

PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 162]

Calculation of Title Insurance Company Gross Premiums

The Department of Revenue (Department), under the authority contained in section 408(a) of the Tax Reform Code of 1971 (72 P.S. § 7408(a)), proposes to add § 162.11 (relating to calculation of title insurance company gross premiums) to read as set forth in Annex A.

Purpose of the Regulation

The Department is proposing a change in the method of calculating the gross premiums tax on title insurance policies for which the issuer charges the insured an all-inclusive fee under the rate schedule approved by the Insurance Department.

Explanation of Regulatory Requirements

There are two methods under which title insurance companies issue policies: the all-inclusive fee and the approved attorney system. Under the all-inclusive fee system, the title insurer charges a fee under a schedule approved by the Insurance Department. In addition to the charge for the policy, this fee includes a charge for ancillary services, such as title searches, abstracts, attorneys' fees and document preparation. The title company performs these ancillary services. Under the approved attorney fee system, an approved attorney performs the ancillary services and the insurer charges a fee for the policy referred to as the approved attorney rate.

Depending on the method used, the Department currently subjects to the gross premiums tax either the entire all-inclusive fee or the approved attorney rate.

The Department is proposing to tax a title insurance policy issued under the all-inclusive fee schedule approved by the Insurance Department that portion of the all-inclusive fee that is equivalent to the fee that would be charged under the approved attorney fee schedule for the same policy coverage. See § 162.11(b).

Subsection (c) sets forth the method of calculation and provides a detailed example. Notwithstanding the amount of the fee charged to the insured, subsection (d) provides that a title insurance company must calculate the amount of its taxable premiums relative to the total fee charged on the basis of the number of policies and the total liability covered by the policies with respect to the liability ranges prescribed in the approved attorney fee schedule then in effect. An example details how the schedule should be prepared.

Fiscal Impact

The Department estimates that the proposed regulation will cause annual revenue losses of \$1.2 million. This figure is based on estimated fiscal year cash payments of the six foreign title insurance companies that are currently appealing or litigating tax liabilities under the all-inclusive fee schedule. Costs in the current fiscal year reflect refunds due the six appellants/litigants, which are estimated to be \$2.7 million, including principal and interest (accrued for periods between 1984 and 1995). Reference should be made to the Regulatory Analysis

Form, Question (20), for more information regarding estimated annual revenue losses.

Paperwork

The proposed regulation will have a minimal impact on the paperwork requirements for title insurance companies. The proposed regulation will require a title insurance company to complete and file an additional schedule reporting taxable premiums under the approved attorney rate fee schedule with its annual gross premiums tax report. This schedule, however, is simply completed by information readily available to the title insurance companies because of their own recordkeeping systems.

Effectiveness/Sunset Date

The proposed regulation will become effective upon final publication in the *Pennsylvania Bulletin*. The proposed 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 regulation to Anita M. Doucette, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 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 20, 1997, the Department submitted a copy of this proposed regulation to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the proposed regulation, 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.

If IRRC has objections to any portion of the proposed regulation, it will notify the Department within 10 days of the close of the Committees' comment period. 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 regulation, by the Department, the General Assembly and the Governor.

ROBERT A. JUDGE, Sr.,
Secretary

Fiscal Note: 15-385. (1) General Fund;

	<i>One-Time Cost</i>
(2) Implementing Year 1997-98 is	\$2.7 million;
	<i>Revenue Loss</i>
(3) 1st Succeeding Year 1998-99 is	\$1.2 million;
2nd Succeeding Year 1999-00 is	\$1.2 million;
3rd Succeeding Year 2000-01 is	\$1.2 million;
4th Succeeding year 2001-02 is	\$1.2 million;
5th Succeeding year 2002-03 is	\$1.2 million;
(4) 1996-97 \$ Non-Applicable; FY 1995-96 \$; FY 1994-95 \$;	
(7) Tax Refunds—Executive Authorization; will pay one-time costs; (8) recommends adoption.	

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE VI. CORPORATION TAXES

CHAPTER 162. INSURANCE COMPANIES
SUBJECT TO TAX IN THIS COMMONWEALTH

TITLE INSURANCE COMPANIES

§ 162.11. Calculation of title insurance company gross premiums.

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

Excess fee—The difference between the all-inclusive fee for the total transaction and the all-inclusive fee for the maximum liability coverage specified in the approved attorney fee schedule.

(b) Except as provided in subsection (c), gross premiums for all title insurance companies subject to gross premiums tax shall be calculated using the applicable approved attorney fee schedule approved by the Insurance Department for the title insurance company. If a title insurance policy is issued under the all-inclusive fee schedule approved by the Insurance Department, the taxable gross premium shall be that portion of the all-inclusive fee that is equivalent to the fee that would be charged under the approved attorney fee schedule for the same policy coverage.

(c) The taxable premium for policies that are written in excess of the maximum liability coverage amount specified in the approved attorney fee schedule shall be calculated as follows:

(1) If the title insurance policy is written under the approved attorney system, the taxable premium is the entire fee.

(2) If the title insurance policy is written under the all inclusive system, the taxable premium is the sum of the following:

(i) The approved attorney fee for the maximum liability coverage specified in the approved attorney fee schedule.

(ii) The excess fee.

Example:

Title Insurance Company X writes one title insurance policy for more than \$1 million. The liability coverage of that policy is \$20 million. The \$20 million policy was written under the all inclusive system for a total fee of \$38,583. The approved attorney fee schedule in effect for Title Insurance Company X is as follows:

<i>Unit of Insurance or Fraction Thereof</i>	<i>Fee</i>
\$0.00 to \$15,000	\$45
\$15,001 to \$100,000.....	Add \$3 per \$1,000
\$100,001 to \$500,000.....	Add \$2.50 per \$1,000
\$500,001 to \$1 million	Add \$2 per \$1,000
\$1,000,001 and greater.....	Subject to negotiation

The all-inclusive fee schedule in effect for Title Insurance Company X is as follows:

<i>Unit of Insurance or Fraction Thereof</i>	<i>Fee</i>
\$0.00 to \$15,000	\$303
\$15,001 to \$35,000.....	Add \$7 per \$1,000
\$35,001 to \$50,000.....	Add \$6 per \$1,000
\$50,001 to \$100,000.....	Add \$5 per \$1,000
\$100,001 to \$500,000.....	Add \$4.50 per \$1,000
\$500,001 to \$1 million	Add \$3.50 per \$1,000
\$1,000,001 and greater.....	Subject to negotiation

The maximum policy specifically covered by the approved attorney fee schedule and the all-inclusive fee schedule is \$1 million; the approved attorney fee for a \$1 million policy is \$2,300; the total fee for the \$20 million policy written under the all-inclusive system is \$38,583; and the all-inclusive fee for a \$1 million policy is \$4,333. Therefore, the excess fee for this policy is \$34,250 (\$38,583—4,333) and the taxable gross premium is \$36,550 (\$2,300 (approved attorney fee for \$1 million policy) + 34,250 (excess fee)).

(d) A title insurance company shall calculate the amount of its taxable premiums on the basis of the number of policies and the total liability covered by the policies within the liability ranges as prescribed in the approved attorney fee schedule then in effect. A title insurance company shall submit a schedule setting out the relevant data by policy coverage ranges and calculating the taxable gross premiums as indicated. (Refer to the schedule in the example which follows.) This schedule shall be attached to the title insurance company's gross premiums tax report. Copies of the applicable approved attorney fee schedule and the all-inclusive fee schedule in effect for the title insurance company also shall be attached to the gross premiums tax report.

Example:

Title insurance company writes 3,201 title insurance policies covering a total liability of \$391 million under the all-inclusive system during the tax year. The distribution of policies within the ranges set forth in the fee schedule is as follows:

A	B	C	D	E	F	G	H	I
Range	Number of Policies	Total Liability for Policies in Range	Premium on first \$15,000 of Coverage [Col. B × \$45]	Premium on next \$85,000 Per Policy @ \$3 per 1,000	Premium on next \$400,000 per policy @ \$2.50 per 1,000	Premium on next \$500,000 per policy @ \$2 per 1,000	Excess Fee for Negotiated Policies	Total [Col. D +Col. E +Col. F +Col. G +Col. H]
0 to 15,000	100	1,000,000	4,500	—	—	—	—	4,500

A	B	C	D	E	F	G	H	I
15,001 to 100,000	2,000	90,000,000	90,000	180,000 (60,000,000 @ \$3 per 1,000)	—	—	—	270,000
100,001 to 500,000	1,000	200,000,000	45,000	255,000 (85,000,000 @ \$3 per 1,000)	250,000 (100,000,000 @ \$2.50 per 1,000)	—	—	550,000
500,001 to 1,000,000	100	80,000,000	4,500	25,500 (8,500,000 @ \$3 per 1,000)	100,000 (40,000,000 @ \$2.50 per 1,000)	60,000 (30,000,000 @ \$2 per 1,000)	—	190,000
1,000,001 or more	1	20,000,000	45	255 (85,000 @ \$3 per 1,000)	1,000 (400,000 @ \$2.50 per 1,000)	1,000 (500,000 @ \$2 per 1,000)	34,250	36,550
TOTAL	3,201	391,000,000	144,045	460,755	351,000	61,000	34,250	1,051,050

Under this section, the title insurance company's taxable gross premiums are \$1,051,050.

[Pa.B. Doc. No. 97-1391. Filed for public inspection August 29, 1997, 9:00 a.m.]

[61 PA. CODE CHS. 101, 103 and 155]

Personal Income and Corporate Taxes

The Department of Revenue (Department), under the authority contained in sections 354, 408 and 603 of the Tax Reform Code of 1971 (TRC) (72 P. S. §§ 7354, 7408 and 7603), proposes to amend §§ 101.1, 103.12 and 155.30 (relating to definitions; net profits; and regulated investment companies), to read as set forth in Annex A.

Explanation of Regulatory Requirements

Section 101.1 is proposed to be amended by replacing the existing definitions of "employee" and "employer" with new definitions consistent with the requirements of Act 110 of 1989 (72 P. S. § 7301(g) and (h)).

The definition of "income" is being expanded to implement the provisions of section 602(f)(2)(A) of the code (72 P. S. § 7602(f)(2)(A)) and to reflect the holdings of the Commonwealth Court in *Morgan v. Commonwealth*, 400 A.2d 1384 (Pa. Cmwlth. 1979) and *Wettach v. Commonwealth*, 620 A.2d 730 (Pa. Cmwlth. 1993). The revisions provide that the term "income" includes income received by a taxpayer directly or through partnerships, associations, Pennsylvania S corporations or estates or trusts. The revisions also specify that:

(1) The taxable income of a partnership or Pennsylvania S corporation is to be computed in the same way and on the same basis as the taxable income of an individual.

(2) The taxable income of an individual is the total of the eight classes of income enumerated and classified in section 303 of the TRC, each class computed without setoff between or among any other class and, unless a net taxable class, without deductions.

Section 103.12 is also proposed to be amended to reflect the holdings in *Morgan* and *Wettach*.

The definition of "personal income tax income" set forth in § 155.30(b)(4) is proposed to be amended to provide that the term means income computed in the same manner and on the same basis as the income of an individual under Article V (relating to Personal Income Tax).

Affected Parties

Regulated investment companies that are subject to the capital stock/foreign franchise tax and business owners, investors and tax practitioners may be affected by the proposed amendments.

Fiscal Impact

The Department has determined that the proposed amendments will have no fiscal impact on the Commonwealth.

Paperwork

The proposed amendments will not generate additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The proposed amendments will become effective upon final publication in the *Pennsylvania Bulletin*. These proposed amendments are 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 comments, suggestions or objections regarding the proposed amendments to Anita M. Doucette, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 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)), the Department submitted a copy of these proposed amendments on August 20, 1997, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the proposed amendments, the Department has provided IRRC and the House and Senate Finance 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.

If IRRC has objections to any portion of the proposed amendments, it will notify the agency within 10 days of the close of the Committees' comment period. The notification shall specify the regulatory review criteria that have not been met by the portion. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the regulation, by the Department, the General Assembly and the Governor.

ROBERT A. JUDGE, Sr.,
Secretary

Fiscal Note: 15-381. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE V. PERSONAL INCOME TAX

CHAPTER 101. GENERAL PROVISIONS

§ 101.1. Definitions.

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

* * * * *

Employee— [Every individual performing services if the relationship between him and the person for whom he performs the services is the legal relationship of employer and employe as determined by the usual common law rules. Generally, the relationship of employer and employe exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which the result is accomplished. That is, an employe is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is not an employe.

(i) The definition of "employe" for Pennsylvania Personal Income Tax purposes is the same as that for Federal income tax withholding purposes. Consequently, an individual who is issued a Form W-2 indicating Federal income tax withheld, is an employe unless he can affirmatively prove that the Federal withholding was not required, that is, that an employer-employe relationship does not exist and the withholding was done merely as a convenience. In addition, the remuneration paid for certain types of services is not subject to Federal income tax withholding regardless of whether an employer-employe relationship exists. In these cases, the failure to withhold does not indicate nonemploye status and a determination must be made based on the particular facts of the relationship. The remuneration referred to is cited at section 3401(a) of the IRC and includes, inter alia, that paid:

- (A) For agricultural labor.
- (B) For domestic service in certain circumstances.
- (C) For services performed by an ordained, commissioned or licensed minister of a church in the exercise of his ministry.
- (D) For services performed by an individual under the age of 18 in the delivery or distribution of newspapers.

(ii) Generally, F.I.C.A. employe tax is only withheld on individuals who are "employees" within the common law meaning. Consequently, an individual who is issued a Form W-2 indicating F.I.C.A. employe tax withheld, will be considered an employe unless he can affirmatively prove:

(A) That he is among the classes of individuals cited at section 3121(d) of the IRC who are employes for F.I.C.A. purposes only.

(B) That no employer-employe relationship otherwise exists. The classes of individuals referred to are:

- (I) Certain agent-drivers or commission drivers.
- (II) Full-time life insurance salesmen.
- (III) Certain home workers.
- (IV) Certain traveling or city salesmen.

(ii) Generally, evidence of payment of Federal Self-Employment Tax is conclusive proof that an individual is not an employe. However, this does not apply to certain classes who are subject to Self-Employment Tax regardless of whether an employer-employe relationship exists. In these cases, the payment of Self-Employment Tax does not indicate nonemploye status and a determination must be made based on the particular facts of the relationship. The classes referred to are cited at section 1.1402(c)-3 of the IRC and include, inter alia:

- (A) Certain newspaper vendors.
- (B) Certain sharecroppers.
- (C) Employes of foreign governments.
- (D) Ministers and members of religious orders unless exempt.
- (E) State and local government employes compensated on fee basis.

(iv) Where the presence or absence of an employer-employe relationship cannot be determined on the basis of Federal income tax withholding, F.I.C.A. employe tax withholding or payment of Self-Employment Tax, the following factors are considered, in addition to the elements enumerated in subparagraph (i) in making the determination. No one factor is conclusive; rather, the test is one of the totality of the following circumstances:

- (A) Whether the individual is required by his principal, or by the person from whom remuneration is received, to work fixed hours, follow a prescribed routine or perform prescribed duties.
- (B) Whether the individual participates in pension, unemployment, disability or hospitalization plans offered by the principal.
- (C) Whether the individual is guaranteed an amount of remuneration by the principal.

(D) Whether the individual is either reimbursed for expenses or receives an expense allowance.

(E) Whether the individual represents only one principal.] The term includes any individual who performs any service, of whatever nature, for any other individual or any entity and earns or receives remuneration therefor. For the purpose of Chapter 113 (relating to withholding of tax), the term has the same meaning as when used in Chapter 24 of the IRC (26 U.S.C.A. §§ 3401—3406) (relating to collection of income tax at source on wages).

Employer—[An individual, partnership, association, corporation, governmental body or unit or agency, or another entity employing one or more persons for compensation. A person required under the Internal Revenue Code, as amended, to withhold Federal income tax from compensation of an employe is prima facie deemed to be an employer.] The term means any person for whom an individual performs any service, of whatever nature, provided that:

(i) If the person for whom the individual performs the service does not have the payment of the remuneration for the service, the term means the person having the payment of the remuneration.

(ii) For the purpose of Chapter 113 (relating to withholding of tax), the term has the same meaning as when used in 26 U.S.C.A. Chapter 24 of the IRC.

* * * * *

Income—The total of the classes enumerated under Chapter 103 Subchapter B (relating to the determination of tax) received by a taxpayer directly, or through partnerships, associations or Pennsylvania S corporations and the amount of each class derived by the taxpayer through estates or trusts[. There may be no setoff between or among the classes.] determined and computed in accordance with the requirements of this article relating to the taxation of a natural individual's personal income, including the requirements that:

(i) There is no setoff between, or among, any different classes of personal income tax income.

(ii) No deduction is allowed for expenses, whether paid or incurred for the production or collection of income or for the management, conservation or maintenance of property, except:

(A) Allowable unreimbursed employe business expense.

(B) Allowable costs of goods sold and expense incurred in the operation of a business.

(C) Allowable costs of acquisition, expenses of sale and collection expenses.

(D) Expenses necessary to the production or collection of rents and royalties or for the management, conservation or maintenance of rents, royalties, patents or copyrights.

(iii) In the case of a Pennsylvania S corporation, partnership or other association, trust or estate, the distributive income of the same is classed, determined and computed in the same way and on the same basis as the taxable income of a natural individual; and, in the case of a Pennsylvania S corporation, partnership or other association, each

shareholder, partner or member take into income the shareholder's, partner's or member's pro rata share of the income or loss in each applicable class of income received by the Pennsylvania S corporation, partnership or other association.

