

RULES AND REGULATIONS

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 131]

Deductible Program

The Insurance Department (Department) hereby deletes Chapter 131 (relating to deductible program) under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412). Chapter 131 was previously promulgated under section 13(d) of the Casualty and Surety Rate Regulatory Act (40 P. S. § 1193) and section 13(d) of the Fire, Marine and Inland Marine Rate Regulatory Act (40 P. S. § 1233) (acts).

Purpose

The purpose of this deletion of Chapter 131 is to eliminate redundant and obsolete regulations. The regulations, adopted in 1973, imposed several requirements on insurance companies licensed to do business in this Commonwealth with respect to deductibles used for property or casualty policies. The regulations authorized insurance companies to offer previously prohibited small deductible or full coverage programs, overruling an Insurance Commissioner order issued in 1971. The regulations instructed insurance companies offering the expanded deductible choices to consumers to first file their revised rates with the Department. Finally, the regulations announced that a company would be in violation of the Insurance Unfair Practices Act (40 P. S. §§ 1151—1162) (Repealed) if it implemented lowered deductibles without the insured's consent, or otherwise failed to fully disclose and explain all available options to consumers.

The Department has determined that the regulations are redundant and unnecessary. The provisions of these regulations are sufficiently within the acts, and the regulations in no manner enhance the authorizing statutes. Additionally, the Department, through its market conduct activities, monitors insurers to ensure compliance with statutory requirements for filing and approval of rates and forms. Therefore, the Department deletes Chapter 131 in its entirety.

Statutory Authority

The regulations are being deleted under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929. Chapter 131 was previously promulgated under the acts.

Comments

Notice of this deletion was published at 27 Pa.B. 1941 (April 19, 1997) as a proposed rulemaking with a 30-day public comment period.

No comments were received from the standing committees and no comments were received from the public during the 30-day comment period.

Fiscal Impact

There will be no fiscal impact as a result of the deletion of these regulations.

Paperwork

There will be no impact on paperwork as a result of the deletion of these regulations.

Affected Parties

The deletion of these sections will affect all licensed property and casualty insurers in this Commonwealth.

Effectiveness/Sunset Date

The rulemaking will become effective upon final publication in the *Pennsylvania Bulletin*. Because the rulemaking proposes to delete obsolete regulations, no sunset date has been assigned.

Contact Person

For information on this matter, contact Randy Rohrbaugh, Director, Bureau of Property and Casualty, Insurance Department, 1311 Strawberry Square, Harrisburg, PA 17120, (717) 787-4192.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of this rulemaking on March 28, 1997, to the Independent Regulatory Review Commission (IRRC), the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition, 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 the material is available to the public upon request.

These final-form regulations were deemed approved by the House and Senate Committees on November 10, 1997, in accordance with section 5.1(d) of the Regulatory Review Act. IRRC met on November 20, 1997. The deletions were deemed approved in accordance with section 5.1(e) of the Regulatory Review Act.

Findings

The Insurance Commissioner finds that:

(1) Public notice of intention to adopt this rulemaking as amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code, §§ 7.1 and 7.2.

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

Order

The Insurance Commissioner, acting under the authorizing statutes, orders that:

(a) The regulations of the Insurance Department, 31 Pa. Code Chapter 131, are amended by deleting §§ 131.1—131.7 to read as set forth at 27 Pa.B. 1941 (April 19, 1997).

(b) The Commissioner shall submit this order and 27 Pa.B. 1941 to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Commissioner shall certify this order and 27 Pa.B. 1941 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall be abolished upon publication in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 6385 (December 6, 1997).)

Fiscal Note: Fiscal Note 11-143 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 98-410. Filed for public inspection March 13, 1998, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF MEDICINE

[49 PA. CODE CH. 16]

Prosecutorial Functions Deleted

The State Board of Medicine (Board) amends §§ 16.62, 16.71, 16.72, 16.81 and 16.82, to read as set forth in Annex A. This amendment deletes regulations declared invalid by the Pennsylvania Supreme Court's decision in *Lyness v. State Board of Medicine*, 605 A.2d 1024 (Pa. 1992).

In 1992, the Pennsylvania Supreme Court declared §§ 16.62, 16.71, 16.72, 16.81 and 16.82 as unconstitutional through its ruling in *Lyness*. Notice of proposed rulemaking has been omitted under section 204(3) of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1204(3)) (CDL), because notice of proposed rulemaking is unnecessary. Accordingly, in this rulemaking, the Board removes the procedural regulations relating to complaint process, formal hearings and appeals contained in §§ 16.62, 16.71, 16.72, 16.81 and 16.82.

Compliance with Executive Order 1996-1

The Board reviewed this rulemaking and considered the purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final/proposed omitted rulemaking addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

Statutory Authority

This rulemaking is adopted under section 8 of the Medical Practice Act (63 P.S. § 422.8).

