

RULES AND REGULATIONS

Title 12—COMMERCE, TRADE AND LOCAL GOVERNMENT

DEPARTMENT OF COMMUNITY AND ECONOMIC
DEVELOPMENT
[12 PA. CODE CH. 145]

[Correction]

Industrialized Housing and Components

An error occurred in the final-form rulemaking which appeared at 34 Pa.B. 6024, 6026 (November 6, 2004). The effective date was incorrect. The correct version is as follows, with ellipses referring to the existing text of the final-form rulemaking.

* * * * *

Effective Date/Sunset Date

The final-form rulemaking will take effect February 4, 2005. The final-form rulemaking will be monitored on a regular basis and updated as needed.

* * * * *

Order

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

* * * * *

(c) This order shall take effect February 4, 2005.

* * * * *

[Pa.B. Doc. No. 04-1994. Filed for public inspection November 5, 2004, 9:00 a.m.]

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CH. 93]

Stream Redesignations (Brushy Meadow Creek, et al.)

The Environmental Quality Board (Board) by this order amends 25 Pa. Code §§ 93.9c, 93.9g, 93.9l, 93.9n, 93.9o, 93.9q and 93.9v to read as set forth in Annex A.

This order was adopted by the Board at its meeting of June 15, 2004.

A. Effective Date

These amendments are effective upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

B. Contact Persons

For further information, contact Edward R. Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Water Supply and Wastewater Management, 11th Floor, Rachel Carson State Office Building,

P. O. Box 8467, 400 Market Street, Harrisburg, PA 17105-8467, (717) 787-9637 or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD-users) or (800) 654-5988 (voice users). This final-form rulemaking is available electronically through the Department of Environmental Protection's (Department) website www.dep.state.pa.us.

C. Statutory Authority

This final-form rulemaking is being made under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law and Section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grants to the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department. In addition, section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313) sets forth requirements for water quality standards and the Federal regulation at 40 CFR 131.32 (relating to Pennsylvania) sets forth certain requirements for portions of the Commonwealth's antidegradation program.

D. Background of the Final-Form Rulemaking

Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements and effluent limits) on individual sources of pollution.

The Department considers candidates for High Quality (HQ) or Exceptional Value (EV) Waters and all other use designations in its ongoing review of water quality standards. In general, HQ and EV waters shall be maintained at their existing quality and permitted activities shall ensure the attainment of all designated and existing uses.

The Department may identify candidates for redesignation during routine waterbody investigations. Requests for consideration may also be initiated by other agencies, such as the Fish and Boat Commission (Commission). Organizations, businesses or individuals may submit a rulemaking petition to the Board.

These streams were evaluated in response to two petitions, as well as requests from the Commission and the Department's Southcentral Regional Office (SCRO), Northeast Regional Office (NERO) and Bureau of Water Supply and Wastewater Management (BWSWM) as follows:

Petitions: Crum Creek and Green Lick Run

PFBC: Pine Creek

SCRO: Little Juniata River and Spring Creek

NERO: Brushy Meadow Creek and Waltz Creek

BWSWM: South Fork Beech Creek

These regulatory changes were developed as a result of aquatic studies conducted by the BWSWM and the Commission. The physical, chemical and biological characteristics and other information on these waterbodies were evaluated to determine the appropriateness of the current and requested designations using applicable regulatory criteria and definitions. In reviewing whether waterbodies qualify as HQ or EV waters, the Department considers

the criteria in § 93.4b (relating to qualifying as High Quality or Exceptional Value Waters). Based upon the data collected in these surveys, the Board has made the designations in Annex A.

In addition, a corrective amendment is included to rectify an omission from the Class A Wild Trout Waters rulemaking, which was published as final rulemaking in 32 Pa.B. 4695 (September 28, 2002). In redesignating the upper reaches of Lost Creek (Drainage List N), an entry for Little Lost Creek was inadvertently omitted. Little Lost Creek is designated Trout Stocking (TSF), and is reinserted into the drainage list in the annex as a corrective amendment.

E. Summary of Comments and Responses on the Proposed Rulemaking

The Board approved the proposed rulemaking for the Brushy Meadow Creek, et al. package at its December 17, 2002, meeting. The proposed rulemaking was published at 33 Pa.B. 4165 (August 23, 2003) with provision for a 45-day public comment period that closed on October 7. Comments were received from 12 commentators. The United States Environmental Protection Agency (EPA) Region 3 office supported the package in general.

Nine commentators supported the redesignation of the West Branch Crum Creek to EV. They cited local efforts to protect water quality in the Crum Creek basin through conservation easements and ordinances to protect riparian buffer areas. They also noted the need to protect the Springton (Geist) Reservoir that serves as a public water supply. The Chester County Planning Commission and the Chester County Water Resources Authority noted that the redesignation of the West Branch Crum Creek to EV fits in with the county comprehensive plan.

One commentator expressed concern about the potential impact of ash from the Harrisburg Incinerator on groundwater and water quality in Spring Creek and wanted the Department to address this issue in its study. No sampling was conducted during the redesignation evaluation to specifically assess the impacts of the incinerator on the creek because any effects from the incinerator are reflected in the existing quality of the stream and the aquatic community observed during the study. If the stream had shown signs of impairment, causes for the impairments would then have been investigated.

The Commission commented that its assessment work at two sites on Waltz Creek in August 2002 developed data to support the inclusion of Waltz Creek on the Class A Wild Trout Streams (WTS) list. They recommended that the Board defer action on the redesignation of Waltz Creek until the Class A designation process has been completed. The Commission published notice at 34 Pa.B. 1643 (March 20, 2004) that proposed to add portions of Waltz Creek to its list of Class A WTSs. Formal action to designate a portion of Waltz Creek as a Class A WTS was taken at the Commission meeting on April 19-20, 2004, following the public comment period. The Department obtained the Commission inventory report for the lower reach of Waltz Creek and our independent review confirmed that the Class A wild brown trout criterion for a HQ Cold Water Fishes (CWF) water is met. As a result, the portion of Waltz Creek downstream from the confluence of Greenwalk Creek is recommended for designation as HQ-CWF, MF. This is a change from the CWF, MF designation in the proposed rulemaking.

F. Summary of Changes to the Proposed Rulemaking

The aquatic life use designation for the Waltz Creek basin from the confluence of Greenwalk Creek to the

mouth has been changed to HQ-CWF, MF. The final designation is based on the Commission's action and Department's independent evaluation as described in Section E of this Preamble.

A corrective amendment to reinsert Little Lost Creek into Drainage List N as TSF has been added.

G. Benefits, Costs and Compliance

1. *Benefits*—Overall, the citizens of this Commonwealth will benefit from these amendments because they will reflect the appropriate designated use and maintain the most appropriate degree of protection for each stream in accordance with the existing use of the stream.

2. *Compliance Costs*—Generally, the changes should have no fiscal impact on, or create additional compliance costs for the Commonwealth or its political subdivisions. The streams are already protected at their existing use, and therefore the designated use changes will have no impact on treatment requirements. No costs will be imposed directly upon local governments by these revisions. Political subdivisions that add a new sewage treatment plant or expand an existing plant in these basins may experience changes in cost as noted below in the discussion of impacts on the private sector.

Persons conducting or proposing regulated activities shall comply with the regulatory requirements relating to designated and existing uses. For example, persons could be adversely affected if they expand a discharge or add a new discharge point since they may need to provide a higher level of treatment to meet the designated and existing uses of the stream. These increased costs may take the form of higher engineering, construction or operating costs for wastewater treatment facilities. Treatment costs are site-specific and depend upon the size of the discharge in relation to the size of the stream and many other factors. It is therefore not possible to precisely predict the actual change in costs. Economic impacts would primarily involve the potential for higher treatment costs for new or expanded discharges to streams that are redesignated to a more protective use.

