

# Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY  
REVIEW COMMISSION

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

(1) Agency: Pennsylvania Liquor Control Board

(2) Agency Number: 54

Identification Number: 83

IRRC Number: 3095

(3) PA Code Cite: 40 Pa. Code § 7.22.

(4) Short Title: Posting Requirements for Extension

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

Primary Contact: Norina K. Blynn (717) 783-9454  
Pennsylvania Liquor Control Board  
401 Northwest Office Building  
Harrisburg, Pennsylvania 17124  
FAX: (717) 787-8820  
Email: [ra-lblegal@pa.gov](mailto:ra-lblegal@pa.gov)

Secondary Contact: Rodrigo J. Diaz (717) 783-9454  
(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)

There is a conflict between the Board's Regulations and the Liquor Code with regard to the posting time for notices about an application for extension of licensed premises. Specifically, the Liquor Code provides that the notice must be posted for 30 days. The Board's Regulations require that the notice must be posted for 15 days. The purpose of this amendment is to amend the Board's Regulations to match the Liquor Code.

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

The Board has the authority to make regulations pursuant to section 207(i) of the Liquor Code [47 P.S. § 2-207(i)].

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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.

No, this regulation is not mandated by any federal or state law or 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 Board's Regulations require that applicants for an extension of the licensed premises post a notice that such application has been filed. Currently, the Board's Regulations provide that the notice must be posted for a period of 15 days. [40 Pa. Code § 7.22]. The 15 day posting period is consistent with the former language of section 403(g) of the Liquor Code [47 P.S. § 4-403(g)].

Act 212 of 2002 amended section 403(g) of the Liquor Code by increasing the time period for the posting of a notice, from 15 days to 30 days. Thus, the statute now requires a longer posting period than the regulation requires.

Although section 403(g) of the Liquor Code references applications for a new license or a license being transferred to a new location, and not the extension of a license, the courts have held that "an extension was in effect a transfer to a new location." Ulana v. Pennsylvania Liquor Control Bd., 484 A.2d 859, 862 (Pa. Cmwlth. 1984). While the Ulana case does not deal with the length a notice must be posted, the Board has followed the court's analysis, and therefore the posting time set forth in section 403(g) for a new license or a transfer of a license has been applied to extensions of the license.

The disparity between the statute and the regulation sometimes results in frustration and confusion for applicants. Some applicants believe that the notice can be taken down at the expiration of the 15 day period, and that the application can then be approved, however because of the language in section 403(g), that is not the case.

In addition, those parties who wish to file a protest ("protestants") to the application have 30 days from the posting of the notice to do so. [40 Pa. Code § 17.13]. Thus, there can be confusion or misunderstanding on the part of protestants when a notice is removed (erroneously) after only 15 days.

The amendment would resolve these misunderstandings by requiring that a notice of an application for extension of the licensed premises must be posted for at least 30 days.

(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.

There are no federal standards regarding the length of time such notices must be posted.

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

Other states have their own unique and individual systems of alcoholic beverage control. The regulatory change should not put Pennsylvania at a competitive disadvantage. Further, the amendment does not change current law; rather it amends existing regulations to reflect current law.

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

After diligent research, the Board is unaware of any other regulations, issued by the Board or by another state agency, which would be affected by the promulgation of the amendment.

(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.)

Input was not received from the public or any other groups outside the Board. The purpose of the amendment is to amend the existing regulations, to conform with the changes to the law effectuated by Act 212 of 2002.

(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 July 14, 2015, there are 15,112 active licensees that could be potentially affected by the proposed regulation, but only if they decide to expand their premises. Under federal law (relating to small business size standards) "small" businesses in the Full Service Restaurant and Drinking Places (Alcoholic Beverages) industries are those with annual receipts of \$7,500,000 or less. [13 C.F.R. § 121.201]. Wineries, distilleries and breweries are considered small businesses if they employ less than 500 (wineries, breweries) or 750 (distilleries) employees. Hotels are considered small businesses if they have annual receipts of \$32,500,000 or less. Thus, the majority of businesses licensed by the Board would likely be considered small businesses. The amendment simply aligns the posting period with that which is required by statute; therefore no licensee will be adversely affected.

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

The Board does not know exactly how many of the 15,112 active licensees fall within the definition of "small businesses" but presumes most do. The Board also does not know how many of the active licensees will apply to extend their licensed premises. All applicants for an extension of the licensed premises are expected to comply with the amendment and post the required notice for 30 days instead of the current 15 days. Said requirement exists regardless of whether the regulation is amended.

(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.

There are no anticipated financial, economic, or social impacts on individuals, small businesses, businesses and labor communities and other public and private organizations since the amendment simply conforms the regulation to the existing law. The expected benefit is an elimination of inconsistency, misunderstanding and confusion that currently exists because the regulatory period for posting a notice is not the same as that required by the amended statutory language.

