

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL HEARING BOARD

[25 PA. CODE CH. 102]

Practice and Procedure

The Environmental Hearing Board (Board) by this order amends Chapter 1021 (relating to practice and procedure) to read as set forth at Annex A. The regulations modify the rules of practice and procedure before the Board by implementing improvements in practice and procedure.

The Board approved the final regulations at its October 4, 2000, meeting.

Effective Date

The regulations will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

Contact Person

For further information, contact William T. Phillipy IV, Secretary to the Board, 2nd Floor, Rachel Carson State Office Building, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. If information concerning this rulemaking is required in an alternative form, William Phillipy may be contacted at the number in this Preamble. TDD users may telephone the Board through the AT&T Pennsylvania relay center at (800) 654-5984.

Statutory Authority

The regulations are promulgated under the authority of section 5 of the Environmental Hearing Board Act (act) (35 P. S. § 7515) which empowers the Board to adopt regulations pertaining to practice and procedure before the Board.

Comments and Revisions to Proposed Rulemaking

The Board received comments on the proposed regulations from the Independent Regulatory Review Commission (IRRC) and from John W. Carroll, Esq. of Pepper Hamilton LLP. The comments will be addressed on a section-by-section basis.

§ 1021.24 Referral to Pro Bono Counsel

Mr. Carroll questioned why the pro bono program is limited to pro se litigants and to "parties" and suggested that the rule should also apply to organizations and all persons before they become "parties." The Board agreed with this comment and has changed the rule to apply to any person who appears or intends to appear before the Board on a pro se basis and who claims inability to afford a lawyer.

Subsection (a) of the proposed rule authorized the Secretary to the Board to refer to pro bono counsel parties "who claim not to be able to afford a lawyer." Both the staff of IRRC and Mr. Carroll questioned whether the Board should include a process and standard for verifying a party's financial need. Proposed subsections (a)(3) and (b), which authorized the Board Secretary to refer parties to "an individual attorney, law firm or organization whose name appears on the Board's register of attorneys who have volunteered to take on the representation," were also opposed for these and other reasons.

The Board's consideration of these and other comments has led it to withdraw subsections (a)(3) and (b) of this rule. The final proposed rule only seeks authority to refer persons who claim to be unable to afford a lawyer to the appropriate state or county bar association with respect to their request for pro bono representation. Any bar association may then make its own decision as to whether or not to seek pro bono representation for the applicant based on its standards for determining whether the applicant is able to afford a lawyer. The Board has therefore added the following language to the proposed final rule: "The financial standard for determining a person's ability to afford a lawyer will be the standard adopted or applied by the appropriate bar association at the time of referral."

The Board's ability to refer persons not represented by counsel is important not only to the Board but also to other litigants before the Board. Persons who represent themselves in Board proceedings waste both the Board's time and that of business or municipal entities involved in the litigation as a result of favorable Department of Environmental Protection (Department) action with respect to their application. This is because persons who represent themselves are not versed in either the Board's rules of procedure or 225 Pa. Code (relating to Pennsylvania Rules of Evidence). These complex rules are applied in the hearing on the merits of the claims of the parties. In addition, persons who represent themselves have been known to improperly conduct discovery proceedings through the issuance of subpoenas to the great cost and annoyance of the other parties to the litigation.

The proposed final regulation will serve these interests by authorizing the Board's Secretary to direct these persons to the Pennsylvania Bar Association, or any relevant county bar association, for referral to pro bono counsel willing to provide these services without payment of a fee. The Board and the Pennsylvania Bar Association have inaugurated such a program under which the Secretary to the Board refers any such person to the Pennsylvania Bar Association. The Pennsylvania Bar Association will attempt to secure representation for any person who can demonstrate to the bar association an inability to pay for such legal services.