3. *Compliance Assistance Plan*—The regulatory revisions have been developed as part of an established program that has been implemented by the Department since the early 1980s. The revisions are consistent with and based on existing Department regulations. The revisions extend additional protection to selected waterbodies that exhibit exceptional water quality and are consistent with antidegradation requirements established by The Clean Streams Law and the Federal Clean Water Act. All surface waters in this Commonwealth are afforded a minimum level of protection through compliance with the water quality standards, which prevent pollution and protect existing water uses.

The amendments will be implemented through the Department's permit and approval actions. For example, the National Pollutant Discharge Elimination System (NPDES) permitting program bases effluent limitations on the use designation of the stream. These permit conditions are established to assure water quality criteria are achieved and designated and existing uses are protected. New and expanding dischargers with water quality based effluent limitations are required to provide effluent treatment according to the water quality criteria associated with existing uses and revised designated water uses.

4. *Paperwork Requirements*—The regulatory revisions should have no direct paperwork impact on the Commonwealth, local governments and political subdivisions, or

the private sector. These regulatory revisions are based on existing Department regulations and simply mirror the existing use protection that is already in place for these streams. There may be some indirect paperwork requirements for new or expanding dischargers to streams upgraded to HQ or EV. For example, NPDES general permits are not currently available for new or expanded discharges to these streams. Thus an individual permit, and its associated paperwork, would be required. Additionally, paperwork associated with demonstrating social and economic justification may be required for new or expanded discharges to certain HQ Waters, and consideration of nondischarge alternatives is required for all new or expanded discharges to EV and HQ Waters.

H. *Pollution Prevention*

The water quality standards and antidegradation programs are major pollution prevention tools because the objective is to prevent degradation by maintaining and protecting existing water quality and existing uses. Although the antidegradation program does not prohibit new or expanded wastewater discharges, nondischarge alternatives are encouraged, and required when environmentally sound and cost effective. Nondischarge alternatives, when implemented, remove impacts to surface water and reduce the overall level of pollution to the environment by remediation of the effluent through the soil.

I. *Sunset Review*

This final-form rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 13, 2003, the Department submitted a copy of the proposed rulemaking, published at 33 Pa.B 4165, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, the Department provided IRRC and the Committees with copies of the comments received, as well as other documentation when requested. The Department has considered all public comments in preparing this final-form regulation. No comments were received on the proposed rulemaking from IRRC or the Committees.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), this final-form rulemaking was deemed approved by the House and Senate Committees

on October 6, 2004. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 7, 2004, and approved the final-form rulemaking.

K. *Findings*

The Board finds that:

(1) Public notice of 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 regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposal published at 33 Pa.B 4165.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

(5) This final-form rulemaking does not contain standards or requirements that exceed requirements of the companion Federal regulations.

L. *Order*

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

(a) The regulations of the Department, 25 Pa. Code Chapter 93, are amended by amending §§ 93.9c, 93.9g, 93.9i, 93.9n, 93.9o, 93.9q and 93.9v to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

(c) The Chairperson shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees, as required by the Regulatory Review Act.

(d) The Chairperson 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 immediately upon publication in the *Pennsylvania Bulletin*.

KATHLEEN A. MCGINTY,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 34 Pa.B. 5889 (October 23, 2004).)

Fiscal Note: 7-380 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 93. WATER QUALITY STANDARDS

ANTIDegradation Requirements

§ 93.9c. Drainage List C.

Delaware River Basin in Pennsylvania

Delaware River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
2—Martins Creek	Main Stem, Confluence of East and West Forks to Mouth	Northampton	TSF, MF	None
3—UNTs to Martins Creek	Basins, Confluence of East and West Forks to Mouth	Northampton	TSF	None
3—Brushy Meadow Creek (UNT 64106)	Basin, Source to East Bangor Dam	Northampton	TSF, MF	None
3—Brushy Meadow Creek	Main Stem, East Bangor Dam to Mouth	Northampton	CWF, MF	None
4—UNTs to Brushy Meadow Creek	Basins, East Bangor Dam To Mouth	Northampton	TSF, MF	None
3—Waltz Creek	Basin, Source to Greenwalk Creek	Northampton	CWF, MF	None
4—Greenwalk Creek	Basin	Northampton	CWF, MF	None
3—Waltz Creek	Basin, Greenwalk Creek to Mouth	Northampton	HQ-CWF, MF	None
3—Little Martins Creek	Basin	Northampton	CWF	None

§ 93.9g. Drainage List G.

Delaware River Basin in Pennsylvania

Delaware River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
3—Stony Creek	Non-Tidal Portions of Basin	Delaware	WWF, MF	None
2—Crum Creek	Basin, Source to West Branch Crum Creek	Chester	HQ-CWF	None
3—West Branch Crum Creek	Basin	Chester	EV	None
2—Crum Creek	Basin, West Branch Crum Creek to Junction of Newtown, Edgemont and Willistown Township Borders	Chester— Delaware	HQ-CWF	None
2—Crum Creek	Basin, Junction of Newtown, Edgemont and Willistown Township Borders to Springton Reservoir	Delaware	CWF	None

§ 93.9l. Drainage List L.

Susquehanna River Basin in Pennsylvania

West Branch Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
3—Moshannon Creek	Basin, Source to Roup Run	Clearfield—Centre	HQ-CWF	None
3—Moshannon Creek	Main Stem, Roup Run To Mouth	Clearfield—Centre	TSF	None
4—UNTs to Moshannon Creek	Basins, Roup Run to Mouth	Clearfield—Centre	CWF	None
4—Roup Run	Basin	Centre	CWF	None
	* * * * *			
4—Marsh Creek	Basin	Centre	CWF	None
4—Beech Creek				
5—South Fork Beech Creek	Basin, Source to Stinktown Run	Centre	CWF	None
6—Stinktown Run	Basin	Centre	HQ-CWF	None
5—South Fork Beech Creek	Basin, Stinktown Run to Mouth	Centre	CWF	None
5—North Fork Beech Creek	Basin, Source to Confluence with South Fork	Centre	CWF	None
4—Beech Creek	Main Stem, Confluence of South and North Branches to Mouth	Clinton—Centre	CWF	None
5—UNTs to Beech Creek	Basins, Confluence of South and North Branches to Mouth	Clinton—Centre	CWF	None
5—Rock Run	Basin	Centre	EV	None
	* * * * *			

§ 93.9n. Drainage List N.

Susquehanna River Basin in Pennsylvania

Juniata River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
4—Robinson Run	Basin	Huntingdon	WWF	None
3—Little Juniata River	Main Stem, Source to Logan Spring Run	Blair-Huntingdon	TSF	None
4—UNT to Little Juniata River	Basins, Source to Logan Spring Run	Blair	WWF	None
4—Spring Run	Basin	Blair	WWF	None
	* * * * *			
5—Sink Run	Basin	Blair	TSF	None
4—Logan Spring Run	Basin	Huntingdon	WWF	None
3—Little Juniata River	Main Stem, Logan Spring Run to Confluence with Frankstown Branch	Huntingdon	CWF	None
4—UNTs to Little Juniata River	Basins, Logan Spring Run to Confluence with Frankstown Branch	Huntingdon-Blair	WWF	None
4—Elk Run	Basin	Blair	WWF	None

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
4—Gensimore Run	Basin	Huntingdon	WWF	None
4—Sinking Run	Basin	Huntingdon	CWF	None
4—Spruce Creek	Basin	Huntingdon	HQ-CWF	None
4—McLain Run	Basin	Huntingdon	WWF	None
		* * * * *		
3—Lost Creek	Basin, SR 35 Bridge to Little Lost Creek	Juniata	CWF	None
4—Little Lost Creek	Basin	Juniata	TSF	None
3—Lost Creek	Basin, Little Lost Creek to Big Run	Juniata	TSF	None
		* * * * *		

§ 93.9o. Drainage List O.

