

**Regulatory Analysis Form**

(Completed by Promulgating Agency)

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

**INDEPENDENT REGULATORY  
REVIEW COMMISSION****RECEIVED****FEB 21 2019**Independent Regulatory  
Review Commission

(1) Agency

Pennsylvania Liquor Control Board

(2) Agency Number: 54

Identification Number: 93

IRRC Number: 3224

(3) PA Code Cite: 40 Pa. Code § 5.43

(4) Short Title: Proof of Recycling

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

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](mailto:ra-lblegal@pa.gov)

Secondary Contact: Rodrigo Diaz, Chief Counsel  
 Jason M. Worley, Deputy Chief Counsel  
 (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 proposed rulemaking provides guidance to restaurant, hotel, and club licensees who want to recycle packages that contain liquor. The Liquor Code requires such licensees to show proof in writing of participation in recycling programs. The proposed rulemaking establishes what constitutes "proof in writing."

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

Section 491(5) of the Liquor Code (47 P.S. § 4-491(5)) requires restaurant, hotel and club liquor licensees to break any package that contained liquors within 24 hours after the package has been emptied. The purpose for this requirement is to prevent the fraudulent reuse of liquor packaging.

There are two exceptions to the requirement to break the package: 1) the package is one that the PLCB determines to be decorative, or 2) the licensee participates in either a municipal recycling program or a voluntary recycling program.

The Pennsylvania State Police, Bureau of Liquor Control Enforcement (“BLCE”), which is responsible for the enforcement of the Liquor Code, may demand that a licensee provide “proof in writing” if the licensee claims to be participating in a recycling program. *Id.* This proposed rulemaking establishes what constitutes “proof in writing.”

The website for the Pennsylvania Department of Environmental Protection provides information on recycling in Pennsylvania:

Statewide recycling in Pennsylvania began in 1988 with the Municipal Waste Planning Recycling and Waste Reduction Act (P.L. 556, No. 101) (“Act 101”) that requires larger municipalities to recycle.

Today, more than 11.6 million residents [—] at least 94 percent of the state's population [—] have access to recycling. About 79 percent have convenient access to recycling through about 1,050 curbside pickup programs. Since Pennsylvania is largely rural, 870 drop-off programs extend recycling to the greatest number of communities.

**Act 101 also requires each county to develop county plans to manage its own wastes and assure a minimum of ten years disposal capacity.**

<https://www.dep.pa.gov/Business/Land/Waste/Recycling/Pages/default.aspx> (emphasis added).

In developing this proposed rulemaking, the PLCB researched the recycling program for each of the sixty-seven counties, to ensure that licensees throughout the Commonwealth would be able to meet the requirements of the proposed rulemaking. As a result, licensees will be given several different options to establish proof in writing that they are participating in a recycling program no matter where they are located.

The proposed rulemaking adds section 5.43 to subchapter D, which has been renamed “Maintenance of the Licensed Premises” to more accurately capture the topics covered in the subchapter. Subsection (a) is based on the text of section 491(5) of the Liquor Code and is included to provide a frame of reference for the regulation.

Subsection (b) requires a licensee to “deface, prior to recycling, the labels of all packages that are not broken. The labels must be defaced with a permanent marker or some other, similar, permanent defacement....” The reason for this is to prevent the fraudulent reuse of liquor packaging, which is also the reason for requiring a licensee to break any packages that are not being recycled. Packaging that is not broken may be taken by someone, whether at curbside or at a recycling drop off location, who then refills the package and passes it off as genuine. Therefore, to thwart this type of fraud, licensees are required to deface the labels of liquor packaging that is being recycled.

Subsection (c) sets forth the documentation that licensees must keep as “proof in writing” of participation in a recycling program. Paragraph 1 requires a licensee to have, as a threshold element, written proof that the county recycles the type of material, such as glass, that the licensee is recycling. This proof can be a pamphlet or printed pages from the recycling program’s website or something similar.

Subsection (c), paragraph 2 pertains to licensees that have their recycling picked up at the curb. These licensees must retain a copy of the receipts, bills or invoices paid by the licensee when it pays for a municipal or private entity to pick up its recycling.

