

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: 84

IRRC Number:

3098

(3) PA Code Cite: 40 Pa. Code §§ 7.2, 7.4

(4) Short Title: Right To Occupy

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

Primary Contact: Rodrigo J. Diaz (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: Norina K. Blynn (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)

The Board's regulations require an applicant to establish its right to occupy the proposed licensed premises. While this is typically done through a lease or deed, some entities have acquired the right to occupy a premises through a contract between it and the owner of the premises. The Board's Regulations are being amended to reflect the fact that the right to occupy may be obtained through a means other than a lease or deed.

(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)].

(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.

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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 an applicant to establish its right to occupy the proposed licensed premises. While this is typically done through a lease or deed, some entities have acquired the right to occupy a premises through a contract between it and the owner of the premises. The Board's regulations are being amended to reflect the fact that the right to occupy may be obtained through a means other than a lease or deed.

The principal beneficiaries will be those entities involved in the ownership and operation of hotels. Management companies typically operate a chain of hotels under a common name on behalf of different real estate holders; however, they typically occupy the premises under a management agreement with the real estate owner rather than with a deed or lease. Since the Board's regulations contemplate that the licensee will have a lease or deed to the premises, the real estate owners often apply for the license in their own name and list the actual operator of the hotel as a management company.

While management companies are permitted under the Liquor Code, the management agreement between the parties are subject to the Board's review and the agreements must clearly state that the final decision-making authority rests with the license holder, not the management company. This Liquor Code requirement often results in the Board refusing the initial management agreement until it is modified to give the real estate owner/license the ultimate authority.

While applicants will ultimately comply with the Board's directive, they have made it clear that giving the real estate owner rather than the actual operator the final decision-making authority in the operation of the hotel, is not how they would prefer to conduct their affairs. Allowing the management agreement to be the basis for the hotel operator's proof that it has the right to occupy the premises will allow the management company to apply for the liquor license in its own name and would be more consistent with the parties' desired business relationship.

There are currently approximately 1200 active hotel liquor licenses in Pennsylvania. Some, though not all of them could take advantage of this change.

(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.

Federal regulations do not address this matter, since the granting of licenses to sell alcohol is a matter strictly within each state's authority.

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

The proposed regulation will increase the number of entities that could apply for a hotel liquor license

and should make Pennsylvania more attractive to those management companies that wish to operate hotels in their own names.

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

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.)

The proposed regulation was developed in coordination with the Board's Bureau of Licensing ("Licensing"). Licensing in turn received input from attorneys who represent licensees and applicants for licenses. Attorneys from the law firm of Flaherty & O'Hara suggested that allowing hotel operators to acquire licenses in their own names would be beneficial to the industry and that the absence of a deed or lease was a principal reason more hotel operators did not apply for licenses in their own name.

(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?

It is unknown how many persons, businesses, small businesses and organizations may be affected by the regulation. There are currently approximately 1200 active hotel liquor licenses and less than 450 management agreements in effect in Pennsylvania. Some, though not all of them could take advantage of this change. Other licensees could as well but the lease/deed issue primarily affects hotels that employ management companies.

The proposed regulation will give the affected parties an additional option in terms of who should apply for the license.

(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.

There are no persons, groups, or entities that will be required to comply with the proposed regulation. The proposed regulation simply offers an additional option.

(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 proposed regulation offers an additional option to those entities that employ a management company. The principal benefit will be that it will allow hotel real estate owners and hotel operators to arrange their business relationship in a manner more consistent with their intentions. In addition, if the

hotel operator rather than the hotel real estate owner is applying for the liquor license, there will be no need for the filing of a concurrent application for a management company. An application for a management company must be accompanied with a \$350 fee.

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

The proposed regulation offers an additional option to those entities that employ a management company. There is no additional cost associated with the use of this option.

The benefit of the proposed regulation will be that it will allow hotel real estate owners and hotel operators to arrange their business relationship in a manner more consistent with their intentions. In addition, if the hotel operator rather than the hotel real estate owner is applying for the liquor license, there will be no need for the filing of a concurrent application for use of a management company. An application for a management company must be accompanied with a \$350 fee.

(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 proposed regulation offers an additional option to those entities that employ a management company. There is no additional cost associated with the use of this option.

Each hotel operator who takes advantage of this option by apply for a liquor license in its own name will be able to operate the hotel without having to file an application for use of a management company, a \$350 savings. While it is unknown how many hotel operators will pursue this option, there are currently approximately 1200 active hotel liquor licenses and less than 450 management agreements in effect in Pennsylvania.

(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.

Because the regulated community, local governments, and the state government are not required to take any action as a result of this regulatory change, it is not expected to affect legal, accounting or consulting procedures and should not require any additional reporting, recordkeeping or other paperwork.

(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.

Program	FY -3 2011-2012	FY -2 2012-2013	FY -1 2013-2014	Current FY 2014-2015
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 would be subject to the regulation because the regulation pertains to applicants who are unknown to the Board until an application is submitted.

(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.

The applicant will not have to submit a formal report or record.

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

The only impact on small business would be that some of them may have to fill out one less application when applying for a liquor license.

