

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p>	
<p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p>2015 MAY 15 PM 3:12</p>	
<p>(1) Agency: Pennsylvania Liquor Control Board</p>		<p>IRRC</p>	
<p>(2) Agency Number: 54 Identification Number: 74</p>		<p>IRRC Number: 3026</p>	
<p>(3) PA Code Cite: 40 Pa. Code § 7.10</p>			
<p>(4) Short Title: Increasing Fines in Conversion of Suspension to Fine Actions</p>			
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Justin Blake (717) 783-9454 Pennsylvania Liquor Control Board 401 Northwest Office Building Harrisburg, Pennsylvania 17124 FAX: (717) 787-8820 Email: ra-lblegal@pa.gov</p> <p>Secondary Contact: Rodrigo Diaz (717) 783-9454 (Same Contact Information)</p>			
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation <input checked="" type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General</p>	
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>The proposed rulemaking will amend section 7.10 of the Board's Regulations by increasing the minimum fines that may be imposed when the Board is asked to convert an unserved suspension into a fine, as authorized by section 468(a)(4) of the Liquor Code. The proposed regulation would increase the minimum fine for conversions subject to section 7.10(d)(1) of the Board's Regulations from one hundred dollars (\$100) to one thousand dollars (\$1,000), and would increase the minimum fine for conversions subject to section 7.10(d)(2) of the Board's Regulations from one thousand dollars (\$1,000) to three thousand dollars (\$3,000) per day.</p>			
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>Pennsylvania Liquor Code, sections 207(i) and 468(a)(4) [47 P.S. §§ 2-207(i), 4-468(a)(4)].</p>			

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(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. There are no relevant state or federal court decisions pertaining to this regulatory change.

(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.

The proposed rulemaking will amend section 7.10 of the Board's Regulations by increasing the minimum amount of fines acceptable to the Board when the Board is requested to convert an unserved suspension to a fine in connection with a license transfer application.

Section 468(a)(4) of the Liquor Code [47 P.S. § 4-468(a)(4)] gives the Board the discretion to convert license suspensions, which have been ordered by administrative law judges in citation matters but which remain unserved because the premises is not in operation, into monetary fines at the request of a transferee. If the Board accepts the request for a conversion, it will notify the transferee of the amount of the fine. The transferee may either accept or reject the proposed fine. If accepted, the fine must be paid as a condition to approval of the transfer; if rejected, the conversion is rendered a nullity and the unserved suspension remains in effect for the licensee.

Pursuant to section 7.10 of the Board's Regulations, the Board adopted a methodology whereby it would base the fine on one-half ($\frac{1}{2}$) of the average daily gross receipts of the transferor in its last year of operation. Currently, a minimum fine of one hundred dollars (\$100) per each day of unserved suspension is imposed unless the citation is one in which the minimum fine would have been one thousand dollars (\$1,000); in those situations, the minimum fine acceptable is one thousand dollars (\$1,000) per each day of unserved suspension. [40 Pa. Code § 7.10]. The minimum fine is imposed when a licensee does not possess or fails to provide tax returns to demonstrate the gross revenue for the last calendar year of operation, or when the formula results in an amount that is lower than the above-referenced minimum.

The Board believes the regulation is needed because converting a suspension into a fine of only one hundred dollars (\$100) diminishes the deterrent and punitive effects that were intended by the initial suspension order. If the minimum fines were increased to one thousand dollars (\$1,000) a day for non-enhanced penalty citations, and three thousand dollars (\$3,000) a day for enhanced penalty citations, these concerns would be alleviated.

(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 amended regulation 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?

Unserved suspensions in license transfer applications are regulated by neighboring states in accordance with their unique and individual systems of alcoholic beverage control. Because of this, the regulatory change should not put Pennsylvania at a competitive disadvantage.

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

The 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.)

No public input has been received in the development and drafting of these regulations.

(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?

To the extent that applicants in future license transfer matters will be affected by the proposed regulation, the types and number of such applicants are unknown to the Board and therefore cannot be identified or quantified.

With respect to the impact on retail and other licensees with unserved suspensions which desire to transfer the license, increasing the minimum fines in conversion of suspension to fine actions would arguably lessen the value of the license in the marketplace, depending on the severity of the suspension. However, it would only affect those licensees which would have incurred a lesser fine amount under the current regulation. Moreover, since the transferee has the right to reject the fine amount set by the Board and instead serve the original suspension, the increased minimum fine may be avoided altogether, if the transferee so chooses.