(iv) Married persons may not compute their tax as if they were one person; and no setoff between married persons is permitted. For example, an individual's net profit from manufacturing toys is \$100, his net loss from the business of selling garden supplies is \$20, his wife's loss from a business she operates is \$20, and his net loss from passive ownership of investment rental properties is \$10. His total net business profits are \$80 which is his [total] income, against which he may not set off his losses on rentals or his wife's business losses.

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CHAPTER 103. IMPOSITION AND DETERMINATION OF TAX

§ 103.12. Net profits.

(a) Net profits shall be the net income from the operation of a business, profession or other activity after provision for all costs and expenses incurred in the conduct thereof [are]. They shall be determined either on a cash or accrual basis in accordance with accepted accounting principles and practices [but without deduction of taxes based on income].

(b) Net profits are different from other classes of personal income in that:

(1) The profits are derived from the marketing of a product or service to customers on a commercial basis; from securities employed as working capital in the business operations; from accounts and notes receivable from sales of products or services sold in the ordinary course of the business operations; or from assets which serve an operational function in the ordinary course of business operations.

(2) The marketing activity is conducted with the manifest objective of achieving profitable operations.

(3) The marketing activity is conducted with regularity and continuity and is not limited or exclusive.

(c) Net profits shall be computed wholly without reference to any item of revenue, cost, expense or liability derived or incurred in connection with, or attributable to:

(1) The ownership or disposition of assets that are held for investment purposes or otherwise serve an investment function.

(2) The trading in securities for personal purposes and not for the accounts of customers.

(3) The sale, discontinuation or abandonment of a business or segment thereof.

(4) Any tax imposed on, or measured by, gross or net earned or unearned income.

(5) An isolated or nonrecurring transaction which is not a normal or routine business activity.

(d) Choosing to form a partnership or other entity or to associate with others, receiving and reporting income or gain as the income of the partnership, entity or associates or dividing the

same among its partners, beneficial owners or associates or the trading in securities for the benefit of shareholders, partners, members or associates does not of itself make the income of the partnership, entity or associates net profits.

CHAPTER 155. CAPITAL STOCK TAX AND FOREIGN FRANCHISE TAX

§ 155.30. Regulated investment companies.

* * * * *

(b) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

(4) *Personal Income Tax Income.* [The term includes compensation, net profits from the operation of a business, profession or farm, interest income, dividends received, net gains or income from the sale, exchange or disposition of property, rents, royalties, patents and copyrights income from estates and trusts and gambling winnings.] The term means income computed in the same manner and on the same basis as the income of an individual under Article V (relating to Personal Income Tax).

[Pa.B. Doc. No. 97-1392. Filed for public inspection August 29, 1997, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CHS. 71, 75 AND 83]

Licensing

The Department of Transportation (Department), Bureau of Driver Licensing, under the authority contained in 75 Pa.C.S. §§ 1508, 1508.1, 1509 and 6103, proposes to amend Chapters 71, 75 and 83 (relating to school bus drivers; drivers license examination; and physical and mental criteria, including vision standards relating to the licensing of drivers) to read as set forth in Annex A.

Purpose of these Chapters

The purpose of Chapter 71 is to provide rules regarding the course of instruction and physical examination for school bus drivers as required by 75 Pa.C.S. 1509 (relating to qualifications for school bus driver endorsement).

The purpose of Chapter 75 (relating to Driver's License Examination) is to provide standards and procedures for the issuance, renewal and replacement of photographic driver's licenses under 75 Pa.C.S. 1510(a) (relating to issuance and content of driver's license).

The purpose of Chapter 83 is to provide rules regarding the physical and mental criteria used by physicians in conducting physical examinations of applicants for learner's permits and driver's licenses and by physicians and other persons authorized to diagnose and treat disorders and disabilities delineated in this chapter in determining whether a person examined by the provider should be reported to the Department as having a disorder affecting the ability of the person to drive safely.

Purpose of these Proposed Amendments

The purpose of these amendments is to amend Chapters 71, 75 and 83, consistent with the provisions of 75 Pa.C.S. § 1508.1 (relating to physical examinations), to permit physician assistants and certified registered nurse practitioners to conduct the physical examinations required for the issuance of a driver's license and a school bus driver endorsement. Under 75 Pa.C.S. 1508(a) (relating to examination of applicant for driver's license), every applicant for a driver license shall be examined for the type or class of vehicles that the applicant desires to operate. The examination includes a physical examination, a screening test of the applicant's eyesight and a test of the applicant's ability to read and understand official traffic-control devices, knowledge of safe driving practices and the traffic laws of the Commonwealth. Further, the applicant must provide an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type or class for which the applicant desires to drive.

Historically, in this Commonwealth, licensed physicians conducted the physical examinations of applicants for a driver's license and the school bus endorsement. However, health care systems have evolved and with the cost reducing methods of managed care, schools now have certified registered nurse practitioners (CRNP) rather than physicians and many doctors' offices now maintain only one physician and several physician assistants.

A CRNP is a registered nurse licensed in this Commonwealth by both the State Board of Nursing and the State Board of Medicine. Further, CRNPs are licensed in a particular clinical specialty area and perform acts of medical diagnosis or prescription of medical, therapeutic or corrective measures in collaboration with, and under the direction of, a physician licensed to practice medicine.

A physician assistant is a person certified by the State Board of Medicine to assist a physician or group of physicians in the provision of medical care and services and under the supervision and direction of the physician or group of physicians.

CRNPs and physician assistants have been performing physical examinations for several years, and under the authority contained in 49 CFR 390.5 and 391.43(a)(1), may perform the commercial driver physical examinations.

The following represents a summary of the significant amendments:

(1) Sections 71.2, 75.2 and 83.2 (all relating to definitions) are proposed to be amended to provide a definition for the terms "certified registered nurse practitioner" and "physician assistants." These health care provider definitions were developed by the State Board of Medicine.

(2) Sections 71.3, 75.6 and 83.1 (relating to physical examinations; physical examination; and purpose) are proposed to be amended, consistent with 75 Pa.C.S. § 1508.1, to permit CRNPs and physician assistants to perform the physical examination of applicants as prescribed in these chapters.

(3) Section 71.3(c), certificate of school transportation physician, has been restyled as "physical examination certificate" since the certificate issued for the successful completion of the annual physical examination of a school bus driver may now be administered by a CRNP or a physician assistant, and thus issuance of the certificate is not limited to a school transportation physician.

(4) Section 75.6 is proposed to be amended by deleting the reference to other applicants or drivers who may not be physically or mentally qualified to be licensed to drive and thus are required to submit to a physical examination. The intent of this legislation and the regulatory amendments is to allow CRNPs and physician assistants to perform the preliminary physical examination required for initial licensing. The deleted phrase refers to individuals who are already licensed and that the Department has reason to believe are medically incompetent. Examination of these drivers is covered under Chapter 83 and must still be performed by a physician. These examinations are not related to the application for initial licensure and their inclusion here is confusing.

Persons and Entities Affected

These proposed amendments affect physicians, CRNPs and physician assistants who give the physical examination to applicants as prescribed in these chapters. Persons applying for their learner's permit or school bus endorsement are also affected.

Fiscal Impact

These proposed amendments will not impose any increased costs on private persons, State or local governments. These proposed amendments will not require any additional reports or other paperwork requirements.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. 745.5(a)), on August 20, 1997, the Department submitted, a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Transportation. In addition to submitting these proposed amendments, 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. A copy of this material is available to the public upon request. If IRRC has objections to any portions of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' comment period. 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, prior to final publication of the regulations, by the Department, the General Assembly and the Governor of objections raised.

Sunset Date

The Department is not establishing a sunset date for these proposed amendments, since these proposed amendments are needed to administer provisions required under the 75 Pa.C.S. (relating to Vehicle Code). The Department will, however, continue to closely monitor these amendments for their effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Rebecca L. Bickley, Director, Bureau of Driver Licensing, Riverfront Office Center, 1101 South Front Street, 4th Floor, Harrisburg, PA 17104, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

Contact Person

The contact person is Lawrence Jones, Manager, Bureau of Driver Licensing, Department of Transportation, Riverfront Office Center, 1101 South Front Street, 4th Floor, Harrisburg, PA 17104, (717) 787-7740.

BRADLEY L. MALLORY,
Secretary

Fiscal Note: 18-342. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE IV. LICENSING

CHAPTER 71. SCHOOL BUS DRIVERS

§ 71.2. Definitions.

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

CRNP—Certified registered nurse practitioner—A registered nurse licensed in this Commonwealth who is certified, by both the State Board of Nursing and the State Board of Medicine, in a particular clinical specialty area and who, while functioning in the expanded role as a professional nurse, performs acts of medical diagnosis or prescription of medical therapeutic or corrective measures in collaboration with and under the direction of a physician licensed to practice medicine in this Commonwealth.

* * * * *

Physician assistant—A person certified by the State Board of Medicine to assist a physician or group of physicians in the provision of medical care and services and under the supervision and direction of the physician or group of physicians.

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§ 71.3. Physical examination.

(a) *General rule.* A physical examination shall be given by a school transportation physician, a **CRNP or a physician assistant**:

* * * * *

(c) [**Certificate of school transportation physician**] **Physical examination certificate.** The examining school transportation physician, **CRNP or physician assistant** shall issue a certificate, valid for the ensuing year, to every driver who passes a physical examination.

* * * * *

CHAPTER 75. DRIVER'S LICENSE EXAMINATION

Subchapter A. GENERAL PROVISIONS

§ 75.2. Definitions.

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

* * * * *

CRNP—Certified registered nurse practitioner—A registered nurse licensed in this Commonwealth who is certified, by both the State Board of Nursing and the State Board of Medicine, in a particular

clinical specialty area and who, while functioning in the expanded role as a professional nurse, performs acts of medical diagnosis or prescription of medical therapeutic or corrective measures in collaboration with and under the direction of a physician licensed to practice medicine in this Commonwealth.

* * * * *

Physician assistant—A person certified by the State Board of Medicine to assist a physician or group of physicians in the provision of medical care and services and under the supervision and direction of the physician or group of physicians.

* * * * *

§ 75.6. Physical examination.

An applicant for a driver's license, who has never been issued a driver's license in this Commonwealth or another state, [and every other applicant or driver the Department has reason to believe may not be physically or mentally qualified to be licensed to drive a motor vehicle] shall submit to a physical examination by a licensed physician, [who] or CRNP or a physician assistant. The licensed physician, or CRNP or physician assistant performing the examination shall report the findings of the physical examination to the Department on a physical examination certificate or form provided by the Department. The Department may request that the report be submitted on a special certificate relating to the alleged mental or physical disability of the applicant or licensee.

CHAPTER 83. PHYSICAL AND MENTAL CRITERIA, INCLUDING VISION STANDARDS RELATING TO THE LICENSING OF DRIVERS

§ 83.1. Purpose.

Section 1517(b) of the act (relating to medical advisory board) authorizes the Department to adopt physical and mental criteria, including vision standards, for licensing of drivers under Chapter 15 of the act (relating to licensing of drivers). These physical and mental criteria have been formulated by the Medical Advisory Board under the authority of sections 1517 and 1518 of the act (relating to medical advisory board; and reports on mental or physical disabilities or disorders). In addition to their use by the Department in connection with its responsibilities under Chapter 15 of the act, these physical and mental criteria shall be used by physicians, CRNPs and physician assistants in conducting physical examinations of applicants for learner's permits and driver's licenses and by physicians and other persons authorized to diagnose and treat disorders and disabilities covered in this chapter in determining whether a person examined by the provider should be reported to the Department as having a disorder affecting the ability of the person to drive safely.

§ 83.2. Definitions.

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

* * * * *

CRNP—Certified registered nurse practitioner—A registered nurse licensed in this Commonwealth who is certified, by both the State Board of Nursing and the State Board of Medicine, in a particular clinical specialty area and who, while functioning

in the expanded role as a professional nurse, performs acts of medical diagnosis or prescription of medical therapeutic or corrective measures in collaboration with and under the direction of a physician licensed to practice medicine in this Commonwealth.

* * * * *

Physician assistant—A person certified by the State Board of Medicine to assist a physician or group of physicians in the provision of medical care and services and under the supervision and direction of the physician or group of physicians.

* * * * *

[Pa.B. Doc. No. 97-1393. Filed for public inspection August 29, 1997, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 51, 53, 93 AND 109]

Administration, Commission Property and Boating

The Fish and Boat Commission (Commission) proposes to amend Chapters 51, 53, 93 and 109. The Commission is publishing these amendments as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments deal with administration, Commission property and boating.

A. Effective Date

These proposed amendments will, if approved on final rulemaking, go into effect on January 1, 1998, or upon publication of an order adopting the final-form regulations, whichever occurs later.

B. Contact Person

For further information on the proposed changes, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

C. Statutory Authority

These proposed amendments are published under the statutory authority of sections 741, 2502, 5122 and 5123 of the code and section 506 of The Administrative Code of 1929 (71 P. S. § 186).

D. Purpose and Background

The proposed amendments are designed to update, modify and improve Commission regulations pertaining to administration, Commission property and boating. The specific purpose for the various proposed amendments is described in more detail under the summary of proposal.

E. Summary of Proposal

1) *Section 51.28 (relating to report of the presiding officer)*. In accordance with current practice, all proposed reports (pertaining to revocations and suspensions), regardless of whether exceptions are filed, are forwarded to the Commission's Law Enforcement Committee for review and consideration. However, under to the General Rules of Administrative Practice and Procedure, a proposed report becomes the final agency decision if no exceptions

are filed to the proposed report within 30 days. In those instances when no exceptions are filed, it is unnecessary for the Law Enforcement Committee to review the matter because the proposed report already represents the final agency action. To eliminate an unnecessary step in the current procedure, which will reduce the processing time of these cases, staff proposed that this section be amended. The Commission approved the publication of a notice of proposed rulemaking consistent with staff's recommendation.

2) *Sections 51.33 and 51.61 (relating to effective date of filing licenses and trout/salmon permits; and permits required for disturbance of waterways or watersheds).* A review of these regulations revealed a need to clarify or make minor corrections to insure that anglers are able to understand them and that the original intent is contained in them. The proposed changes do not alter or change the regulations in a significant manner.

3) *Section 53.8 (relating to boats).* The law enforcement jurisdiction of the National Park Service (NPS) is limited to the Delaware River, shore to shore on the water only, within the confines of the scenic river area. Additionally, NPS's authority extends to the very few acres that it owns and the Commission and the New York Department of Environmental Conservation access areas where the parties have entered into formal lease agreements. The six Commission access areas involved are Buckingham, Equinunk, Calicoon, Damascus, Narrowsburg and Zane Grey.

The Commission is quite fortunate to be able to rely on NPS's presence and its law enforcement efforts. However, NPS has been put in the position of having to contend with the conflicting laws and regulations of the Commonwealth and New York. The fisheries differences have been resolved for the most part, but confusion remains regarding boat registrations.

Accordingly, staff proposed an amendment to § 53.8 (relating to boats) to avoid confusion and the possible prosecution of unsuspecting persons using Commission access areas on the Delaware River. The Commission approved the publication of a notice of proposed rulemaking containing this change.

4) *Section 53.26 (relating to dogs).* In recent years, staff have seen a tremendous increase in the number of dogs roaming unsupervised on Commission owned or controlled properties. These animals are causing a number of identifiable problems by barking, growling, stalking and charging anglers and boaters as well as leaving dog "droppings" on lawn areas, paths and parking lots. Most of the dogs on Commission property are not brought there by anglers or boaters. It also is recognized that, on some properties, legitimate dog training activities can be conducted without interfering, to any great degree, with the property's intended users.

In an attempt to protect adequately the primary users of Commission properties (that is, boaters and anglers) and still allow others to walk or train, or both, their dogs, the Commission needs reasonable regulations. The Commission approved the publication of a notice of proposed rulemaking, containing a proposed regulation relating to control of dogs on Commission property.

5) *Section 93.13 (relating to issuing agents).* Under section 5304 of the code (relating to issuing agents), the Commission may designate issuing agents for boat registrations. Boat registration issuing agents, other than the Commission, issue only temporary boat registrations; they do not process renewals of boat registrations.

Boat registration issuing agents are authorized by the code to charge and retain an issuing agent fee not exceeding \$2 for each registration. Although the Commission collects and retains issuing agent fees for fishing licenses and permits issued by Commission offices, its offices have not collected the issuing agent fees for temporary boat registrations.

In order for the Commission to start collecting boat registration issuing agent fees for temporary boat registrations issued directly by Commission offices, a clarifying amendment to the existing regulations is required. The proposed amendment will make it clear that Commission offices are designated issuing agents. The Commission approved the publication of a notice of proposed rulemaking containing this change.

6) *Section 109.4 (relating to waterskiing, aquaplaning, kiteskiing and similar activities).* At its January 1997 meeting, the Commission directed staff to meet with proponents of changes to regulations on waterski observers to discuss their concepts for creating a carefully-crafted limited exceptions to existing regulations and report back to the Commission at the May 1997 meeting. Staff met with Frank Gates to discuss his concerns and those of a group of devoted water-skiers who strongly believe that they need some relief from the current requirements in order fully to pursue their sport. Staff and Frank Gates discussed several alternatives, and it was decided that the proponents of change or their attorney would get back to staff with proposed wording. Later, staff were informed that the proponents of change would like the Commission to seek public comment on the proposal set forth in the January 1997 agenda.

Late in the 1996 session of the General Assembly, Legislators proposed an amendment to pending legislation to provide (in pertinent part):

The presence of a competent observer shall not be required in a boat towing a water-skier if all of the following conditions are met:

- (1) The operator of the boat meets all the qualifications of a competent observer and is wearing an approved personal flotation device while the skier is being towed.
- (2) The boat is equipped with all of the following:
 - (a) A rearview mirror which is at least 5 inches by 10 inches
 - (b) A ski platform
 - (c) A boom, towing eye or pylon mounted permanently inside the hull of the boat to which the towing rope is secured.
- (3) Only one person is being towed.
- (4) The device on which the person is riding is only attached to the person and not to the boat.
- (5) Conditions, including other boating activities or congestion in the vicinity of the proposed operation, do not impede safe and prudent boat or waterskiing operations.
- (6) The waterskiing takes place on a day other than a weekend or holiday.