The standard for providing pro bono services to persons unable to afford legal representation through the Pennsylvania Bar Association was developed through a committee of that Bar Association's Environmental, Mineral and Natural Resources Law Section in consultation with members of the Board. The standard reflects the fact that totally destitute persons ordinarily do not take appeals from actions of the Department. However, persons owning some property may be adversely affected by Department action, but may be unable to afford legal representation. This standard also reflects the consideration that the pro bono program must be designed so that paying clients will not be taken away from attorneys in this Commonwealth who charge comparatively low legal fees. Accordingly, a standard was developed which is somewhat more liberal than what is applied under strict Legal Services Corporation guidelines. The standard applied by the Pennsylvania Bar Association under the current program is that the individual must meet one of the following eligibility criteria:

1. Income greater than 187.5% of the official Federal poverty threshold (OPT) guideline but no more than 200% of the OPT.

2. Income below 187.5% of the OPT who are nevertheless ineligible for free legal services through another program either as a result of a lack of appropriate funding or lack of environmental training on the part of program attorneys.

The Pennsylvania Bar Association will seek pro bono counsel for an appellant referred to it by the Board with a full financial disclosure that the applicant meets this standard. In the event an individual does not fall into either of these categories, the applicant may qualify for pro bono services by submitting an in forma pauperis affidavit under Pa.R.C.P. 240(h). This rule requires the party to make a complete financial disclosure and supply an affidavit from his attorney stating his belief that the party is unable to pay for legal services and that the attorney is providing free legal service to the party.

This financial standard will permit individuals having an income level somewhat above that which would qualify them for free representation in Federally funded programs as well as those persons who may be eligible for other Federally funded programs, but to whom these free legal services are unavailable or where there is a lack of appropriate environmental training on the part of program attorneys.

The Board expects that the standard for inability to pay for legal services approved by the Pennsylvania Bar Association or any relevant bar association will vary from time to time depending upon changing economic circumstances of likely applicants and of the practice of law. These standards may also vary depending on changes in state and Federal standards for providing public service to needy persons without charge. Accordingly, the Board has not proposed a fixed standard for bar associations to follow in making their decision as to whether to seek pro bono counsel for any particular applicant. However, the Board believes that the Pennsylvania Bar Association standard is most appropriate and that the bar associations will apply adequate standards for anyone who is unable to pay for legal services as circumstances may change.

The Board received other comments with respect to the now withdrawn provisions of the rule. It is unnecessary to respond to these comments in connection with this proposed final rule.

§ 1021.54 Substitution of Parties

Both IRRC and Mr. Carroll commented that the use of the word "election" in subsection (a) was unclear and that it should be clarified to indicate that it meant election to public office. The Board agreed with this comment and added the language "to public office" after the word "election" in subsection (a) of the final rule.

Mr. Carroll stated that the last sentence of subsection (b) referring to § 1021.53 was confusing. He questioned whether the reference should specifically be to § 1021.53(b)(2). The Board agreed and revised subsection (b) of the final rule to refer to § 1021.53(b)(2).

§ 1021.99 Authority Delegated to Hearing Examiners

IRRC submitted no comments on this proposed rule. Mr. Carroll had two comments. First, he suggested that the word "appoint" in subsection (a) should be replaced with "assign." The Board disagreed, determining that "appoint" was the proper term. While the Board might assign the duties of a hearing examiner to an assistant counsel employed by the Board, the rule should be more expansive in order to include the appointment of someone

not in the employ of the Board, such as a former administrative law judge, to act as a hearing examiner in times of a heavy caseload.

Mr. Carroll also felt that the use of the phrase "dispose of procedural matters" in subsection (a)(4) was too broad. The Board disagreed and determined that use of the word "dispose" was appropriate. The intent of the rule is that an assigned hearing examiner will work closely with the Board member in disposing of important objections or motions.

Sunset Date

A sunset date has not been established for these regulations. The effectiveness of the regulations will be evaluated on an ongoing basis by the Board and the Rules Committee.

Regulatory Review

As required by section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted copies of the proposed rulemaking, which was published at 30 Pa.B. 2766 (June 3, 2000), to IRRC and the Senate and House Environmental Resources and Energy Committees for review and comment. The Board also provided IRRC and the Committees with the Regulatory Analysis Form prepared in compliance with Executive Order 1996-1 (relating to regulatory review promulgation) and copies of comments received.