Under federal law (relating to Small Business Size Regulations), "small" businesses in the Full-Service Restaurant and Drinking Places (Alcoholic Beverages) industries are those with annual receipts of seven million dollars (\$7,000,000) or less. [13 C.F.R. § 121.201]. The vast majority of licensees would meet this standard as small businesses. Any transferee applying for a conversion which provides a tax return will receive a fine that is a function of the licensee's gross earnings in its last year of operation. Thus, small businesses and larger businesses are treated in a fair and proportional manner.

(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.

Those affected by this proposed amendment include retail and other licensees which must comply with the provisions of the Liquor Code and the Board's Regulations. Enforcement is the province of the Pennsylvania State Police Bureau of Liquor Control Enforcement. As discussed, increasing the minimum fines in conversion of suspension to fine actions would only affect those licensees which would have incurred a lesser fine amount under the current regulation. In 2014, the Board received fourteen (14) requests to convert a suspension to a fine. Eleven (11) were converted, nine (9) of which would have been affected by the proposed amendment. That being said, there were approximately fifteen thousand two hundred (15,200) retail and one thousand two hundred sixty (1,260) wholesale licenses in effect as of May 5, 2015. The Board expects a similarly small proportion of persons, businesses, and small businesses to be impacted by the regulation once it takes effect.

(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 final-form regulation is not expected to have a substantial, adverse fiscal impact on the regulated community, since the change only affects licensees that would have been subject to the lower fine amount that is set forth in the current regulation. This regulatory change is not expected to have any adverse fiscal impact on state and local governments, or businesses in compliance with the Liquor Code.

Increasing the minimum converted fine amounts will bring the penalty ultimately assessed against the regulated community more in line with that which was intended by the administrative law judge in ordering the original suspension. It would also have a small, positive fiscal impact on Board revenues, nominally increasing the amount the Board remits to the Commonwealth.

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

The Board believes the benefits of the regulation outweigh any costs because increasing the minimum fines converted from suspensions will better reflect the deterrent and punitive effects that were intended by the initial suspension order. Again, this regulatory change is not expected to have a substantial adverse fiscal impact on the regulated community.

(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.

In 2014, the Board converted suspensions to fines upon request in eleven (11) cases, nine (9) of which would have been affected by the proposed amendment. The total of all fines assessed in those nine (9) cases was twenty-one thousand five hundred dollars (\$21,500), for an average of two thousand three hundred eighty-eight dollars and eighty-nine cents (\$2,388.89) per licensee. Under the proposed regulatory change, the total of the fines converted in those nine (9) cases would have been sixty-eight thousand dollars (\$68,000).

Again, payment of the converted fine is at the discretion of the transferee. Therefore, only those members of the regulated community that choose to pay the converted fine will be impacted. Those that opt to serve the originally-imposed suspension will not be affected.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulatory change is not expected to have any fiscal impact on local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulatory change could have a slight positive fiscal impact on Board revenues from the increased fines from conversions, nominally increasing the amount the Board remits to the Commonwealth. Such increase will depend upon the number of transferees that choose to pay the converted fines. Using the 2014 data provided above, the Board would have remitted an additional forty-six thousand five hundred dollars (\$46,500) to the Commonwealth, assuming all nine (9) transferees opted to pay the increased fines rather than serve license suspensions.

(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.

Because the regulatory change only affects the amount of the fines in conversion of suspension to fine actions, and only in those cases in which the licensee requests such a conversion, the regulation 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 measures by state or local governments in order to implement the regulation.

(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	Minimal	Minimal	Minimal	Minimal	Minimal	Minimal
Total Savings	0	0	0	0	0	0
COSTS:						
Regulated Community	Minimal	Minimal	Minimal	Minimal	Minimal	Minimal
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	Minimal	Minimal	Minimal	Minimal	Minimal	Minimal
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	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.

It is unknown how many small businesses will be subject to the regulation because the regulation pertains to transferors and transferees who are unknown to the Board until an application is submitted. However, based on the limited number of requests to convert a suspension that the Board receives per year, it is expected to affect less than a dozen small businesses.

- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

No new reporting, recordkeeping or other administrative costs for compliance will be imposed by the regulatory change.

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

Small businesses will only be affected to the extent that they choose to pay the converted fines rather than serve the original suspension in connection with a license transfer application.