As used in this provision, the term "competent observer" means a person who has the ability to assess when a water-skier is in trouble, who knows and understands the waterskiing hand signals and is capable of helping a skier.

At the request of Commission staff, this amendment was withdrawn to give the Commission staff the opportunity to meet with proponents of the changes to observer requirements and to consider possible changes to Commission regulations. In addition to policy concerns, the staff had concerns with the drafting of the proposed amendment. The Boating Advisory Board discussed the legislative proposal at its meeting on December 20, 1996, and recommended against changing the current regulations on observer requirements, which are set forth in § 109.4 (relating to waterskiing, aquaplaning, kiteskiing and similar activities).

The proponents of change have asked the Commission to consider an amendment to § 109.4(c). Although staff are not convinced that a modification of the observer requirement is necessary or appropriate, it is believed that the wording of the proposed change as set forth in Annex A may be an adequate springboard for further discussion. The Commission has been encouraged by members of the General Assembly to at least seek public input on a possible proposed change to these regulations. At its meeting on May 5, 1997, the Commission approved the publication of a notice of proposed rulemaking seeking public comment on a possible change to § 109.4(c), provided that the notice explicitly provides that, at this stage, the Commission is only seeking public input and does not necessarily endorse the proposed change.

F. Paperwork

The proposed amendments will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendments will impose new costs on the private sector and the general public in that persons who initially register their boats at Commission offices will have to pay a \$2 issuing agent fee.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendments to the Executive Director, Pennsylvania Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically at "regulations @ fish.state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

(Editor's Note: Amendments to §§ 53.8 and 109.4, proposed to be amended in this document, appeared at 27 Pa.B. 3999 (August 9, 1997) and will be codified in MTS 275 (October, 1997).)

Fiscal Note: 48A-69. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 51. ADMINISTRATIVE PROVISIONS

Subchapter C. SUSPENSION, DENIAL OR REVOCATION OF LICENSES, PERMITS, REGISTRATIONS OR PRIVILEGES

§ 51.28. Report of the presiding officer.

* * * * *

(c) [The] If exceptions to the proposed report are not filed, the proposed report will be considered the final administrative adjudication of the Commission.

(d) If exceptions to the proposed report are filed, the proposed report, together with the entire record, the briefs, the exceptions, [if any,] and briefs on and opposing exceptions will be filed by the Executive Director with the [Chairman] Chairperson of the Commission's Law Enforcement Committee.

Subchapter D. ISSUING AGENTS

§ 51.33. Effective dates of filing licenses and trout/salmon permits.

Fishing licenses and permits, such as trout/salmon permits, are valid for the year printed on the license certificate or [stamp] permit, and the month of December of the preceding year, except for tourist licenses that are valid for the dates specified on the license certificate.

Subchapter G. PERMIT REQUIREMENTS

§ 51.61. Permits required for disturbance of waterways or watersheds.

* * * * *

(b) Examples of permits that may be required to undertake specific activities in the waters or watersheds of this Commonwealth include[, but are not limited to,] the following:

* * * * *

(18) Permit for use of an algicide, herbicide or fish control chemical in waters of this Commonwealth.

(19) Permit to draw off impounded water.

CHAPTER 53. COMMISSION PROPERTY

§ 53.8. Boats.

* * * * *

(i) A boat using a [Fish and Boat Commission] lake or access area shall be registered and display the official registration number and current validation stickers described under Subpart C and Part III of the code, except that this provision does not apply to non-commercial users of access areas on the Delaware River and West Branch of the Delaware River bounded by the State of New York. Public service boats as defined under section 5302[(3)] of the code (relating to exemptions from registration) and boats participating in events authorized under § 109.6 (relating to special marine events) are exempt from this section.

* * * * *

§ 53.26. Dogs.

(a) Dogs are permitted on Commission property if they are licensed and otherwise in compliance with all other provisions of the Dog Law (3 P. S. §§ 459-101—459-1205).

(b) The maximum number of dogs that an owner or handler is permitted to have on Commission property at one time is two.

(c) The owner or handler shall keep the dogs on a leash not exceeding 6 feet in length while on Commission property.

(d) The owner or handler shall keep the dogs under his supervision and control while on Commission property.

(e) The owner or handler shall immediately scoop, contain and retain the droppings of the dog. The owner or handler may not dispose of the dog droppings on Commission property.

(f) The owner or handler is responsible for the conduct of the dog while on Commission property.

(g) Subsection (c) does not apply when an owner or handler is training a dog for water retrieval purposes and when the following apply:

(1) The dog is actually performing customary water retrieval functions.

(2) The dog remains within 10 feet of the owner/handler while on land.

(3) The dog is under the immediate control of the owner/handler at all times.

(4) The dog does not interfere with anglers or boaters engaged in fishing, boating or other lawful activities.

(h) An owner or handler of a hunting dog is exempt from subsections (c) and (e) when he keeps his dog off lawn areas, trails and parking lots and when he is engaged in legal hunting or training during the seasons established by the Pennsylvania Game Commission.

Subpart C. BOATING

CHAPTER 93. BOAT REGISTRATION AND NUMBERING

§ 93.13. Issuing agents.

(a) The [appointment] designation of issuing agents for temporary boat registrations shall be limited to the Commission and Commission offices, county treasurers and businesses dealing in boats, boating equipment or sporting goods.

* * * * *

(d) The Commission will collect and deposit in the Boat Fund the \$2 issuing agent fee for all temporary boat registrations issued by Commission offices.

CHAPTER 109. SPECIALTY BOATS AND WATERSKIING ACTIVITIES

§ 109.4. [Water skiing] Waterskiing, aquaplaning, [kite skiing] kiteskiing and similar activities.

* * * * *

(c) *Observer required.* [It is unlawful for a person to operate a boat for towing or otherwise assisting a person on water skis unless there is at least one

competent observer in the boat besides the operator, in a position to observe the progress of the person being towed. It is unlawful for a person to water ski being towed by a watercraft or device not containing an operator and observer as required by this section.] (1) *General rule.* Except as otherwise provided in this subsection, it is unlawful for a person to operate a boat towing or otherwise assisting a person on water skis unless there is at least one competent observer in the boat in addition to the operator of the boat. The observer shall be positioned in the boat so as to observe the progress of the person being towed. It is unlawful for a person to water ski being towed by a watercraft or device not containing an operator and observer as required by this subsection.

(2) *Special conditions.* The Executive Director, or a designee, may issue a permit to allow a limited exception to the requirements of paragraph (1). A permit issued under this paragraph will permit operation of a boat towing a water skier without an observer, in addition to the operator, on board the boat. These operations will be permitted only under the following conditions:

(i) Both the operator of the boat and the water skier meet safety training requirements as evidenced by documented completion of a safe boating course and active membership in a state or National waterskiing organization, which provides members with information on waterskiing safety.

(ii) The operator fulfills the definition of a “competent observer” as set forth in this section, wears an approved personal flotation device (PFD) and is a person 18 years of age or older.

(iii) The boat is equipped with the following:

(A) A rearview mirror which is at least 5 inches by 10 inches configured so that the operator may at all times observe the progress of the person being towed.

(B) A ski platform.

(C) A boom, towing eye or pylon mounted permanently inside the hull of the boat to which the towing rope is secured.

(iv) Only one person is being towed.

(v) The water skis or other device on which the person is riding are attached only to the person and not to the boat.

(vi) Conditions, including weather, other boating activities and congestion in the vicinity of the proposed operation, do not impede safe and prudent boat or waterskiing operations.

(vii) The waterskiing takes place on a day other than a weekend or holiday. The Executive Director, for good cause shown, may permit waterskiing under this section on a Saturday or Sunday before the hour of 10 a.m if the Executive Director finds that other boating activities on the waters at the same time will not interfere with the waterskiing.

(viii) The waterskiing takes place on waters described and approved for the operations in the permit.

(ix) The waterskiing takes place at times as the Executive Director or a designee indicates in the permit.

(x) The boat towing the waterskier displays a special waterski flag of a size and design approved by the Commission.

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[Pa.B. Doc. No. 97-1394. Filed for public inspection August 29, 1997, 9:00 a.m.]

**[58 PA. CODE CH. 93]
Boating**

The Fish and Boat Commission (Commission) proposes to amend Chapter 93 (relating to boat registration and numbering). The Commission is proposing these amendments under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments deal with boat registration.

A. Effective date

These proposed amendments will, if approved on final rulemaking, go into effect on January 1, 1998, or upon publication of an order adopting the final-form regulations, whichever occurs later.

B. Contact person

For further information on the proposed changes, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

C. Statutory authority

These proposed amendments are published under the statutory authority of section 5122 of the code (relating to registrations, licenses, permits, plates and statistics).

D. Purpose and background

The proposed amendments are designed to update, modify and improve Commission regulations pertaining to boat registration. The specific purpose of the various proposed amendments is described in more detail under the summary of proposal.

E. Summary of proposal

1) *Section 93.1 (relating to registration)*. The change clarifies the existing regulation to provide that 1-year registrations will not be issued.

2) *Section 93.2 (relating to permanent and temporary registration)*. In addition to some minor wording changes, it is proposed that this section be amended to make it clear that a person acquiring a previously registered boat must register it in the new owner's name and to provide that temporary decals will display the expiration date, instead of the issuance date, and that the expiration date will be last day of the second month after issuance. For boats previously registered in this Commonwealth, it is proposed to clarify the regulations to require that temporary and new registration stickers be displayed.

3) *Section 93.3 (relating to application for boat registration)*. The Commission proposes amending this section to make it consistent with the titling regulations and to improve its clarity. In addition, it is proposed to make it clear that the holder of a registration who trades or replaces his previously registered boat may transfer the remaining period of registration (but not the number) to the new boat on the payment of the \$5 transfer fee. The Commission is also proposing to spell out the procedures to be used when the last known registrant of a boat with

expired registration has not signed the forms to transfer the boat to the applicant for registration.

4) *Section 93.4 (relating to certificate of registration)*. The Commission proposes that a small validation sticker be applied to the certificate of registration. To validate the registration, the certificate will have to be signed (as presently required) and the small sticker applied. A similar approach is used in Maryland.

5) *Section 93.7 (relating to duplicate certificate of registration)*. The Commission proposes a clarifying change in the regulation on duplicate registration certificates.

6) *Section 93.10 (relating to change of address)*. It is proposed that the regulation be clarified to provide that change of address notifications be made in writing.

7) *Section 93.12 (relating to dealers, manufacturers and jobbers)*. In a change suggested by the Bureau of Law Enforcement, it is proposed to clarify the definition of manufacturers. In addition, a change is proposed to deal with the registration status of boats traded in to dealers.

8) *Section 93.13 (relating to issuing agents)*. A provision has been proposed which clarifies issuing agents' responsibilities for handling of nonpublic information about persons registering boats.

9) *Section 93.14 (relating to proof of ownership)*. The Commission proposes to clarify the requirements on proof of ownership of boats for initial registration and to require submission of a Form PFBC-734, instead of an affidavit, when other documentation is not available.

10) *Section 93.17 (relating to abandoned boats)*. This proposed provision, modeled on a similar provision in the titling regulations, sets forth how an applicant can obtain registration for an abandoned boat.

The Commission approved the publication of a notice of proposed rulemaking, containing these changes. The Commission's staff will solicit the advice of the Boating Advisory Board concerning the proposed changes so that the Commission may consider the Board's input prior to acting on final rulemaking.

F. Paperwork

The proposed amendments will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendments will impose no new costs on the private sector or the general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendments to the Executive Director, PA Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically at "regulations@fish.state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-70. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 93. BOAT REGISTRATION AND NUMBERING

§ 93.1 Registration.

(a) [Boat] With the exception of a "Manufacturer/Dealer/Jobber" registration certificate, which is valid for 1 year, and a "State Owned" registration certificate, which is valid until the removal of the property from inventory, all other boat registration certificates issued under this chapter are valid for a period not exceeding 2 years. The Commission will not issue 1-year registration certificates except to "Manufacturer/Dealer/Jobbers." The registration period expires on March 31 of the second year following issuance.

(b) [The] Except for Manufacturers/Dealer/Jobber registrations, the fee for the registration will be twice the annual registration fee as set forth in the code.

* * * * *

(d) The Commission ordinarily relies solely on the information submitted by an applicant to show that the applicant is the true and lawful owner of the boat for which registration is sought. Issuance of a boat registration does not constitute an adjudication or finding with respect to ownership of the boat. However, the Commission will defer issuance of a new or renewal registration for any boat after it receives written notice of the existence of a reasonable dispute as to the ownership of a boat. The parties who dispute the ownership of the boat shall be responsible to obtain a determination of ownership from an appropriate civil forum or by settlement and to notify the Commission, in writing, of the determination.

§ 93.2. Permanent and temporary registration.

(a) Boat not previously registered in this Commonwealth.

(1) A person acquiring a boat which has not been previously registered in the person's name in this Commonwealth shall complete an application for boat registration as set forth in § 93.3 (relating to application for boat registration). The applicant will receive a copy of the completed application [, signed by the issuing agent,] which will be recognized as the boat's certificate of registration for a period [not to exceed 60 days from the date of issuance] specified in subsection (d). This temporary certificate of registration shall be carried on the boat when the boat is in operation and shall be available for inspection by an authorized officer. The new owner will receive a set of temporary validation decals from the authorized issuing agent [which will be valid for 60 days from the date of issuance] who will enter the expiration date (month/year), calculated in accordance with subsection (d), on the decal. [The issuing agent shall indicate the date of issue on the temporary validation decals.] Before

the boat is operated, these temporary validation decals shall be displayed on each side of the bow—the front half—of the boat in a position to provide for maximum visibility.

* * * * *

(b) Boat previously registered in this Commonwealth but having expired registration.

(1) A person acquiring a boat which has been previously registered in another person's name in this Commonwealth and possesses an expired registration shall complete an application for boat registration as set forth in § 93.3. The applicant will receive a copy of the completed application [, signed by the issuing agent,] which will be recognized as the boat's certificate of registration for a period [not to exceed 60 days from the date of issuance] specified in subsection (d). This temporary certificate of registration shall be carried on the boat when the boat is in operation and shall be available for inspection by an authorized officer. The new owner will receive a set of temporary validation decals from the authorized issuing agent [which will be valid for 60 days from the date of issuance] who will enter the expiration date (month/year), calculated in accordance with subsection (d), on the decal. [The issuing agent shall indicate the date of issue on the temporary validation decals.] Before the boat is operated, these temporary validation decals shall be displayed on each side of the bow—the front half—of the boat in a position to provide for maximum visibility. If the boat is displaying expired validation decals, the owner or operator shall remove the expired validation decals and replace them with the temporary validation decals. The previously assigned registration number currently on the boat will remain with the boat as long as the boat is registered in this Commonwealth.

* * * * *

(c) Boat previously registered in this Commonwealth having current registration.

(1) A person acquiring a boat which has been previously registered in another person's name in this Commonwealth [and is] displaying current biannual validation decals shall complete an application for boat registration as set forth in § 93.3. The applicant will receive a copy of the completed application [, signed by the issuing agent,] which will be recognized as the boat's certificate of registration for a period [not to exceed 60 days from the date of issuance] specified in subsection (d). This temporary certificate of registration shall be carried on the boat when the boat is in operation and shall be available for inspection by an authorized officer. The new owner will receive a set of temporary validation decals from the authorized issuing agent who will enter the expiration date (month/year), calculated in accordance with subsection (d), on the decal. Before operating the boat on the waters of this Commonwealth, the owner or operator shall remove the prior validation decals and replace them with the temporary validation decals. The previously assigned registration number will remain with the boat as long as the boat is registered in this Commonwealth. It is unlawful for a person acquiring a boat described in this subsection to operate the boat on the waters of this Commonwealth until the registration is transferred to the new owner as provided in this section.

[(2) A person who applies for boat registration for a boat displaying current biannual validation decals in the person's name up until October 1 of the first year of the biannual registration cycle will not receive new biannual validation decals but will receive a new biannual certificate of registration card from the Commission which shall be carried onboard the boat while it is being operated. The current biannual validation decals on the boat will be valid.

(3) A person who applies for boat registration for a boat displaying current biannual validation decals in the person's name between October 1 of the first year of the biannual registration cycle and October 1 of the second year of the biannual registration cycle will receive from the Commission new biannual validation decals that will extend the current boat registration by 1 year. Upon receipt of the new biannual registration decals, the owner or operator shall remove the biannual validation decals currently on the boat and replace them with the new biannual validation decals provided by the Commission. The biannual validation decals shall be displayed in accordance with § 93.5. The new owner will also receive from the Commission a new biannual certificate of registration card which shall be carried onboard the boat while it is being operated.

(4) A person who applies for boat registration for a boat displaying a current biannual validation decal after October 1 of the second year of the biannual registration cycle will receive from the Commission new biannual validation decals that will extend the current boat registration by 2 years. Upon receipt of the new biannual validation decals, the owner or operator shall remove the biannual validation decals currently on the boat and replace them with the biannual validation decals provided by the Commission. The biannual validation decals shall be displayed in accordance with § 93.5. The new owner will also receive from the Commission a new biannual certificate of registration card which shall be carried onboard the boat while it is being operated.]

(2) The Commission will send the registrant biannual validation decals and a new biannual certificate of registration. The registrant shall display the new biannual validation decals in accordance with § 93.5 and shall carry the registration card onboard the boat while it is operating. In determining the expiration date of the new biannual registration, the Commission will use the following guidelines:

(i) Application received on or before September 30 of the first year of the biannual registration cycle: New validation expires at the end of the current registration cycle.