Fiscal Impact and Paperwork Requirements

The rulemaking will have no fiscal impact on the Commonwealth or its political subdivisions.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5.1(c)), a copy of the final-form regulation was submitted on January 4, 1998, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Committee on Consumer Protection and Professional Licensure and the House Committee on

Professional Licensure. In addition, at the same time, the final-form regulations were submitted to the Attorney General for review and comment under the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act, the deletions were deemed approved by the House and Senate Committees on February 3, 1998, and were approved by IRRC on February 13, 1998.

Additional Information

Individuals who desire information are invited to submit inquiries to Cindy L. Warner, Board Administrator, State Board of Medicine, Post Office Box 2649, Harrisburg, PA 17105-2649, (717) 783-1400.

Findings

The Board finds that:

(1) Public notice of intention to amend its regulations as adopted by this order under the procedures specified in sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) has been omitted under the authority contained in section 204(3) of the CDL because the Board has, for good cause, found that the procedures specified in sections 201 and 202 of the CDL are, in this circumstance, unnecessary because the provisions deleted were found to be unconstitutional and are therefore unenforceable.

(2) The deletions of the regulations of the Board in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

Order

The Board, acting under its authorizing statute, orders:

(a) The regulations of the Board, 49 Pa. Code Chapter 16, are amended by deleting §§ 16.62, 16.71, 16.72, 16.81 and 16.82 to read as set forth in Annex A.

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

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

(d) This order shall become effective immediately upon publication in the *Pennsylvania Bulletin*.

DANIEL B. KIMBALL, Jr., M.D.,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 1185 (February 28, 1998).)

Fiscal Note: 16A-495. 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 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS

Subchapter E. MEDICAL DISCIPLINARY PROCESS AND PROCEDURES

§ 16.62. (Reserved).

§ 16.71. (Reserved).

§ 16.72. (Reserved).

§ 16.81. (Reserved).

§ 16.82. (Reserved).

[Pa.B. Doc. No. 98-411. Filed for public inspection March 13, 1998, 9:00 a.m.]

STATE BOARD OF MEDICINE

[49 PA. CODE CH. 16]

Sympathomimetic Amines

The State Board of Medicine (Board) amends § 16.96, as set forth in Annex A. The objective of this amendment is to effectuate the sunset provision at § 16.96.

Notice of proposed rulemaking has been omitted under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3))(CDL) because notice of proposed rulemaking is unnecessary.

This regulation sunsetted by its own terms on January 17, 1992. The Board has determined not to take any action to revise or reestablish the regulation.

Accordingly, in this amendment, the Board deletes § 16.96.

Compliance with Executive Order 1996-1

The Board reviewed this rulemaking and considered the purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final omitted regulation addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

Statutory Authority

This amendment is adopted under section 8 of the Medical Practice Act (63 P. S. § 422.8).

Fiscal Impact and Paperwork Requirements

The amendment will have no fiscal impact on the Commonwealth or its political subdivisions.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5.1(c)), a copy of the final-form regulation was submitted on January 14, 1998, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Committee on Consumer Protection and Professional Licensure and the House Committee on Professional Licensure. In addition, at the same time, the final-form regulation was submitted to the Attorney General for review and comment under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5(c) of the Regulatory Review Act, the regulation was deemed approved by the House and Senate Committees on February 3, 1998, and by IRRC on February 13, 1998.

Additional Information

Individuals who desire information are invited to submit inquiries to Cindy L. Warner, Board Administrator, State Board of Medicine, Post Office Box 2649, Harrisburg, PA 17105-2649, (717) 783-1400.

Findings:

The Board finds that:

(1) Public notice of intention to amend its regulations as adopted by this order under the procedures specified in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) has been omitted under the authority contained in section 204(3) of the CDL because the Board has, for good cause, found that the procedures specified in sections 201 and 202 of the CDL are, in this circumstance, unnecessary because the provisions deleted are ineffective by the sunset provision in § 16.96(7)(g).

(2) The amendment of the regulations of the Board in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

Order

The Board, acting under its authorizing statute, orders:

(a) The regulations of the Board, 49 Pa. Code Chapter 16, are amended by deleting § 16.96, to read as set forth in Annex A.

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

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

(d) This order shall become effective immediately upon publication in the *Pennsylvania Bulletin*.

DANIEL B. KIMBALL, Jr., M.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 1185 (February 28, 1998).)

Fiscal Note: 16A-496. 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 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS

Subchapter F. MINIMUM STANDARDS OF PRACTICE

§ 16.96. (Reserved).