Subsection (c), paragraph 3 pertains to licensees that must take their recycling to a drop off location. There may or may not be a person staffing the drop off location; so, in consideration of that fact, the “proof in writing” documentation does not require corroboration from the township or municipality. The proposed rulemaking includes a simple form that the licensee is required to keep and record what was delivered to the drop off location and when.

In addition to the form, paragraph 3 requires the licensee to keep a choice of two of the following items:

- The name, location and hours of operation of the recycling facility where licensee disposes recyclable materials.
- A copy of the recycling registration or documentation required by a municipality.
- A municipal waste newsletter or circular.
- An e-mail, letter or memorandum from its municipality that explains what may be recycled and where recyclable materials may be dropped off.
- Municipal recycling maps of drop-off locations for recyclable material.
- A municipal recycling collection schedule or calendar.
- Other printed or online materials provided by a municipality regarding municipal waste management.

The intent behind this requirement is to ensure that the licensee has made the effort to become informed as to how to recycle in the county. Although independent corroboration is preferred, in many rural areas, it is impossible to obtain.

Finally, subsection (d) requires the “proof in writing” to be kept for a period of two years, in conformance with section 493(12) of the Liquor Code (47 P.S. § 4-493(12)).

The proposed rulemaking is intended to benefit restaurant, hotel, and club licensees; there were approximately 14,000 of these licensees as of January 4, 2019. The members of the regulated community will benefit from the guidance and clarity provided by this proposed rulemaking.

(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.

Federal regulations do not address what proof in writing is required to evidence participation in a recycling program.

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

The proposed rulemaking is rooted in section 491(5) of the Liquor Code, which is applicable only in Pennsylvania. To the extent that any comparison was undertaken, the PLCB compared the recycling programs in each county to ensure that every licensee would be able to meet the requirements of the proposed regulation, regardless of location.

The requirements of the proposed regulation are so minimal, they should not put Pennsylvania at a competitive disadvantage.

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

The proposed rulemaking will not affect any other existing or proposed regulations of the PLCB 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.)

A licensee in Bedford County contacted the PLCB's Office of Chief Counsel ("OCC") for guidance as to how he could provide proof in writing of his participation in a recycling program. This licensee drops his recyclable materials at an unstaffed location. As a result, and because of the variety of programs throughout the Commonwealth, a regulation is necessary to provide clarity and guidance to all licensees regardless of location.

The OCC provided a draft of its proposed regulation to the BLCE. The BLCE is charged with enforcement of the Liquor Code and the PLCB's Regulations. The BLCE reviewed the document and did not have any concerns about it negatively impacting enforcement.

(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?

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).

As of January 4, 2019, there were approximately 14,000 licensees that could be affected by the proposed rulemaking. Licensees would only be affected by the proposed rulemaking if they are participating in a recycling program. Although some of the PLCB's licensees probably do not fall within the definition of small business, the majority of businesses licensed by the PLCB would likely be considered small businesses.

(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.

The affected parties include all licensees that recycle packages that contained liquor. As of January 4, 2019, there were approximately 14,000 active licensees that could be affected by the proposed rulemaking. The proposed rulemaking will benefit licensees by providing clear and consistent guidance regarding what is needed to establish "proof in writing" of participation in a recycling program.

(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 expected financial, economic and social impact of the proposed rulemaking is that it will provide information as to what constitutes "proof in writing" for those licensees that participate in a recycling program. Should the BLCE ask a licensee for this proof, the licensee will know what they must provide and the BLCE will know what is acceptable.

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

Under the Liquor Code, participation in a recycling program is voluntary. For those licensees that want to participate in a recycling program, the proposed rulemaking provides guidance as to what proof must be kept to establish participation in a recycling program.

(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.

If a licensee is participating in a recycling program, the proposed rulemaking requires the licensee to keep minimal records on its premises, which may result in insignificant copying or printing costs. No other additional costs are imposed on the licensee. No legal, accounting or consulting procedures are required.

(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.

This proposed rulemaking is not expected to result in costs or savings to local governments.

(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.

This proposed rulemaking is not expected to result in any costs or savings to state government.

(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.

For the regulated community, there is some additional recordkeeping but only if the licensee is participating in a recycling program.

Licensees must have written proof that the county recycles the type of material, such as glass, that the licensee is recycling. This proof can be a pamphlet or printed pages from the recycling program's website or something similar.

