

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 93]

#### Stream Redesignations (Newtown Creek, et al.)

The Environmental Quality Board (Board) amends §§ 93.7, 93.9d, 93.9e, 93.9g, 93.9l, 93.9o, 93.9q and 93.9v to read as set forth in Annex A.

#### A. *Effective Date*

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

#### B. *Contact Persons*

For further information, contact Richard H. Shertzer, Chief, Division of Water Quality Standards, Bureau of Water Standards and Facility Regulation, 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, (800) 654-5984 (TDD-users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection (Department) website at [www.depweb.state.pa.us](http://www.depweb.state.pa.us).

#### C. *Statutory and Regulatory 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 in 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 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.

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

Existing use protection is provided when the Department determines, based on its evaluation of the best available scientific information, that a surface water attains water uses identified in §§ 93.3 and 93.4 (relating to protected water uses; and Statewide water uses). Examples of water uses protected include the following: Cold Water Fishes (CWF), Warm Water Fishes (WWF), HQ and EV. A final existing use determination is made on a surface water at the time the Department takes a permit or approval action on a request to conduct an activity that may impact surface water. If the determination demonstrates that the existing use is different than the designated use, the water body will immediately receive the best protection identified by either the attained uses or the designated uses. A stream will then be "redesignated" through the rulemaking process to match the existing uses with the designated uses. For example, if the designated use of a stream is listed as protecting WWF but the redesignation evaluation demonstrates that the water attains the use of CWF, the stream would immediately be protected for CWF, prior to a rulemaking. Once the Department determines the water uses attained by a surface water, the Department will recommend to the Board that the existing uses be made "designated" uses, through rulemaking, and be added to the drainage lists of uses identified in §§ 93.9a—93.9z.

These streams were evaluated in response to one petition, as well as requests from the Pennsylvania Fish and Boat Commission (FBC) and the Department as follows:

*Petition:* Pine Run (Chest Township Road District)

*FBC:* Messenger Run

*Department:* Indian Spring Run, Unnamed Tributary (UNT) to Lizard Creek, Newtown Creek and Indian Creek

These amendments were developed as a result of aquatic studies conducted by the Department 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.

#### E. *Summary of Comments and Responses on the Proposed Rulemaking*

The Board approved the proposed rulemaking for the Newtown Creek, et al. package at its June 21, 2005, meeting. The proposed rulemaking was published at 35 Pa.B 4734 (August 20, 2005) with provision for a 45-day public comment period that closed on October 4, 2005. Comments were received from five commentators including the United States Environmental Protection Agency (EPA).

The EPA Region 3 office supported the package in general. Three commentators supported the redesignation of Pine Run to EV.

One commentator supported redesignating UNT 03876 to Lizard Creek as an EV water. This same commentator, however, also declared his opposition to plans for a quarry operation in the immediate vicinity of UNT 03876 to Lizard Creek. This comment is not relevant to this

final-form rulemaking and was forwarded to the Department's Office of Mineral Resource Management for appropriate review and consideration.

#### F. *Summary of Changes to the Proposed Rulemaking*

No changes were made to the redesignations recommended in the proposed rulemaking. Minor revisions are included in Annex A which have occurred following the proposed rulemaking. The Board recommends an additional correction to § 93.7, Table 3 (relating to specific water quality criteria) for Dissolved Oxygen (DO<sub>3</sub>) criteria. An erroneous reference is given to "See the following table." This reference should be removed. Additionally, further clarification was added to the zone descriptions by identifying the river mile of the confluence for the unnamed tributaries listed in drainage lists D, L and O.

#### G. *Benefits, Costs and Compliance*

*Benefits.* Overall, the citizens of this Commonwealth will benefit from this final-form rulemaking because it reflects the appropriate designated use and maintains the most appropriate degree of protection for each stream in accordance with the existing use of the stream.

*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 in the discussion of impacts on the private sector.

Persons conducting or proposing regulated activities shall comply with the regulatory requirements regarding 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.

*Compliance assistance plan.* This final-form rulemaking has been developed as part of an established program that has been implemented by the Department since the early 1980s. The final-form rulemaking is consistent with and based on existing Department regulations. The final-form rulemaking extends additional protection to selected waterbodies that exhibit exceptional water quality and are consistent with antidegradation requirements established by the Federal Clean Water Act and The Clean Streams Law. 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 redesignations 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 expanded 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.

*Paperwork requirements.* The final-form rulemaking should have no direct paperwork impact on the Commonwealth, local governments and political subdivisions or the private sector. This final-form rulemaking is based on existing Department regulations and simply mirrors 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 program are major pollution prevention tools because their 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*

These regulations 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 5, 2005, the Department submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 4734, to the Independent Regulatory Review Commission (IRRC) and 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, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 29, 2006, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved effective November 29, 2006, by IRRC.



