

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 85]
Bluff Recession and Setback

The Environmental Quality Board (Board) proposes to amend Chapter 85 (relating to bluff recession and setback), to make minor editorial changes, clarify municipal response on designation, add the City of Erie to the list of municipalities having a bluff recession hazard area, clarify minimum setback distances, add a deed and plat notice requirement and delete requirements for specific supporting documentation.

This proposal was adopted by the Board at its June 17, 2008, meeting.

A. *Effective Date*

These amendments will be effective upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information, contact Shamus Malone, Chief of Monitoring and Technical Assistance, PA Coastal Resources Management Program, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 772-4785.

Information regarding submitting comments on the proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site: www.depweb.state.pa.us.

C. *Statutory Authority*

The proposed amendments are published under the statutory authority of the Bluff Recession and Setback Act (32 P. S. §§ 5201—5315).

D. *Background and Purpose*

In response to a 2001 petition to the Board by Millcreek Township, Erie County, to clarify the designation of Bluff Recession Hazard Areas along Lake Erie, the Department conducted a study of this Commonwealth's entire Lake Erie shoreline to determine Bluff Recession Hazard Areas. Considering the results of this study and other related studies and data, and responses from the coastal municipalities along Lake Erie concerning tentative designations of bluff recession hazard areas, the Department recommended including the City of Erie as a municipality identified as having a bluff recession hazard area.

A majority of the shoreline of the City of Erie is along the southern edge of Presque Isle Bay, sheltered from open lake wave energies by the protective land feature of Presque Isle Peninsula. However, approximately 1.5 miles of the City's eastern shoreline are outside Presque Isle Bay and are exposed to open lake wave energies. The bluffs adjacent to this section of shoreline are undercut by wave attack, have steep slopes, are periodically devoid of vegetation and have experienced active bluff recession or have been heavily protected. If left unregulated with setbacks and improvement limitations, existing and future development in this area will be subject to property damage from bluff recession. Therefore, this portion of the

City of Erie is designated as having a bluff recession hazard area and the City of Erie should be included as a regulated municipality in Chapter 85.

The compelling public need for this proposed rulemaking is based on the six basic purposes stated in the Bluff Recession and Setback Act and Chapter 85. Those purposes are:

- To encourage planning and development in bluff areas that is consistent with sound land use practices.
- To protect people and property in bluff areas from the dangers and damages associated with the inevitable recession of bluffs.
- To prevent and eliminate urban and rural blight which results from the damages of bluff recession.
- To minimize the expenditure of public and private funds for shoreline protection and bluff stabilization structures and activities.
- To authorize a comprehensive and coordinated program to regulate development activities through the use of setback ordinances in Bluff Recession Hazard Areas to preserve and restore the natural ecological systems, and to prevent continuing destruction of property and structures.
- To encourage local administration and management of bluffs consistent with the duty of the Commonwealth as trustee of natural resources, and the constitutional right of the people to the preservation of the natural, scenic, aesthetic and historic values of the environment.

E. *Summary of Regulatory Requirements*

A brief description of the proposed amendments follows:

Subchapter A. General Provisions

Section 85.1 (relating to definitions) is proposed to be amended by adding the "Board" as a definitional term and clarifying the definitions for "Act," "Person," "Plat" and "Structure."

Subchapter B. Procedure for Designation of Areas With Bluff Recession Hazards.

This subchapter is proposed to be amended by making minor editorial changes to §§ 85.11 and 85.13 (relating to general requirements; and Department notification to municipalities) and adding clarifying language to §§ 85.14 and 85.15 (relating to municipal response on designation; and Department notification to the Environmental Quality Board).

Subchapter C. Bluff Recession Hazard Areas Setback Requirements

This subchapter is proposed to be amended by making changes to § 85.22(c) (relating to methods of determining minimum bluff setback distances) to change the minimum allowable bluff setback distance from 50 feet to 25 feet.

This subchapter is proposed to be amended by making minor editorial changes to § 85.23 (relating to modification of minimum bluff setback distances) and to move § 85.22(b) to § 85.25(b) for clarity.

In addition, § 85.26 (relating to designated municipalities and minimum bluff setback distances for identified categories of structures) is proposed to be amended by making minor editorial changes along with an important

clarification in subsection (c) that this table sets minimum setback requirements and adds the City of Erie as a designated municipality.

Following formal approval and designation of this additional bluff recession hazard area, the City of Erie will be required to adopt and implement a bluff setback ordinance within 6 months. The existing Chapter 85 has been in existence since 1980. Eight municipalities were originally identified as having bluff recession hazard areas. The proposed rulemaking adds one additional municipality to this list, based on the results of a recently completed study of bluff recession hazards along Pennsylvania's Lake Erie shoreline.

The City of Erie has permitting, technical and administrative capabilities and no additional staff or support capabilities are anticipated to be needed to administer a bluff setback ordinance. The cost of administering the ordinance is reflected by the number of building permits issued for structures in the bluff recession hazard area. Since the City of Erie already has a building permit system in place, administering the bluff setback ordinance should require only minimal costs and no additional resources.

Subsections § 85.26(d) and (e) are proposed to be added to clarify that municipalities may adopt more restrictive bluff setback distances and that the Uniform Construction Code (see 34 Pa. Code § 401.1) or local zoning regulations may also apply.

Subchapter D. Municipal Bluff Setback Ordinance and Regulations

This subchapter is proposed to be amended by making minor editorial changes to §§ 85.32, 85.35 and 85.37 (relating to time limit for municipal adoption of bluff setback ordinance and regulations; municipal adoption of more restrictive ordinance; and contents of ordinance and regulations submitted by municipality). A cross reference to the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003) and regulations is proposed to be added to § 85.37(4)(i)(B) and a clarification made to § 85.37(7) regarding notice to applicants.

A new requirement is proposed in § 85.37(7)(i) and (ii) for every deed or plat within the bluff recession hazard area to include an appropriate bluff recession hazard area notice.

Subchapter E. Department Oversight of Municipal Compliance

This subchapter is proposed to be amended by deleting § 85.41 (relating to general requirements), deleting the requirement for notification by certified letter in § 85.42(b) and making minor editorial changes to § 85.42(d).

Subchapter F. Grants and Reimbursements to Municipalities

This subchapter is proposed to be amended by making minor editorial changes to § 85.52 (relating to limitation of grants and reimbursements) and replacing the specific list of records and supporting documentation required in § 85.55 (relating to records and audits) with the requirement that the records be maintained in accordance with generally accepted accounting practices.

As required by statute, the Department reimburses affected municipalities up to 75% of the costs incurred to develop an ordinance, and up to 50% of the cost of ongoing administration. Currently, the grant amount budgeted and spent by the Department for ongoing administrative costs for the eight municipalities is \$4,400 annually. For various reasons, one being the addition of

another municipality (City of Erie) to the municipalities needing reimbursement for administrative costs, the Department has increased the budgeted amount for this activity in future grant years.

The Department provides free annual training to affected municipalities to keep them up to date with new methods of monitoring development activities in bluff recession hazard areas. Furthermore, this proposed rule making would result in only minimal changes to the primary technical guidance document used to help the municipalities with daily implementation of their bluff setback ordinances. This change would be to include the City of Erie as one of the regulated municipalities.

Subchapter G. Appeals

This subchapter is proposed to be amended by making a minor editorial change to § 85.61(b)(1) (relating to appeals).