Licensees that have their recycling picked up at the curb must retain a copy of the receipts, bills or invoices for this service.

Licensees that must take their recycling to a drop off location must complete a simple form to record what was delivered to the drop off location and when. This form is incorporated into the proposed rulemaking. In addition to the form, these licensees must keep a choice of two of the following items:

- The name, location and hours of operation of the recycling facility where licensee disposes recyclable materials.
- A copy of the recycling registration or documentation required by a municipality.
- A municipal waste newsletter or circular.
- An e-mail, letter or memorandum from its municipality that explains what may be recycled and where recyclable materials may be dropped off.
- Municipal recycling maps of drop-off locations for recyclable material.
- A municipal recycling collection schedule or calendar.
- Other printed or online materials provided by a municipality regarding municipal waste management.

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

Forms are required only if a licensee is participating in a recycling program whereby the licensee must take its recyclable materials (which, under the Liquor Code, are packages that contained liquor) to a drop off location. Under these circumstances, a licensee must keep a simple form to record what was delivered to the drop off location and when.

(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.**

The form is incorporated into the rulemaking, at section 5.43(c)(3).

(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.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Regulated Community</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Local Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Savings</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>COSTS:</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Regulated Community</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Local Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Costs</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>REVENUE LOSSES:</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Regulated Community</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Local Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Revenue Losses</b>	\$0	\$0	\$0	\$0	\$0	\$0

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

<b>Program</b>	<b>FY -3 2015-2016</b>	<b>FY -2 2016-2017</b>	<b>FY-1 2017-2018</b>	<b>Current FY</b>
	\$0	\$0	\$0	\$0

(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.

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).

As of January 4, 2019, there were approximately 14,000 licensees that could be affected by the proposed rulemaking. Licensees would only be affected by the proposed rulemaking if they are participating in a recycling program. Although some of the PLCB's licensees probably do not fall within the definition of small business, the majority of businesses licensed by the PLCB would likely be considered small businesses.

- (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 costs for compliance with the proposed regulation will be minimal and will stem from the cost to copy or print the proof in writing that the licensee is participating in a recycling program. No professional skills are necessary as the proposed rulemaking does not require the preparation of any reports or records.

- (c) A statement of probable effect on impacted small businesses.

Any effect on impacted small businesses is likely to be positive, as the proposed rulemaking expands and clarifies what is required to provide proof in writing of participation in a recycling program.

- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The proposed rulemaking is not intrusive or costly, therefore a less intrusive or less costly alternative method is not available. Moreover, because recycling programs vary from county to county, the PLCB believes that nothing less than a regulatory promulgation would provide clarity to all licensees regardless of location or type of recycling program that exists at their location.

- (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 such special provisions have been developed to meet the particular needs of those affected groups or persons because it is believed that such groups or persons do not have particular needs when it comes to providing proof in writing as to participation in a recycling program.

- (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 other alternative regulatory provisions were considered. Because recycling programs vary from county to county, the PLCB believes that nothing less than a regulatory promulgation would provide clarity to all licensees regardless of location or type of recycling program that exists at their location.



(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;

With regard to this proposed rulemaking, there are no reporting requirements for small businesses. The compliance requirements, which are described above, are minimal and intended to be easily met. Less stringent requirements would be ineffective.

- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

The proposed rulemaking does not incorporate any schedules or deadlines save the requirement to keep records for two years, which is based on section 493(12) of the Liquor Code (47 P.S. § 4-493(12)).

- c) The consolidation or simplification of compliance or reporting requirements for small businesses;

With regard to this proposed rulemaking, the compliance requirements are as simple as possible. Every licensee who participates in a recycling program needs to show that what it claims to recycle is accepted by its municipality. If the licensee pays a recycling entity for taking its recyclable items from its curbside, the licensee must also keep a copy of its receipts, bills or invoices. If the licensee takes its recyclable items to a drop off location, the licensee needs to keep a simple form as well as two other items, evidencing an awareness of the details of the recycling program. Most, if not all, of this information can be obtained by visiting the municipality's website. Throughout the year, the licensee need only keep a copy of its receipts, bills or invoices, or complete a simple form when delivering recyclable items to the drop off location.

- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and

The proposed rulemaking does not establish any performing, design, or operational standards.

- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The Liquor Code does not require participation in a recycling program. Any licensee that does not participate in a recycling program is exempt from 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.

The PLCB has not relied on data to justify this proposed rulemaking.

(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>July 2019</u>      |
| C. The expected date of delivery of the final-form regulation:                                | <u>September 2019</u> |
| D. The expected effective date of the final-form regulation:                                  | <u>November 2019</u>  |
| E. The expected date by which compliance with the final-form regulation will be required:     | <u>November 2019</u>  |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u>            |

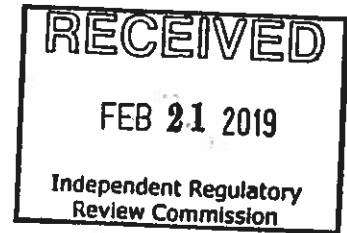
(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

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

Copy below is hereby approved  
as to form and legality.

Attorney General:

BY:   
DEPUTY ATTORNEY GENERAL

FEB 01 2019  
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. 54-93

DATE OF ADOPTION:  
January 16, 2019

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

January 16, 2019  
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 5. DUTIES AND RIGHTS OF LICENSEES

SUBCHAPTER D. MAINTENANCE OF THE LICENSED PREMISES

*The following section is proposed to be added:*

5.43. Proof of recycling.

## **PROPOSED RULEMAKING**

### **LIQUOR CONTROL BOARD**

#### **40 PA. CODE CH. 5**

#### **SUBCHAPTER D: MAINTENANCE OF THE LICENSED PREMISES**

#### **PROOF OF RECYCLING**

The Liquor Control Board ("PLCB"), under the authority of section 207(i) of the Liquor Code (47 P.S. § 2-207(i)), proposes to amend the title of Subchapter D (relating to maintenance of the licensed premises) in Chapter 5 and add § 5.43 to read as set forth in Annex A.

#### *Summary*

Section 491(5) of the Liquor Code (47 P.S. § 4-491(5)) requires restaurant, hotel and club liquor licensees to break any package that contained liquors within 24 hours after the package has been emptied. The purpose for this requirement is to prevent the fraudulent reuse of liquor packaging.

There are two exceptions to the requirement to break the package: 1) the package is one that the PLCB determines to be decorative, or 2) the licensee participates in either a municipal recycling program or a voluntary recycling program.

The Pennsylvania State Police, Bureau of Liquor Control Enforcement ("BLCE"), which is responsible for the enforcement of the Liquor Code, may demand that a licensee provide "proof in writing" if the licensee claims to be participating in a recycling program. Id. This proposed rulemaking establishes what constitutes "proof in writing."

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Today, more than 11.6 million residents [—] at least 94 percent of the state's population [—] have access to recycling. About 79 percent have convenient access to recycling through about 1,050 curb-side pickup programs. Since Pennsylvania is largely rural, 870 drop-off programs extend recycling to the greatest number of communities.

**Act 101 also requires each county to develop county plans to manage its own wastes and assure a minimum of ten years disposal capacity.**

<https://www.dep.pa.gov/Business/Land/Waste/Recycling/Pages/default.aspx> (emphasis added).

In developing this proposed rulemaking, the PLCB researched the recycling program for each of the sixty-seven counties, to ensure that licensees throughout the Commonwealth would be able to meet the requirements of the proposed rulemaking. The research showed that licensees have several different options to establish proof in writing that they are participating in a recycling program no matter where they are located.

The proposed rulemaking adds section 5.43 to subchapter D, which has been renamed "Maintenance of the License Premises" to more accurately capture the topics covered in the subchapter. Subsection (a) is based on the text of section 491(5) of the Liquor Code and is included to provide a frame of reference for the regulation.

Subsection (b) requires a licensee to "deface, prior to recycling, the labels of all packages that are not broken. The labels must be defaced with a permanent marker or some other, similar, permanent defacement...." The reason for this is to prevent the fraudulent reuse of liquor packaging, which is also the reason for requiring a licensee to break any packages that are not being recycled. Packaging that is not broken may be taken by someone, whether at curbside or at a recycling drop off location, who then refills the package and passes it off as genuine. Therefore, to thwart this type of fraud, licensees are required to deface the labels of liquor packaging that is being recycled.