## DESIGNATED WATER USES AND WATER QUALITY CRITERIA

## § 93.9d. Drainage List D.

## Delaware River Basin in Pennsylvania

*Lehigh River*

Stream	Zone	County					Water Uses Protected	Exceptions To Specific Criteria
		*	*	*	*	*		
3—Fireline Creek	Basin			Carbon			CWF	None
3—Lizard Creek	Basin, Source to T-922 Bridge			Schuylkill			CWF	None
3—Lizard Creek	Basin, T-922 Bridge to Confluence of UNT 03876 at RM 7.90			Carbon			TSF	None
4—UNT 03876 at RM 7.90	Basin			Carbon			EV	None
3—Lizard Creek	Basin, UNT 03876 to Mouth			Carbon			TSF	None
		*	*	*	*	*		

## § 93.9e. Drainage List E.

## Delaware River Basin in Pennsylvania

*Delaware River*

Stream	Zone	County					Water Uses Protected	Exceptions To Specific Criteria
		*	*	*	*	*		
2—Neshaminy Creek	Non-Tidal Portion of Main Stem, RM 26.84 to Mouth			Bucks			WWF, MF	Add Tur <sub>1</sub>
3—Mill Creek	Basin, Watson Creek to Mouth			Bucks			WWF, MF	Add Tur <sub>1</sub>
3—Newtown Creek	Basin			Bucks			WWF, MF	Add Tur <sub>1</sub>
3—Core Creek	Basin, Source to Inlet of Lake Luxembourg			Bucks			CWF, MF	Add Tur <sub>2</sub>
		*	*	*	*	*		

## § 93.9g. Drainage List G.

## Delaware River Basin in Pennsylvania

*Delaware River*

Stream	Zone	County					Water Uses Protected	Exceptions To Specific Criteria
		*	*	*	*	*		
4—East Branch Brandywine Creek	Main Stem, Shamona Creek to Confluence with West Branch			Chester			WWF, MF	None
5—Beaver Creek	Basin, East Brandywine-Caln Township Border to Mouth			Chester			TSF, MF	None
5—Valley Creek	Basin, Source to Broad Run			Chester			CWF, MF	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
		* * * * *		
4—Rogues Harbor Run	Basin	Clearfield	EV	None
3—Chest Creek	Basin, Rogues Harbor Run to Pine Run	Clearfield	CWF	None
4—Pine Run	Basin	Clearfield	EV	None
3—Chest Creek	Basin, Pine Run to Mouth	Clearfield	CWF	None
3—Miller Run	Basin	Clearfield	CWF	None
		* * * * *		
5—Cedar Run	Basin	Centre	CWF	None
5—UNT 23057 at RM 18.18 (locally Markles Gap Run)	Basin	Centre	HQ-CWF	None
5—Slab Cabin Run	Basin, Source to PA 26 at RM 9.0	Centre	HQ-CWF	None
		* * * * *		
4—Spring Creek	Main Stem, PA 550 Bridge to Mouth	Centre	HQ-CWF	None
5—UNTs to Spring Creek	Basins, PA 550 Bridge to Mouth	Centre	CWF	None
5—Logan Branch	Basin, Source to UNT 23007 at RM 7.16	Centre	CWF	None
6—UNT 23007 at RM 7.16 (locally McBrides Run)	Basin	Centre	HQ-CWF	None
5—Logan Branch	Basin, UNT 23007 to T 371 Bridge	Centre	CWF	None
5—Logan Branch	Main Stem, T-371 Bridge to Mouth	Centre	HQ-CWF	None
		* * * * *		

§ 93.9o. Drainage List O.

Susquehanna River Basin in Pennsylvania  
Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
		* * * * *		
2—Pequea Creek	Main Stem, PA 897 to Mouth	Lancaster	WWF	None
		* * * * *		
3—Indian Spring Run	Basin, Source to SR 10 Bridge	Chester	EV	None
3—Indian Spring Run	Basin, SR10 to Confluence of UNT 07540 at RM 1.95	Lancaster	CWF	None
4—UNT 07540 at RM 1.95 to Indian Spring Run	Basin, Source to SR10 Bridge	Chester	HQ-CWF	None
4—UNT 07540 at RM 1.95 to Indian Spring Run	Basin, SR10 Bridge to Mouth	Lancaster	CWF	None
3—Indian Spring Run	Basin, UNT 07540 to Mouth	Lancaster	CWF	None
3—White Horse Run	Basin	Lancaster	WWF	None
		* * * * *		

§ 93.9q. Drainage List Q.