In preparing the final-form regulations, the Board has considered the comments received from the public and IRRC. No comments on the proposed rulemaking were received from either of the legislative committees.

These final-form regulations were submitted to the House Environmental Resources and Energy Committee and the Senate Environmental Resources and Energy Committee on November 8, 2000. Because no action was taken by the Committees within 20 days after submission of the final-form regulations, they are deemed approved. IRRC met on December 14, 2000, and approved the regulations under section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)).

Findings

The Board finds that

(1) Public notice of the proposed rulemaking was 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) These regulations are necessary and appropriate for administration of the act.

Order

The Board orders that:

(a) The regulations of the Board, 25 Pa. Code Chapter 1021, are amended by adding §§ 1021.24, 1021.54 and 1021.99 to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of Attorney General and Office of General Counsel for review as to legality and form as required by law.

(c) The Chairperson of the Board shall submit this order and Annex A to the House Environmental Resources and Energy Committee, the Senate Environmental Resources and Energy Committee and IRRC, as required by law.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

GEORGE J. MILLER,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 30 Pa.B. 6964 (December 30, 2000).)

Fiscal Note: Fiscal Note 106-5 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART IX. ENVIRONMENTAL HEARING BOARD

CHAPTER 1021. PRACTICE AND PROCEDURE

Subchapter A. PRELIMINARY PROVISIONS

REPRESENTATION BEFORE THE BOARD

§ 1021.24. Referral to pro bono counsel.

(a) The Secretary to the Board is authorized to refer persons who appear before the Board on a pro se basis, and who claim not to be able to afford a lawyer, to one of the following:

(1) The pro bono committee of the Pennsylvania Bar Association's Environmental, Mineral and Natural Resources Law Section.

(2) A county bar association lawyer referral service.

(b) The financial standard for determining a person's inability to afford a lawyer will be the standard adopted by the appropriate bar association at the time of referral.

Subchapter C. FORMAL PROCEEDINGS

APPEALS

§ 1021.54. Substitution of parties.

(a) A person who has succeeded to the interests of a party to an appeal by operation of law, election to public office, appointment or transfer of interest may become a party to the pending action by filing with the Board a verified petition for substitution of party, which includes a statement of material facts upon which the right to substitute is based.

(b) The substituted party shall have all the rights and liabilities of the original party to the proceeding provided that any other party to the proceeding may move to strike the substituted party for just cause. A substituted party-appellant is limited to pursuing only those objections raised by the original appellant in its appeal, unless both the original appellant and the substituted appellant meet the conditions of § 1021.53(b)(2) (relating to amendments to appeal; nunc pro tunc appeals).

HEARING EXAMINERS

§ 1021.99. Authority delegated to hearing examiners.

(a) The Board may appoint hearing examiners to preside at hearings. Subject to the approval of the Board member assigned to the case, the hearing examiner shall have the following authority:

- (1) To schedule and regulate the course of the hearings.
- (2) To administer oaths and affirmations.

(3) To rule on motions in limine, offers of proof and the admission or exclusion of evidence.

(4) To conduct pretrial conferences, settlement conferences and related pretrial proceedings and to dispose of procedural matters.

(5) To schedule the filing of posthearing briefs following the conclusion of the hearing.

(6) To recommend to the Board member or to the Board an opinion and order or adjudication disposing of the matters considered at the hearing.

(b) Subsection (a) supersedes 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers.)

[Pa.B. Doc. No. 01-74. Filed for public inspection January 19, 2001, 9:00 a.m.]

Title 40—LIQUOR

LIQUOR CONTROL BOARD

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

Licensees and Vendors

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 §§ 5.16, 5.31, 7.1, 7.5, 7.6, 7.22, 7.23, 7.41, 9.12, 9.91, 11.1, 11.2, 11.3, 11.201, 11.203, 11.204, 11.205, 13.43 and adds §§ 7.8 and 7.9.