The Department is seeking public comment on the possible future inclusion of a section in Chapter 85 on proper vegetation management. This would be a regulatory section that would require coastal property owners to adhere to certain vegetation management practices to ensure bluff stability on their properties and adjoining properties. Poor vegetation management practices (indiscriminant felling of mature trees or property wide topping and thinning mature tree canopies) at the bluff crest or on the bluff face can have devastating effects on bluff stability that usually initiate large scale bluff recession that can result in property loss and/or structural damage.

F. Benefits

The benefit of this proposed rulemaking is the protection of the health and safety of coastal property owners, the prevention of the destruction of property and structures in designated bluff recession hazard areas, and the prevention of the introduction of debris and hazardous materials into the coastal environment. Federal funds will be available through the Coastal Resources Management (CRM) Program to help develop and implement any necessary ordinance. Future monitoring, training and technical assistance will also be provided by the CRM Program.

Also of interest to the public is the availability of Technical Advisory Services (TAS) provided by the Department to coastal property owners along the Lake Erie shoreline. The TAS is a free service implemented by the staff of the CRM Program and has been in existence for 25 years. The TAS provides technical advice to existing and prospective shoreline and bluff property owners on the causes and effects of shoreline erosion and of progressive bluff recession. This service is highly successful and is credited with saving millions of dollars in property values. The TAS also provides information regarding best management practices for the proper management of bluff and shoreline properties along Lake Erie. Under a Direct Action Policy in the Federal and State approved and jointly funded CRM Program, "... the Program shall provide technical assistance and advice concerning the design of structural and non structural methods of shore protection and bluff stabilization."

G. Pollution Prevention

The Federal Pollution Prevention Act of 1990 established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of

environmentally friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This proposed rulemaking promotes a multimedia pollution prevention approach for the proposed regulated area of the City of Erie. The construction setbacks in Chapter 85 for new construction and improvements to existing structures within the bluff recession hazard areas will promote safe and sensible practices by placing new construction outside and away from bluff recession hazard areas, making all new construction moveable and minimizing improvements to existing structures in bluff recession hazard areas. The proposed setbacks for new construction (from the bluff crest) are 25 feet for residential, 25 feet for commercial and 25 feet for industrial. Regulating new construction to keep it out of and away from the bluff recession hazard area will in effect prevent pollution of Lake Erie waters by avoiding collapse of structures into the waters of Lake Erie, caused by erosion and progressive bluff recession.

H. *Sunset Review*

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 13, 2008, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the rulemakings.

J. *Public Comment*

Written comments. Interested persons are invited to submit comments, suggestions or objections regarding the

proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by October 22, 2008. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by October 22, 2008. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form rulemaking will be considered.

Electronic comments. Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by October 22, 2008. A subject heading of the proposal and a return name and address must be included in each transmission.

K. *Public Hearings*

The Board will hold one public hearing for the purpose of accepting comments on this proposal. The hearing will be held as follows:

September 23, 2008 Tom Ridge Environmental Center
10 a.m. 301 Peninsula Drive
Suite 1
Room 108
Erie, PA 16505-2042

Persons wishing to present testimony at the hearing are requested to contact the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JOSEPH R. POWERS,
Acting Chairperson

Fiscal Note: 7-704. (1) General Fund:

	<i>Environmental Protection Operations</i>	<i>Environmental Program Management</i>
(2) Implementing Year 2008-09 is	\$1,125	\$375
(3) 1st Succeeding Year 2009-10 is	\$750	\$250
2nd Succeeding Year 2010-11 is	\$750	\$250
3rd Succeeding Year 2011-12 is	\$750	\$250
4th Succeeding Year 2012-13 is	\$750	\$250
5th Succeeding Year 2013-14 is	\$750	\$250
(4) 2007-08 Program—	\$98,582,000	\$39,909,000
2006-07 Program—	\$89,847,000	\$36,868,000
2005-06 Program—	\$87,897,000	\$37,049,000
(7) Environmental Protection Operations and Environmental Program Management; (8) recommends adoption. Revenue is expected to cover increased costs beginning in 2009-2010.		

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHAPTER 85. BLUFF RECESSION AND SETBACK

Subchapter A. GENERAL PROVISIONS

§ 85.1. Definitions.

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

Act—[The act of May 13, 1980 (No. 1980-48)] Bluff Recession and Setback Act (32 P. S. §§ 5201—5215).

* * * * *

[Persons—] Person

(i) An individual, partnership, public or private association or corporation, firm, trust estate, municipality, governmental unit, public utility or other legal entity which is recognized by law as the subject of rights and duties.

(ii) [When] Whenever used in [a] any section prescribing or imposing a penalty, the term [shall include] includes the members of a partnership; the officers, members, servants and agents of an association, officers, agents and servants of a corporation but [shall exclude] excludes any department, board, bureau or agency of the Commonwealth.

Plat—A map, drawing or print accurately drawn to scale showing the proposed or existing [the Commonwealth] location of all structures.

* * * * *

§ 85.2. Scope.

This chapter is adopted in accordance with the duties relating to bluff recession placed on the Department by the act, and [they shall apply] applies to all municipalities designated as having bluff recession hazard areas and to all persons constructing, installing or engaging in substantial improvement to any structure or utility facility within bluff recession hazard areas.

Subchapter B. PROCEDURE FOR DESIGNATION OF AREAS WITH BLUFF RECESSION HAZARDS

§ 85.11. General requirements.

The Department is authorized [by] under section 4 of the act (32 P. S. § 5204) to identify areas in this Commonwealth [which have] that contain bluff recession hazard areas. Prior to formal designation by the [Environmental Quality Board] EQB, the tentatively identified municipality will be invited to submit comments to the Department concerning the designation.

§ 85.13. Department notification to municipalities.

Following completion of the study, the Department will, by certified letter, notify the governing body of the municipality that it has been tentatively designated as possessing a bluff recession hazard area. The letter [shall] will contain [all of] the following information:

* * * * *

(6) Specification of [the] a 60-day time [limits] limit for comment.

(7) Notice that [a] one or more public [hearing] hearings will be held concerning the designation of bluff recession hazard areas by the [Environmental Quality Board] EQB prior to formal designation.

§ 85.14. Municipal response on designation.

(a) Each municipality tentatively identified by the Department as possessing a bluff recession hazard area will be invited to submit written comments concerning the tentative designation to the Department within 60 days of receiving the notification letter of the Department.

(b) If a municipality disagrees with the letter of the Department tentatively designating it as possessing a bluff recession hazard area and the required setback distances, the appropriate representatives of the Department will contact and offer to meet with representatives of the municipality to review, discuss and attempt to resolve the differences. This meeting will be scheduled within 30 days from the date the letter is received from the municipality.

(c) If a municipality does not comment within the time prescribed in § 85.13(6) (relating to Department notification to municipalities), it will be presumed that the municipality is in agreement with the designation and the required setback distance.

§ 85.15. Department notification to the [Environmental Quality Board] EQB.

(a) [When the Department receives comments from a tentatively designated municipality, it] Following the close of the municipal comment period on the tentative designation, the Department will prepare and transmit to the [Environmental Quality Board a request for] EQB a proposed rulemaking proposing formal designation of the bluff recession hazard area of the municipality and the establishment of bluff setback distances in the bluff recession hazard area. The [request] proposed rulemaking will contain [, at a minimum, all of] the following:

* * * * *

(3) [All comments] Comments received from the affected municipality.

* * * * *

(b) [In the event a municipality disagrees with the letter of the Department tentatively designating it as possessing a bluff recession area and the required setback distances and has not submitted comments acceptable to the Department, the appropriate representatives of the Department will contact and offer to meet with representatives of the municipality to review, discuss, and attempt to resolve the differences. This meeting will be held within 30 days from the date of the letter received from the municipality.