Ohio River Basin in Pennsylvania

*Allegheny River*

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
		* * * * *		
4—Pell Run	Basin	Warren	CWF	None
4—Messenger Run	Basin	Warren	EV	None
4—Mead Run	Basin	Warren	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—Indian Creek	Basin, Camp Run to Champion Creek	Fayette	HQ-CWF	None
5—Champion Creek	Basin	Fayette	CWF	None
4—Indian Creek	Main Stem, Champion Creek to Mouth	Fayette	CWF	None
5—UNTs to Indian Creek	Basins, Champion Creek to Mouth	Fayette	CWF	None
		* * * * *		

[Pa.B. Doc. No. 07-4. Filed for public inspection January 5, 2007, 9:00 a.m.]

**Title 40—LIQUOR**

**LIQUOR CONTROL BOARD**

**[40 PA. CODE CHS. 5, 11, 13 AND 17]**

**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)), amends Chapters 5, 11, 13 and 17.

*Summary*

The final-form rulemaking codifies practices and procedures of the Board and further explains various legislative changes to the code.

The final-form rulemaking explains conditions under which minors without a parent, guardian or proper supervisor may be present in licensed premises that primarily serve food.

The final-form rulemaking prohibits purchases or redemption of the Board's gift cards by minors.

The final-form rulemaking establishes procedures for the Board to participate in wine events.

The final-form rulemaking codifies established practices regarding limits on point-of-sale incentive programs for malt or brewed beverages.

The final-form rulemaking explains the procedure for intervention by interested parties when a municipality has requested leave to enforce its own noise ordinance instead of the Board's regulations on amplified music.

*Comments to Proposed Rulemaking*

During the public comment period, comments were received on behalf of the Pennsylvania State Association of Township Supervisors (PSATS). These comments and the Board's responses are as follows:

*Comment:* The calculation of a licensee's eligibility for renewal of a Sunday sales permit (SSP) in § 11.176 (relating to renewal) allows inclusion of sales on Sunday of food and nonalcoholic beverages after an SSP expires. By doing so, it is suggested that the regulation allows artificial inflation of the licensee's ratio that is likely to decrease if the applicant receives an SSP.

*Response:* The act of July 6, 2005 (P. L. 135, No. 39) (Act 39) removed the ratio requirement for licensees to receive an SSP, except for licensees in a first class city (Philadelphia). See section 406(a)(3) of the code (47 P. S. § 4-406(a)(3)). As a result, further study of the SSP procedures as they apply to Philadelphia will be needed. Accordingly, the proposed amendments to this section have been withdrawn.

*Comment:* The qualification to be a petitioner in noise exemption proceedings under § 17.15 was questioned.

Neighbors petitioning as a group, or those who collectively have a direct interest, should be accepted as interveners.

*Response:* This section establishes procedures for parties to participate in a proceeding when a municipality is asking to enforce its own noise ordinances in the place of § 5.32(a). The regulation establishes a time limit for acceptance of petitions to intervene. This serves the interests of all parties in a fair and orderly hearing. The standards for a person or group of people to qualify as interveners are drawn from existing law and regulations, notably 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) and *Application of Biester*, 487 Pa. 438, 409 A.2d 848 (1979). The Board proposed this regulation to clarify the procedure to be followed and to apply current legal standards. These standards would not preclude a collective or neighborhood petition to intervene under proper circumstances. Therefore, the section was adopted as proposed.

On June 8, 2005, the Independent Regulatory Review Commission (IRRC) provided comments to the proposed rulemaking. These comments and the Board's responses are as follows.

*Comment:* IRRC questioned the calculation of a licensee's eligibility for an SSP. Like the PSATS, IRRC asked for an explanation of the inclusion of Sunday sales of food and nonalcoholic beverages occurring outside of the effective date of an SSP. Also questioned was the 120-day waiting period for licensees to reapply after expiration of the previous SSP. IRRC suggested allowing reapplication as soon as a licensee can show 90-consecutive days of compliance with the 30% ratio in the most recent 12 months. Alternatively, an explanation of the 120-day waiting period was requested.

*Response:* Act 39 removed the ratio requirement for licensees to receive an SSP, except for licensees in a first class city (Philadelphia). See section 406(a)(3) of the code. As a result, further study of the SSP procedures as they apply to Philadelphia will be needed. Accordingly, the proposed amendments to this section have been withdrawn.