Susquehanna River Basin in Pennsylvania

Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
		* * * * *		
2—Paxton Creek	Basin	Dauphin	WWF	None
2—Spring Creek	Basin	Dauphin	CWF	None
2—Yellow Breeches Creek	Main Stem, Source to LR 21012 (SR 1007)	Cumberland	HQ-CWF	None
		* * * * *		

§ 93.9q. Drainage List Q.

Ohio River Basin in Pennsylvania

Allegheny River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
		* * * * *		
4—Church Run	Basin	Crawford	CWF	None
4—Pine Creek	Basin, Source to Caldwell Creek	Crawford	HQ-CWF	None
5—Caldwell Creek	Basin, Source to West Branch Caldwell Creek	Warren	HQ-CWF	None
6—West Branch Caldwell Creek	Basin	Crawford	EV	None
5—Caldwell Creek	Basin, West Branch Caldwell Creek to Mouth	Crawford	EV	None
4—Pine Creek	Basin, Caldwell Creek to Mouth	Crawford	CWF	None
4—Benninghof Run	Basin	Venango	CWF	None
		* * * * *		

§ 93.9v. Drainage List V.

Ohio River Basin in Pennsylvania
Monongahela River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
4—Jacobs Creek	Basin, Bridgeport Reservoir Dam to Green Lick Run	Fayette-Westmoreland	WWF	None
5—Green Lick Run	Basin, Source to Latta Run	Fayette	EV	None
6—Latta Run	Basin	Fayette	CWF	None
5—Green Lick Run	Basin, Latta Run to T-753 Bridge	Fayette	CWF	None
5—Green Lick Run	Basin, T-753 Bridge to Mouth	Fayette	WWF	None
4—Jacobs Creek	Basin, Green Lick Run to Mouth	Fayette-Westmoreland	WWF	None
4—Cedar Creek	Basin	Westmoreland	TSF	None

[Pa.B. Doc. No. 04-2025. Filed for public inspection November 12, 2004, 9:00 a.m.]

Title 40—LIQUOR

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 1, 3, 5, 7, 9, 11, 13 AND 15]

Revisions to Codify Practices and Procedures Resulting from Legislative Amendments

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (code) (47 P.S. § 2-207(i)) adopted amendments to Chapters 1, 3, 5, 7, 9, 11, 13 and 15.

Summary

This final-form rulemaking codifies numerous practices and procedures of the Board and further explains various legislative changes to the Liquor Code (47 P.S. §§ 1-101—8-803). The following is a summary:

- * It defines what may be considered when evaluating a person's reputation.
- * It explains seating requirements for licensed retail establishments.
- * It explains the issuance of a certificate of approval, a letter of authority and who must execute a certificate of completion for licensing and the consequences for failing to do so.
- * It states the recordkeeping requirements for alternate brewers' licenses and explains brewery pubs' privileges and requirements.
- * It states requirements for issuing economic development licenses.
- * It sets forth whom licensees may employ and who may be appointed as manager in accordance with the Liquor Code.
- * It defines sweepstakes and who may sponsor sweepstakes promotions.
- * It eliminates the prohibition of a stage on the licensed premises where entertainment could be seen outside the premises.

- * It fully explains how municipalities may petition the Board for exemption from the Board's regulations on noise.
- * It eliminates the prohibition on selling or furnishing lunch below cost.
- * It explains how clubs and catering clubs may exchange their licenses.
- * It explains that a licensee may request a hearing when the licensee cannot comply with a prior approval for reasons beyond the licensee's control.
- * It explains how to convert a suspension to a fine.
- * It sets forth the requirements for a temporary extension of license.
- * It sets the maximum period for safekeeping of retail licenses, except clubs, to 3 years per the Liquor Code.
- * It fully explains sheriff's sales of liquor licenses.
- * It defines procedures for intermunicipal transfers of retail licenses.
- * It regulates Internet wine sales.
- * It eliminates obsolete regulations about vehicle identification.
- * It increases the number of authorized agents who may purchase liquor on behalf of licensees from two to four.
- * It eliminates prohibitions on cooperative advertising and the requirement for prior Board approval for point-of-sale and advertising novelties.
- * It explains advertising by manufacturers on distributor trucks.
- * It clarifies limits on bar spending/free drinks.
- * It defines discount pricing practices.
- * It regulates tasting events on licensed premises and in Wine and Spirits Stores.
- * It sets forth conditions on providing free samples.

Affected Parties

This final-form rulemaking will affect Internet wine purchasers and sellers, retail and wholesale licensees and applicants for licenses issued by the Board.

Paperwork Requirements

The final-form rulemaking will not significantly increase paperwork for the Board or the regulated community. In several cases, existing paperwork will be eliminated.

Fiscal Impact

Because this final-form rulemaking primarily codifies and organizes existing practices or obligations under the code, it will not have a fiscal impact on the licensees of the Board or applicants for licenses, the Commonwealth or its subdivisions.

Effective Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 18, 2004, the Board submitted a copy of the proposed rulemaking, published at 34 Pa.B. 3411, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Committees for review and comment.

In preparing this final-form rulemaking, the Board has considered all comments from IRRC, the committees and the public. No comments were received from the committees or the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on October 20, 2004, this 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 October 21, 2004, and approved the final-form rulemaking.

Contact Person

Further information may be obtained from James Maher, Office of Chief Counsel, 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, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the final-form rulemaking is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Board, acting under the enabling statutes, orders that:

(a) The regulations of the Board, 40 Pa. Code Chapters 1, 3, 7, 9, 11, 13 and 15, are amended by:

(1) Amending §§ 3.1, 3.8, 3.13, 5.21, 7.31, 11.33, 13.51, 13.102 and 15.62; by adding §§ 1.5, 3.104, 3.106—3.108, 5.36, 7.25, 7.61, 7.62, 7.64, 9.131, 13.53, 13.201, 13.211, 13.221—13.229 and 13.231; and by deleting §§ 5.61, 13.14 and 13.24 to read as set forth at 34 Pa.B. 3411.

(2) Amending §§ 5.23, 5.30, 5.32, 7.3, 9.11, 9.22, 9.28, 11.7, 13.42, 13.43, 13.52; by adding §§ 3.91, 3.92, 3.101—3.103, 3.105, 5.86, 7.10, 7.33, 7.63, 7.65, 9.132, 9.141—9.145; and by deleting §§ 9.23, 9.24, 9.26, 9.29 and 9.30 to read as set forth in Annex A.

JONATHAN H. NEWMAN,

Chairperson

Fiscal Note: 54-59. (1) Liquor Fund; (2) Implementing Year 2003-04 is \$294,000; (3) 1st Succeeding Year 2004-05 is \$294,000; 2nd Succeeding Year 2005-06 is \$294,000; 3rd Succeeding Year 2006-07 is \$294,000; 4th Succeeding Year 2007-08 is \$294,000; 5th Succeeding Year 2008-09 is \$294,000; (4) 2003-04 Program—\$294,000; 2002-03 Program—\$236,000; 2001-02 Program—\$240,000; (7) recommends adoption. Although this regulation will result in a loss of revenue due to the repeal of a registration fee, the elimination of the registration process for vehicles transporting alcoholic beverages will result in a net savings since this fee did not cover the cost of the program.

Annex A**TITLE 40. LIQUOR****PART I. LIQUOR CONTROL BOARD****CHAPTER 1. GENERAL PROVISIONS****CHAPTER 3. LICENSE APPLICATIONS****Subchapter A. GENERAL PROVISIONS****Subchapter J. MALT OR BREWED BEVERAGE MANUFACTURERS****§ 3.91. Alternating brewers' license.**

Records required to be maintained shall be the same as are required by a licensed manufacturer of malt or brewed beverages under § 5.101 (relating to breweries).

§ 3.92. Brewery pubs.