(c) In the event a municipality fails to comment within the time prescribed in § 85.13(6) (relating to Department notification to municipalities), the Department will assume the municipality is in agreement and will note that municipality provided no comment concerning the designation and the required setback distance within the allotted time.

(d) Following transmittal of the [request] proposed rulemaking by the Department to the [Environ-

mental Quality Board] EQB, the [Environmental Quality Board] EQB will give public notice and hold one or more public hearings on the [request] proposed rulemaking to formally designate areas within municipalities as bluff recession hazard areas.

[(e)] (c) Following public hearings, the Department will consider the comments received [at the public hearing] and make appropriate revisions to the [request and resubmit it] proposed rulemaking. The Department will then submit the proposed rulemaking to the [Environmental Quality Board] EQB for final action. Following [an affirmative action by the Environmental Quality Board] adoption by the EQB and publication of the formal designation, the Department will notify the municipality that it must within 6 months comply with the act and this chapter.

Subchapter C. BLUFF RECESSION HAZARD AREAS SETBACK REQUIREMENTS

§ 85.22. Methods of determining minimum bluff setback distances.

(a) The Department will develop minimum bluff setback distances for each municipality tentatively designated as having a bluff recession hazard area by applying the following formula:

$$\text{Rate of Bluff Recession} \times \text{Appropriate life span of structure} = \text{Minimum Bluff Setback Distance}$$

[(b) When the Department receives the completed application, it will review the application based on the criteria for a variance pursuant to § 85.37(4) (relating to contents of ordinance and regulations submitted by municipality) within 45 days, and send a certified letter to the applicant approving or disapproving the variance. A copy of this letter will be sent to the municipality for its permanent record. If the Department does not take action regarding the application within 45 days, the application will be deemed approved.]

(1) The rate of bluff recession is the average annual rate of recession for all the municipality's [bluff] bluffs as calculated by the Department.

(2) The appropriate life span of structure is 50 years for residential homes, 75 years for commercial structures, and 100 years for light and heavy industrial structures.

[(c) In no case shall the] (b) The minimum bluff setback distance may not be less than [50] 25 feet. When use of the formula identified in subsection (a) would produce a minimum bluff setback distance of less

than [50] 25 feet, the formula [shall] does not apply and [50] 25 feet shall be the minimum bluff setback distance.

§ 85.23. Modification of minimum bluff setback distances.

A minimum bluff setback distance for a municipality may be modified upon presentation of formal studies acceptable to the Department documenting annual recession rates at variance with the recession rate data of the Department. Upon Department review and acceptance of the data as accurate and compatible with the objectives of the act, a new minimum bluff setback distance will be calculated. The Department will request the [Environmental Quality Board] EQB to amend the designation in accordance with this subchapter concerning the minimum bluff setback distances.

§ 85.25. Variances granted by the Department.

(a) During the period between [Environmental Quality Board] EQB designation of a bluff recession hazard area and the approval of the Department of a bluff setback ordinance and regulations of a municipality, the Department may grant variances to the bluff setback requirements for all construction in a designated bluff recession hazard area. A property owner shall file an application with the Department for a variance to allow construction on his property.

(b) When the Department receives the completed application for a variance, it will review the application based on the criteria for a variance under § 85.37(4) (relating to contents of ordinance and regulations submitted by municipality) within 45 days, and send a certified letter to the applicant approving or disapproving the variance. A copy of this letter will be sent to the municipality for its permanent record. If the Department does not take action regarding the application within 45 days of receipt of this application, the application will be deemed approved.

§ 85.26. Designated municipalities and minimum bluff setback distances for identified categories of structures.

(a) Under § 85.15 (relating to Department notification to the [Quality Board] EQB), the municipalities identified in subsection (c) have been designated as possessing a bluff recession hazard area.

* * * * *

(c) [Designated municipalities and setback distances in feet.] Regardless of any other provision of law or ordinance, the minimum setback distances in the named municipalities must be in accordance with the following table:

<i>Municipality (by geographic location)</i>	<i>Residential</i>	<i>Commercial</i>	<i>Light and Heavy Industrial</i>
Springfield Township Erie County	100'	150'	200'
Girard Township Erie County	60'	90'	120'
Lake City Borough Erie County	60'	90'	120'
Fairview Township Erie County	50'	75'	100'

<i>Municipality (by geographic location)</i>	<i>Residential</i>	<i>Commercial</i>	<i>Light and Heavy Industrial</i>
Millcreek Township Erie County	50'	75'	100'
[Fairview Township Erie County]	[50']	[75']	[100']
Erie City Erie County	25'	25'	25'
Lawrence Park Township Erie County	50'	75'	100'
Harborcreek Township Erie County	50'	75'	100'
North East Township Erie County	50'	75'	100'

(d) The setback distances listed in subsection (c) are minimum distances. The actual distance of the area subject to bluff recession may be greater in certain areas. Nothing in this chapter guarantees that bluff recession will not occur beyond the specified setback distances during the usable life span of a structure originally installed or constructed in accordance with the setback requirements at the time of installation or construction. Because of variations in the bluff recession rates, municipalities may adopt more restrictive ordinances in accordance with § 85.35 (relating to municipal adoption of more restrictive ordinance).

(e) If the setback distance for the placement of structures regulated under another law or ordinance, such as the Uniform Construction Code (see 34 Pa. Code § 4401.1) or zoning regulation, is greater than that specified in subsection (c), the greater setback distance shall apply within the bluff recession hazard area.

Subchapter D. MUNICIPAL BLUFF SETBACK ORDINANCE AND REGULATIONS

§ 85.32. Time limit for municipal adoption of bluff setback ordinance and regulations.

Each municipality, following publication of the formal [Quality Board] EQB designation of a bluff recession hazard area, shall within 6 months of receiving notification amend or adopt and implement a bluff setback ordinance and regulations which are consistent with the requirements of § 85.37 (relating to contents of ordinance and regulations submitted by municipality).

§ 85.35. Municipal adoption of more restrictive ordinance.

No provision of the act shall be construed [as in any way limiting] to limit the power of any municipality to adopt more restrictive ordinances, codes, or regulations governing construction and development in bluff recession hazard areas that are established under §§ 85.22— [85.24] 85.26 [(relating to bluff recession hazard areas setback requirements)].

§ 85.37. Contents of ordinance and regulations submitted by municipality.

The ordinance and regulations submitted by a municipality to the Department shall include at a minimum the following components:

* * * * *

(3) A municipality shall provide a procedure, as a part of the ordinance and regulations, that enables monitoring of substantial improvements to structures bisected by or within the bluff setback distance. The procedure must ascertain the market value of the [property] structure prior to the first improvement and document subsequent improvements to the structure to ensure that they do not exceed 50% of the market value for a consecutive 5-year period. At the request of the municipality, the Department will provide assistance to the municipality in developing this procedure.

(4) The municipality shall provide a variance to its bluff setback ordinance and regulations only in the following cases:

(i) When a parcel established prior to a bluff recession hazard area [designated] designation does not have adequate depth considering the minimum bluff setback requirements to provide for any reasonable use of the land, a variance may be applied for. The variance shall be authorized when the following standards and criteria are met:

(A) The structure and all associated structures and [utilities] utility facilities shall be located on the property as far landward of the bluff line as allowed by other municipal ordinances.

(B) The structure shall be designed and constructed to be movable. Construction activities [shall] must meet the minimum erosion and sediment control practices established [by] under Chapter 102 (relating to erosion and sediment control) and reflect guidance contained in municipal stormwater ordinances or county watershed stormwater management plans. [All construction materials, including foundations, shall be removed and disposed of in accordance with Chapter 75 (Reserved) as part of the moving operation.] As part of the moving operation, all construction materials, including foundations, shall be removed and disposed of in accordance with the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and the regulations promulgated thereunder. Access to and from the structure shall be of sufficient width and acceptable grade to allow for moving of the structure.

