

# RULES AND REGULATIONS

## Title 40—LIQUOR

### LIQUOR CONTROL BOARD

#### [40 PA. CODE CHS. 3, 5, 7, 9, 11, 13 AND 15]

#### Amendments

The Liquor Control Board (Board) under the authority of section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), adopts amendments to §§ 3.6, 3.31—3.33, 3.35—3.37, 3.51, 5.15, 5.16, 5.22, 5.23, 5.31, 7.1, 7.3—7.5, 7.7, 7.31, 7.32, 7.43, 7.51—7.54, 9.11, 9.13, 9.23, 9.24, 9.27—9.30, 11.21, 11.23, 11.42, 11.51, 11.62, 11.72, 11.172, 11.176, 11.181, 13.72 and 15.62.

The Board regulations will be amended by this order to eliminate obsolete and misleading information, burdensome requirements placed on licensees and applicants and will streamline the license application process.

#### Comments

Notice of proposed rulemaking was published at 27 Pa.B. 1852 (April 12, 1997), with a 30-day written public comment period. The Independent Regulatory Review Commission (IRRC) recommended amending the proposed amendments relative to issuance of 4-year permits and language concerning extensions of amusement permits.

The Board proposed that all permits issued after December 31, 1997, expire December 31, 2000, and the issuance of 4-year permits expire after December 31, 2000. These permits are presently issued annually to wholesale alcohol purchasers, pharmacists, hospitals, State-owned institutions, manufacturing pharmacists, chemists and nonbeverage manufacturers. IRRC suggested staggering these permits beginning in 1998 to reduce the amount of work required for both the Board and the permittees. The Board holds the position that the number of permittees (approximately 485) is not sufficient to warrant staggering over a 4-year period and that by staggering the issuance of these permits over 4 years, the work load would actually increase. IRRC suggested amending the second sentence of § 5.31(a)(2) (relating to amusement permit) for the sake of clarity. This section deals with the renewal of amusement permits and presently states, "If issued, the permit will expire with the license and may be extended at the time of validation unless revoked or otherwise subject to suspension." The Board agrees to amend this section for the sake of clarity and adopts IRRC's language which states, "Amusement permits expire with the license. Amusement permits may be extended at license validation unless the permit is revoked or subject to suspension."

No other comments, either in support of, or in opposition to the proposed amendments, were received by the Board during the public comment period.

#### Fiscal Impact

These final-form regulations will reduce overall costs to Board licensees, applicants for licenses and permits as well as for the State. Local governments will not be affected by the amendments.

#### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 24, 1997, the Board submitted a copy of the notice of proposed rulemaking to IRRC and the Chairpersons of the House Committee on Liquor Control and the Senate Committee on Law and Justice for review and comment. The final-form rulemaking was transmitted to the Chairpersons and IRRC on July 9, 1997.

These final-form regulations were deemed approved by the Senate Committee on Law and Justice on July 29, 1997, were deemed approved by the House Committee on Liquor Control on July 29, 1997, and were approved by IRRC on August 7, 1997, in accordance with section 5(c) of the Regulatory Review Act.

#### Contact Person

Persons requiring an explanation of the final-form regulations or information related thereto should contact Jerry Danyluk, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA, 17124-0001.

#### Findings

The Board finds that:

(1) Public notice of intention to adopt amendments to the administrative regulations 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, at 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the final-form regulations set forth in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

#### Order

The Board, acting under the enabling statute orders that:

(a) The regulations of the Board, 40 Pa. Code Chapters 3, 5, 7, 9, 11, 13 and 15, are amended by amending §§ 3.6, 3.31—33, 3.35, 3.37, 3.51, 5.16, 5.22, 5.23, 7.1, 7.3—7.5, 7.7, 7.31, 7.32, 7.43, 9.11, 9.13, 9.23, 9.24, 9.28—9.30, 11.21, 11.23, 11.42, 11.51, 11.62, 11.72, 11.172, 11.176, 11.181 and 13.72; by adding § 15.62; and by deleting §§ 3.36, 5.15, 7.51—7.54 and 9.27 to read as set forth at 27 Pa.B. 1852 and by amending § 5.31 to read as set forth in Annex A.