(a) The Board will be authorized to issue a brewery pub license to the holder of a brewery license. A brewery pub license may only be issued in those municipalities in which the Board may issue or transfer a malt and brewed beverage retail dispenser license.

(b) The holder of a brewery pub license shall have all the rights and be subject to the same conditions and qualifications as those imposed on holders of a malt and brewed beverage retail dispenser license except as set forth in this section.

(c) The brewery pub license will be issued to premises immediately adjacent to but separate and distinct from the brewery premises.

(d) Sales of alcoholic beverages at the brewery pub premises shall be limited to sales of malt or brewed beverages produced at and owned by the adjacent brewery. A brewery pub licensee may sell, for on-premises consumption, Pennsylvania wine it has purchased either from the Board or the holder of a Pennsylvania limited winery license.

(e) A brewery pub license may not be issued to a brewery that has already acquired a restaurant, hotel or malt and brewed beverage retail dispenser license. If a brewery, which has a brewery pub license, applies for and acquires a restaurant, hotel or malt and brewed beverage retail dispenser license, the brewery pub license will be cancelled upon approval of the restaurant, hotel or malt and brewed beverage retail dispenser license.

(f) Any citations which may be issued pursuant to section 471 of the Liquor Code (47 P. S. § 4-471) for activity relating to the brewery pub will be issued against the brewery license.

Subchapter K. ECONOMIC DEVELOPMENT LICENSES

§ 3.101. Economic development licenses.

(a) *Issuance of license.* The Board may issue restaurant and eating place retail dispenser licenses without regard to county quota restrictions for the purpose of economic development in a municipality for premises situated within any of the following:

(1) A KOZ established under the authority of the Keystone Opportunity Zone, Keystone Opportunity Expansion Zone and Keystone Opportunity Improvement Zone Act (73 P. S. §§ 820.101—820.1309).

(2) An EZ, as designated by the Department of Community and Economic Development in accordance with the Neighborhood Assistance Act (62 P. S. §§ 2081—2089).

(3) A municipality that has approved the issuance of a restaurant or eating place retail dispenser license for the purpose of local economic development.

(b) *Definitions.* The following words and terms, when used in this subchapter, have the following meanings:

EZ—Enterprise Zone.

KOZ—Keystone Opportunity Zone.

§ 3.102. Approval for economic development license.

(a) An applicant shall request written certification from the KOZ local coordinator or EZ administrator that the proposed licensed premises is situated in a zone or an area designated for economic development.

(b) An applicant shall request approval from the municipality for a KOZ, EZ or local economic development license.

(1) The municipality will hold at least one public hearing on the applicant's request for an economic development license.

(2) The municipality shall, within 45 days of a request for approval, render a decision by ordinance or resolution to approve or disapprove the applicant's request for an economic development license.

(3) If the municipality finds that the issuance of the license would promote economic development, it may approve the request. The municipality shall refuse the request if it finds that the approval of the request would adversely affect the welfare, health, peace and morals of the municipality or its residents.

(4) If the receiving municipality denies the applicant's request for approval of an economic development license, the applicant may appeal the decision of the municipality to the court of common pleas in the county in which the proposed licensed premises is located.

§ 3.103. Filing criteria for provisional economic development license.

A license application may be filed with the Board for premises situated within a KOZ, an EZ or a municipality that has approved the issuance of a license for the purpose of local economic development, provided that the applicant submits the following with its application:

(1) The required initial application surcharge fee as determined by county class, the appropriate license fee and application-processing fee.

(2) Written certification from the KOZ local coordinator or EZ administrator or from the municipality that the

proposed licensed premises is situated in a zone or an area designated for economic development.

(3) Municipal approval in the form of an ordinance or resolution, including the applicant's name and exact address, approving the issuance of an economic development license.

§ 3.105. Quarterly filing of applications and application hearings.

(a) Issuance of economic development licenses is limited to two licenses per calendar year in counties of the first through fourth class and one license per calendar year in counties of the fifth through eighth class.

(b) Quarterly filing periods are established for all counties as follows:

1st Quarter—January 1 through March 31

2nd Quarter—April 1 through June 30

3rd Quarter—July 1 through September 30

4th Quarter—October 1 through December 31

(c) At the end of the first quarter, every properly filed license application in a county will be subject to an administrative hearing before a Board hearing examiner in accordance with section 464 of the Liquor Code (47 P. S. § 4-464). Second quarter applications will be held in abeyance until after hearings are held for first quarter applications and a determination is made by the Board as to the availability of a license within the county.

(d) If a vacancy continues to exist in a county after hearings are held and a determination has been made by the Board, properly filed applications for the next quarter will be scheduled for hearings.

(e) In addition to any objections to, or support of, an application for the issuance of a license, an applicant shall establish at the administrative hearing, that it has exhausted reasonable means to find a suitable license within the existing county quota law.

(f) Upon approval of an application, the applicant will receive a provisional license for 120 days, exclusive of periods of safekeeping.

(g) In the event of an appeal from the Board's decision regarding the issuance or renewal of an economic development license, the appeal will act as a supersedeas and will preclude the processing of additional applications for vacancies in that county.

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

Subchapter B. EMPLOYEES OF LICENSEES

EMPLOYMENT OF OTHERS

§ 5.23. Appointment of managers.

(a) The operation of a licensed business requires a manager. A licensee shall appoint an individual as manager for each licensed establishment. The manager shall devote full time and attention to the licensed business.

(b) Appointment or approval, or both, by the Board of a manager will not exempt the licensee from the penalties provided by law and this title for violations committed in the licensed establishment or in the course of the operation of the licensed business.

(c) The Board may rescind the approval of an appointment of a manager at any time for any cause which it deems sufficient.

(d) In the event of the illness or extended vacation of a licensee, the Board may approve the appointment of a manager for a period not to exceed 30 days. In case of emergency, the approval may be extended upon written request of the licensee.

(e) The licensee, without Board approval, may designate one of its employees as the person in charge of the business for a period of time not to exceed 15 calendar days, when the manager is absent from the licensed premises.

(f) The manager appointed by a licensee shall be a reputable person. The licensee shall submit an application for appointment of a manager to the Board. If the licensee is a club or catering club, notice of the change in manager shall be part of licensee's application for license validation or renewal. For other licensees, if there is a change of manager, the licensee shall give the Board written notice within 15 calendar 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.

(g) When a background investigation is 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 Board has disapproved the individual. The designated manager shall devote full time to the licensed business and may not be employed or engaged in another business unless prior approval is obtained from the Board.

(h) A club manager or steward may engage 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

§ 5.30. Definitions.

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

Audio/video playback device—A device which emits a musical recording, or in the case of a video jukebox, emits a musical recording accompanied by recorded video images on a screen that does not exceed 24 inches by 30 inches.

Event/tournament/contest—A competitive endeavor involving skill, speed, strength or endurance. The term includes a competitive endeavor involving physical attributes of contestants.

Game—A device, such as a pinball, shuffleboard, bowling or video machine which provides the player with amusement and no other form of award excepting free plays.

Instrumental music—Music generated by instruments played by musicians without vocal accompaniment.

Sweepstakes—A chance promotion in which tickets or game pieces are distributed and the winner or winners are selected in a random drawing.

§ 5.32. Restrictions/exceptions.

(a) A licensee may not use or permit to be used inside or outside of the licensed premises a loudspeaker or similar device whereby the sound of music or other

entertainment, or the advertisement thereof, can be heard on the outside of the licensed premises.

(b) A licensee may not permit an employee, servant, agent, event/tournament/contest participant or a person engaged directly or indirectly as an entertainer in the licensed establishment or a room or place connected therewith, to be in contact or associate with the patrons in the establishment, room or place for a lewd, immoral, improper or unlawful purpose. A copy of this restriction shall be constantly and conspicuously displayed on the wall of the dressing room used by the entertainers, as well as in a conspicuous location visible to employees, servants, agents and event/tournament/contest participants.