[Pa.B. Doc. No. 98-412. Filed for public inspection March 13, 1998, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CHS. 143 AND 147]

Surplus Tags and Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 13, 1998, adopted the following changes:

Amend Chapter 143, Subchapter C (relating to antlerless deer licenses) by amending §§ 143.42, 143.51, 143.52 and 143.55, to eliminate the reference to bonus tags in this subchapter and change the definition to “surplus” tags and provide for their issuance as well as the issuance of unlimited antlerless licenses for counties in the Special Regulations Areas.

Amend Chapter 147, Subchapter A (relating to general provisions) by removing language in § 147.1 (relating to scope) that has been determined to exceed the parameters under 34 Pa.C.S. (relating to Game and Wildlife Code)(code).

Amend Chapter 147, Subchapter A with the addition of the definition of “field trial/hunt test” in § 147.2 (relating to general) and to Subchapter L, § 147.221 (relating to general) and removing the language in § 147.222 (relating to permits for bird dog trials on Commission controlled lands) making reference to official guns.

Amend Chapter 147, Subchapter H (relating to protected specimen) by adding new §§ 147.143—147.145, to provide a definition of “abandoned venison” and to outline the procedures for the transfer of ownership of the abandoned venison.

These amendments are hereby adopted under the authority of the code.

Chapter 143, Subchapter C

1. *Introduction*

In establishing the antlerless deer license allocation for 1997, the Commission decided to eliminate the bonus license system and to establish a much restricted surplus system involving issuance of licenses to flintlock muzzleloader hunters and in special regulations areas only. As a result, the Commission proposed at its October 7, 1997, meeting and finally adopted at its January 13, 1998, meeting, changes to Subchapter C of Chapter 143 which would accomplish this purpose. These changes are being adopted under authority contained in section 2102 of the code (relating to regulations).

2. *Purpose and Authority*

Given concerns by Legislators and sportsmen with regard to deer populations in parts of this Commonwealth, the Commission at its April 15, 1997, meeting decided to reduce antlerless license allocations and eliminate the bonus system which virtually guaranteed the sale of all antlerless licenses and permitted deer hunters to each harvest a number of deer. The Commission decided to initiate a limit of a maximum of two deer, one of each sex, per hunter per year and to restrict surplus antlerless licenses to flintlock muzzleloader hunters and to special regulations areas where antlerless licenses are unlimited. At its October 7, 1997, meeting the Commission proposed changes to Chapter 143, Subchapter C which would implement this change. The changes were finally adopted at the January 13, 1998, meeting of the Commission.

Section 2102 of the code authorizes the Commission to “. . . promulgate regulations relating to seasons and bag limits for hunting or furtaking. . . .” This section provides the authority for the adopted changes.

3. *Regulatory Requirements*

With the exception of those areas where unlimited antlerless deer licenses are available, the changes will limit deer hunters to one antlerless or one surplus license per year.

4. *Persons Affected*

Persons wishing to hunt antlerless deer in this Commonwealth will be affected by the changes.

§ 147.1

1. *Introduction*

In a memorandum opinion in the case of *Showers v. Spangler, et. al.*, 1 CV-94-2129, Judge Caldwell of the Federal District Court for the Middle District of Pennsylvania expressed the opinion that § 147.1(b) (relating to scope), is invalid as being inconsistent with section 2906 of the code (relating to records). To avoid any potential future problems, the Commission at its October 7, 1997, meeting proposed, and at its January 13, 1998, meeting finally adopted, deleting a sentence which expands the scope of the section. This change is being adopted under authority contained in section 2901(b) of the code (relating to authority to issue permits).

2. *Purpose and Authority*

Section 2906 of the code provides that: “The records must be kept for a period of three years and shall be open to inspection by any officer of the Commission during normal business hours” Section 147.1(b) provides that: “The record, together with the premises, shall be open to inspection upon demand of an officer of the Commission.” Clearly the regulation authorizes much more than the statute, namely the inspection of premises and records on demand, not during reasonable business hours. As such, the Commission is deleting this sentence.

Section 2901 of the code authorizes the Commission to “. . . promulgate regulations to control the activities which may be performed under authority of any permit issued.” This provides authority for the change in the regulation.

3. *Regulatory Requirements*

The adopted change will relax current requirements.

4. *Persons Affected*

Individuals holding Commission permits will be affected by the change.

Chapter 147, Subchapter H

1. *Introduction*

As a result of several meetings held between representatives of the Commission, Legislators and meat processors, the need became evident for a mechanism by which meat processors could dispose of unclaimed venison which they have been given to process. The Commission therefore proposed at its October 7, 1997 meeting, and finally adopted at its January 13, 1998, meeting that §§ 147.143—147.145 be added to Subchapter H of Chapter 147 to provide the mechanism. These additions were adopted under authority contained in sections 2102 and 2901 of the code.

