

PROPOSED RULEMAKING

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 5]

Proof of Recycling

The Liquor Control Board (Board), 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 (relating to proof of recycling) 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 Board 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, 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 web site for the Department of Environmental Protection provides information on recycling in this Commonwealth:

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 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 Board researched the recycling program for each of the 67 counties, to ensure that licensees throughout this Commonwealth would be able to meet the requirements of this 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.

This 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.

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 web site 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. This 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 2 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. This 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) web site. 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 February 21, 2019, the Board 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 this proposed rulemaking within 30 days of the close of the public comment period. The comments, recommenda-

tions 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 Board, the General Assembly and the Governor.

TIM HOLDEN,
Chairperson

Fiscal Note: 54-93. No fiscal impact; (8) recommends adoption.

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]

(Editor’s Note: The following section is proposed to be added and printed in regular type to enhance readability.)

§ 5.43. Proof of recycling.

(a) Under 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 Board 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 web site 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:

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

I, the undersigned, hereby verify the information provided above is 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).

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)).

[Pa.B. Doc. No. 19-322. Filed for public inspection March 8, 2019, 9:00 a.m.]