*Comment:* The Board's role with respect to wine events under section 215(e) of the code (47 P. S. § 2-215(e)) was questioned in two respects. First, the text of proposed § 13.27(c) and (d) (relating to Board participation in wine events) indicated the Board's approval of wine events, as contrasted to the statutory authority granted to the Board to participate in or sponsor wine events. Second, the provision of subsection (d) making the Board's decision not to approve a wine event a nonappealable decision is questioned in the context of 2 Pa.C.S. § 702 (relating to appeals).

*Response:* Because the intent of § 13.27 was to explain the conditions applicable to the Board's sponsorship of or participation in a wine event, reference to "approval" was meant to reflect action by the Board to sponsor or participate in a wine event. The Board's business decision to forego sponsorship or participation was intended to be made without the potential for judicial review. The text of this section has been amended to clarify the Board's role with respect to wine events.

Several clarity points were recommended. These comments are as follows:

*Comment:* Section 5.121(a) (relating to service in establishments primarily serving food) cross references "section

494(14) of the Liquor Code (47 P. S. § 4-494(a))." This reference should be corrected to section 493(14) of the code (47 P. S. § 4-493(14)).

*Response:* The cross reference was corrected in this final-form rulemaking.

*Comment:* Section 11.13 (relating to gift card transactions by minors prohibited) cross references all of section 305 of the code (47 P. S. § 3-305). It appears that only subsection (h) of the this section applies to gift cards. If so, the reference in the final-form rulemaking should be more specific by referencing section 305(h) of the code.

*Response:* The cross reference was corrected in this final-form rulemaking.

*Comment:* Section 11.172(a)(4) (relating to application for Sunday sales permit) was proposed to be amended to state "... at least 30%..." To be consistent with section 406(a)(3) of the code and § 11.171(b) (relating to statutory provisions), this subsection should be amended to state "equal to 30% or more."

*Response:* This section is being withdrawn for further consideration.

*Comment:* The example in § 11.176 does not specify which subsection it demonstrates. It is placed after subsection (c), but it appears to demonstrate subsection (b). The regulation should clearly state which provision is being demonstrated.

*Response:* This section is being withdrawn for further consideration.

*Comment:* The terms "wine event" and "event" are used interchangeably in § 13.27. The term "wine event" should be defined and used consistently.

*Response:* The term "wine event" is used in this final-form rulemaking.

*Comment:* The amendments to § 13.51(a) (relating to general prohibition) replace specific references to exceptions with general language. The Board should retain the specific reference to exceptions.

*Response:* This section has been withdrawn.

*Comment:* Section 17.15(a) stated when petitions to intervene may be filed. It should also include where they must be filed.

*Response:* This information has been added to this final-form rulemaking.

*Affected Parties*

This final-form rulemaking affects existing licensees and parties interested in municipal noise ordinance proceedings.

*Paperwork Requirements*

The final-form rulemaking will not significantly increase paperwork for the Board or the regulated community.

*Fiscal Impact*

Because the 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, applicants for licenses or the Board itself.

*Effective Date*

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

*Contact Person*

Additional information is available from James F. Maher, Assistant Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 16, 2005, the Board submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 2112 (March 16, 2005), to IRRC and the Chairpersons of the House Committee on Liquor Control and Senate Committee on Law and Justice for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on October 18, 2006, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 19, 2006, and approved the final-form rulemaking.

*Findings*

The Commission finds that:

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

(2) The amendment of the Board's regulations in the manner provided in this order is necessary and appropriate for the administration of the code.

*Order*

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 40 Pa. Code Chapters 5, 11, 13 and 17, are amended by adding §§ 5.121, 11.13, 13.27, 13.54, 13.56 and 17.15 and by amending § 17.1 to read as set forth in Annex A.

*(Editor's Note:* The Board has withdrawn the proposals to amended § 11.172, 11.176 and 13.51, which were included in the proposed rulemaking at 35 Pa.B. 2112.)

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

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

JONATHAN H. NEWMAN,  
*Chairperson*

*(Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 6742 (November 4, 2006).)

**Fiscal Note:** Fiscal Note 54-61 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 J. MINORS ON LICENSED PREMISES**

Sec.

5.121. Service in establishments primarily serving food.

**§ 5.121. Service in establishments primarily serving food.**

(a) Section 493(14) of the Liquor Code (47 P. S. § 4-493(14)) creates several exceptions to the general prohibition of minors being present in licensed premises. One of these exceptions, known as the "Pizza Hut" exception, permits a minor to be present in a restaurant, hotel or retail dispenser (but not a club) licensed premises that has gross sales of food and nonalcoholic beverages equal to at least 50% of its combined gross sales of both food and alcoholic beverages.

(b) Licensees qualifying for this exception will not be cited for unlawfully allowing minors to frequent the licensed premises.