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

There is no less intrusive or less costly alternative method to bring the fines in conversion of suspension to fine actions better in line with the effect of the original suspension order.

- (25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

No special provisions 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.

- (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.

Non-regulatory alternatives were not considered because the minimum fine amount is set by regulation.

- (27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

No special regulatory methods to minimize any adverse impact on small businesses were considered because the minimal adverse fiscal impact to the regulated community will only affect those licensees who have been found to be in non-compliance with the Liquor Code and/or the Board's Regulations, and who have requested from the Board a conversion of unserved suspension days into a fine.

- (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 Board has not relied on data to develop this regulation.

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

- | | |
|---|-----------------------|
| A. The date by which the agency must receive public comments: | <u>September 2013</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>None</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>May 2015</u> |
| D. The expected effective date of the final-form regulation: | <u>July 2015</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>July 2015</u> |
| F. The 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.

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FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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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. 54-74

DATE OF ADOPTION: May 13, 2015

BY: T. Holder

TITLE: Chairman
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form
and legality. Executive or Independent
Agencies:

BY: K. Duell
Chief Counsel

May 13, 2015
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 7. TRANSFER, EXTENSION, SURRENDER, EXCHANGE AND SUSPENSION OF LICENSES

SUBCHAPTER A. TRANSFER OF LICENSES

The following section is proposed to be amended:

7.10 Conversion of suspension to fine.

FINAL-FORM RULEMAKING

LIQUOR CONTROL BOARD

40 PA. CODE CHAPTER 7

Subchapter A. Transfer of Licenses

The Liquor Control Board ("Board"), under the authority of section 207(i) of the Liquor Code (47 P.S. § 2-207(i)), amends Chapter 7.

Summary

The regulation will amend section 7.10 of the Board's Regulations by increasing the minimum amount of fines acceptable to the Board when the Board converts an unserved suspension to a fine.

Section 468(a)(4) of the Liquor Code [47 P.S. § 4-468(a)(4)] authorizes the Board to convert pending unserved suspensions in citation cases into monetary fines at the request of a transferee, if the current licensee is unable to serve the suspension. Pursuant to section 7.10 of the Board's Regulations, the Board adopted a methodology whereby it would base the fine on one-half (½) of the average daily gross receipts of the transferor in its last year of operation. Currently, a minimum fine of one hundred dollars (\$100) per each day of unserved suspension is imposed unless the citation is one in which the minimum fine would have been one thousand dollars (\$1,000); in those situations, the minimum fine provided in the regulation is one thousand dollars (\$1,000) per each day of unserved suspension. [40 Pa. Code § 7.10]. If the Board accepts a request for a conversion, it will notify the transferee of the amount of the fine, and the transferee may either accept or reject the proposed fine. If accepted, the fine must be paid as a condition to approval of the transfer; if rejected, the conversion is rendered a nullity, and the unserved suspension remains in effect.

The minimum fine is imposed when a licensee does not possess or fails to provide tax returns to demonstrate the gross revenue for the last calendar year of operation or when the formula results in an amount that is lower than the above-referenced minimum. The Board believes the regulation is needed because converting a license suspension into a fine of one hundred dollars (\$100) diminishes the deterrent and punitive effects that were intended by the initial suspension order. For example, a license suspension deprives a licensee of the revenue it would have collected had it been licensed to sell alcoholic beverages during the period of suspension, and it requires that notice of the suspension be posted in a conspicuous location outside the licensed premises. If the minimum fines were increased to one thousand dollars (\$1,000) per day for non-enhanced penalty citations, and three thousand dollars (\$3,000) per day for enhanced penalty citations, the impact of the fine would be more in line with the impact of the original suspension.

Affected Parties

The regulation will impact only those retail and other licensees with unserved suspensions which desire to transfer the license. Of those, only transferors which would have incurred a lesser fine amount under the current regulation will be affected by the increased minimum fines in conversion of suspension to fine actions. In 2014, the Board received fourteen (14) requests to

convert a suspension to a fine. Eleven (11) were converted, nine (9) of which would have been affected by the proposed amendment.

Paperwork Requirements

The Board does not anticipate that this regulatory change will affect the amount of paperwork or administrative costs of the regulated community.