(ii) Application received between October 1 of first year of the biannual registration cycle and September 30 of the second year of the cycle: New validation expires at the end of the next registration cycle.

(iii) Application received after October 1 of the second year of the biannual registration cycle: Validation expires after 2 years.

(d) Temporary decals. [The temporary validation decals are color coded to indicate the year for

which they are valid.] The temporary validation decals are valid [for only 60 days from] until the last day of the second month after the date of issuance [on] of the decal, which date will be not less than 60 nor more than 90 days after issuance of the decal. The owner or operator shall ensure that the temporary validation decals are removed and the biannual validation decals, when received from the Commission, are displayed in place of the temporary validation decals. The temporary validation decal shall display the date on which it expires in the following format: "Expires last day of (month)/(year)." The authorized issuing agent shall enter the expiration date (month/year) on the decal.

§ 93.3. Application for boat registration.

(a) New registration. Application for a boat registration for a new boat or a used boat that was not previously registered in this Commonwealth shall conform with the following:

(1) Forms. The owner of a boat desiring registration shall apply on Form REV-336, provided by the Commission. The completed form shall be forwarded to the Fish and Boat Commission, [; Boat Registration Division; Post Office Box 68900, Harrisburg, PA 17106-8900] Licensing and Registration Section.

(2) Required information. The applicant shall provide the following information on the application (REV-336) for a boat registration:

* * * * *

(ii) The name [and address of the former owner] of the person from whom the boat was purchased.

(iii) The state registration number, if any, currently assigned to the boat.

* * * * *

(v) The full hull identification number (HIN).

* * * * *

(vii) The length of the boat [to the nearest half-foot] in feet and inches.

(viii) The type of propulsion, such as, outboard, inboard [or other], sterndrive or unpowered.

* * * * *

(xii) [A statement as to use, for example: pleasure, rental business, jobber/dealer, manufacturer, commercial-passenger, commercial-fishing, commercial-other or other] The primary usage such as, pleasure, rental/livery, manufacturer/dealer/jobber, commercial passenger, and the like.

* * * * *

(xvii) The date of birth of the primary registrant.

* * * * *

(5) Incomplete or incorrect applications will not be processed until completed and may be returned by the Commission to the applicant or issuing agent.

(b) Renewals. Only [Form PFC] Forms PFBC-730a and PFBC-733 shall be used to renew registrations of boats which are being kept by the same owner. If the registration has lapsed, the owner shall obtain Form [PFC] PFBC-730a or PFBC-733 from the [Boat

Registration Division] Licensing and Registration Section of the Commission to renew the lapsed registration.

(c) [*Transfers*] *Previously registered boats.* Application for a certificate of registration for a boat previously registered in this Commonwealth shall conform with the following:

* * * * *

(2) A bill of sale, signed by the **last** registered owner, may be substituted for the required signatures on REV-336 [**or the purchaser may complete the PFC-734 "Statement of Purchase" form**].

(3) If the registered owner of a boat to be transferred is deceased, the personal representative (executor/administrator) of the decedent shall sign Form REV- [366] 336 for the [**last registered owner**] **deceased owner**. The personal representative shall indicate his capacity with his signature and shall provide documentation—**an original death** certificate and letters testamentary [**or similar documentation**], **letters of administration, original short certificate, court order filed under small estates procedurs or Form PFBC-R1**—certifying his capacity to act on behalf of the decedent's estate. **An original death certificate is not required if Form PFBC-R1 is signed by the attending physician or funeral director.** If the boat registration is to be transferred from joint ownership, when one of the joint owners is deceased, the other joint owner shall present the **original** death certificate to effect the transfer.

(4) **When an applicant seeks to register a boat having an expired registration and the last registered owner has not signed the REV-336 or bill of sale because he is not the seller of the boat, the Commission will, prior to processing the application for registration, notify the last registered owner at his last known address that the applicant is seeking to register the boat. If the last registered owner claims an ownership interest in the boat and objects to the transfer of the registration to the applicant, the Commission will defer further processing until the parties resolve the ownership issues through established civil processes. If the last registered owner does not object to the transfer or fails to respond to the notice after 30 days, the Commission may process the request for registration if it is otherwise satisfied that the applicant is the true and lawful owner of the boat and entitled to registration.**

(d) *Transfer of registration to new boat.* The holder of a valid Pennsylvania registration certificate on a boat previously owned by him may transfer the registration certificate for the remainder of the original boat's registration period to a new boat upon payment of the transfer fee for multiyear registrations as set forth in the code and submission of a complete Form PFBC R-4. If the registration fee for the new boat is greater than the registration fee for the old boat based on the length of the boat, the applicant shall also pay the difference between the registration fees for the new and old boat. The applicant shall submit the certificate of registration for the old boat and certify that the validation stickers have been removed from the old boat at the time of transfer. The old boat's number shall remain with the old boat, and the new boat shall be issued a new number unless it was previously numbered in this Commonwealth.

§ 93.4. Certificate of registration.

(a) The owner shall sign the certificate of registration, Form [**PFC**] **PFBC-730b**, in ink and place a numbered, registration certificate validation sticker on the reverse side of the certificate to validate the registration. **A registration certificate is not valid unless a sticker is applied.**

* * * * *

§ 93.7. Duplicate certificate of registration.

The Commission will issue a duplicate certificate of registration upon receipt of Form [**PFC**] **PFBC-730a** or Form [**PFC**] **PFBC-732** from the registered owner and payment of the appropriate fee. **The Commission will not issue the numbered registration certificate validation sticker for duplicate registrations, but the lack of the sticker will not affect the validity of a duplicate registration certificate.**

§ 93.10. Change of address.

The owner shall notify the Commission, **in writing**, within 15 days after a change of address. The original certificate of registration shall be retained for use until a new certificate is issued.

§ 93.12. Dealers, manufacturers and jobbers.

* * * * *

(d) A manufacturer is a person or business engaged in building, **testing**, or constructing boats **or boat parts** from raw material or parts. To be eligible for a manufacturer's registration, an applicant shall demonstrate to the satisfaction of the Commission that the applicant is regularly engaged in the business of manufacturing **or testing** boats **or boat parts** for sale.

* * * * *

(g) **Boat dealers, jobbers or manufacturers who take in trade a boat bearing previous Pennsylvania boat registration are required, within 15 days of obtaining the boat, to place the boat under the dealer/jobber/manufacturer's dealer registration. The dealer, jobber or manufacturer shall complete Form 336 and forward it to the Boat Registration Section. No fee is applicable to a transaction when dealers place boats taken in trade under its dealer registrations. It is unlawful for a boat dealer, jobber or manufacturer to operate or allow to be operated a boat received in trade bearing Pennsylvania boat registration until the boat is placed under its dealer registration under this subsection.**

§ 93.13. Issuing agents.

* * * * *

(c) If [**an agent is**] the Executive Director determines that a sufficient number of agents are not available in an area [**which meets subsection (a) or (b), the Executive Director**] reasonably to address the needs of the boating public, the Executive Director may appoint [**an agent**] additional agents from other interested individuals [**if the appointment is in the best interest of the boating public**] or reduce the number of temporary boat registrations that existing agents are required to issue during the year.

(d) Issuing agents shall have access to nonpublic information concerning holders of boat registrations and titles, including their home addresses.

Issuing agents who are provided nonpublic information about boat registration holders or boat owners in the course of their duties may not release or disclose the nonpublic information except for official purposes.

§ 93.14. Proof of ownership for initial registration.

(a) Proof of ownership for initial registration shall be established by a manufacturer's certificate of origin indicating transfer of ownership from the manufacturer, distributor or dealer to the applicant if the boat was manufactured after January 1, 1993. When registering a new boat for the first time, the original manufacturer's certificate of origin shall be attached to the Form REV-336 and submitted to the Commission.

(b) If a manufacturer's certificate of origin is not available, proof of ownership shall be established by one of the following:

* * * * *

(c) If [the requirements of subsections (a) and (b) are not available] neither a manufacturer's certificate of origin nor the documents described in subsection (b) are available, the applicant shall submit [an executed affidavit] an executed Form PFBC-734 (Affidavit of Purchase/Ownership) fully setting forth the facts to support the applicant's claim of ownership in the boat. [Affidavits for materials used in the construction of] Applications seeking to prove ownership of homemade boats shall be supported with bills of sale for the major components of the boat. Affidavits are executed under penalty of law.

* * * * *

(e) This section applies to initial registration of a boat. It does not apply to registration of boats previously or currently registered in this Commonwealth.

§ 93.17. Registration of abandoned boats

(a) Policy. Before registering a boat, the Commission must be satisfied that the applicant for registration has sufficient ownership interest in the boat to qualify for registration. Requests to register boats found abandoned on private property and Commonwealth waters present particular problems. It is the policy of the Commission to register these boats only if the applicant demonstrates ownership by taking the steps described in this section and complies with other applicable law and regulations

(b) Boats abandoned on private property. Subject to the following, a landowner, his lessee or his agent may register a boat that has been abandoned on his land or the waters immediately adjacent to his land for at least 3 months.

(1) A person desiring to register an abandoned boat in his name shall provide written notice to the Commission of his intent to register the boat. The notice shall, at a minimum, set forth the date and place the boat was found, a description of the boat, including the make, model and year, and, if known, the hull identification number, registration number, temporary decal number and other identifying data. The person desiring to register an abandoned boat may provide written notice to the Commission by completing Form PFBC-R2, "Notice of Intent to

Register Boat Abandoned on Private Property" and mailing the form to the Commission.

(2) If a boat abandoned on a person's land or waters has a hull identification number, registration number, temporary decal number or other identifying indicia, the Commission will notify the last registrant of the boat that the boat has been abandoned and that the requester desires to register the boat in his name.

(3) Upon receipt of the written request, the Commission will notify the last registrant by certified mail that someone desires to register the boat in his name and if ownership is not claimed and the boat removed within 30 days, the Commission may, upon proper application and payment of fees, register the boat in the name of the person desiring to register it.

(i) The notice shall:

(A) Describe the make, model, hull identification number and registration number of the boat.

(B) State the location where the boat is being held.

(C) Inform the registrant of his right to reclaim the boat within 30 days after the date of the notice upon payment of all registration fees and other applicable charges.

(D) State that failure of the registrant to reclaim the boat is deemed consent to the registration of the abandoned boat in the name of the requester with dissolution of all interests of the prior registrant.

(ii) If the last known registrant does not respond, the Commission may notify the requester to proceed under paragraph (4). The Commission is not required to send a letter if it cannot identify the boat's last registrant or ascertain an address. If the abandoned boat has a registration number, temporary decal number or other identifying indicia, evidencing that the boat is registered in another state, the Commission will notify the other state and ask it to notify the boat's last registrant by certified mail that someone desires to register the boat in his name. The other state's notice shall provide that if ownership is not claimed and the boat removed within 30 days, the Commission may, upon proper application and payment of fees, register the boat in the name of the person desiring to register it. The other state is not required to send a letter if it cannot identify the boat's last registrant or ascertain an address. When the other state notifies the registrant, if known, as provided in this section and advises the Commission that the transfer of registration to the requester is unobjectionable to the other state, the Commission may notify the requester to proceed under paragraph (4).

(4) Regardless of whether the abandoned boat has a hull identification number, registration number, temporary decal number or other identifying indicia, the person desiring to register the boat in his name shall place a notice in a newspaper of general circulation published in the county where the boat is located for 3 consecutive days. The notice shall describe the boat, its location, the date it was abandoned and any identifying number. The person also shall state in the notice that if the boat is not claimed and removed within 30 days after

publication in the newspaper, the person will apply for registration of the boat in his name.

(5) After the notices described in paragraphs (3) and (4) have expired, but no earlier than 60 days after the person desiring registration has first notified the Commission, the person may apply to the Commission for registration of the boat in his name.

(i) The application shall be accompanied by the following items:

(A) A statement made under penalty of law that the boat has been abandoned for at least 3 months.

(B) Proof that the applicant provided notices as set forth in this section.

(C) Proof that a notice was published in a newspaper as required by paragraph (4).

(ii) In cases involving boats registered in other states, the Commission may extend the 60-day period described in paragraph (5) to 180 days.

(6) Upon receipt of the required materials and the payment of fees required by law, the Commission will register the boat in the name of the applicant.

(7) The Commonwealth, its agencies and political subdivisions may register any boat abandoned on areas under their ownership by proceeding in the manner set forth in this section.

(c) *Boats abandoned on Commonwealth waters.* A person finding a boat abandoned on the waters of this Commonwealth (not private property) shall notify the Commission of the description and location of the boat as well as the date on which it was found. A person may notify the Commission by completing Form PFBC-R3, "Notice of Abandoned Boat Found on Commonwealth Waters" and mailing the form to the Commission.

(1) The Commission may take possession of a boat abandoned on the waters of this Commonwealth or may authorize a salvor to take possession provided the salvor complies with these provisions, is a vehicle salvage dealer as defined in 75 Pa.C.S. § 1337 (relating to use of "Miscellaneous Motor Vehicle Business" registration plates), and holds a current, valid certificate of authorization issued by the Department of Transportation under 75 Pa.C.S. § 7302 (relating to certification of authorization).

(2) Any salvor taking possession of a boat under this section shall notify the Commission in writing within 48 hours after taking possession.

(3) The Commission, after taking possession of an abandoned boat or after receiving notice that a salvor has taken possession of an abandoned boat, shall notify by certified mail, return receipt requested the last known registrant of the boat. The notice shall:

(i) Describe the make, model, hull identification number and registration number of the boat.

(ii) State the location where the boat is being held.

(iii) Inform the registrant of his right to reclaim the boat within 30 days after the date of the notice upon payment of all towing and storage charges and all registration fees.

(iv) State that failure of the registrant to reclaim the boat is deemed consent to the destruction, sale or other disposition of the abandoned boat with dissolution of all interests of the registrant.

(4) If the identity of the last registrant cannot be determined, the contents of the notice described in paragraph (3) shall be published three times in a newspaper of general circulation in the area where the boat was found abandoned. If the boat is in possession of a salvor, publication of the notice shall be the responsibility of the salvor. If the boat is in possession of the Commission, publication of the notice is the responsibility of the Commission. Publication of the notice shall have the same effect as the notice sent by certified mail.

(5) The Commission, after 45 days of the date of notice sent by certified mail described in paragraph (3) or publication of the notice described in paragraph (4), may dispose of the boat if it is in its possession or may authorize the salvor to dispose of the boat in its possession as provided in paragraph (6) or (7).

(6) The Commission, if in possession of the unclaimed abandoned boat, or the salvor, if in possession of the unclaimed abandoned boat, may sell the boat at public auction if it has value. From the proceeds of the sale of the abandoned boat, the Commission or the salvor, as applicable, shall be reimbursed for the costs of towing, storage, notice, publication, mailing and costs of the auction. The remainder of the proceeds of the sale shall be forwarded to the Commission, which will hold them for 60 days from the date of sale for claim by the registrant. If the proceeds are not so claimed, they shall be deposited in the boat fund for use of the Commonwealth.

(7) If an unclaimed abandoned boat is valueless except for salvage, the salvor in possession shall apply to the Commission for registration, and upon issuance of the same, the salvor may destroy, dismantle, salvage or recycle the boat and retain any proceeds realized therefrom to offset the costs of towing, storage, notice, publication and mailing.

[Pa.B. Doc. No. 97-1395. Filed for public inspection August 29, 1997, 9:00 a.m.]

[58 PA. CODE CHS. 61, 63, 65 and 67]

Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapters 61, 63, 65 and 69. The Commission is publishing these proposed amendments as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments concern with fishing.

A. *Effective date*

These proposed amendments will, if approved on final rulemaking, go into effect on January 1, 1998, or upon publication of an order adopting the amendments, whichever comes later.

B. *Contact person*

For further information on the proposed changes, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This pro-

posal is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

C. Statutory authority

These proposed amendments are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. Purpose and background

The proposed amendments are designed to update, modify and improve Commission regulations relating to fishing. The specific purpose for the various proposed amendments is described in more detail under the summary of proposal.

E. Summary of proposal

1) *Sections 61.1, 61.4 and 61.7 (relating to Commonwealth inland waters; the Conowingo Reservoir; and Susquehanna River and tributaries)*. Regulations for the Susquehanna River (footnote in §§ 61.1 and 61.7) and the Conowingo Reservoir (§ 61.4) prohibit the harvest of American shad; this was done primarily to protect adult shad that were being trapped and transported up river for stock rebuilding purposes. River herring and hickory shad are other anadromous fish species for which restoration is expected within the Susquehanna River Basin through the operation of the fish passage facilities at the dams. Harvest of hickory shad is prohibited in the Conowingo Reservoir where the Commission follows the regulatory lead of the state of Maryland. Prohibiting harvest of American shad, hickory shad and both species of river herring will remain important during the initial phases of fish passage at the dams. It is appropriate that these fish stocks be protected from harvest during the population building phases in the entire Susquehanna River Basin.

Amending § 61.7 and footnote #4 to § 61.1 to make it illegal to take, catch or kill hickory shad and alewife and blueback herring (collectively known as river herring) will provide the appropriate protection. Amending § 61.4 to make it illegal to take, catch or kill alewife and blueback herring (collectively known as river herring) will add protection to these species in addition to the protection already provided to American shad and hickory shad in the Conowingo Reservoir. At its meeting, the Commission approved the publication of a notice of proposed rulemaking containing these changes with the clarification that landlocked alewife taken from inland ponds, lakes or reservoirs (such as Lake Raystown), collected by legal means and measuring less than 8 inches in length may be harvested for use as baitfish.

