

RULES AND REGULATIONS

Title 40—LIQUOR

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 7]

Posting Requirements for Extension

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P.S. § 2-207(i)), amends § 7.22 (relating to application).

Summary

There was 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, section 403(g) of the Liquor Code (47 P.S. § 4-403(g)) provides that the notice must be posted for 30 days and the regulation in § 7.22 formerly required that the notice must be posted for 15 days. This final-form rulemaking amends § 7.22 to match section 403(g) of the Liquor Code.

The act of December 9, 2002 (P.L. 1653, No. 212) 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.

Section 7.22 requires that applicants for an extension of the licensed premises post a notice that an application has been filed. Section 7.22 formerly provided that the notice must be posted for 15 days. The 15-day posting period was consistent with the former language of section 403(g) of the Liquor Code.

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, Commonwealth Court has 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 Commonwealth Court's analysis, and therefore the posting time in section 403(g) of the Liquor Code for a new license or a transfer of a license has been applied to extensions of the license.

The disparity between section 403(g) of the Liquor Code and § 7.22 sometimes resulted in frustration and confusion for applicants. Some applicants believed that the notice could 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) of the Liquor Code, 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 under § 17.13 (relating to protests/intervention procedure). Thus, there was confusion or misunderstanding on the part of protestants when a notice is removed (erroneously) after only 15 days.

This final-form rulemaking will 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 this final-form rulemaking if they decide to expand their premises. Since this final-form rulemaking simply aligns the posting period with that which is required under section 403(g) of the Liquor Code, licensees will not be adversely affected.

Paperwork Requirements

This final-form rulemaking is not expected to affect legal, accounting or consulting procedures and should not require additional reporting, recordkeeping or other paperwork.

Fiscal Impact

This final-form rulemaking is not expected to have fiscal impact on the regulated community, the Commonwealth or local governments. Therefore, a fiscal impact is not anticipated.

Effective Date

This final-form rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comments

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 15, 2015, the Board submitted a copy of the notice of proposed rulemaking, published at 45 Pa.B. 6269 (October 24, 2015), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Liquor Control Committee and Senate Committee on Law and Justice for review and comment.

Under section 5(c) of the Regulatory Review Act, the Board shall submit to IRRC and the House and Senate Committees copies of comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on April 20, 2016, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 21, 2016, and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments to the Board's regulations in the manner provided in this order are necessary and appropriate for the administration of the Liquor Code.

Order

The Board, acting under the authorizing statute, orders that:

(a) The regulations of the Board, 40 Pa. Code Chapter 7, are amended by amending § 7.22 to read as set forth at 45 Pa.B. 6269.

(b) The Board shall certify this order and 45 Pa.B. 6269 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon publication in the *Pennsylvania Bulletin*.

TIM HOLDEN,
Chairperson

(*Editor's Note:* See 46 Pa.B. 2384 (May 7, 2016) for IRRC's approval order.)

Fiscal Note: Fiscal Note 54-83 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 16-861. Filed for public inspection May 20, 2016, 9:00 a.m.]