Purpose

The Board regulations amended by this order will codify the Board's policy permitting outside employment for club managers or stewards, rescind the ability of municipalities to set the hours of amusement for retail licensees in contravention of the Liquor Code, delete references to surety bond requirements that were eliminated by statute, correct erroneous cites to the Malt Beverage Tax Law (72 P.S. §§ 9001—9016), delete the 120-day requirement for discounting wholesale beer prices as a result of a Federal court decision that struck down corresponding portions of the act of December 20, 1996 (P.L. 1513, No. 196) (Act 196), permit the sale of grain alcohol for nonpotable use, eliminate inaccurate references to cost limits on interior displays and eliminate the requirement that interior displays bear serial or model numbers.

Comments

Notice of proposed rulemaking was published at 29 Pa.B. 5301 (October 9, 1999), with a 30-day written public comment period.

The Board received four written comments from managers of hotels and a written comment from the President of the Pennsylvania Travel Council in support of its proposed regulatory change to § 13.102. This regulatory amendment would have allowed hotels to offer an open bar to their overnight guests as part of a meal package on December 31, 1999, until 2 a.m. on January 1, 2000. The amendment to § 13.102, as well as amendments to §§ 3.31, 3.33, 3.63, 3.73, 11.91, 11.92, 13.71—13.75, 13.77—13.79, 13.81, 13.86 and 13.87 relating to registration of vendors' agents, which were previously included with these regulatory amendments, were filed as a final rulemaking with proposed rulemaking omitted on November 8, 1999. These amendments took effect upon their publication at 29 Pa.B. 6337 (December 18, 1999).

The Independent Regulatory Review Commission (IRRC) submitted comments relative to the proposed rulemaking as follows:

1. As a general comment, IRRC referenced that portion of the rulemaking dealing with vendor registration as an area not addressed in these comments since a separate final-omitted regulations were submitted by the Board on November 8, 1999.

2. IRRC commented on several sections of the regulations that refer to forms and noted that the Board uses expressions such as "form furnished by the Board" or "transfer form" throughout its regulations. IRRC suggested that for the sake of clarity, the Board should consider providing a brief description of the forms after each of the aforementioned phrases. IRRC suggested this would help licensees obtain and use the appropriate form. However, only the Board's Bureau of Licensing furnishes forms to licensees and applicants for licenses and permits. In doing so, the Bureau of Licensing takes steps to insure that the appropriate and correct forms are furnished. Because the Board issues over 70 different types of licenses or permits and each of those licenses or permits could require a variety of actions such as transfer of location or ownership, correction to license, renewal, and the like, describing the forms in the regulations would serve no useful purpose. Identifying forms in the regulations would also restrict the Board's ability to change or eliminate a form without a regulatory change.

3. IRRC suggested that in § 7.5 (relating to transfers on death of the licensee) the comma between "transfer form" and the word "application" should be deleted. However, the transfer form and application are separate forms, therefore only the reference to the bond is deleted.

4. IRRC suggested that § 7.9 (relating to site plans) needed clarification. The proposed language states that the site plan submitted by an applicant for a new license or transfer of an existing license must depict the location of the proposed licensed premises in relation to identifiable property lines or easily identifiable landmarks. IRRC recommended that the term "easily identifiable landmarks" should be defined since the term is unclear. Therefore, "or reference points" was added after "landmarks."

5. IRRC stated that the term "maximum value" as used in § 13.43(b) and (c) (relating to interior display) referencing the value of interior displays, is vague and suggested that "maximum value as set by the Board" would better define the term. The Board agrees and the referenced section is being amended.

6. IRRC recommended clarification of § 13.87 (relating to records). Since subsection (b) states, "[T]he records shall also be open to inspection by authorized representatives of the Board during normal business hours," the IRRC questioned whether the phrase "normal business hours" referred to the standard hours of operation of the vendor or the Board. Although it is recognized that business may be conducted at all hours of the day or night, "normal business hours" is a general term similar to "nine to five." It references a generally recognized standard for conducting business so as not to inconvenience either party. This section was amended by a final regulation with proposed rulemaking omitted as referenced and published at 29 Pa.B. 6337.