* * * * *

(7) [The municipality has alerted and shall continue to alert permit applicants, when permits are granted, that the bluff setback requirements are at best a minimum distance and, because of variations

in local bluff recession rates, cannot guarantee that a structure located in a bluff recession hazard area will not be endangered by bluff recession within its useful life span.] When an applicant submits an application for a permit for any construction or development activities in areas subject to bluff recession hazards, the municipality shall alert the applicant of the minimum bluff setback prescribed in § 85.26(c) (relating to designated municipalities and minimum bluff setback distances for identified categories of structures).

(i) A deed for the transfer of property within designated bluff recession hazard areas shall include appropriate notice that it is within a bluff recession hazard area.

(ii) After _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.), a plat approved for subdivision or land development under a municipal ordinance for areas within the bluff recession hazard area must include appropriate notice by the municipal zoning administrator.

Subchapter E. DEPARTMENT OVERSIGHT OF MUNICIPAL COMPLIANCE

§ 85.41. [General requirements] (Reserved).

[As required by section 7 of the act (32 P. S. § 5207) the Department will adopt procedures and regulations for the review and approval of municipal ordinance and regulations.]

§ 85.42. Department review and approval of a municipality setback ordinance and regulations.

* * * * *

(b) The Department will, upon ascertaining that the proposed bluff setback ordinance and regulations meet the minimum requirements [set forth] in § 85.37 (relating to contents of ordinance and regulations submitted by municipality), notify the municipality [by certified letter] of the approval of the ordinance and regulations.

* * * * *

(d) [Should] If the Department, during the review of the proposed ordinance and regulations, [find] finds that the ordinance and regulations do not meet the minimum requirements of this chapter, the Department will disapprove the ordinance and regulations and will notify the municipality. The letter will contain the reasons for disapproval and suggestions for correcting the problem. Upon receipt of this letter, the municipality shall have 30 days to correct the problem and resubmit the proposed ordinance and regulations. If the municipality disagrees with the findings of the Department, the municipality may appeal the decision of the Department under the procedures in [this chapter] § 85.61 (relating to appeals).

* * * * *

Subchapter F. GRANTS AND REIMBURSEMENTS TO MUNICIPALITIES

§ 85.52. Limitation of grants and reimbursements.

Grants [shall] will be available from the Department to municipalities to reimburse them for allowable costs

incurred in complying with [the requirements of] the act. Grants [shall] will be limited to:

* * * * *

(2) Fifty percent of the allowable costs for the ongoing administration of an ordinance incurred by a municipality. Allowable costs for administration of bluff setback ordinance [shall] do not include those costs [which] that are offset by reasonable permit fees imposed by the municipality.

§ 85.55. Records and audits.

(a) Municipalities shall maintain books, records, documents, correspondence and other evidence pertaining to the costs and expenses incurred under § 85.52 (relating to limitation of grants and reimbursements) to the extent and in [such] detail [as] that will properly reflect all costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which funding has been provided under the grant. [Such] The records shall be maintained in accordance with generally accepted accounting principles. [A detailed explanation of the accounting procedures and types of records are contained in the "Manual of Accounting and Related Financial Procedures for Pennsylvania Municipalities," published and distributed by the Department of Community Affairs, Forum Building, Harrisburg, Pennsylvania 17120.]

(b) A municipality shall maintain accounting records and supporting documentation which identify all revenue and costs from the effective date to expiration date of the grant. [As a minimum, the following books of account shall be used:] The accounting records shall be maintained in accordance with generally accepted accounting practices.

[(1) Cash receipts journal.

(2) Cash disbursement journal.

(3) Payroll journal.

(4) General journal.

(c) In the event a municipality records transactions by the accrual method of accounting, additional records shall be required.

(d) The following documentation should be retained in file:

(1) Copies of revenue documents.

(2) Original vendor invoices.

(3) Payroll records.

(4) Cancelled checks.

(5) Worksheets used to prepare grant reports and other related grant information. All records should be retained for a period of three years from the grant expiration date or until all pending matters are resolved.]

Subchapter G. APPEALS

§ 85.61. Appeals.

* * * * *

(b) An appeal of an action under the act [shall] does not act as a supersedeas. A supersedeas may be granted by the [Environmental Hearing Board] EQB upon a showing by the petitioner that:

(1) [that irreparable] Irreparable harm to the petitioner or other interested parties will result if supersedeas is denied.

(2) [That there] There is a likelihood of the success of the petitioner on the merits.

(3) [That the] The grant of a supersedeas will not result in irreparable harm to [the] this Commonwealth.

[Pa.B. Doc. No. 08-1523. Filed for public inspection August 22, 2008, 9:00 a.m.]

DEPARTMENT OF REVENUE

[61 PA. CODE CHS. 73 AND 74] Malt Beverage Tax

The Department of Revenue (Department), under Article XX of the Tax Reform Code of 1971 (TRC) (72 P. S. §§ 9001—9016), proposes to amend 61 Pa. Code Chapters 73 and 74 (relating to emergency and limited malt beverage tax credit and malt beverage tax; and malt beverage tax) to read as set forth in Annex A.

Purpose of Proposed Rulemaking

The proposed rulemaking codifies legislative changes relating to the Malt Beverage Tax that were set forth in the act of December 23, 2003 (P. L. 250, No. 46) (72 P. S. § 9010) (regarding to limited tax credits). The title of Chapter 73 is being amended to remove the words "Emergency and." In addition, the Department has added clarifying language and removed obsolete language throughout Chapters 73 and 74.

Explanation of Regulatory Requirements

Several definitions in § 73.52 (relating to definitions) are amended to reflect legislative changes in Act 46-2003. The definition for "Bureau" is obsolete and has been removed from the regulation. The definition for "report" is renamed to "application," and this change is reflected in revisions throughout the rulemaking. The detailed instructions that previously appeared in the definition of "report" have been moved to § 73.54 (relating to report applying for tax credit). The term "emergency period" is replaced with "effective period" to mirror the language in the act. Additionally, increased dollar amounts and revised dates are changed in the definitions of "amounts paid," "emergency period (renamed "effective period")" and "qualifying capital expenditures."

Sections 73.51 and 74.1 (relating to purpose) have been revised to update citations.

Section 73.53 (relating to tax credit to be allowed and limitations) is amended to reflect an increase from \$100,000 to \$200,000 for tax credits allowed, not to exceed in total amount the amount of qualifying capital expenditures. In paragraphs (1) and (2), the terms "actually" and "actual" have been deleted from the phrases "amounts actually paid" and "actual amounts paid" respectively to mirror the term used in the definition "amount paid" in § 73.52. Additionally, clarifying language is added in paragraph (4).

Section 73.54 has been renamed to "Application for tax credit." The text immediately appearing under the section name has been updated for clarity, and the last sentence

has been moved to paragraph (3). In paragraphs (1) and (3) obsolete language has been replaced. Paragraph (4) updates the period for maintaining auditable record schedules and supporting data regarding tax credit claims to "January 31, 2011" and deletes "January 31, 1980." Paragraph (5) updates the period for keeping and retaining account records to not less than 3 years after "December 31, 2008" and deletes "December 31, 1977."

