

Regulatory Analysis Form

(Completed by Promulgating Agency)

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

(1) Agency:

Pennsylvania Liquor Control Board

(2) Agency Number:

54

Identification Number:

90

**INDEPENDENT REGULATORY
REVIEW COMMISSION****RECEIVED**

JUN 9 2021

Independent Regulatory
Review Commission

IRRC Number: 3236

(3) PA Code Cite: 40 Pa. Code, Chapter 5

(4) Short Title: Responsible Alcohol Management Program

(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

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)

In 2000, the Responsible Alcohol Management Program ("RAMP") was established in the Liquor Code (47 P.S. §§ 1-101—10-1001) to provide for training and certification of licensees as to safe and responsible service of alcoholic beverages. At that time, participation in RAMP was mostly voluntary. However, amendments to the Liquor Code have made training mandatory for managers and alcohol service personnel and have required certification for certain licensees. This rulemaking will clarify what constitutes RAMP certification, what is required of those impacted by the legislative changes and provide guidance to online training providers or classroom instructors of RAMP server/seller training.

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

Pennsylvania Liquor Code, sections 207(i) and 471.1 (47 P.S. §§ 2-207(i) and 4-471.1).

(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.

Amendments to the Liquor Code have made RAMP training mandatory for managers and alcohol service personnel and have required RAMP certification of certain licensees:

- Act 11 of 2011 created the off-premises catering permit and required all servers at the off-premises catered site to receive RAMP server/seller training.
- Act 113 of 2011 amended the Liquor Code to require managers of a restaurant, eating place retail dispenser, hotel, club, limited distillery, or distributor license to complete RAMP manager/owner training within 180 days of the PLCB's approval of the appointment.
- Act 39 of 2016 amended the Liquor Code to require all alcohol service personnel to complete RAMP server/seller training within six months of being hired by a licensee, unless the person had successfully completed the training prior to being hired.
- Act 39 also amended the Liquor Code to provide for wine expanded permits, authorizing the permit holder to sell wine to patrons for off-premises consumption. Permit holders must obtain RAMP certification and have a RAMP-trained cashier at the register when patrons are on the licensed premises.

The purpose of this final-form rulemaking is to clarify what constitutes RAMP certification, to clarify what is required of those impacted by the legislative changes, and to provide guidance to those who want to offer RAMP server/seller training as online training providers or classroom instructors.

The final-form rulemaking seeks to clarify the difference between RAMP training and RAMP certification, because members of the regulated community frequently confuse training and certification.

A server/seller is required to receive server/seller training and a manager is required to receive owner/manager training. Sections 5.203 and 5.204 (relating to mandatory training for managers and mandatory training for alcohol service personnel) were added to provide clarity to the regulated community.

Training is a component, a prerequisite for certification; it is not the equivalent of certification. Only licensees receive RAMP certification. Licensees may voluntarily obtain RAMP certification, or they may be required to obtain it as a result of an adjudicated citation, because of a conditional licensing agreement with the PLCB, or because it is necessary for a permit they seek to obtain, such as a wine expanded permit.

Prior to these amendments, there were instances where the term "certification" was used inconsistently throughout Chapter 5, Subchapter I of the PLCB's Regulations, which has contributed to the confusion in the regulated community. For example, the current section 5.231 is entitled "Instructor Certification;"

section 5.243(a)(1) requires licensees to keep records on the “Certification status of its employees, managers and owners....” Current section 5.233 addresses the need to have an alternative curriculum “certified” by the PLCB’s Bureau of Alcohol Education (“BAE”).

This final-form rulemaking intends to clarify that “certification” is available to licensees only and requires the fulfillment of four prerequisites and then the submission of an application for certification of the licensee. The confusion and need for clarity on this issue prompted the creation of sections 5.205 and 5.206 (relating to RAMP certification prerequisites and RAMP certification). In addition, throughout the final-form rulemaking, if the word “certification” or “certified” was used in a context other than licensee certification, it was replaced with a more appropriate word. For example, online training providers and classroom instructors are authorized or deauthorized, not certified. Server/sellers and owner/managers receive training, not certification. Curriculum is approved, not certified.

The final-form rulemaking edits **section 5.201** (relating to purpose) by keeping most of the first sentence but deleting the remainder. The provisions in section 5.201(a), pertaining to the four-part RAMP program, are set forth in more detail at new section 5.205. The provisions in subsections (b) and (c) are set forth in more detail in new sections 5.205 and 5.206.

The final-form rulemaking expands the definitions listed in **section 5.202** (relating to definitions) by adding terms that have been introduced in the new sections, such as alcohol service personnel, alternative curriculum, designated employee, material change, online training provider, standard curriculum, and training voucher. Other definitions were edited to provide clarity and consistency within the regulation. In the proposed rulemaking, the PLCB deleted the definition for “responsible server practices;” the final-form rulemaking restores that definition.

The final-form rulemaking adds **section 5.203** (relating to mandatory training for managers), which stems from the provision of Act 113 of 2011 that requires managers, under section 471.1(g) of the Liquor Code, to obtain owner/manager training. The final-form regulation provides that the manager will be deemed to have met the training requirement if they have successfully completed the training within the two years prior to being appointed manager. Two years was chosen as the time frame because it corresponds with RAMP certification, which is also valid for two years. In response to a comment from IRRC, the final-form rulemaking has been amended to clarify that owner/manager training expires after two years, and the owner/manager must renew training every two years.

The final-form rulemaking also adds **section 5.204** (relating to mandatory training for alcohol service personnel), which stems from the provision of Act 39 of 2016 that requires alcohol service personnel, under section 471.1(h) of the Liquor Code, to obtain server/seller training. Like section 5.203, the alcohol service personnel will be deemed to have met the training requirement if they have successfully completed the training within two years prior to being hired by the licensee. In response to comments from IRRC, the final-form rulemaking has been amended to clarify that server/seller training expires after two years, and that alcohol service personnel must renew training every two years.

The final-form rulemaking adds **section 5.205** (relating to RAMP certification prerequisites) which is intended to clarify that training alone does not constitute certification. The word “prerequisites” was deliberately chosen to signal that the four components are not synonymous with certification. The four prerequisites are (1) owner/manager training, which was formerly located in section 5.241 (relating to

manager/owner training); (2) server/seller training, which was previously not explained in detail; (3) new employee orientation, which was formerly located in section 5.242 (relating to new employee orientation); and (4) display of responsible alcohol service signage, which was previously located in section 5.261 (relating to signs).

In the final-form rulemaking, the PLCB clarifies that new employee orientation is required of *all* alcohol service personnel when an employer is preparing to apply for RAMP certification for the first time. Section 471.1(a) of the Liquor Code provides that "Training for alcohol service personnel shall be as set forth by the board, but at minimum it shall consist of training to prevent service of alcohol to minors and to visibly intoxicated persons." 47 P.S. § 471.1(a). The basic information covered in the new employee orientation is important for all alcohol service personnel to know. In this way, the BAE is assured that all of an employer's alcohol service personnel have been given this information, not just those recently hired.

IRRC asked the PLCB to explain the reasonableness of allowing an employer 30 days to conduct new employee orientation. It bears noting that this provision is currently located in section 5.242(a), and as such, was previously approved by IRRC. In addition, please note that 30 days is the *deadline* for new employee orientation. At every owner/manager training, the PLCB stresses that licensees should not wait to review the new employee orientation form with new staff, but should review it with them as soon as possible, even before they start. However, since that could be challenging, providing a 30-day deadline gives them a certain timeframe for the completion of this task.

Requiring this training to be completed within a shorter time frame could be burdensome to the regulated community. Many employees in the food services and drinking industry work part-time. Therefore, in a 30-day period of time, it is entirely possible that a licensee's new employee might only work four to eight times – the equivalent of once or twice a week. Allowing a licensee 30 days to provide new employee orientation gives the licensee a fair opportunity to meet this requirement.

Please note that this task is only required for licensees that are seeking RAMP certification or wish to remain compliant. It is not otherwise mandatory. RAMP certification is voluntary for most licensees. Completing the new employee orientation form is a component of the program to remain compliant once certified.

Section 5.206 (relating to RAMP certification) incorporates text from former section 5.271 (relating to premises certification). Section 5.206 was deliberately set apart from section 5.205 to make clear that satisfying the prerequisites was not the equivalent of RAMP certification. Another step is required; a licensee must file an application with the PLCB for certification.

IRRC asked the PLCB to explain its statutory authority for subsection 5.206(c), which binds the Office of Administrative Law Judge to take official notice of the PLCB's records with regard to licensee certification. Please note that the identical language regarding official notice was previously vetted by the regulatory process and is currently located in section 5.271(i) of the PLCB's Regulations, 40 Pa. Code § 5.271(i). The existing language was simply moved to another section as part of the overhaul of the chapter.

However, to be thorough, the PLCB provides the following explanation. Section 206 of the Liquor

Code places the PLCB under the auspices of the Administrative Code of 1929: "Except as otherwise expressly provided by law, the board shall be subject to all the provisions of The Administrative Code of one thousand nine hundred twenty-nine, as amended, which apply generally to independent administrative boards and commissions." 47 P.S. § 2-206.

Section 506 of the Administrative Code of 1929, empowers independent administrative boards to prescribe rules and regulations for a variety of matters:

The heads of all administrative departments, the several independent administrative boards and commissions, the several departmental administrative boards and commissions, are hereby **empowered to prescribe rules and regulations**, not inconsistent with law, for the government of their respective departments, boards, or commissions, the conduct of their employes and clerks, the distribution and performance of their business, and the custody, use, and preservation of the records, books, documents, and property pertaining thereto.

71 P.S. § 186 (emphasis added). Specific guidance as to the PLCB's authority to issue a regulation pertaining to official notice can be found in the Pennsylvania Code:

Official notice may be taken by the agency head or the presiding officer of such matters as might be judicially noticed by the courts of this Commonwealth, or **any matters as to which the agency by reason of its functions is an expert**. Any participant shall, on timely request, be afforded an opportunity to show the contrary. Any participant requesting the taking of official notice after the conclusion of the hearing shall set forth the reasons claimed to justify failure to make the request prior to the close of the hearing.

1 Pa. Code § 35.173 (emphasis added).¹

The Commonwealth Court articulated additional guidance on which subjects are appropriate for the doctrine of official notice:

"Official notice" is the administrative counterpart of judicial notice and is the most significant exception to the exclusiveness of the record principle. **The doctrine allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency's field and those facts contained in reports and records in the agency's files**, in addition to those facts which are obvious and notorious to the average person. Thus, official notice is a broader doctrine than is judicial notice and recognizes the special competence of the administrative agency in its particular field and also **recognizes that the agency is a storehouse of information on that field consisting of reports, case files, statistics and other data relevant to its work**.

Ramos v. Pa. Bd. of Prob. & Parole, 954 A.2d 107, 109-110 (Pa. Cmwlth. 2008) (emphasis added) (citations omitted).

¹ This regulation is found in Title 1, Part II of the Pennsylvania Code, which begins by citing the following authority: "The provisions of this Part II [are] issued under section 506 of The Administrative Code of 1929 (71 P.S. § 186); section 35 of the Administrative Agency Law (71 P.S. § 1710.35) (Repealed); and 45 Pa.C.S. §§ 503, 701 and 723, unless otherwise noted."

The PLCB's BAE is the only entity in the Commonwealth that is authorized to issue RAMP certification to a licensee.

For purposes of clarity, the PLCB's proposed rulemaking added language indicating that the PLCB's certification of a licensee's status as being RAMP compliant shall create a rebuttable presumption that the licensee is RAMP compliant. Additionally, in the final-form rulemaking, the PLCB has also clarified that this is a matter of which official notice may be taken within the context of any proceeding before the Office of Administrative Law Judge or the PLCB.

Section 5.207 (relating to records) is based on former section 5.243 (relating to records). The language in section 5.207(a)(1) was updated to reflect the information that the BAE wants licensees to keep.

Section 5.211 was deleted and replaced with a sentence explaining that someone who wants to offer server/seller training may use either the PLCB's standard curriculum or an alternative curriculum that has been approved by the PLCB. The final-form rulemaking goes on to provide more information in section 5.212 (relating to standard curriculum) and section 5.213 (relating to alternative curriculum).

The final-form rulemaking adds **section 5.212** (relating to standard curriculum), providing that a standard RAMP curriculum for server/seller training is electronically available, free of charge, to anyone who requests it. If someone requests that the information be provided in hard copy via mail, the PLCB will provide it for a flat fee.

The final-form rulemaking adds **section 5.213** (relating to alternative curriculum) to explain, in greater detail, what is required of someone who wants to get an alternative curriculum approved for use in server/seller training. The PLCB studied the time it takes to evaluate and approve an alternative curriculum. It is estimated that the process takes 17.5 hours at a cost to the PLCB of \$515.00. Rounding the cost of estimation down to the nearest hundred (\$500.00) and then dividing that figure in half results in a figure of \$250.00. The PLCB is essentially subsidizing half the cost for the providers. The rulemaking introduces a limit of two resubmissions to correct any deficiencies; that limit was chosen as a fair balance between the interests of the alternative curriculum offeror and the limited resources of the BAE.

The final-form rulemaking includes a new heading, Online Training Providers and Programs for Server/Seller Training. The increased demand for RAMP server/seller training can be met, in part, by online server/seller training.² The BAE has allowed a limited number of online training providers to offer server/seller training since November 2011. The section is based on the BAE's experience with existing online training providers and includes guidance for anyone wanting to become a new online training provider.

IRRC asked the PLCB to explain the implementation procedure for authorizing a business as an online training provider. The PLCB will authorize a business to provide online training courses, and already has. Regardless of the business organization, at the core is an individual who is providing the RAMP training services. The BAE will review the minimum qualifications of the individual who will be providing training services on behalf of the business, which qualifications are the same required of an

² As an aside, only the PLCB may offer owner/manager training. 47 P.S. § 4-471.1(c).

individual and are set forth in section 5.231(b).

Section 5.221 (relating to online training provider application) also includes a limitation that the PLCB will only accept applications during scheduled open enrollment periods. The purpose behind this amendment is primarily to control the number of applications received by the BAE. To ensure that those seeking server/seller training receive a quality experience, online training providers must be thoroughly evaluated. Evaluating online training providers is a time-consuming process, which includes numerous deadlines for the applicant and the BAE, and the BAE has only nine staff members available to conduct the evaluations. Therefore, limiting the acceptance of applications to scheduled periods is an effective way to ensure that the BAE can evaluate and authorize qualified online training providers within a reasonable timeframe.

Section 5.221 establishes the procedure for someone applying to become a new online training provider. Currently, online training providers are assessed the same fee required of classroom instructors—\$250.00—because the regulations do not as of yet provide for a fee for online training providers. To determine an appropriate fee for an online training provider application, the PLCB calculated the amount of time spent in evaluating the application and supporting the online training provider. The process includes, but is not limited to, reviewing the application and the online training content, providing feedback and evaluating resubmissions of training content, providing troubleshooting and records reconciliation, and course evaluation. It is estimated that the process takes 55 hours at a cost to the PLCB of \$1,772.50. The evaluation is extensive and time consuming, since every link and every digital functionality must be tested to ensure that the program works as it is supposed to. As a result, the final-form rulemaking establishes the nonrefundable application fee of an online training provider at \$850.00. This fee was calculated by rounding the cost of evaluation and support down to \$1,700.00 and then dividing that figure in half. Again, the PLCB is subsidizing half of the cost.

Given the number of people who need to obtain server/seller training, the PLCB believes that online training providers can easily recoup the fee from alcohol service personnel in need of training. During fiscal year 2019-2020, 65,277 people received server/seller training from an online training provider, of which there are currently fourteen. If the number of students who obtained training were equally divided among the fourteen online training providers, each online training provider would have 4,662 students. The online training provider could recoup nearly the entire \$850.00 application fee by charging each of those students 18 cents ($4662 \times \$0.18 = \839.16). Put another way, an online training provider would only need \$1.00 from approximately 1.302% of the 65,277 students to recoup the nearly the entire application fee ($65,277 \times 1.302\% = 849.91$). Currently, online training providers charge from \$8.00 to \$40.00 per training, with most charging \$20.00 or \$25.00.

IRRC asked the PLCB to address whether the PLCB has considered the economic impact upon prospective online training providers who will incur expenses developing an online training module without knowing when it may submit an application for authorization. This scenario was not considered by the Board. A potential applicant who prepares an online training module with no idea as to when open enrollment will occur has taken an unnecessary risk of his or her own making.

IRRC also asked the PLCB to address subsection 5.221(b), regarding minimum qualifications. This subsection does not require an online training provider to attend owner/manager training, which is mandatory for classroom instructors under section 5.234(7) (relating to classroom instructor

responsibilities). In addition, section 5.234(6) requires classroom instructors to attend instructor meetings scheduled by the Board. IRRC asked the PLCB to explain the reasonableness of excluding online training providers from these requirements.

Online training providers do not have to attend owner/manager training because of the difference between an online training course and the classroom experience. With an online course, the student does not have an opportunity to ask questions or engage in a discussion of the material that may exceed the topic at hand. However, in a classroom setting, the classroom instructor delivers the information and provides a more in-depth explanation of it. Questions frequently arise and discussion is likely. It is important for the classroom instructor to have additional training to be prepared for these situations. This is the reason why classroom instructors must have additional training that online training providers are not required to have.

Section 5.222 (relating to online training program approval process) sets forth the approval process, which requires the evaluation of the online training program itself. An online training provider is allotted 120 days to give the PLCB access to the online training website. After receiving access to the website, the PLCB will determine whether the website meets the minimum standards that are set forth in section 5.223 (relating to minimum standards of the online training program). The minimum standards include certain program features, program availability, program functionality, and the PLCB's final examination. The minimum standards also set forth security and technology requirements, such as encrypting personally identifiable information and prohibiting the online training provider from selling or using such information for any purpose other than for identification by the online training provider and verification by the PLCB.

Section 5.223 (relating to minimum standards of the online training program) sets forth the program features, program availability, program functionality, final examination, and security and technology requirements. In subsection 5.223(e), the final-form regulation is amended to correct a reference to another section.

Section 5.224 (relating to online training provider responsibilities) establishes what is required of the online training provider. IRRC asked the PLCB to explain the need for and reasonableness of the requirement of setting a minimum number of students per online training provider, as established in section 5.224(3). In response, the PLCB notes that RAMP training is important for the licensees and their personnel. The online training provider who is offering server/seller courses should be able to demonstrate a commitment to the training being offered. Even if the method of instruction is via computer and not classroom, requiring a minimum number of students ensures that the online training provider is committed to offering a professional service.

Section 5.224, paragraph 7 originally required an online training provider to resolve a technical support inquiry within one business day. A commentator expressed concern with implementing this requirement when correcting technical issues and communicating with students. The commentator suggested that two business days is a more reasonable timeframe. The commentator's suggestion has been accepted. The final-form regulation amends the time period to two business days.

Section 5.224, paragraph 10(i) originally required an online training provider to make changes to online training program content within 24 hours of being notified by the Board. IRRC asked the PLCB to

explain the reasonableness of how this provision will be implemented.

It is imperative that students receive the correct information. Licensees could be held liable for violations of the law if their employees are not properly trained. It is not acceptable to the BAE to allow misinformation to be disseminated.

That being said, there is frequently—but not always—a period of time before the law changes; some legislation provides for a period of sixty days before it becomes effective. The final-form regulation provides that the changes must be made by the date provided by the PLCB. Under this scenario, the BAE could notify all online training providers that changes must be made to program content and approved by the BAE by a specific day. The BAE will allow as much time as possible, but in some circumstances, the law changes immediately upon the signature of the Governor, and thus the timing of the changes is beyond the BAE's control.

Section 5.224(10)(iii) directs an online training provider to “[r]efrain from making material changes to online training program content” without approval from the PLCB or unless directed to by the PLCB. The online training provider is required to submit the material changes to the program for PLCB review and approval under section 5.224(10)(iii)(A) (“Clause A”). In response to comments by IRRC, Clause A has been amended in two respects. First, the procedures for review and approval will follow the procedures set forth in section 5.213 (relating to alternative curriculum), and language to that effect has been added to Clause A. Second, the nonrefundable fee has been changed from \$850.00 to \$250.00, to keep the provisions of Clause A consistent with section 5.213.

In the proposed rulemaking, section 5.224, paragraph (11)(i) required an online training provider to notify the PLCB “not less than 30 calendar days” before an online training program is modified, enhanced or upgraded. In the final-form regulation, the requirement of 30 days’ notice has been deleted, and the online training provider is simply asked to give the PLCB notice before the implementation of any system enhancements or modifications. Students will often contact the BAE if they have an issue with an online training provider, so if the BAE has notice that an enhancement or modification has been implemented, this information can be shared with the student.

Section 5.225 (relating to renewal of authorization) explains the time frame and procedures for renewing the authorization to serve as an online training provider. Through this rulemaking, the PLCB is establishing clear rules for the renewal of an online training provider’s authorization. Currently, online training providers pay a renewal fee of \$250.00. This fee has not been changed since 2010. To determine an appropriate fee, the PLCB calculated the amount of time spent in renewing an online training provider. The process includes, but is not limited to, course evaluation, student records reconciliation, and troubleshooting. It is estimated that the process takes approximately 39 hours at a cost to the PLCB of \$1,222.50. As a result, section 5.225 of the final-form rulemaking increases the renewal fee of an online training provider from \$250.00 to \$600.00. This fee was calculated by rounding the cost of evaluation and support down to \$1,200.00 and then dividing that figure in half. The PLCB is therefore subsidizing half of the cost for the provider.

In addition, section 5.225 imposes a late fee of \$100.00 on an online training provider if a renewal application is not filed at least 30 days before the expiration of the authorization. Because RAMP has only nine staff members, requiring an online training provider to submit a renewal application 30 days

before expiration allows sufficient time for the RAMP staff to process the request. This ensures that the online training provider's authorization is renewed in a timely fashion, without interruption of the provider's business.

In the final-form rulemaking, section 5.225 includes has been amended to address two issues raised in response to the proposed rulemaking. First, hard copy screen shots of the online training program are not required with a renewal application if the online training provider certifies that no material changes were made to the online training program after it was last approved by the PLCB. Screen shots are only required of online training providers if they have incorporated material changes into their online training program.

Second, applications for renewal will not be accepted after the expiration date. In the proposed rulemaking, applications for renewal would have been accepted with the submission of a \$250.00 late fee. However, IRRC pointed out that allowing the online training provider to file a late application for renewal creates a "gap of uncertainty," whereby it is unclear if the online training provider is authorized or not authorized to provide server/seller training. To eliminate this "gap of uncertainty," section 5.225 was amended to eliminate the acceptance of renewal applications after the date of expiration. In the final-form rulemaking, the language was amended to mirror the language in paragraph 5.235(c)(2) and now states the prohibition in the singular, rather than the plural.

Section 5.226 (relating to training vouchers) addresses a practice whereby online training providers issue training vouchers in bulk quantities to licensees with many employees, such as chain restaurants or casinos. The licensee may then give the training vouchers to its employees to obtain the server/seller training. Once these vouchers are sold, however, there is no guarantee that the online training provider will still be authorized to provide such training by the time the last voucher is redeemed and training is completed. The PLCB sought to protect licensees from having a large quantity of vouchers issued by an online training provider who no longer had authorization to provide training. In the proposed rulemaking, training vouchers were only valid for sixty days from the date of purchase.

In response to comments from the public and from IRRC, the final-form rulemaking of section 5.226 eliminates the provision that training vouchers expire after sixty days. The final-form rulemaking provides that training vouchers are valid for as long as the online training provider is authorized to provide server/seller training. Refunds for unused training vouchers are addressed in section 5.227 (relating to deauthorization of online training providers).

Section 5.227 (relating to deauthorization of online training providers) sets forth the procedure that will be followed when an online training provider does not meet the minimum standards, does not meet its responsibilities, or engages in prohibited conduct. In the final-form rulemaking, the PLCB added subsection (b)(1), which explains what an online training provider must do if its authorization to provide online training is suspended. The suspended online training provider must immediately render the online training program inaccessible to new students. In addition, the online training provider must contact all students who have started the course but not finished it and advise them to finish the course within fourteen days. Thus, students are alerted that they must finish, and no additional vouchers can be redeemed until the suspension is lifted.

In the final-form rulemaking, the PLCB also added subsection (c)(1), which explains what an online

training provider must do if it has been deauthorized from providing online training. The deauthorized online training provider, like the suspended online training provider, must render the program inaccessible to new students, and e-mail students who have started the course that they must finish it within fourteen days (section 5.223(b)(2)(ii) requires students to provide an e-mail address during the registration process). Deauthorized online training providers must also contact, by e-mail or telephone, holders of unused training vouchers and advise them that the online training program is no longer valid, and they must remit refunds for all unredeemed training vouchers.

Section 5.231 (relating to classroom instructor application) increases the fee that a classroom instructor applicant must pay. Currently, new classroom instructors pay a fee of \$250.00. This fee has not been changed since 2010. To determine an appropriate fee, the PLCB calculated the amount of time spent in evaluating and training a new classroom instructor. The process includes, but is not limited to, two days of instruction as well as on-site training evaluation. It is estimated that the process takes approximately 50 hours at a cost to the PLCB of \$1,083.80. As a result, section 5.231 of the final-form rulemaking increases the nonrefundable application fee of a new classroom instructor from \$250.00 to \$500.00. This fee was calculated by rounding the cost of evaluation and support down to \$1,000.00 and then dividing that figure in half. As a result, the PLCB subsidizes half of the cost.

During fiscal year 2019-2020, 14,888 people obtained server/seller training in a classroom setting. There are currently twenty-one classroom instructors; if the people taking server/seller training were evenly distributed among the twenty-one classroom instructors, each instructor would teach approximately 709 people per year. The authorized classroom instructor can recoup nearly the entire \$500.00 authorization fee by charging each student an additional seventy cents ($709 \times \$0.70 = \496.30). Put another way, a classroom instructor would only need \$1.00 from approximately 3.3% of the 14,888 students to recoup the application fee ($14,888 \times 3.3\% = 491.30$). It is estimated that currently, classroom instructors charge from \$15.00 to \$50.00 per training, with most charging \$25.00 to \$40.00.

Section 5.231 also includes a limitation that the PLCB will only accept applications during scheduled open enrollment periods. The purpose behind this amendment is primarily to control the number of applications received by the BAE. To ensure that those seeking server/seller training receive a quality experience, the classroom instructors must be thoroughly evaluated. Evaluating instructors is a time-consuming process, which includes numerous deadlines for the applicant and the BAE, and the BAE has only nine staff members available to conduct the evaluations. Therefore, limiting the acceptance of applications to scheduled periods is an effective way to ensure that the BAE can evaluate and authorize qualified classroom instructors within a reasonable timeframe.

Section 5.231 updates the requirements for a classroom instructor, including the fact that the applicant must have had, within the past five years, two years of experience as a trainer or in giving presentations. The purpose behind this change was to ensure that the applicant's skills in this area are still relatively fresh, not, for example, based on an experience from twenty years ago. In addition, hospitality experience has been clarified to be related to hotel/restaurant management, to ensure that the applicant has ample experience.

The final-form rulemaking amends **section 5.232** (relating to classroom instructor approval process) to address the classroom instructor approval process instead of classroom instructor responsibilities, which will be addressed in newly added section 5.234 (relating to classroom instructor responsibilities). The

most significant change to the approval process is the institution of a probationary period. The probationary period allows the BAE to evaluate classroom instructors “in action,” to ensure that the classroom instructor can actually teach the material. If a classroom instructor does not achieve a rating of “Outstanding,” “Commendable,” or “Satisfactory,” the PLCB will terminate the classroom instructor’s authorization.

Section 5.233 (relating to minimum standards of classroom training) amends the existing regulation in small ways to provide greater clarity to the regulated community. For example, because the final-form rulemaking introduces the category of online training providers, this section is amended to refer to “classroom instructors,” to clearly distinguish them from online training providers.

As suggested by IRRRC, the second sentence of subsection 5.233(a) has been deleted because it is repetitive. In addition, the phrase “Within seven days” has been added to the beginning of subsection (e) to clarify the timeframe for notifying students of their grade in the final examination.

Additionally, in section 5.233, a classroom instructor is required to notify the PLCB immediately when cancelling a training session or making a change to the training schedule. Previously, the methods of communication between the classroom instructor and the PLCB in these circumstances included first class United States mail, other delivery or express service, facsimile, or e-mail. The final-form rulemaking amends the methods of communication to reflect the actual practice, which is by telephone or e-mail, eliminating all other methods.

Section 5.234 (relating to classroom instructor responsibilities) includes the existing content of section 5.232 (relating to instructor responsibilities). The section has been expanded to include a subsection requiring the classroom instructor on probationary status to adhere to the PLCB’s Regulations and Probationary Status Instructor policies that will be provided by the PLCB. The section also adds responsibilities of classroom instructors about making changes to the curriculum, about acknowledging communications from the PLCB, getting PLCB approval on marketing correspondence, and keeping contact information up to date with the PLCB.

