(c)(3), the PLCB believed that a regulatory change was the best course of action.

A copy of the final form regulation package, including the PLCB's responses to comments from the Independent Regulatory Review Commission, is enclosed with this letter. Please note that the three-member Board will be reviewing the final form regulation package at its April 14, 2021 meeting.

Thank you for your interest in this matter.

Sincerely,



RODRIGO J. DIAZ
CHIEF COUNSEL

Enclosures

Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board
May 10, 2021

SUBJECT: Final-form Regulation Package 54-101
Cleaning Beer Dispensing Systems

TO: DAVID SUMNER, EXECUTIVE DIRECTOR
INDEPENDENT REGULATORY REVIEW COMMISSION

FROM: RODRIGO J. DIAZ 
CHIEF COUNSEL
PENNSYLVANIA LIQUOR CONTROL BOARD

By E-Mail

The Pennsylvania Liquor Control Board ("PLCB") is submitting final-form amendments to chapter 5 of its regulations. Enclosed please find a copy of the regulatory analysis form, signed CDL-1 face sheet, preamble and Annex A (regulatory text). The PLCB received comments from the Independent Regulatory Review Commission ("IRRC"), as well as the Pennsylvania Restaurant & Lodging Association, the Brewers of Pennsylvania, the Pennsylvania State Police Bureau of Liquor Control Enforcement, and the Pennsylvania Licensed Beverage & Tavern Association. The responses to the comments are set forth in separate documents which are also enclosed.

The proposed version of these regulations was provided to the legislative oversight committees, IRRC and to the Legislative Reference Bureau on February 28, 2020.

If you have any questions and comments about this regulatory submission, feel free to contact the Office of Chief Counsel, Pennsylvania Liquor Control Board, at RALegal@pa.gov.

Enclosures

cc with enclosures:

Honorable Mike Regan, Majority Chairman, Senate Law and Justice Committee
Honorable James Brewster, Minority Chairman, Senate Law and Justice Committee
Honorable Carl Metzgar, Majority Chairman, House Liquor Control Committee
Honorable Daniel Deasy, Minority Chairman, House Liquor Control Committee
Taylor Wamsher, Executive Director, Senate Law and Justice Committee
Stephen Bruder, Executive Director, Senate Law and Justice Committee
Michael Biacchi, Executive Director, House Liquor Control Committee
Lynn Benka-Davies, Executive Director, House Liquor Control Committee

Foster, Norina

From: Wamsher, Taylor <twamsher@pasen.gov>
Sent: Monday, May 10, 2021 10:00 AM
To: Foster, Norina
Subject: RE: PLCB Final Form Regulation 54-101 Cleaning Beer Dispensing Systems

Good morning!

I received the package, thanks!

Taylor

From: Foster, Norina <nofoster@pa.gov>
Sent: Monday, May 10, 2021 9:46 AM
To: Wamsher, Taylor <twamsher@pasen.gov>
Subject: PLCB Final Form Regulation 54-101 Cleaning Beer Dispensing Systems

● CAUTION : External Email ●

Good morning,

Attached please find the PLCB's final-form regulatory package on cleaning beer dispensing systems. As proof that you have received the package, would you please send a reply email stating that you received the package for the Senate Majority leader? The Commission will not accept a "sent" email as proof of delivery.

Thank you!

Norina K. Foster | Assistant Counsel
Pennsylvania Liquor Control Board | Office of Chief Counsel
401 Northwest Office Building | Harrisburg, PA 17124
Phone: 717.783.9454 | Fax: 717.787.8820
Email: nofoster@pa.gov
lcb.pa.gov

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Foster, Norina

From: Bruder, Stephen <Stephen.Bruder@pasenate.com>
Sent: Monday, May 10, 2021 2:13 PM
To: Foster, Norina
Subject: RE: PLCB Final Form Regulation 54-101 Cleaning Beer Dispensing Systems

Got it. Thanks

From: Foster, Norina <nofoster@pa.gov>
Sent: Monday, May 10, 2021 2:03 PM
To: Bruder, Stephen <Stephen.Bruder@pasenate.com>
Subject: Fw: PLCB Final Form Regulation 54-101 Cleaning Beer Dispensing Systems

■ EXTERNAL EMAIL ■

Please acknowledge receipt so I can get this filed today. Thanks!

From: Foster, Norina
Sent: Monday, May 10, 2021 9:47 AM
To: Stephen Bruder (SBRUDER@pasenate.com) <SBRUDER@pasenate.com>
Subject: PLCB Final Form Regulation 54-101 Cleaning Beer Dispensing Systems

Good morning,

Attached please find the PLCB's final-form regulatory package on cleaning beer dispensing systems. As proof that you have received the package, would you please send a reply email stating that you received the package for the Senate Minority leader? The Commission will not accept a "sent" email as proof of delivery.

Thank you!

Norina K. Foster | Assistant Counsel
Pennsylvania Liquor Control Board | Office of Chief Counsel
401 Northwest Office Building | Harrisburg, PA 17124
Phone: 717.783.9454 | Fax: 717.787.8820
Email: nofoster@pa.gov
lcb.pa.gov

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Foster, Norina

From: Michael Biacchi <Mbiacchi@pahousegop.com>
Sent: Monday, May 10, 2021 2:17 PM
To: Foster, Norina
Cc: Vigoda, Michael
Subject: RE: PLCB Final Form Regulation 54-101 Cleaning Beer Dispensing Systems

I did receive, but not from Vigoda in person...

From: Foster, Norina <nofoster@pa.gov>
Sent: Monday, May 10, 2021 2:04 PM
To: Michael Biacchi <Mbiacchi@pahousegop.com>
Subject: Fw: PLCB Final Form Regulation 54-101 Cleaning Beer Dispensing Systems

Please acknowledge receipt so I can get this filed today. Thanks!

From: Foster, Norina
Sent: Monday, May 10, 2021 9:50 AM
To: Mbiacchi@pahousegop.com <Mbiacchi@pahousegop.com>
Subject: FW: PLCB Final Form Regulation 54-101 Cleaning Beer Dispensing Systems

Good morning,

Attached please find the PLCB's final-form regulatory package on cleaning beer dispensing systems. As proof that you have received the package, would you please send a reply email stating that you received the package for the House Majority leader? The Commission will not accept a "sent" email as proof of delivery.

Thank you!

Norina K. Foster | Assistant Counsel
Pennsylvania Liquor Control Board | Office of Chief Counsel
401 Northwest Office Building | Harrisburg, PA 17124
Phone: 717.783.9454 | Fax: 717.787.8820
Email: nofoster@pa.gov
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Foster, Norina

From: Benka-Davies, Lynn <LBDavies@pahouse.net>
Sent: Monday, May 10, 2021 10:00 AM
To: Foster, Norina
Subject: RE: PLCB Final Form Regulation 54-101 Cleaning Beer Dispensing Systems

I have received the regulations sent to the House Minority leader.
Have a great day.
Lynn

Lynn Benka-Davies, Executive Director
House Liquor Control Committee (D)
lbdavies@pahouse.net
717-943-5145

From: Foster, Norina <nofoster@pa.gov>
Sent: Monday, May 10, 2021 9:51 AM
To: Benka-Davies, Lynn <LBDavies@pahouse.net>
Subject: PLCB Final Form Regulation 54-101 Cleaning Beer Dispensing Systems

Good morning,

Attached please find the PLCB's final-form regulatory package on cleaning beer dispensing systems. As proof that you have received the package, would you please send a reply email stating that you received the package for the House Minority leader? The Commission will not accept a "sent" email as proof of delivery.

Thank you!

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