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

There are no costs or adverse effects. Therefore, the benefits of making the language of the regulation consistent with the language of the statute will outweigh the nonexistent costs and adverse effects.

(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 regulation is not expected to result in any costs or savings for the regulated community; it is not anticipated that any legal, accounting or consulting procedures will be required.

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

The regulation is not expected to result in any costs or savings for local governments; it is not anticipated that any legal, accounting, or consulting services would be 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 regulation is not expected to result in any costs or savings for the state government; it is not anticipated that any legal, accounting, or consulting services would be required.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No procedures, reports, recordkeeping or other paperwork will be required for the implementation of the proposed regulation. There is an existing requirement to post a notice for thirty (30) days; the amended regulation simply acknowledges that requirement.

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

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

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

There is no expenditure history as there are no programs affected by the regulation.

<b>Program</b>	<b>FY -3 2012-2013</b>	<b>FY -2 2013-2014</b>	<b>FY -1 2014-2015</b>	<b>Current FY 2015-2016</b>
N/A	N/A	N/A	N/A	N/A

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

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.

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

This amendment will not have an adverse impact on small businesses, since it simply amends the regulation to reflect the current state of the law.

(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 benefit for the regulated community requires the amendment of the 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.

Non-regulatory alternatives were not considered because the benefit for the regulated community requires the amendment of the regulation. This amendment will not have an adverse impact on small businesses.

(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.

Data was not the basis for this regulation.

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

- |   |                   |
|---|-------------------|
| A. The date by which the agency must receive public comments:                               | <u>N/A</u>        |
| B. The date or dates on which public meetings or hearings will be held:                     | <u>April 2016</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>June 2016</u>  |
| D. The expected effective date of the final-form regulation:                                | <u>June 2016</u>  |
| E. The date by which compliance with the final-form regulation will be required:            | <u>N/A</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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<p>Copy below is hereby approved as to form and legality.</p> <p>Attorney General:</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Pennsylvania Liquor Control Board</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. 54-83</p> <p>DATE OF ADOPTION: <u>March 9, 2016</u></p> <p>BY: <u><i>Tim J. Hilde</i></u></p> <p>TITLE: <u>Chairman</u> (Executive Officer, Chairman or Secretary)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies:</p> <p>BY: <u><i>Robert J. ...</i></u> Chief Counsel</p> <p><u>March 9, 2016</u> DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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TITLE 40—LIQUOR

PART I. LIQUOR CONTROL BOARD

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

SUBCHAPTER B. EXTENSION OF LICENSES

*The following section is amended:*

7.22. Application.

# **RESPONSES OF THE PENNSYLVANIA LIQUOR CONTROL BOARD**

**TO**

**Comments about PLCB Regulation #54-83 (IRRC #3095)**

## **Posting Requirements for Extension**

We submit for your consideration the following comments on the proposed rulemaking published in the October 24, 2015 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Pennsylvania Liquor Control Board (Board) to respond to all comments received from us or any other source.

### **1. Clarity.**

The proposed regulation requires an applicant requesting an extension of a liquor license to include additional premises to post public notice for a period of at least 30 days. Current regulations require the notice to be posted for at least 15 days. The Board, in the Preamble and in response to Regulatory Analysis Form (RAF) questions #7, #10 and #14, describes the purpose of the rulemaking is to amend the Board's regulations to conform with changes to the law effectuated by Act 212 of 2002.

Section 403(g) of the Liquor Code (Code) (47 P.S. 4-403(g)) requires every applicant for a new license or for the transfer of an existing license to post, for a period of at least 30 days, a notice of such application. Act 212 of 2002 amended Section 403(g) of the Code by increasing the number of days that an applicant for a new license or for the transfer of an existing license must post notice from fifteen days to thirty days.

Section 404 of the Liquor Code (47 P.S. 4-404) distinguishes three separate categories of applications: a new license, a license transfer to a new location and an extension of an existing license to cover an additional area. The references in Section 404 to ". . . the extension of an existing license to cover an additional area" were added by Act 1 of 2006.

Based on our review of these two sections, it appears an application for the extension of an existing license to include additional premises does not fall under either category of a new license application or an application for transfer of an existing license. The Board has provided additional information explaining that license transfers are considered to include extensions. Specifically, the Board cites the case of Ulana. Ltd. v. PLCB as its legal authority in determining that Section 403(g) applies to extensions of license. The Board should reference the case in the Preamble and RAF to the final-form regulation as the statute alone does not make clear that Section 403(g) applies to license extensions.

*Response:* References to the Ulana case have been added to the Preamble and the RAF.