Section 73.55 (relating to grant of credit, conditions and limitations) deletes "December 31, 1977" and revises to "December 31, 2008" as the ending date when no credit will be allowed against any tax due to any taxable period. Paragraph (2) is amended with clarification language of 3 years, but not beyond December 31, 2008, for tax credits not utilized by the taxpayer.

Sections 74.31—74.41 (relating to malt beverage tax refunds) has been renamed "Malt Beverage Tax Credits." The term "refunds" has been changed to "credits" in the section headings and text throughout this entire subchapter to mirror the use of the term "credit" as authorized in the statute at section 2009 of the act (72 P. S. § 9009(f)) regarding refund of tax.

Section 74.35 (relating to refunds on malt beverage rendered unsalable by reason of damage or destruction) is amended to include a new reason of "recalled due to defect."

Section 74.37 (relating to credits) deletes obsolete language, "attention Bureau of Examination."

Section 74.41 (relating to time limit on credits) is amended to increase from 2 to 3 years the time limit on credits from the date of sale.

Affected Parties

Manufacturers, retailers and purchasers of malt or brewed beverages may be affected by the regulation.

Fiscal Impact

The Department has determined that the proposed amendment will have minimal fiscal impact on the Commonwealth.

Paperwork

The proposed amendment will not create additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The regulation will become effective upon final publication in the *Pennsylvania Bulletin*. The regulation is scheduled for review within 5 years of final publication. No sunset date has been assigned.

Contact Person

Interested persons are invited to submit in writing any comments, suggestions or objections regarding the proposed amendments to Mary R. Sprunk, Office of Chief Counsel, Department of Revenue, P. O. Box 281061, Harrisburg, Pennsylvania 17128-1061, within 30 days after the date of the publication of this notice in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 13, 2008, the Department submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance (Committees). In addition to submitting the amendment, the Department has provided IRRC and the Committees with a copy of a

detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

The Committees may, at any time prior to the submittal of the final-form regulation, convey to the agency and the Commission, their comments, recommendations and objections to the proposed regulation. IRRC may, within 30 days of the close of the public comment period, submit to the agency and Committees any comments, recommendations and objections to the proposed regulation. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the amendments, by the Department, the General Assembly and the Governor.

THOMAS W. WOLF
Secretary

Fiscal Note: 15-444. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE III. CIGARETTE AND BEVERAGE TAXES

CHAPTER 73. [EMERGENCY AND] LIMITED MALT BEVERAGE TAX CREDIT

§ 73.51. Purpose.

The Secretary of Revenue, under the authority [contained in section 10.1(d) and other provisions of the act (47 P. S. § 112.1(d))] of the act and by reason of the act provides, among other things, that the General Assembly of the Commonwealth, conscious of the financial emergency facing the brewing industry of this Commonwealth and the attendant risk of business failure and loss of employment opportunity, declares it public policy that the renewal and improvement of the capital facilities of the brewing industry be encouraged and assisted by a limited tax subsidy to be granted during the period of the emergency and further making provisions for a limited subsidy by tax credits to be allowed under certain terms, conditions and limitations, adopts this [section and §§ 73.52—73.57] chapter to assist in these and other purposes and to aid and guide in the administration, operation and enforcement of the act.

§ 73.52. Definitions.

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

Act—[The act of May 9, 1974 (P. L. 279, No. 82) (47 P. S. § 112.1), an amendment to the Malt Beverage Tax Law (47 P. S. §§ 103—120.3)] The Malt Beverage Tax Law (72 P. S. §§ 9001—9016).

Amounts paid—Amounts actually paid, or at the taxpayer's election, amounts promised to be paid under firm purchase contracts actually executed within any calendar year falling within the [emergency] effective period provided, [however, that] there shall be no duplication of amounts paid under this definition. [Provided, further, that] In addition, [no amount or] amounts

shall constitute amounts paid until full proof thereof, as provided in the act and as provided in this chapter, shall have been submitted and filed under oath or other verification[, as hereinafter required,] and the Secretary has approved and certified the amounts [and then only] to the extent of the amounts [so] approved and certified by the Secretary do not [to] exceed [\$100,000] \$200,000 within a single calendar year.

Application—The report for claiming a tax credit.

[*Bureau*—The Pennsylvania Bureau of Cigarette and Beverage Taxes.

Commonwealth—The Commonwealth of Pennsylvania.

Department—The Department of Revenue of the Commonwealth of Pennsylvania.

Emergency] Effective period—The period from January 1, 1974, to [December 31, 1976] December 31, 2008, inclusive.

Qualifying capital expenditures—Amounts paid by a taxpayer during the [emergency] effective period for the purchase of items of plant, machinery or equipment intended for use by the taxpayer within this Commonwealth in the manufacture and sale of malt or brewed beverages. [However, the] The total amount of qualifying capital expenditures made by the taxpayer within a single calendar year included within the [emergency] effective period may not exceed [\$100,000] \$200,000. [Provided further that the] The plant, machinery and equipment shall be directly related to the utilization of the manufacture and sale of malt or brewed beverages [. Provided, further, that] and the total amount of qualifying capital expenditures made within a single calendar year within the [emergency] effective period [shall] must include all amounts paid as defined in this chapter and the act, and [shall] may not exceed [\$100,000] \$200,000 in any single calendar year.

* * * * *

[*Report*—The application for claiming a tax credit as provided for in section 10.1(d) of the act (47 P. S. § 112.1(d)) and all attachments thereto. The report shall be in writing, shall contain in addition to other information the Secretary shall require, a statement of the nature, amounts and dates of the qualifying capital expenditures made, including a full description of the same, with specifications, together with copies of all contracts, bills, receipts and related papers pertaining to the qualifying capital expenditures for which a tax credit is, or may be sought. The report shall be made under oath or verified so as to subject the maker of the same to the penalties of perjury for any false statement, including attachments, in the report.

Secretary—The Secretary of Revenue of the Commonwealth of Pennsylvania when not otherwise qualified.]

* * * * *

§ 73.53. Tax credit to be allowed and limitations.

A tax credit [or credits shall] will be allowed to a taxpayer, as provided in this section, not to exceed [in]

the total amount [the amount] of qualifying capital expenditures made by the taxpayer and certified by the Secretary.

(1) The amount of qualifying capital expenditures made by the taxpayer in [any] a single calendar year shall be the total of the amounts [actually] paid, and at the taxpayer's election, amounts promised to be paid under firm purchase contracts executed during the calendar year, and certified by the Secretary, but not exceeding a total of [\$100,000] \$200,000.

(2) [No] A taxpayer, notwithstanding the number of plants, sales quarters or other facilities of the taxpayer within this Commonwealth for the manufacture and sale of malt or brewed beverages, and [further] notwithstanding the [actual] amounts paid as defined in § 73.52 (relating to definitions) [shall] will be certified by the Secretary to receive or [shall] will receive a tax credit [or credits] in [any] a single calendar year in excess of [\$100,000] \$200,000.

* * * * *

(4) Tax credit used in any calendar year may not exceed tax [paid] owed to the Department in that calendar year.

§ 73.54. [Report applying] Application for tax credit.

A taxpayer [desiring to claim] seeking a tax credit [or credits] under [this] the act shall [from time to time, in accordance with regulations promulgated by the Secretary, report to the Secretary the nature, amounts and dates of qualifying capital expenditure made by him and other information the Secretary shall require] file an application with the Secretary. [If satisfied as to the correctness of the report, the Secretary shall issue to the taxpayer a certificate establishing the amount of qualifying capital expenditures made by the taxpayer and included within the report.]