Fiscal Impact

This regulatory change is not expected to have a substantial adverse fiscal impact on the regulated community, since the change only affects licensees that would have been subject to the lower fine amount that is set forth in the current regulation. In 2014, the Board received fourteen (14) requests to convert a suspension to a fine. Eleven (11) were converted, nine (9) of which would have been affected by the proposed amendment. The Board expects a similarly small proportion of the regulated community to be impacted by the regulation once it takes effect. It must further be emphasized that conversions are optional. The transferee has the right to reject the fine amount set by the Board and to instead serve the original suspension upon becoming licensed.

This regulatory change is not expected to have any adverse fiscal impact on state and local governments. In fact, this change will have a small, positive fiscal impact on Board revenues, nominally increasing the amount the Board remits to the Commonwealth.

Effective Date

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

Contact Person

Comments should be addressed to Justin Blake, Assistant Counsel, or Rodrigo J. Diaz, Executive Deputy Chief Counsel, Office of Chief Counsel, Pennsylvania Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review

Under section 5 of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 24, 2013, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the House Liquor Control Committee and the Senate Law and Justice Committee. A copy of this material is available to the public upon request.

Under section 5a(c) of the Regulatory Review Act, the Board is required to provide IRRC and the Committees with copies of the comments received during the public comment period, as well as other documents when requested. The Board received three (3) comments from IRRC, the responses to which are set forth in a separate document. The Board did not receive comments from the Committees or the public.

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

Tim Holden
Chairman

ANNEX A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 7. TRANSFER, EXTENSION, SURRENDER, EXCHANGE AND SUSPENSION
OF LICENSES

Subchapter A. TRANSFER OF LICENSES

§ 7.10. Conversion of suspension to fine.

(d) The fine will be calculated by application of the following formula: {Gross earnings of the transferor divided by 365 (or the number of days in operation in the transferor's last year of operation) multiplied by .50. The resulting figure is the amount of the fine per day of suspension, subject to the following exceptions:}

(1) [If the amount is less than \$100 per day, a fine of \$100 per day will be set.] If the suspension was issued for a citation for which the minimum fine, if a fine had been imposed, is ~~one hundred dollars (\$100)~~ FIFTY DOLLARS (\$50), a minimum fine of one thousand dollars (\$1,000) per day will be set.

(2) [If the suspension was issued for a citation that required a minimum fine amount of \$1,000 per day, a minimum fine of \$1,000 per day will be set.] If the suspension was issued for a citation for which the minimum fine, if a fine had been imposed, is one thousand dollars (\$1,000), a minimum fine of three thousand dollars (\$3,000) per day will be set.

RESPONSES OF THE PENNSYLVANIA LIQUOR CONTROL BOARD

TO

Comments about PLCB Regulation #54-74 (IRRC #3026)

Conversion of Suspension to Fine

May 13, 2015

1. Economic or fiscal impacts; Need for the regulation; Reasonableness of requirements.

In response to Question #10 of the Regulatory Analysis Form (RAF) regarding why the regulation is needed, the Board gives two reasons, one of which is that fines received in lieu of suspensions **may** not cover the cost, in work hours, of processing the conversion. If the fines are needed to cover the cost of processing the conversion, the Board has not provided information related to this need. In fact, in response to Questions #23 and 23a related to fiscal costs and past three-year expenditure history, the Board responded “minimal” and “N/A,” respectively. If the cost of processing the conversion is a reason for needing this regulation, the Board should provide additional information. For example, what are the fiscal costs associated with implementation and compliance for state government? Specifically, what is the cost to process a conversion? What is the expenditure history for the program? In the Preamble and RAF submitted with the final-form regulation, we ask the Board to provide more detailed information that supports the need for the regulation on this cost basis and to demonstrate that the fiscal impact is reasonable as related to the cost.

RESPONSE: The Board has amended its response to Question 10 of the RAF to provide more information on the need for the regulation.

The primary purpose of the proposed amendment to section 7.10 of the Board’s Regulations is deterrence. Currently, a minimum fine of one hundred dollars (\$100) or one thousand (\$1,000) per day of suspension is imposed when a licensee does not possess or fails to provide tax returns demonstrating its revenue for the last calendar year of operation, or when application of the formula in subsection 7.10(d) results in an amount that is lower than the corresponding minimum. Often the transferor is not able to

obtain the licensee's most recent tax return and is therefore subject to the minimum or an amount determined by the Board.