2) *Sections 61.1, 61.2, 63.11 and 63.12 (relating to Commonwealth inland waters; Delaware River and River Estuary; eel chutes; and eelpots and fyke nets)*. Management of American eels is a subject of much discussion among East Coast jurisdictions. According to the *American Eel and Horseshoe Crab Public Information Document* prepared by Atlantic States Marine Fisheries Commission (ASMFC) American Eel Plan Development Team, "status of American eel populations along the Atlantic seaboard is poorly understood. At the same time, growing exploitation of American eel has raised concern by various fisheries management interests. Domestic and overseas markets utilize nearly all life history stages of eels and demand for the species continues to be greater than the fishery can supply." The economic value of eels, particularly baby eels or elvers (also glass eels), has been referred to as the next most lucrative commodity next to illegal drugs. Values of several hundred dollars per pound of elvers are not uncommon, particularly when destined for

aquaculture use in Asia or Europe. It is common knowledge that major suppliers follow the migration and obtain elvers in various jurisdictions through permitted or illegal, or both, fisheries. The lack of uniformity, particularly length limits, complicates and hinders action by law enforcement personnel.

The Commonwealth, by virtue of having only one or two commercial fisheries for eels, is relatively well off compared to most other jurisdictions. Even so, the Commission's regulations merit some attention in light of problems with American eel fisheries. Under the code, an applicant can be issued an eel chute (weir) license for \$25 for reaches of the North and West Branches of the Susquehanna River, the Juniata River downstream of Mount Union and in the Delaware River. In recent years, undoubtedly due to a scarcity of eels in the Susquehanna drainage, no permits have been issued. Two were issued for the Delaware River in 1996 with only one involving active fishing and reporting a catch slightly over 400 pounds. Much of the Delaware River, especially that involving the Delaware Water Gap National Recreation Area, is now closed to commercial take of any species, including eels. The authority requiring issuance of eel chute licenses is statutory, and the Commission has no explicit statutory authority to refuse to issue the licenses to qualified licensees. However, the Commission does have explicit statutory authority to prohibit the sale of eels taken from Commonwealth and boundary waters. Accordingly, staff recommended that § 63.11(13) be amended so that eels caught lawfully under this section may not be sold or offered for sale. In addition, this section should be amended to add a new subsection providing that eels taken with eel chutes shall be subject to the same size and creel limits as eels taken with hook and line.

It is not known how many anglers take eels with eelpots as currently permitted under § 63.12. It is speculated that few if any take advantage of this practice, which does not require any special permit or license. Staff further suggested that eelpots be considered an illegal device having no place in today's fisheries management plan for American eel.

Use of fyke nets as authorized by § 63.12 requires a \$10 permit and may occur only in the Delaware River common to this Commonwealth and New Jersey. In 1996, staff initiated a moratorium on issuing fyke net permits in anticipation of possible changes brought about by an ASMFC coastwide eel management plan. This was intentionally done to minimize inconvenience to anglers who geared up to harvest and sell elvers only to lose that opportunity a year or so later. One permit was issued before word on the moratorium became known to staff. It is not known whether or not that permit was utilized. Based on social conflicts involving fyke netters in other jurisdictions, uncertainty of American eel stocks and the philosophical difference of a commercial elver fishery contrary to recreational angling throughout the rest of this Commonwealth, except Lake Erie, staff suggested that the fyke net program be retired.

American eels, both adult and young, still play a role in recreational angling in this Commonwealth. It is the intent of staff to continue to permit the taking of eels as bait and as conventional sport harvest (if taken on hook and line). In doing so, a 6-inch minimum length limit (with a 50 fish possession limit) needs to be considered to facilitate law enforcement relative to the harvest and trafficking of elvers through Commonwealth markets and to be consistent with regulations in neighboring jurisdic-

tions. This means an angler taking elvers with a seine, dip net or other legal device will have a 6-inch minimum and an 8-inch maximum. The 8-inch maximum applies to eels, chubs, suckers, lampreys and fallfish when taken as baitfish. Otherwise, those over 8-inches in length can be taken only by hook and line. The Commission approved the publication of a notice of proposed rulemaking consistent with staff's recommendations.

3) *Sections 63.6—63.8 (relating to authorized devices for game fish, baitfish and fishbait; exceptions to limitations on devices; and long bows, spears and gigs).* A review of these regulations revealed a need to clarify or make minor corrections to insure that anglers are able to understand them and that the original intent is contained therein. The proposed changes do not alter or change the regulations in any significant manner.

4) *Section 65.24 (relating to miscellaneous special regulations).* Management of Harveys Lake, a 658-acre natural lake in Luzerne County, has been dynamic and at times controversial in the last 10 years or so. In the mid-1980's, stocking was terminated as the lake exceeded the 200-acre maximum for the adult trout program. Fingerlings stocked on a put-grow-and-take basis were used in recognition of suitable thermal and chemical traits characteristic of a two-story lake. Evaluation of fingerling stockings in comparison to larger size trout indicated very poor survival during the first and perhaps most critical year in the lake. Losses over the dam and predation by chain pickerel, perhaps walleye and resident waterfowl were thought to be limiting factors in the use of fingerlings. About the same time, results from use and harvest studies across the State on trout-stocked waters were being used to revise stocking rates for better use of hatchery trout and to provide more opportunity for trout angling. Staff recognized the potential to provide year long opportunity for trout angling on a few select two-story lakes/reservoirs through the stocking of adult trout at a very light stocking rate, particularly when use of fingerlings did not achieve success. Thus, adult trout stocking was phased back into the program for Harveys Lake. Brown trout have been emphasized given their greater potential to achieve a larger size in a two-story lake with alewife forage.

Staff would now like to advance the management of Harveys Lake, bearing in mind several key aspects, including: 1) keeping the lake open as long as possible for warmwater/coolwater species angling; 2) providing more trout fishing opportunity by stocking adult trout prior to opening day, during the spring inseason period, and in the fall; 3) stocking a mix of rainbow and brown trout in recognizing differences in catchability and the idea that some, primarily brown trout, will provide the basis for a trophy fishery; and 4) using special regulations to manage for a trophy fishery without eliminating opportunity for the typical trout angler to catch and keep a few trout from recent stockings. New regulations are envisioned to manage for a trophy fishery while still permitting anglers to enjoy recently stocked trout center on a reduced daily creel, an elevated minimum length limit and a short period of no-fishing. For a program based on the stocking of hatchery trout, a three trout daily creel will be used in an attempt to prolong the fishery. While the Statewide 7-inch length limit will still apply, only one of the three fish daily limit may exceed 18 inches. This is intended to emphasize the trophy potential of trout stocked in Harveys Lake as it takes brown trout on the average two seasons before the 18 inch length is attained. The no-fishing season of April 1 through 8 a.m. of the opening day of regular trout season is like that for waters in the

late winter-extended trout fishing program. It is staff's intent to maximize the number of days Harveys Lake is open for angling but have a very short closure so preseason stocking for the mid-April opener can occur.

The general approach has been aired at several meetings, including meetings of the Luzerne County Federation of Sportsmen and the Harveys Lake Protection Association. Overall reaction has been favorable. The Commission approved the publication of a notice of proposed rulemaking containing these changes.

5) *Section 69.12 (relating to seasons, sizes and creel limits—Lake Erie).* Fisheries Management staff have noted changes in: (1) water quality; (2) aquatic macrophyte (vegetation) density; and (3) fish species composition in Presque Isle Bay. Generally, improvement in water quality has been noted. Aquatic macrophyte density has increased undoubtedly as a consequence of zebra mussel colonization and related increases in water clarity. Changes in fish species composition can be expected to exhibit modes fluctuations as a consequence of environmental factors. However, substantial increases in rough-fish, primarily quillback, have been noted in recent surveys. Recent surveys also have found evidence of natural reproduction of muskellunge.

Increases in Great Lakes muskellunge stocks in Lake Erie in the vicinity of Buffalo, New York, have been documented. Additionally, recent studies by New York biologists suggest that Great Lakes muskellunge utilize very specific spawning habitats and young muskellunge associate themselves with very specific types of aquatic vegetation. cursory survey information suggests that these habitats and aquatic plants are available in Presque Isle Bay. Given adequate habitat (spawning and nursery) and availability of adequate forage fish, staff are anxious to foster recovery of the Great Lakes strain muskellunge by protecting larger and mature size classes. Great Lakes muskellunge exhibit maturity schedules where all or most females attain sexual maturity by age 7 at approximately 39 inches. Given this schedule, staff recommended to the Commission that a minimum size limit of 40 inches be established with a one fish daily creel limit. Restrictive regulations and perhaps supplemental stocking of Great Lakes strain muskellunge from out-of-State sources will be used to restore wild muskellunge populations to Presque Isle Bay with a multiyear evaluation. The Commission approved the publication of a notice of proposed rulemaking consistent with staff's recommendations.

6) *Sections 69.31 and 69.33 (relating to seasons; and use of trap nets).* A notice of proposed rulemaking containing changes to §§ 69.21—69.39 was published at 26 Pa.B. 5982 (December 14, 1996). Staff also directly solicited comments from all licensed commercial fishermen on Lake Erie. Although the Commission did not receive any comments during the public comment period, it received one comment shortly after the comment period ended. The commentator offered many suggestions worthy of consideration. However, the extensive changes that he suggested, while within the scope of the proposed rulemaking, required further staff review and will profit from public input. Accordingly, the Commission adopted the regulations as proposed at its January 1997 meeting and agreed to consider additional changes as proposed rulemaking at its spring 1997 meeting.

During a technical staff review in March 1997, staff considered the commentator's requests. Staff found no compelling reason to regulate the time of year when walleye are harvested commercially; therefore, staff rec-

ommended that when the total allowable harvest is attained, the season is closed. Staff also acknowledged that trap nets fish more easily and efficiently in shallow water thereby improving the expectation that the total allowable catch can be attained. The distance limits recommended by staff are intended to preserve navigation.

As a result of the technical review, staff recommended to the Commission that the regulations be amended. The Commission, at its spring 1997 meeting, approved the publication of a notice of proposed rulemaking consistent with staff's recommendations.

F. *Fiscal Impact*

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendments will impose no new costs on the private sector or the general public.

G. *Paperwork*

The proposed amendments will not increase paperwork and will create no new paperwork requirements.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendments to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days of publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically at "regulations@fish.state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

(Editor's Note: A proposal to amend § 61.7 remains outstanding at 27 Pa.B. 1653 (April 5, 1997). A proposal to amend § 65.24 remains outstanding at 27 Pa.B. 1468 (March 22, 1997).)

Fiscal Note: 48A-68. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS

§ 61.1. Commonwealth inland waters.

* * * * *

(d) Except as otherwise provided in this subpart, the following seasons, sizes and creel limits apply to inland waters of this Commonwealth and the Youghiogheny Reservoir:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
* * * * *	* * * * *	* * * * *	* * * * *
AMERICAN EEL	Open year-round	8 inches	50
* * * * *	* * * * *	* * * * *	* * * * *
SUNFISH, YELLOW PERCH, CRAPPIES, CATFISH, ROCK BASS, SUCKERS, [EELS], CARP, WHITE BASS	Open year-round	No minimum	50 (combined species)
AMERICAN EEL (as baitfish)	Open year-round	6 inches to 8 inches	50
* * * * *	* * * * *	* * * * *	* * * * *

**** Note: Unlawful to take, catch or kill American Shad, **hickory shad and alewife and blueback herring (collectively known as river herring)** in Susquehanna River and its tributaries. See §§ 61.4 and 61.7.

§ 61.2. Delaware River and River Estuary.

* * * * *

(d) The following seasons, sizes and creel limits apply to the Delaware River and to Delaware River tributaries from the mouths of the tributaries upstream to the limit of the tidal influence:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
* * * * *	* * * * *	* * * * *	* * * * *
AMERICAN EEL	Open year-round	8 inches	50
AMERICAN EEL (as baitfish)	Open year-round	6 inches to 8 inches	50
* * * * *	* * * * *	* * * * *	* * * * *

§ 61.4. Conowingo Reservoir.

* * * * *

(d) The following seasons, sizes and creel limits apply to the Conowingo Reservoir, which includes the Susquehanna River from the Maryland State Line upstream to Holtwood Dam:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
*****	*****	*****	*****
AMERICAN and HICKORY SHAD and ALEWIFE and BLUEBACK HERRING (collectively known as river herring)	Closed (No open season)	Closed	0
*****	*****	*****	*****

§ 61.7. Susquehanna River and tributaries.

* * * * *

(d) The following seasons, sizes and creel limits apply to the Susquehanna River and its tributaries including the Juniata River, the West Branch, "North Branch" and other tributaries within the Susquehanna River Basin, except the Conowingo Reservoir—see § 61.4 (relating to Conowingo Reservoir):

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
AMERICAN and HICKORY SHAD and ALEWIFE and BLUEBACK HERRING (collectively known as river herring) *	Closed year-round	Closed	0
*****	*****	*****	*****

*Note: Landlocked alewife taken from inland ponds, lakes or reservoirs that are collected by legal means and measure less than 8 inches in length may be harvested for use as baitfish.

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.6. Authorized devices for game fish, baitfish and fishbait.

* * * * *

(d) It is unlawful to use more than two lines at any time when fishing for game fish, baitfish or both.

§ 63.7. Exceptions to limitations on devices.

The limitations on fishing devices contained in this chapter do not:

* * * * *

(3) Limit the means or devices by which fish may be taken under special permits issued under Chapter 29 of the code (relating to special licenses and permits), **except trout/salmon permits.**

* * * * *

§ 63.8. Long bows, spears and gigs.

* * * * *

(b) *Delaware River.* The following provisions apply to use of long bows, **including compound**, spears and gigs on the Delaware River:

(1) In addition to the species in subsection (a), herring, except shad, and catfish may be taken [**using long bows and arrow, spears or gigs**].

(2) It is unlawful to use long bows and arrow, **including compound**, spears or gigs to take fish within 275 yards of an eel weir.

* * * * *

§ 63.11. Eel chutes.

It is unlawful to operate an eel chute except in compliance with the following terms and conditions:

* * * * *

(13) The Commission hereby determines under section 3311 of the code (relating to sale of certain fish prohibited) that eels caught lawfully under this section may **not** be sold or offered for sale.

(14) **Eels taken with eel chutes shall be subject to the same size and creel limits as eels taken with hook and line.**

§ 63.12. [**Eelpots and fyke nets**] (Reserved).

[(a) **Unlawful.** It is unlawful to take, catch or kill fish by means of eelpots or fyke nets except in compliance with the terms and conditions of this section.

(b) **Location.** Eelpots and fyke nets shall be lawful for use only in the Delaware River between this Commonwealth and the State of New Jersey.

(c) **Seasons.** Eelpots and fyke nets may be used only during the period July 31—May 31 of each year. The use of these devices is prohibited during the month of June.

(d) **Species.** Eelpots and fyke nets may be used only to catch carp, catfish, eel and suckers. It is unlawful to take, catch or kill other species of fish by means of these devices. Other species which may

be caught in these devices shall be immediately returned unharmed to the waters from which they were taken.

(e) *Size.* It is unlawful to use or possess an eelpot or fyke net having an entrance or more than 6 inches in diameter or an outside diameter of more than 30 inches. It is unlawful to use or possess any eelpot or fyke net that includes wings or rods.

(f) The Commission hereby determines, under

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
*****	*****	*****
Luzerne	Harveys Lake	During the period from the opening day of trout season through midnight March 31, the daily creel limit for trout (combined species) is 3, one of which may exceed 18 inches in length. The season is closed from April 1 through 8 a.m. of the opening day of regular trout season. Warmwater/coolwater species — Inland regulations apply.
*****	*****	*****

CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES
Subchapter A. GENERAL PROVISIONS

§ 69.12. Seasons, sizes and creel limits—Lake Erie.

* * * * *

(d) The following seasons, sizes and creel limits apply to Lake Erie and Presque Isle Bay, including peninsula waters:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
MUSKELLUNGE and MUSKELLUNGE HYBRIDS PIKE Northern	Inland seasons apply: See § 61.1	[30] 40 inches 24 inches	[2] (combined species) 2
*****	*****	*****	*****

Subchapter D. COMMERCIAL FISHING, SEASONS AND NETS

§ 69.31. Seasons.

* * * * *

(b) [The commercial fishing season for walleye is the period after September 19 and before December 1 or a lesser period that the Executive Director may determine is appropriate to provide for the protection and management of these fish. Prior to the opening of the commercial walleye season on September 20, the Executive Director will announce the total allowable commercial catch of walleye for that season. The total allowable catch will be equal to the reported commercial catch of walleye in 1980 or a lesser figure as the Executive Director determines appropriate to provide for the protection and management of walleye in the Pennsylvania portion of Lake Erie. The Executive Director will declare the walleye season to be closed when he determines that the total allowable catch may be attained. It is unlawful for a person fishing under a commercial fishing license or for commercial purposes to attempt to catch walleye except during the commercial walleye season established under this

subsection. Walleye accidentally caught out of season shall be returned to the waters from which they were taken regardless of condition. These walleye may not be sold. These walleye shall be reported within 2 business days to the Commission. Commercial operations are not permitted to target walleye as a species for harvest prior to September 20.] The commercial fishing season for walleye is January 1 until the date established by the Executive Director as marking the probable attainment of the total allowable catch for walleye for that year. The total allowable catch for walleye for any year will be determined by the Executive Director and announced annually on or before March 1. After the announcement, the Executive Director may, from time to time, revise the total allowable catch for that year if he determines that conditions so warrant. The Executive Director or a designee will monitor monthly, weekly and daily reports of catch of walleye and will declare the season to be closed on a date the Director determines will prob-

ably mark attainment of the total allowable catch. It is unlawful for a person fishing under a commercial fishing license or with a device subject to licensing under section 2902 of the code (relating to net permits) to take, catch or attempt to catch walleye except during the walleye season established under this subsection. Walleye accidentally caught out of season shall be immediately returned to the waters from which it was taken regardless of its condition and reported within 2 business days to the Commission at the address where commercial catch reports are filed.