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

Fiscal Impact

These final-form regulations will not impose additional costs on the regulated community, the State or local governments.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 17, 1999, 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. These final-form regulations were submitted to the Chairpersons of the House and Senate Committees and IRRC on October 31, 2000.

These final-form regulations were deemed approved by the House and Senate Committees on November 21, 2000. Under section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)), IRRC met on December 14, 2000, and approved the final-form regulations.

Contact Person

Persons requiring an explanation of the final-form regulations or information related thereto should contact Jerry Danyluk, Liquor Control Board, 513 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, 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 5, 7, 9, 11 and 13, are amended by adding §§ 7.8 and 7.9; by deleting §§ 11.2 and 11.201, 11.203—11.205; and by amending §§ 5.16, 5.31, 7.1, 7.5, 7.6, 7.22, 7.23, 7.41, 9.12, 9.91, 11.1, 11.3 and 13.43 to read as set forth in Annex A. Amendments to §§ 3.31, 3.33, 3.63, 3.73, 11.91, 11.92, 13.71—13.75, 13.77—13.79, 13.81, 13.86, 13.87 and 13.102 previously published at 29 Pa.B. 5301 were filed separately as a final rulemaking with proposed rulemaking omitted and were effective upon publication in the *Pennsylvania Bulletin* at 29 Pa.B. 6337.

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

(c) The Board shall certify this order 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 30 Pa.B. 6964 (December 30, 2000).)

Fiscal Note: Fiscal Note 54-55 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

§ 5.16. Appointment of managers.

(a) The operation of a licensed business requires the full time and attention of a manager. A licensee holding one or more licenses shall appoint an individual as manager for each licensed establishment and the manager shall devote full time and attention to the licensed business. If the licensee is an individual, he may designate himself as manager of one licensed establishment, except in the case of distributors or importing distributors. If a license is held by more than one individual, the manager may be one of the individuals or another person the licensee may designate, except in the case of distributors and importing distributors.

(b) The manager appointed by a licensee shall be a reputable person. The licensee shall notify the Board in writing of the name and home address of the manager and the date and place of birth. If there is a change of manager, the licensee shall give the Board written notice within 15 days of the change together with full information for the new individual who is appointed as manager. Each notice of the appointment of a manager or notice of a change of manager shall be accompanied by a fee of \$60.

(c) When a background investigation shall be conducted to obtain or verify information regarding an individual appointed as manager, an additional fee of \$75, for a total fee of \$135, will be assessed. An individual may not act in the capacity of manager after the licensee has been notified that the individual has been disapproved by the Board. The designated manager shall devote full time to the licensed business and may not be employed or engaged in another business unless prior written approval is obtained from the Board.

(d) A club manager or steward may be engaged in employment outside his duties as manager or steward except as provided in section 493(11) of the Liquor Code (47 P. S. § 4-493(11)).

Subchapter C. AMUSEMENT AND
ENTERTAINMENT

§ 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 amuse-

ment 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 amusement 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.

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

Subchapter A. TRANSFER OF LICENSES

§ 7.1. Filing of applications for transfer.

Licenses issued by the Board, under Article IV of the Liquor Code (47 P. S. §§ 4-401—4-498), may be transferred in accordance with this subchapter. Applications for transfer of licenses may be filed at any time, but when filed within 30 days of the expiration date of the license term, the transfer applies to the renewal license only, except in the case of death. Applications for transfer shall be made on the regular transfer form, which shall be accompanied by the application for license and remittance of proper fees in accordance with the applicable provisions of section 614-A of The Administrative Code of 1929 (71 P. S. § 240.14A).

§ 7.5. Transfers on death of the licensee.

On the death of the licensee, the license may be transferred immediately to the surviving spouse or to the

administrator or executor of the estate of the licensee, upon presentation of the transfer form, application, filing fee, and short form certificate from the registrar of wills. If it is desired to transfer the license to a person designated by and acting for the administrator or executor, the transfer application and fee, with written evidence of the designation, shall be submitted by the administrator or executor. The Board will be notified in writing within 30 days of the death of a licensee.

§ 7.6. Transfer of partnership licenses.