Given that a license suspension is provided as a heightened penalty under the Liquor Code as compared to a fine [See subsection 471(c)], when converting a suspension to a fine the Board must aim to set an amount which matches the punitive effect of the original suspension as much as possible. The rationale for imposing a suspension is twofold: (1) there is the punitive effect of depriving a licensee of the revenue that it would have collected had it been licensed to sell alcohol during the period of the suspension; and (2) there is the deterrent effect of having to post a notice of suspension in a conspicuous location outside the licensed premises. Converting a suspension to a fine of only one hundred dollars (\$100) per day, or one thousand dollars (\$1,000) per day in the case of higher offenses for which the statutory range of fines is one thousand dollars (\$1,000) to five thousand dollars (\$5,000), lessens both the punitive and deterrent effects which were intended by the initial suspension order of the administrative law judge. Increasing the minimum amounts will result in the assessment of fines which better represent the deterrent and punitive effects of the original suspension imposed by the administrative law judge. Further, since the citation history of a licensee is public information, available on the Board's website, potential buyers of the license will be able to factor the cost of converting the suspension into a fine when negotiating a price for the license. Thus, it will be the seller (who incurred the citation) and not the buyer who will ultimately bear the cost of the suspension.

2. § 7.10 Conversion of suspension to fine. – Conforms to intent of General Assembly in enactment of the statute; Clarity; Reasonableness of requirements.

Currently, Subsection (d) contains a formula for converting a suspension to a fine. The formula is used to calculate the dollar amount of the fine per day of suspension, with two exceptions. The first exception in Paragraph (d)(1) addresses the possibility that the calculated amount could be less than \$100, in which case the fine is set at \$100. The second exception in Paragraph (d)(2) states that if the suspension was issued for a citation that required a minimum fine amount of \$1,000 per day, a minimum fine of \$1,000 per day will be set. We note that the minimum fine amount for citations is provided for in Section 4-471(b) (relating to revocation and suspension of licenses; fines) of the Pennsylvania Liquor Code (Liquor Code). 47 P.S. § 4-471(b).

The Board proposes to delete the formula from Subsection (d) and create two tiers of fines based upon the possible minimum fine amount that could have been imposed in lieu of a suspension. The first proposed tier states that if the suspension was issued for a citation for which the minimum fine, if a fine had been imposed, is \$100, then a minimum fine of \$1,000 per day will be set. However, Section 4-471(b) of the Liquor Code states that if an administrative law judge imposes a fine for a citation, the minimum fine amount shall be either \$50 or \$1,000 depending upon the violation. Because the statute does not reference a \$100 minimum fine amount, the regulation is not clear as to which suspensions for citations this would apply. The Board needs to explain the derivation and relevance of the \$100 fine reference. Furthermore, the final-form regulation should clarify to which suspensions the \$100 minimum fine amount would apply and how the fines are consistent with the Liquor Code and intent of the Legislature.

Additionally, by deleting the formula and providing for only a minimum fine, the Board has essentially removed the standard for how fines will be set. With no upper limit in place, the Board could find itself setting fines in an arbitrary and capricious manner which could lead to an unfair result for licensees. For example, one licensee could be fined \$1,000 per day while another licensee with a similar violation could be charged \$1,000,000. The Board should reconsider the manner in which it makes its calculations and explain how it intends to avoid an unfair and potentially unconstitutional imposition of its fines.

RESPONSE: The Board has amended the proposed rulemaking and the RAF to correct typographical errors. The reference to a minimum statutory fine of one hundred dollars (\$100) has been revised to reflect the statutory minimum fine of fifty dollars (\$50) provided for in subsection 471(b) of the Liquor Code [47 P.S. § 4-471(b)]. In addition, the existing formula has been restored to the amended subsection 7.10(d) of the Board's Regulations, as it was never the Board's intent to delete it.

The Commission's concern that the Board may set fines in an arbitrary and capricious manner is now moot since the formula will not be deleted. If the licensee submits its prior-year tax return, the fine will be proportional to its gross earnings in its last year of operation. If no return is submitted, the fine will instead be at the discretion of the Board, with a minimum of one thousand dollars per day (\$1,000) or three thousand dollars (\$3,000) per day. However, there should be no concern for unfairness resulting from an uncapped fine (something that already is possible under the existing

regulation) since the transferee always has the option of rejecting the Board's decision and choosing to serve the original suspension rather than paying the converted fine as set by the Board. [40 Pa. Code § 7.10(g)].