(c) To qualify for this exception, a licensee will assure that:

(1) Minors are not permitted to sit at the bar counter of the premises.

(2) Alcoholic beverages are not served to any adult at the table or booth where the minor is seated, unless the minor is also there with a parent, legal guardian or proper supervisor.

(3) Sales of food and nonalcoholic beverages at the licensed premises during the preceding 12-month licensing year are at least 50% of the combined gross sales of both food and alcoholic beverages.

**CHAPTER 11. PURCHASES AND SALES  
RETAIL AND WHOLESALE PURCHASE—GENERAL****§ 11.13. Gift card transactions by minors prohibited.**

Gift cards authorized by section 305(h) of the Liquor Code (47 P. S. § 3-305(h)) for sale and redemption by the Board may not be purchased or redeemed by minors.

**CHAPTER 13. PROMOTION****Subchapter A. ADVERTISING****WINE****§ 13.27. Board participation in wine events.**

(a) Section 215(e) of the Liquor Code (47 P. S. § 2-215(e)) authorizes the Board to sponsor or participate in wine events. A "wine event" is a show, demonstration, exposition or festival that has a purpose of educating consumers about wine that is available in this Commonwealth.

(b) Persons seeking Board sponsorship or participation in a wine event shall submit a request in writing to the Board at least 60 days prior to the first day of the wine event.

(c) If the Board decides to sponsor or participate in the wine event, it will issue a letter of authority to the event organizer. The Board's letter will describe the premises upon which the wine event will be held.

(d) If the Board decides not to sponsor or participate in the wine event, the Board's decision is final, and may not be appealed.



(e) Wine to be used in a wine event that the Board sponsors or participates in may be acquired and possessed in accordance with the following:

(1) Wine donated for the wine event may be shipped directly to the wine event organizer or its agents.

(2) Records showing the amount, types and brands of all wine received, the identity of the donors and the dates received and documents evidencing payment of all necessary taxes shall be forwarded to the Board prior to the wine event.

(3) Wine obtained for the wine event that is not used at the wine event shall be returned to the donor, donated to a nonprofit, charitable organization registered with the Department of State or destroyed and may not be sold.

(4) Wine may also be obtained for the wine event through the Board's wine and spirits stores.

(f) The Board's letter of authority authorizes the wine event organizer or its agents to possess and transport wine for the wine event.

(g) Participation in the wine event, including the service and consumption of wine, may be conditioned on the purchase of a ticket to the wine event. The wine event organizer, its agents or the Board may sell tickets. Sale of tickets by the wine event organizer or its agents does not constitute the unlawful sale of alcohol.

(h) The wine event organizer shall appoint a manager who shall be present on the premises at all times during the wine event.

(i) The Board may sell wine for off-premises consumption in an area it designates at the wine event. The Board shall comply with the provisions of the Liquor Code governing retail sales at Wine and Spirits Stores, except that advance advertisement or notice posting by the Board of the location of the designated sales area is not required and provisions granting a right of protest will not be applicable.

(j) If the premises where the wine event is to occur is licensed by the Board, the licensee will not be cited under the Liquor Code for conduct occurring on the licensed premises during the wine event, so long as the licensee, its employees or agents are not directly involved in the violation and are not participating in the operation or management of the wine event.

**GIVING AND ACCEPTING THINGS OF VALUE**

**§ 13.54. Point of sale (POS) incentive programs—defined.**

A POS incentive program provides prizes for nonlicensed buyers to purchase and for distributors/importing distributors to promote the sale of a brand of malt or brewed beverages. These promotions feature displays or advertisements at the location where a sale is made.

**§ 13.56. Permissible point of sale (POS) incentive programs.**

(a) A POS incentive program must be sponsored by a manufacturer or importing distributor of malt or brewed beverages.

(b) The composite value of prizes available to nonlicensed buyers shall be at least three times the value of prizes available to distributors/importing distributors.

(c) Associated display and novelty items must be directed at and available for nonlicensed buyers.

(d) A prize may not be given to every participant.

(e) The value of a prize for a nonlicensed buyer may not exceed \$1,500.

(f) The POS incentive program may not incorporate a payment to licensees based on the number of cases displayed.

(g) The POS incentive program shall be approved in advance by the Office of Chief Counsel, Pennsylvania Liquor Control Board.

**CHAPTER 17. SPECIAL RULES OF PRACTICE AND PROCEDURE FOR MATTERS BEFORE THE BOARD**

**Subchapter A. GENERAL**

**§ 17.1. Purpose.**

This chapter supplements 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) and governs the practice and procedure before the Board regarding license applications, appeals from ALJ decisions, applications for supersedeas, divestiture and noise exemption petitions.