<i>Species</i>	<i>Size Limit</i>
Yellow perch (<i>Perca flavescens</i>)	8 1/2 inches
Walleye (<i>Stizostedion vitreum</i>)	15 inches

(d) **Limitations on use.** [From March 1 through November 30, no part of a trap net may be set within 1.5 miles of the Lake Erie shoreline. In addition, after June 1 and before November 30, no part of a trap net may be set closer to shore than the line from a point on the Ohio/Pennsylvania border 42°:02.5"N, 80°:31.2"W; thence 063°T to 42°:13.0"N, 80°:00.0"W; thence 058°T to 42°:19.1"N, 70°:45.7"W.] From January 1 through June 15, no part of a trap net may be set within 0.5 miles of the Lake Erie shoreline, except between longitudes 80°00' and 80°10' where no part of a trap net may be set within 1.5 miles of the Lake Erie shoreline. From June 16 through December 31, no part of a trap net may be set within 1.5 miles of the Lake Erie shoreline.

[Pa.B. Doc. No. 97-1396. Filed for public inspection August 29, 1997, 9:00 a.m.]

**[58 PA. CODE CHS. 63, 65 AND 69]
Fishing**

The Fish and Boat Commission (Commission) proposes to amend Chapters 63, 65 and 69. The Commission is publishing these amendments as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code (code)). The proposed amendments deal with fishing.

A. Effective Date

These proposed amendments will, if approved on final rulemaking, go into effect on January 1, 1998, or upon publication of an order adopting the final-form regulations, whichever occurs later.

* * * * *

§ 69.33. Use of trap nets.

* * * * *

(b) *Species.* A commercial trap net licensee may not possess or sell a fish except in compliance with the following size limits and seasons. The following size limits apply to commercial trap net licensees except that 5% of each licensee's daily catch by [weight] number per species may be undersized fish that may be lawfully sold:

<i>Season</i>
[March 1 until total allowable catch is taken] No closed season until the total allowable catch is taken
[September 20 until December 1 or attainment of total allowable catch, whichever comes first] No closed season until the total allowable catch is taken

* * * * *

B. Contact Person

For further information on the proposed changes, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

C. Statutory Authority

These proposed amendments are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. Purpose and Background

The proposed amendments are designed to update, modify and improve Commission regulations pertaining to fishing. The specific purpose of the various amendments is described in more detail under the summary of proposal.

E. Summary of Proposal

1) *Sections 63.8 and 69.12 (relating to long bows, spears and gigs; and seasons, sizes and creel limits—Lake Erie).* The Commission has received requests from individuals who scuba dive in Lake Erie to allow the taking of burbot through the use of spears or gigs. The Bureau of Fisheries and Bureau of Law Enforcement personnel in the Northwest Regional Office and Erie County have reviewed the requests, and no one has any particular objections.

The proposed amendments would permit the taking of burbot from Lake Erie at a depth of at least 60 feet or more using nonmechanical spears or gigs. The proposed season would be from June 1 to September 30 annually, with a daily creel limit of five fish per day. The possession of mechanically propelled spearguns would be illegal. Divers possessing spears/gigs and taking or attempting to take burbot would be required to have a valid fishing license.

The Executive Director, acting on the recommendation of the Bureau of Fisheries and Law Enforcement, has exercised his authority to make temporary changes to fishing regulations so that the proposed change will be in effect on a trial basis during the period July 12—September 30, 1997. The Commission approved the publication of a notice of proposed rulemaking containing these changes.

2) *Section 65.24 (relating to miscellaneous special regulations)*. The Allegheny River tailwater located in Warren County provides a popular multispecies fishery for anglers. As a result of the coldwater release from the Allegheny Reservoir, the 8.75 mile section located immediately downstream from the outflow of the reservoir is managed to provide trout angling opportunities through the annual planting of fingerling trout. Under current regulations, the 0.75 mile segment immediately downstream of the reservoir is managed under Miscellaneous Waters Special Regulations with no closed season on trout and a daily creel limit of three trout per day. The remaining 8 miles of trout habitat is managed under Statewide regulations.

The provision of a coldwater release and the increased productivity of this water combine to offer a unique opportunity for management designed to further enhance the year-round trout fishery. Therefore, staff proposed that the regulations for trout be revised on the Allegheny River tailwater. Specifically, staff proposed that the regulations provide for year-round angling with no tackle restriction under a 14 inch minimum size limit and two trout daily creel limit during the regular trout season (8 a.m. opening day through midnight Labor Day), with no harvest permitted during the remainder of the season. This proposal is supported by the Cornplanter Chapter of Trout Unlimited. The Commission approved the publication of a notice of proposed rulemaking consistent with the staff's recommendation.

F. *Paperwork*

The proposed amendments will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendments will impose no new costs on the private sector or the general public.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendments to the Executive Director, Pennsylvania Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically at "regulations@fish.state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of

electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

(Editor's Note: A proposal to amend § 65.24 remains outstanding at 27 Pa.B. 1468 (March 22, 1997)).

Fiscal Note: 48A-71. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.8. Long bows, spears and gigs.

* * * * *

(c) [**Restrictions.** Spears or gigs may not be mechanically propelled, may not have more than five barbed points, and may not be used in approved trout waters.] *Lake Erie.* Scuba divers, who possess a valid fishing license and Lake Erie stamp, shall be permitted to take burbot at a depth of at least 60 feet.

(d) [**Persons with disabilities.** The Executive Director, or a designee, may issue permits to persons exempt from the fishing license requirement under section 2709(b) of the code (relating to exemptions from license requirements)—except a person who is blind—and a person who is permanently deprived of the use of a leg or an arm or both arms allowing them to use crossbows or mechanically propelled spears and gigs subject to limitations and conditions as set forth in the permit. Persons who wish to apply for a permit under this section may apply on forms provided by: Director, Bureau of Law Enforcement, Pennsylvania Fish and Boat Commission, Post Office Box 67000, Harrisburg, Pennsylvania 17106-7000.] **Restrictions.** Spears or gigs may not be mechanically propelled, may not have more than five barbed points, and may not be used in approved trout waters.

(e) **Persons with disabilities.** The Executive Director, or a designee, any issue permits to persons exempt from the fishing license requirement under section 2709(b) of the code (relating to exemptions from license requirements) except a person who is blind—and a person who is permanently deprived of the use of a leg or an arm or both arms allowing them to use crossbows or mechanically propelled spears and gigs subject to limitations and conditions as set forth in the permit. Persons who wish to apply for a permit under this section may apply on forms provided by: Director, Bureau of Law Enforcement, Pennsylvania Fish and Boat Commission, Post Office Box 67000, Harrisburg, Pennsylvania 17106-7000.

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.24. Miscellaneous Special Regulations.

The following waters are subject to the following miscellaneous special regulations.

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
*****	*****	*****
Warren	Allegheny River—[.75 mile below Kinzua Dam] 8.75 miles downstream from the outflow of the Allegheny Reservoir to the confluence with Conewago Creek	[No closed season on trout. Daily limit three.] Trout—minimum size limit—14 inches; daily creel limit—2 trout per day (combined species) from 8 a.m. on the opening day of regular trout season through midnight Labor Day, except during the period from the day after Labor Day to the opening day of regular trout season of the following year, when no trout may be killed or had in possession. Other inland seasons, sizes and creel limits apply.
*****	*****	*****

CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES

§ 69.12. Seasons, sizes and creel limits—Lake Erie.

* * * * *

(d) The following seasons, sizes and creel limits apply to Lake Erie and Presque Isle Bay, including peninsula waters:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
*****	*****	*****	*****
BURBOT (when taken by scuba divers by use of nonmechanical spears or gigs at a depth of at least 60 feet)	June 1 to September 30	None	5
*****	*****	*****	*****

[Pa.B. Doc. No. 97-1397. Filed for public inspection August 29, 1997, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CHS. 141 AND 143]

Small Game; Mandated Revocation of Hunting and Trapping License and Rights

To effectively manage the wildlife resources of this Commonwealth, the Commission (Commission) at its June 24, 1997, meeting, proposed the following amendments to read as set forth in Annex A:

Amend § 141.22 (relating to small game) by changing the shot size restriction for taking furbearers.

Amend Chapter 143, Subchapter G (relating to mandated revocation of hunting and trapping license and right) by adding §§ 143.124—143.127, to require a person whose hunting or furtaking privileges have been denied under to section 2522(c)(1)—(3) of the code (relating to shooting at or causing injury to human beings) to show proof of taking a vision examination and complete a hunter education course before his license can be restored.

These amendments will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposal of these amendments is 30 Pa.C.S. (relating to Game and Wildlife Code)(code).

These proposals were made public at the June 24, 1997, meeting of the Commission, and comments on these proposals may be sent to the Executive Director of the Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797 until September 19, 1997.

Proposed amendment to § 141.22

1. Introduction

To effectively manage the wildlife resources of the Commonwealth, the Commission, at its June 24, 1997, meeting proposed changing § 141.22 to increase the size of shot that may lawfully be used to take furbearers to size BB. This change is proposed under sections 322(c)(5) and 2102 of the code (relating to specific powers and duties; and regulations).

2. Purpose and Authority

Representatives of the furtaking community initiated the proposed change because of their belief that the smaller shot currently required does not have adequate shocking and penetrating power to humanely harvest furbearers. Commission staff review of the recommendation produced agreement.

Section 322(c)(5) of the code authorizes the Commission to fix the type and number of devices which may be used to take game or wildlife. Section 2102 of the code directs the Commission to promulgate regulations relating to the

types of devices allowed for hunting or furtaking. These provisions provide the statutory basis for the proposed change.

3. Regulatory Requirements

The proposed change would relax current regulatory requirements.

4. Persons Affected

Individuals who wish to engage in furtaking would be affected.

5. Cost and Paperwork Requirements

The proposed change would not result in any additional cost either to the Commission or to hunters.

Proposed amendment to Chapter 143, Subchapter G

1. Introduction

On December 19, 1996, the Governor signed Act 184 of 1996, which amended section 2522 of the code (relating to shooting at or causing injury to human beings). Two major changes introduced by Act 184 involve the imposition of additional prerequisites to receiving a hunting or furtaking license after suspension for having shot at, injured or killed a human being. One of these prerequisites is providing evidence to the Commission, of having successfully completed a hunter/trapper education course. The other is providing evidence of having taken a vision examination administered by a licensed ophthalmologist or optometrist. The proposed additions to Chapter 143, Subchapter G provide standards for the vision examination and require proof of completion of a hunter/trapper education course. These provisions are adopted under authority contained in section 2721 of the code (relating to license issuance supervision) and section 2102 of the code.

2. Purpose and Authority

As indicated in the Introduction, recently adopted Act 184 requires successful completion of a hunter/trapper education course and a vision examination before individuals who have had their hunting and furtaking license suspended by reason of having shot at, injured or killed a human being can have their privileges reinstated. To implement these regulations, the Commission, at its June 24, 1997, meeting proposed adding §§ 143.124—143.127, to Subchapter G which would prescribe standards for those vision examinations and implement the requirements.

Section 2721 of the code provides that the issuance of all hunting and furtaking licenses "... shall be in accordance with regulations of the Commission." Section 2102 of the code authorizes the Commission to promulgate regulations relating to hunting and furtaking.

3. Regulatory Requirements

Under the proposed sections, a person whose hunting and furtaking privileges have been denied as a result of having shot at, injured or killed a human being shall provide to the Commission, on forms provided, proof of meeting minimum visual acuity standards and evidence of having successfully completed a Commission-sponsored hunter/trapper education course.

4. Persons Affected

The only persons that would be affected by the proposed sections are those who have been denied hunting and furtaking privileges as the result of having shot at, injured or killed a human being.

5. Cost and Paperwork Requirements

Those persons wishing to have their hunting and furtaking privileges restored would need to bear the costs of taking a the Commission-sponsored hunter/trapper education course, having a visual examination by a licensed ophthalmologist or optometrist and submitting simple forms evidencing satisfaction of those requirements. Because of the relatively small number of persons involved, it is anticipated that the cost to the Commission will be minimal.

Effective Dates

The proposed changes will be effective on final publication in the Pennsylvania Bulletin and remain in effect until changed by the Commission.

Contact Person

For further information on the proposed changes the contact person is James R. Fagan, Director, Bureau of Law Enforcement, (717) 783-6526, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

DONALD C. MADL, Executive Director

Fiscal Note: 48-100. No fiscal; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter A. GENERAL

§ 141.22. Small game.

(a) Unlawful activities. It is unlawful to:

(1) Take small game, [furbearers,] protected mammals or protected birds using shot larger than #4 lead, #4 Bismuth/tin or #2 steel.

(2) Take furbearers using shot larger than size BB lead, size BB Bismuth/tin or size BB steel.

[(2)] (3)***

[(3)] (4)***

[(4)] (5)***

[(5)] (6)***

[(6)] (7)***

* * * * *

CHAPTER 143. HUNTING AND FURTAKER LICENSES

Subchapter G. MANDATED REVOCATION OF HUNTING AND [TRAPPING] FURTAKING LICENSE AND RIGHTS

§ 143.124. Restoration of hunting and furtaking privileges of offenders in hunting related shooting incidents.

A person whose hunting and furtaking privileges have been denied under section 2522(c)(1)—(2) and (3) of the act (relating to shooting at or causing injury to human beings), shall, prior to having hunting and furtaking privileges restored, comply with the following:

(1) Provide to the Commission on a form provided, evidence that the offender has met the following minimum visual acuity standards:

(i) A combined vision of 20/40 or better corrected or 20/40 or better corrected vision in the sighting eye.

(ii) In the case of a single sighted offender, mono vision of 20/40 or better corrected.

(iii) A plotted visual field of at least 120° along the horizontal meridian, excepting normal blind spots.

(iv) An affirmation by a licensed optometrist or ophthalmologist that the offender is visually safe to sport hunt.

(2) Provide to the Commission on a form provided, evidence that the offender has successfully completed a Commission sponsored hunter/trapper education course.

§ 143.125. Compliance with Commission order.

When the Commission requires a person to wear corrective lenses under section 2522(g) of the act (relating to shooting at or causing injury to human beings), that person shall at all times while hunting or furtaking wear corrective lenses.

§ 143.126. Unlawful acts.

It is unlawful for a person whose hunting and furtaking privileges have been denied under section 2522(c) of the act (relating to shooting at or causing injury to human beings), to hunt or take fur or to purchase or attempt to purchase a hunting or furtaking license prior to complying with this subchapter.

§ 143.127. Penalties.

A person who violates this subchapter shall be subject to the penalties as provided in the act.

[Pa.B. Doc. No. 97-1398. Filed for public inspection August 29, 1997, 9:00 a.m.]

MEDICAL PROFESSIONAL LIABILITY CATASTROPHE LOSS FUND

[31 PA. CODE CHS. 242 AND 246]

Medical Professional Liability Catastrophe Loss Fund and Mediation

The Medical Professional Liability Catastrophe Loss Fund (Fund), under the authority of the Health Care Services Malpractice Act (act) (40 P. S. §§ 1301.101—1301.1006) proposes to adopt amendments to read as set forth in Annex A.

Background:

On November 26, 1996, Governor Tom Ridge signed into law the act of November 26, 1996 (P. L. 776, No. 135) (Act 135). This legislation amends the act and constitutes the first substantive changes to the act in over 14 years. The Fund was first established under the act, and its purpose is to provide professional liability insurance to Pennsylvania's health care providers, as defined in the

act, at a reasonable cost and ensure just compensation to the victims of alleged professional negligence. See section 103 of the act (40 P. S. § 1301.103). The recent amendments to the act alter the professional liability insurance marketplace, the Fund's role in the marketplace and certain of the procedures and processes governing professional liability malpractice litigation in this Commonwealth.

The purpose of these proposed amendments is to provide uniform procedures and forms to enable insurance companies and self-insurers to comply with the liability insurance provisions of the act, to promulgate guidelines and requirements governing the purchase of insurance by health care providers as mandated by the act and to issue regulations necessary to properly effectuate the administrative and financial operations of the Fund. In addition, the proposed rulemaking embodied in Chapter 246 (relating to medication) implements section 702(i) of the act (40 P. S. § 1301.702(i)) by providing uniform procedures to be used in conducting mediation where primary medical malpractice insurance carriers and self-insureds disagree in a case involving the Fund. The mediation provisions create a system whereby mediation can be used to resolve differences, rather than litigation.

Summary:

General Amended Provisions

Chapter 242

Definitions (§ 242.2) This section deletes definitions that refer to the prior method of calculating the Fund surcharge. Added to this section are definitions of the "prevailing primary premium," which is now the basis upon which the Fund surcharge is calculated, under the act and the definition of the term "interest."

Notice and amount of surcharge (§ 242.3) The proposed amendments to this section clarify the notice requirements regarding any change in the amount of surcharge and the applicability of the change.

Computation of surcharge (§ 242.4) The proposed amendment to this section mandates that basic insurance carriers shall obtain statements from health care providers as to their addresses and specialties, and that the primary insurer must accurately compute the insurance premium and Fund surcharge. The amendments to this section are necessitated by the General Assembly's adoption of the prevailing primary premium to calculate Fund surcharge.

Adjustment of surcharge (§ 242.5) The proposed amendment to this section provides that primary insurers must submit the Fund surcharge within 20 days after the date on which the policy is written or renewed, or the effective date of the policy. Late remittance by the insurer or self-insurance plan shall result in the payment of interest by the party. Also, a refund check will not be issued to a carrier or health care provider unless unusual circumstances arise which indicate that a refund shall be made.