3. Compliance with the RRA.

The information contained in response to Question #15 of the RAF submitted with this rulemaking is not sufficient to allow this Commission to determine if the regulation is in the public interest. Specifically, the Board has not included a citation to the relevant provisions of the federal definition of small business that were reviewed in the development of the rulemaking and an analysis of their applicability or inapplicability to the regulation. Without this information, we cannot determine if this proposed regulation is in the public interest. In the RAF submitted with the final-form regulation, the Board should provide the federal citation, as well as the number of persons, business[es], small business[es] (as defined in Section 3 of the RRA, Act 76 of 2012) and organizations which will be affected by the regulation.

RESPONSE: The Board has amended its response to Question 15 of the RAF to provide a citation to the federal definition of small business that was reviewed in the development of the rulemaking.

Under federal law (relating to Small Business Size Regulations), "small" businesses in the Full-Service Restaurant and Drinking Places (Alcoholic Beverages) industries are those with annual receipts of \$7 million (\$7,000,000) or less. [13 C.F.R. § 121.201]. Licensees receiving suspensions for violations of the Liquor Code typically fall into one of these two industries. In 2014, the Board received fourteen (14) requests to convert a suspension to a fine. Eleven (11) were converted, nine (9) of which would have been affected by the proposed amendment. In contrast, as of May 5, 2015, there were approximately fifteen thousand two hundred (15,200) retail and one thousand two hundred sixty (1,260) wholesale licenses in effect. The Board expects a similarly small proportion of persons, businesses, and small businesses to be impacted by the regulation once it takes effect.

Again it must be emphasized that conversions are optional. They may only be initiated at the request of a transferee in a pending liquor license transfer matter in which the licensee/transferor has a license suspension which has yet to be served. After receiving the Board's decision setting a fine, the transferee may simply reject the Board's decision and choose to serve the

original suspension, without incurring any detriment. While the increased minimum fines provided in the amended regulation may make conversions less appealing to transferees, the fact that the formula for converting fines remains unchanged ensures that fines set by the Board will remain proportional to the size of the licensed business. Any transferee applying for a conversion which provides a tax return will receive a fine that is a function of the licensee's gross earnings in its last year of operation. Thus, small businesses and larger businesses are treated in a fair and proportional manner.

Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board
May 15, 2015

SUBJECT: Final-Form Regulation Package 54-74
Conversion of Suspension to Fine

TO: DAVID SUMNER, EXECUTIVE DIRECTOR
INDEPENDENT REGULATORY REVIEW COMMISSION

FROM: FAITH S. DIEHL *FSDiehl*
CHIEF COUNSEL
PENNSYLVANIA LIQUOR CONTROL BOARD

By Hand Delivery

The Pennsylvania Liquor Control Board ("PLCB") is submitting final-form amendments to chapter 7 of its regulations. Enclosed please find a copy of the regulatory analysis form, signed CDL-1 face sheet, preamble and Annex A (regulatory text), as well as the response of the PLCB to comments submitted by the Independent Regulatory Review Commission ("IRRC").

The proposed version of these regulations was provided to the legislative oversight committees, IRRC, and the Legislative Reference Bureau on September 24, 2013.

Any questions and comments about this regulatory submission can be directed to Justin Blake, Assistant Counsel, or Rodrigo Diaz, Executive Deputy Chief Counsel, at (717) 783-9454.

Enclosures

cc with enclosures:

Honorable Charles McIlhinney, Majority Chairman, Senate Law and Justice Committee
Honorable James Brewster, Minority Chairman, Senate Law and Justice Committee
Honorable Chris Ross, Majority Chairman, House Liquor Control Committee
Honorable Paul Costa, Minority Chairman, House Liquor Control Committee
Gail Reinard, Executive Director, Senate Law and Justice Committee
Victor Wills, Executive Director, Senate Law and Justice Committee
Shauna Boscaccy, 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: 54-74

SUBJECT: Conversion of Suspension to a Fine

AGENCY: 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

2015 MAY 15 PM 3:12

RECEIVED
IRRC

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
5/15/15	<i>Almennick</i> (1)	HOUSE LIQUOR CONTROL COMMITTEE
5/15/15	<i>Kura Zickler</i> (2)	(Majority) HOUSE LIQUOR CONTROL COMMITTEE
5/15/15	<i>Wanna Tholait</i> (3)	(Minority)
5/14/15	<i>Ranee Madell</i> (4)	SENATE LAW & JUSTICE COMMITTEE
5/14/15	<i>K Cooper</i> (5)	(Majority) SENATE LAW & JUSTICE COMMITTEE
		(Minority) INDEPENDENT REGULATORY REVIEW COMMISSION