(1) [Effective September 30, 1974, a taxpayer may no less than 4 weeks prior to making a commitment of expenditures regarding a qualifying capital expenditure notify the Secretary in writing by personal delivery or certified mail, of the renewal or improvement intended to be made and fully describe the same. The Secretary may, at his discretion, cause an examination to be made of the taxpayer's capital facilities to ascertain what renewal and improvement, or either, of the capital facilities is intended. No report provided for in this subchapter or the act may be made or submitted by a taxpayer, nor may a tax credit for any renewal and improvement of the capital facilities be allowed, nor may a certificate establishing an amount of qualifying capital expenditures be made or tax credit allowed, whichever shall in the Secretary's discretion be applicable, unless the foregoing written notification has been submitted by the taxpayer.] The application must be in writing on a form provided by the Department and include a statement of the nature, amounts and dates of the qualifying capital expenditures made, including a full description of the same, with specifications, together with copies of all contracts, bills, receipts and related papers pertaining to the qualifying

capital expenditures for which a tax credit is, or may be sought, and other information required by the Secretary. The application must be made under oath or verified so as to subject the applicant to the penalties of perjury for false statement, including attachments, in the application.

* * * * *

(3) [Every report provided for in this section or in the act shall include and have attached thereto a full description of the items of plant, machinery or equipment, which is the subject matter of the report and which is concerned in any claim for a tax credit, including in detail the nature, amounts and dates of the qualifying capital expenditures made by the taxpayer, together with a written and signed statement, by the taxpayer or an officer thereof, under oath or verified so as to subject the maker of the same to the penalties of perjury for any false statement, including attachments, in the report, that the statements, items and amounts in the report and the attachments thereto are fully true, exact, correct and authentic, and submit exact copies of all documents, and the like, in support thereof including, but not restricted to, contracts, bills, receipts and other related papers pertaining to the qualifying capital expenditures.] If satisfied as to the correctness of the application, the Secretary will issue to the taxpayer a certificate establishing the amount of qualifying capital expenditures made by the taxpayer and included within the application.

(4) It [shall be the duty of the taxpayer] is the taxpayer's duty to maintain auditable records schedules and relevant supporting data regarding tax credit claims until [January 31, 1980] January 31, 2011. [In addition, a] A schedule of payments and commitments shall be accurately maintained and be explicitly identifiable as to the amounts paid as well as the qualifying capital expenditure.

(5) Every taxpayer shall keep and retain full and complete books of account records and appropriate subsidiary accounts and data as to every qualifying capital expenditure, [reports] applications with attachments and every tax credit allowed and every certificate issued under the act as to qualifying capital expenditures by the Secretary for a period of not less than 3 years after [December 31, 1977] December 31, 2008, or later date as the Secretary may in writing notify the taxpayer on or prior to [December 31, 1977] December 31, 2008. All records shall be subject to examination by the Department. Every taxpayer shall give to the Department, or its [duly] authorized representative, reasonable means, facilities and opportunity for these examinations and audits.

* * * * *

§ 73.55. Grant of credit, conditions and limitations.

Upon receipt from a taxpayer of a certificate from the Secretary [issued under section 10.1(c) of the act (47 P. S. § 112.1(c)], the Secretary [shall] will grant a tax credit in the amount certified against any tax then due or thereafter becoming due from the taxpayer under the act. [No credit] Credit will not be allowed against any tax due for any taxable period ending after [December 31, 1977] December 31, 2008.

* * * * *

(2) Tax credits not utilized by a taxpayer because the taxpayer's tax payments were exceeded by the tax credit allowable in [any] a calendar year are available for utilization by the taxpayer [in subsequent calendar years] for 3 years[, but not beyond December 31, 1977] December 31, 2008.

CHAPTER 74. MALT BEVERAGE TAX

§ 74.1. Purpose.

It is the purpose of the [Malt Beverage Tax Law (47 P. S. §§ 103—120.3)] act to provide revenue by imposing a State tax upon the sale of malt beverages by the manufacturer and importing agents for foreign manufacturers, the obligation to collect [said] the taxes for the Commonwealth and transmit [same] the taxes monthly to the Commonwealth.

§ 74.2. Definitions.

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

Act—The Malt Beverage Tax Law [(47 P. S. §§ 103—120.3)] (72 P. S. §§ 9001—9016).

* * * * *

MALT BEVERAGE TAX [REFUNDS] CREDITS

§ 74.31 [Refunds] Credits for manufacturers on out-of-State sales.

[In the event any] If malt or brewed beverages upon which the tax has been paid by a manufacturer have been sold or shipped by [him] the manufacturer to a licensed or regular dealer in [such] malt or brewed beverages in another state, [such] the manufacturer shall be entitled to a [refund] credit of the actual amount of tax paid by [him] the manufacturer, [upon condition that] the seller [shall make] makes an affidavit that the malt or brewed beverages were so sold and shipped, and that [he] the manufacturer shall furnish from the purchaser an affidavit, or in cases [where] when the total purchase price is \$5 or less, a written certificate in lieu of an affidavit from the purchaser, or, upon satisfactory proof that [such] the affidavit or certificate cannot be obtained, other evidence satisfactory to the Department that [he] the manufacturer has received [such] the malt or brewed beverages for sale or consumption outside this Commonwealth, together with the name and address of the purchaser.

§ 74.32. [Refunds] Credits for Pennsylvania manufacturers on sales to exempt parties.

[In the event any] If malt or brewed beverages upon which the tax has been paid by a manufacturer have been sold to commissaries, ship's stores or voluntary unincorporated organizations of the armed forces personnel operating under regulations promulgated by the Secretary of Defense, the manufacturer shall be entitled to a [refund] credit of the actual amount of tax paid by him,

upon condition that he shall make affidavit and furnish proof that the malt or brewed beverages were so sold.

§ 74.33. [Refunds] Credits for out-of-State manufacturers on sales to tax exempt parties.

[In the event any] If malt or brewed beverages upon which the tax has been paid by an out-of-State manufacturer and subsequently sold by an importing distributor to commissaries, ship's stores or voluntary unincorporated organizations of the armed forces personnel operating under regulations promulgated by the Secretary of Defense, the manufacturer shall be entitled to a [refund] credit of the actual amount of tax paid by [him upon condition that he shall make] the manufacturer if he makes an affidavit and [furnish] furnishes proof that the malt or brewed beverages were so sold.

§ 74.34. [Refunds] Credits for manufacturers on sales to public service licensee.

[In the event any] If malt or brewed beverages upon which the tax has been paid by a manufacturer have been sold and delivered to a public service licensee who is obligated to pay the tax thereon, the manufacturer shall be entitled to a [refund] credit of the actual amount of tax paid by him, upon condition that he [shall make] makes an affidavit and furnish proof satisfactory to the Department of the facts.

§ 74.35. [Refunds] Credits on malt beverage rendered unsalable by reason of damage or destruction.

[In the event any] If malt or brewed beverages, upon which the tax has been paid by a manufacturer [shall be] the manufacturer rendered unsalable by reason of damage or destruction or recalled due to defect, [such] the manufacturer shall be entitled to a [refund] credit of the actual amount of tax paid [by him, upon condition that he shall make] he makes an affidavit and [furnish proof satisfactory] furnishes to the Department that the malt beverages were so damaged or destroyed.

§ 74.36. [Refunds] Credits on leakers, stale beer and beer which has become unsalable or over-aged.

The Department will not permit [refunds] credits on leakers, stale beer and beer which has become unsalable or over-aged.

§ 74.37. Credits.

[No credits] Credits will not be granted without the approval of the Department [of Revenue, attention Bureau of Examination].

§ 74.40. Off-premises storage.

Malt beverages returned to an off-premises location [shall] will not be entitled to a tax [refund] credit.