(b) The Board shall submit this order, 27 Pa.B. 1852 and Annex A to the Office of the Attorney General for approval as to form and legality as required by law.

(c) The Board shall certify this order, 27 Pa.B. 1852 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

JOHN E. JONES, III,  
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 4400 (August 23, 1997).)

**Fiscal Note:** Fiscal Note 54-50 remains valid for the final adoption of the subject regulations.

**Annex A**  
**TITLE 40. LIQUOR**  
**PART I. LIQUOR CONTROL BOARD**  
**CHAPTER 5. DUTIES AND RIGHTS OF**  
**LICENSEES**

**Subchapter B. EMPLOYES OF LICENSEES**

**§ 5.31. Amusement permit.**

(a) *Requirements.*

(1) Under section 493(10) of the Liquor Code (47 P. S. § 4-493(10)), the Board may issue an amusement permit authorizing dancing, theatricals, floor shows and motion picture exhibitions in licensed premises, or in another place operated in connection therewith, to the holder of a retail liquor or retail dispenser license, except clubs, upon proper application and payment of the required fee.

(2) An application for an amusement permit may be filed with the Board at any time during the license period. Amusement permits expire with the license. Amusement permits may be extended at license validation unless the permit is revoked or subject to suspension.

(3) An amusement permit may be denied to a licensee against whom revocation or criminal proceeds are pending or to a licensee who, in the Board's opinion, has failed to conduct the licensed premises in accordance with the laws of the Commonwealth. A licensee denied an amusement permit may appeal the decision of the Board by requesting a hearing before the Board within 20 days of notice of denial.

(4) An amusement permit may not be assigned. When the retail liquor or retail dispenser license of the licensee is transferred by the Board from one person to another, or from one place to another, the amusement permit held by the licensee may be transferred in like manner upon the payment of a filing fee of \$10.

(5) An amusement permit is not required for television devices, audio/video playback devices, radio, instrumental music, games or events/tournaments/contests.

(b) *Suspension or revocation of an amusement permit.*

(1) The Office of Administrative Law Judge, upon sufficient cause shown that a licensee holding an amuse-

ment permit, or a partner, officer, director, servant, agent or employe of the licensee, has permitted in the licensed premises a violation of the Liquor Code or this title, or upon other sufficient cause shown, may, upon due notice and proper hearing being given to the licensee, suspend or revoke the permit.

(2) The Office of Administrative Law Judge, upon sufficient cause shown that a licensee holding an amusement permit, or a partner, officer, director, servant, agent or employe of the licensee, is guilty of, or pleads guilty to a violation of the laws of the Commonwealth before a court may after hearing suspend or revoke the amusement permit of the licensee upon the receipt of a transcript of the record in that proceeding.

(3) The action of the Office of Administrative Law Judge in suspending or revoking an amusement permit is final. A new amusement permit will not be approved until the expiration of 1 year from the date of revocation.

(c) *Revocation/suspension of a permit.* If the liquor or malt or brewed beverage license is revoked or suspended, for whatever reason, the amusement permit of the licensee will be similarly automatically revoked or suspended. There will be no refund made nor credit given for the unused portion of the fee paid for the permit, upon suspension or revocation.

(d) *Hours for amusement.*

(1) A licensee holding an amusement permit may permit dancing, theatricals, floor shows and motion pictures in the licensed establishment only during the hours when the sale of liquor or malt or brewed beverages is permitted.

(2) Paragraph (1) does not apply to a licensee or licensed establishment located in a municipality which has, by ordinance, resolution or other appropriate action in accordance with law, fixed the hours for the amusement in licensed establishments. The hours so fixed are controlling when certified copies of the ordinance, resolution or other appropriate action in accordance with law, are filed by the municipality with the Board.

[Pa.B. Doc. No. 97-1390. Filed for public inspection August 29, 1997, 9:00 a.m.]