Reporting forms and procedures (§ 242.6) The proposed amendment to this section attempts to clarify the procedures and forms used by insurers and self-insured plans when reporting to the Fund. Specifically, the original Form 5116 or Declarations Page is to be mailed to the health care provider within 20 days of the effective date of the policy or self-insurance. A Declarations Page, indicating acknowledgment of insurance and surcharge paid shall be submitted to the Fund at its Harrisburg,

office, and shall contain all of the information requested on Form 5116. The Form 2116 Remittance Advice, summarizing all surcharges collected, payable and refundable, accompanied by a check, shall be received in the Director's Office within 20 days from the effective date of the policy. In amended subsection (a)(3), there are additional requirements regarding information that must be contained on the Form 2116 in order to assist the Fund in verifying coverage.

Discontinuation of basic coverage insurance and notices of noncompliance (§ 242.7) The proposed amendments to this section contain requirements applicable in the event the health care provider changes the term of professional liability coverage. In the circumstances, the surcharge shall be calculated on an annual basis and shall reflect the surcharge percentages in effect for all calendar years over which the policy is in effect. Additional payments necessitated by the change shall be remitted within 20 days of the effective date of the annual surcharge. Cancellations are to be reported on Form 2116 by indicating the unused portion of the policy. These dates, the return premium and the return surcharge shall be recorded in parenthesis.

Overpayments, credits and duplicate payments (§ 242.9) The proposed amendment to this section states that in the event of overpayments made by insureds, agents or insurers, the overpayments shall be recovered by offsets against amounts due from companies to the Fund. Also, the amendment mandates that refunds shall be paid directly to the health care provider by the agent or insurer, and upon showing of proof of payment, the Fund will then issue the appropriate credit to the agent or insurer.

Self-insurers (§ 242.10) The proposed amendment to this section makes clear that this chapter applies to approved and accepted self-insurance plans and self-insurers, and that they shall pay the surcharge to the Fund, accompanied by reporting forms required under § 242.6, within 20 days of the effective date of the self-insurance plan and on an annual basis thereafter within 20 days of the inception of the annual self-insurance.

Compliance (§ 242.17) The proposed amendment to this section provides that the health care provider who fails to pay the surcharge or emergency surcharge within the prescribed time limits shall be responsible for the payment of interest, and will not be covered by the Fund in the event of loss for the period of time in which any delinquencies exist. Also, late remittances by insurance carriers of surcharges collected from health care providers and late remittance of surcharges due from self-insurance providers shall include interest.

Effective date (§ 242.18) The proposed amendment to this section makes clear that the effective date of Chapter 242 as well as the commencement date for using the prescribed forms is November 26, 1996.

Corrections (§ 242.21) This new section provides that any corrections to previously submitted Form 216 shall be clearly marked "Correction." Any Correction Form 216 shall be separate from other reporting forms and shall identify the original Form 216 being corrected, and shall contain only the health care providers erroneously submitted. The insurer or the self-insurer shall respond with a Correction Form 216 within 20 days after being notified of an erroneous submission.

Chapter 246. Mediation

Purpose (§ 246.1) This section identifies the purpose of Chapter 246 pertaining to mediation of disputes between insurers, self-insurers or the Fund in medical malpractice actions.

Definitions (§ 246.2) This proposed section defines terms used in Chapter 246 of the regulations.

Agreement of parties (§ 246.3) This proposed section provides that when multiple insurers or the Fund, or both, disagree on a case, the Fund may provide for a mediator upon the request of any party, as defined in § 246.2. Whenever any of the parties agree to mediation, chapter 246 applies.

Administration and delegation of duties (§ 246.4) This proposed section provides that upon the request of a party to a case within Fund coverage limits, the Fund may provide for a mediator. Special mediation sessions may be held to determine each defendant's proportionate share of liability. Selected mediators shall immediately disclose any circumstances creating a presumption of bias or interest in the outcome of the proceedings, or any circumstances that may prevent prompt meeting with the parties. If a party thereafter objects to a mediator on the basis of identifiable bias, interest or unavailability, a new mediator will be selected who is agreeable to all participants.

Binding mediation (§ 246.5) This proposed section provides that if all parties agree to binding mediation, all parties shall be bound by the conclusions of the mediator. If parties cannot agree to binding mediation, they should utilize the assistance of an impartial mediator in a good faith attempt to work toward a mutually satisfactory solution.

Date, time and location of the mediation proceedings (§ 246.6) This proposed section provides that a mediator will immediately work with the parties to establish a date and time of the mediation session and that notice of a mediation session must be provided to all parties at least 3 working days in advance of the session. At the discretion of the mediator, he may meet with or request information from one or more parties.

Mediation session (§ 246.7) This proposed section states that the manner in which mediation sessions shall be conducted must expeditiously permit full production of all relevant information, including written materials and a description of the testimony of each witness, if necessary. Materials or information for complex cases, as designated by the Fund, may be requested by the mediator in advance of a mediation session. Documents provided to the mediator shall also be provided to every other party to the mediation. Mediators will conduct orderly settlement negotiations at mediation sessions, considering the facts, issues and arguments of the parties, and parties will be represented by persons with authority to resolve or settle, or both, disputes.

Mediation by document submission (§ 246.8) This proposed section permits parties to agree that a dispute will be decided on the basis of document submission, and specifies the procedures to be followed in the circumstances.

Conclusions of the mediator (§ 246.9) The mediator shall issue and distribute his decision no later than 2 business days from the date of closing of the final mediation session or complete submission of documents. The decision shall specify the remedy, if any, shall be in

writing and signed by the mediator, and there will be no formal opinion unless all parties agree.

Expenses (§ 246.10) This proposed section provides that witness expenses shall be paid by the party producing the witness and that all of their expenses of the mediation, and including mediator expenses and the expenses of any witness and the cost of any proof produced at the direct request of the mediator, shall be borne equally by all parties, unless they agree otherwise.

Confidentiality (§ 246.11) This proposed section makes clear that statements made and items of proof admitted at mediation sessions are inadmissible in any litigation or arbitration, to the extent allowed by law. Also, this section provides that the parties agree not to subpoena or otherwise require the mediator to testify or produce records, notes or work product in any future proceedings. In addition, no record will be made of the mediation sessions. The conclusion of the mediator in binding mediation shall have the force and effect of a settlement.

Effective Date

The effective date of Chapter 246 is proposed to be November 26, 1996.

Affected Organizations and Individuals

These proposed amendments will have a positive effect on all basic coverage insurers, self-insurers, plaintiffs and all defendants in medical malpractice litigation involving the Fund in that the proposed amendments will provide clarification of uniform procedures and forms to enable insurance companies and self-insurers to comply with the liability insurance provisions of the act. The proposed amendments will properly effectuate the administrative and financial operations of the Fund and provisions will be in place to provide uniform procedures to be used in conducting mediation when there is disagreement on a case involving the Fund.

Accomplishments/Benefits

The proposed amendments in Chapter 242 and the proposed regulations in Chapter 246 will ensure dissemination of proper administrative procedures and requirements and a means by which disagreements on medical malpractice litigation involving the Fund can be resolved without resort to costly litigation.

Fiscal Impact

Public Sector

With respect to Chapter 242, the proposed amendments require more timely remittance of Fund surcharges by insurers, and also provide for payment of interest to the Fund on overdue amounts. Chapter 246 will provide fiscal benefit to the Commonwealth in that mediation provides a means by which to avoid costly litigation.

Private Sector

There will be no added cost to basic coverage insurers, self-insurers, plaintiffs and defendants in medical malpractice litigation involving the Fund. In addition, there will be no cost to the general public.

Paperwork Requirements

The proposed amendments in Chapter 242 provide for no additional paperwork requirements, other than minor changes in the collection and reporting of certain relevant data and its inclusion on already existing forms that are submitted to the Fund.

Effective Date

The proposed amendments will become effective retroactively to November 26, 1996, after they are published in the *Pennsylvania Bulletin* in final form.

Sunset Date

There is no sunset date for these proposed amendments.

Public Hearing

There are currently no plans to hold public hearings.

Public Comment

Interested persons are invited to submit suggestions or objections regarding the proposed amendments to Arthur F. McNulty, Chief Counsel, Pennsylvania Medical Professional Liability Catastrophe Loss Fund, 10th Floor, Suite 1000, 30 North Third Street, P. O. Box 12030, Harrisburg, PA 17108, (717) 783-3770, within 30 days of the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments received within 30-calendar days will be reviewed and considered in the preparation of the final-form regulations. Comments received after the 30-day comment period will be considered for subsequent revisions of these proposed amendments.

Regulatory Review

Under section 5(a) of the Regulatory Review Act, (71 P. S. § 745.5(a)), the Board submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Welfare and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Board within 10 days of the close of the Committees' comment period. 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, prior to final publication of the amendments, by the Board, the General Assembly and the Governor of objections raised.

JOHN H. REED,
Director

Fiscal Note: 20-1. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART IX. MEDICAL CATASTROPHE LOSS FUND

CHAPTER 242. MEDICAL PROFESSIONAL LIABILITY CATASTROPHE LOSS FUND

§ 242.2. Definitions.

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

* * * * *

[Cost to each health provider—The gross premium, including experience and schedule rating for basic coverage professional liability insurance.]

* * * * *

[*Gross premium*—The entire premium charged the insured, including, but not limited to, binder charges and policy fees, as is generated to secure an occurrence-based policy. In the case of a claims made policy, the gross premium shall be computed as the sum of all the premiums charged for the claims made policy including the reporting endorsement (that is, tail coverage) or prior acts coverage or its substantial equivalent. Payment of the surcharge shall be made at the time that the respective premium is collected subject to the limitation of § 242.6(a)(3) (relating to reporting forms and procedures).]

* * * * *

Interest—The rate prescribed in section 506 of The Fiscal Code (72 P. S. § 506).

Prevailing primary premium—The schedule of rates approved by the Insurance Commissioner and in use by the Joint Underwriting Association as of January 1, 1996.

§ 242.3. Notice of and amount of surcharge.

(a) The Director, with the prior approval of the Insurance Commissioner, will publish, prior to December 1, in the *Pennsylvania Bulletin*, notice of [a] any change in the amount of surcharge applicable to health care providers and collectible during the following calendar year.

(b) The effective date of [a] any change in the amount of surcharge shall be January 1 and shall be applicable to all policies of basic coverage insurance or plans of self-insurance [having new or renewal dates occurring on or after January 1].

§ 242.4. Computation of surcharge [when professional liability insurance premium part of a composite rate].

(a) The basic insurance carrier shall obtain from the health care provider a statement as to the addresses and specialty of the health care provider, and shall provide a copy of the statement to the Fund in line with the reporting requirements in this chapter.

[(a) Where] (b) When the professional liability insurance premium of an insured is included in a composite rate or with other insurance coverage, it shall be the responsibility of the insurer to accurately compute the portion attributable to the professional liability insurance [, in order to properly determine the surcharge].

[(b)] (c) ***

§ 242.5. Adjustment of surcharge.

(a) Calculation of the surcharge shall be made based on the first policy written or renewed after January 1 of the calendar year. The surcharge amount shall be submitted to the Fund within [60] 20 days of the effective date required by § 242.6 (relating to reporting forms and procedures). [A] Any subsequent adjustment to the premium for the basic insurance coverage shall be reported to the Fund by the basic insurance carrier and the surcharge shall be adjusted accordingly.

(b) In the event of an increase or decrease in the surcharge owed to the [fund] Fund, the carrier shall submit proper evidence of the modification of the premium for the basic insurance coverage policy and shall indicate on the Form 216 a credit or debit to be applied to

the account of the carrier. A refund check may not be issued to a carrier or health care provider unless unusual circumstances arise which indicate that such a refund [may] shall be made.

(c) Late remittance by the insurer or a self-insurance plan shall result in the payment of interest by the insurer or self-insurance plan, and interest shall be computed under section 806 of The Fiscal Code (72 P. S. § 806).

§ 242.6. Reporting forms and procedures.

(a) The following forms have been promulgated or approved for use under this chapter:

(1) *Form 5116—Acknowledgment of Insurance and Surcharge Paid*. This form is intended as the acknowledgment from approved self-insured health care providers that they are self-insured in compliance with the act and have paid the Fund surcharge. Basic coverage insurance carriers may also use this form in lieu of the Declarations Page to acknowledge that the health care provider has purchased basic coverage professional liability insurance and paid the Fund surcharge, if prior approval for its continued use has been obtained from the Fund's legal counsel in accordance with paragraph (2)(iii).

(i) The original of the form or the Declarations Page—whichever is applicable—is to be mailed to the health care provider [; and a copy is to be submitted to the Fund, accompanied by the surcharge payment and Form 216,] within [60] 20 days of the effective date of the policy or self-insurance period.

(ii) Licensed physicians and podiatrists covered under policies issued to hospitals, nursing homes and primary health centers shall also be provided with a complete acknowledgment form. [Individual copies of the form or the Declarations Page—whichever is applicable—accompanied by the surcharge payments for each of these health care providers and Form 216 are to be submitted to the Fund attached to the acknowledgment form applicable to the hospital, nursing home or primary health center.]

(2) *Declarations Page—Acknowledgment of Insurance and Surcharge Paid*. A copy of this form, which forms a part of the medical malpractice policy issued by a commercial carrier, shall be submitted to the Fund in lieu of and in the same manner as Form 5116 as explained in paragraph (1).

(i) The Declarations Page shall display [all of] the following:

(A) [Information] All information requested on the Form 5116, explained in paragraph (1).

* * * * *

(iii) The Declarations Page shall be submitted to the legal counsel of the Director for approval prior to use. After July 1, 1980, no form will be accepted from a commercial carrier unless circumstances preclude the use of the Declarations Page, and prior approval for the continued use of the Form 5116 has been obtained from the legal counsel of the Director. Requests for approval shall be submitted to: Legal Counsel; [Post Office] P. O. Box 12030; [221 North Second Street] 30 North Third Street; Harrisburg, Pennsylvania 17108.

(3) *Form 216—Remittance Advice*. This form is to be used by basic professional liability insurance carriers and approved self-insurers for summarizing surcharges col-

lected, payable and refundable. The form, accompanied by a check, [**should**] **shall** be received in the Director's Office within [**60**] **20** days from the effective date of the policy. On installment policies, the surcharge applicable to the full annual policy period shall be collected and remitted to the Director at the inception of the policy. **This form shall be dated and include the underwriting insurance company's or self-insurer's name, the name of an authorized contact person, and telephone number of authorized contact person, as a heading. This form shall also include the most current Pennsylvania license number, the name and address of health care provider, coverage dates, policy type (if claims made, retroactive date shall be provided), policy number, specialty code, geographic territory, basic coverage limits, gross premium, surcharge and slot positions when applicable and other information as may be required by the Director.**

* * * * *

§ 242.7. Discontinuation of basic coverage insurance and notices of noncompliance.

* * * * *

(g) When a health care provider changes the term of his professional liability coverage, the surcharge shall be calculated on an annual base and shall reflect the surcharge percentages in effect for all the calendar years over which the policy is in effect. An additional payment necessitated by this subsection shall be remitted within 20 days of the effective date of the annual surcharge.

(h) Cancellations shall be reported on Form 216 by indicating the unused portion of the policy. These dates, the return premium and the return surcharge shall be recorded in parentheses.

§ 242.9. Overpayments, credits[,] and duplicate payments.

(a) When overpayments are made by insureds, agents or insurers, they [**may**] **shall** be recovered by offsets against amounts due from companies to the Fund.

(b) The offsets shall be recorded on Form 216 with minus signs or brackets to distinguish them from debits and shall be accompanied by evidence in support of refunds resulting from premium reductions under § 242.5(a)(1) (relating to adjustment of surcharge). Surcharge credits of amounts less than \$10 may be waived in accordance with the insurer's policy relative to small return premiums. **Refunds shall be paid directly to the health care provider by the agent or insurer, and upon a showing of proof of payment, the Fund will issue the appropriate credit to the agent or insurer.**

§ 242.10. Self-insurers.

* * * * *

(b) Self-insurers shall pay the surcharge to the Fund accompanied by the reporting forms required under § 242.6 (relating to reporting forms and procedures) within [**60**] **20** days of the effective date of the self-insurance plan and on an annual basis thereafter within [**60**] **20** days of the inception of the annual self-insurance period.

§ 242.17. Compliance.

* * * * *

(b) A health care provider failing to pay the surcharge or emergency surcharge [**within the time limits**] prescribed will not be covered by the Fund in the event of loss.

(c) **A health care provider failing to pay the surcharge or emergency surcharge within the time limits prescribed shall be responsible for the payment of interest, and will not be covered by the Fund in the event of loss for the period of time in which a delinquency exists.**

[(c)] (d) ***

[(d)] (e) ***

* * * * *

(f) **Late remittance by carriers of surcharges collected from health care providers and late remittance of surcharges due from self-insurance providers shall include interest at the rate prescribed in section 506 of The Fiscal Code (72 P. S. § 506.)**

§ 242.18. Effective date.

The effective date of this chapter as well as the commencement date for using the prescribed forms [**shall be November 1, 1976**] is **November 26, 1996.**

§ 242.21. Corrections.

(a) **Corrections to a previously submitted Form 216 shall be clearly marked "Correction." Correction Form 216 shall be separate from other reporting forms and shall identify the original Form 216 being corrected. This form shall contain only the health care providers erroneously submitted.**

(b) **The insurer or self-insurer shall respond with a Correction Form 216 within 20 days after being notified of erroneous submission.**

(Editor's Note: The following text is new. It has been printed in regular type to enhance readability.)