(c) A licensee may not directly or indirectly employ a minor person under 18 years of age as an entertainer in the licensed establishment, or in a room or place connected therewith, nor may a licensee permit in the establishment, room or place, a minor person under 18 years of age to act as an entertainer.

(d) A hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub or malt beverage eating place licensee may not hold or permit to be held, on the licensed premises an event, tournament or contest; nor advertise, offer, award or permit the award on the licensed premises of trophies, prizes or premiums, for any purpose except as follows:

(1) A hotel, restaurant, club or malt beverage eating place licensee may permit to be held within the licensed premises an event sanctioned by the State Athletic Commission under 5 Pa.C.S. Part I, Subparts A and B (relating to general provisions; and boxing) or under 5 Pa.C.S. Part I, Subpart C (relating to the Wrestling Act). Only malt or brewed beverages, as generally permitted by the class of license involved, may be sold, served or delivered on that portion of the licensed premises where the event is held, and not sooner than 1 hour before, and not later than 1 hour after the event. Service of malt or brewed beverages at these events will be conducted only with the prior written approval of the State Athletic Commission filed with the Board. Drinks shall be dispensed in that portion of the licensed premises where the event is conducted only in paper or plastic cups.

(2) A hotel, restaurant, club or malt beverage eating place licensee may hold or permit to be held within the licensed premises or in a bowling alley immediately adjacent thereto as provided in sections 406(a)(1) and 442(b) of the Liquor Code (47 P. S. § 4-406(a)(1) and 4-442(b)), a bowling tournament or bowling contest. Liquor and malt or brewed beverages, as generally permitted by the class of license involved, may be served, sold or delivered at the bowling tournament or bowling contest by the licensee.

(3) A hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub or malt beverage eating place licensee may permit the conduct of events on the licensed premises by groups constituting a league. Liquor and malt or brewed beverages, as generally permitted by the class of license involved, may be sold, served or delivered at the events on the licensed premises.

(4) Hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub or malt beverage eating place licensees may permit the conduct of tournaments and contests on the licensed premises for the benefit of, and officially sponsored by, bona fide charitable organizations.

(i) A charitable organization for the purposes of this section is defined as one qualified, approved by and registered with the Department of State and operated under 49 Pa. Code Part I, Subpart B (relating to charitable organizations).

(ii) Charitable organization functions shall be operated in accordance with the Solicitation of Funds For Charitable Purposes Act (10 P. S. § § 162.1—162.24) and, if applicable, the Local Option Small Games of Chance Act (10 P. S. § § 311—327), and the Bingo Law (10 P. S. § § 301—308.1).

(5) Hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub and malt beverage eating place licensees may conduct self-sponsored tournaments, events or contests on their own licensed premises so long as the activities are in conformance with the applicable provisions of this subchapter.

(e) For an activity conducted under this subchapter, the following apply:

(1) There may not be lewd, immoral or improper conduct by the licensee, its servants, agents, employees, patrons or event, contest or tournament participants.

(2) There may not be unlawful gambling directly or indirectly associated with an activity on the licensed premises. A licensee will be held strictly liable for unlawful gambling on the licensed premises.

(3) There may not be an event, contest or tournament which involves the consumption of alcoholic beverages by an event, tournament or contest participant.

(4) The price of a ticket or evidence of admission to an event, tournament or contest may not include a charge or assessment for alcoholic beverages or entitle the holder thereof to receive an alcoholic beverage anywhere on the licensed premises except for alcoholic beverages included in a meal package offering as provided for in Chapter 13 (relating to promotion).

(5) A licensee or sponsoring charity may advertise an event, tournament or contest.

(6) Hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub and malt beverage eating place licensees, as well as governing bodies of professional golf, skiing, tennis, bowling, pocket billiards and nonlicensee sponsors as provided in subsection (e) may award prizes to contestants or participants of events, tournaments or contests.

(7) The total value of all prizes for any given event, tournament or contest may not exceed \$500. The total value of all prizes awarded in any 7-day period may not exceed \$5,000.

(8) Golf, skiing, tennis, pocket billiards or bowling events, tournaments, contests and events sanctioned by the State Athletic Commission are exempted from the prize value restrictions in this section.

(9) Licensees shall maintain on the licensed premises for 2 years, from the date of the event, an itemized list of all prizes for each event, tournament, contest indicating each prize, its value and the name and address of the recipient.

(f) The restrictions in this section apply not only to the licensee, but to partners, officers, directors, servants, agents and employees of a licensee.

(g) Municipalities may petition the Board for exemption from the Board's regulations regarding the enforcement of subsection (a) for all licensees within an identifiable area in accordance with section 493.1(b) of the Liquor Code (47 P. S. § 4-493.1(b)).

(h) A manufacturer, manufacturer's representative or licensee may sponsor sweepstakes promotions. Permissible sweepstakes shall provide that the following conditions apply:

(i) No purchase is necessary to enter.

(ii) Entrants shall be 21 years of age or older.

(iii) Retail licensed premises may only be involved as pick-up or drop-off points for entry forms and not for the conducting of drawings or the awarding of prizes.

(iv) Alcoholic beverages may not be part of the prize.

Subchapter F. CLUBS

OTHER REQUIREMENTS

§ 5.86. Permitted exchange of club and catering club licenses.

(a) Upon application under Chapter 3 (relating to license applications), and subject to the authority granted by section 472.3(a) of the Liquor Code (47 P. S. § 4-472.3(a)), the Board may issue to a club, a club liquor license in exchange for a club malt beverage retail dispenser license in any municipality which has approved the granting of liquor licenses. The fee for issuance of a license under this subsection shall be equal to the application filing fee plus the license fee for a hotel or restaurant liquor license in the municipality in which the licensed premises is located, as set forth in section 614-A of The Administrative Code of 1929 (71 P. S. § 240.14).

(b) Upon application under Chapter 3, and upon approval of the Board, a club holding a club liquor license may surrender its license, and receive a catering club liquor license in its place.

(c) Upon application under Chapter 3, and upon approval of the Board, a club holding a catering club liquor license may surrender its license and receive a club liquor license in its place.

(d) The fee for filing an application for exchange of club licenses shall be applied consistent with section 614-A of The Administrative Code of 1929 (71 P. S. § 240.14).

(1) an application for the exchange of a club license for a catering club license may only be filed for a full license year. It shall be accompanied by a renewal filing fee, and a license fee equal to that required for a restaurant license in the municipality of its location under section 614-A of The Administrative Code of 1929.

(2) An application for the exchange of a catering club license for a club license may only be filed for a full license year. It must be accompanied by a renewal filing fee and a license fee for a club as required under section 614-A of The Administrative Code of 1929.

(e) Exchange of licenses may only occur within a municipality that has approved the granting of such licenses.

CHAPTER 7. TRANSFER, EXTENSION, SURRENDER EXCHANGE OF LICENSES

Subchapter A. TRANSFER OF LICENSES

§ 7.3. Transfers of location.

(a) *Retail liquor or retail dispenser licenses.* If a retail liquor or retail dispenser licensee moves his place of

business from one address to another, the new establishment must be ready for operation before the license transfer will be approved. Liquor or malt or brewed beverages may not be sold or served at the new establishment until formal approval of the transfer is given by the Board.

(b) *Other transferable licenses.* When other licenses transferable under the law are involved, and the licensee desires to move his place of business from one address to another, proper application for transfer of license shall be made, and approval of the Board obtained, before the business is operated at the new address.

(c) *Effect of failure to achieve full compliance.* If a request for the transfer of a license has received prior approval by the Board, and thereafter, a licensee is unable to achieve full compliance based on the plans submitted under prior approval, a hearing may be held.

(1) The hearing will take evidence to determine whether full compliance with the licensee's plans was impossible for reasons outside the licensee's control.

(2) If it was, an application for transfer to another location will be considered by the Board.