As suggested by IRRRC, the phrase “modifications or changes” has been replaced by the defined phrase “material changes,” for increased clarity. For additional clarity, the text of section 5.234 has been amended to explain that, if a classroom instructor wants to make material changes to either the standard curriculum or an approved alternative curriculum, the classroom instructor must submit the curriculum, including the material changes, to the BAE for review and approval in accordance with the provisions of section 5.213(b).

The final-form rulemaking adds new **section 5.235** (relating to renewal of authorization). Through this rulemaking, the PLCB is establishing clear rules for the renewal of a classroom instructor’s authorization. Currently, classroom instructors pay a renewal fee of \$250.00. This fee has not been changed since 2010. To determine an appropriate fee, the PLCB calculated the amount of time spent in renewing a classroom instructor. The process includes, but is not limited to, travelling to locations for on-site training evaluation. It is estimated that the process takes approximately 22.5 hours at a cost to the PLCB of \$655.00. As a result, section 5.235 of the final-form rulemaking increases the renewal fee of a classroom instructor from \$250.00 to \$300.00. This fee was calculated by rounding the cost of evaluation and support down to \$600.00 and then dividing that figure in half. The PLCB subsidizes half

of the cost for the classroom instructor renewal.

Section 5.235(b)(2) requires that, if a classroom instructor wants to make material changes to the alternative curriculum, an additional \$250 fee is required. The classroom instructor shall continue to use the alternative curriculum that was approved by the PLCB until the notice of authorization has been renewed.

In addition, section 5.235 imposes a late fee on classroom instructors if renewal applications are not timely filed. Because RAMP has only nine staff members, requiring a classroom instructor to submit a renewal application 30 days before expiration allows sufficient time for the RAMP staff to process the request. This ensures that the instructor's authorization is renewed in a timely fashion, without interruption of the instructor's business. Renewals that are submitted shortly before expiration or after expiration tend to disrupt the work of the RAMP office; further, the late-submitting instructor will often ask for expedited service for what is truly an avoidable situation. Towards that end, an additional late fee of \$100.00 is imposed to compel the timely submission of the application for renewal. This fee was adopted because it is the same fee that licensees must pay if they are untimely with their license renewal applications. See 47 P.S. § 4-470(a).

In the final-form rulemaking, the language paragraph 5.235(c)(2) was amended to state that "The PLCB will not accept an application for renewal of authorization that is filed after the expiration of the current authorization." This is the identical language in paragraph 5.225(b)(2). In addition, the final-form rulemaking establishes that the classroom instructor who has missed filing an application for renewal before the date of expiration will have to wait for open enrollment to submit a new application.

Section 5.236 (relating to deauthorization of classroom instructors) is nearly identical to section 5.227 (relating to deauthorization of online training providers) except for the fact that it does not include provisions that are unique to online training providers: the invalidation of training that is completed after deauthorization and the invalidation of previously issued training vouchers. Neither of these scenarios is at issue with classroom instructors and, therefore, these provisions were not included in section 5.236.

The final-form rulemaking deletes the text in **section 5.241** (relating to manager/owner training). This information can now be found in section 5.205(b)(1), relating to RAMP certification prerequisites. The final-form rulemaking also deletes the text in **section 5.242** (relating to new employee orientation). This information has been restated with more detail and can now be found in section 5.205(b)(3) (relating to RAMP certification prerequisites). The final-form rulemaking deletes the text in **section 5.243** (relating to records). This information can now be found in section 5.207 (relating to records).

The final-form rulemaking amends **section 5.251** (relating to additional prohibited conduct). Two new sections – section 5.227 (relating to deauthorization of online training providers) and section 5.236 (relating to deauthorization of classroom instructors) – identify the conduct that will lead to deauthorization. To eliminate repetition, the text in subsections 5.251(a)(9), (b) and (c) has been deleted. The remainder of the text in section 5.251 was edited to include minor updates in vernacular, to be consistent with the rest of the final-form rulemaking. The only significant change is the incorporation of a reference to the Pennsylvania Human Relations Act, 43 P.S. §§ 951—963 ("PHRA"); discrimination or harassment based on age, race, sex, disability, national origin or religion or any other protected class under the PHRA is prohibited conduct.

Finally, this rulemaking deletes the text of sections 5.261 (relating to signs) and 5.271 (relating to premises certification). This information can now be found in section 5.205(b)(4) (relating to display of responsible alcohol service signage) and section 5.206 (relating to RAMP certification), respectively.

The affected parties include licensees and their employees, including managers and server/sellers, as well as entities that are offering RAMP server/seller training. For Fiscal Year 2019-2020, 5,903 people enrolled in owner/manager training and 80,165 people enrolled in server/seller training. The affected parties also include the classroom instructors and online training providers. As of March 31, 2021, there are twenty-one classroom instructors and fourteen online training providers of server/seller training.

(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 final-form 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?

Alcohol service training and the associated requirements for such training programs are regulated by neighboring states in accordance with their unique and individual systems of alcoholic beverage control. Because of this, the final-form 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 requests from members of the public regarding how they may offer online server/seller training. The PLCB has carefully considered comments submitted by IRRC and the public and has amended the proposed rulemaking in response to those comments.

(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?

As of March 8, 2021, there are approximately 15,000 active licensees in Pennsylvania that may sell and serve alcohol for on-premises consumption and approximately 1,200 licensed distributors and importing

distributors of malt or brewed beverages that sell alcohol exclusively for off-premises consumption. Also, there were 1,445 licensees with a wine expanded permit, for which they must have RAMP certification. There were also 174 off-premises catering permits, whose servers must have received server/seller training.

As of March 8, 2021, there were 21 classroom instructors of server/seller training and 14 online training providers of server/seller training. This rulemaking will also affect those applicants who wish to become authorized as RAMP classroom instructors or offer an online training program. It is unknown how many people are included in this group.

(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.

Pursuant to amendments in the Liquor Code, managers are required to receive owner/manager training within 180 days of being appointed manager, and alcohol service personnel are required to receive server/seller training within six months of being hired by a licensee. In both cases, training is only excused if the individual has received the training within the past two years. For Fiscal Year 2019-2020, 5,933 people enrolled in owner/manager training and 80,025 people enrolled in server/seller training.

It is unknown how many licensees are required to obtain RAMP certification, either as a result of an adjudicated citation or because of the terms of a conditional licensing agreement required by the PLCB's Bureau of Licensing. However, as of March 31, 2021, approximately 3,609 licensees are currently RAMP-certified.

As of March 8, 2021, there were 21 classroom instructors and 14 online training providers. It is unknown how many people or entities want to become authorized as RAMP classroom instructors or offer an online training 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 financial impact of the regulation is primarily on those individuals or entities who are seeking to offer server/seller training, either as an online training provider or as a classroom instructor. The current fee for becoming a classroom instructor has been in place since 2010. Since that time, online training providers have been assessed the same fee, even though the process of evaluating an online training provider is far more time consuming. The PLCB re-evaluated the time spent when evaluating applicants and estimated the cost for each type of evaluation. Those costs were rounded down to the nearest hundred and then halved, which figure became the new fee. As a result, the fees have been increased except for the evaluation of an alternative curriculum, which remains at \$250. The fee increases are appropriate because they are directly tied to the costs incurred by the PLCB when an applicant requests the authority to provide server/seller training. Moreover, these expenses may be recouped from the fees charged to those individuals who sign up for the server/seller course offered by the online training provider or classroom instructor. Finally, even with the fee increases, the PLCB is only charging for 50% of the actual costs.

The economic and social impact of the regulation is difficult to quantify. Although the fees are being

increased, it is anticipated that the classroom instructor and online training provider can readily offset the cost from the fees they charge students, given the tens of thousands of people who need to receive server/seller training.

The expected benefits of this proposed rulemaking are: an increased awareness of what is required of managers and alcohol service personnel, an increased awareness of what is required for a licensee to become RAMP-certified, increased numbers of licensees becoming RAMP-certified, and an increase in the number of online training providers and classroom instructors.

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

The current regulations have not been updated in nearly 10 years. During that time, the Liquor Code has been amended in ways that increase the demand for RAMP training and RAMP certification. The proposed rulemaking adds definitions, reorganizes content to improve clarity, and clarifies language to reduce confusion. There are increased costs to online training providers and classroom instructors, but they are about half of the costs incurred by the PLCB in the process of evaluating the online training providers and classroom instructors. Moreover, these costs can be recouped from tens of thousands of individuals who must take RAMP server/seller training.

(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 for this question is the online training provider or classroom instructor. They incur costs when they apply to become an authorized provider or instructor of server/seller training or when they seek to renew that authorization. They may incur additional costs if they decide to use an alternative curriculum instead of RAMP's curriculum, or if they request that a hard copy of RAMP curriculum be mailed to them.

The PLCB estimated that the process involved in approving and supporting an online training provider takes 55 hours of work by individuals with salaries of \$25 to \$35 dollars per hour. The total cost to approve and support an online training provider is \$1,772.50, which was rounded down to \$1,700.00 and then halved to reach the fee of \$850.00 for the authorization of a new online training provider.

The renewal of an online training provider takes 39 hours of work by individuals with salaries of \$25 to \$35 dollars per hour. The total cost to renew and support an online training provider is \$1,222.50, which was rounded down to \$1,200.00 and then halved to reach the fee of \$600.00 for the renewal of an online training provider.

The PLCB estimated that the process involved in approving and supporting a classroom instructor takes 50.5 hours of work by individuals with salaries of \$25 to \$35 dollars per hour. The total cost to approve and support a classroom instructor is \$1,083.80, which was rounded down to \$1,000.00 and then halved to reach the fee of \$500.00 for the authorization of a new classroom instructor.

The renewal of a classroom instructor takes 22.5 hours of work by individuals with salaries of \$25 to \$35 dollars per hour. The total cost to renew and support a classroom instructor is \$655.00, which was

rounded down to \$600.00 and then halved to reach the fee of \$300.00 for the renewal of a classroom instructor.

The PLCB estimated that the process involved in approving an alternative curriculum takes 17.5 hours of work by individuals with salaries of \$25 to \$35 dollars per hour. The total cost to approve an alternative curriculum is \$515.00, which was rounded down to \$500.00 and then halved to reach the fee of \$250.00 for the approval of an alternative curriculum.

(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 costs to the PLCB stem from reviewing and approving alternative curriculums, and reviewing and approving online training programs, online training providers, and classroom instructors (see the answer to Question 19). The required fees are expected to cover about half of these costs. Thus, these regulations are expected to reduce the cost 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.

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?

Yes; see below.

(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.**

Hard copies are attached of the following forms:

- Application for Approval of RAMP Classroom Curriculum
- Application for Approval of RAMP Classroom Instructor
- Application for Approval of RAMP Online Provider

- Alcohol Education Criminal Record Check
- Licensee New Employee Orientation Form
- Application for RAMP Certification

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$14,700	\$14,700	\$14,700	\$14,700	\$14,700
Total Savings	\$0	\$14,700	\$14,700	\$14,700	\$14,700	\$14,700
	In the proposed rulemaking, the calculated amount of savings was \$16,800. It was calculated by assuming that all the classroom instructors and online training providers would renew their authorizations at the updated renewal fee (36 classroom * \$300 renewal = \$10,800; 10 online * \$600 renewal = \$6,000). The change in this figure, from \$16,800 to \$14,700, is because there are 15 fewer classroom instructors (21 classroom * \$300 = \$6,300) and four more online training providers (14 online * \$600 = \$8,400).					
COSTS:	No costs for the regulated community are included here, because it is expected that the online training providers and classroom instructors will pass the cost along to individuals taking server/seller training.					
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0
(23a) Provide the past three year expenditure history for programs affected by the regulation.						
Program	FY -3 2017-2018	FY -2 2018-2019	FY -1 2019-2020	Current FY 2020-2021		
RAMP	\$1,182,154.24	\$1,216,837.24	\$1,150,340.11	\$677,083.48*		

				*Through February 2021
<p>(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:</p> <ul style="list-style-type: none"> (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. <p>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).</p> <p>The online training provider and the classroom instructor may fall within one of the following small business classifications: data processing, hosting, and related services with annual receipts of less than \$30 million; professional and management development training with annual receipts of less than \$10 million; other technical and trade schools with receipts of less than \$14 million; and all other miscellaneous schools and instruction with receipts less than \$10 million. (13 C.F.R. § 121.201).</p> <p>This rulemaking is not anticipated to have adverse impacts on small business. Although the fees for the online training provider and the classroom instructor have been increased, these fees will be recouped by passing along the cost to the attendees of the training, of which there are tens of thousands across the Commonwealth. As a result, it cannot be said that the proposed rulemaking has an adverse impact on small business.</p>				
<p>(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.</p> <p>The PLCB has not identified any group that may need any special provisions or accommodations.</p>				
<p>(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.</p> <p>Alternative regulatory provisions were not considered. The rulemaking consists of the least burdensome acceptable regulations that balance the interests of the individuals seeking authorization or approval of an online training program with BAE’s desire to maintain and exceed the standards of RAMP training.</p>				
<p>(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered</p>				

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.

Because the rulemaking does not adversely impact small businesses, the PLCB did not conduct a regulatory flexibility analysis.

(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>N/A</u> |
| B. The date or dates on which any public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of delivery of the final-form regulation: | <u>June 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.

Commonwealth of Pennsylvania Pennsylvania Liquor Control Board 1/19	APPLICATION FOR APPROVAL OF ALTERNATIVE CLASSROOM CURRICULUM	Responsible Alcohol Management Program
--	---	---

TYPE OR PRINT LEGIBLY WITH BLUE OR BLACK INK

1. PERSONAL INFORMATION

FIRST NAME	MI	LAST NAME	SUFFIX
HOME ADDRESS (STREET, P.O. BOX NO.)		CITY	STATE ZIP
DAYTIME PHONE (INCLUDING AREA CODE)		EVENING PHONE (INCLUDING AREA CODE)	
()		()	
EMAIL ADDRESS		WEBSITE ADDRESS (IF APPLICABLE)	

2. CURRICULUM INFORMATION

All required topics are covered with content provided by the PLCB or the Provider as indicated in the Required Topics section of this application.

Yes ☐ No ☐

A complete copy of your curriculum must accompany this application, including all training content, proposed student manual, videos, or any other material you plan to use in your online course.

PLCB Use Only

Application Received: ____ / ____ / ____ Fee Received: ____ / ____ / ____

3. REQUIRED TOPICS

Each topic must be covered with either required content provided by the PLCB where indicated or with content chosen by the Provider.

Topics	PLCB Required Text	Provider Text Only
RAMP Certification	X	
Liability Concerns	X	
Documentation	X	
Liquor Code	X	
PLCB Regulations	X	
House Policies	X	
Club Bylaws	X	
What is Alcohol?	X	
Absorption Rate Factors	X	
Drug and Alcohol Interactions		X
Alcohol and Energy Drinks		X
Drink Equivalency	X	
How Alcohol is Eliminated		X
Measuring Intoxication	X	
Explanation of BAC	X	
Tolerance		X
Alcohol and the Brain	X	
Visible Intoxication Defined	X	
Preventing Intoxication		X
Refusing Service	X	
Minors	X	
Who and When to Card	X	
Legally Acceptable ID	X	
How to Card	X	
Proof of Carding	X	
Minors Frequenting	X	

INSTRUCTIONS

This application is for the approval of an alternative classroom curriculum to be used for the Server/Seller Training component of the Responsible Alcohol Management Program (RAMP). Any person who wishes to use this curriculum must submit a separate application to seek approval as a RAMP classroom instructor.

1. Personal information - Enter personal information for individual submitting curriculum for approval.
2. Curriculum
 - a) Affirm that all required topics are covered with content provided by the PLCB or the Provider as indicated in the Required Topics section of this application.
 - b) Submit a complete copy of your curriculum with this application, including all training content, proposed student manual, videos, or any other material you plan to use in your online course.
3. Fees
 - a) A nonrefundable application fee of \$250.00 must accompany this application. Submit a check or money order made payable to "Commonwealth of PA." **Do not send cash.** Submit completed application and fee to: Pennsylvania Liquor Control Board, RAMP, 990 Briarsdale RD, Unit A Harrisburg, PA, 17109.

If you require assistance in completing this application, call the RAMP office at 866.275.8237.

PLCB-2440 7.18 Commonwealth of Pennsylvania Pennsylvania Liquor Control Board	APPLICATION FOR APPROVAL OF RAMP CLASSROOM INSTRUCTOR	BUREAU OF ALCOHOL EDUCATION
--	--	--------------------------------

TYPE OR PRINT LEGIBLY WITH BLUE OR BLACK INK

1. PERSONAL INFORMATION

FIRST NAME	MI	LAST NAME
HOME ADDRESS	(STREET, P.O. BOX NO.)	(STATE) (ZIP)
COUNTY		
DAYTIME PHONE	EVENING PHONE	
E-MAIL ADDRESS	WEBSITE ADDRESS (IF APPLICABLE)	
DATE AND PLACE OF BIRTH	SOCIAL SECURITY NUMBER	

2. CURRICULUM INFORMATION

A STANDARD CURRICULUM IS AVAILABLE FROM THE PENNSYLVANIA LIQUOR CONTROL BOARD (PLCB) HOWEVER, YOU MAY CHOOSE TO USE ANOTHER CURRICULUM PROVIDED THAT IT HAS BEEN APPROVED BY THE PLCB.

1. WHICH CURRICULUM DO YOU PLAN TO USE? PLCB ☐ OTHER ☐ BOTH ☐

IF OTHER, PLEASE INDICATE NAME OF CURRICULUM _____

Please attach Resume and at least three (3) Professional References.

Board Use Only

Date Application Received:	Date Fee Received:	Date Certified:
____/____/____	____/____/____	____/____/____

3. EXPERIENCE

MINIMUM QUALIFICATIONS: POSSESS A MINIMUM OF 2 YEARS EXPERIENCE, FULL TIME, IN THE FIELD OF EDUCATION, LAW, LAW ENFORCEMENT, SUBSTANCE ABUSE PREVENTION, HOSPITALITY OR ALCOHOL SERVICE TRAINING.

PLEASE INCLUDE MOST RELEVANT WORK EXPERIENCE THAT BEST HELPS TO QUALIFY YOU FOR THIS POSITION BASED ON THE MINIMUM QUALIFICATIONS DESCRIBED ABOVE. (SUBMITTING A RESUME IS NOT A SUBSTITUTE FOR THIS SECTION)

1. FROM (DATE)	TO (DATE)
----------------	-----------

NAME OF EMPLOYER	PHONE
------------------	-------

EMPLOYER ADDRESS

TYPE OF BUSINESS	TITLE	NUMBER OF HOURS WORKED/WEEK
------------------	-------	-----------------------------

DESCRIPTION OF DUTIES. PLEASE BE SPECIFIC AS POSSIBLE.

2. FROM (DATE)	TO (DATE)
----------------	-----------

NAME OF EMPLOYER	PHONE
------------------	-------

EMPLOYER ADDRESS

TYPE OF BUSINESS	TITLE	NUMBER OF HOURS WORKED/WEEK
------------------	-------	-----------------------------

DESCRIPTION OF DUTIES. PLEASE BE SPECIFIC AS POSSIBLE.

4. OTHER

1. PLEASE ENTER THE DATE YOU COMPLETED THE PLCB RAMP OWNER/MANAGER TRAINING. (MUST BE COMPLETED IN-CLASS, ONCE IN THE YEAR PRECEDING THE DATE THE APPLICATION FOR INSTRUCTOR CERTIFICATION IS FILED). COMPLETING THIS TRAINING ONLINE DOES NOT SATISFY THIS REQUIREMENT.

DATE ____/____/____

1. ARE YOU AT LEAST 21 YEARS OF AGE?

YES ____ NO ____

2. HAVE YOU GRADUATED FROM HIGH SCHOOL OR OBTAINED A GED?

YES ____ NO ____ IF YES, DATE ____/____/____

3. ARE YOU WILLING TO TRAVEL THROUGHOUT THE COMMONWEALTH TO CONDUCT TRAINING?

YES ____ NO ____

4. CAN YOU COMMUNICATE IN A LANGUAGE OTHER THAN ENGLISH?

YES ____ NO ____

IF YES, WHAT LANGUAGE(S)? _____

5. HAVE YOU OWNED OR BEEN AFFILIATED WITH A LIQUOR LICENSED ESTABLISHMENT WITHIN THE PAST FIVE YEARS?

YES ____ NO ____

IF YES, PLEASE PROVIDE THE LICENSE NAME _____, LID NUMBER _____
AND AFFILIATION _____

5. CRIMINAL HISTORY

CRIMINAL OFFENSE INCLUDES FELONIES, MISDEMEANORS AND SUMMARY OFFENSES.

CONVICTION IS AN ADJUDICATION OF GUILT AND INCLUDES DETERMINATIONS BEFORE A COURT, A DISTRICT JUSTICE OR MAGISTRATE AND PLEAS OF NOLO CONTENDERE (NO CONTEST) THAT RESULT IN A FINE, SENTENCE OR PROBATION.

FOR THIS QUESTION DISREGARD: MINOR TRAFFIC VIOLATIONS (NO POINTS), OFFENSES COMMITTED BEFORE YOUR 18TH BIRTHDAY WHICH WERE ADJUDICATED IN JUVENILE COURT UNDER A YOUTH OFFENDER LAW, AND ANY CHARGES WHICH HAVE BEEN EXPUNGED BY A COURT OR FOR WHICH YOU SUCCESSFULLY COMPLETED AN ACCELERATED REHABILITATIVE DISPOSITION PROGRAM.

1. WERE YOU EVER CONVICTED OF A CRIMINAL OFFENSE? OR ARE YOU NOW UNDER CHARGES FOR A CRIMINAL OFFENSE? OR HAVE YOU EVER FORFEITED BOND OR COLLATERAL IN CONNECTION WITH A CRIMINAL OFFENSE?

YES ____ NO ____ IF YES, PLEASE EXPLAIN:

ACKNOWLEDGEMENT

I SWEAR OR AFFIRM, SUBJECT TO THE PENALTIES PROVIDED BY 18 PA. C.S. 4904, THAT THE FOREGOING ANSWERS AND STATEMENTS PROVIDED HEREIN ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SIGNATURE _____

DATE _____

INSTRUCTIONS

This application is for the approval of a Responsible Alcohol Management Program (RAMP) server/seller classroom instructor.

1. A non-refundable fee of \$250.00 is required by any individual seeking approval as a RAMP server/seller classroom instructor. Please make a check or money order payable to "Commonwealth of PA." **Do not send cash.** Submit completed application and fee to the Pennsylvania Liquor Control Board, RAMP, 990 Briarsdale RD, Unit A Harrisburg, PA, 17109.

2. A Request for Criminal Record Check, Form PLCB - 2391, **MUST** be submitted for the applicant seeking approval as a RAMP instructor. Please make a separate check or money order payable to "Commonwealth of Pennsylvania" in the amount indicated on the form. **Do not send cash.**

If you require assistance in completing this application, call the RAMP office at 866.275.8237.

12/18 Commonwealth of Pennsylvania Pennsylvania Liquor Control Board	APPLICATION FOR APPROVAL OF RAMP ONLINE TRAINING PROVIDER	BUREAU OF ALCOHOL EDUCATION
---	--	--------------------------------

TYPE OR PRINT LEGIBLY WITH INK

1. PROVIDER INFORMATION

FIRST NAME	MI	LAST NAME	SUFFIX
HOME ADDRESS (STREET, P.O. BOX NO)		CITY	STATE ZIP
DAYTIME PHONE (INCLUDING AREA CODE)		EVENING PHONE (INCLUDING AREA CODE)	
()		()	
EMAIL ADDRESS		WEBSITE ADDRESS (IF APPLICABLE)	

2. CURRICULUM INFORMATION

A STANDARD CURRICULUM IS AVAILABLE FROM THE PENNSYLVANIA LIQUOR CONTROL BOARD (PLCB) HOWEVER, YOU MAY CHOOSE TO USE AN ALTERNATIVE CURRICULUM PROVIDED THAT IT HAS BEEN APPROVED BY THE PLCB.

1. WHICH CURRICULUM DO YOU PLAN TO USE? PLCB _____ ALTERNATIVE _____

IF ALTERNATIVE, LIST DATE APPROVED ____/____/____

*PLEASE NOTE, IF USING AN ALTERNATIVE CURRICULUM, THAT CURRICULUM MUST BE APPROVED BY THE PLCB BEFORE SUBMITTING AN APPLICATION FOR APPROVAL OF AN ONLINE TRAINING PROVIDER.

Board Use Only

Date Received: ____/____/____	Fee Received: ____/____/____	Date Certified: ____/____/____
----------------------------------	---------------------------------	-----------------------------------

3. EMPLOYMENT EXPERIENCE

MINIMUM QUALIFICATIONS: POSSESS A MINIMUM OF 2 YEARS EXPERIENCE, FULL TIME, IN THE FIELD OF EDUCATION, LAW, LAW ENFORCEMENT, SUBSTANCE ABUSE PREVENTION, HOSPITALITY OR ALCOHOL SERVICE TRAINING.

PLEASE INCLUDE MOST RELEVANT WORK EXPERIENCE THAT BEST HELPS TO QUALIFY YOU FOR THIS POSITION BASED ON THE MINIMUM QUALIFICATIONS DESCRIBED ABOVE. ATTACH SEPARATE SHEET IF NECESSARY. (SUBMITTING A RESUME IS NOT A SUBSTITUTE FOR THIS SECTION)

1. FROM (DATE) _____ TO (DATE) _____

NAME OF EMPLOYER _____ PHONE (INCLUDING AREA CODE) _____

EMPLOYER ADDRESS (STREET, P.O. BOX NO.) _____ CITY _____ () _____ STATE _____ ZIP _____

TYPE OF BUSINESS _____ TITLE _____

DESCRIPTION OF DUTIES _____

2. FROM (DATE) _____ TO (DATE) _____

NAME OF EMPLOYER _____ PHONE (INCLUDING AREA CODE) _____

EMPLOYER ADDRESS (STREET, P.O. BOX NO.) _____ CITY _____ () _____ STATE _____ ZIP _____

TYPE OF BUSINESS _____ TITLE _____

DESCRIPTION OF DUTIES _____

4. OTHER

1. ARE YOU AT LEAST 21 YEARS OF AGE?

YES ☐ NO ☐

2. HAVE YOU GRADUATED FROM HIGH SCHOOL OR OBTAINED A GED?

YES ☐ NO ☐ IF YES, DATE ____/____/____

3. ARE YOU WILLING TO OFFER YOUR ONLINE TRAINING PROGRAM TO THE GENERAL PUBLIC?

YES ☐ NO ☐

4. HAVE YOU OWNED OR BEEN AFFILIATED WITH A LIQUOR LICENSED ESTABLISHMENT LOCATED IN PENNSYLVANIA WITHIN THE PAST FIVE YEARS?

YES ☐ NO ☐

IF YES, PLEASE PROVIDE THE LICENSE NAME _____

LID NUMBER _____ YOUR AFFILIATION _____

5. CRIMINAL HISTORY

CRIMINAL OFFENSE INCLUDES FELONIES, MISDEMEANORS AND SUMMARY OFFENSES.

CONVICTION IS AN ADJUDICATION OF GUILT AND INCLUDES DETERMINATIONS BEFORE A COURT, A DISTRICT JUSTICE OR MAGISTRATE AND PLEAS OF NOLO CONTENDERE (NO CONTEST) THAT RESULT IN A FINE, SENTENCE OR PROBATION.

FOR THIS QUESTION DISREGARD: MINOR TRAFFIC VIOLATIONS (NO POINTS), OFFENSES COMMITTED BEFORE YOUR 18TH BIRTHDAY WHICH WERE ADJUDICATED IN JUVENILE COURT UNDER A YOUTH OFFENDER LAW, AND ANY CHARGES WHICH HAVE BEEN EXPUNGED BY A COURT OR FOR WHICH YOU SUCCESSFULLY COMPLETED AN ACCELERATED REHABILITATIVE DISPOSITION PROGRAM.

WERE YOU EVER CONVICTED OF A CRIMINAL OFFENSE? OR ARE YOU NOW UNDER CHARGES FOR A CRIMINAL OFFENSE? OR HAVE YOU EVER FORFEITED BOND OR COLLATERAL IN CONNECTION WITH A CRIMINAL OFFENSE?

