

PROPOSED RULEMAKING

STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

[49 PA. CODE CHS. 47—49]

Fees

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) proposes to amend §§ 47.4 and 47.34 (relating to licensure fees; and registration of continuing education providers, courses and programs); and add §§ 48.4 and 49.3 (relating to applicability of general provisions in Chapter 47) to read as set forth in Annex A.

A. *Effective date*

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

B. *Statutory Authority*

The proposed rulemaking is authorized under section 6(2) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act) (63 P. S. § 1906(2)).

C. *Background and Purpose*

The act requires the Board to set fees by regulation so that revenues meet or exceed expenditures over a biennial period. General operating expenses of the Board are funded through biennial license renewal fees. Expenses related to applications or services which are provided directly to individual licensees or applicants are excluded from general operating revenues and are funded through fees in which the cost of providing the service forms the basis for the fee.

Three licensure groups were added to the Board under the enactment of the act of December 21, 1998 (P. L. 1017, No. 136) (Act 136), which necessitated a determination of fees for services to the new licensees and applicants. Additionally, existing fees for services to licensees and applicants were analyzed to determine if the fees reflected the actual cost of providing the services. Actual cost calculations are based upon the following formula:

$$\begin{array}{r} \text{Number of minutes to perform the function} \\ \times \\ \text{pay rate for the classification of personnel} \\ \text{performing the function} \\ + \\ \text{a proportionate share of administrative overhead.} \end{array}$$

The analysis determined that the existing fees for applications for licensure and original license issuance as a licensed social worker, and approval as a continuing education provider or program, did not accurately reflect the actual cost involved of providing the services. Fees for the Board in these categories fell short of the cost to provide the service. The analysis also determined the actual cost for application fees for licensure and original

license issuance for clinical social workers, marriage and family therapists and professional counselors.

Biennial renewal fees for the three new licensure groups were determined by applying the existing biennial renewal fee for licensed social workers.

In this proposal, fees for the services identified will allocate costs to those who use the service or application. The Board would continue to apportion the enforcement and operating costs to the general licensing population when the Board makes its biennial reconciliation of revenue and expenditures.

D. *Compliance with Executive Order 1996-1*

In accordance with the requirements of Executive Order 1996-1, in drafting and promulgating the proposed rulemaking, the Board considered the least restrictive alternative to regulate costs for services requested by licensees and applicants. The Board also extended the invitation to the following boards, associations and interested licensees and educators to preliminarily review and comment on the Board's draft regulatory proposal: James Gavin, National Association of Social Workers; Association of Social Work Boards; Morgan Plant/PA Alliance of Counseling; Council on Social Work Education; Donna F. Derr, Ph.D., LSW, Director of Family and Comm. Ed.; Pennsylvania Society for Clinical Social Work; Edward Beck, Ed.D., CCMHC, NCC/Susquehanna Institute/East Shore Med. Ctr.; David W. Hall, Ph.D. Associate Professor/Counseling/University of Scranton; John M. Sutton, Jr.; Robert C. Nielsen, President, American Assoc. of State Counseling Bds.; Sally J. Tice, Ph.D./The Marriage & Family Life Ctr.; and Donald B. Kaveny, Director/American Association of Marriage and Family Therapists.

E. *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The fees will have a modest fiscal impact on those members of the private sector who apply for services from the Board. The proposed rulemaking will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

F. *Sunset Date*

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 9, 2001, 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.

Under section 5(g) of the Regulatory Review Act, 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' review period. The notifica-

tion shall specify the regulatory review criteria which have not been met by the portion of the proposed amendments to which an objection is made. 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.

H. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Eva Cheney, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking. Reference No. 16A-695 (Fees), when submitting comments.

THOMAS F. MATTA, Ph.D.,
Chairperson

Fiscal Note: 16A-695. 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 47. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF SOCIAL WORKERS

GENERAL PROVISIONS

§ 47.4. Licensure fees.

(a) The fee schedule for licensure as a licensed social worker [or for a], provisional license, licensed clinical social worker, licensed marriage and family therapist or licensed professional counselor shall be as follows:

(1) Application fee for licensure and original license issuance as a licensed social worker \$[15] 25

(2) Biennial renewal for licensed social worker, clinical social worker, marriage and family therapist or professional counselor \$45

* * * * *

(7) Application fee for licensure and original license issuance as a clinical social worker, marriage and family therapist or professional counselor \$45

* * * * *

CONTINUING EDUCATION

§ 47.34. Registration of continuing education providers, courses and programs.

* * * * *

(b) An applicant for Board approval as a provider of a course or program shall submit an application, along with a fee of [\$25] \$40, at least 90 days before the date of the course or program commences.

* * * * *

CHAPTER 48. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF MARRIAGE AND FAMILY THERAPISTS

GENERAL PROVISIONS

§ 48.4. Applicability of general provisions in Chapter 47.

Sections 47.2—47.4 and 47.34 apply to this chapter.

CHAPTER 49. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF PROFESSIONAL COUNSELORS

GENERAL PROVISIONS

§ 49.3. Applicability of general provisions in Chapter 47.

Sections 47.2—47.4 and 47.34 apply to this chapter.

[Pa.B. Doc. No. 01-1561. Filed for public inspection August 24, 2001, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 51 AND 63]

Administration and Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapters 51 and 63 (relating to administrative provisions; and general fishing regulations). 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 relate to administration and fishing.