If one or more partners voluntarily retire, an application for correction of license shall be executed and filed by all the partners, including the retiring partner. In the case of death of a partner, the application for correction of license shall be executed and filed by the surviving partners, and by the administrator or executor of the estate of the deceased partner, if any, and be accompanied by a short form certificate from the registrar of wills. If there is no administrator or executor, the application for correction of license shall be executed and filed by the surviving partners together with documentary evidence of the death of the deceased partner. These requirements also apply if the license is held jointly by husband and wife. Applications for correction of a license under this section shall be accompanied by the proper fee in accordance with the applicable provisions of section 614-A of The Administrative Code of 1929 (71 P. S. § 240.14A).

§ 7.8. Floor plans.

Applicants for new licenses or for transfer of location of existing licenses shall submit floor plans with the application depicting all areas to be licensed. Floor plans are required for existing structures, as well as for structures proposed for construction and are to depict room dimensions. Floor plans shall be reproduced on paper and are not to exceed 8 1/2 by 11 inches. A separate floor plan is required for each floor used in conjunction with the licensed business.

§ 7.9. Site plans.

Applicants for new licenses or for transfer of location of existing licenses shall submit site plans when the structure the applicant intends to occupy has not been constructed at the time the application is filed with the Board. Site plans shall be reproduced on paper in an 8 1/2 by 11-inch format and shall depict the location of the proposed licensed premises in relation to identifiable property lines or easily identifiable landmarks or reference points with measurements to the property lines, landmarks or reference points.

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 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.

§ 7.23. Approval.

The additional premises for which it is desired to extend a license shall be completely equipped for the carrying on of the type of business permitted under the license, but no sales of liquor or malt or brewed beverages, storage or similar activity may take place in the additional premises until approval has been given by the Board. Where the extension of premises involves physical alterations or new construction, the Board may grant prior approval for the extension, as similarly provided in section 403(a) of the Liquor Code (47 P. S. § 4-403(a)). The application for extension of license shall be accompanied by a written request for consideration, together with floor plans as set forth in § 7.8 (relating to floor plans) clearly showing the premises as it will be after the alterations or construction are completed. If the additional premises the applicant intends to license has not been constructed at the time the application is filed with the Board, a site plan shall be submitted as set forth in § 7.9 (relating to site plans). Approval may be in the form of a new license, giving the additional address or a letter authorizing the use of additional premises. In the case of distributors and importing distributors of malt or brewed beverages, no sales of malt or brewed beverages may be made in a warehouse except that in which the office or principal place of business of the licensee is maintained.

**Subchapter D. EXCHANGE OF LICENSES
DISTRIBUTOR AND IMPORTING DISTRIBUTOR
LICENSES**

§ 7.41. Applications.

An application for the exchange of Distributor or Importing Distributor Licenses shall be filed on a form furnished by the Board and will be considered by the Board only at the times indicated in § 7.42 (relating to effective dates).

**CHAPTER 9. TRANSPORTATION, IMPORTATION,
DISPOSITION AND STORAGE**

**Subchapter A. TRANSPORTATION OF LIQUOR,
MALT OR BREWED BEVERAGES OR ALCOHOL
LICENSES**

§ 9.12. Applications for Transporter-for-Hire Licenses.

(a) *Transporter-for-Hire License, Class A.* An application for a Transporter-for-Hire License, Class A, shall be filed on forms furnished by the Board and shall be accompanied by application and license fees in accordance with section 614-A of The Administrative Code of 1929 (71 P. S. § 240.14A). The license will be issued for the calendar year and the license fee will be prorated quarterly, in accordance with section 508 of the Liquor Code (47 P. S. § 5-508).

(b) *Transporter-for-Hire License, Class B.* An application for a Transporter-for-Hire License, Class B, shall be accompanied by application and license fees in accordance with section 614-A of The Administrative Code of 1929. The licenses will be issued for the calendar year.