YES ☐ NO ☐ IF YES, PLEASE EXPLAIN:

6. TECHNICAL SUPPORT CONTACT INFORMATION

FIRST NAME	MI	LAST NAME	SUFFIX
------------	----	-----------	--------

HOME ADDRESS (STREET, P.O. BOX NO.)	CITY	STATE	ZIP
-------------------------------------	------	-------	-----

DAYTIME PHONE (INCLUDING AREA CODE)	EVENING PHONE (INCLUDING AREA CODE)
-------------------------------------	-------------------------------------

() EMAIL ADDRESS	() WEBSITE ADDRESS (IF APPLICABLE)
----------------------	--

7. AFFIRMATION AND SIGNATURE

I SWEAR OR AFFIRM, SUBJECT TO THE PENALTIES PROVIDED BY 18 PA. C.S. 4904, THAT THE FOREGOING ANSWERS AND STATEMENTS PROVIDED HEREIN ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

PROVIDER SIGNATURE	DATE
--------------------	------

INSTRUCTIONS

This form is for the approval of a Responsible Alcohol Management Program (RAMP) online training provider.

1. Provider information - Enter personal information for person seeking approval as an online training provider.
2. Curriculum - Indicate which curriculum you plan to use. Please note that if you plan to use an alternative curriculum, you must submit a separate application and fee to the PLCB for the approval of that curriculum before submitting an application for approval as an online training provider.
3. Employment experience - Enter employment experience for person seeking approval as an online training provider.
4. Other - Answer each of the statements by placing an (x) in the appropriate response box.
5. Criminal History - Place an (x) in the appropriate response box.
6. Technical support contact information - Enter personal information for the person who will be responsible for providing technical support.
7. Affirmation and signature - Person seeking approval as an online training provider must sign and date.
8. Fees –
 - a. A non-refundable fee of \$250.00 is required by any individual seeking approval as a RAMP online training provider. Please make a separate check or money order payable to "Commonwealth of Pennsylvania." **Do not send cash.**
 - b. A Request for Criminal Record Check, Form PLCB - 2391, **MUST** be submitted for the applicant seeking approval as a RAMP online training provider. Please make a separate check or money order payable to "Commonwealth of Pennsylvania" in the amount indicated on the form. **Do not send cash.**
9. Submit completed application, criminal record check form and fees to: Pennsylvania Liquor Control Board, RAMP, 990 Briarsdale RD, Unit A Harrisburg, PA, 17109.

If you require assistance in completing this application, call the RAMP office at 866.275.8237.

**ALCOHOL EDUCATION
CRIMINAL RECORD CHECK****TYPE OR PRINT LEGIBLY WITH INK or COMPLETE ONLINE, PRINT, AND SIGN**

1. DATE OF REQUEST

2. FULL NAME (SUBJECT OF RECORD CHECK)

(LAST)

(FIRST)

(MIDDLE)

(SUFFIX)

3. ADDRESS

(STREET, RURAL ROUTE, P O BOX NO)

(CITY)

(STATE)

(ZIP)

4. PRIMARY PHONE # (INCLUDING AREA CODE)

() -

5. MAIDEN NAME AND/OR ALIASES

6. SOCIAL SECURITY NO. (SOC)

7. DATE OF BIRTH

8. SEX - check M or F box

☐ M☐ F

9. RACE

10. SIGNATURE

11. DATE

REQUESTER CHECKLIST

✓ DID YOU ENTER THE FULL NAME, DOB, AND SOC?

✓ DID YOU ENTER YOUR COMPLETE ADDRESS INCLUDING ZIP CODE
AND TELEPHONE NUMBER IN THE SPACES PROVIDED?✓ DID YOU ENCLOSE THE \$22.00 FEE (CHECK/MONEY ORDER) PAYABLE
TO "PLCB" OR "COMMONWEALTH OF PA"? **DO NOT SEND CASH.****AFTER COMPLETION MAIL TO:****PENNSYLVANIA LIQUOR CONTROL BOARD
RAMP CENTRAL REGIONAL OFFICE
990 BRIARSDALE RD., UNIT A
HARRISBURG PA 17109-5905****FOR OFFICIAL USE ONLY**

CONTROL NO.

INFORMATION DISSEMINATED

☐ NO RECORD☐ CRIMINAL RECORD

INQUIRY BY

DATE INQUIRED

THE INFORMATION DISSEMINATED BY THE CENTRAL REPOSITORY IS BASED SOLELY
ON THE FOLLOWING IDENTIFIERS THAT MATCH THOSE FURNISHED BY THE REQUESTER

CERTIFIED BY

☐ NAME☐ DATE OF BIRTH☐ RACE☐ SOC☐ MAIDEN/ALIAS NAME☐ SEX**INSTRUCTIONS**

A records check is required in order to be considered for approval as a RAMP Server/Seller Instructor AND a \$22.00 fee must be submitted. Upon receipt, the records check will be conducted via a direct link with the Pennsylvania State Police. Should you have any questions, contact the Bureau of Alcohol Education at (866) 275-8237.

**NEW EMPLOYEE
LICENSEE ORIENTATION**

BUREAU OF ALCOHOL EDUCATION
RESPONSIBLE ALCOHOL MANAGEMENT PROGRAM

Establishment Name _____ Name of Employee _____

LID # _____ Employee Identification # (Use last 4 digits of SSN and date of birth) _____
EXAMPLE: 0000-12/07/79 FOR DECEMBER 7, 1979

FURNISHING OR SELLING ALCOHOL TO MINORS **EMPLOYEE
INITIALS**

Pennsylvania Liquor Code (Administrative Liability)
Fines for licensees or employees for serving alcohol to a minor
\$1,000 to \$5,000 fine and/or suspension or revocation of license and mandatory compliance with RAMP for the first offense
Pennsylvania Crimes Code (Criminal Liability)
Fines for anyone furnishing or selling to a minor
Minimum \$1,000 for the first offense and \$2,500 for each subsequent offense and possible imprisonment up to 1 year
Dram Shop Laws (Civil Liability)
Civil lawsuits for furnishing or selling alcohol to minors
Licensees or employees can be sued for death, injury, or damage caused by a minor who is served alcohol

ACCEPTABLE FORMS OF IDENTIFICATION

A valid photo driver's license issued by the Pennsylvania Department of Transportation or by any other state
Must have photo and be valid (cannot be expired).
A valid photo identification card issued by the Pennsylvania Department of Transportation or by any other state
Must have photo and be valid (cannot be expired).
A valid armed forces identification card containing the holder's photograph
Must have photo and be valid (cannot be expired).
A valid passport, passport card, or travel visa containing the holder's photograph
Must have photo and be valid (cannot be expired).

CARDING PRACTICES

It is recommended that anyone who appears to be under the age of 30 be considered a potential underage drinker and be asked to provide proper identification
To defend yourself against citations for serving minors, you should document your age verification method. The Pennsylvania Liquor Code allows the following methods to be used in defense: photographs, photocopies, videos, ID swipe machines, or a completed Declaration of Age Card.
House policies have been discussed regarding managing potential fake IDs

SELLING ALCOHOL TO VISIBLY INTOXICATED CUSTOMERS

Pennsylvania Liquor Code (Administrative Liability)
Fines for licensees or employees for selling or serving alcohol to a visibly intoxicated person
\$1,000 to \$5,000 fine, and/or suspension or revocation of license and mandatory compliance with RAMP for the first offense
Any violation of Chapter 4 section 493(1) of the Liquor Code can be the basis of a criminal charge under the Liquor Code (misdemeanor)
Fines up to \$5,000 and/or imprisonment for 3 months to 1 year.
Dram Shop Laws (Civil Liability)
Civil lawsuits for furnishing or selling alcohol to a visibly intoxicated person
Licensees or employees can be sued for death, injury, or damage caused by a person who is served alcohol while visibly intoxicated

SERVICE OF ALCOHOL TO VISIBLY INTOXICATED CUSTOMERS

House policies have been discussed related to slowing down service of alcohol to customers when there is a concern that the customer is going to become visibly intoxicated
House policies have been discussed related to refusing service or "cutting someone off" when the customer is visibly intoxicated.
House policies have been discussed related to designated driver program or alternative transportation for customers who appear to be visibly intoxicated

CRIMINAL ACTIVITY ON PREMISE

House policies have been discussed as to how to handle situations when criminal activity is known to be occurring on the premises.

ESTABLISHMENT SPECIFIC ORIENTATION FOR NEW EMPLOYEE (OPTIONAL)

EMPLOYEE SIGNATURE _____	DATE _____	OWNER/MANAGER SIGNATURE _____	DATE _____
--------------------------	------------	-------------------------------	------------

NEW EMPLOYEE LICENSEE ORIENTATION INSTRUCTIONS

1. Each member of the alcohol service staff must complete a New Employee Licensee Orientation (NEO) form. This includes anyone who serves alcohol or checks identification, including owners and managers, regardless of whether or not they have been trained in a RAMP server/seller course.
2. The NEO must be completed in its entirety.
3. Alcohol service staff must complete the top section, which includes Establishment Name, Name of Employee, LID #, and Employee Identification Number.
4. Alcohol service staff must read and initial all of the statements listed under each topic on the NEO form.
5. Please make sure that both the owner/manager and employee sign and date the form.
6. Completed forms must be maintained as part of the licensee's operating records, required to be kept for two (2) years in accordance with section 493(12) of the Liquor Code.
7. Keep the original, completed forms for the duration of the employee's employment.
8. This form needs to be completed only one (1) time by each member of the alcohol service staff. If you wish to review this information again in the future with an employee who previously completed the form, simply review the information and have the employee sign and date on the back of the form.

Please note: Failure to accurately maintain these records may void your current RAMP certification.

PLCB+ (RAMP Owner/Manager Functionality)

To begin, you must first verify that you have access to the premises you wish to manage. To access the establishment's RAMP staff roster and to apply for RAMP certification of the premises, you must log into PLCB+ and click on **RAMP**. From the RAMP page, click on the **Owner/Manager** tab and you should see a list of all the premises that you own or manage. If you do not have the Owner/Manager tab or your premises is not listed, you must request the premises manager access code from RAMP at ra-lbramp@pa.gov or 866-275-8237. Please provide the name of the establishment, the manager's name and the LID number when making the request.

Once the access code has been provided you must click on the **My Profile** tab and enter the access code at the bottom of the screen. Once this code has been linked with your account, you can manage the staff roster and apply for RAMP certification.

1. Log onto PLCB+ and navigate to the R.A.M.P. menu.

2. Select the Owner/Manager tab.



3. Once you click on the Owner/Manager tab you should see a listing of all the premises that you own or manage. NOTE: If this page is blank, you must request the access code from RAMP.

Managing Your Staff Roster

You must first update your staff roster before you can apply for RAMP certification. The roster must include all members of the licensee's alcohol service staff (this includes anyone who sells or serves alcoholic beverages and/or check IDs). Staff who were trained and registered with your LID number should already appear. You must add and remove staff members as necessary.

1. Select the Manage Staff/Roster link for the premises you wish to manage.

LID # (License Type)	Licensee	Premises	Certification Status	Certification Date	Certification Application Status
82948 (Hotel (Liquor))	Bobbi's Hotel Inc	Bobbi's Hotel	Not Certified		Apply for Certification

2. To update employees that appear on the roster, click on the employees' name. A detailed page of the employee's information will appear. You will need to enter their Hire Date and New Employee Orientation completion date, if those fields are blank. Click Save.

STAFF MEMBER DETAILS

* First Name: Betty
* Last Name: White

Phone Number: (717) 777 7777

Email Address:

Address Line 1: 4444 South George Street

Address Line 2:

City: Harrisburg

State: Pennsylvania

Zip Code: 15555

EMPLOYMENT INFORMATION

Hire Date: mmm dd, yyyy

New Employee Orientation Date: mmm dd, yyyy

Roster Activation Date: Feb 7, 2017

Separation Date: mmm dd, yyyy

TRAINING RECORD

Course Name (Course Dates)	Attendance	Exam Result	Course Type	Training Status	Training Expiration
RAMP - Server/Seller Training (Feb 07, 2017 10:00 AM)	Attended	Pass	Server/Seller	Active	Feb 07, 2019

Cancel Save Save & Close

3. To remove employees that appear on the roster, but are no longer employed at your licensed establishment or are no longer part of the alcohol service staff, enter the separation date and click the Remove button. This will remove the individual from your active staff roster.

Bobbi's Hotel

Address: 123 MAIN ST
HARRISBURG PA 15555
Operator: BOBBI PEIFER *

Below is a list of individuals who have been trained under your LID. Your staff roster must include the names of all current staff, including any owners and managers who serve alcohol or check identification regardless if they have been trained. Please review your roster and add and remove staff as necessary. This roster should be updated and maintained and kept in the same manner in which you keep other business records.

STAFF ROSTER

+ Add Staff Member

Name	Hire Date	New Employee Orientation Date	Roster Activation Date	Owner/Manager Date Trained	Server/Seller Date Trained	Separation Date	
Betty White	Jan 3, 2017	Jan 6, 2017	Feb 7, 2017	mmm dd, yyyy	Feb 7, 2017	mmm dd, yyyy	Remove
BOBBI PEIFER	Oct 31, 2016	Dec 13, 2016	Nov 10, 2016	Aug 31, 2016	Feb 7, 2017	mmm dd, yyyy	Remove
Tom Cruise	Dec 20, 2016	Feb 7, 2017	Feb 7, 2017	mmm dd, yyyy	Feb 7, 2017	mmm dd, yyyy	Remove

3. To add employees that do not appear on your roster, click on **Add Staff Member**. Read the instructions provided on that screen to add a new staff member. NOTE: You will be required to enter their first name, last name, birth date, and the last 4 digits of their social security number. Everyone that works at your establishment serving alcohol or checking identification needs to be included on your staff roster.

Bobbi's Hotel

Address: 123 MAIN ST
HARRISBURG PA 15555
Operator: BOBBI PEIFER

Below is a list of individuals who have been trained under your LID. Your staff roster must include the names of all current staff, including any owners and managers who serve alcohol or check identification regardless if they have been trained. Please review your roster and add and remove staff as necessary. This roster should be updated and maintained and kept in the same manner in which you keep other business records.

STAFF ROSTER

+ Add Staff Member

Name	Hire Date	New Employee Orientation Date	Roster Activation Date	Owner/Manager Date Trained	Server/Seller Date Trained	Separation Date	
<u>Betty White</u>	Jan 3, 2017	Jan 6, 2017	Feb 7, 2017	mmm dd, yyyy	Feb 7, 2017	mmm dd, yyyy	Remove
<u>BOBBI PEIFER</u>	Oct 31, 2016	Dec 13, 2016	Nov 10, 2016	Aug 31, 2016	Feb 7, 2017	mmm dd, yyyy	Remove
<u>Tom Cruise</u>	Dec 20, 2016	Feb 7, 2017	Feb 7, 2017	mmm dd, yyyy	Feb 7, 2017	mmm dd, yyyy	Remove

Applying for RAMP Certification

1. From the Owner/Manager tab, select the Apply for Certification link.

LID # (License Type)	Licensee	Premises		Certification Status	Certification Date	Certification Application Status
82948 (Hotel (Liquor))	Bobbi's Hotel Inc	Bobbi's Hotel	Manage Staff/Roster	Not Certified		Apply for Certification

2. You will be presented with a notice that you are about to start the certification application process. Select Next to continue.

3. On the following screen you must review your current active staff roster and make any necessary updates.

- If you need to make any changes to the hire dates or New Employee Orientation dates you can do so by clicking on the employees' name.
- If you need to add or remove an individual from the roster you may do so by clicking on your premises name as shown below.

RAMP Certification Application

[Need Help?](#) ?

Below is a list of individuals who appear on your alcohol service staff roster. Your staff roster must include the names of all current staff, including any owners and managers who serve alcohol or check identification regardless if they have been trained. Please review the information below for each member listed. To make any changes to the information listed or to add or remove staff, please click on the Update Roster Information link. If there are no changes to be made, click Next.

License to be certified: 82948 - Hotel (Liquor) - Bobbi's Hotel Inc (Bobbi's Hotel)

REVIEW ACTIVE ROSTER

Update Roster information for: **Bobbi's Hotel**

Name	Server/Seller Training	Owner/Manager Training	Hire Date	* New Employee Orientation Date	Roster Activation Date	Owner/Manager Date Trained	Server/Seller Date Trained
Tom Cruise	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Dec 20, 2016	Feb 7, 2017	Feb 7, 2017	mmm dd, yyyy	Feb 7, 2017
Betty White	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Jan 3, 2017	Jan 6, 2017	Feb 7, 2017	mmm dd, yyyy	Feb 7, 2017
BOBBI PEIFER	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Oct 31, 2016	Dec 13, 2016	Nov 10, 2016	Aug 31, 2016	Feb 7, 2017

[Save Draft](#)

[Next](#)

4. When all information has been updated select the Next button.

5. On the next page of the application you are presented with a series of questions that you are required to answer. If you answer 'No' to any question, you are not eligible for certification at this time. Please click the Save Draft button and correct the deficiency and proceed once you have met the requirements. If you answer 'Yes' to all questions, select the Next button to proceed (see step 7).

RAMP Certification Application

[Need Help?](#)

QUESTIONS

Below are the requirements to achieve RAMP certification. Please read each statement and check the box you are affirming to. Click Next to proceed.

1. OWNER/MANAGER TRAINING Has either an owner or the PLCB-approved manager attended owner/manager training within the previous two (2) years? ☒ Yes ☐ No
2. SERVER/SELLER TRAINING Have at least fifty percent (50%) of the alcohol service personnel completed a PLCB-approved server/seller course within the previous two (2) years? ☒ Yes ☐ No

[Back](#)

[Save Draft](#)

[Next](#)

6. If you started an application but did not submit it, it will appear in the Owner/Manager tab under **My Draft Certification Applications** section. Click on the file# which is underlined to continue.

MY DRAFT CERTIFICATION APPLICATIONS

The applications listed below have been started but not yet submitted. Click the row to continue entering your application information.

File # Application Type



400233 Certification Application

7. On the final page of the application you are required to agree to a disclosure before submission of the application. Select the certification checkbox and select the **Submit Application** button.

RAMP Certification Application

DECLARATION



I SWEAR OR AFFIRM, SUBJECT TO THE PENALTIES PROVIDED UNDER 18 PA. C.S.A. §4904 (UNSWORN FALSIFICATION TO AUTHORITIES), THAT THE FOREGOING ANSWERS AND STATEMENTS HEREIN ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

 Submit Application

 Back

Save Draft

8. After successful submission of the RAMP certification application you will be presented with a confirmation page that summarizes the application details. Your application has now been sent to the PLCB to process.

9. From the **Owner/Manager** tab, you will see the details of the application under **My Certification Applications Under Review** until it is fully processed by the PLCB.

10. Once the application is approved, from the **Owner/Manager** tab, you can print your RAMP certificate found under **My Approved Certification Applications**.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

RECEIVED

JUN 9 2021

Independent Regulatory
Review Commission

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved
as to form and legality.

Attorney General:

BY: _____
(DEPUTY ATTORNEY GENERAL)

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. 54-90

DATE OF ADOPTION:
June 2, 2021

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

June 2, 2021
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 I. RESPONSIBLE ALCOHOL MANAGEMENT PROGRAM

FINAL FORM RULEMAKING

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 5]

Responsible Alcohol Management Program

The Liquor Control Board ("PLCB"), under the authority of sections 207(i) and 471.1 of the Liquor Code (47 P.S. §§ 2-207(i), 4-471.1), proposes to amend §§ 5.201—5.271 (relating to the Responsible Alcohol Management Program) and add §§ 5.203—5.207, 5.212-5.213, 5.221-5.227, and 5.234-5.236 to read as set forth in Annex A.

Summary

In 2000, the Responsible Alcohol Management Program ("RAMP") was established in the Liquor Code (47 P.S. §§ 1-101—10-1001) to provide for training and certification of licensees as to safe and responsible service of alcoholic beverages. At that time, participation in RAMP was mostly voluntary, except for licensees who were ordered to participate as a result of an adjudicated citation or because they were compelled to participate under the terms of a conditional licensing agreement. However, amendments to the Liquor Code have made RAMP training mandatory for managers and servers and have required RAMP certification of certain licensees:

- Act 11 of 2011 created the off-premises catering permit and required all servers at the off-premises catered site to receive RAMP server/seller training.
- Act 113 of 2011 amended the Liquor Code to require managers of a restaurant, eating place retail dispenser, hotel, club, limited distillery, or distributor license to complete RAMP manager/owner training within 180 days of the PLCB's approval of the appointment.
- Act 39 of 2016 amended the Liquor Code to require all alcohol service personnel to complete RAMP server/seller training within six months of being hired by a licensee, unless the person had successfully completed the training prior to being hired.
- Act 39 also amended the Liquor Code to provide for wine expanded permits, authorizing the permit holder to sell wine to patrons for off-premises consumption. Permit holders must obtain RAMP certification and have a RAMP-trained cashier at the register when patrons are on the licensed premises.

The purpose of this final-form rulemaking is to clarify what constitutes RAMP certification, to clarify what is required of those impacted by the legislative changes, and to provide guidance to those who want to offer RAMP server/seller training as online training providers or classroom instructors.

The final-form rulemaking seeks to clarify the difference between RAMP training and RAMP certification, because members of the regulated community frequently confuse training and

certification. A server/seller is required to receive server/seller training and a manager is required to receive owner/manager training. Sections 5.203 and 5.204 (relating to mandatory training for managers and mandatory training for alcohol service personnel) were added to provide clarity to the regulated community.

Training is a component, a prerequisite for certification; it is not the equivalent of certification. Only licensees receive RAMP certification. Licensees may voluntarily obtain RAMP certification, or they may be required to obtain it as a result of an adjudicated citation, because of a conditional licensing agreement with the PLCB, or because it is necessary for a permit they seek to obtain, such as a wine expanded permit.

Prior to these amendments, there were instances where the term “certification” was used inconsistently throughout Chapter 5, Subchapter I of the PLCB’s Regulations, which has contributed to the confusion in the regulated community. For example, the current section 5.231 is entitled “Instructor Certification;” section 5.243(a)(1) requires licensees to keep records on the “Certification status of its employees, managers and owners....” Current section 5.233 addresses the need to have an alternative curriculum “certified” by the PLCB’s Bureau of Alcohol Education (“BAE”).

This final-form rulemaking intends to clarify that “certification” is available to licensees only and requires the fulfillment of four prerequisites and then the submission of an application for certification of the licensee. The confusion and need for clarity on this issue prompted the creation of sections 5.205 and 5.206 (relating to RAMP certification prerequisites and RAMP certification). In addition, throughout the final-form rulemaking, if the word “certification” or “certified” was used in a context other than licensee certification, it was replaced with a more appropriate word. For example, online training providers and classroom instructors are authorized or deauthorized, not certified. Server/sellers and owner/managers receive training, not certification. Curriculum is approved, not certified.

The final-form rulemaking edits **section 5.201** (relating to purpose) by keeping most of the first sentence but deleting the remainder. The provisions in section 5.201(a), pertaining to the four-part RAMP program, are set forth in more detail at new section 5.205. The provisions in subsections (b) and (c) are set forth in more detail in new sections 5.205 and 5.206.

The final-form rulemaking expands the definitions listed in **section 5.202** (relating to definitions) by adding terms that have been introduced in the new sections, such as alcohol service personnel, alternative curriculum, designated employee, material change, online training provider, standard curriculum, and training voucher. Other definitions were edited to provide clarity and consistency within the regulation. In the proposed rulemaking, the PLCB deleted the definition for “responsible server practices;” the final-form rulemaking restores that definition.

The final-form rulemaking adds **section 5.203** (relating to mandatory training for managers), which stems from the provision of Act 113 of 2011 that requires managers, under section 471.1(g) of the Liquor Code, to obtain owner/manager training. The final-form regulation provides that the manager will be deemed to have met the training requirement if they have successfully completed the training within the two years prior to being appointed manager. Two years was chosen as the

time frame because it corresponds with RAMP certification, which is also valid for two years. In response to a comment from IRRC, the final-form rulemaking has been amended to clarify that owner/manager training expires after two years, and the owner/manager must renew training every two years.

The final-form rulemaking also adds **section 5.204** (relating to mandatory training for alcohol service personnel), which stems from the provision of Act 39 of 2016 that requires alcohol service personnel, under section 471.1(h) of the Liquor Code, to obtain server/seller training. Like section 5.203, the alcohol service personnel will be deemed to have met the training requirement if they have successfully completed the training within two years prior to being hired by the licensee. In response to comments from IRRC, the final-form rulemaking has been amended to clarify that server/seller training expires after two years, and that alcohol service personnel must renew training every two years.

The final-form rulemaking adds **section 5.205** (relating to RAMP certification prerequisites) which is intended to clarify that training alone does not constitute certification. The word “prerequisites” was deliberately chosen to signal that the four components are not synonymous with certification. The four prerequisites are (1) owner/manager training, which was formerly located in section 5.241 (relating to manager/owner training); (2) server/seller training, which was previously not explained in detail; (3) new employee orientation, which was formerly located in section 5.242 (relating to new employee orientation); and (4) display of responsible alcohol service signage, which was previously located in section 5.261 (relating to signs).

In the final-form rulemaking, the PLCB clarifies that new employee orientation is required of *all* alcohol service personnel when an employer is preparing to apply for RAMP certification for the first time. Section 471.1(a) of the Liquor Code provides that “Training for alcohol service personnel shall be as set forth by the board, but at minimum it shall consist of training to prevent service of alcohol to minors and to visibly intoxicated persons.” 47 P.S. § 471.1(a). The basic information covered in the new employee orientation is important for all alcohol service personnel to know. In this way, the BAE is assured that all of an employer’s alcohol service personnel have been given this information, not just those recently hired.

IRRC asked the PLCB to explain the reasonableness of allowing an employer 30 days to conduct new employee orientation. It bears noting that this provision is currently located in section 5.242(a), and as such, was previously approved by IRRC. In addition, please note that 30 days is the *deadline* for new employee orientation. At every owner/manager training, the PLCB stresses that licensees should not wait to review the new employee orientation form with new staff, but should review it with them as soon as possible, even before they start. However, since that could be challenging, providing a 30-day deadline gives them a certain timeframe for the completion of this task.

Requiring this training to be completed within a shorter time frame could be burdensome to the regulated community. Many employees in the food services and drinking industry work part-time. Therefore, in a 30-day period of time, it is entirely possible that a licensee’s new employee might only work four to eight times – the equivalent of once or twice a week. Allowing a licensee 30

days to provide new employee orientation gives the licensee a fair opportunity to meet this requirement.

Please note that this task is only required for licensees that are seeking RAMP certification or wish to remain compliant. It is not otherwise mandatory. RAMP certification is voluntary for most licensees. Completing the new employee orientation form is a component of the program to remain compliant once certified.

Section 5.206 (relating to RAMP certification) incorporates text from former section 5.271 (relating to premises certification). Section 5.206 was deliberately set apart from section 5.205 to make clear that satisfying the prerequisites was not the equivalent of RAMP certification. Another step is required; a licensee must file an application with the PLCB for certification.

IRRC asked the PLCB to explain, in the Preamble, its statutory authority for subsection 5.206(c), which binds the Office of Administrative Law Judge to take official notice of the PLCB's records with regard to licensee certification. Please note that the identical language regarding official notice was previously vetted by the regulatory process and is currently located in Section 5.271(i) of the PLCB's Regulations, 40 Pa. Code § 5.271(i). The existing language was simply moved to another section as part of the overhaul of the chapter.

However, to be thorough, the PLCB provides the following explanation. Section 206 of the Liquor Code places the PLCB under the auspices of the Administrative Code of 1929: "Except as otherwise expressly provided by law, the board shall be subject to all the provisions of The Administrative Code of one thousand nine hundred twenty-nine, as amended, which apply generally to independent administrative boards and commissions." 47 P.S. § 2-206.

Section 506 of the Administrative Code of 1929, empowers independent administrative boards to prescribe rules and regulations for a variety of matters:

The heads of all administrative departments, the several independent administrative boards and commissions, the several departmental administrative boards and commissions, are hereby **empowered to prescribe rules and regulations**, not inconsistent with law, for the government of their respective departments, boards, or commissions, the conduct of their employes and clerks, the distribution and performance of their business, and the custody, use, and preservation of the records, books, documents, and property pertaining thereto.

71 P.S. § 186 (emphasis added). Specific guidance as to the PLCB's authority to issue a regulation pertaining to official notice can be found in the Pennsylvania Code:

Official notice may be taken by the agency head or the presiding officer of such matters as might be judicially noticed by the courts of this Commonwealth, or **any matters as to which the agency by reason of its functions is an expert**. Any participant shall, on timely request, be afforded an opportunity to show the contrary. Any participant requesting the taking of official notice after the conclusion of the

hearing shall set forth the reasons claimed to justify failure to make the request prior to the close of the hearing.

