

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC'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

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 thirty (30) days. The Board's Regulations require that the notice must be posted for fifteen (15) days. The purpose of the proposed regulation 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 fifteen (15) days. [40 Pa. Code § 7.22]. The fifteen (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 fifteen (15) days to thirty (30) days. Thus, the statute now requires a longer posting period than the regulation requires.

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 fifteen (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 thirty (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 fifteen (15) days.

The proposed regulatory change would resolve these misunderstandings by requiring, in the regulation, that a notice of an application for extension of the licensed premises must be posted for at least thirty (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 proposed regulation 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 proposed regulation.

(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 proposed regulation 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 seven and a half million dollars (\$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 thirty-two and a half million dollars (\$32,500,000) or less. Thus, the majority of businesses licensed by the Board would likely be considered small businesses. The proposed regulation 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 proposed regulation and post the required notice for (thirty) 30 days instead of the current fifteen (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 proposed regulation 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 proposed 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.

	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	\$0	\$0	\$0	\$0	\$0
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:						
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.

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

Program	FY -3 2012-2013	FY -2 2013-2014	FY -1 2014-2015	Current FY 2015-2016
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 regulation 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 creation of the proposed 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 creation of the proposed regulation. This regulation 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>November 2015</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>January 2016</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>March 2016</u> |
| D. The expected effective date of the final-form regulation: | <u>March 2016</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>March 2016</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)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved
as to form and legality.

Attorney General:


BY: _____
(DEPUTY ATTORNEY GENERAL)

SEP 14 2015

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. 54-83

DATE OF ADOPTION: December 17, 2014

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

December 17, 2014
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 B. EXTENSION OF LICENSES

The following section is proposed to be amended:

7.22. Application.

PROPOSED 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

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 fifteen (15) days. [40 Pa. Code § 7.22]. The fifteen (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 fifteen (15) days to thirty (30) days. Thus, the statute now requires a longer posting period than the regulation requires.

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 fifteen (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 thirty (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 fifteen (15) days.

The proposed regulatory change would resolve these misunderstandings by requiring, in the regulation, that a notice of an application for extension of the licensed premises must be posted for at least thirty (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 regulatory change is not expected to have any fiscal impact on the regulated community, state government, or local governments.

Effective Date

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

Public Comments

Interested persons are invited to submit written comments about the proposed rulemaking to Rodrigo Diaz, Executive Deputy Chief Counsel, or Norina Blynn, Assistant Counsel, Office of Chief Counsel, Pennsylvania Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001, within thirty (30) days after publication of the proposed regulation in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Please note that all public comments will be posted on the Independent Regulatory Review Commission's website. No personal information will be redacted from the public comments received.

Regulatory Review

Under section 745.5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on _____, 2015, the Board submitted a copy of this proposed rulemaking 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. A copy is available to the public upon request.

Under Section 745.5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), IRRC may convey any comments, recommendations or objections to the proposed regulations within 30

days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. Comments, recommendations or objections raised shall be reviewed prior to the regulation's final publication.

Tim Holden
Chairman

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

(a) To obtain Board approval, an application for extension of license describing the additional premises shall be filed with the Board.

(b) A fee of \$220 shall accompany an application for extension of license, and a physical inspection of the premises will be made whenever deemed necessary by the Board.

(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
September 15, 2015**

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

**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 proposed 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).

This proposed regulation had previously submitted to your office on April 21, 2015. However, that submission was not accepted because this office used the outdated Regulatory Analysis Form (“RAF”). As a result, that proposed regulation was withdrawn. The enclosed package is substantially similar to the previously-submitted package, but with the proper RAF.

These amendments are being delivered today to the legislative oversight committees and to the Legislative Reference Bureau. They have been approved by the Office of Attorney General as to form and legality.

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

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
- 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>
9/15/15	<u>N. Thompson</u> (1)	SENATE LAW & JUSTICE COMMITTEE (Majority)
9/15/15	<u>Rene Landell</u> (2)	SENATE LAW & JUSTICE COMMITTEE (Minority)
9/15/15	<u>Devin M. Muehl</u> (3)	HOUSE LIQUOR CONTROL COMMITTEE (Majority)
9/15/15	<u>Kura Zickler</u> (4)	HOUSE LIQUOR CONTROL COMMITTEE (Minority)
9/15/15	<u>Coime Inant</u> (5)	LEGISLATIVE REFERENCE BUREAU
9/15/15	<u>K Cooper</u> (6)	INDEPENDENT REGULATORY REVIEW COMMISSION