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Subsection (c), paragraph 3 pertains to licensees that must take their recycling to a drop off location. There may or may not be a person staffing the drop off location; so, in consideration of that fact, the "proof in writing" documentation does not require corroboration from the township or municipality. The proposed rulemaking includes a simple form that the licensee is required to keep and record what was delivered to the drop off location and when.

In addition to the form, paragraph 3 requires the licensee to keep a choice of two of the following items:

- The name, location and hours of operation of the recycling facility where licensee disposes recyclable materials.
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- A municipal recycling collection schedule or calendar.
- Other printed or online materials provided by a municipality regarding municipal waste management.

The intent behind this requirement is to ensure that the licensee has made the effort to become informed as to how to recycle in the county. Although independent corroboration is preferred, in many rural areas, it is impossible to obtain.

Finally, subsection (d) requires the “proof in writing” to be kept for a period of two years, in conformance with section 493(12) of the Liquor Code (47 P.S. § 4-493(12)).

### *Affected Parties*

The affected parties include restaurant, hotel, and club licensees; there were approximately 14,000 of these licensees as of January 4, 2019. The members of the regulated community will benefit from the guidance and clarity provided by this proposed rulemaking.

### *Paperwork Requirements*

This proposed rulemaking imposes minimal paperwork requirements on those licensees who recycle packages that previously contained alcohol. The proposed rulemaking is intended to provide guidance as to what constitutes “proof in writing” of participation in a recycling program without creating a burden for licensees.

### *Fiscal Impact*

This regulatory change is not expected to have any measurable fiscal impact on the regulated community, state government, or local governments.

### *Effective Date*

This proposed rulemaking will become effective upon final-form publication in the Pennsylvania Bulletin.

### *Public Comments*

Interested persons are invited to submit written comments about this proposed rulemaking to Rodrigo Diaz, Chief Counsel, Jason M. Worley, Deputy Chief Counsel, or Norina Foster, Assistant Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001, within 30 days after publication of this proposed rulemaking in the Pennsylvania Bulletin. When commenting, individuals should indicate if they wish to be apprised of future developments regarding this proposed rulemaking, and include a name, address and e-mail address. Comments submitted by facsimile will not be accepted.

Public comments will be posted on the Independent Regulatory Review Commission's (IRRC) website. Personal information will not be redacted from the public comments received.

### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on \_\_\_\_\_, the PLCB submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to 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 comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the PLCB, the General Assembly and the Governor.

TIM HOLDEN,  
Chairperson

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]

MAINTENANCE OF THE LICENSED PREMISES.

[SANITARY AND LIGHTING CONDITIONS]

Sec.

5.41. Compliance with sanitation requirements.

5.42. Lighting.

5.43. Proof of recycling.

\* \* \* \* \*

§ 5.43. Proof of recycling.

(a) Pursuant to section 491(5) of the Liquor Code (47 P.S. § 4-491(5)), restaurant, hotel and club liquor licensees are required to break any package in which liquors were contained, except those decanter packages that the PLCB determines to be decorative, within 24 hours after the contents of the package have been removed, unless the licensee participates in either a municipal recycling program or a voluntary recycling program.

(b) If a licensee participates in a recycling program, the licensee must deface, prior to recycling, the labels of all packages that are not broken. The labels must be defaced with a permanent marker or some other, similar, permanent defacement that will discourage the theft of the bottles for unlawful re-use.

(c) The licensee shall provide proof in writing of participation in such a program upon demand of the Bureau of Liquor Control Enforcement of the Pennsylvania State Police. This subsection establishes what constitutes "proof in writing."

(1) The licensee must be able to provide written proof that the municipal or voluntary recycling program accepts the kind of materials (such as glass) that licensee recycles. This written proof may be a pamphlet or printed pages from the recycling program's website or something similar.

(2) If the licensee pays for a municipal or private entity to pick up its recycling, the licensee must retain a copy of the receipts, bills or invoices paid by the licensee to the municipal or private entity as "proof in writing."