1 Pa. Code § 35.173 (emphasis added).¹

The Commonwealth Court articulated additional guidance on which subjects are appropriate for the doctrine of official notice:

“Official notice” is the administrative counterpart of judicial notice and is the most significant exception to the exclusiveness of the record principle. The doctrine allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency’s field and those facts contained in reports and records in the agency’s files, in addition to those facts which are obvious and notorious to the average person. Thus, official notice is a broader doctrine than is judicial notice and recognizes the special competence of the administrative agency in its particular field and also recognizes that the agency is a storehouse of information on that field consisting of reports, case files, statistics and other data relevant to its work.

Ramos v. Pa. Bd. of Prob. & Parole, 954 A.2d 107, 109-110 (Pa. Cmwlth. 2008) (emphasis added) (citations omitted).

The PLCB’s BAE is the only entity in the Commonwealth that is authorized to issue RAMP certification to a licensee.

For purposes of clarity, the PLCB’s proposed rulemaking added language indicating that the PLCB’s certification of a licensee’s status as being RAMP compliant shall create a rebuttable presumption that the licensee is RAMP compliant. Additionally, in the final form rulemaking, the PLCB has also clarified that this is a matter of which official notice may be taken within the context of any proceeding before the Office of Administrative Law Judge or the PLCB.

Section 5.207 (relating to records) is based on former section 5.243 (relating to records). The language in section 5.207(a)(1) was updated to reflect the information that the BAE wants licensees to keep.

Section 5.211 was deleted and replaced with a sentence explaining that someone who wants to offer server/seller training may use either the PLCB’s standard curriculum or an alternative curriculum that has been approved by the PLCB. The final-form rulemaking goes on to provide more information in section 5.212 (relating to standard curriculum) and section 5.213 (relating to alternative curriculum).

¹ This regulation is found in Title 1, Part II of the Pennsylvania Code, which begins by citing the following authority: “The provisions of this Part II [are] issued under section 506 of The Administrative Code of 1929 (71 P.S. § 186); section 35 of the Administrative Agency Law (71 P.S. § 1710.35) (Repealed); and 45 Pa.C.S. §§ 503, 701 and 723, unless otherwise noted.”

The final-form rulemaking adds **section 5.212** (relating to standard curriculum), providing that a standard RAMP curriculum for server/seller training is electronically available, free of charge, to anyone who requests it. If someone requests that the information be provided in hard copy via mail, the PLCB will provide it for a flat fee.

The final-form rulemaking adds **section 5.213** (relating to alternative curriculum) to explain, in greater detail, what is required of someone who wants to get an alternative curriculum approved for use in server/seller training. The PLCB studied the time it takes to evaluate and approve an alternative curriculum. It is estimated that the process takes 17.5 hours at a cost to the PLCB of \$515.00. Rounding the cost of estimation down to the nearest hundred (\$500.00) and then dividing that figure in half results in a figure of \$250.00. The PLCB is essentially subsidizing half the cost for the providers. The rulemaking introduces a limit of two resubmissions to correct any deficiencies; that limit was chosen as a fair balance between the interests of the alternative curriculum offeror and the limited resources of the BAE.

The final-form rulemaking includes a new heading, **Online Training Providers and Programs for Server/Seller Training**. The increased demand for RAMP server/seller training can be met, in part, by online server/seller training.² The BAE has allowed a limited number of online training providers to offer server/seller training since November 2011. The section is based on the BAE's experience with existing online training providers and includes guidance for anyone wanting to become a new online training provider.

IRRC asked the PLCB to explain, in the Preamble, the implementation procedure for authorizing a business as an online training provider. The PLCB will authorize a business to provide online training courses, and already has. Regardless of the business organization, at the core is an individual who is providing the RAMP training services. The BAE will review the minimum qualifications of the individual who will be providing training services on behalf of the business, which qualifications are the same required of an individual and are set forth in **section 5.231(b)**.

Section 5.221 (relating to online training provider application) also includes a limitation that the PLCB will only accept applications during scheduled open enrollment periods. The purpose behind this amendment is primarily to control the number of applications received by the BAE. To ensure that those seeking server/seller training receive a quality experience, online training providers must be thoroughly evaluated. Evaluating online training providers is a time-consuming process, which includes numerous deadlines for the applicant and the BAE, and the BAE has only nine staff members available to conduct the evaluations. Therefore, limiting the acceptance of applications to scheduled periods is an effective way to ensure that the BAE can evaluate and authorize qualified online training providers within a reasonable timeframe.

Section 5.221 establishes the procedure for someone applying to become a new online training provider. Currently, online training providers are assessed the same fee required of classroom instructors—\$250.00—because the regulations do not as of yet provide for a fee for online training providers. To determine an appropriate fee for an online training provider application, the PLCB calculated the amount of time spent in evaluating the application and supporting the online training

² As an aside, only the PLCB may offer owner/manager training. 47 P.S. § 4-471.1(c).

provider. The process includes, but is not limited to, reviewing the application and the online training content, providing feedback and evaluating resubmissions of training content, providing troubleshooting and records reconciliation, and course evaluation. It is estimated that the process takes 55 hours at a cost to the PLCB of \$1,772.50. The evaluation is extensive and time consuming, since every link and every digital functionality must be tested to ensure that the program works as it is supposed to. As a result, the final-form rulemaking establishes the nonrefundable application fee of an online training provider at \$850.00. This fee was calculated by rounding the cost of evaluation and support down to \$1,700.00 and then dividing that figure in half. Again, the PLCB is subsidizing half of the cost.

Given the number of people who need to obtain server/seller training, the PLCB believes that online training providers can easily recoup the fee from alcohol service personnel in need of training. During fiscal year 2019-2020, 65,277 people received server/seller training from an online training provider, of which there are currently fourteen. If the number of students who obtained training were equally divided among the fourteen online training providers, each online training provider would have 4,662 students. The online training provider could recoup nearly the entire \$850.00 application fee by charging each of those students 18 cents ($4662 \times \$0.18 = \839.16). Put another way, an online training provider would only need \$1.00 from approximately 1.302% of the 65,277 students to recoup nearly the entire application fee ($65,277 \times 1.302\% = 849.91$). Currently, online training providers charge from \$8.00 to \$40.00 per training, with most charging \$20.00 or \$25.00.

IRRC asked the PLCB to address, in the Preamble, whether the PLCB has considered the economic impact upon prospective online training providers who will incur expenses developing an online training module without knowing when it may submit an application for authorization. This scenario was not considered by the Board. A potential applicant who prepares an online training module with no idea as to when open enrollment will occur has taken an unnecessary risk of his or her own making.

IRRC also asked the PLCB to address, in the Preamble, subsection (b), regarding minimum qualifications. This subsection does not require an online training provider to attend owner/manager training, which is mandatory for classroom instructors under Section 5.234(7) (relating to classroom instructor responsibilities). In addition, section 5.234(6) requires classroom instructors to attend instructor meetings scheduled by the Board. IRRC asked the PLCB to explain the reasonableness of excluding online training providers from these requirements.

Online training providers do not have to attend owner/manager training because of the difference between an online training course and the classroom experience. With an online course, the student does not have an opportunity to ask questions or engage in a discussion of the material that may exceed the topic at hand. However, in a classroom setting, the classroom instructor delivers the information and provides a more in-depth explanation of it. Questions frequently arise and discussion is likely. It is important for the classroom instructor to have additional training to be prepared for these situations. This is the reason why classroom instructors must have additional training that online training providers are not required to have.

Section 5.222 (relating to online training program approval process) sets forth the approval process, which requires the evaluation of the online training program itself. An online training provider is allotted 120 days to give the PLCB access to the online training website. After receiving access to the website, the PLCB will determine whether the website meets the minimum standards that are set forth in section 5.223 (relating to minimum standards of the online training program). The minimum standards include certain program features, program availability, program functionality, and the PLCB's final examination. The minimum standards also set forth security and technology requirements, such as encrypting personally identifiable information and prohibiting the online training provider from selling or using such information for any purpose other than for identification by the online training provider and verification by the PLCB.

Section 5.223 (relating to minimum standards of the online training program) sets forth the program features, program availability, program functionality, final examination, and security and technology requirements. In subsection 5.223(e), the final-form regulation is amended to correct a reference to another section.

Section 5.224 (relating to online training provider responsibilities) establishes what is required of the online training provider. IIRC asked the PLCB to explain the need for and reasonableness of the requirement of setting a minimum number of students per online training provider, as established in section 5.224(3). In response, the PLCB notes that RAMP training is important for the licensees and their personnel. The online training provider who is offering server/seller courses should be able to demonstrate a commitment to the training being offered. Even if the method of instruction is via computer and not classroom, requiring a minimum number of students ensures that the online training provider is committed to offering a professional service.

Section 5.224, paragraph 7 originally required an online training provider to resolve a technical support inquiry within one business day. A commentator expressed concern with implementing this requirement when correcting technical issues and communicating with students. The commentator suggested that two business days is a more reasonable timeframe. The commentator's suggestion has been accepted. The final-form regulation amends the time period to two business days.

Section 5.224, paragraph 10(i) originally required an online training provider to make changes to online training program content within 24 hours of being notified by the Board. IIRC asked the PLCB to explain, in the Preamble, the reasonableness of how this provision will be implemented.

It is imperative that students receive the correct information. Licensees could be held liable for violations of the law if their employees are not properly trained. It is not acceptable to the BAE to allow misinformation to be disseminated.

That being said, there is frequently—but not always—a period of time before the law changes; some legislation provides for a period of sixty days before it becomes effective. The final-form regulation provides that the changes must be made by the date provided by the PLCB. Under this scenario, the BAE could notify all online training providers that changes must be made to program content and approved by the BAE by a specific day. The BAE will allow as much time as possible,

but in some circumstances, the law changes immediately upon the signature of the Governor, and thus the timing of the changes is beyond the BAE's control.

Section 5.224, paragraph (10)(iii) directs an online training provider to "[r]efrain from making material changes to online training program content" without approval from the PLCB or unless directed to by the PLCB. The online training provider is required to submit the material changes to the program for PLCB review and approval under Clause (A). In response to comment by IRRC, Clause A has been amended in two respects. First, the procedures for review and approval will follow the procedures set forth in section 5.213, and language to that effect has been added to Clause A. Second, the nonrefundable fee has been changed from \$850.00 to \$250.00, to keep the provisions of Clause A consistent with section 5.213.

In the proposed rulemaking, section 5.224, paragraph (11)(i) required an online training provider to notify the Board not less than 30 days before an online training program is modified, enhanced or upgraded. In the final-form regulation, the paragraph has been amended to delete the requirement of 30 days' notification and to simply require that the PLCB is notified before the implementation of any system enhancements or modifications. Students will often contact the BAE if they have an issue with an online training provider, so if the BAE has notice that an enhancement or modification has been implemented, this information can be shared with the student.

Section 5.225 (relating to renewal of authorization) explains the time frame and procedures for renewing the authorization to serve as an online training provider. Through this rulemaking, the PLCB is establishing clear rules for the renewal of an online training provider's authorization. Currently, online training providers pay a renewal fee of \$250.00. This fee has not been changed since 2010. To determine an appropriate fee, the PLCB calculated the amount of time spent in renewing an online training provider. The process includes, but is not limited to, course evaluation, student records reconciliation, and troubleshooting. It is estimated that the process takes approximately 39 hours at a cost to the PLCB of \$1,222.50. As a result, section 5.225 of the final-form rulemaking increases the renewal fee of an online training provider from \$250.00 to \$600.00. This fee was calculated by rounding the cost of evaluation and support down to \$1,200.00 and then dividing that figure in half. The PLCB is therefore subsidizing half of the cost to the provider.

In addition, section 5.225 imposes a late fee of \$100.00 on an online training provider if a renewal application is not filed at least 30 days before the expiration of the authorization. Because RAMP has only nine staff members, requiring an online training provider to submit a renewal application 30 days before expiration allows sufficient time for the RAMP staff to process the request. This ensures that the online training provider's authorization is renewed in a timely fashion, without interruption of the provider's business.

In the final-form rulemaking, section 5.225 has been amended to address two issues raised in response to the proposed rulemaking. First, hard copy screen shots of the online training program are not required with a renewal application if the online training provider certifies that no material changes were made to the online training program after it was last approved by the PLCB. Screen shots are only required of online training providers if they have incorporated material changes into their online training program.

Second, applications for renewal will not be accepted after the expiration date. In the proposed rulemaking, applications for renewal would have been accepted with the submission of a \$250.00 late fee. However, IRRC pointed out that allowing the online training provider to file a late application for renewal creates a “gap of uncertainty,” whereby it is unclear if the online training provider is authorized or not authorized to provide server/seller training. To eliminate this “gap of uncertainty,” section 5.225 was amended to eliminate the acceptance of renewal applications after the date of expiration. In the final-form rulemaking, the language was amended to mirror the language in paragraph 5.235(c)(2) and now states the prohibition in the singular, rather than the plural.

Section 5.226 (relating to training vouchers) addresses a practice whereby online training providers issue training vouchers in bulk quantities to licensees with many employees, such as chain restaurants or casinos. The licensee may then give the training vouchers to its employees to obtain the server/seller training. Once these vouchers are sold, however, there is no guarantee that the online training provider will still be authorized to provide such training by the time the last voucher is redeemed and training is completed. The PLCB sought to protect licensees from having a large quantity of vouchers issued by an online training provider who no longer had authorization to provide training. In the proposed rulemaking, training vouchers were only valid for sixty days from the date of purchase.

In response to comments from the public and from IRRC, the final-form rulemaking of section 5.226 eliminates the provision that training vouchers expire after sixty days. The final-form rulemaking provides that training vouchers are valid for as long as the online training provider is authorized to provide server/seller training. Refunds for unused training vouchers are addressed in section 5.227 (relating to deauthorization of online training providers).

Section 5.227 (relating to deauthorization of online training providers) sets forth the procedure that will be followed when an online training provider does not meet the minimum standards, does not meet its responsibilities, or engages in prohibited conduct. In the final-form rulemaking, the PLCB added subsection (b)(1), which explains what an online training provider must do if its authorization to provide online training is suspended. The suspended online training provider must immediately render the online training program inaccessible to new students. In addition, the online training provider must contact all students who have started the course but not finished it and advise them to finish the course within fourteen days. Thus, students are alerted that they must finish, and no additional vouchers can be redeemed until the suspension is lifted.

In the final-form rulemaking, the PLCB also added subsection (c)(1), which explains what an online training provider must do if it has been deauthorized from providing online training. The deauthorized online training provider, like the suspended online training provider, must render the program inaccessible to new students, and advise students who have started the course that they must finish it within fourteen days (section 5.223(b)(2)(ii) requires students to provide an e-mail address during the registration process). Deauthorized online training providers must also contact, by e-mail or telephone, holders of unused training vouchers and advise them that the online training program is no longer valid, and they must remit refunds for all unredeemed training vouchers.

Section 5.231 (relating to classroom instructor application) increases the fee that a classroom instructor applicant must pay. Currently, new classroom instructors pay a fee of \$250.00. This fee has not been changed since 2010. To determine an appropriate fee, the PLCB calculated the amount of time spent in evaluating and training a new classroom instructor. The process includes, but is not limited to, two days of instruction as well as on-site training evaluation. It is estimated that the process takes approximately 50 hours at a cost to the PLCB of \$1,083.80. As a result, section 5.231 of the final-form rulemaking increases the nonrefundable application fee of a new classroom instructor from \$250.00 to \$500.00. This fee was calculated by rounding the cost of evaluation and support down to \$1,000.00 and then dividing that figure in half. As a result, the PLCB subsidizes half of the cost.

During fiscal year 2019-2020, 14,888 people obtained server/seller training in a classroom setting. There are currently twenty-one classroom instructors; if the people taking server/seller training were evenly distributed among the twenty-one classroom instructors, each instructor would teach approximately 709 people per year. The authorized classroom instructor can recoup nearly the entire \$500.00 authorization fee by charging each student an additional seventy cents ($709 \times \$0.70 = \496.30). Put another way, a classroom instructor would only need \$1.00 from approximately 3.3% of the 14,888 students to recoup the application fee ($14,888 \times 3.3\% = 491.30$). It is estimated that currently, classroom instructors charge from \$15.00 to \$50.00 per training, with most charging \$25.00 to \$40.00.

Section 5.231 also includes a limitation that the PLCB will only accept applications during scheduled open enrollment periods. The purpose behind this amendment is primarily to control the number of applications received by the BAE. To ensure that those seeking server/seller training receive a quality experience, the classroom instructors must be thoroughly evaluated. Evaluating instructors is a time-consuming process, which includes numerous deadlines for the applicant and the BAE, and the BAE has only nine staff members available to conduct the evaluations. Therefore, limiting the acceptance of applications to scheduled periods is an effective way to ensure that the BAE can evaluate and authorize qualified classroom instructors within a reasonable timeframe.

Section 5.231 updates the requirements for a classroom instructor, including the fact that the applicant must have had, within the past five years, two years of experience as a trainer or in giving presentations. The purpose behind this change was to ensure that the applicant's skills in this area are still relatively fresh, not, for example, based on an experience from twenty years ago. In addition, hospitality experience has been clarified to be related to hotel/restaurant management, to ensure that the applicant has ample experience.

The final-form rulemaking amends **section 5.232** (relating to classroom instructor approval process) to address the classroom instructor approval process instead of classroom instructor responsibilities, which will be addressed in newly added section 5.234 (relating to classroom instructor responsibilities). The most significant change to the approval process is the institution of a probationary period. The probationary period allows the BAE to evaluate classroom instructors "in action," to ensure that the classroom instructor can actually teach the material. If a classroom instructor does not achieve a rating of "Outstanding," "Commendable," or "Satisfactory," the PLCB will terminate the classroom instructor's authorization.

Section 5.233 (relating to minimum standards of classroom training) amends the existing regulation in small ways to provide greater clarity to the regulated community. For example, because the final-form rulemaking introduces the category of online training providers, this section is amended to refer to “classroom instructors,” to clearly distinguish them from online training providers.

As suggested by IRRC, the second sentence of subsection 5.233(a) has been deleted because it is repetitive. In addition, the phrase “Within seven days” has been added to the beginning of subsection (e) to clarify the timeframe for notifying students of their grade in the final examination.

Additionally, in section 5.233, a classroom instructor is required to notify the PLCB immediately when cancelling a training session or making a change to the training schedule. Previously, the methods of communication between the classroom instructor and the PLCB in these circumstances included first class United States mail, other delivery or express service, facsimile, or e-mail. The final-form rulemaking amends the methods of communication to reflect the actual practice, which is by telephone or e-mail, eliminating all other methods.

Section 5.234 (relating to classroom instructor responsibilities) includes the existing content of section 5.232 (relating to instructor responsibilities). The section has been expanded to include a subsection requiring the classroom instructor on probationary status to adhere to the PLCB’s Regulations and Probationary Status Instructor policies that will be provided by the PLCB. The section also adds responsibilities of classroom instructors about making changes to the curriculum, about acknowledging communications from the PLCB, getting PLCB approval on marketing correspondence, and keeping contact information up to date with the PLCB.

As suggested by IRRC, the phrase “modifications or changes” has been replaced by the defined phrase “material changes,” for increased clarity. For additional clarity, the text of section 5.234 has been amended to explain that, if a classroom instructor wants to make material changes to either the standard curriculum or an approved alternative curriculum, the classroom instructor must submit the curriculum, including the material changes, to the BAE for review and approval in accordance with the provisions of section 5.213(b).

The final-form rulemaking adds new **section 5.235** (relating to renewal of authorization). Through this rulemaking, the PLCB is establishing clear rules for the renewal of a classroom instructor’s authorization. Currently, classroom instructors pay a renewal fee of \$250.00. This fee has not been changed since 2010. To determine an appropriate fee, the PLCB calculated the amount of time spent in renewing a classroom instructor. The process includes, but is not limited to, travelling to locations for on-site training evaluation. It is estimated that the process takes approximately 22.5 hours at a cost to the PLCB of \$655.00. As a result, section 5.235 of the final-form rulemaking increases the renewal fee of a classroom instructor from \$250.00 to \$300.00. This fee was calculated by rounding the cost of evaluation and support down to \$600.00 and then dividing that figure in half. The PLCB subsidizes half of the cost for the classroom instructor renewal.

Section 5.235(b)(2) requires that, if a classroom instructor wants to make material changes to the alternative curriculum, an additional \$250 fee is required. The classroom instructor shall continue to use the alternative curriculum that was approved by the PLCB until the notice of authorization has been renewed.

In addition, section 5.235 imposes a late fee on classroom instructors if renewal applications are not timely filed. Because RAMP has only nine staff members, requiring a classroom instructor to submit a renewal application 30 days before expiration allows sufficient time for the RAMP staff to process the request. This ensures that the instructor's authorization is renewed in a timely fashion, without interruption of the instructor's business. Renewals that are submitted shortly before expiration or after expiration tend to disrupt the work of the RAMP office; further, the late-submitting instructor will often ask for expedited service for what is truly an avoidable situation. Towards that end, an additional late fee of \$100.00 is imposed to compel the timely submission of the application for renewal. This fee was adopted because it is the same fee that licensees must pay if they are untimely with their license renewal applications. See 47 P.S. § 4-470(a).

In the final-form rulemaking, the language paragraph 5.235(c)(2) was amended to state that "The PLCB will not accept an application for renewal of authorization that is filed after the expiration of the current authorization." This is the identical language in paragraph 5.225(b)(2). In addition, the final-form rulemaking establishes that the classroom instructor who has missed filing an application for renewal before the date of expiration will have to wait for open enrollment to submit a new application.

Section 5.236 (relating to deauthorization of classroom instructors) is nearly identical to section 5.227 (relating to deauthorization of online training providers) except for the fact that it does not include provisions that are unique to online training providers: the invalidation of training that is completed after deauthorization and the invalidation of previously issued training vouchers. Neither of these scenarios is at issue with classroom instructors and, therefore, these provisions were not included in section 5.236.

The final-form rulemaking deletes the text in section 5.241 (relating to manager/owner training). This information can now be found in section 5.205(b)(1), relating to RAMP certification prerequisites. The final-form rulemaking also deletes the text in section 5.242 (relating to new employee orientation). This information has been restated with more detail and can now be found in section 5.205(b)(3) (relating to RAMP certification prerequisites). The final-form rulemaking deletes the text in section 5.243 (relating to records). This information can now be found in section 5.207 (relating to records).

The final-form rulemaking amends **section 5.251** (relating to additional prohibited conduct). Two new sections – section 5.227 (relating to deauthorization of online training providers) and section 5.236 (relating to deauthorization of classroom instructors) – identify the conduct that will lead to deauthorization. To eliminate repetition, the text in subsections 5.251(a)(9), (b) and (c) has been deleted. The remainder of the text in section 5.251 was edited to include minor updates in vernacular, to be consistent with the rest of the final-form rulemaking. The only significant change is the incorporation of a reference to the Pennsylvania Human Relations Act, 43 P.S. §§ 951—963

(“PHRA”); discrimination or harassment based on age, race, sex, disability, national origin or religion or any other protected class under the PHRA is prohibited conduct.

Finally, this rulemaking deletes the text of **sections 5.261** (relating to signs) and **5.271** (relating to premises certification). This information can now be found in section 5.205(b)(4) (relating to display of responsible alcohol service signage) and section 5.206 (relating to RAMP certification), respectively.

Affected Parties

The affected parties include licensees and their employees, including managers and server/sellers, as well as entities that are offering RAMP server/seller training. For Fiscal Year 2019-2020, 5,903 people enrolled in owner/manager training and 80,165 people enrolled in server/seller training. The affected parties also include the classroom instructors and online training providers. As of March 31, 2021, there are twenty-one classroom instructors and fourteen online training providers of server/seller training.

Paperwork Requirements

This final-form rulemaking does not impose any new paperwork requirements on licensees, alcohol service personnel, managers, online training providers, or classroom instructors.

Fiscal Impact

The fee for a classroom instructor has increased from \$250.00 to \$500.00, with a renewal fee of \$300.00. In addition, the fee for an online training provider is established as \$850.00, with a renewal fee of \$600.00. Moreover, these fees are less than half of the costs incurred by RAMP to train and authorize classroom instructors or to review the content of an online training provider as well as test every link and every digital functionality. However, as explained above, these fees can readily be offset from the fees that online training providers and classroom instructors already charge to the tens of thousands of people who need server/seller training.

Effective Date

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

Contact Person

Questions regarding this final-form regulation 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 June 3, 2019, the PLCB submitted a copy of the notice of proposed rulemaking, published at 49 Pa.B. 3733, 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(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), 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 IRRC and from the public, the responses to which are set forth in separate documents.

Under section 5a(j.2) of the Regulatory Review Act, on _____, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(e) of the Regulatory Review Act, the final-form rulemaking was approved by IRRC effective _____.

TIM HOLDEN,
Chairperson

RESPONSES OF THE PENNSYLVANIA LIQUOR CONTROL BOARD TO

Comments about Board Regulation #54-90 (IRRC #3236)

Responsible Alcohol Management Program

1. Section 5.202. Definitions. – Consistency with statute; Clarity; Reasonableness.

Material change

The definition of “material change” includes changes to “the order of the curriculum” of Responsible Alcohol Management Program (RAMP) server/seller training for alcohol service personnel. Why does reordering the curriculum, without a change to substance, constitute a material change? Since a sizeable fee is required, we ask the Board to explain the reasonableness of considering reordered curriculum a material change.

Response: Classroom instructors and online training providers must be authorized, every year, to provide server/seller training. Part of the authorization (or reauthorization) process is submitting the curriculum to the Pennsylvania Liquor Control Board’s (“PLCB”) Bureau of Alcohol Education (“BAE”) for approval. If the curriculum has not been changed since the last time it was approved, reauthorization is expedited.

But if there is a material change, then the entire curriculum must be scrutinized to ensure that it includes all of the required material and omits nothing. Even if the curriculum is “only” reordered, it is still considered a material change because of the amount of time needed to go back and forth through the previously approved curriculum and the changed curriculum. The BAE must undertake a meticulous review process to ensure that the reordered curriculum is equivalent to or exceeds the PLCB’s standard curriculum.

Moreover, if the order of the curriculum is changed, it will no longer match the manual that must be provided to students. This is especially a concern for classroom training because the students often follow the manual during the training. If topics in the manual are not in the same order as in the curriculum, the learning experience will be diminished for the students.

Therefore, the PLCB believes that it is reasonable to consider the reordering of the curriculum as a material change.

Additionally, the definition states that a material change “**may include** the addition of unapproved information or the deletion of approved information. [Emphasis added.] We have two concerns. First, “may” indicates a discretionary action. We ask the Board to revise this definition to omit the discretionary language.

Response: It is agreed that the word “may,” in certain situations, can indicate discretion. For example, if a sentence began with the phrase “The Board may...”, the word “may” would clearly indicate discretion on the part of the Board.

However, “may” does not always indicate discretionary action. The Cambridge Dictionary defines “may” as a word that is used to express possibility, used to ask or give permission, or used to make a suggestion or suggest a possibility in a polite way.¹

In the definition for the phrase “material change,” the word “may” is used to express a possibility, not a discretionary action. It is possible that an instructor or online training provider effects a material change to the curriculum by adding unapproved information to the curriculum. It is also possible that an instructor or online training provider effects a material change to the curriculum by deleting approved information from the curriculum. Either possibility would constitute a material change; the word “may” captures both possibilities. Therefore, the Board respectfully declines to revise the definition of “material change.”

Second, classroom instructors and online training providers are required to submit changes to the standard and approved alternative curriculums to the Board for approval. Are there additional modifications the Board considers to be material changes? To improve the clarity of the definition, we ask the Board to add additional examples to the definition.

Response: Currently, the definition of “material change” provides that either the instructor or online training provider is adding information that has not been approved, or is deleting information that was approved. The definition as currently written is all-encompassing as to what the Board considers to be a material change.

Moreover, in previous hearings, the Board has been advised by the IRRC Commissioners that examples are not appropriate for inclusion in regulatory text. Therefore, the Board respectfully declines to add examples to the regulatory text. The BAE is always available if an instructor or online training provider has a question as to whether a desired change would be considered a “material change.”

Responsible server practices

The definition of “responsible server practices” is proposed to be deleted. However, Section 471.1(a) of the Liquor Code (47 P.S. § 4-471(a)) requires that “newly hired alcohol service personnel [shall be oriented] to responsible server practices, as the term is defined by the [B]oard, through regulation.” [Emphasis added.] The Preamble to the proposed regulation does not address this proposed deletion. We ask the Board to explain in the Preamble to the final regulation the reasonableness of deleting this term which the Liquor Code directs the Board to define by regulation.

¹ <https://dictionary.cambridge.org/us/dictionary/english/may> (accessed October 9, 2019).

Response: The term “responsible server practices” has been restored in the final-form regulation, in accordance with the Liquor Code.