**Subchapter B. LICENSE APPLICATIONS**

**§ 17.15. Intervention in noise exemption petitions.**

(a) Petitions to intervene may be filed with the Board when a municipality has petitioned the Board for exemption from the Board's regulation regarding the sound of amplified music or other entertainment, or the advertisement thereof, being heard outside of licensed premises.

(b) The deadline for filing a petition to intervene with the Board is 7 calendar days before the hearing. In extraordinary circumstances and for good cause, a petition to intervene may be accepted by the Board after the deadline, but not after the hearing begins.

(c) A petition to intervene must present proof that the petitioner has a substantial, direct and immediate interest in the outcome of the proceeding. For an interest to be substantial, it means that there is some discernible adverse effect to the petitioner's individual interest. For the petitioner to have a direct interest, it means that the person claiming to be aggrieved must show the harm to his interest would be caused by the municipality's enforcement of its own noise ordinance. An immediate interest means that there is a close causal connection between the alleged injury and the grant of the exemption.

(d) The Board may allow petitioners to become interveners if the petition also shows the petitioner has an interest of such a nature so that intervention is necessary or appropriate to administration of the Liquor Code and this title. The Board will also consider whether or not the interest asserted in the petition to intervene is adequately represented by existing parties.

[Pa.B. Doc. No. 07-5. Filed for public inspection January 5, 2007, 9:00 a.m.]

# Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

## STATE BOARD OF COSMETOLOGY

### [49 PA. CODE CH. 7]

#### Accreditation of Licensed Schools

The State Board of Cosmetology (Board) amends §§ 7.111 and 7.113a (relating to application for a school license; and accreditation by a Nationally recognized accrediting agency).

#### A. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

#### B. *Statutory Authority*

Section 11 of the act of May 3, 1933 (P. L. 242, No. 86) (Act 86) (63 P. S. § 517) authorizes the Board to promulgate regulations generally for the conduct of persons, copartnerships, associations or corporations affected by Act 86.

#### C. *Background and Purpose*

Since 1991, § 7.113a has required a cosmetology school, within 5 years of being licensed by the Board, to submit to the Board proof that it is accredited by a Nationally recognized accrediting agency. In the intervening period, the Board has encountered instances in which a school licensee, prior to submitting proof of accreditation, changes ownership, location or name, and then asserts that the 5-year clock for accreditation should begin running again. Because the regulation is not clear on this question, some school licensees have managed to avoid submitting proof of accreditation for periods exceeding 5 years. Additionally, confusion has occurred with regard to whether, and for how long, a school is required to maintain that accreditation after submitting proof of it to the Board. This final-form rulemaking resolves both the issue of maintenance of accreditation and the issue of change of ownership, name or location, thereby eliminating the related regulatory construction problems that exist under the current language and clarifying the accreditation requirement.

#### D. *Description of Amendments*

The final-form rulemaking adds a paragraph to § 7.111(a), makes a technical change to § 7.111(b), deletes an obsolete sentence from § 7.113a and adds three subsections to that provision. The additions amplify and clarify the requirement that a school licensed by the Board submit to the Board, within 5 years after the Board licenses it, proof that the school is accredited by a Nationally recognized accrediting agency. The final-form rulemaking also establishes the requirement that a licensed school maintain accreditation to renew its license biennially. And finally, in response to concerns expressed in comments by the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) during proposed rulemaking, the final form rulemaking adds a provision allowing the Board the discretion to grant a variance from the “accreditation within 5 years of licensure” requirement for good cause shown by a new owner. This is designed to cover a situation when a new owner, in good faith, takes over a school which a prior owner neglected to accredit,

but the new owner may only have a short period, such as 6 months or 1 year, remaining to obtain accreditation prior to the expiration of 5 years from initial licensure. In this case, the new owner could apply to the Board for an extension of the 5-year accreditation period for up to 5 additional years.

Section 7.111(a) is amended by adding paragraph (7) to establish the requirement that an owner-applicant for a school license shall include, with the license application to the Board, proof that the school is already accredited or that the school has made application for accreditation to comply with § 7.113a. The new paragraph also specifies that certification or approval by the Department of Education suffices as proof of accreditation for secondary vocational technical schools.

Section 7.111(b) is amended by insertion of the term “school” in the first line to make it clear that school licenses are the subject of the provision.

Section 7.113a is amended by deleting the now obsolete provision that a school licensed by the Board as of May 25, 1991, shall submit proof of accreditation by May 25, 1996.

Section 7.113a(b) is added to specify that the requirement that a school submit proof of accreditation within 5 years of initial licensure is not negated by a change of ownership, name or location of the school within or following the 5-year period after initial licensure.