(3) If the licensee voluntarily participates in a recycling program by taking recyclable materials to a drop off location, the licensee must maintain, for each calendar year, a statement in the following format and completed with details of its voluntary recycling:

### **PROOF OF RECYCLING**

The form is to be completed and maintained as a record by a licensee that participates in a municipal or voluntary recycling program by taking recyclable materials to a drop off location:

<u>Name and address of the licensee</u>				
<u>What materials do you recycle?</u>				
<u>How frequently are recyclables removed from the premises?</u>				
<u>How are recyclables removed from the premises?</u>				
<u>Where do you take the recyclables (Name and address of drop off location)?</u>				
<u>Record below, for each delivery of recyclable materials, the following information:</u>				
<u>Date of delivery</u>	<u>Time of delivery</u>	<u>Delivered by whom (Please print)</u>	<u>What was delivered</u>	<u>Approximate weight or quantity of materials</u>

I, the undersigned, hereby verify the information provided above is a true and complete to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

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Signature of Licensee Representative

Date

(4) In addition to the form required by subsection (c)(3), a licensee who takes recyclable materials to a drop off location must also keep a copy of at least two of the following records from the municipality with oversight of the drop off location:

(A) The name, location and hours of operation of the recycling facility where licensee disposes recyclable materials.

(B) A copy of the recycling registration or documentation required by a municipality.

(C) A municipal waste newsletter or circular.

(D) An e-mail, letter or memorandum from its municipality that explains what may be recycled and where recyclable materials may be dropped off.

(E) Municipal recycling maps of drop-off locations for recyclable material.

(F) A municipal recycling collection schedule or calendar.

(G) Other printed or online materials provided by a municipality regarding municipal waste management.

(d) These records shall be maintained as part of the licensee's operating records required to be kept for 2 years in accordance with section 493(12) of the Liquor Code (47 P.S. § 4-493(12)).

**Commonwealth of Pennsylvania  
Pennsylvania Liquor Control Board  
February 21, 2019**

**SUBJECT: Proposed Regulation Package 54-93  
Proof of Recycling**

**TO: DAVID SUMNER, EXECUTIVE DIRECTOR  
INDEPENDENT REGULATORY REVIEW COMMISSION**

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

**By Hand Delivery**

The Pennsylvania Liquor Control Board ("PLCB") is submitting proposed 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 Office of Attorney General has approved the proposed amendments for form and legality.

These proposed amendments are being delivered today to the legislative oversight committees and to the Legislative Reference Bureau.

If you have any questions and comments about this regulatory submission, feel free to contact the Office of Chief Counsel, Pennsylvania Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124, or by telephone at (717) 783-9454. If I am not available, you can discuss this matter with Jason Worley, Deputy Chief Counsel, or Norina Foster, Assistant Counsel.

cc with enclosures:

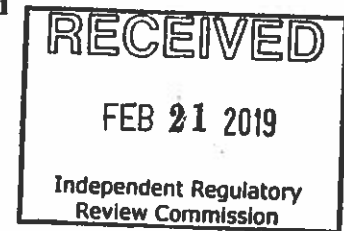
Honorable Patrick Stefano, Majority Chairman, Senate Law and Justice Committee  
Honorable James Brewster, Minority Chairman, Senate Law and Justice Committee  
Honorable Jeff Pyle, Majority Chairman, House Liquor Control Committee  
Honorable Dan Deasy, Minority Chairman, House Liquor Control Committee  
Benjamin Wren, 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

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

**I.D. NUMBER:** 54-93  
**SUBJECT:** Proof of Recycling  
**AGENCY:** Pennsylvania Liquor Control Board

**TYPE OF REGULATION**

☒ **Proposed Regulation**  
☐ **Final Regulation**  
☐ **Final Regulation with Notice of Proposed Rulemaking Omitted**  
☐ **120-day Emergency Certification of the Attorney General**  
☐ **120-day Emergency Certification of the Governor**  
☐ **Delivery of Tolled Regulation**  
    ☐ **With Revisions**   ☐ **Without Revisions**



**FILING OF REGULATION**

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
2/21/19		SENATE LAW & JUSTICE COMMITTEE (Majority)
2/21/19		SENATE LAW & JUSTICE COMMITTEE (Minority)
2/21/19		HOUSE LIQUOR CONTROL COMMITTEE (Majority)
2/21/19		HOUSE LIQUOR CONTROL COMMITTEE (Minority)
2/21/19		LEGISLATIVE REFERENCE BUREAU
2/21/19		INDEPENDENT REGULATORY REVIEW COMMISSION