2. Section 5.203. Mandatory training for managers. – Clarity.

Subsection (b) states that “licensees must ensure that the manager has successfully completed owner/manager training within the past [two] years.” We ask the Board to clarify in the Preamble to the final regulation that owner/manager training expires after two years and that a manager must renew owner/manager training every two years.

This comment also applies to Section 5.204(b) (relating to mandatory training for alcohol service personnel).

Response: Clarifying language has been added in a new subsection, Subsection (d), to both Sections 5.203 and 5.204.

3. Section 5.204. Mandatory training for alcohol service personnel. – Clarity; Reasonableness.

Subsection (c) states, “If a licensee obtains an off-premises catering permit for use at a catered function, every employee whose primary responsibility at the catered function is to sell and/or serve alcoholic beverages or check identifications of those seeking to enter the catered function must have successfully completed server/seller training within [two] years prior to the date of the catered function.” [Emphasis added]. The Board defines the term “alcohol service personnel” as “[a]ny employe . . . whose primary responsibility includes the resale, furnishing or serving of liquor or malt or brewed beverages. It shall also mean any employe . . . whose primary responsibility is to ascertain the age of individuals who are attempting to enter the licensed premises.” We ask the Board to use the defined term “alcohol service personnel” or to explain in the Preamble to the final regulation why it is reasonable not to use the defined term.

Response: The emphasized language above has been replaced in the final-form regulation with the phrase “alcohol service personnel.”

Similarly, we ask the Board to clarify the final regulation by replacing “employee” with the defined term “alcohol service personnel” in Section 5.205(b)(1)(iii) (relating to RAMP certification prerequisites) where the regulation states, “Instruction will be provided on techniques to ensure that employees are complying with house rules”

Response: The word “employees” in Section 5.205(b)(1)(iii) has been replaced by the phrase “alcohol service personnel” in the final-form regulation.

4. Section 5.205. RAMP certification prerequisites. – Protection of public health, safety and welfare; Clarity; Reasonableness; Implementation procedures.

Subsection (b)(3) addresses new employee orientation. We have two concerns.

First, Subparagraph (i) requires a licensee to “review an orientation checklist with all alcohol service personnel” when the licensee is preparing to apply for RAMP certification or renewal. Is a licensee required to review the orientation checklist with new employees or all employees? Section 471.1(a) of the Liquor Code only requires orientation for new employees.

Response: The intent of this provision is that the licensee is required to review the orientation checklist with all alcohol service personnel.

Further, under Subparagraph (ii), a licensee shall conduct new employee orientation within 30 days of hire, which is separate from the licensee applying for RAMP certification or renewal. We ask the Board to clarify in the final regulation the type of employee who receives orientation and the timeframe for completion of orientation.

Response: At the time of certification, all alcohol service personnel should have completed the new employee orientation form. Once RAMP-certified, all alcohol service personnel should have the new employee orientation form completed within 30 days of their date of hire.

Additional language has been added to Subparagraphs (i) and (ii) for clarification.

Second, Subparagraph (ii) provides that a licensee shall ensure that new employee orientation – covering service to minors, service to visibly intoxicated persons, acceptable forms of identification, carding practices and house policies – occurs “within 30 days of the employee’s hire.” Given that compliance with these standards is fundamental to an employee’s job duties and a licensee’s RAMP certification, is the Board ensuring public health, safety and welfare by providing this length of time for new employee orientation? We ask the Board to explain in the Preamble to the final regulation the reasonableness of this timeframe.

Response: Please note that this provision is currently located in Section 5.242(a):

Licensees applying for certification of compliance under section 471.1 of the Liquor Code (47 P.S. § 4-471.1) shall conduct new employee orientation **within 30 days** of the employee’s hire, in accordance with a checklist of responsible server practices provided by the BAE including:

40 Pa. Code § 5.242(a) (emphasis added). This length of time had already been approved by IRRC.

Moreover, 30 days is the *deadline* for new employee orientation. At every owner/manager training, the PLCB stresses that licensees should not wait to review the new employee

orientation form with new staff, but should review it with them as soon as possible, even before they start. However, since that could be challenging, providing a 30 day deadline gives them a certain timeframe for the completion of this task.

Requiring this training to be completed within a shorter time frame could be burdensome to the regulated community. Many employees in the food services and drinking industry work part-time. Therefore, in a 30 day period of time, it is entirely possible that a licensee's new employee might only work four to eight times – the equivalent of once or twice a week. Allowing a licensee 30 days to provide new employee orientation gives the licensee a fair opportunity to meet this requirement.

Finally, please note that this task is only required for licensees that are RAMP-certified. It is not mandatory for any other reason. RAMP certification is voluntary for most licensees. Completing the new employee orientation form is a component of the program to remain compliant once certified.

5. Section 5.206. RAMP certification. – Statutory authority.

Subsection (c) appears to bind the Office of Administrative Law Judge to take official notice of the Board's records with regard to licensee certification. We ask the Board to explain its statutory authority for this provision in the Preamble to the final regulation.

Response: Initially, please note that the identical language regarding official notice was previously vetted by the regulatory process and is currently located in Section 5.271(i) of the PLCB's Regulations:

The Office of Administrative Law Judge will take official notice of the Board's records with regard to the licensee's certification.

40 Pa. Code § 5.271(i). The existing language, which had previously been approved by IRRC, was simply moved to another section as part of the overhaul of the chapter.

By way of further explanation, section 206 of the Liquor Code puts the PLCB under the auspices of the Administrative Code of 1929: "Except as otherwise expressly provided by law, the board shall be subject to all the provisions of The Administrative Code of one thousand nine hundred twenty-nine, as amended, which apply generally to independent administrative boards and commissions." 47 P.S. § 2-206.

Section 506 of the Administrative Code of 1929, empowers independent administrative boards to prescribe rules and regulations for a variety of matters:

The heads of all administrative departments, **the several independent administrative boards** and commissions, the several departmental administrative boards and commissions, **are hereby empowered to prescribe rules and regulations**, not inconsistent with law, for the government of their respective departments, boards, or commissions, the

conduct of their employees and clerks, the distribution and performance of their business, and the custody, use, and preservation of the records, books, documents, and property pertaining thereto.

71 P.S. § 186 (emphasis added).

Specific guidance as to the PLCB's authority to issue a regulation pertaining to official notice can be found in the Pennsylvania Code:

Official notice may be taken by the agency head or the presiding officer of such matters as might be judicially noticed by the courts of this Commonwealth, or **any matters as to which the agency by reason of its functions is an expert.** Any participant shall, on timely request, be afforded an opportunity to show the contrary. Any participant requesting the taking of official notice after the conclusion of the hearing shall set forth the reasons claimed to justify failure to make the request prior to the close of the hearing.

1 Pa. Code § 35.173 (emphasis added).²

The Commonwealth Court provided guidance on which subjects are appropriate for the doctrine of official notice:

"Official notice" is the administrative counterpart of judicial notice and is the most significant exception to the exclusiveness of the record principle. **The doctrine allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency's field and those facts contained in reports and records in the agency's files,** in addition to those facts which are obvious and notorious to the average person. Thus, official notice is a broader doctrine than is judicial notice and recognizes the special competence of the administrative agency in its particular field and also **recognizes that the agency is a storehouse of information on that field consisting of reports, case files, statistics and other data relevant to its work.**

Ramos v. Pa. Bd. of Prob. & Parole, 954 A.2d 107, 109-110 (Pa. Cmwlth. 2008) (emphasis added) (citations omitted).

The PLCB's BAE is the only entity in the Commonwealth that is authorized to issue RAMP certification to a licensee.

² This regulation is found in Title 1, Part II of the Pennsylvania Code, which begins by citing the following authority: "The provisions of this Part II [are] issued under section 506 of The Administrative Code of 1929 (71 P.S. § 186); section 35 of the Administrative Agency Law (71 P.S. § 1710.35) (Repealed); and 45 Pa.C.S. §§ 503, 701 and 723, unless otherwise noted."

For purposes of clarity, the PLCB's proposed rulemaking added language indicating that the PLCB's certification of a licensee's status as being RAMP compliant shall create a rebuttable presumption that the licensee is RAMP compliant. Additionally, in the final-form rulemaking, the PLCB has also clarified that this is a matter of which official notice may be taken within the context of any proceeding before the Office of Administrative Law Judge or the PLCB.

ONLINE TRAINING PROVIDERS AND PROGRAMS FOR SERVER/SELLER TRAINING

6. Section 5.221. Online training provider application. – Economic or fiscal impacts; Reasonableness; Implementation procedures.

This section addresses how an individual applies for authorization as an online training provider, including minimum qualifications related to age, education and experience. We have two questions. First, will the Board authorize a business as an online training provider? Second, if so, what are the minimum qualifications? We ask the Board to explain in the Preamble to the final regulation the implementation procedure for authorizing a business as an online training provider.

Response: Yes, the Board will authorize a business to provide online training courses, and already has. Regardless of the business organization, at the core is an individual who is providing the RAMP training services. The BAE will review the minimum qualifications of the individual who will be providing training services on behalf of the business, which qualifications are the same required of an individual and are set forth in Section 5.231(b).

Subsection (a)(1) provides for an open enrollment period, as posted on the Board's website, for applications from online training providers. The Board may "limit the number and frequency of open enrollment periods." We have three concerns. First, it is reasonable for the Board to limit when applications may be submitted?

Response: Yes, it is reasonable, given the fact that the BAE has only nine staff members and reviewing the submissions of online training providers is extremely time-consuming. In order to have BAE staff available to review the applications thoroughly and efficiently, the receipt of said applications must be controlled.

Second, did the Board consider establishing a schedule for open enrollment and posting it on the Board's website?

Response: Yes, a schedule for open enrollment was considered, but it is difficult to anticipate when there will be a need for more training providers.

Third, has the Board considered the economic impact upon prospective online training providers who will incur expenses developing an online training module without knowing when it may submit an application for authorization? We ask the Board to address these concerns in the

Preamble to the final regulation. This comment also applies to Sections 5.213(c)(2)(ii), 5.222(e)(2), 5.225(c)(5), 5.227(d), 5.231(a)(1), 5.235(c)(4) and 5.236(d).

Response: No, this scenario was not considered by the Board. A potential applicant who prepares an online training module with no idea as to when open enrollment will occur has taken an unnecessary risk of his or her own making.

With regard to the PLCB's refusal to accept, for a minimum of one year, an application from an online training provider or classroom instructor that has been deauthorized, this ban is necessary for three reasons:

- 1) It provides a significant consequence for the failure of an online training provider or classroom instructor to adhere to the regulations. Without this consequence, there is no reason why an entity that has refused to follow the regulations could not simply turn around and file a new application to become an online training provider or classroom instructor.
- 2) It saves the limited resources of the BAE for those online training providers and classroom instructors that are willing to follow the regulations. Because these provisions are not currently included in the regulations, the BAE has deauthorized a provider or instructor for failure to adhere to the rules, only to see that same entity apply again to be a provider or instructor, and the BAE is currently without the authority to reject the application.
- 3) It ensures that the online training providers and classroom instructors that are providing services take that responsibility seriously. In short, shoddy providers and instructors are weeded out and kept out. This benefits licensees, alcohol service personnel, and the community at large.

Subsection (b), regarding minimum qualifications, does not require an online training provider to attend owner/manager training, which is mandatory for classroom instructors under Section 5.234(7) (relating to classroom instructor responsibilities). Further Section 5.234(6) requires classroom instructors to attend instructor meetings scheduled by the Board. Why is this Board-provided instruction not relevant for an online training provider? We ask the Board to explain in the Preamble to the final regulation the reasonableness of excluding online training providers from these requirements.

Response: Online training providers do not have to attend owner/manager training because of the differences between an online training course and the classroom experience. With an online course, the student does not have an opportunity to ask questions or engage in a discussion of the material that may exceed the topic at hand. However, in a classroom setting, the classroom instructor delivers the information and provides a more in-depth explanation of it. Questions frequently arise and discussion is likely. It is important for the classroom instructor to have additional training to be prepared for these situations. This is the reason why classroom instructors must have additional training that online training providers are not required to have.

7. Section 5.223. Minimum standards of the online training program. – Clarity.

Subsection (e)(1) states, “The online training program must comply with the most current version of the [Board’s] Web Training Transfer Service requirements, as referenced in [Section] 5.222(a) (relating to online training program approval process).” Should this reference be to Section 5.213(a) (relating to alternative curriculum)?

Response: Yes, and the final form regulation reflects this correction.

8. Section 5.224. Online training provider responsibilities. – Clarity; Need; Reasonableness; Implementation procedures.

Paragraph (3) requires an online training provider to provide training to at least 225 students per year. We have three questions. First, how did the Board determine the number of students who must be trained? Second, what are the repercussions of not meeting this minimum? Third, why is there a need to set a minimum number of students per online training provider? We ask the Board to explain in the Preamble to the final regulations the need for and the reasonableness of this requirement.

Response:

1. This threshold figure was established over ten years ago. 40 Pa. Bulletin 3494 (June 26, 2010). At that time, the RAMP Regulations only pertained to classroom instructors. The PLCB wants instructors who can offer quality training. The reason for requiring an instructor to train a minimum number of students was because the frequency of instruction would ensure that the quality of instruction is maintained or improved. Requiring an instructor to train a minimum of 225 students ensures that the instructors are teaching on a fairly consistent basis. In addition, the figure is reasonable: 225 divided by twelve months equals 18.75 students per month.
2. An online training provider who does not meet this minimum will not be reapproved at the end of the year.
3. RAMP training is important for the licensees and their personnel. The online training provider who is offering server/seller courses should be able to demonstrate a commitment to the training being offered. Even though the method of instruction is via computer and not classroom, requiring a minimum number of students ensures that the online training provider is committed to offering a professional service.

Paragraph (4) requires an online training provider to send records regarding online training to the Board immediately following completion of online training. Subparagraph (i) provides that “records must be sent in real-time or in frequent batch submissions within 15 minutes after completion of the final examination.” Does the Board consider these requirements to be equal?

Response: No, the requirements are not equal. “Real-time” means instantaneously; batch submissions must be submitted within 15 minutes following completion of online training.

Further, a commentator suggested that this requirement should be revised to allow online training providers to send records once per day to accommodate scheduled maintenance and downtime.

We ask the Board to clarify in the final regulation the timeframe in which the online training provider is required to send final examination records.

Response: The commentator’s suggestion is not acceptable. Licensees often want to be certified as soon as possible, and server/seller training is a significant pre-requisite for certification. Moreover, most system maintenance is usually scheduled during non-business hours (overnight). The BAE does not work overnight and would not be looking for records during those hours. Records must be sent in real-time or in frequent batch submissions within 15 minutes after completion of the final examination.

Paragraph (7) requires an online training provider to resolve a technical support inquiry within one business day. A commentator expressed concern with implementing this requirement when correcting technical issues and communicating with students. The commentator suggested that two business days is a more reasonable timeframe. We note that Paragraph (8) does allow 48 hours for an online training provider to respond to e-mails, telephone calls or other contacts.

We ask the Board to revise this paragraph as suggested by the commentator or to explain in the Preamble to the final regulation the reasonableness of the proposed timeframe.

Response: The commentator’s suggestion has been accepted. The final-form regulation amends the time period to two business days.

Paragraph (10)(i) requires an online training provider to make changes to online training program content within 24 hours of being notified by the Board. Subparagraph (ii) requires the online training provider to limit public access to the online training program until the changes have been made and approved by the Board. A commentator stated that “[m]aking changes to a properly built and tested online course is nearly impossible to do in one day.” The commentator suggested that Subparagraphs (i) and (ii) be revised to allow the online training provider to submit a plan to the Board to implement changes, while allowing access to the previously approved online training program.

We ask the Board to explain in the Preamble to the final regulation the reasonableness of how this provision will be implemented.

Response: It is imperative that students receive the correct information. Licensees could be held liable for violations of the law if their employees are not properly trained. It is not acceptable to the BAE to allow misinformation to be disseminated.

That being said, there is frequently – but not always – a certain period of time before the law changes. The BAE will notify all online training providers that changes must be made to program content and approved by the BAE by a specific day. The BAE will allow as much time as possible, but in some circumstances, the law changes immediately upon the signature of the Governor, and thus the timing of changes to the law is beyond the BAE's control.

Paragraph (10)(iii) directs an online training provider to “[r]efrain from making material changes to online training program content” without approval from the Board or unless directed to by the Board. The online training provider is required to submit the material changes to the program for Board review and approval under Clause (A). Will the Board require the online training provider to follow the procedures for review and approval of an alternative curriculum in Section 5.213, including the \$250 fee in Subsection (b)? We ask the Board to explain in the Preamble to the final regulation how it will implement the provisions in this paragraph and Section 5.213.

Response: Clause A has been amended in two respects. First, the procedures for review and approval will follow the procedures set forth in Section 5.213, and language to that effect has been added to Clause A. Second, the nonrefundable fee has been changed from \$850.00 to \$250.00, to keep the provisions of Clause A consistent with Section 5.213.

Paragraph (11)(i) requires an online training provider to notify the Board not less than 30 days before an online training program is modified, enhanced or upgraded. We have three concerns. First, is a minimum 30-day notification period reasonable? Second, will the Board review and test the online training program following the completion of the system changes? Third, is the online training provider required to limit public access during this time? In the Preamble to the final regulation, we ask the Board to clarify how this provision will be implemented and to explain the reasonableness of this timeframe.

Response:

1. The paragraph has been amended to delete the requirement of 30 day's notification and to simply require that the PLCB is notified before the implementation of any system enhancements or modifications. Students will often contact the BAE if they have an issue with an online training provider, so if the BAE has notice that an enhancement or modification has been implemented, this information can be shared with the student.
2. As it pertains to security and technology, the BAE does not anticipate needing to review and test, but there may be a situation where the BAE will be asked to review and test the online training program by the provider.
3. When implementing security and technology changes, the BAE anticipates that the course would still be available to the public; the online training provider would not be required to restrict access in these circumstances.

9. Section 5.225. Renewal of authorization. – Economic or fiscal impacts; Clarity; Reasonableness; Implementation procedures.

Subsection (b) states, “The online training provider shall submit, with the application for renewal of authorization, hard copy screen shots of the most recent [Board]-approved online training program with renewal. The online training provider shall submit no more than [two] screen shots per one side of an 8 ½ by 11 inch piece of paper. The screen shots may be in color or black and white.” Since the online training program has already been approved by the Board, did the Board consider requiring the online training provider to certify that the same program will be used rather than submitting screen shots on paper?

Response: The Board has reconsidered this issue and has determined that, if the online training provider certifies that the same program will be used, the online training provider does not need to submit screen shots. However, if there are changes to the program, the online training provider will be required to submit screen shots. Section 5.225, paragraphs (a)(1) and (2) have been amended to incorporate these changes. Because of these amendments, subsection (b) has been deleted and subsection (c) has been recalibrated as subsection (b).

We have several concerns related to Subsection (c) which addresses untimely applications for authorization renewal. Subsection (c) is proposed as follows:

1. The [Board] may accept an application for renewal of authorization that is filed less than 30 days before the expiration of the current authorization, but not after expiration, if the applicant includes an additional filing fee of \$100.
2. The [Board] may accept an application for renewal of authorization that is filed up to 30 days after the expiration of the current authorization if the applicant includes an additional filing fee of \$250.
3. The [Board] will not accept applications for renewal of authorization that are filed more than 30 days after the expiration of the current authorization.
4. As of the date of the expiration of an online training provider’s authorization, the following will no longer be valid:
 - i. Training that is completed by a student after the date of expiration.
 - ii. Any training vouchers issued by an online training provider that have not been redeemed and training completed.
5. The [Board] will not accept, for a minimum of [one] year from the date of expiration, an application from an online training provider whose authorization has expired. Under such circumstances, a new application must be filed, not an application for renewal. Applications will only be accepted during a period of open enrollment, which shall be posted on the [Board’s Bureau of Alcohol Education’s] page on the [Board’s] web site. See [Section] 5.221(a) (relating to online training provider application).

Paragraph (2) raises several concerns related to implementation. By allowing an online training provider to submit an application for renewal up to 30 days after expiration of the current authorization, the Board creates a gap of uncertainty related to Paragraph (4). Under Paragraph

(4)(i), why would a student be able to take training from an online training provider whose authorization has expired? We ask the Board to prohibit the applicant from providing public access to the online training when the online training provider's authorization has expired. Also, under Paragraph (4)(ii), how will unredeemed training vouchers and incomplete training be handled if the online training provider submits an application after the expiration date but within 30 days? We ask the Board to explain in the Preamble to the final regulation the reasonableness and fiscal impact of how unredeemed training vouchers and incomplete training will be handled.

Also, Paragraph (5) states that an application will not be accepted for at least one year from the date of expiration of the current authorization. This contradicts Paragraph (2) which states that an application may be accepted for up to 30 days following the expiration of the current authorization. We ask the Board to carefully review Subsection (c) and clarify how it will be implemented in the final regulation.

Response: Paragraph (2) has been deleted and, in Paragraph (3) (renumbered as Paragraph (2)), the phrase "more than 30 days" has been deleted; please note that the plural "applications" has been changed to a singular "application" for the sake of clarity. These changes eliminate the gap of uncertainty related to Paragraph (4) (renumbered as Paragraph (3)). These changes also eliminate any contradiction there may have been in Paragraph (5) with regard to when applications will be accepted. In addition, a new paragraph has been added to prohibit the online training provider from allowing public access to its online server/seller training for Pennsylvania server/sellers as of the date of the expiration of the online training provider's authorization.

10. Section 5.226. Training vouchers. – Economic or fiscal impacts; Clarity; Need; Reasonableness; Implementation procedures.

This section allows an online training provider to sell training vouchers to licensees for use by their alcohol service personnel within 60 days of purchase. Training vouchers may be purchased in bulk. Two commentators oppose the requirement to use training vouchers within 60 days, stating that this may deter bulk purchases, thereby limiting volume discounts and increasing the cost per employee.

We have three questions. First, why is there a need to require a licensee to use training vouchers within a given time period? Second, is the 60-day timeframe reasonable? Third, did the Board consider limiting the sale of training vouchers within 30 days of the expiration of an online training provider's authorization? We ask the Board to answer these questions in the Preamble to the final regulation and to consider revising this regulation as suggested by the commentators.

Response:

1. The decision to limit the viability of vouchers was made to protect licensees from disreputable entities. The BAE is aware of entities that have sold large quantities of vouchers to licensees and then disappeared, leaving the licensees with nothing. Although one commentator says that a reputable provider will refund a licensee, not every provider is reputable. This provision was meant to protect licensees from disreputable entities who seek to sell as many vouchers as possible and then vanish.

2. The reason for the sixty day time frame was to encourage licensees to thoughtfully consider how many vouchers they would realistically need during that time frame. Because licensees have vastly different needs, it was impossible to anticipate how many vouchers would be appropriate. Limiting the viability of vouchers allows licensees to still be able to obtain the number of vouchers they need, while protecting them from a disreputable provider's ability to pressure licensees into making large volume purchases.
3. No, the Board did not consider limiting the sale of training vouchers within 30 days of the expiration of an online training provider's authorization. This would do nothing to protect licensees during the previous eleven months of that provider's authorization. A disreputable provider would have more than enough time to pressure licensees to purchase large quantities of vouchers and then disappear.

Further, this section does not require an online training provider to refund the purchase price of training vouchers to licensees when the online training provider is deauthorized or authorization is not renewed.

Response: The PLCB added a new paragraph, 5.227(c)(1), that requires an online training provider to refund the cost of any unexpired vouchers if the online training provider is deauthorized from providing RAMP training, fails to renew its authorization, or its application to renew its authorization is not accepted or granted by the PLCB.

A commentator suggested that an online training provider should be required to obtain surety bonds so that licensees are able to obtain refunds. Has the Board considered a system to ensure refunds to licensees? We ask the Board to address in the Preamble to the final regulation the economic impact of training vouchers and to clarify the implementation procedures in the final regulation.

Response: The PLCB felt that limiting the viability of vouchers was the best way to prevent disreputable online training providers from taking advantage of licensees – rather than focusing on a system to try to make the licensees whole, the PLCB focused on employing techniques to prevent the fraud from occurring in the first place.

A surety bond seems appealing, but its legal structure renders it inappropriate for the PLCB's purpose. A surety brings three parties together in a mutual, legally binding contract. One party is the principal – for example, the online training provider – who purchases the bond to guarantee future performance. The second party is the obligee – in this case, the PLCB – the entity that requires the bond. The third party is the surety – an insurance company that provides a line of credit in case the principal fails to perform.

The reason why a surety bond is inappropriate is because the online training provider does not enter into a contract to provide services for the PLCB. The online training provider enters into a contract with a licensee who is purchasing the training vouchers for use by its

alcohol service personnel. However, the licensee is not a party to the surety bond contract, and therefore has no standing to file a claim with the surety if the online training provider does not fulfill its obligation.

In the surety bond scenario, the PLCB—not the licensee—is the entity that would be able to file a claim with the surety because of the online training provider’s failure to provide training, but there is no contract for performance between the online training provider and the PLCB. Moreover, the PLCB cannot file a claim on behalf of the licensee, because there is no legal relationship between the PLCB and the licensee that would allow the PLCB to “stand in the shoes” of the licensee.

Instead of the PLCB serving as the obligee, the entity that requires the bond, consider the scenario where the licensee is the obligee. From a contractual standpoint this scenario would make sense because the online training provider is entering into a contract to provide services for the licensee who purchases training vouchers, and the surety bond is backing up the online training provider’s performance. However, from a practical standpoint, this arrangement would require an online training provider to provide a surety bond to every single licensee that buys training vouchers. Requiring a surety bond for every contract with every licensee could be quite burdensome for the online training provider.

Therefore, although the PLCB has considered the surety bond option, this option is not appropriate and has been rejected.

11. Section 5.227. Deauthorization of online training providers. – Economic or fiscal impacts; Clarity; Reasonableness; Implementation procedures.

Subsection (b) states that a notice of violation may advise the online training provider that its authorization is temporarily suspended, pending resolution of a violation. What is the impact on students and training vouchers if authorization is suspended? Will the online training provider be required to prohibit public access to the online training program if authorization is suspended? We ask the Board to clarify how this provision will be implemented when a notice of violation includes the temporary suspension of an online training provider’s authorization.

Response: The PLCB has amended subsection (b) to require an online training provider to immediately prohibit new students from accessing the online training program. In addition, the online training provider must contact all students who have started the course but not finished it and advise them to finish the course within fourteen days. Thus, students are alerted that they must finish, and no additional vouchers can be redeemed until the suspension is lifted.

Similar to our comment on Section 5.225(c)(4)(i) and (ii) (relating to renewal of authorization), we have concerns related to Paragraph (1) which addresses deauthorization of an online training provider. The proposed language is as follows:

- (1) As of the date of the [Board’s] notice of deauthorization to an online training provider, the following will no longer be valid:

- (i) Training that is completed by a student after the date of the [Board's] notice of deauthorization.
- (ii) Any training vouchers issued by an online training provider that have not been redeemed and training completed.

Under Paragraph (1)(i), why would a student be able take training from an online training provider who has been deauthorized? We ask the Board to clarify implementation procedures for deauthorization and to prohibit the online training provider from providing public access to the online training program when the online training provider has been deauthorized. Under Paragraph (1)(ii), how will unredeemed training vouchers and incomplete training be handled if the online training provider has been deauthorized? We ask the Board to explain in the Preamble to the final regulation the reasonableness and fiscal impact of how unredeemed training vouchers and incomplete training will be handled.

Response: The PLCB has rewritten Paragraph (c)(1) to address these concerns. The amended language requires a deauthorized online training provider prohibit all students from accessing the online training program. The online training provider must also e-mail all students who have started the online training program but not finished it and advise the students that they must finish the online training program within 14 days after the date of deauthorization. The amended language also requires the online training provider to provide refunds to purchasers of vouchers that were not redeemed.

CLASSROOM INSTRUCTORS OF SERVER/SELLER TRAINING

12. Section 5.231. Classroom instructor application. – Clarity.

Subsection (b)(2) sets one qualification for a classroom instructor as “having a minimum of [two] years of experience, full-time, as a trainer or in giving presentations in the field of education, law, law enforcement, substance abuse prevention, hospitality related to hotel/restaurant management or alcohol service training or other equivalent combination of experience and training.” We ask the Board to clarify in the Preamble to the final-form regulation how it will evaluate experience “giving presentations” compared to experience as a trainer.

Response: The most necessary quality that a classroom instructor must have is the ability to communicate effectively. This quality is not restricted to trainers. People involved in sales, public speaking and any other profession that involves giving presentations have the ability to communicate effectively. Since the ability to communicate effectively is a transferable skill, individuals whose background includes giving presentations should not be excluded from consideration because they were not applying their communication skills in the field of training.