(d) If a prior approval for transfer was originally granted for transfer to a different municipality, the 5-year moratorium on a transfer from the municipality to which the transfer was effected is measured from the date the license becomes operational. See section 461(a) of the Liquor Code (47 P. S. § 4-461(a)).

§ 7.10. Conversion of suspension to fine.

(a) When a license application for transfer is pending and the transferor has an outstanding license suspension imposed by the Office of Administrative Law Judge that has not yet been served and cannot be served because the premises is not in operation, the transferee shall either serve the suspension upon the approval of the transfer, or request that the suspension be converted to a fine to be paid by the transferee upon the approval of the transfer.

(b) If the transferee prefers to pay a fine in lieu of serving a suspension, it shall make a request to the Office of Chief Counsel that a fine be set by the Board.

(c) For purposes of making a determination as to the amount of the fine, the transferee's request to the Office of Chief Counsel shall include the following:

(1) A letter requesting that a fine be set in lieu of the suspension.

(2) A statement that the transferor cannot serve the suspension because the premises is not in operation.

(3) The transferor's Federal tax return for its last year of operation, showing the licensed business's profit or loss.

(4) The number of days the transferor was open in its last year of operation.

(5) A copy of the administrative law judge's adjudication and order that resulted in the suspension. This document is obtainable from the Office of Administrative Law Judge.

(d) The fine will be calculated by application of the following formula: Gross earnings of the transferor divided by 365 (or the number of days in operation in the transferor's last year of operation) multiplied by .50. The resulting figure is the amount of the fine per day of suspension, subject to the following exceptions:

(1) If the amount is less than \$100 per day, a fine of \$100 per day will be set.

(2) If the suspension was issued for a citation that required a minimum fine amount of \$1,000 per day, a minimum fine of \$1,000 per day will be set.

(e) The Board may set a fine in the absence of one or more of the documents described in subsection (c)(1)—(5). The Office of Chief Counsel may request additional financial documents.

(f) The Board will act on the request by accepting the request and setting the amount of the fine, or rejecting the request, or making a counteroffer and informing the transferee of its decision in writing.

(g) If the transferee rejects the Board's decision, the original suspension will remain in effect, to be served by the transferee if the transfer is approved.

(h) If after the Board approves a conversion to a fine, the transfer application is denied, the Board's decision regarding the suspension conversion to a fine is rendered a nullity and the unserved suspension remains in effect for the transferor.

Subchapter C. SURRENDER OF LICENSES

§ 7.33. Sheriff's sale of a liquor license.

When a license is subject to a writ of execution the following apply:

(1) Any writ of execution must identify the liquor license by type and number, and may be filed in any county where jurisdiction would be appropriate. The Board may not be listed as garnishee. Notification to the Board upon the filing of a writ of execution is not required.

(2) Sheriff's seizure of the original license is not required. Licenses seized must be sent to the Bureau of Licensing for safekeeping within 15 days of seizure. If the debtor satisfies the judgment prior to sale, the sheriff may return the original license to the named licensee.

(3) Licenses may not be transferred without Board approval. Purchase at a sheriff's sale is not a transfer of the license but instead, only grants to purchaser the right to apply for the transfer of the license. Prospective purchases of a license are subject to the following conditions:

(i) Any sale of a license is subject to approval by the Board. Renewal and transfer applications may be obtained from the Bureau of Licensing.

(ii) The Board's Bureau of Licensing will be provided with the purchaser's current address immediately upon purchase.

(iii) A license validation or renewal application must be filed 60 days prior to the expiration date of the license. See section 470 of the Liquor Code (47 P. S. § 4-470). If filed later than that date, or within 2 years after the expiration, a late filing fee will be assessed for the renewal application.

(iv) It shall be the purchaser's responsibility to review all letters from the Board and to take all necessary steps to validate, renew or transfer the license in a timely manner.

(v) Licenses not renewed within 2 years after expiration will cease to exist and will not be reactivated.

(vi) Transfer, validation or renewal of the license will not be approved without tax clearance certificates from the Departments of Revenue and Labor and Industry for

both the previous license holder and the purchaser. See section 477 of the Liquor Code (47 P. S. § 4-477).

(vii) Any pending citations issued against the license shall be satisfied prior to transfer.

(4) The purchaser shall obtain the seal of the sheriff or the prothonotary on Board transfer or renewal applications in lieu of the signature of the previous license holder. The sheriff's bill of sale and writ of execution shall accompany the transfer or renewal application when filed.

Subchapter F. INTERMUNICIPAL TRANSFER OF RETAIL LICENSES.

§ 7.63. Municipal standing before the Board.

(a) The receiving municipality may file a protest against the approval of an intermunicipal transfer of a license into its municipality and the municipality shall have standing in a hearing to present testimony in support of or against the transfer of a license.

(b) If the Board receives a protest from the receiving municipality, the Board may refuse an application for an intermunicipal transfer of a license.

(c) A protest must be filed within the time allowed by § 17.13 (relating to protests/intervention procedure).

§ 7.65. Subsequent transfers.

Licenses transferred from one municipality to another may not be transferred out of the receiving municipality for 5 years from the date of operation in the receiving municipality.

CHAPTER 9. TRANSPORTATION, IMPORTATION, DISPOSITION AND STORAGE

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

VEHICLES

§ 9.11. Transportation for hire.

(a) Except as exempted in subsection (b), a person who transports liquor, malt or brewed beverages or alcohol for hire within this commonwealth shall obtain a Transporter-for-Hire License, Class A, a Transporter-for-Hire License, Class B or a Transporter-for-Hire License, Class C, from the Board.

(b) Liquor, malt or brewed beverages or alcohol, may be transported for hire without a Transporter-for-Hire License under the following conditions:

(1) If the alcohol in question is "denatured," as specified in the Liquor Code.

(2) If transportation is accomplished by scheduled common air carriers of mail and passengers; or by common carriers by railroad, subject to regulation by the Pennsylvania Public Utility Commission; or by transporters-for-hire who transport liquor, malt or brewed beverages or alcohol, under contract with, and as agents of, common carriers by railroad, under railroad tariffs, railroad bills of lading, railroad regulations and railroad responsibility and direction, provided the main transportation of the liquor, malt or brewed beverages or alcohol, is by rail and the agents perform only a collection and delivery service as part of the rail transportation, and further provided that certified copies of the contracts of the agents are filed with the Board.

(3) If the liquor, malt or brewed beverages, or alcohol in question are for the personal use of, and not for resale by, the transporter.

(4) If transportation is by licensees of the Board whose licenses or permits authorize the transportation of liquor, malt or brewed beverages or alcohol in the regular operation of their licensed business.

(5) If transportation is by persons who transport liquor, malt or brewed beverages or alcohol, through this Commonwealth commercially and not for delivery therein:

(i) The operator of the vehicle shall have in his possession at all times while in this Commonwealth, an invoice and a bill of lading or waybill (showing the brand name, size and number of containers of liquor, malt or brewed beverages or alcohol so transported), which shall be produced for inspection upon the request of an authorized police or enforcement officer of this Commonwealth.

(ii) The cargo must remain intact and upon the same vehicle or conveyance while in this Commonwealth, unless prevented by an accident or other similarly uncontrollable circumstance.

§ 9.22. Identification of vehicles.

Licenses of the Board whose licenses authorize the transportation of liquor, malt or brewed beverages, or alcohol in the regular operation of their licensed business shall display on each side of each vehicle used in the operation of the business their name, address including the street name and number as shown on the license and the license number as shown on the license in letters no smaller than 4 inches in height. The license identification number shall be preceded by the letters "P. L. C. B."

§ 9.23. (Reserved).

§ 9.24. (Reserved).

§ 9.26. (Reserved).

§ 9.28. Use of vehicles.