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

The requirement that a copy of the lease or deed be provided as part of the application process is set forth by regulation. Therefore, allowing a different method to establish the right to occupy the premises must also be set forth by regulation.

(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 current regulations.

(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 current regulations.

(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.

No data was used for the basis of the proposed regulation.

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

- | | |
|---------------------------------------------------------------------------------------------|----------------------|
| A. The date by which the agency must receive public comments: | <u>June 2015</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>July 2015</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>August 2015</u> |
| D. The expected effective date of the final-form regulation: | <u>November 2015</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)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved
as to form and legality.

Attorney General:

BY: 
(DEPUTY ATTORNEY GENERAL)

APR 28 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. 54-84

DATE OF ADOPTION: April 8, 2015

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

April 8, 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 sections are proposed to be amended:

- 7.2. Transfer of ownership.
- 7.4 Transfer of ownership and location.

PROPOSED 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 Board's regulations require an applicant to establish its right to occupy the proposed licensed premises. While this is typically done through a lease or deed, some entities have acquired the right to occupy a premises through a contract between it and the owner of the premises. The Board's regulations are being amended to reflect the fact that the right to occupy may be obtained through a means other than a lease or deed.

The principal beneficiaries will be those entities involved in the ownership and operation of hotels. Management companies typically operate a chain of hotels under a common name on behalf of different real estate holders; however, they typically occupy the premises under a management agreement with the real estate owner rather than with a deed or lease. Since the Board's regulations contemplate that the licensee will have a lease or deed to the premises, the real estate owners typically apply for the license in their own name and list the actual operator of the hotel as a management company.

While management companies are permitted under the Liquor Code, the management agreement between the parties are subject to the Board's review and the agreements must clearly state that the final decision-making authority rests with the license holder, not the management company. This Liquor Code requirement often results in the Board refusing to approve the management agreement until it is modified to give the real estate owner/license the ultimate authority.

While applicants will ultimately comply with the Board's directive, they have made it clear that giving the real estate owner rather than the actual operator the final decision-making authority in the operation of the hotel, is not how they would prefer to conduct their affairs. Allowing the management agreement to be the basis for the hotel operator's proof that it has the right to occupy the premises will allow the management company to apply for the liquor license in its own name and would be more consistent with the parties' desired business relationship.

Affected Parties

The affected parties include all future applicants for a liquor license whose right to occupy the proposed licensed premises is based on something other than a deed or lease.

Paperwork Requirements

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

§ 7.2. Transfers of ownership.

When an application is filed for transfer of a license from one person to another, a bill of sale of the business or fixtures shall be executed by the licensee and shall be exhibited to the Board or its representative. The purchase price of the business, either in the form of cash or legal obligation as security for the purchase price, shall be placed in escrow with an attorney or financial institution, to be paid to the original licensee upon the approval of the transfer by the Board. The actual transfer of ownership of the business may not pass until approval of the transfer of license has been given. The transferee shall exhibit a deed or lease for the premises, or bill of sale, [or both] or other written proof of its right to occupy the proposed premises, as the case may be. The license may not change hands until the license transfer has been approved by the Board and the original licensee may continue the operation of the business and may sell liquor or malt or brewed beverages until formal approval of the transfer is given. If the original licensee does not continue operation of the business under the license, no liquor or malt or brewed beverages may be sold and the license shall be surrendered to the Board until the transfer is approved.

§ 7.4. Transfers of ownership and location.

When a transfer involves a change of both location and ownership, the new establishment, if retail liquor or retail dispenser, shall be ready for operation before the license transfer will be approved. The new applicant shall satisfy the Board that he is the owner, [or] lessee or otherwise has the right to occupy and use [of] the premises, the fixtures and equipment therein. Liquor or malt or brewed beverages may not be sold by the applicant until the transfer of the license has been approved. The transferor, provided his fixtures and equipment are not involved in the transfer, may continue to operate at his original place of business until notified that the transfer of the license to the applicant has been approved, at which time the license and Wholesale Purchase Permit Card, if any, shall be surrendered by the transferor to the Board.

Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board
May 5, 2015

SUBJECT: Proposed Regulation Package 54-84
Right to Occupy

TO: DAVID SUMNER, EXECUTIVE DIRECTOR
INDEPENDENT REGULATORY REVIEW COMMISSION

FROM: FAITH S. DIEHL
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).

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: 54-84
SUBJECT: Right to Occupy
AGENCY: Liquor Control Board

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TYPE OF REGULATION

 X 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>
5/5/15	<u>N Thompson</u> (1)	SENATE LAW & JUSTICE COMMITTEE (Majority)
5/5/15	<u>Ronnie Sardell</u> (2)	SENATE LAW & JUSTICE COMMITTEE (Minority)
5/5/15	<u>Allyce Mernick</u> (3)	HOUSE LIQUOR CONTROL COMMITTEE (Majority)
5/5/15	<u>Kira Zickler</u> (4)	HOUSE LIQUOR CONTROL COMMITTEE (Minority)
5/5/15	<u>K Cooper</u> (5)	INDEPENDENT REGULATORY REVIEW COMMISSION
5-5-15	<u>Heather Burge</u> (6)	LEGISLATIVE REFERENCE BUREAU