Section 7.113a(c) is added to allow the Board the discretion to grant a variance from the “accreditation within 5 years of licensure” requirement for good cause shown by a new owner. In this case, the new owner could apply to the Board for an extension of the 5-year accreditation period for up to 5 additional years.

Section 7.113a(d) is added to establish the requirement that a school, after initial accreditation, shall maintain accreditation to renew its license biennially.

#### E. *Summary of Comments and Responses to Proposed Rulemaking*

Proposed rulemaking was published at 36 Pa.B. 1229 (March 18, 2006) followed by a 30-day public comment period. The Board did not receive any comments from the general public or from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). Both the HPLC and IRRC commented, expressing concern about there being no provision for the Board to grant extensions or the like to new owners, acting in good faith, who cannot meet the 5-year accreditation period because of a prior owner’s delay in initiating or obtaining accreditation. In response to those comments, the Board added § 7.113a(c) to allow the Board the discretion to grant a variance from the “accreditation within 5 years of licensure” requirement for good cause shown by a new owner. This is designed to cover the situation about which the comments expressed concern. Under the added subsection, the new owner could apply to the Board for an extension of the 5-year accreditation period for up to 5 additional years.

#### F. *Fiscal Impact and Paperwork Requirements*

There is no adverse fiscal impact or paperwork requirement imposed on the Commonwealth, political subdivisions or the private sector.

#### G. *Sunset Date*

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 8, 2006, the Board submitted a copy of the notice of proposed rulemaking, published at 36 Pa.B. 1229, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 21, 2006, the final-form rulemaking was approved by the HPLC. On November 29, 2006, the final-form rulemaking was deemed approved by the SPC/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 30, 2006, and approved the final-form rulemaking.

I. *Contact Person*

Further information may be obtained by contacting Hilarene Staller, Board Administrator, State Board of Cosmetology, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7130.

J. *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 the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and no comments were received.

(3) The final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 36 Pa.B. 1229.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in this preamble.

K. *Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 7, are amended by amending § 7.111 to read as set forth at 36 Pa.B. 1229 and by amending § 7.113a to read as set forth in Annex A.

(b) The Board shall submit this order, 36 Pa.B. 1229 and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Board shall certify this order, 36 Pa.B. 1229 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*.

SUSAN E. RINEER,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 7777 (December 16, 2006).)*

**Fiscal Note:** Fiscal Note 16A-4511 remains valid for the final adoption of the subject regulations.

Annex A

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 7. STATE BOARD OF COSMETOLOGY LICENSURE AND ADMINISTRATION OF SCHOOLS OF COSMETOLOGY**

**§ 7.113a. Accreditation by a Nationally recognized accrediting agency.**

(a) *Accreditation required.* Within 5 years after being licensed by the Board, a school shall submit to the Board proof that it is accredited by a Nationally recognized accrediting agency.

(b) *Change of ownership, name or location.* Except as otherwise provided in subsection (c), a change of ownership, name or location of the school within or following the 5-year period after initial licensure does not negate or postpone the requirement for accreditation within 5 years of initial licensure.

(c) *Extension for good cause.* The Board, upon good cause shown by a new owner who has taken ownership of a school within the 5-year period after initial licensure, may extend the period for obtaining accreditation for up to an additional 5 years from the date the new owner takes ownership.

(d) *Biennial renewal.* After initial accreditation, a licensed cosmetology school shall maintain accreditation as a condition of biennial renewal of the school license.

[Pa.B. Doc. No. 07-6. Filed for public inspection January 5, 2007, 9:00 a.m.]

**Title 58—RECREATION**

**PENNSYLVANIA GAMING CONTROL BOARD**

**[58 PA. CODE CHS. 401 AND 425]**

**Licensed Entity Representatives**

The Pennsylvania Gaming Control Board (Board), under 4 Pa.C.S. § 1203(a) (relating to temporary regulations), adopts temporary regulations to facilitate implementation of 4 Pa.C.S. Part II (relating to gaming), enacted by the act of July 5, 2004 (P. L. 572, No. 71) (Act 71), as amended by the act of November 1, 2006 (P. L. 1243, No. 135) (Act 135). Chapter 425, entitled Licensed Entity Representatives, is added to Subpart B, entitled Licensing, Registering, Certifying and Permitting.

Additionally, under the Board's Resolution No. 2005-3-REG, the Board has the authority to amend the temporary regulations adopted on June 16, 2005, as it deems necessary in accordance with the purpose of Act 71 and to further the intent of Act 71. To respond to statutory changes in Act 135, the Board has decided to make editorial changes to the temporary regulation dated June 16, 2005, as deposited with the Legislative Reference Bureau (Bureau) and published at 35 Pa.B. 4045 (July 16, 2005).