CHAPTER 246. MEDIATION

Sec.	
246.1.	Purpose.
246.2.	Definitions.
246.3.	Agreement of parties.
246.4.	Administration and delegation of duties.
246.5.	Binding mediation.
246.6.	Date, time and location of mediation proceedings.
246.7.	Mediation sessions.
246.8.	Mediation by document submission.
246.9.	Conclusions of the mediator.
246.10.	Expenses.
246.11.	Confidentiality.

§ 246.1. Purpose.

This chapter provides uniform procedures to be used in conducting mediation when primary medical malpractice insurance carriers disagree on a case involving the Fund.

§ 246.2. Definitions.

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

Act—The Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006).

Fund—The Medical Professional Liability Catastrophe Loss Fund established by section 701 of the act (40 P. S. § 1301.701).

Insurer—The insurance company or self-insurer providing basic coverage insurance.

Mediation—Meetings between insurers and the Fund, their representatives and a mediator to explore issues, needs and settlement options. Upon the consent of all parties to a mediation proceeding, the mediation shall be binding, and the parties shall be bound by the conclusions of the mediator. Mediation proceedings are confidential and should not be considered public information subject to disclosure under the act of June 21, 1957 (P. L. 390, No. 212), known as the Right-To-Know Law (65 P. S. §§ 66.1—66.4) and the Sunshine Act (65 P. S. §§ 271—286).

Mediator—An individual having specific training or experience in one or more of the following:

- (i) Mediation.
- (ii) Medical malpractice litigation.
- (iii) Insurance law.

Party—The Fund, all basic coverage insurers, self-insurers, plaintiffs and all defendants in medical malpractice litigation involving the Fund.

§ 246.3. Agreement of parties.

Upon the request of a party, the Fund may provide for a mediator in cases where multiple insurers or the Fund, or both, disagree on a case. The procedures in this chapter apply when any of the parties have agreed to mediation.

§ 246.4. Administration and delegation of duties.

Upon the request of a party to a case within the Fund coverage limits, the Fund may provide for a mediator. An individual may not serve as a mediator in a dispute in which that person has a financial or personal interest in the case at issue or the result of the mediation. Immediately upon selection, the selected mediator shall disclose circumstances likely to create a presumption of bias or interest in the outcome of the proceedings or circumstances that may prevent a prompt meeting with the parties. If a party thereafter objects to the mediator on the basis of identifiable bias, interest or unavailability, a new mediator will be selected who is agreeable to all participants in the mediation.

§ 246.5. Binding mediation.

If all parties agree that mediation shall be binding, the parties shall be bound by the conclusions of the mediator. As provided by the act, the administration of the mediation and proceedings conducted thereafter shall be confidential and will not be considered public information subject to the Sunshine Act (65 P. S. §§ 271—286). Documents produced for and relating to the mediation shall be considered part of the Fund's claim file, shall be confidential and will not be considered public information subject to disclosure under the act of June 21, 1957 (P. L. 390, No. 212), known as the Right-To-Know Law (65 P. S. §§ 66.1—66.4). If the parties do not agree to binding mediation, the parties should utilize the assistance of an impartial mediator in an attempt to work toward a mutually satisfactory solution, through good faith negotiation.

§ 246.6. Date, time and location of mediation proceedings.

(a) Upon selection, the mediator will work with the parties to establish the time and location of a mediation session. Additional mediation sessions may be scheduled as agreed to by the parties and the mediator. Notice of a mediation session shall be provided to all parties at least 3 working days in advance of the session. Notice may be given orally or through facsimile communication.

(b) The mediator may meet with or request information pertinent to the mediation from one or more parties prior to scheduling a mediation session.

§ 246.7. Mediation sessions.

(a) Mediation sessions shall be conducted by the mediator in the manner that would most expeditiously permit full production of all information reasonably required for the mediator to understand the issues presented. The information will usually include relevant written materials and a description of the testimony of each witness. For cases designated by the Fund as complex, the mediator may ask the parties for written materials or information in advance of the mediation session in the manner specified in § 246.6 (relating to date, time and location of mediation proceedings). Mediation sessions in noncomplex cases not requiring testimonial evidence should be completed within 3 hours.

(b) At mediation sessions, mediators will conduct an orderly settlement negotiation, considering to resolve or settle, or both, disputes. The mediator may conduct separate meetings with each party in order to improve the mediator's understanding of the respective positions of each party.

§ 246.8. Mediation by document submission.

When all parties agree that a dispute will be decided on the basis of document submission, they shall jointly file a signed statement to that effect with the mediator. Each party shall then send two copies of their respective documentation to the mediator and one copy to each other within 7 days of filing with the mediator. The parties will then have an additional 7 days to file answering statements with the mediator and each other.

§ 246.9. Conclusions of the mediator.

The mediator shall promptly issue and distribute to all parties the mediator's decision no later than 2 business days from the date of closing of the final mediation session or complete submission of documents by the parties. The decision shall be in writing and shall be signed by the mediator. The decision shall specify the remedy, if any, and there shall be no formal opinion unless all parties agree. If the parties so agree, they will share equally in payment of the additional mediator compensation.

§ 246.10. Expenses.

The expenses of witnesses for a party shall be paid by the party producing the witnesses. Other expenses of the mediation, including required travel and other expenses of the mediator, and the expenses of a witness and the cost of proof produced at the direct request of the mediator, shall be borne equally by all parties, unless they agree otherwise. In the case of mediation by document submission, each party will be responsible for costs associated with their own document submission excluding the expenses of a witness and the cost of proof produced at the direct request of the mediator, which shall be borne equally by all parties, unless they agree otherwise.

§ 246.11. Confidentiality.

The parties recognize that mediation sessions are settlement negotiations and that all offers, promises, conduct and statements, whether written or oral, made in the course of the proceedings are inadmissible in litigation or arbitration of their dispute, to the extent allowed by law. The parties agree not to subpoena or otherwise require the mediator to testify or produce records, notes or work product in future proceedings. No recording or

stenographic record will be made of the mediation sessions. If the parties previously agreed to binding mediation, the conclusions of the mediator shall have the effect of a settlement and will be legally enforceable and admissible in court or arbitration proceedings to compel enforcement.

[Pa.B. Doc. No. 97-1399. Filed for public inspection August 29, 1997, 9:00 a.m.]

STATE BOARD OF OPTOMETRY

[49 PA. CODE CH. 23]

Therapeutic Drugs

The State Board of Optometry (Board) proposes to amend its regulations in Chapter 23 (relating to State Board of Optometry) by: (1) adding a new definition in § 23.1 (relating to definitions); (2) amending § 23.82 (relating to continuing education hour requirements); and (3) adding new §§ 23.201 and 23.202 (relating to qualifications for certification; and application procedure), to read as set forth in Annex A.

A. Effective Date

The proposed amendments will be effective upon publication of the final-form regulations in the *Pennsylvania Bulletin*.

B. Statutory Authority

The proposed amendments are authorized under sections 3(b)(14) and 4.1 of the Optometric Practice and Licensure Act (63 P. S. §§ 244.3(b)(14) and 244.4a).

C. Background and Purpose

The purpose of the proposal is to implement the act of October 30, 1996 (P. L. 719, No. 129) (Act 130) effective October 30, 1996. Act 130 amended the Optometric Practice and Licensure Act (act) (63 P. S. §§ 244.1—244.12), to require, inter alia, the certification and regulation of the prescription and administration by optometrists of pharmaceutical agents for therapeutic purposes (therapeutic drugs). The Board is required to certify eligible optometrists in two categories. The first requires an applicant to have: (1) graduated from an accredited school of optometry where a condition for graduation is or was the successful completion of a minimum of 100 hours in therapeutic drugs; and (2) passed a licensure examination to practice optometry which included therapeutic drugs. The second requires an applicant to have: (1) completed a Board-approved course of a minimum of 100 hours in therapeutic drugs; and (2) passed an examination in therapeutic drugs prepared and administered by a qualified and approved professional testing organization.

The proposed amendments also require that therapeutic drugs which will be used by optometrists approved by the Secretary of Health.

Likewise, optometrists will be required by newly added sections to obtain 30 hours of approved continuing optometric education every 2 years beginning with license renewals in 1998. For optometrists certified to prescribe and administer therapeutic drugs, 6 of those hours must concern the prescription and administration of therapeutic

drugs. Prior law required a minimum of 24 hours of continuing professional education during each biennial renewal period.

D. Description of Proposed Amendments

The "Treatment and Management of Ocular Disease Examination" (TMOD) is proposed to be defined in § 23.1 as the examination adopted by the Board as a prerequisite to therapeutic drug certification. The TMOD is a Nationally recognized examination in therapeutic drugs developed and administered by the National Board of Examiners in Optometry. It was first administered as a stand-alone examination in 1985, and as an integral part of the National Board Examination since April of 1993.

The minimum number of hours of required continuing education prerequisite to biennial renewal of an optometric license would be increased from 24 to 30 hours in § 23.82. The new language would also provide that for licensees certified in therapeutic drugs, at least 6 of the required 30 hours must concern the prescription and administration of pharmaceutical agents for therapeutic purposes. The new language would also clarify that completion of the 100-hour course in therapeutic drugs will satisfy the continuing education requirement for the biennial renewal period in which it is completed.

Proposed qualifications for certification in therapeutic drugs are outlined in § 23.201. The section establishes two categories of certification consistent with Act 130. Category 1 applies to applicants licensed by examination to practice optometry in this Commonwealth on or after April 1993. Those persons would be required to: (1) have graduated from an accredited optometric educational institution where a condition for graduation at the time the applicant graduated was the successful completion of a minimum of 100 hours in therapeutic drugs; and (2) have obtained a passing score on one of the following examinations taken on or after April 1993: the TMOD portion of Part II (Clinical Sciences) of the National Board Examination, the TMOD standing alone or an examination for licensure in another jurisdiction which required a passing score on therapeutic drugs. Category 2 certification is available to applicants who were licensed by examination to practice optometry in this Commonwealth before April 1993 or licensed by reciprocity. Those applicants would be required to: (1) successfully complete a course offered subsequent to October 30, 1996, by an accredited optometric educational institution in the United States or Canada, consisting of a minimum of 100 hours in the prescription and administration of pharmaceutical agents for therapeutic purposes; and (2) obtain a passing score on the TMOD taken subsequent to completion of the 100-hour course.

Proposed § 23.202 would set forth the application procedure under each category. It will also provide that applicants for licensure as optometrists by examination in this Commonwealth after the effective date of these proposed amendments will automatically qualify for certification in therapeutic drugs.

During the course of its predrafting deliberations on the implementation of Act 130, the Board received input from various interested parties, including the Chairperson of the House Professional Licensure Committee, Honorable Mario J. Civera, Jr.. Chairperson Civera advised that the legislative intent behind Act 130 would permit recent graduates, for example, those who graduated from optometric college and who took and passed the National licensure examination which included therapeutic drugs as a standard component in the early 1990's, to

be certified in therapeutic drugs without further training. The Legislature further intended, he noted, that current training programs and examination would be required for all others seeking certification in therapeutic drugs. An interpretation of Act 130 to the contrary he opined would not implement the duty of both the Legislature and the Board to serve the public's best interest.

Although the TMOD was first given as a freestanding examination in April of 1985, it did not become a component part of the National Board Examination until April 1993. Consistent with the legislative intent expressed by Representative Civera, the Board will delineate April 1993 as the operative date subsequent to which candidates for certification in therapeutic drugs will be eligible for certification under Category 1 without completing an additional 100-hour course in therapeutic drugs. With respect to Category 2, those persons ineligible to be certified as recent graduates would be required to successfully complete a 100-hour course offered subsequent to October 30, 1996, the effective date of Act 130. Prior to that date, the Board had no authority to approve programs. The Board is satisfied that a sufficient number of 100-hour courses in therapeutic drugs are offered by the various accredited optometric educational institutions in the United States and Canada to accommodate those persons wishing certification. Those applicants would also be required to pass the TMOD subsequent to the conclusion of the course. Having passed the TMOD prior to the required current training would appear to defeat the purpose of Act 130 in assuring up-to-date competency in therapeutic pharmaceuticals.

The Board believes that these educational and examination requirements are consistent with the legislative intent to permit qualified optometrists to prescribe and administer therapeutic drugs in a safe manner.

E. Compliance with Executive Order 1996-1

In accordance with Executive Order 1996-1 (February 1, 1996), in drafting and promulgating the proposed amendments the Board solicited input from the regulated community as well as the Secretary of Health, the Pennsylvania Optometric Association, the Pennsylvania College of Optometry and the Pennsylvania Academy of Ophthalmology. The Board reviewed and incorporated many of the comments of the various individuals and professional organizations in the proposed amendments.

F. Fiscal Impact and Paperwork Requirements

The proposed amendments will have no fiscal impact on the Commonwealth or its political subdivisions. Applicants for certification in therapeutic drugs will be required to pay a small fee to cover the costs of certification. Similarly, applicants may be required to pay additional costs for specified therapeutic drug training and examinations. The public may benefit from reduced costs of health care in that optometrists will be permitted to treat minor eye diseases and conditions without multiple examinations by various health care providers.

G. Sunset Date

The Board continually 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 August 14, 1997, the Board submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional

Licensure Committee. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Board within 10 days of the close of the Committees' comment period. 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, prior to final publication of the amendments, by the Board, the General Assembly and the Governor of objections raised.

I. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to April L. McClaine, Board Counsel, State Board of Optometry, P. O. Box 2649, 116 Pine Street, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking. Reference No. 16A-525 (Therapeutic Drugs), when submitting comments.

ROBERT A. GINSBURG, O.D.,
Chairperson

Fiscal Note: 16A-525. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

**PART I. DEPARTMENT OF STATE
SUBPART A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 23. STATE BOARD OF OPTOMETRY
GENERAL PROVISIONS**

§ 23.1. Definitions.

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

* * * * *

TMOD—Treatment and Management of Ocular Disease Examination—An examination developed, prepared, administered and scored by the NBEQ, which the Board adopts as the examination for certification in pharmaceutical agents for therapeutic purposes.

CONTINUING EDUCATION

§ 23.82. Continuing education hour requirements.

(a) An applicant for biennial license renewal or reactivation of license is required to complete, during the 2 years preceding renewal or reactivation, a minimum of [24] 30 hours of continuing education. **For licensees certified in accordance with section 4.1 of the act (63 P.S. § 244.4a) and §§ 23.201 and 23.202 (relating to qualifications for certification; and application procedure), at least 6 of the required 30 hours shall concern the prescription and administration of pharmaceutical agents for therapeutic purposes. Completion of a course described in § 23.201(b)(1) (relating to qualification for certification) shall satisfy the continuing education requirement for the biennial renewal period in which it is completed.**

* * * * *

**CERTIFICATION IN PHARMACEUTICAL AGENTS
FOR THERAPEUTIC PURPOSES**

§ 23.201. Qualifications for certification.

(a) *Category 1.* To obtain certification to prescribe and administer pharmaceutical agents for therapeutic purposes, an applicant licensed by examination to practice optometry in this Commonwealth on or after April 1993, shall meet the following requirements:

(1) Graduation from an accredited optometric educational institution in the United States or Canada where a condition for graduation at the time the applicant graduated was the successful completion of a minimum of 100 hours in the prescription and administration of pharmaceutical agents for therapeutic purposes.

(2) A passing score on one of the following examinations taken on or after April 1993:

(i) The TMOD portion of Part II (Clinical Sciences) of the National Board Examination.

(ii) The TMOD.

(iii) An examination for licensure in another jurisdiction which required passing scores on the prescription and administration of pharmaceutical agents for therapeutic purposes.

(b) *Category 2.* To obtain certification to prescribe and administer pharmaceutical agents for therapeutic purposes, an applicant licensed by examination to practice optometry in this Commonwealth before April 1993, or licensed by reciprocity, shall meet the following requirements:

(1) Successful completion of a course offered subsequent to October 30, 1996, consisting of a minimum of 100 hours in the prescription and administration of pharmaceutical agents for therapeutic purposes offered by an accredited optometric educational institution in the United States or Canada.

(2) A passing score as determined by the NBEO on the TMOD taken subsequent to completion of the course required in paragraph (1).

§ 23.202. Application procedure.

(a) An applicant for certification under Category 1 shall submit the following to the Board:

(1) A completed application obtained from the Board together with the certification fee required by § 23.91 (relating to fees).

(2) Certification on a form provided by the Board

from an accredited optometric educational institution in the United States or Canada that the applicant graduated from the institution and that a condition for the applicant's graduation was the successful completion of a minimum of 100 hours in the prescription and administration of pharmaceutical agents for therapeutic purposes.

(3) Certification from the NBEO that the applicant obtained a passing score on the TMOD portion of Part II (Clinical Sciences) of the National Board Examination taken on or after April 1993 or a passing score on the TMOD taken on or after April 1993, or certification on a form provided by the Board from the appropriate licensing authority of another jurisdiction that the applicant obtained a passing score on a licensing examination in that jurisdiction taken on or after April 1993 which required a passing score on the prescription and administration of pharmaceutical agents for therapeutic purposes at the time the applicant passed the examination.

(b) An applicant for certification under Category 2 shall submit the following to the Board:

(1) A completed application obtained from the Board together with the certification fee required by § 23.91.

(2) Certification on a form provided by the Board from an accredited optometric educational institution in the United States or Canada that the applicant has successfully completed its course offered subsequent to October 30, 1996, consisting of a minimum of 100 hours in the prescription and administration of pharmaceutical agents for therapeutic purposes.

(3) Certification from the NBEO that the applicant has obtained a passing score on the TMOD taken after completion of the course.

(c) On and after _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal), applicants for licensure as optometrists by examination who meet the qualifications, including a passing score on the TMOD portion of Part II (Clinical Sciences) of the National Board Examination and graduation from an accredited optometric educational institution in the United States or Canada shall be certified to prescribe and administer pharmaceutical agents for therapeutic purposes without further application.

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