Subsection (b)(5) requires a classroom instructor to attend owner/manager training. We ask the Board to consider changing the “attending” and “attend” terminology to “completing” and “complete” to clarify the training requirements.

Response: Respectfully, the PLCB declines to change the verb relating to owner/manager training, since classroom instructor applicants are required to attend the owner/manager training—in other words, they must physically show up to an owner/manager class session and attend the training. The verb “complete” implies that the same training could be accomplished online. Although online owner/manager training is available, such training is for licensees, not classroom instructor applicants.

13. Section 5.233. Minimum standards of classroom training. – Clarity; Need; Reasonableness; Implementation procedures.

Subsection (a)(1) requires a classroom session to be at least 2½ hours long. Under Section 5.223(a)(5) (relating to minimum standards of the online training program), an online training program must include at least 1½ hours of instructional time. How did the Board determine the need for a longer classroom session? We ask the Board to explain in the Preamble to the final regulation the reasonableness of this time requirement.

Response: The requirement that each classroom training session must consist of at least 2½ hours of instructional time has been in existence for nearly ten years, and is currently codified at 40 Pa. Code § 5.233(a)(1). See 40 Pa. Bulletin 3494. This period of time is appropriate for a classroom training session because it allows for questions and answers, as well as other interruptions, such as the sharing of illustrative anecdotes. For these reasons, less time is needed when the training is being conducted online. Please note that, although this is the first rulemaking to address online training providers, they have been providing server-seller training for several years. The required amount of instructional time for both classroom settings and online training has been developed from years of practical experience and therefore is reasonable.

Subsection (d) requires a student to complete the final examination individually and without assistance from others. Has the Board considered allowing a student with a learning disability to request an accommodation to complete the final examination?

Response: Should the need ever arise, the BAE would afford a student with a learning disability a reasonable accommodation to complete the final examination.

Subsection (e) requires a classroom instructor to notify a student of the grade on the final examination. However, the method of notification and a timeframe for doing so are not stated. We ask the Board to clarify implementation of this subsection in the final regulation.

Response: The PLCB has added “Within seven days,” to the beginning of subsection (e) to clarify the timeframe for notifying the students of their grade on the final examination. The PLCB does not believe it is necessary to specify, by regulation, the exact method of notification.

If a classroom instructor is teaching students who have paid for the course themselves, the classroom instructor will frequently grade the exams while the students wait and advise the students in person of whether they passed. However, larger employers may ask a

classroom instructor to teach numerous members of its alcohol service personnel. In these situations, typically the classroom instructor receives payment after the instruction is given. Because of this, the classroom instructor will only release the students' results after the employer has paid the classroom instructor. This typically occurs within a week of instruction.

14. Section 5.234. Classroom instructor responsibilities. – Clarity; Need; Reasonableness; Implementation procedures.

Paragraph (2)(i) states, "A classroom instructor shall refrain from making any **modifications or changes** to the standard curriculum without being required to do so by the [Board]." [Emphasis added]. Subparagraph (ii) states, "A classroom instructor shall refrain from making any **modifications or changes** to an alternative curriculum without first receiving approval from the [Board]" [Emphasis added]. Subparagraph (iii) requires a classroom instructor who opts to use an alternative curriculum to submit a \$250 fee for review and approval. We have two issues with these subparagraphs. First we ask the Board to revise "modifications or changes" to the defined term "material changes."

Response: The language in Paragraph (2), subparagraphs (i), (ii), and (iii) has been changed to incorporate the phrase "material change."

Second, when a material change is made to the standard curriculum or an approved alternative curriculum, the classroom instructor is required to follow the procedure under Subparagraph (iii). Will the Board require the classroom instructor to follow the procedures for review and approval of an alternative curriculum in Section 5.213, including the \$250 fee in Subsection (b)? We ask the Board to clarify in the Preamble to the final regulation how it will implement the provisions in this paragraph and Section 5.213.

Response: Yes. Section 5.211 states: "Any individual or entity that wants to offer server/seller training must use the standard curriculum provided by the Bureau of Alcohol Education or an alternative curriculum that has been approved for use by the PLCB." For additional clarity, the text of section 5.234 has been amended to explain that, if a classroom instructor wants to make material changes to either the standard curriculum or an approved alternative curriculum, the classroom instructor must submit the curriculum, including the material changes, to the BAE for review and approval in accordance with the provisions of section 5.213(b).

The BAE will implement the provisions of Section 5.234 and 5.213 through communications with classroom instructors and online training providers including but not limited to postings on the BAE's webpage.

Paragraph (3) requires a classroom instructor to hold training sessions throughout this Commonwealth. We have three questions. First, how will the Board determine that a classroom instructor has met this standard? Second, how will the Board enforce this regulation? Third, what

are the repercussions of not meeting this requirement? We ask the Board to explain in the Preamble to the final regulation the need for and the reasonableness of this requirement.

Response: The answer to the first question can be found in Paragraph (5), which requires the classroom instructor to "Provide accurate records of attendance and course completion ... to the PLCB within 7 calendar days following each training session through the BAE's page on the PLCB's website." The location information is included in the records of attendance and course completion. The second and third questions are answered with the same response: failure to meet these responsibilities could result in the BAE refusing to renew the authorization of a classroom instructor. See Section 5.236(a)(2) (relating to Deauthorization of classroom instructors).

The language requiring a classroom instructor to schedule training sessions throughout the Commonwealth is currently located at section 5.232(2); it was included to ensure that all counties would be adequately served by classroom instructors. Although online training providers are able to offer convenience to some people, the concern is that rural areas might not have sufficient access to the Internet and as a result, online training providers would not be able to meet the needs of these rural areas.

To date, every county has been able to receive server/seller training, even in remote areas, because a classroom instructor always comes forward to provide the necessary service. Requiring instructors to hold classes through the Commonwealth ensures this result. Although the PLCB is authorized to offer server/seller training under section 471.1(a) of the Liquor Code, it is preferable to have the training offered by entities that have made a commitment to offering it.

Paragraph (4) requires a classroom instructor to hold at least two training sessions per year for at least 225 students. We have three questions. First, how did the Board determine the number of sessions and the number of students who must be trained? Second, what are the repercussions of not meeting these minimums? Third, why is there a need to set a minimum number of sessions and students? We ask the Board to explain in the Preamble to the final regulation the need for and the reasonableness of these requirements.

Response:

1. This threshold figure was established over ten years ago. 40 Pa. Bulletin 3494 (June 26, 2010). At that time, the RAMP Regulations only pertained to classroom instructors. The PLCB wants instructors who can offer quality training. The reason for requiring an instructor to train a minimum number of students was because the frequency of instruction would ensure that the quality of instruction is maintained or improved. Requiring an instructor to train a minimum of 225 students ensures that the instructors are teaching on a fairly consistent basis. In addition, the figure is reasonable: 225 divided by twelve months equals 18.75 students per month.
2. A classroom instructor who does not meet this minimum will not be reapproved at the end of the year.
3. RAMP training is important for the licensees and their personnel. The classroom instructor who is offering server/seller courses should be able to demonstrate a

commitment to the training being offered. Requiring a minimum number of students ensures that the classroom instructor is committed to offering a professional service.

15. Regulatory Analysis Form (RAF). – Economic or fiscal impacts; Need; Reasonableness; Timetables for compliance.

Related to Questions #17, #19, #23 and #24, we ask the Board to provide additional information related to fees. The Board currently charges the same fee for classroom instructors and online training providers for applications, renewals and changes to standard curriculum. The proposed regulation separates classroom instructors and online training providers and establishes different fees for each. For example, where both classroom instructors and online training providers each currently submit \$250 with an application, under the proposed regulation, applicants for authorization as a classroom instructor would pay \$500 while an applicant to provide online training would pay \$850. In the Preamble, the Board states that the fees are less than half of the costs incurred by the Board “to train and authorize classroom instructors or to review the content of an online training provider as well as test every link and every digital functionality.” We ask the Board to explain why and how it determined that this cost sharing percentage is appropriate. Further, since many of these fees are newly established or significantly increased, we ask the Board to provide additional information related to the need, fiscal impact and reasonableness of the fees in the final regulation.

Response: The \$250.00 fee was implemented in 2010, when final-form RAMP regulations were published. 40 Pa. Bulletin 3494 (June 26, 2010). In the proposed regulations, the fee was \$100.00 every two years; in the final form regulations, the fee was changed to \$250.00 every year. 40 Pa. Bulletin 3496. Since 2010, the fee has remained unchanged, although the demand on the RAMP program and the BAE has only increased as a result of legislative changes.

When online training providers began to offer server/seller training, there was no provision in the PLCB’s Regulations regarding the fee that online training providers would need to pay in order to be authorized for providing training. The only provision was the \$250.00 assessed for classroom instructors. It would not have been fair to classroom instructors if online training providers did not have to pay a fee, nor would it have been legally permissible to charge online training providers something other than \$250.00. Therefore, the PLCB determined that online training providers would need to pay a \$250.00 fee until such time that the PLCB’s Regulations were revised to address online training providers.

The process of adjusting the fees began with the determining the appropriate fee for the online training providers. Because evaluating an online training provider requires considerably more time and effort by the BAE staff, the PLCB rejected the option of keeping that fee at the same amount as the fee for a classroom instructor. The PLCB believed that the better approach was to tie the fee to an actual cost, as opposed to picking a number out of thin air.

As a result, the online training provider fee was based upon the costs incurred in evaluating an application. Given the amount of the costs, however, the PLCB did not consider it reasonable to pass on the entire cost to the applicant. The PLCB believed that rounding the costs down and then halving that amount was a reasonable approach, and that formula was applied to each fee.

To determine an appropriate fee for an online training provider application, the PLCB calculated the amount of time spent in evaluating the application and supporting the online training provider. The process includes, but is not limited to, reviewing the application and the online training content, providing feedback and evaluating resubmissions of training content, providing troubleshooting and records reconciliation, and course evaluation. It is estimated that the process takes 55 hours at a cost to the PLCB of \$1,772.50. The evaluation is extensive and time consuming, since every link and every digital functionality must be tested to ensure that the program works as it is supposed to. As a result, the proposed rulemaking establishes the nonrefundable application fee of an online training provider at \$850.00. This fee was calculated by rounding the cost of evaluation and support down to \$1,700.00 and then dividing that figure in half. The PLCB is subsidizing half the cost.

Given the number of people who need to obtain server/seller training, the PLCB believes that online training providers can easily recoup the fee from alcohol service personnel in need of training. During fiscal year 2019-2020, 65,277 people received server/seller training from an online training provider, of which there are currently fourteen. If the number of students who obtained training were equally divided among the fourteen online training providers, each online training provider would have 4,662 students. The online training provider could recoup nearly the entire \$850.00 application fee by charging each of those students 18 cents ($4662 \times \$0.18 = \839.16). Put another way, an online training provider would only need \$1.00 from approximately 1.302% of the 65,277 students to recoup the nearly the entire application fee ($65,277 \times 1.302\% = 849.91$). Currently, online training providers charge from \$8.00 to \$40.00 per training, with most charging \$20.00 or \$25.00.

To determine an appropriate renewal fee for an online training provider, the PLCB calculated the amount of time spent in renewing an online training provider. The process includes, but is not limited to, course evaluation, student records reconciliation, and troubleshooting. It is estimated that the process takes approximately 39 hours at a cost to the PLCB of \$1,222.50. As a result, section 5.225 of the proposed rulemaking increases the renewal fee of an online training provider from \$250.00 to \$600.00. This fee was calculated by rounding the cost of evaluation and support down to \$600.00 and then dividing that figure in half. The PLCB is therefore subsidizing half of the cost for the provider.

To determine an appropriate fee for a new classroom instructor, the PLCB calculated the amount of time spent in evaluating and training a new classroom instructor. The process includes, but is not limited to, two days of instruction as well as on-site training evaluation. It is estimated that the process takes approximately 50 hours at a cost to the PLCB of \$1,083.80. As a result, section 5.231 of the proposed rulemaking increases the

nonrefundable application fee of a new classroom instructor from \$250.00 to \$500.00. This fee was calculated by rounding the cost of evaluation and support down to \$1,000.00 and then dividing that figure in half. As a result, the PLCB subsidizes half of the cost.

During fiscal year 2019-2020, 14,888 people obtained server/seller training in a classroom setting. There are currently twenty-one classroom instructors; if the people taking server/seller training were evenly distributed among the twenty-one classroom instructors, each instructor would teach approximately 709 people per year. The authorized classroom instructor can recoup nearly the entire \$500.00 authorization fee by charging each student an additional seventy cents ($709 \times \$0.70 = \496.30). Put another way, a classroom instructor would only need \$1.00 from approximately 3.3% of the 14,888 students to recoup the application fee ($14,888 \times 3.3\% = 491.30$). It is estimated that currently, classroom instructors charge from \$15.00 to \$50.00 per training, with most charging \$25.00 to \$40.00.

To determine an appropriate renewal fee for a classroom instructor, the PLCB calculated the amount of time spent in renewing a classroom instructor. The process includes, but is not limited to, travelling to locations for on-site training evaluation. It is estimated that the process takes approximately 22.5 hours at a cost to the PLCB of \$655.00. As a result, section 5.235 of the proposed rulemaking increases the renewal fee of a classroom instructor from \$250.00 to \$300.00. This fee was calculated by rounding the cost of evaluation and support down to \$600.00 and then dividing that figure in half. The PLCB subsidizes half of the cost for the classroom instructor renewal.

It is noteworthy that, in the comments filed by the regulated community, none of them remarked about the increase in fees.

We note that the Board states in several responses in the RAF that no costs for the regulated community are included because it is expected that the online training providers and classroom instructors will pass the cost along to individuals taking server/seller training. However, licensees and alcohol service personnel are a part of the regulated community as they are required to comply with the training and certification regulations. We ask the Board to provide specific cost estimates for licensees and alcohol service personnel.

Response: As explained above, individuals taking server/seller training can be expected to pay from \$8.00 to \$40.00 for online training or from \$15.00 to \$50.00 for classroom training. Since the individual is free to choose among the different trainers and training options, it is expected that the competition among training providers will help to keep costs competitive. Some licensees bear this cost for their employees but they do so voluntarily. There is no requirement that a licensee must pay for server/seller training. Please note that server/seller training is valid for two years.

Furthermore, section 411 of the Liquor Code, 47 P.S. § 4-411, was amended by Act 39 of 2016 to allow a licensee to accept from a manufacturer, licensee and trade organization “money or other things of value solely for the administration of a responsible alcohol management training program for alcohol service personnel...” 47 P.S. § 4-411(f)(1). So

it is possible that a licensee will have its server/seller training costs completely underwritten by another entity.

Additionally, in response to Question #24, the Board states that online training providers and classroom instructors “will [recoup increased fees] by passing along the cost to the attendees of the training, of which there are tens of thousands across the Commonwealth.” The Board acknowledges increased class fees and provides measurements for small businesses, but fails to adequately address licensees classified as small businesses. We ask the Board to provide an economic impact statement relative to licensees who meet the standards for small businesses.

Response: 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).

Considering the above definitions of “small business,” it is assumed that most licensees who are subject to the Liquor Code and the PLCB’s Regulations would fall under one of the above definitions. There are approximately 16,000 thousand licensees in these categories. As of March 31, 2021, approximately 3,609 licensees are currently RAMP

Note that the Liquor Code requires that all alcohol service personnel must successfully complete training for alcohol service personnel within 6 months of being hired by a licensed establishment “[u]nless successfully completed prior to being hired.” 47 P.S. § 4-471.1(h).³ Therefore, to a certain degree, the imposition of a cost on the licensed employer comes as a result of legislation, not regulation. However, there is nothing in the statute that requires the licensed employer to pay for the training. The phrase “[u]nless successfully completed prior to being hired” indicates that it is permissible for the individuals themselves to pay for their own training.

Although training for owner/managers and alcohol service personnel is statutorily required, RAMP certification is, for most licensees, voluntary. If a licensee voluntarily obtains certification, then it has made a business decision that the value of RAMP certification outweighs the cost. Pursuant to section 470 of the Liquor Code, a licensee with RAMP certification can receive a lesser penalty for violations of section 493(1) as it relates to sales to minors or sales to a visibly intoxicated person. 47 P.S. § 4-471.

Under certain circumstances, RAMP certification is not voluntary. RAMP certification may be required by the terms of a conditional licensing agreement; it may be ordered in the adjudication issued by an administrative law judge; it may be required to proceed with the transfer of a license when protests have been lodged against the transfer. If a licensee is required to obtain RAMP certification for any one of these reasons, the cost of obtaining

³ The Liquor Code also requires managers to obtain Owner/Manager training, which can only be provided by the PLCB. 47 P.S. § 4-471.1(a).

RAMP certification will likely be significantly less than the cost of losing the license outright.

There is no cost to a licensee to file an Application for Certification. All other materials, including the orientation checklist and the required signage, are available free of charge from the PLCB's website. No professional skills are necessary to obtain and maintain RAMP certification.

Related to Question #29, we ask the Board to update the timetable for the review of the regulation.

Response: The timetables in Question 29 of the RAF have been updated.

16. Miscellaneous clarity.

- In the RAF and Preamble the statement regarding the calculation of fees relating to Section 5.225 is incorrect. These statements should be corrected in the final-form regulation.

Response: The statements in the Preamble and RAF, regarding the calculation of fees relating to section 5.225, have been corrected.

- Section 5.233(a) (relating to minimum standards of classroom training) consists of two sentences which are essentially the same. We ask the Board to delete one sentence in the final regulation.

Response: The second sentence has been deleted.

- The Board did not include Section 471.1 of the Liquor Code in the statutory authority statement in the Preamble to the proposed regulation. We ask the Board to include this provision in the Preamble to the final regulation.

Response: This statutory provision has been included in the Preamble to the final form regulation.



June 9, 2021

Hannah Olsem

Rserving.com

VIA E-MAIL: hannah@rserving.com

Re: Proposed Regulation Changes, 40 Pa. Code Chapter 5

Dear Ms. Olsem:

This office received your comments regarding the proposed changes to the Pennsylvania Liquor Control Board's ("PLCB") Responsible Alcohol Management Program ("RAMP") regulations. A copy of the final-form regulatory review package is attached.

In response to comments made by you and others, the final-form rulemaking of section 5.226 eliminates the provision that training vouchers expire after sixty days. The final-form rulemaking provides that training vouchers are valid for as long as the online training provider is authorized to provide server/seller training.

In addition, provisions were added to section 5.227, relating to deauthorization of online training providers, to address concerns that the PLCB had with vouchers that have no expiration. The PLCB added subsection (b)(1), which explains what an online training provider must do if its authorization to provide online training is suspended. The suspended online training provider must immediately render the online training program inaccessible to new students. In addition, the online training provider must contact all students who have started the course but not finished it and advise them to finish the course within fourteen days. Thus, students are alerted that they must finish, and no additional vouchers can be redeemed until the suspension is lifted.

The PLCB also added subsection (c)(1), which explains what an online training provider must do if it has been deauthorized from providing online training. The deauthorized online training provider, like the suspended online training provider, must render the program inaccessible to new students, and advise students who have started the course that they must finish it within fourteen days (section

5.223(b)(2)(ii) requires students to provide an e-mail address during the registration process). Deauthorized online training providers must also contact, by e-mail or telephone, holders of unused training vouchers and advise them that the online training program is no longer valid, and they must remit refunds for all unredeemed training vouchers.

With regard to your surety bond suggestion, its legal structure renders it inappropriate for the PLCB's purpose. A surety brings three parties together in a mutual, legally binding contract. One party is the principal – for example, the online training provider – who purchases the bond to guarantee future performance. The second party is the obligee – in this case, the PLCB – the entity that requires the bond. The third party is the surety – an insurance company that provides a line of credit in case the principal fails to perform.

The reason why a surety bond is inappropriate is because the online training provider does not enter into a contract to provide services for the PLCB. The online training provider enters into a contract with a licensee who is purchasing the training vouchers for use by its alcohol service personnel. However, the licensee is not a party to the surety bond contract, and therefore has no standing to file a claim with the surety if the online training provider does not fulfill its obligation.

In the surety bond scenario, the PLCB—not the licensee—is the entity that would be able to file a claim with the surety because of the online training provider's failure to provide training, but there is no contract for performance between the online training provider and the PLCB. Moreover, the PLCB cannot file a claim on behalf of the licensee, because there is no legal relationship between the PLCB and the licensee that would allow the PLCB to “stand in the shoes” of the licensee.

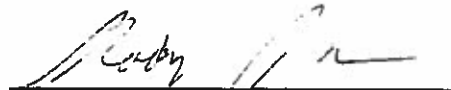
Instead of the PLCB serving as the obligee, the entity that requires the bond, consider the scenario where the licensee is the obligee. From a contractual standpoint this scenario would make sense because the online training provider is entering into a contract to provide services for the licensee who purchases training vouchers, and the surety bond is backing up the online training provider's performance. However, from a practical standpoint, this arrangement would require an online training provider to provide a surety bond to every single licensee that buys training vouchers. Requiring a surety bond for every contract with every licensee could be quite burdensome for the online training provider.

Hannah Olsem
June 9, 2021
Page 3

Therefore, although the PLCB has considered the surety bond option, this option is not appropriate and has been rejected.

Thank you for your comments about this regulation.

Sincerely,



RODRIGO J. DIAZ
CHIEF COUNSEL

Attachments



June 9, 2021

Kate Piche
National Restaurant Association
175 West Jackson Boulevard, Suite 1500
Chicago, IL 60604
VIA E-MAIL: KPiche@restaurant.org

Re: Proposed Regulation Changes, 40 Pa. Code Chapter 5

Dear Ms. Piche:

This office received your comments regarding the proposed changes to the Pennsylvania Liquor Control Board's ("PLCB") Responsible Alcohol Management Program ("RAMP") regulations. A copy of the final-form regulatory review package is attached.

Your comments and suggestions will be reiterated below, followed by the response of the PLCB.

1. Proposed section 5.224(4)(i) states: "Records must be sent in real-time or in frequent batch submissions not more than 15 minutes after completion of the final examination." You suggest that records should be sent in at least once per business day.

The PLCB needs records to be sent as close to real-time as possible. Many servers are looking for their certificate soon after completing the course. In addition, licensees are trying to update their roster and apply for RAMP Certification as soon as possible, and to do this they need to have an up-to-date training record. Currently-approved vendors have already set up the interface for the records to be sent automatically. This suggestion will not be implemented.

2. Proposed section 5.224(7) states: "Provide technical support to students via telephone, internet chat exchange or e-mail. Technical support must be timely and accurate. Any technical support inquiry from a student must be resolved within 1

business day.” You suggest that any technical support inquiry must be addressed within two business days.

Your suggestion has been accepted. The final-form regulation amends the time period to two business days.

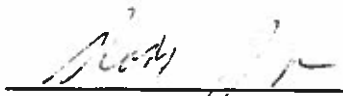
3. Proposed section 5.224(10) states: “ With regard to changes to program content: (i) Make required changes to written program content within 24 hours of being notified by the PLCB.” You recommend that required changes to written program content must be acknowledged within three business days.

It is imperative that students receive the correct information. Licensees could be held liable for violations of the law if their employees are not properly trained. It is not acceptable to allow misinformation to be disseminated.

That being said, there is frequently—but not always—a period of time before the law changes; some legislation provides for a period of sixty days before it becomes effective. The final-form regulation provides that the changes must be made by the date provided by the PLCB. Under this scenario, the Bureau of Alcohol Education (“BAE”) could notify all online training providers that changes must be made to program content and approved by the BAE by a specific day. The BAE will allow as much time as possible, but in some circumstances, the law changes immediately upon the signature of the Governor, and thus the timing of the changes is beyond the BAE’s control.

Thank you for your comments about this regulation.

Sincerely,



RODRIGO J. DIAZ
CHIEF COUNSEL

Attachments



June 9, 2021

Stephen J. Matt, COO
eStrategy Solutions, Inc.
6601 Vaught Ranch Road, Suite 100
Austin, TX 78730
VIA E-MAIL: smatt@estrategysolutions.com

Re: Proposed Regulation Changes, 40 Pa. Code Chapter 5

Dear Mr. Matt:

This office received your comments regarding the proposed changes to the Pennsylvania Liquor Control Board's ("PLCB") Responsible Alcohol Management Program ("RAMP") regulations. A copy of the final-form regulatory review package is attached.

In response to comments made by you and others, the final-form rulemaking of section 5.226 eliminates the provision that training vouchers expire after sixty days. The final-form rulemaking provides that training vouchers are valid for as long as the online training provider is authorized to provide server/seller training.

In addition, provisions were added to section 5.227, relating to deauthorization of online training providers, to address concerns that the PLCB had with vouchers that have no expiration. The PLCB added subsection (b)(1), which explains what an online training provider must do if its authorization to provide online training is suspended. The suspended online training provider must immediately render the online training program inaccessible to new students. In addition, the online training provider must contact all students who have started the course but not finished it and advise them to finish the course within fourteen days. Thus, students are alerted that they must finish, and no additional vouchers can be redeemed until the suspension is lifted.


The PLCB also added subsection (c)(1), which explains what an online training provider must do if it has been deauthorized from providing online training. The deauthorized online training provider, like the suspended online training provider,

Stephen Matt
June 9, 2021
Page 2

must render the program inaccessible to new students, and advise students who have started the course that they must finish it within fourteen days (section 5.223(b)(2)(ii) requires students to provide an e-mail address during the registration process). Deauthorized online training providers must also contact, by e-mail or telephone, holders of unused training vouchers and advise them that the online training program is no longer valid, and they must remit refunds for all unredeemed training vouchers.

Thank you for your comments about this regulation.

Sincerely,



RODRIGO J. DIAZ
CHIEF COUNSEL

Attachments

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

Subchapter I. RESPONSIBLE ALCOHOL MANAGEMENT PROGRAM

GENERAL

§ 5.201. Purpose.

[(a) This subchapter implements the program authorized under section 471.1 of the Liquor Code (47 P.S. § 4-471.1), regarding responsible alcohol management. This provision authorizes the Board to establish a four-part program including:

- (1) New employee orientation.
- (2) Training for alcohol service personnel.
- (3) Manager/owner training.
- (4) Display of responsible alcohol service signage.

(b) Under section 471.1(f) of the Liquor Code, licensees are to obtain certification upon the completion of a certified alcohol service personnel program or the Board's owner/manager training program. Certification will be valid for 2 years.

(c) Licensees and their managers and employees may enter the Responsible Alcohol Management Program voluntarily, may commit to participation as part of a conditional licensing agreement entered into with the Board or may be required to participate by order of one of the Board's administrative law judges. This subchapter also establishes standards for the Board to certify compliance with this program.]

This subchapter implements the provisions authorized under section 471.1 of the Liquor Code (47 P.S. § 4-471.1).

§ 5.202. Definitions.

When used in this subchapter, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

Alcohol service personnel—Any employee of a licensee such as a bartender, waiter or, in the case of a distributor or importing distributor, a salesperson whose primary responsibility includes the resale, furnishing or serving of liquor or malt or brewed beverages. It shall also mean any employee, such as a doorman, whose primary responsibility is to ascertain the age of individuals who are attempting to enter the licensed premises.

Alternative curriculum—Curriculum for server/seller training that was developed by an entity other than the Bureau of Alcohol Education.

BAE—Bureau of Alcohol Education—The office in the [Board] **PLCB** that is responsible for administering the Responsible Alcohol Management Program (**RAMP**).

[Certify]—To approve and confirm the approval in writing.]

[Instructor]—An individual who is certified by the Board to instruct students, including licensees, owners, managers, servers, sellers and members of the public, in responsible server practices.] **Classroom instructor**—An individual who is authorized by the **PLCB** to instruct students on server/seller training in a classroom setting where the instructor and the students are physically present.

Designated employee—An employee of a licensee whose primary job for the licensee is employee training or providing human resource services.

Licensee—An individual, person or entity that holds a license issued by the [Board] **PLCB**.

[Manager/owner training]—Training conducted by the Board or its employees for individuals who manage or own licensed premises.]

Material change—A change that affects or impacts the substance of the curriculum or changes the order of the curriculum. A material change may include the addition of unapproved information or the deletion of approved information.

New employee—An individual who has not been employed at the licensed premises [seeking certification] in any capacity during the preceding year.

Online training provider—An individual or entity who is authorized by the **PLCB** to provide instruction to students on server/seller training by means of the Internet.

Owner/manager training—Training conducted by the **PLCB** or its employees for individuals who manage or own licensed premises.

PLCB—Pennsylvania Liquor Control Board.

RAMP—Responsible Alcohol Management Program—A certification program regarding the responsible sale and service of alcohol.

{Responsible server practices—Procedures and practices used by alcohol service personnel to prevent the furnishing or selling of alcoholic beverages to minors and visibly intoxicated persons.}

Server/seller training—Training conducted by the PLCB, a classroom instructor, or an online training provider for alcohol service personnel.