*Purpose and Background*

Under 4 Pa.C.S. § 1203(a), the Board is authorized to promulgate temporary regulations to facilitate the prompt

implementation of Act 71. The regulations are necessary to establish the procedures for the registration of licensed entity representatives.

Under 4 Pa.C.S. § 1203(b), the temporary regulations adopted by the Board expire no later than 3 years following the effective date of Act 71 or upon promulgation of regulations as generally provided by law. These temporary regulations are not subject to sections 201—205 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201—1208), known as the Commonwealth Documents Law (CDL) or the Regulatory Review Act (71 P.S. §§ 745.1—745.15).

#### *Financial Impact*

Act 71 and the regulations provide for the implementation and management of gaming within this Commonwealth and the collection of fees and taxes from entities and individuals authorized by the Board to be employed by, provide gaming related services to or operate gaming facilities.

The appropriations from the Commonwealth for the implementation of Act 71 and costs of administering 4 Pa.C.S. Part II will be reimbursed by the licensed entities as specified within Act 71. Individuals and entities that wish to obtain licenses as gaming entities shall pay to the Gaming Fund significant licensing fees to obtain the authority to do business within this Commonwealth. Part of these fees shall reimburse the Board and the Pennsylvania State Police for licensing processes and background investigations. The licensing, registration, certification and permitting of individuals and other classes of applicants will be reimbursed by the applicants through fees established by the Board.

It is anticipated that the expenses of the Board and associated activities shall be reimbursed by the applicants and gaming entities as previously specified. Accordingly, this temporary regulation will have no financial impact on the State budget.

#### *Statutory Authority*

The Board is authorized under 4 Pa.C.S. § 1203(a) to adopt and publish temporary regulations to implement the policies and purposes of Act 71.

#### *Regulatory Review*

Under 4 Pa.C.S. § 1203(b), the Board's authority to adopt temporary regulations expires on April 15, 2007.

#### *Findings*

The Board finds that:

(1) Under 4 Pa.C.S. § 1203(a), the temporary regulations are exempt from the requirements of the Regulatory Review Act and sections 201—205 of the CDL.

(2) The adoption of the temporary regulations provided by this order is necessary and appropriate for the administration of the authorizing statute.

#### *Order*

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

(a) The Board acting under the authority of the Act 71 adopts the temporary regulation and the amendment to the temporary regulation adopted by resolution at the December 13, 2006, public meeting. The temporary regulation and amendment pertain to definitions and registration of licensed entity representatives.

(b) The regulations of the Board, 58 Pa. Code Chapters 401 and 451, are amended by adding § 425.1 and by

amending § 401.4 to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

(c) The temporary regulation and the amendment are effective December 13, 2006.

(d) The temporary regulation and amendment will be posted on the Board's website and published in the *Pennsylvania Bulletin*.

(e) The temporary regulation shall be subject to amendment as deemed necessary by the Board in accordance with the purpose of Act 71 and to further the intent of Act 71.

(f) The Chairperson of the Board shall certify this order and deposit the temporary regulation and amendment with the Legislative Reference Bureau as required by law.

THOMAS A. DECKER,  
*Chairperson*

**Fiscal Note:** 125-58. No fiscal impact; (8) recommends adoption.

### **Annex A**

#### **TITLE 58. RECREATION**

#### **PART VII. GAMING CONTROL BOARD**

#### **Subpart A. GENERAL PROVISIONS**

#### **CHAPTER 401. PRELIMINARY PROVISIONS**

#### **§ 401.4. Definitions.**

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

\* \* \* \* \*

*Licensed entity representative*—A person acting on behalf of or representing the interest of an applicant, licensee, permittee or registrant, including an attorney, agent or lobbyist regarding any matter which may reasonably be expected to come before the Board.

\* \* \* \* \*

#### **Subpart B. LICENSING, REGISTERING, CERTIFYING AND PERMITTING**

#### **CHAPTER 425. LICENSED ENTITY REPRESENTATIVES**

Sec.  
425.1. Registration.

#### **§ 425.1. Registration.**

(a) A licensed entity representative shall file a completed Licensed Entity Registration Form with the Board, which includes the individual's name, employer or firm, address, telephone number and the licensed entity being represented.

(b) A licensed entity representative shall be required to update its registration information on an ongoing basis.

(c) The Board will maintain a list of licensed entity representatives. The registration list will be available for public inspection at the offices of the Board and on the Board's Internet website.

[Pa.B. Doc. No. 07-7. Filed for public inspection January 5, 2007, 9:00 a.m.]