2. *Purpose and Authority*

Meat processors are often asked to butcher deer, yet when they notify the customer that the meat is ready for pickup, the owner does not pick up the venison. Currently, regulations do not permit the meat processor to lawfully sell the venison and the processor has therefore

lost the time and expense of butchering the meat. The adopted additions will change this situation by creating a special permit which would allow transfer of venison in return for payment of processing fees.

Section 2102(a) of the code directs the Commission to "... promulgate such regulations as it deems necessary and appropriate concerning game or wildlife..." Section 2901(b) of the code authorizes the Commission "... as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit..." These provisions provide the authority for the additions, which will control limited transfer of venison.

3. Regulatory Requirements

The adopted additions will allow actions currently not permitted by regulations but will require compliance with a notification and reporting procedure and the obtaining of a permit.

4. Persons Affected

Meat processors who process venison and their customers who fail to pickup meat will be affected by the additions.

Chapter 147, Subchapter A and L

1. Introduction

By Act No. 184 of 1996, enacted on December 19, 1996, section 2382 of the code (relating to training dogs on small game) was amended to allow lawful training of dogs on small game at any time during the year. As a result of this change, many dog training organizations requested the Commission to review some of its regulations relating to dog training. That review led the Commission to propose at its October 7, 1997, and to finally adopt at its January 13, 1998, meeting, changes to Chapter 147, Subchapters A and L to define "field trial/hunt test" and allow the firing of blank ammunition from a firearm normally fired from the shoulder by up to ten "official guns" during the trials/tests. These changes are adopted under authority contained in section 2901(b) of the code.

2. Purpose and Authority

As a result of recent changes in the code and a dialog with representatives of dog training organizations, the Commission has decided to recognize sanctioned dog training events which will be referred to as "field trials/hunt tests." In addition, the Commission also is adopting a provision to allow the firing of blank ammunition at these events from a firearm normally fired from the shoulder by no more than ten persons. Finally, a provision in § 147.222 providing for five "official guns" will be increased to ten.

These activities will be authorized by permits issued by the Commission. Section 2902(b) of the code (relating to general categories of permits) authorizes the Commission to promulgate regulations to control activities which may be performed under the authority of any permit.

3. Regulatory Requirements

The adopted changes will expand activities that can be performed under Commission permits and will increase the number of official guns to ten persons.

4. Persons Affected

Persons wishing to train hunting dogs will be affected by the changes.

5. Comment and Response Summary

No comments were received with regard to the changes.

6. Cost and Paperwork Requirements

The adopted changes will not result in any additional cost or paperwork requirements.

7. Effective Date

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

8. Contact Person

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

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240)(45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendments of the Game Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Game Commission, 58 Pa. Code, Chapters 143 and 147, are amended by amending §§ 143.42, 143.51, 143.52, 143.55, 147.1 and 147.2 and by adding §§ 147.144, 147.145, 147.221 and 147.222 to read as set forth at 27 Pa.B. 6334 (December 6, 1997) and by adding § 147.143 to read as set forth in Annex A.

(b) The Executive Director of the Game Commission shall submit this order, 27 Pa.B. 6334 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

DONALD C. MADL,
Executive Director

(Editor's Note: The text of § 147.143 has been adopted as proposed but has been printed on final adoption to reflect new numbering.)

Fiscal Note: Fiscal Note 48-101 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 147. SPECIAL PERMITS

Subchapter H. PROTECTED SPECIMEN

§ 147.143. Transfer of lawful possession of abandoned venison.

(a) Definition.

Abandoned venison—Venison which remains unclaimed by the lawful owner at a butcher shop for longer than 10 days after the lawful owner has been notified by the butcher or an employe that the venison is dressed and ready to be picked up.

(b) *Procedure for transfer of lawful possession of abandoned venison.*

(1) Lawful possession of abandoned venison may be transferred to any resident of this Commonwealth who is in possession of a valid permit to possess deer (PGC-90-LE) provided that:

(i) Prior to a transfer of possession of abandoned venison the butcher or an employe has notified the lawful owner of the venison in the butcher shop by United States registered mail to the person's last known address of the intent to dispose of the venison.

(ii) The notification gives the lawful owner of the venison 30 days to claim the venison and pay to the butcher the standard labor fee for preparing the venison for consumption.

(2) After the 30-day period has expired, the butcher may transfer the lawful possession of abandoned venison to a resident of this Commonwealth who presents a valid permit to possess deer (PGC-90-LE) and if required by the butcher pays the standard labor fee for preparing the venison for consumption.

(3) The butcher shall, within 24 hours of transferring possession of abandoned venison, send by United States mail a report setting forth the date of transfer and the name, address and telephone number of the person or organization that received the venison to the wildlife conservation officer in charge of the district where the butcher shop is located.

[Pa.B. Doc. No. 98-413. Filed for public inspection March 13, 1998, 9:00 a.m.]