Standard curriculum—Curriculum for server/seller training that is produced and provided by the Bureau of Alcohol Education.

Student—An individual who has enrolled in a RAMP class or online training.

Training voucher—A code or password that grants permission or access to an online training program that may be purchased from an online training provider.

§ 5.203. Mandatory training for managers.

(a) Any manager who is required, under section 471.1(g) of the Liquor Code, to complete owner/manager training within 180 days of approval of appointment by the PLCB will be deemed to have met that training requirement if the appointed manager successfully completed the training within the 2 years prior to being appointed manager.

(b) Licensees must ensure that the manager has successfully completed owner/manager training within the past 2 years.

(c) The first time an individual enrolls in owner/manager training, he or she shall enroll and attend the owner/manager training in a classroom setting. The individual may take subsequent owner/manager training in a classroom setting or by means of online training, as preferred.

(D) OWNER/MANAGER TRAINING EXPIRES AFTER TWO YEARS. AN OWNER/MANAGER MUST RENEW OWNER/MANAGER TRAINING EVERY TWO YEARS.

§ 5.204. Mandatory training for alcohol service personnel.

(a) Any alcohol service personnel who is required, under section 471.1(h) of the Liquor Code, to complete server/seller training within 6 months of being hired by a licensee will be deemed to have met that training requirement if the training was successfully completed within the 2 years prior to being hired by the licensee.

(b) Licensees must ensure that each member of their alcohol service personnel has successfully completed server/seller training within the past 2 years.

(c) If a licensee obtains an off-premises catering permit for use at a catered function, every employee whose primary responsibility at the catered function is to sell and/or serve alcoholic beverages or check identifications of those seeking to enter the catered function ALL

ALCOHOL SERVICE PERSONNEL must have successfully completed server/seller training within 2 years prior to the date of the catered function.

(D) SERVER/SELLER TRAINING EXPIRES AFTER TWO YEARS. ALCOHOL SERVICE PERSONNEL MUST RENEW SERVER/SELLER TRAINING EVERY TWO YEARS.

§ 5.205. RAMP certification prerequisites.

(a) Licensees may seek RAMP certification voluntarily, may commit to obtaining certification as part of a conditional licensing agreement entered into with the PLCB, or may be required to obtain certification by a provision in the Liquor Code or as a result of an adjudicated citation.

(b) Licensees applying for RAMP certification under section 471.1 of the Liquor Code (47 P.S. § 4-471.1) must complete the following prerequisites:

(1) Owner/manager training.

(i) At least one owner or the PLCB-approved manager must complete the owner/manager training.

(ii) The first time an individual enrolls in owner/manager training, he or she shall enroll and attend the owner/manager training in a classroom setting. The individual may take subsequent owner/manager training in a classroom setting or by means of online training, as preferred.

(iii) Training will include instruction on proper service of alcohol, developing an alcohol service policy and establishing house rules and policies aimed at preventing sales of alcoholic beverages to minors or visibly intoxicated persons. Instruction will also be provided on identification checks and signs of visible intoxication. Instruction will be provided on techniques to ensure that employees ALCOHOL SERVICE PERSONNEL are complying with house rules and policies, including the orientation of new and current employees and the documentation of incidents occurring in the workplace.

(iv) Owner/manager training will be conducted by the PLCB. The PLCB will maintain records establishing the names of individuals who have successfully undergone owner/manager training.

(2) Server/seller training.

(i) At least 50% of the licensee's alcohol service personnel must successfully complete server/seller training at the time of filing the application for certification of compliance. This percentage must be maintained or RAMP certification may be rescinded.

(ii) Successful completion of server/seller training is a score of 80% or better on the PLCB's final examination.

(iii) Training will include instruction on detecting signs of impairment and intoxication, identifying underage individuals, and detecting false identifications, including those that are altered, counterfeit or borrowed. Instruction will focus on the practical application of the skills necessary to properly check identification, prevent intoxication and refuse service.

(3) New employee orientation.

(i) When preparing to apply for RAMP certification FOR THE FIRST TIME [or renewal of RAMP certification], the licensee's owner, manager or designated employee must review an orientation checklist with all alcohol service personnel. The orientation checklist, provided by the PLCB, addresses the liquor laws regarding service to minors, service to visibly intoxicated patrons, acceptable forms of identification, carding practices and house policies.

(ii) NEW EMPLOYEES MUST RECEIVE ORIENTATION WITHIN 30 DAYS OF BEING HIRED BY THE LICENSEE. When new employees are hired, the licensee is responsible for ensuring that the owner, manager or designated employee conducts new employee orientation within 30 days of the employee's hire.

(iii) Once completed, orientation checklists should be kept by the licensee throughout the person's employment and for 2 years after separation from employment.

(4) Display of responsible alcohol service signage.

(i) Licensees must post signs in the licensed premises. The signs will be provided by the PLCB, although a licensee may use its own signs as long as they are equivalent in size and content to the PLCB's signs.

(ii) The following signs must be posted, notifying patrons about:

(A) Acceptable forms of identification as described in section 495(a) of the Liquor Code (47 P.S. § 4-495(a)).

(B) The licensee's duty to refuse service to minors and visibly intoxicated persons under section 493(1) of the Liquor Code (47 P.S. § 4-493(1)).

(iii) The design of the signs must be so that they are legible from a distance of at least 10 feet. Signs must be located where patrons will easily see them.

(iv) The licensee is responsible for the posting and maintenance of signs.

§ 5.206. RAMP certification.

(a) After a licensee has completed the prerequisites of RAMP certification as set forth in § 5.205 (relating to RAMP certification prerequisites), the licensee may file an application with the PLCB for RAMP certification. There is no fee for applying for certification or recertification.

(1) If the PLCB finds that the licensee has satisfied the prerequisites, the PLCB will approve the application for certification of the licensee.

(2) RAMP certification is valid for 2 years. The PLCB will issue a notice of certification to the licensee that will advise the licensee of the date that the certification will expire.

(3) The licensee must continually satisfy the certification requirements during that period or certification may be rescinded.

(b) If the PLCB finds that the licensee has not satisfied the prerequisites, the PLCB will deny the application for certification of the licensee.

(1) If the licensee was required to obtain RAMP certification as a result of an adjudicated citation or by the terms of a conditional licensing agreement, but failed to do so, the PLCB will refer the matter to the Pennsylvania State Police, Bureau of Liquor Control Enforcement.

(c) ~~The Office of Administrative Law Judge shall take official notice of the PLCB's records with regard to the licensee's certification.~~ The PLCB's certification of a licensee's status as being RAMP compliant shall create a rebuttable presumption that the licensee is RAMP compliant. This is a matter of which official notice may be taken within the context of any proceeding before the Office of Administrative Law Judge or the PLCB.

§ 5.207. Records.

(a) A licensee that has obtained RAMP certification shall keep the following records:

(1) A current list of all members of the licensee's alcohol service personnel, including the name of the employee, date of hire, date of training (owner/manager and server/seller) and date of new employee orientation.

(2) Date of licensee's certification.

(3) New employee orientation checklist(s), as explained in § 5.205(b)(3) (relating to RAMP certification prerequisites).

(4) Responsible alcohol service signs it posted, where and when the signs were posted, revised and reposted.

(b) 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)).

[COURSE OF STUDY] CURRICULUM FOR SERVER/SELLER TRAINING

§ 5.211. [Course of study for alcohol service personnel] Curriculum for server/seller training.

[(a) A standard curriculum for the course of study will be provided by the BAE.

(b) The BAE is authorized to review curriculum submitted by another training provider and to certify the curriculum if it is equivalent to or exceeds the BAE's standard curriculum. A request for review of curriculum must be accompanied by a nonrefundable \$250 application fee.

(1) In the event that the training provider's curriculum is not equivalent to or does not exceed the BAE's standard curriculum, the BAE will advise the training provider in writing within 90 days of receiving the curriculum and fee as to subjects where the training provider's curriculum is deficient.

(2) The training provider has the opportunity to correct and resubmit its curriculum no more than two times. Curriculum resubmitted under this subsection does not require the payment of an additional fee.

(3) If the training provider's curriculum is still deficient after the second and final resubmission, the BAE will not accept submissions or resubmissions from the training provider for 1 year from the date that the BAE sent notification to the training provider that the second resubmission was deficient.]

Any individual or entity that wants to offer server/seller training must use the standard curriculum provided by the Bureau of Alcohol Education or an alternative curriculum that has been approved for use by the PLCB.

§ 5.212. Standard curriculum.

(a) The PLCB makes available, on the BAE's page on the PLCB's web site, an electronic link to the PLCB's standard curriculum and a manual to be used by students. If an individual or entity requests the PLCB to provide this information in hard copy by means of mail, the PLCB will assess a flat fee, pursuant to an established fee schedule, for printing and mailing the information. The fee schedule will be published on the BAE's page on the PLCB's web site.

(b) The standard curriculum includes instruction on detecting signs of impairment and intoxication, identifying underage individuals, and detecting false identifications, including those that are altered, counterfeit or borrowed. Instruction will focus on the practical

application of the skills necessary to properly check identification, prevent intoxication and refuse service.

§ 5.213. Alternative curriculum.

(a) The PLCB makes available, on the BAE's page on the PLCB's web site, an electronic link to guidelines for submitting an alternative curriculum to be approved by the PLCB, along with an electronic link to the most current version of the PLCB's Web Trainee Transfer Service requirements. If an individual or entity requests the PLCB to provide this information in hard copy via mail, the PLCB will assess a flat fee, pursuant to an established fee schedule, for printing and mailing the information. The fee schedule will be published on the BAE's page on the PLCB's web site.

(b) The PLCB is authorized to approve the use of an alternative curriculum and student manual developed by another person or entity for use by an online training provider or a classroom instructor. An application for approval of the alternative curriculum and student manual must be accompanied by a nonrefundable \$250 application fee. The PLCB may approve the use of the alternative curriculum and student manual if they are equivalent to or exceed the PLCB's standard curriculum.

(c)(1) In the event that the alternative curriculum and student manual are not equivalent to or do not exceed the PLCB's standard curriculum and student manual, the PLCB will advise the applicant in writing as to the deficiencies within 90 days of receiving the alternative curriculum, student manual and fee.

(2) The applicant will have 60 days from the date of the notification to complete the required changes to the alternative curriculum and resubmit it for evaluation. If the alternative curriculum and student manual still do not meet or exceed the PLCB's standard curriculum and student manual, the PLCB will again advise the applicant in writing as to the deficiencies. The applicant will then have 30 days from the date of the second notification to complete the required changes to the online training program and provide access to the PLCB for a final evaluation of the alternative curriculum. The resubmission under this subsection does not require the payment of an additional fee.

(i) If the alternative curriculum still includes deficiencies after the third submission to the PLCB, the PLCB will send a notice to the applicant by United States mail that the alternative curriculum will not be approved and that the application is closed. No refund will be given to the applicant.

(ii) The PLCB will not accept, for a minimum of 1 year from the date of the notice advising the applicant that the application was closed, another application for alternative curriculum approval from the applicant. Applications will only be accepted during a period of open enrollment, which shall be posted on the BAE's page on the PLCB's web site.

(3) If the applicant has rectified the deficiencies in the alternative curriculum and student manual and they are approved by the PLCB, the applicant shall submit a clean, final copy of the approved alternative curriculum and the student manual.

ONLINE TRAINING PROVIDERS AND PROGRAMS FOR SERVER/SELLER TRAINING

§ 5.221. Online training provider application.

(a) A person who wants to become an authorized online training provider of server/seller training shall submit an application for authorization issued by the PLCB and pay a nonrefundable application fee of \$850, as well as a separate fee for a criminal record check.

(1) The PLCB will only accept applications during scheduled open enrollment periods, which shall be posted on the BAE's page on the PLCB's web site. The PLCB reserves the discretion to limit the number and frequency of open enrollment periods based on operational restrictions.

(b) The minimum qualifications of an online training provider are the same as the minimum qualifications of a classroom instructor, as set forth in § 5.231(b) (relating to classroom instructor application), except that online training providers are not required to attend owner/manager training.

(c) The applicant shall submit, for approval, a proposed online training program that must be approved by the PLCB before the PLCB will issue a notice of authorization to the online training provider.

§ 5.222. Online training program approval process.

(a) The online training program must be based on the PLCB's standard curriculum or an alternative curriculum that has been approved by the PLCB.

(1) Within 120 days of receiving the standard curriculum or approval to use an alternative curriculum, the applicant shall provide the PLCB with access to the proposed online training web site, including necessary login information for the purpose of viewing content and testing the web site.

(2) If the applicant requires more than 120 days to provide the PLCB with access to the proposed online training web site, the applicant may request an extension in writing, by letter or by e-mail. The PLCB may grant a 30-day extension for temporary, nonrecurring exigencies, such as instructor illness or family emergency, bad weather or other circumstances beyond the instructor's control.

(3) If the applicant does not provide the PLCB access to the proposed online training web site by the deadline provided by the PLCB, the application will be denied and no refund will be given to the applicant.

(b) Upon receipt of the applicant's proposed online training program, the PLCB will review and test the proposed online training program. While the online training program is under review by the PLCB, the applicant may not advertise the availability of the online training program or provide public access to the online training program.

(c) The PLCB will determine whether an applicant's online training program meets the minimum standards set forth in § 5.223 (relating to minimum standards of the online training program).

(d) After the initial evaluation, the PLCB will, if necessary, notify the applicant of any required changes that need to be made to the online training program. The applicant will have 60 days from the date of the notification to complete the required changes to the online training program and provide access to the PLCB for a second evaluation of the online training program.

(e) After the second evaluation, the PLCB will, if necessary, again notify the applicant of any required changes that need to be made to the online training program. The applicant will have 30 days from the date of the notification to complete the required changes to the online training program and provide access to the PLCB for a final evaluation of the online training program.

(1) If the online training program still requires changes after the third submission to the PLCB, the PLCB will send a notice to the applicant by United States mail that the online training program will not be approved and that the application is closed. No refund will be given to the applicant.

(2) The PLCB will not accept, for a minimum of 1 year from the date of the notice advising the applicant that the application was closed, another application for online training program approval from the applicant. Applications will only be accepted during a period of open enrollment, which shall be posted on the BAE's page on the PLCB's web site. See § 5.221(a) (relating to online training provider application).

(f) If the applicant meets the minimum requirements and the PLCB has approved that person's proposed online training program, the PLCB will issue to the online training provider a notice of authorization.

(g) The period of authorization shall be 1 year from the date of issuance of the notice of authorization. The renewal of authorization is addressed in § 5.225 (relating to renewal of authorization).

§ 5.223. Minimum standards of the online training program.

(a) Program features.

(1) The program content for the online training program must be either the standard curriculum or an approved alternative curriculum. Material changes to the curriculum may not be made without the approval of the PLCB.

(2) The online training program must cover topics required by the PLCB. The topics must be grouped into training modules. For some topics, the online training program must include mandatory language. The required topics, the mandatory language and the PLCB's final examination will be made available to the applicant by the PLCB.

(3) The online training program must include knowledge checks at the end of each training module. Knowledge checks ensure that a student is properly reviewing and understanding the program content. The online training program must require a student to correctly answer questions based on course content. Such questions should be designed to evaluate the student's comprehension of each training module before students are permitted to advance to the next training module.

(4) The online training program must use the PLCB's final examination.

(5) The online training program must consist of at least 1 1/2 hours of instructional time.

(6) The online training program must contain any disclaimers required by the PLCB, which the PLCB will provide to the applicant.

(b) Program availability.

(1) Every online training provider shall make its online training program available to the general public.

(2) An online training provider shall require a student to register for the online training program by using specific personal identifiers provided by the PLCB.

(i) The online training program must provide the opportunity for a student to confirm and edit the information submitted in the registration process before proceeding.

(ii) The registration process must require the student to provide an e-mail address.

(iii) As soon as the student has completed the registration process, the online training program must send the student an e-mail confirming his or her registration with that online training program. The e-mail must include a hyperlink to the online training program.

(3) If the online training provider offers training vouchers for licensees to purchase for the future use of the licensee's employees, the online training provider's web site must meet the requirements set forth in § 5.226 (relating to training vouchers).

(c) Program functionality.

- (1) All text on each page or screen of the online training program must be narrated.
- (2) Each page or screen of the online training program must be numbered.
- (3) Each page or screen of the online training program must be timed so that a student may not advance to the next page or screen without having sufficient opportunity to review the contents of the current page or screen.
- (4) Knowledge checks must be incorporated throughout the training.
- (5) The online training program must require the student to answer security questions during registration that will be used, at random intervals, to validate student identity and participation throughout the course.
- (6) The online training program must allow a student to pause and review previous pages or screens at any time.
- (7) The online training program must allow a student to save progress in the program content, log out and resume the online training program at a later time. Once the student has begun the final examination, however, logging out of the training program must not be permitted, as explained in subsection (d)(1)(i).

(d) Final Examination.

(1) At the conclusion of the online training program, the student shall be required to complete the PLCB's final examination.

(i) The student shall have one attempt at the final examination. The student shall not be permitted to log out of the final examination and resume the final examination at a later time.

(ii) Questions in the PLCB's final examination must be randomized by the online training provider.

(iii) The student shall not be able to print the final examination.

(2) The online training program must immediately score the final examination and immediately notify the student of that score. A score of 80% or better is required to pass the final examination.

(i) The online training program must be able to allow a student who receives a passing score on the final examination to print a certificate of completion provided by the PLCB.

(ii) A student who does not receive a passing score on the final examination may re-register for an online training program. However, the student may not retake the final examination without taking the online training program again.

(3) The online training program must provide each student with access to a manual.

(i) If the online training program is using the PLCB's standard curriculum, then the student shall be provided with the manual for that curriculum.

(ii) If the online training program is based on an alternative curriculum that has been approved by the PLCB, then the student shall be provided with the manual for that curriculum.

(iii) Manuals may not be printed until the conclusion of the final examination.

(iv) Manuals may not be provided to anyone not participating in an approved online training program.

(e) Security and technology.

(1) The online training program must comply with the most current version of the PLCB's Web Trainee Transfer Service requirements, as referenced in § 5.222(a) ~~(relating to online training program approval process)~~ 5.213(A) (RELATING TO ALTERNATIVE CURRICULUM).

(2) The online training program must encrypt, at all times, any personally identifiable information protected by law, including but not limited to a student's social security number or date of birth. The online training provider shall not sell or use such information for any purpose other than for identification by the online training provider and verification by the PLCB.

(3) The online training program must comply with any and all applicable Federal and State laws and regulations related to information security.

§ 5.224. Online training provider responsibilities.

Online training providers have the responsibility to do the following:

(1) Using the standard curriculum provided by the PLCB, or an alternative curriculum approved by the PLCB, provide students, by means of an online training program, with information regarding the current status of the law on issues regarding the sale or service of alcoholic beverages by licensees.

(2) Provide the PLCB with unlimited vouchers or pass codes that will allow the PLCB to access the online training program free of charge for review purposes.

(3) Train at least 225 students per year. Online training providers may request a waiver of the minimum requirements in this paragraph by sending a letter or e-mail to the PLCB. The PLCB will waive the requirements for minimum training activity for online training providers due to temporary, nonrecurring exigencies, such as online training provider illness

or family emergency, bad weather or other circumstances beyond the online training provider's control.

(4) Provide accurate records of a student's completion of online training to the PLCB immediately following the online training by electronically transmitting the necessary electronic data regarding the student.

(i) Records must be sent in real-time or in frequent batch submissions not more than 15 minutes after completion of the final examination.

(ii) The online training provider shall monitor submissions daily and resolve, within 24 hours, any error message received from the PLCB indicating that the submission was not processed. If the error message cannot be resolved within 24 hours, the online training provider shall immediately notify the PLCB.

(iii) The online training provider shall maintain all records of online training sessions for a minimum of 2 years.

(5) Attend instructor meetings as scheduled by the PLCB.

(6) Refer all questions relating to course content to the PLCB.

(7) Provide technical support to students via telephone, internet chat exchange or e-mail. Technical support must be timely and accurate. Any technical support inquiry from a student must be resolved within 1 business day 2 BUSINESS DAYS.

(8) Acknowledge or respond to e-mails, telephone calls or any other contacts placed by the PLCB, licensees and/or trainees within 48 hours.

(9) Submit all forms of correspondence used for marketing purposes to the PLCB for approval prior to dissemination. An online training provider shall not use any forms of correspondence for marketing purposes that have not been approved by the PLCB.

(10) With regard to changes to program content:

(i) Make required changes to written program content within 24 hours of being notified BY THE DATE PROVIDED by the PLCB.

(ii) Block public access to the program content until the required changes have been made and approved by the PLCB.

(iii) Refrain from making material changes to online training program content without being required to do so by the PLCB or without receiving approval from the PLCB to make the material changes.

(A) If the online training provider wants to make a material change to the online training program, the online training program must be submitted for review and approval, PURSUANT TO THE PROCEDURE SET FORTH IN SECTION 5.213 (RELATING TO ALTERNATIVE CURRICULUM), along with a nonrefundable fee of \$850 \$250 AS REQUIRED BY THAT SECTION, unless the changes were required by the PLCB.

(11) With regard to security and technology:

(i) Provide the PLCB with ~~not less than 30 calendar days'~~ notice of any system enhancements or modifications, including upgrades and new versions and releases.

(ii) Report, in accordance with the Breach of Personal Information Notification Act (73 P.S. §§ 2301—2329), any breach of system security or unauthorized release of personally identifiable information.

(iii) Report to the PLCB, within 24 hours, any system failure that prevents compliance with any of the requirements of this regulation.

(iv) Ensure the correction of a system failure within 7 calendar days.

(12) Notify the PLCB within 7 days of a change in the online training provider's telephone number, e-mail address or physical address and provide the PLCB with the new telephone number, e-mail address or physical address.

§ 5.225. Renewal of authorization.

(a) At least 30 days prior to the expiration of the online training provider's authorization, the online training provider shall submit an application for renewal of authorization, which will be provided by the PLCB.

(1) If the online training provider does not want to make material changes to the online training program from the last time it was approved by the PLCB, THE ONLINE TRAINING PROVIDER SHALL CERTIFY THAT NO MATERIAL CHANGES WERE MADE TO THE ONLINE TRAINING PROGRAM AFTER IT WAS LAST APPROVED BY THE PLCB. IN ADDITION, THE ONLINE TRAINING PROVIDER SHALL SUBMIT ~~then a \$600 fee must accompany~~ WITH the online training provider's application for renewal of authorization, as well as a separate fee for a criminal record check.

(2) If the online training provider wants to make material changes to the online training program, then a \$850 fee must accompany the online training provider's application for renewal of authorization, as well as a separate fee for a criminal record check. The online training provider shall use the online training program approved by the PLCB until the notice of authorization has been renewed. THE ONLINE TRAINING PROVIDER SHALL SUBMIT HARD COPY SCREEN SHOTS OF THE ONLINE TRAINING PROGRAM THAT INCORPORATES THE MATERIAL CHANGES. THE ONLINE TRAINING PROVIDER SHALL SUBMIT NO MORE THAN 2 SCREEN SHOTS PER ONE SIDE OF

AN 8 1/2 BY 11 INCH PIECE OF PAPER. THE SCREEN SHOTS MAY BE IN COLOR OR BLACK AND WHITE.

~~—(b) The online training provider shall submit, with the application for renewal of authorization, hard copy screen shots of the most recent PLCB approved online training program with renewal. The online training provider shall submit no more than 2 screen shots per one side of an 8 1/2 by 11 inch piece of paper. The screen shots may be in color or black and white.~~

~~—(c) (B) Untimely applications for authorization renewal.~~

~~—(1) The PLCB may accept an application for renewal of authorization that is filed less than 30 days before the expiration of the current authorization, but not after expiration, if the applicant includes an additional filing fee of \$100.~~

~~—(2) The PLCB may accept an application for renewal of authorization that is filed up to 30 days after the expiration of the current authorization if the applicant includes an additional filing fee of \$250.~~

~~—(3) (2) The PLCB will not accept applications—AN APPLICATION for renewal of authorization that are IS filed more than 30 days after the expiration of the current authorization.~~

~~—(4) (3) As of the date of the expiration of an online training provider's authorization, the following will no longer be valid:~~

~~—(i) Training that is completed by a student after the date of expiration,~~

~~—(ii) Any training vouchers issued by an online training provider that have not been redeemed and training completed.~~

(4) AS OF THE DATE OF THE EXPIRATION OF THE ONLINE TRAINING PROVIDER'S AUTHORIZATION, THE ONLINE TRAINING PROVIDER IS PROHIBITED FROM ALLOWING PUBLIC ACCESS TO ITS ONLINE SERVER/SELLER TRAINING FOR PENNSYLVANIA SERVER/SELLERS.

~~—(5) The PLCB will not accept, for a minimum of 1 year from the date of expiration, an application from an online training provider whose authorization has expired. Under such circumstances, a new application must be filed, not an application for renewal. Applications will only be accepted during a period of open enrollment, which shall be posted on the BAE's page on the PLCB's web site. See § 5.221(a) (relating to online training provider application).~~

§ 5.226. Training vouchers.

(a) The online training provider may sell training vouchers for future use by a licensee's employees. A licensee may purchase training vouchers in bulk for future use by its employees.

(b) Training vouchers are only valid for 60 days from the date of purchase and must indicate their expiration date. VALID FOR AS LONG AS THE ONLINE TRAINING PROVIDER IS AUTHORIZED TO PROVIDE SERVER/SELLER TRAINING.

(c) The online training provider shall ensure that its web site includes a notice on the same page that informs the public about training vouchers, that training vouchers are only valid for 60 days from the date of purchase and must indicate their expiration date. The notice must require the purchaser to acknowledge this information before completing the purchase of the training vouchers.

§ 5.227. Deauthorization of online training providers.

(a) The PLCB will send a notice of violation to an online training provider by certified United States mail if the online training provider is:

(1) Failing to meet the minimum standards of the online training program set forth in § 5.223 (relating to minimum standards of the online training program),

(2) Failing to meet the responsibilities set forth in § 5.224 (relating to online training provider responsibilities),

(3) Engaging in prohibited conduct set forth in § 5.251 (relating to additional prohibited conduct).

(b) The notice of violation will give the online training provider a deadline by which the violation must be remedied. The amount of time given to remedy the violation will vary depending upon the complexity of the circumstances and may be up to 60 days. The notice of violation may advise the online training provider that its authorization is temporarily suspended, pending resolution of the violation.

(1) IF THE ONLINE TRAINING PROVIDER RECEIVES A NOTICE THAT ITS AUTHORIZATION IS TEMPORARILY SUSPENDED, THE ONLINE TRAINING PROVIDER MUST IMMEDIATELY PROHIBIT ALL STUDENTS FROM ACCESSING THE ONLINE TRAINING PROGRAM UNTIL THE VIOLATION THAT PROMPTED THE SUSPENSION HAS BEEN RESOLVED.

(c) If the violation is not remedied by the deadline, or if the PLCB has grounds to issue a second notice of violation within the same authorization year as the first notice of violation, the PLCB will send a notice of deauthorization to an online training provider by certified United States mail. An appeal of the PLCB's decision to deauthorize shall be in accordance with 1 Pa. Code §§ 31.1—35.251 (relating to General Rules of Administrative Practice and Procedure).

~~(1) As of the date of the PLCB's notice of deauthorization to an online training provider, the following will no longer be valid:~~

~~(i) Training that is completed by a student after the date of the PLCB's notice of deauthorization;~~

~~(ii) Any training vouchers issued by an online training provider that have not been redeemed and training completed;~~

(1) IF THE ONLINE TRAINING PROVIDER RECEIVES A NOTICE THAT IT HAS BEEN DEAUTHORIZED, THE ONLINE TRAINING PROVIDER SHALL IMMEDIATELY:

(I) RENDER THE ONLINE TRAINING PROGRAM INACCESSIBLE BY NEW STUDENTS;

(II) CONTACT, BY E-MAIL, ALL STUDENTS WHO HAVE STARTED THE COURSE BUT NOT FINISHED IT AND ADVISE THEM TO FINISH IT WITHIN 14 DAYS AFTER THE DATE OF DEAUTHORIZATION;

(III) CONTACT, BY E-MAIL OR BY TELEPHONE, THE PURCHASERS OF ALL UNREDEEMED VOUCHERS AND ADVISE THEM THAT THE ONLINE TRAINING PROGRAM IS NO LONGER AUTHORIZED; AND

(IV) REMIT REFUNDS TO ALL PURCHASERS OF VOUCHERS THAT HAVE NOT BEEN REDEEMED. THE ONLINE TRAINING PROVIDER SHALL REFUND THE AMOUNT FOR THESE VOUCHERS AT THE SAME BULK RATE THAT THE PURCHASER PAID.