§ 74.41. Time limit on [refunds] credits.

[No] An application for [refund shall] credit will not be recognized or processed unless filed within [two] 3 years from date of sale.

[Pa.B. Doc. No. 08-1524. Filed for public inspection August 22, 2008, 9:00 a.m.]

DEPARTMENT OF STATE

[4 PA. CODE CH. 191]

Alteration of Local Election Districts

The Department of State (Department) proposes to amend 4 Pa. Code by adding Chapter 191 (relating to alteration of local election districts). The act of November 24, 1999 (P. L. 543, No. 51) (25 P. S. §§ 2745—2750) (act) provides for the manner in which a county board of elections may alter election districts and the manner in which a county board of elections shall report election data. Section 540 of the act (25 P. S. § 2750), provides that regulations may be promulgated to administer 25 P. S. §§ 2745—2750.

Purpose of Chapter

The purpose of the proposed rulemaking is to establish an efficient method for the reporting of alterations to local election districts by the various county boards of elections and to provide for the efficient reporting of election data for the local election districts contained within each county. By requiring the timely reporting of alterations to election districts, the proposed regulations help avoid possible confusion among voters who are directly affected by an election district alteration.

Explanation of Chapter 191:

Chapter 191: Alteration of local election districts.

The Department proposes to adopt Chapter 191 to set forth four sections which include general provisions regarding: definitions; procedures for implementing alteration of local election districts; procedures for implementing the outcome of alteration of local election districts; procedures for reporting election districts.

§ 191.1. Definitions.

At § 191.1(a), the Department proposes two definitions. The Department proposes to define “boundary” with a cross reference to section 506 of the Pennsylvania Election Code (Code) (25 P. S. § 2706). The Department reasoned that a cross reference would clarify to the regulated community the meaning of the term and its use within the regulations. The Department also proposes defining “report” to include a signed court order approving the resulting districts. Section 502 of the Code (25 P. S. § 2702), requires that a redistricting plan be approved by the Court of Common Pleas prior to being submitted to the Department for review. The Department reasoned that the definition of report should include a signed court order approving the resulting districts to show that the county board of elections fulfilled the requirement under section 502 of the Code before submitting it to the Department. At § 191.1(b), the Department clarified that the definitions in section 102 and 535 of the Code (25 P. S. §§ 2602 and 2745), are incorporated into the regulations by reference.

§ 191.2. Procedures for implementing alteration of local election districts.

At § 191.2(a), the Department proposes, as directed by section 537(b) of the act (25 P. S. § 2747(b)), that within 30 days of an alteration, the county board of elections shall submit a report to the Bureau. At § 191.2(b), the Department proposes that the county board of elections shall submit its report to the Bureau at least 45 days prior to a primary or an election. The Department reasoned that requiring the reports be submitted to the Bureau 45 days prior to a primary or an election would

give the Bureau time to review the reports to know the boundaries of each local election district which would lend to accuracy and efficiency on the day of the primary or the election.

§ 191.3. Procedures for implementing the outcome of alteration of local election districts.

At § 191.3(a), the Department proposes that the county board of elections or voter registration commission shall enter the outcome of the alteration in the Statewide Uniform Registry of Electors (SURE), after completing all requirements. The Department reasoned that the proposed requirement efficiently updates the SURE system that is used to produce district registers (commonly called poll books).

At § 191.3(b), the Department proposes that if a county alters the election district of an elector, the county board of elections shall send that elector a new voter identification card, as provided at 25 Pa.C.S. § 1328(c)(2) (relating to approval of registration applications). The Department reasoned that the added language makes certain that electors receive new voter identification cards if they are affected by the alteration of a local election district.

§ 191.4. Procedures for reporting election results.

Section 539 of the act (25 P. S. § 2749) regarding election results; registration requires the county board of elections to provide to the Bureau a report with the election results. At § 191.4, the Department proposes that the county board of elections shall report either electronically in the format prescribed by the Secretary of the Commonwealth or on the paper form provided by the Secretary of the Commonwealth. The Department reasoned that uniformity in the reports provided to the Bureau would increase accuracy and efficiency in configuring the results of an election.

Fiscal Impact

The proposed rulemaking will have a negligible impact upon the Department and the county boards of elections because the rulemaking does not require the implementation of new programs or processes.

Paperwork Requirements

The paperwork requirements will not be substantially altered as a result of the proposed rulemaking.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 13, 2008, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis form to the Independent Regulatory Review Commission (IRRC) and to the Senate and House State Government Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department.

Responses to Comments

Contact Persons

Interested persons may contact Shauna C. Graves, Assistant Counsel, Department of State, 210 North Office

Building, Harrisburg, PA 17120-0039, shgraves@state.pa.us. Comments must be received by September 22, 2008.

PEDRO A. CORTÈS,
Secretary

Fiscal Note: 16-42. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION
PART VIII. BUREAU OF LEGISLATION,
COMMISSIONS AND ELECTIONS
Subpart F. REDISTRICTING
CHAPTER 191. ALTERATION OF LOCAL
ELECTION DISTRICTS

- Sec.
- 191.1. Definitions.
- 191.2. Procedures for implementing alteration of local election districts.
- 191.3. Procedures for implementing the outcome of alteration of local election districts.
- 191.4. Procedures for reporting election results.

§ 191.1. Definitions.

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

Bureau—The Bureau of Legislation, Commissions and Elections in the Department of State of the Commonwealth.

Boundaries—The physical requirements for the resulting election district boundaries as set forth in the Pennsylvania Election Code. The requirements relating to congressional and legislative districts are set forth in section 506 of the Pennsylvania Election Code. (25 P. S. § 2706)

Pennsylvania Election Code—25 P. S. §§ 2601—3554.

Report—A report filed by a county board of elections with the Bureau under the Pennsylvania Election Code regarding alterations after period of restriction which includes the following:

- (1) Maps of:
 - (i) The resulting districts.
 - (ii) The previous districts.
- (2) A verbal description of:
 - (i) The resulting districts.
 - (ii) The previous districts.
- (3) A signed court order approving the resulting districts.
- (4) A description of the reasons for the alteration, including precinct splits, mergers, renaming of districts or boundary changes.

(b) The definitions in sections 102 and 535 of the Pennsylvania Election Code (25 P. S. §§ 2602 and 2745), are incorporated by reference.

§ 191.2. Procedures for implementing alteration of local election districts.

(a) Within 30 days of an alteration, the county board of elections shall submit a report, as defined in § 191.1(a) (relating to definitions), to the Bureau.

(b) The report must be submitted to the Bureau at least 45 days prior to a primary or an election. If the county board of elections does not submit the report at

least 45 days prior to the primary or election, the election district alteration may not be implemented until the next following primary or election.

§ 191.3. Procedures for implementing the outcome of alteration of local election districts.

(a) The county board of elections or voter registration commission shall enter the outcome of the alteration in the Statewide Uniform Registry of Electors (SURE), only after it has completed all of the procedures outlined in § 191.2 (relating to procedures for implementing alteration of local election districts).

(b) If a county alters the election district of an elector, the county board of elections shall send that elector a new voter identification card, as provided at 25 Pa.C.S. § 1328(c)(2) (relating to approval of registration applications).

§ 191.4. Procedures for reporting election results.

The county board of elections shall report election results for each election district within the county either electronically in the format prescribed by the Secretary of the Commonwealth or on the paper form provided by the Secretary of the Commonwealth.

[Pa.B. Doc. No. 08-1525. Filed for public inspection August 22, 2008, 9:00 a.m.]

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 13]

Promotion of Sale of Liquor by Vendors

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), proposes to amend Chapter 13 (relating to promotion).

