

# RULES AND REGULATIONS

## Title 40—LIQUOR

### LIQUOR CONTROL BOARD

#### [ 40 PA. CODE CH. 5 ]

#### Municipal Noise Ordinances

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), amends § 5.36 (relating to municipal noise ordinances).

#### Summary

Section 5.36 is amended by replacing references to § 5.32 (relating to restrictions/exceptions) with references to section 493(34) of the Liquor Code (47 P. S. § 4-493(34)), consistent with the act of December 22, 2011 (P. L. 530, No. 113) (Act 113) and the act of July 5, 2012 (P. L. 1007, No. 116).

Act 113 added section 493(34) of the Liquor Code, regarding noise as an unlawful act. A licensee may not use, or permit to be used, inside or outside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, can be heard beyond the licensee's property line. As made clear in section 493(34) of the Liquor Code, this paragraph supersedes § 5.32(a), creating a need to delete references in § 5.36 to the Board's noise regulation.

Consistent with section 493(34) of the Liquor Code and section 1204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204), known as the Commonwealth Documents Law (CDL), this amendment may be submitted in final-omitted form because the amendment is necessary as a result of a self-executed statute.

#### Affected Parties

Retail and other licensees who must comply with the Liquor Code and the Board's regulations will be affected by this final-omitted rulemaking. Enforcement is the province of the Pennsylvania State Police, Bureau of Liquor Control Enforcement. As the statutory amendment to section 493(34) of the Liquor Code supersedes § 5.32, the regulatory change simply affirms the statutory change.

#### Paperwork Requirements

The Board does not anticipate that this final-omitted rulemaking will affect the amount of paperwork or administrative costs of the regulated community.

#### Fiscal Impact

This final-omitted rulemaking is not expected to have fiscal impact as the amendment affirms section 493(34) of the Liquor Code, which explicitly supersedes the Board's noise regulation.

#### Effective Date

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

#### Contact Person

Further information is available by contacting Alan Kennedy-Shaffer, Assistant Counsel, or Rodrigo Diaz, Executive Deputy Chief Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

#### Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on August 9, 2013, the Board submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Liquor Control Committee and the Senate Law and Justice Committee. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on September 18, 2013, the final-omitted rulemaking was (deemed) approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 19, 2013, and approved the final-omitted rulemaking.

#### Order

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 40 Pa. Code Chapter 5, are amended by amending § 5.36 to read as set forth in Annex A.

(b) 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 publication in the *Pennsylvania Bulletin*.

JOSEPH E. BRION,  
Chairperson

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 43 Pa.B. 5903 (October 5, 2013).)*

**Fiscal Note:** Fiscal Note 54-75 remains valid for the final adoption of the subject regulation.

#### Annex A

#### TITLE 40. LIQUOR

#### PART I. LIQUOR CONTROL BOARD CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

#### Subchapter C. AMUSEMENT AND ENTERTAINMENT

#### § 5.36. Municipal noise ordinances.

(a) A municipality that desires exemption from section 493(34) of the Liquor Code (47 P. S. § 4-493(34)), shall, under section 493.1(b) of the Liquor Code (47 P. S. § 4-493.1(b)), file a petition with the Board, requesting approval. With its petition, the municipality shall file the following:

(1) A copy of the municipality's noise ordinance currently in effect.

(2) The municipality's resolution that:

(i) Confirms the municipality's support of the petition to substitute the municipal noise ordinance for section 493(34) of the Liquor Code.

(ii) Cites the municipal noise ordinance.

(iii) States the municipality's intention to enforce the ordinance in place of section 493(34) of the Liquor Code.

(3) A complete written description of the boundary lines for the proposed exempted noise area.

(4) One copy of a geographical map, the minimum size of which is 36" x 36", including the designated boundary lines of the proposed exempted noise area within the municipality.

(5) Three copies of the geographical map required by paragraph (4), the size of which will be 8 1/2" x 11 1/2".

(6) Identification of a proposed location, within the proposed exempted noise area, to be used by the Board to hold the required public hearing within the proposed exempted area.

(7) Identification of a local print publication of general circulation that would satisfy 65 Pa.C.S. Chapter 7 (relating to Sunshine Act) notice requirement for announcement of the required public hearing.

(b) A date for a public hearing shall be set and public notice given in advance of the hearing: The hearing must comply with all notice, recording and public participation requirements of 65 Pa.C.S. Chapter 7.

(c) Within 60 days after receipt of the petition, the Board will disapprove the petition for an exemption in its entirety or may approve an area more limited for which

the petition will be granted if the Board finds that granting the petition will have an adverse effect on the welfare, health, peace and morals of the residents living in the vicinity of the identified area; otherwise the Board will approve the petition.

(d) The Board may place additional conditions on the petition's approval such as limiting the duration of the approval and any other condition the Board deems appropriate.

(e) There shall be a right to appeal to the court of common pleas in the same manner provided by this act for appeals from refusals to grant licenses.

(f) A municipality may rescind any existing exemption from section 493(34) of the Liquor Code by notifying the Board of its intention to do so in writing, 15 days prior to the rescission date. The notice must be accompanied by an ordinance or resolution authorizing the rescission.

(g) A rescission of an existing exemption which does not rescind the entire exempted area shall be treated as a new petition for exemption with the Board and shall follow the procedures in this section.

[Pa.B. Doc. No. 13-1849. Filed for public inspection October 4, 2013, 9:00 a.m.]