(a) A licensee engaged in the purchase or sale of liquor, malt or brewed beverages, or alcohol may not use or permit to be used vehicles other than the ones identified for use in operation of its licensed business for the transportation of liquor, malt or brewed beverages, or alcohol. Subject to the limitations of their respective licenses, transporter-for-hire licensees may transport liquor, malt or brewed beverages or alcohol in vehicles owned or leased by the transporter-for-hire licensees and operated by drivers employed by the transporter-for-hire licensees or operated by drivers employed by unlicensed transporters who are under contract with the transporter-for-hire licensees.

(b) Persons who have contracted with and are performing transportation services of alcoholic beverages for the transporter-for-hire licensees are considered agents of the transporters-for-hire for purposes of section 471 of the Liquor Code (47 P. S. § 4-471).

(c) A licensee may not sell, lease or permit the use by another of a vehicle identified for use in operation of its licensed business without first obscuring or defacing the identification displayed on the vehicle.

§ 9.29. (Reserved).

§ 9.30. (Reserved).

Subchapter H. IMPORTATION OF WINE PURCHASED BY MEANS OF THE INTERNET

§ 9.132. Definitions.

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

Consumer—A person, 21 years of age or older at the time that the order is placed, who resides in this Commonwealth and is ordering wine by means of the Internet from a direct shipper for personal consumption, not for resale.

Direct shipper—A person or legal entity outside this Commonwealth licensed in another state as a producer, supplier, importer, wholesaler, distributor or retailer of wine who obtains a license from the Board to accept orders placed for wine within this Commonwealth by means of the Internet and who ships or facilitates in any way the shipment of wine by a delivery agent or common carrier to a Wine and Spirits Store.

§ 9.141. Requirements for licensure as a direct shipper.

(a) The person or legal entity completes an application for a license and files it with the Board.

(b) The direct shipper agrees to submit to the jurisdiction of the Board, any other Commonwealth agency, the Board of Claims and the courts of this Commonwealth for any dispute arising out of the direct shipper's conduct of business with the Board or consumers.

(c) The laws of the Commonwealth govern any dispute or issue arising from or involving any transaction or dealing between the direct shipper and the Commonwealth.

(d) The direct shipper agrees to indemnify the Board from any cause of action arising from its conduct of business in this Commonwealth.

(e) The direct shipper agrees to notify the Board if any of its licenses or permits, by which it is licensed in another state, are suspended, revoked, terminated or not renewed by the issuing authority.

(f) Failure by the direct shipper to remain licensed in another state could result in citation by the Pennsylvania State Police, Bureau of Liquor Control Enforcement or nonrenewal of the direct shipper license by the Board.

§ 9.142. Records to be maintained.

(a) The Commonwealth, through the Board or the Department of Revenue, has the right to audit, at reasonable times and at a site designated by the Commonwealth, the books, documents and records of the direct shipper. The direct shipper shall give full and free access to the Commonwealth or its authorized representative to the books, documents and records of the direct shipper to the extent that the books, documents or records relate to the sale by the direct shipper to consumers and to the collection of taxes and fees and the submission of same to the Commonwealth.

(b) The direct shipper agrees to maintain records, which will support the products, including brands, vintages, volumes and sizes sold to consumers and the collection and submission of taxes and fees regarding the products sold.

(c) The direct shipper shall maintain all books, documents and records described in this section for 3 years from the date of the sale.

§ 9.143. Sales of wines.

(a) The direct shipper shall possess a valid license issued by the Board.

(b) The direct shipper may sell to consumers only those classes, varieties and brands of wine not available for sale by the Board to consumers. Those items that may not be sold by direct shippers are listed on the Board's website

and are subject to change. Direct shippers may not ship or sell by means of the Wine and Spirits Stores any other items, alcoholic or nonalcoholic, to consumers other than wine not listed on the Board's website.

(c) The direct shipper may only process orders received by means of the Internet.

(d) Consumers may not purchase, and a direct shipper may not sell, more than 9 liters of wine to a single consumer per month.

(e) The direct shipper shall provide the consumer with an Internet wine order which is a numbered receipt listing the following:

(1) The consumer's name, address, phone number and date of birth.

(2) The name, address, phone number and date of birth of any other person authorized to pick up the product at the Wine and Spirits Store.

(3) The selling price, total volume and a complete and accurate description of products purchased.

(4) Eighteen percent Emergency Tax.

(5) Six percent Sales Tax.

(6) One percent Philadelphia/Allegheny County only Sales Tax, if applicable.

(7) Fees collected.

(8) The address of the Wine and Spirits Store to which the product is being shipped.

(f) Two copies of the Internet wine order must be with the product package and a copy must also be forwarded to the Board electronically within 1 business day from the date of the placement of the order.

(g) The direct shipper shall collect the 18% Emergency Tax, the appropriate Pennsylvania Sales Tax, and the Board's handling fee, per order, of \$4.50.

(h) The direct shipper shall remit to the Board by the 10th calendar day of the following month, the amount of taxes and fees collected from the prior month's sales. This remittance must be accompanied by a list detailing the numbered receipts being remitted.

(i) Failure to submit the appropriate fees and taxes will subject the direct shipper to citation by the Pennsylvania State Police, Bureau of Liquor Control Enforcement, which may result in civil penalties or criminal penalties, or both.

(j) The direct shipper agrees that the Commonwealth may set off the amount of any State tax liability or the other obligation of the direct shipper or its subsidiaries to the Commonwealth against any payments due the direct shipper under any contract with the Commonwealth.

(k) Annually, the direct shipper shall provide to the Board by the 15th day of the following January, a total of all sales of wine to consumers by the number of units and the dollar amount.

§ 9.144. Products shipped.

(a) Wine shipped to a consumer must be shipped to a Wine and Spirits Store.

(b) Shipments must be delivered to a Wine and Spirits Store by a transporter-for-hire licensed by the Board.

(c) Each package so shipped must be clearly identified as containing alcoholic beverages.

(d) Each package must clearly identify the direct shipper on the outside of the package and must have with the package a copy of the Internet wine order.

(e) Each order by a consumer must be packaged separately.

(f) All packaging materials must be sufficient to protect the product from damage during normal handling.

(g) The direct shipper agrees that any missing product, incorrect product, or damage to product, including breakage, defaced labels, leakage or other defects, noted on the Internet wine order will be the responsibility of the direct shipper.

(h) The direct shipper agrees that any wine that is not picked up by the consumer within 30 days of receipt by the Wine and Spirits Store becomes the property of the Board.

(i) The direct shipper shall provide a "call tag" with each order shipped. A call tag is a delivering carrier's service allowing the recipient of a package to call the carrier to pick up unwanted merchandise and have the carrier return it to the shipper.

§ 9.145. Direct shipper's website.

(a) The direct shipper's website must contain language that the direct shipper is solely responsible for the fitness of the product and that the Board neither endorses the direct shipper nor its products.

(b) The direct shipper's website must explain fully the direct shipper's policy on the return of wine purchased by consumers.

(c) The direct shipper's website must inform consumers that it will not sell to anyone who is under 21 years of age on the date of order, and that, when the product is picked up, it will not be released to anyone who cannot demonstrate that he is 21 years of age or older, or to anyone who is not a resident of this Commonwealth, or to anyone who is under the influence of alcohol or other drugs.

(d) The direct shipper's website must contain the following language:

DISCLAIMER

Consumers must be 21 years of age or older on the date of order and residents of Pennsylvania. All wine purchased must be for personal consumption and not for resale. Consumers must select a Wine and Spirits Store for delivery of their order. The Consumer must pick up the product in person at the selected Wine and Spirits Store or designate at the time of order an individual(s) who will be permitted to pick up the order. Whoever picks up the order must be 21 and a Pennsylvania resident. When the order is picked up, the person must present photo identification and be prepared to sign an affidavit that he or she is 21 years of age or older, a Pennsylvania resident and that the wine is for personal use not for resale. The entire order must be picked up; no partial order pick-ups will be permitted.