(c) *Transporter-for-Hire License, Class C.* An application for Transporter-for-Hire License, Class C, shall be accompanied by application and license fees in accordance with section 614-A of The Administrative Code of 1929. The license will be issued for the calendar year. To secure this license, the applicant shall demonstrate that he maintains a fleet of vehicles primarily engaged in general parcel consignment, servicing all points within this Commonwealth and shall demonstrate that he can transport

liquor from points in this Commonwealth to Board facilities, from Pennsylvania licensed limited winery locations to limited winery customers and from distilleries of historical significance to distillery customers.

**Subchapter E. IMPORTATION AND
DISTRIBUTION OF MALT OR BREWED
BEVERAGES**

GENERAL PROVISIONS

§ 9.91. Importation.

(a) A person may not import malt or brewed beverages into this Commonwealth for delivery or use therein, unless the person holds a valid Importing Distributor License, issued by the Board under the Liquor Code, or unless the person is otherwise exempted by the provisions of this section.

(b) This section does not prohibit the importation of malt or brewed beverages by either of the following:

(1) A resident of this Commonwealth, for personal use only and not for sale, provided that the malt or brewed beverages are in original containers and that the tax thereon has been paid, or provisions for the payment have been made under the Malt Beverage Tax Law (72 P. S. §§ 9001—9016).

(2) Railroad and pullman companies, in their dining, club and buffet cars, licensed in this Commonwealth.

(c) Sales of malt or brewed beverages intended to be transported for delivery or use in this Commonwealth shall be consummated outside this Commonwealth and shall be paid for in full prior to or at the time of delivery to the consignee in this Commonwealth, who shall pay transportation charges. The beverages shall also be tax paid in accordance with section 2003 of the Malt Beverage Tax Law (72 P. S. § 9003), and the transporter shall be considered the agent of the consignee.

CHAPTER 11. PURCHASES AND SALES

Subchapter A. GENERAL PROVISIONS

RETAIL AND WHOLESALE PURCHASE—GENERAL

§ 11.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Manufacturer—A person engaged in the manufacture, rectification or compounding of liquors, other than wines, or an agent or representative of the manufacturer. The term, as it relates to Subchapter L (relating to manner of changing prices of malt or brewed beverages), is any entity licensed for and engaged in the manufacture of malt or brewed beverages within this Commonwealth or elsewhere.

State, territory or county of origin—The place where liquors other than wines offered for sale to the Board are manufactured, rectified or compounded for the market.

§ 11.2. (Reserved).

§ 11.3. Sales at retail.

(a) State liquor stores may stock ethyl alcohol, 190 proof, for retail sales subject to the following:

(1) An individual or entity desiring to purchase ethyl alcohol shall file an application on forms provided by the Board.

(2) The Board may approve the application of an individual or entity who swears or affirms that the alcohol will be purchased for nonpotable use only.

(b) Special orders are subject to the following:

(1) Special orders for ethyl alcohol shall be accepted for a minimum quantity of one case of 24 pints or one case of 12 quarts.

(2) Special orders of absolute ethyl alcohol, 200 proof, shall be accepted for a minimum quantity of 1 gallon.

(3) Special orders require a deposit of at least 25% of the selling price at the time of placing an order. The name of the manufacturer shall also be furnished.

Subchapter L. (Reserved)

§ 11.201. (Reserved).

§ 11.203. (Reserved).

§ 11.204. (Reserved).

§ 11.205. (Reserved).

CHAPTER 13. PROMOTION

Subchapter A. ADVERTISING

ADVERTISING OF BRAND NAMES

§ 13.43. Interior display.

(a) A licensee may not install or permit to be installed electrically operated signs or devices, lithographs, framed pictures, cardboard displays, statuettes, plaques, placards, streamers or similar items advertising brand names and intended for interior display on the licensed premises until the licensee has submitted detailed information to the Board on forms provided by the Board, and obtained Board approval. A photograph or sketch of the display sign shall accompany the application form.

(b) When the approved sign, as described in subsection (a), is of maximum value as set by the Board, no background material may be used in conjunction with the installation.

(c) Signs or displays intended for use interchangeable in a window, doorway or in the interior shall meet the requirements for both maximum area, as provided in § 13.42 (relating to window and doorway display) and maximum value as set by the Board.

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