## FINAL FORM RULEMAKING

### LIQUOR CONTROL BOARD

#### 40 PA. CODE CHAPTER 7

#### SUBCHAPTER B. EXTENSION OF LICENSES

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

#### *Summary*

There is a conflict between the Board's Regulations and the Liquor Code with regard to the posting time for notices about an application for extension of licensed premises. Specifically, the Liquor Code provides that the notice must be posted for 30 days. The Board's Regulations require that the notice must be posted for 15 days. The purpose of this amendment is to amend the Board's Regulations to match the Liquor Code.

The Board's Regulations require that applicants for an extension of the licensed premises post a notice that such application has been filed. Currently, the Board's Regulations provide that the notice must be posted for a period of 15 days. [40 Pa. Code § 7.22]. The 15 day posting period is consistent with the former language of section 403(g) of the Liquor Code [47 P.S. § 4-403(g)].

Act 212 of 2002 amended section 403(g) of the Liquor Code by increasing the time period for the posting of a notice, from 15 days to 30 days. Thus, the statute now requires a longer posting period than the regulation requires.

Although section 403(g) of the Liquor Code references applications for a new license or a license being transferred to a new location, and not the extension of a license, the courts have held that "an extension was in effect a transfer to a new location." Ulana v. Pennsylvania Liquor Control Bd., 484 A.2d 859, 862 (Pa. Cmwlth. 1984). While the Ulana case does not deal with the length a notice must be posted, the Board has followed the court's analysis, and therefore the posting time set forth in section 403(g) for a new license or a transfer of a license has been applied to extensions of the license.

The disparity between the statute and the regulation sometimes results in frustration and confusion for applicants. Some applicants believe that the notice can be taken down at

the expiration of the 15 day period, and that the application can then be approved, however because of the language in section 403(g), that is not the case.

In addition, those parties who wish to file a protest (“protestants”) to the application have 30 days from the posting of the notice to do so. [40 Pa. Code § 17.13]. Thus, there can be confusion or misunderstanding on the part of protestants when a notice is removed (erroneously) after only 15 days.

The amendment would resolve these misunderstandings by requiring that a notice of an application for extension of the licensed premises must be posted for at least 30 days.

### *Affected Parties*

As of July 14, 2015, there are 15,112 active licensees that could be potentially affected by the proposed regulation, but only if they decide to expand their premises. Since the proposed regulation simply aligns the posting period with that which is required by statute, no licensee will be adversely affected.

### *Paperwork Requirements*

This regulatory change is not expected to affect legal, accounting or consulting procedures and should not require any additional reporting, recordkeeping or other paperwork.

### *Fiscal Impact*

This amendment is not expected to have any fiscal impact on the regulated community, state government, or local governments. Therefore, no fiscal impact is anticipated

### *Effective Date*

This amendment will become effective upon publication in final form in the Pennsylvania Bulletin.

### *Public Comments*

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

**ANNEX A**

**TITLE 40. LIQUOR**

**Part I. LIQUOR CONTROL BOARD**

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

**SUBCHAPTER B. EXTENSION OF LICENSES**

**§ 7.22. Application.**

\* \* \* \* \*

(c) An applicant for extension of premises shall post, for a period of at least [15] 30 days beginning with the day the application is filed with the Board, in a conspicuous place on the outside of the licensed premises, a notice of application in a form, and size and containing provisions the Board requires concerning the requested extension. Proof of the posting of the notice shall be filed with the Board.

**Commonwealth of Pennsylvania**  
**Pennsylvania Liquor Control Board**  
March 10, 2016

**SUBJECT: Final Form Regulation Package 54-83**  
**Posting Requirements for Extension**

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

**FROM:** RODRIGO J. DIAZ *Rodrigo J. Diaz*  
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).

The proposed version of these regulations was provided to the legislative oversight committees, the Independent Regulatory Review Commission and to the Legislative Reference Bureau on September 15, 2015. The PLCB received comments from the Independent Regulatory Review Commission. The response to these comments is set forth in a separate document.

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

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:** 54-83  
**SUBJECT:** Extension of Licenses  
**AGENCY:** Liquor Control Board

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**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

**FILING OF REGULATION**

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
3/10/16	<u>Mr. Kalds</u> (1)	SENATE LAW & JUSTICE COMMITTEE (Majority)
3/10/16	<u>Rance Dandell</u> (2)	SENATE LAW & JUSTICE COMMITTEE (Minority)
3/10/16	<u>Mike Merrick</u> (3)	HOUSE LIQUOR CONTROL COMMITTEE (Majority)
3-10-16	<u>AM Antick</u> (4)	HOUSE LIQUOR CONTROL COMMITTEE (Minority)
3/10/16	<u>K Cooper</u> (5)	INDEPENDENT REGULATORY REVIEW COMMISSION