The Pennsylvania Liquor Control Board endorses no Direct Shipper nor does it provide any warranties either express or implied, as to the fitness or merchantability of any product purchased over the Internet or assumes any liability for the use or misuse of any product. The Pennsylvania Liquor Control Board will not accept any returns. All requests for the return of any product ordered over the Internet for any reason must be made directly to the

Direct Shipper. For any product damaged after receipt at the Wine and Spirits Store, Consumer will be fully reimbursed for the entire cost of the order by the Board. Any order not picked up within 30 days of receipt at the Wine and Spirits Store becomes the property of the Pennsylvania Liquor Control Board.

(e) The direct shipper's website must require the consumer to indicate that the consumer has read the Board's disclaimer and agrees to its terms and conditions before the consumer may complete the consumer's order. The direct shipper shall maintain a copy of the consumer's acceptance of the disclaimer for 2 years.

(f) If the direct shipper wishes to be linked to the Board's website, it shall sign a linking agreement in the form provided by the Board.

CHAPTER 11. PURCHASES AND SALES

Subchapter A. GENERAL PROVISIONS

RETAIL AND WHOLESALE PURCHASE—GENERAL

§ 11.7. Authorized agents of cardholder.

(a) A permit holder may authorize up to four agents to make purchases in his behalf for use in his business or establishment, subject to the following:

(1) Only individuals regularly employed in the business or establishment of a permit holder or licensed transporters-for-hire may be designated as agents.

(2) The signature of the agents must appear in ink on the Wholesale Liquor Purchase Permit Card in the space provided.

(b) A permit holder may appoint authorized agents in place of those whose signatures originally appeared on the Wholesale Liquor Purchase Permit Card by crossing out the name of the deposed agent in ink and having another party or parties properly sign the card.

(c) If a permit holder desires to make more changes in the designation of authorized agents than space permits on the Wholesale Liquor Purchase Permit Card, the permit holder shall obtain a duplicate Wholesale Liquor Purchase Permit Card by obtaining at the State Store, where the card is on deposit, a form as prescribed by the Board, which shall be completed by the permit holder and returned with a fee of \$10. The manager of the State Store will forward the form to the Bureau of Licensing of the Board. A new card will be forwarded to the store. During the time required for this transaction, purchase at wholesale may be made by the permit holder or an authorized agent at the store where the old card is on deposit. Upon receipt of the new card, the store manager shall immediately notify the permit holder. The old card will then become void and shall be forwarded to the Bureau of Licensing by the manager. The manager shall deliver the new Wholesale Liquor Purchase Permit Card to the permit holder when he visits the store and requests delivery. The new card is not valid until properly signed in accordance with § 11.6 (relating to signature on cards).

CHAPTER 13. PROMOTION

Subchapter A. ADVERTISING

ADVERTISING OF BRAND NAMES

§ 13.42. Window and doorway display.

(a) A licensee may install or permit to be installed any electrically operated signs or devices, lithographs, framed pictures, cardboard displays, statuettes, plaques, plac-

ards, streamers or similar items advertising brand names and intended for window and doorway display on the licensed premises.

(b) Advertising may not exceed 600 square inches in display area. When the advertising material is of maximum size, no background material may be used. When installing signs of smaller size, the combined area of the sign and background or decoration may not exceed the maximum area of 600 square inches.

§ 13.43. Interior display.

(a) A licensee may 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.

(b) When the point-of-sale material, 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 must 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.

GIVING AND ACCEPTING THINGS OF VALUE

§ 13.52. Advertising novelties.

(a) Under section 493(24) of the Liquor Code (47 P. S. § 4-493(24)), advertising novelties of nominal value may be distributed by manufacturers or any class of licensee to trade or consumer buyers. Advertising novelties include matches, disposable lighters, bottle or can openers, caps, tee shirts, recipe pamphlets, pens, corkscrews and ashtrays, which bear advertising matter.

(b) Advertising novelties may not contain obscene or pornographic matter or references.

(c) Nominal value, as used in this subsection, means an amount not to exceed a monetary limit established and disseminated by the Board. Advertising novelties provided by manufacturers or any class of licensee may not be used as equipment by any hotel, restaurant, club, retail dispenser, importing distributor or distributor licensee. Notwithstanding any other provisions of this section, licensees may sell glasses at not less than cost and provide metal keg connectors and tap knobs to other licensees and to holders of special occasion permits. Manufacturers or importers may furnish, give, rent, loan or sell wine lists or menus to retail licensees. The wine lists/menus may involve cooperative endeavors related to cost sharing and advertisement between manufacturers/importers and retail licensees. Wine lists/menus for on-premises use may contain preprinted prices.

(d) Advertising banners/signs for exterior use are considered advertising novelties if the banners/signs conspicuously advertise the alcoholic beverage products sold by the licensee or the name of the manufacturer of alcoholic beverage products sold by the licensee. Exterior advertising banners/signs must comply with section 498 of the Liquor Code (47 P. S. § 4-498).

(e) Advertising banners/signs that are used for interior display are not subject to the advertising novelty cost limit, but are subject to the point of sale advertising cost limit as set by the Board in its Advisory Notice No. 10 (as amended).

(f) Licensees of any class may sell promotional items advertising their own business only, such as tee shirts, mugs, caps and other similar items, to the general public.

[Pa.B. Doc. No. 04-2026. Filed for public inspection November 12, 2004, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 51]

Administrative Provisions

The Fish and Boat Commission (Commission) by this order amends Chapter 51 (relating to administrative provisions). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The change relates to the effective dates of licenses and trout/salmon permits for 2005.

A. Effective Date

The amendment will go into effect immediately upon final-form publication of this order in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the final-form rulemaking, contact Laurie E. Shepler, Esq. (717) 705-7815, P. O. Box 67000, Harrisburg, PA 17106-7000. This final-form rulemaking is available electronically through the Commission's website: www.fish.state.pa.us.

C. Statutory Authority

The amendment to § 51.33 (relating to effective dates of licenses and trout/salmon permits) is published under the statutory authority of section 506 of The Administrative Code of 1929 (71 P. S. § 186).

D. Purpose and Background

This final-form rulemaking is designed to update, modify and improve the Commission's regulations pertaining to administration. The specific purpose of this final-form rulemaking is described in more detail under the summary of change.

E. Summary of Change

It is possible that the General Assembly will enact legislation affecting the price and mix of fishing licenses, stamps and permits late in the 2004 calendar year. These changes will be in effect for the 2005 year. To facilitate the orderly distribution and proper accounting for new license types and license prices, it will be necessary for Commission staff to delay the distribution of license materials until after enactment of legislation.

The current regulation specifies that annual licenses are effective for the year printed on the license certificate and the month of December of the preceding year. The amendment makes 2005 licenses effective on January 1, 2005, or the date of sale in December 2004, whichever is earlier. Limited duration licenses, such as the 1-day, 3-day and 7-day licenses, will remain valid only for the dates specified on the license certificates. The final-form rulemaking is adopted as proposed.

F. Paperwork

The final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no new costs on the private sector or the general public.

H. Public Involvement

A notice of proposed rulemaking was published at 34 Pa.B. 5161 (September 18, 2004). The Commission did not receive any public comments concerning the proposed rulemaking.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendment 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 promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and no comments were received.

(3) The adoption of the final-form rulemaking in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 51, are amended by amending § 51.33 to read as set forth in 34 Pa. B. 5161.

(b) The Executive Director will submit this order and 34 Pa.B. 5161 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 34 Pa.B. 5161 and deposit them with the Legislative Reference Bureau as required by law.

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

DOUGLAS J. AUSTEN, Ph.D,
Executive Director

Fiscal Note: Fiscal Note 48A-161 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 04-2027. Filed for public inspection November 12, 2004, 9:00 a.m.]