(d) The PLCB will not accept, for a minimum of 1 year from the notice of deauthorization, an application from an online training provider that has been issued a notice of deauthorization. Under such circumstances, a new application must be filed, not an application for renewal. Applications will only be accepted during a period of open enrollment. See § 5.221(a) (relating to online training provider application).

CLASSROOM INSTRUCTORS OF SERVER/SELLER TRAINING

§ 5.231. [Instructor certification] Classroom instructor application.

[The BAE will have a procedure, as set forth in this section, to confirm a person's competency to begin and continue working as an instructor. Part of this procedure will include observation of the instructor's training sessions by representatives of the BAE at least twice per year.]

(1) ~~(a)~~ A person desiring ~~[certification as an]~~ authorization to be a classroom instructor shall submit an application ~~[on forms]~~ issued by the ~~[Board]~~ PLCB and pay a ~~[\$250]~~ \$500 nonrefundable application fee, as well as a fee for a criminal record check.

(1) The PLCB will only accept applications during scheduled open enrollment periods. The PLCB reserves the discretion to limit the number and frequency of open enrollment periods based on operational restrictions.

(2) ~~(b)~~ The minimum qualifications of ~~[an]~~ a classroom instructor include the following:

(i) ~~(1)~~ Possessing a high school diploma or GED.

(ii) ~~Possessing~~ ~~(2)~~ Within the previous 5 years, having a minimum of 2 years of experience, full-time, as a trainer or in giving presentations in the field of education, law, law enforcement, substance abuse prevention, hospitality related to hotel/restaurant management or alcohol service training or other equivalent combination of experience and training.

(iii) ~~(3)~~ Being 21 years of age or older.

(iv) ~~(4)~~ Having no ~~[arrests]~~ convictions that are related to alcohol, narcotics or other controlled substances and having no felony convictions in the previous 10 years.

(v) ~~(5)~~ Attending ~~[manager/owner]~~ owner/manager training once in the year preceding the date the application for instructor ~~[certification]~~ authorization is filed. Classroom instructors shall attend the owner/manager training in a classroom setting.

(3) If a person who has submitted a completed application meets the minimum requirements for certification, the Board will issue to the instructor a Notice of Certification. The period of certification shall be 1 year from the date of issuance of the Notice of Certification.

(4) Renewal of certification shall be submitted to the BAE at least 30 days prior to the expiration of the classroom instructor's current certification. The forms shall be provided by the BAE. A \$250 fee must accompany an application for renewal.]

§ 5.232. [Instructor responsibilities] Classroom instructor approval process.

[Instructors have the responsibility to do the following:

(1) Using the standard curriculum provided by the BAE or a curriculum certified by the BAE, provide students with information regarding the current status of the law on issues regarding the sale or service of alcoholic beverages by licensees.

(2) Schedule training sessions in locations throughout this Commonwealth.

(3) Conduct at least two training sessions per quarter and train at least 225 students per year. Instructors may request a waiver of the minimum requirements in this paragraph by sending a letter or e-mail to the BAE. The BAE will waive the requirements for minimum training activity for instructors due to temporary, nonrecurrent exigencies, such as instructor illness or family emergency, bad weather or other circumstances beyond the instructor's control.

(4) Provide accurate records of attendance and course completion, as required under § 5.233(c) (relating to minimum standards of training), to the BAE within 7 calendar days following each training session through the BAE's web site. Original attendance sheets shall be submitted to the BAE by first class United States mail, other delivery or express service, transmission by facsimile or by e-mail.

(5) Attend instructor meetings twice per year as scheduled by the BAE.

(6) Attend manager/owner training at least once per year.]

(a) Applicants shall attend a 2 day mandatory training session in Harrisburg before the PLCB will issue a notice of authorization. An applicant who does not attend and complete the 2day training session will be disqualified from consideration as a classroom instructor.

(b) The PLCB shall issue a notice of authorization to those applicants who have successfully completed the training session. The period of authorization shall be 1 year from the date of issuance of the notice of authorization. The classroom instructor is required to successfully complete a probationary period.

(1) Within the first 3 months of probation, the PLCB will evaluate the classroom instructor at least once. There are five possible evaluation ratings: Outstanding, Commendable, Satisfactory, Needs Improvement, or Unsatisfactory.

(i) The classroom instructor must receive an "Outstanding," "Commendable," or "Satisfactory" rating in order to successfully complete the probationary period.

(ii) If the classroom instructor receives a "Needs Improvement" rating, the classroom instructor will be re-evaluated by the PLCB at any time within the next 3 months. Upon re-evaluation, the classroom instructor must receive an "Outstanding," "Commendable," or "Satisfactory" rating in order to successfully complete the probationary period. If the classroom instructor does not, the PLCB will terminate the classroom instructor's notice of authorization.

(iii) If the classroom instructor receives an "Unsatisfactory" rating, the PLCB will terminate the classroom instructor's notice of authorization.

(iv) "Termination" will be treated the same as deauthorization for purposes of § 5.236 (relating to deauthorization of classroom instructors).

§ 5.233. Minimum standards of classroom training.

(a) [Instructors] A classroom instructor shall conduct training sessions conforming to either the [BAE's] PLCB's standard curriculum or [a] an alternative curriculum [certified] approved by the [BAE] PLCB. ~~A classroom instructor shall adhere to either the standard curriculum or an alternative curriculum approved by the PLCB.~~

(1) Each training session must consist of at least 2 1/2 hours of uninterrupted instructional time, not including time spent reviewing information with students or administering the final examination. Each training session must be taught in one session from start to finish.

(2) The ratio of students per classroom instructor may not exceed 40 to 1.

(b) [Instructors] A classroom instructor shall notify the [BAE] PLCB of the following:

(1) At least 7 calendar days in advance of scheduling any training session. [Instructors] A classroom instructor shall provide notification to the BAE through the BAE's [web site] page on the PLCB's web site.

(2) Immediately of any training session cancellation. [Instructors] A classroom instructor shall provide notification to the [BAE] PLCB by [first class United States mail, other delivery or express service, transmission by facsimile] telephone or by e-mail.

(3) Immediately of any changes to the training schedule. [Instructors] A classroom instructor shall provide notification to the [BAE] PLCB by [first class United States mail, other delivery or express service, transmission by facsimile] telephone or by e-mail.

(c) [Instructors] A classroom instructor shall obtain the student information indicated in paragraphs [(1)—(3)] (1)—(4) at the beginning of the training session. [An instructor] A classroom instructor shall send a completed attendance sheet to the [BAE] PLCB within 7 days of the end of the training session, including the following information from each student:

(1) Name.

(2) Home address and e-mail address.

(3) [Home telephone] Telephone number.

(4) Student identification number issued by the [BAE] PLCB.

[(5) Pass/fail score on the test.

(6) Licensed establishment name, address and licensee identification.

(7) Time and location of training.]

(5) Licensed establishment name, address and licensee identification.

(6) Time, date and location of training.

(7) Pass/fail score on the test.

(d) At the conclusion of the training, the classroom instructor shall administer a [standardized test] final examination prepared by the [BAE] PLCB, [insuring] ensuring that students complete the final examination individually, as a closed book [exam] examination, without access to references or assistance from others to aid in the completion of the final examination.

(e) WITHIN SEVEN DAYS, [The] the classroom instructor shall grade the final examinations and notify students of their grades. A [test] score of 80% or better is required to pass. The classroom instructor shall provide a standard participant wallet card to each student who passes the final examination. These wallet cards are provided to the classroom instructor by the PLCB. A student who does not pass the final examination may, at the first opportunity, schedule training and take the [test] final examination again. However, the student may not retake the final examination without receiving the training again.

§ 5.234. Classroom instructor responsibilities.

Classroom instructors have the responsibility to do the following:

(1) While on probationary status, the classroom instructor shall adhere to all of the PLCB's Regulations and Probationary Status Instructor policies that will be provided by the PLCB.

(2) Using the standard curriculum provided by the PLCB, or an alternative curriculum approved by the PLCB, provide students with information regarding the current status of the law on issues regarding the sale or service of alcoholic beverages by licensees. Classroom instructors shall provide each student with a student manual that corresponds to the standard curriculum or an alternative curriculum approved by the PLCB.

(i) A classroom instructor shall refrain from making any modifications or MATERIAL changes to the standard curriculum without being required to do so by the PLCB.

(ii) A classroom instructor shall refrain from making any modifications or MATERIAL changes to an alternative curriculum without first receiving approval from the PLCB to make the proposed modifications or changes.

(iii) If the classroom instructor wants to revise MAKE MATERIAL CHANGES TO EITHER THE STANDARD CURRICULUM OR the AN APPROVED alternative curriculum, the curriculum must be submitted CLASSROOM INSTRUCTOR MUST

SUBMIT THE CURRICULUM, INCLUDING THE MATERIAL CHANGES, TO THE BAE for review and approval, along with a nonrefundable fee of \$250 IN ACCORDANCE WITH THE PROVISIONS OF SECTION 5.213(B) (RELATING TO ALTERNATIVE CURRICULUM), unless the changes were required by the PLCB.

(3) Schedule training sessions in locations throughout this Commonwealth.

(4) Conduct at least two training sessions per quarter and train at least 225 students per year. Classroom instructors may request a waiver of the minimum requirements in this paragraph by sending a letter or e-mail to the PLCB. The PLCB will waive the requirements for minimum training activity for instructors due to temporary, nonrecurring exigencies, such as instructor illness or family emergency, bad weather or other circumstances beyond the instructor's control.

(5) Provide accurate records of attendance and course completion, as required under § 5.233(c) (relating to minimum standards of classroom training), to the PLCB within 7 calendar days following each training session through the BAE's page on the PLCB's web site. Original attendance sheets must be submitted to the PLCB by first class United States mail, other delivery or express service or by e-mail.

(6) Attend instructor meetings as scheduled by the PLCB.

(7) Attend in-class owner/manager training at least once per year.

(8) Acknowledge or respond to e-mails, telephone calls or any other contacts placed by the PLCB, licensees and/or trainees within 48 hours.

(9) Submit all forms of correspondence used for marketing purposes to the PLCB for approval prior to dissemination. A classroom instructor shall not use any forms of correspondence for marketing purposes that have not been approved by the PLCB.

(10) Notify the PLCB within 7 days of a change in the classroom instructor's telephone number, e-mail address or physical address and provide the PLCB with the new telephone number, e-mail address or physical address.

§ 5.235. Renewal of authorization.

(a) At least 30 days prior to the expiration of the classroom instructor's authorization, the classroom instructor shall submit an application for renewal of authorization, which will be provided by the PLCB. A \$300 fee must accompany the classroom instructor's application for renewal of authorization, as well as a separate fee for a criminal record check.

(b) If the classroom instructor is using an alternative curriculum, the classroom instructor shall submit a copy of the most recently PLCB-approved curriculum with the application for renewal of authorization. If the classroom instructor is using the standard curriculum, the

classroom instructor need not submit a copy of the standard curriculum with the application for renewal of authorization.

(1) If the classroom instructor does not want to make material changes to the alternative curriculum from the last time it was approved by the PLCB, no additional fee is required.

(2) If the classroom instructor wants to make material changes to the alternative curriculum, then an additional \$250 fee, for a total of \$550, must accompany the classroom instructor's application for renewal of authorization. The classroom instructor shall use the alternative curriculum approved by the PLCB until the notice of authorization has been renewed.

(c) *Untimely applications for authorization renewal.*

(1) The PLCB may accept an application for authorization renewal that is filed less than 30 days before the expiration of the current authorization, but not after expiration, if the applicant includes an additional filing fee of \$100.

(2) The PLCB may WILL NOT accept an application for RENEWAL OF authorization renewal that is filed up to 30 days after the expiration of the current authorization if the applicant includes an additional filing fee of \$250.

(3) The PLCB will not accept applications for renewal that are filed more than 30 days after the expiration of the current authorization.

(4) The PLCB will not accept, for a minimum of 1 year from the date of expiration, an application from a classroom instructor whose authorization has expired. Under such circumstances, a new application must be filed, not an application for renewal. Applications will only be accepted during a period of open enrollment. See § 5.231(a) (relating to classroom instructor application).

§ 5.236. Deauthorization of classroom instructors.

(a) The PLCB will send a notice of violation to a classroom instructor by certified United States mail if the classroom instructor is:

(1) Failing to meet the minimum standards of classroom training set forth in § 5.233 (relating to minimum standards of classroom training).

(2) Failing to meet the responsibilities set forth in § 5.234 (relating to classroom instructor responsibilities).

(3) Engaging in prohibited conduct set forth in § 5.251 (relating to additional prohibited conduct).

(b) The notice of violation will give the classroom instructor a deadline if the violation can be remedied. The amount of time given to remedy the violation will vary depending upon the complexity of the circumstances.

(c) If the violation is not remedied by the deadline, or if the PLCB has grounds to issue a second notice of violation within the same authorization year as the first notice of violation, the PLCB will send a notice of deauthorization to the classroom instructor by certified United States mail. An appeal of the PLCB's decision to deauthorize shall be in accordance with 1 Pa. Code §§ 31.1—35.251 (relating to General Rules of Administrative Practice and Procedure).

(d) The PLCB will not accept, for a minimum of 1 year from the notice of deauthorization, an application from a classroom instructor that has been issued a notice of deauthorization. Under such circumstances, a new application must be filed, not an application for renewal. Applications will only be accepted during a period of open enrollment. See § 5.231(a) (relating to classroom instructor application).

[TRAINING/ORIENTATION]

§ 5.241. [Manager/owner training] **Reserved.**

[(a) Manager/owner training will be conducted by the BAE.

(b) Training must include instruction on proper service of alcohol, developing an alcohol service policy and establishing house rules and policies aimed at preventing sales of alcoholic beverages to minors or visibly intoxicated persons. Instruction shall also be provided on identification checks and signs of visible intoxication. Instruction shall be provided on techniques to assure that employees are complying with house rules and policies, including the orientation of new and current employees and the documentation of incidents occurring in the workplace.

(c) For 2 years, the Board will maintain records establishing the names of individuals who have successfully undergone manager/owner training.]

§ 5.242. [New employee orientation] **Reserved.**

[(a) Licensees applying for certification of compliance under section 471.1 of the Liquor Code (47 P.S. § 4-471.1) shall conduct new employee orientation within 30 days of the employee's hire, in accordance with a checklist of responsible server practices provided by the BAE including:

(1) Penalties for furnishing or selling alcohol to minors.

(2) Acceptable forms of identification as defined in section 495(a) of the Liquor Code (47 P.S. § 4-495(a)).

(3) Practices for checking identification to prevent the service of alcohol to minors, which is prohibited under section 493(1) of the Liquor Code (47 P.S. § 4-493(1)).

(4) Penalties for furnishing or selling alcohol to visibly intoxicated persons.

(5) Practices for refusing service of alcohol to visibly intoxicated persons.

(6) Procedures for handling situations where criminal activity, such as drug activity, assaults or fights, loitering and prostitution, is occurring in or about the premises.

(b) The licensee is responsible for ensuring that the owner or manager conducts the new employee orientation.]

§ 5.243. [Records] Reserved.

[(a) The licensee shall keep the following records:

(1) Certification status of its employees, managers and owners, consisting of the name of the employee, manager or owner, date of hire, date of training and the name of the trainer.

(2) Date of premises certification.

(3) Records of its new employee orientation program.

(4) Responsible alcohol service signs it posted, where and when the signs were posted, revised and reposted.

(b) 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)).]

ADDITIONAL PROHIBITED CONDUCT

§ 5.251. [Prohibited] Additional prohibited conduct.

[(a)] The [Board] PLCB may [decertify] deauthorize classroom instructors or online training providers for violating any of the provisions of this subchapter or engaging in the following conduct:

(1) Discrimination or harassment based on age, race, sex, disability, national origin or religion, or any other protected class under the Pennsylvania Human Relations Act, 43 P.S. §§ 951—963.

(2) An act that is in violation of the Liquor Code or this title.

- (3) An act resulting in a misdemeanor or felony conviction.
- (4) An act resulting in admittance into an Accelerated Rehabilitative Disposition (ARD) program if the underlying activity is related to alcoholic beverages, narcotics or controlled substances.
- (5) Being under the influence of alcoholic beverages, narcotics or controlled substances during training presentations, **[examinations or] breaks, or the final examination.**
- (6) Knowingly permitting students to be under the influence of alcoholic beverages, narcotics or controlled substances during training presentations, **[examinations or] breaks, or the final examination.**
- (7) Cheating or condoning cheating by students.
- (8) Knowingly providing false information on reports submitted to the **[Board] PLCB.**
- [(9) Having an unacceptable evaluation regarding the presentation of the course of study from class observations conducted by the BAE. An unacceptable evaluation will result from conduct including, but not limited to, the following:**
- i. Failing to satisfactorily carry out the instructor's responsibilities in § 5.232 (relating to instructor responsibilities).**
 - ii. Failing to meet the minimum standards of training in § 5.211 (relating to course of study for alcohol service personnel).**
 - iii. Failing to provide students with current and accurate information.**
 - iv. Failing to provide accurate records of attendance and course completion to the BAE.**
 - v. Failing to conduct at least 2 1/2 hours of instructional time in each training.**
 - vi. Exceeding the ratio of students per instructor.**
 - vii. Failing to properly administer the standardized test prepared by the BAE.**
- (b) The Board will send a Notice of Decertification to an instructor by certified United States mail. An appeal of the Board's decision to decertify an instructor shall be as set forth in 2 Pa.C.S. § 702 (relating to appeals).**
- (c) The Board will not consider application for recertification until 1 year after the date of decertification.]**

[SIGNS]

§ 5.261. [Signs] **Reserved.**

[(a) Signs for posting in the licensed premises will be provided by the Board. A licensee may use its own signs provided that they are equivalent in size and content to the Board's signs.

(b) The following signs must be posted, notifying patrons about:

(1) Acceptable forms of identification as described in section 495(a) of the Liquor Code (47 P.S. § 4-495(a)).

(2) The licensee's duty to refuse service to minors and visibly intoxicated persons under section 493(1) of the Liquor Code (47 P.S. § 4-493(1)).

(c) The design of the signs must be so that they are legible from a distance of 10 feet. Signs must be located where patrons will easily see them.

(d) The licensee is responsible for the posting and maintenance of signs.]

[CERTIFICATION]

§ 5.271. [Premises certification] **Reserved.**

[(a) A licensee may request that the Board certify that it complies with section 471.1 of the Liquor Code (47 P.S. § 4-471.1). The request may be made by personal contact, telephone or written communication to the BAE. Written communication includes first class United States mail, other delivery or express service, transmission by facsimile or by e-mail.

(b) Certification or recertification will be issued by the Board after investigation and approval of the licensed premises.

(c) There is no fee for certification or recertification.

(d) If the Board finds that a licensee has met the requirements under section 471.1 of the Liquor Code, the licensee will be issued a certificate of compliance valid for 2 years.

(e) If the Board finds that a licensee has not met the requirements under section 471.1 of the Liquor Code or this subchapter, and the licensee's compliance with section 471.1 of the Liquor Code or this subchapter was not mandated by the Office of Administrative Law Judge, by statute, by regulation or by a conditional licensing agreement, the Board will refuse certification or decertify the licensee.

(f) If the Board finds that a licensee has not met the requirements under section 471.1 of the Liquor Code or this subchapter and the licensee's compliance with section 471.1 of the Liquor Code or this subchapter was required by the Office of Administrative Law Judge, by statute, by regulation or by a conditional licensing agreement, the Board will refuse the application for certification or decertify the licensee and refer the matter to the Pennsylvania State Police, Bureau of Liquor Control Enforcement.

(g) The Board will send a Notice of Decertification to the licensee by certified United States mail. Appeal of the Board's decision to decertify a licensee shall be as set forth in 2 Pa.C.S. § 702 (relating to appeals).

(h) A licensee may apply for recertification at any time after the date of decertification.

(i) The Office of Administrative Law Judge will take official notice of the Board's records with regard to the licensee's certification.]

Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board
June 9, 2021

SUBJECT: Final-form Regulation Package 54-90
Responsible Alcohol Management Program

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"), RServing, the National Restaurant Association, and eStrategy Solutions. The responses to these 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 June 3, 2019.

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:

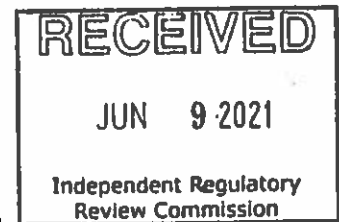
Honorable Mike Regan, Majority Chairman, Senate Law and Justice Committee
Honorable James Brewster, Minority Chairman, Senate Law and Justice Committee
Honorable Carl Metzgar, Majority Chairman, House Liquor Control Committee
Honorable Daniel Deasy, Minority Chairman, House Liquor Control Committee
Taylor 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

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

I.D. NUMBER: 54-90
SUBJECT: Responsible Alcohol Management Program
AGENCY: Pennsylvania Liquor Control Board

TYPE OF REGULATION

___ **Proposed Regulation**
X **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

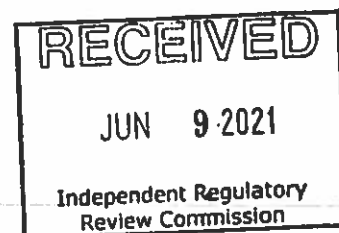
<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
<u>6/9/21</u>	<u>See email from Taylor Wamsher</u>	SENATE LAW & JUSTICE COMMITTEE (Majority)
<u>6/9/21</u>	<u>See email from Stephen Bruder</u>	SENATE LAW & JUSTICE COMMITTEE (Minority)
<u>6/9/21</u>	<u>See email from Mike Biacchi</u>	HOUSE LIQUOR CONTROL COMMITTEE (Majority)
<u>6/9/21</u>	<u>See email from Lynn Benka-Davies</u>	HOUSE LIQUOR CONTROL COMMITTEE (Minority)
___	___	INDEPENDENT REGULATORY REVIEW COMMISSION

Foster, Norina

From: Wamsher, Taylor <twamsher@pasen.gov>
Sent: Wednesday, June 9, 2021 10:05 AM
To: Foster, Norina
Subject: RE: PLCB Final Form Regulation 54-90 - Responsible Alcohol Management Program

I have received it!

Thanks,
Taylor



From: Foster, Norina <nofoster@pa.gov>
Sent: Wednesday, June 9, 2021 9:24 AM
To: Wamsher, Taylor <twamsher@pasen.gov>
Subject: PLCB Final Form Regulation 54-90 - Responsible Alcohol Management Program

Ⓢ CAUTION : External Email Ⓢ

Good morning,

Attached please find the PLCB's final-form regulatory package. 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!

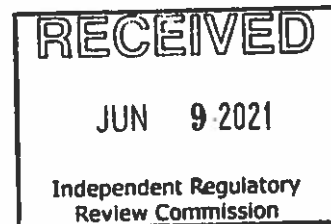
Norina K. Foster | Assistant Counsel
Pennsylvania Liquor Control Board | Office of Chief Counsel
401 Northwest Office Building | Harrisburg, PA 17124
Phone: 717.783.9454 | Fax: 717.787.8820
Email: nofoster@pa.gov
lcb.pa.gov

This message and any attachment is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute a waiver of any privilege.

Foster, Norina

From: Bruder, Stephen <Stephen.Brunder@pasenate.com>
Sent: Wednesday, June 9, 2021 1:27 PM
To: Foster, Norina
Subject: RE: PLCB Final Form Regulation 54-90 - Responsible Alcohol Management Program

received

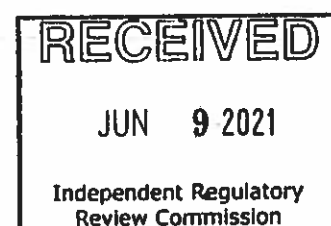


Foster, Norina

From: Foster, Norina
Sent: Wednesday, June 9, 2021 9:45 AM
To: Stephen Bruder (SBRUDER@pasenate.com)
Subject: FW: PLCB Final Form Regulation 54-90 - Responsible Alcohol Management Program
Attachments: 54-90 RAMP FINAL FORM - Senate Law and Justice Committee.pdf; 54-90 CDL-1 Two signatures.pdf; 54-90 RAMP - Final Form Preamble and Annex.pdf; 54-90 RAMP - Final Form RAF updated with forms.pdf; 54-90 Response to eStrategy Solutions.pdf; 54-90 Response to National Restaurant Association.pdf; 54-90 Response to RServing.pdf; 54-90 Responses of the PLCB to IRRC Comments.pdf

My apologies. Please confirm receipt for the Senate Minority. Thank you!

From: Foster, Norina
Sent: Wednesday, June 9, 2021 9:29 AM
To: Stephen Bruder (SBRUDER@pasenate.com) <SBRUDER@pasenate.com>
Subject: PLCB Final Form Regulation 54-90 - Responsible Alcohol Management Program



Good morning,

Attached please find the PLCB's final-form regulatory package. 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

This message and any attachment is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute a waiver of any privilege.

Foster, Norina

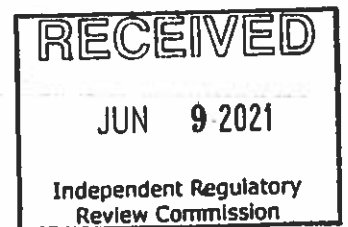
From: Michael Biacchi <Mbiacchi@pahousegop.com>
Sent: Wednesday, June 9, 2021 9:51 AM
To: Foster, Norina
Subject: RE: PLCB Final Form Regulation 54-90 - Responsible Alcohol Management Program

I have received it.

From: Foster, Norina <nofoster@pa.gov>
Sent: Wednesday, June 9, 2021 9:46 AM
To: Michael Biacchi <Mbiacchi@pahousegop.com>
Subject: FW: PLCB Final Form Regulation 54-90 - Responsible Alcohol Management Program

My apologies. Please confirm receipt for the House Majority leader.

Thank you!



From: Foster, Norina
Sent: Wednesday, June 9, 2021 9:30 AM
To: Mbiacchi@pahousegop.com
Subject: PLCB Final Form Regulation 54-90 - Responsible Alcohol Management Program

Good morning,

Attached please find the PLCB's final-form regulatory package. 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

This message and any attachment is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute a waiver of any privilege.

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this information in error, please contact the sender and delete the message and material from all computers.

Foster, Norina

From: Benka-Davies, Lynn <LBDavies@pahouse.net>
Sent: Wednesday, June 9, 2021 3:06 PM
To: Foster, Norina
Subject: RE: PLCB Final Form Regulation 54-90 Responsible Alcohol Management Program

I have received the regulations.

Thank you,

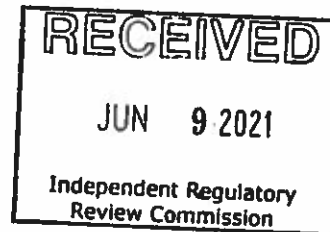
Lynn

Lynn Benka-Davies, Executive Director

House Liquor Control Committee (D)

lbDavies@pahouse.net

717-943-5145



From: Foster, Norina <nofoster@pa.gov>
Sent: Wednesday, June 9, 2021 2:06 PM
To: Benka-Davies, Lynn <LBDavies@pahouse.net>
Subject: PLCB Final Form Regulation 54-90 Responsible Alcohol Management Program

Hi Lynn,

Can you send me confirmation that you received the reg package I sent earlier today? If you didn't get it, let me know and I'll send it again.

Thanks!

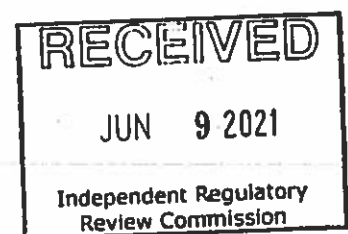
Norina

Foster, Norina

From: Foster, Norina
Sent: Wednesday, June 9, 2021 9:46 AM
To: Lynn Benka-Davies (LBDavies@pahouse.net)
Subject: FW: PLCB Final Form Regulation 54-90 - Responsible Alcohol Management Program
Attachments: 54-90 CDL-1 Two signatures.pdf; 54-90 RAMP - Final Form Preamble and Annex.pdf; 54-90 RAMP - Final Form RAF updated with forms.pdf; 54-90 Response to eStrategy Solutions.pdf; 54-90 Response to National Restaurant Association.pdf; 54-90 Response to Rerving.pdf; 54-90 Responses of the PLCB to IRRC Comments.pdf; 54-90 RAMP FINAL FORM - House Liquor Control Committee.pdf

My apologies. Please confirm receipt for the House Minority leader.

Thank you!



From: Foster, Norina
Sent: Wednesday, June 9, 2021 9:31 AM
To: Lynn Benka-Davies (LBDavies@pahouse.net) <LBDavies@pahouse.net>
Subject: PLCB Final Form Regulation 54-90 - Responsible Alcohol Management Program

Good morning,

Attached please find the PLCB's final-form regulatory package. 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

This message and any attachment is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute a waiver of any privilege.