Purpose

In accordance with Executive Order 1996-1, the Board has reviewed its regulations and determined that these revisions to 40 Pa. Code are necessary to obtain certain products that are in short supply and high demand. Obtaining these products is consistent with the statutory mandate of section 207 of the Liquor Code that authorizes the Board to “. . . buy liquor and alcohol at the lowest price and in the greatest variety reasonably obtainable.” (47 P. S. § 2-207(a)). These products are often rare wines, for which the demand, world-wide, is great.

The Liquor Code authorizes only two categories of liquor that the Board may sell: stock items (47 P. S. § 2-207(a)), consisting of those items sold by means of the Board’s wine and spirits stores, and special order items, otherwise known as Special Liquor Orders (SLO), which consist of those items not currently available from the Board’s wine and spirits stores (47 P. S. § 3-305(a)). The Board’s regulations currently prohibit liquor vendors from processing orders for stock items which the Board carries. (40 Pa. Code §§ 13.73(b) and 13.76(a) (relating to privileges of vendor’s agents; special order listings)).

There is an ever-growing demand for fine wines which are of limited quantity. If a liquor vendor believes that such a rare fine wine has a niche market within this Commonwealth (for example, within certain high-end restaurants or specific cultural or cuisine venues), the vendor may be unwilling to share these products with the Board, by means of the Board’s wine and spirits stores, since allowing its product to be sold as a stock item would

preclude the vendor from processing orders by means of SLO on behalf of members of the niche market (for example, private citizens or Board licensees). In making the proposed regulatory changes, thereby permitting vendors of these "luxury items" to process orders both from the Board and from licensees or other persons, the Board will be in a better position to acquire these products in furtherance of its statutory mandate.

Summary of Amendments

This proposed rulemaking creates a new category of liquors, "luxury items." These are varieties of liquor (including wine) that are in short supply or high demand, as may be determined by the Board. Vendors will be allowed to process orders for "luxury items" both from the Board as well as from Board licensees and other persons, similar to current procedures for SLOs.

Affected Parties

The proposed rulemaking will allow vendors to process orders for "luxury items" from the Board, Board licensees and other persons. Failing to allow vendors to process orders for "luxury items" from the Board and Board licensees and other persons is expected to result in limiting the Board's access to the rare fine wines, thereby reducing the availability to the Pennsylvania public at large by means of the Board's wine and spirits stores.

Paperwork Requirements

This proposed rulemaking will not significantly increase paperwork for the Board or the regulated community.

Fiscal Impact

Because the market forces of supply and demand and the popularity and availability of certain vintages of fine wine will affect the Board's identification of an item as a "luxury item," fiscal impact is impossible to estimate. In the 2007 Fiscal Year, the Board's revenue from sales of SLO items, which are similar in nature to "luxury items," was approximately \$70,000,000.

Effective Date

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

Public Comment/Contact Person

Written comments, suggestions or objections will be accepted for 30 days after publication of the proposed rulemaking in the *Pennsylvania Bulletin*. Comments should be addressed to 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 (act) (71 P. S. § 745.5(a)), on August 7, 2008, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Liquor Control and Senate Committee on Law and Justice. A copy of this material is available to the public upon request.

Under section 5(g) of the act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The act specifies detailed procedures for review by the agency, the General Assembly and the

Governor of comments, recommendations or objections raised prior to final publication of the regulation.

PATRICK J. STAPLETON, III,
Chairperson

Fiscal Note: 54-65. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 13. PROMOTION

Subchapter B. PROMOTION OF SALE OF LIQUOR BY VENDORS

§ 13.71. Definitions.

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

* * * * *

Luxury items—Liquor items designated by the Board that are in short supply or high demand.

* * * * *

Stock merchandise—Liquors which are obtainable at a State Liquor Store, without placing a special liquor order and which have not been designated as luxury items.

* * * * *

§ 13.73. Privileges of vendors' agents.

(a) Agents may advertise and promote the sale of stock merchandise by "missionary work" of only those brands sold to the Board by the vendor by whom the agents are employed. **[The work may include the use of the "Agents Order" form approved by the Board.]**

* * * * *

(d) Agents may solicit from licensees or other persons, orders for those brands of liquor which have been designated by the Board as luxury items. Orders for luxury items obtained by vendors' agents shall be filed with one of the State Liquor Stores as required in this subchapter.

§ 13.77. [Agents' order books] (Reserved).

[The Board, upon request, will issue order books to vendors for themselves and their agents, in which each special order for liquors shall be entered. Each order shall be prepared in quadruplicate and bear the signature and address of the person from whom it is obtained, and the signature of the agent. In the case of a licensee, the order shall include the license number. The original order shall be forwarded to a State Liquor Store not later than the business day after the order is obtained. One copy of the order shall be furnished by the licensed vendor or the vendor's agent to the person from whom the order is obtained and one copy shall be retained by the vendor for vendor's records; and the other copy shall remain in the order book. The Board reserves the right to examine the records of any licensed vendor or the vendor's agents.]

§ 13.78. Special and luxury item orders: requirements and conditions.

* * * * *

(b) Orders presented at State Liquor Stores by agents on behalf of persons other than licensees shall be at the established retail special liquor order or luxury item prices. [No] An order may not be taken for less than [case quantities] two bottles.

* * * * *

§ 13.79. Special orders and luxury item orders: restrictions.

(a) Licensed vendors and their agents shall place special orders for liquor at State Liquor Stores [on the prescribed order book forms signed by the licensee or an authorized agent, or in the case of a retail sale, by the customer].

* * * * *

(d) Special orders placed by a licensed vendor or the vendor's agent for a retail customer may be released by the State Liquor Store [for delivery to the customer].

(e) Licensed vendors and their agents shall place luxury item orders for liquor at State Liquor Stores.

(f) Except by special permission of the Board, luxury item order merchandise may not be delivered to a State Liquor Store until the licensed vendor has received from the Board a formal purchase order calling for the delivery of the liquor. Each case of liquor so delivered shall have clearly marked thereon, in addition to the information required by Federal or State regulations, the purchase order number, the store order number, the brand and size, the code number as called for in the purchase order and other information the Board may prescribe.

(g) Liquor sold to licensees will be released only at the State Store, to the licensee or the licensee's agent as named on the Wholesale Purchase Permit Card of the licensee.

(h) Luxury item orders placed by a licensed vendor or the vendor's agent for a retail customer may be released by the State Liquor Store.

§ 13.86. Agency provisions.

Licensed vendors and their agents shall, except as otherwise restricted in this title, be considered the agents of the persons from whom they obtain special liquor orders or luxury item orders. Neither the Commonwealth nor the Board will be responsible for the proper disposition of moneys collected from a licensee or other person by a licensed vendor or his agents, and under no circumstances will the Commonwealth or the Board be responsible for actions of a licensed vendor or his agents.

§ 13.87. Records.

(a) Every licensed vendor shall maintain and keep complete records of all operations in this Commonwealth for 2 years, which shall be open to inspection by authorized representatives of the Board during normal business hours. These records [shall] must include salaries or commissions of all agents and other [employes] employees working in this Commonwealth, expenses of the [employes] employees supported by detailed vouchers, all promotional and advertising expenditures, special order sales, luxury item sales and stock merchandise requests.

(b) The agents of vendors operating in this Commonwealth shall maintain complete records covering their operations in this Commonwealth. The records [shall] must also be open to inspection by authorized representatives of the Board during normal business hours.

[Pa.B. Doc. No. 08-1526. Filed for public inspection August 22, 2008, 9:00 a.m.]