A. Effective Date

The proposed amendments, if approved on final-form rulemaking, will go into effect upon publication of an order adopting the amendments in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the proposed amendments, contact Laurie E. Shepler, Assistant Counsel, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposal is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

C. Statutory Authority

The proposed amendments to § 51.25 (relating to demand for or waiver of hearing) are published under the statutory authority of section 928 of the code (relating to revocation, suspension or denial of license, permit or registration). The proposed amendments to § 51.41 (relating to general) are published under the statutory authority of sections 928, 2102, 2305, 2711, 2903 and 2904 of the code. The proposed amendments to §§ 51.89, 63.5, 63.11, 63.15 and 63.21 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 the Commission's regulations pertaining to administration and fishing. The specific purpose of the proposed amendments is described in more detail under the summary of proposal.

E. Summary of Proposal

(1) *Section 51.25.* The Commission's regulations provide that before the Commission may suspend, deny or revoke an individual's license, permit, special license or boat registration issued under the authority of the code, the Commission must give that individual an opportunity to be heard. The individual must submit a timely demand for a hearing, and the demand must be in writing. After an individual requests a hearing, the Executive Director appoints a presiding officer to conduct the hearing on the Commission's behalf. Although the Game Commission's regulations provide for a nonrefundable filing fee of \$35, the Commission currently does not charge a fee. The Commission accordingly proposes to amend this section to provide for a \$35 nonrefundable filing fee. The Commission also proposes to amend this section to provide that if an individual demands a hearing and subsequently fails to appear, the individual waives the right to a hearing, and a hearing will not be conducted.

(2) *Sections 51.41, 51.89, 63.11 and 63.15.* When the General Assembly amended the law to transfer administrative responsibility related to commercial artificial propagation from the Commission to the Department of Agriculture, it repealed Chapter 33 of the code (relating to propagation and sale of fish). Therefore, any references to this chapter or any of the sections contained in the chapter must be removed from the Commission's regulations. Accordingly, the Commission proposes to amend these sections as set forth in Annex A.

(3) *Sections 63.5 and 63.21 (relating to methods of fishing; and designation of fishing regulations).* The code provides that if a person violates a regulation promulgated under section 2102(a), the Commission has designated as being for the protection of fish or fish habitat or for the health and safety of persons who fish, that person commits a summary offense of the second degree. The penalty is a \$100 fine or imprisonment not exceeding 20 days. If a person violates a regulation promulgated under section 2102(b), that person commits a summary offense of the third degree. The penalty is a \$50 fine. As such, an individual who is caught intentionally snagging steelhead, for example, pays a \$100 fine, whereas an individual who is caught netting steelhead pays only a \$50 fine. This disparity occurs because the Commission promulgated § 63.9 (relating to snatch fishing, foul hooking and snag fishing) under section 2102(a) of the code and designated it as being for the protection of fish or fish habitat or for the health and safety of persons who fish. The Commission, on the other hand, promulgated § 63.5 (relating to fishing devices) under section 2102(b) of the code.

To correct the inconsistency in the current fine structure for using various illegal methods of taking fish from Commonwealth waters, the Commission proposes the amendments set forth in Annex A.

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. Currently, no more than 20 individuals per year request administrative hearings regarding the proposed suspension, denial or revocation of their licenses, permits, special licenses or boat registrations issued under the authority of the code. Therefore, the fiscal impact of the amendments to § 51.25 will be minimal. With the exception of the proposed changes to § 51.25, the proposed amendments will impose no new costs on the private sector or the general public. The proposed amendments to § 51.25, as previously stated, will impose a \$35 nonrefundable filing fee.

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 after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically to ra-pfbcregs@state.pa.us. A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. 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-118. 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 A. PRELIMINARY PROVISIONS

§ 51.25. Demand for or waiver of hearing.

(a) A respondent shall submit a timely demand for hearing with the answer to the order to show cause. The demand shall be in writing **and shall be accompanied by a nonrefundable filing fee of \$35 in the form of a money order, certified check or bank cashier's check made payable to "Pennsylvania Fish and Boat Commission."** A hearing will not be conducted nor a demand deemed filed until the complete filing fee is received by the Commission in the form specified and within the time frame designated. Failure to file a demand for a hearing or to submit the filing fee in the amount and form specified within the time limit set for filing an answer will be deemed a waiver of the right to hearing. **The Commission will return to the respondent any filing fee that it receives that does not comply with this subsection.**

* * * * *

(c) **If a respondent demands a hearing and subsequently fails to appear at the hearing after being given written notice of the date and time, the respondent's failure to appear will be deemed a**

waiver of the right to a hearing, and a hearing will not be conducted and the filing fee will not be refunded.

(d) Subsection (a) supplements 1 Pa. Code §§ 33.21 and 33.22 (relating to filing fees; and mode of payment of fees).

Subchapter E. PERMIT PROCEDURES

§ 51.41. General.

This subchapter establishes the [agencies] agency practices and procedures to be followed in consideration and disposition of applications for permits the granting or denial of which is discretionary, including permits issued under sections 2902, 2903, 2905, 2906, 3106[, 3301, 3309] and 3509 of the code and including permits issued under provisions of the code which contain the word, "may."

Subchapter I. PERMITS TO DRAW OFF IMPOUNDED WATERS

§ 51.89. General permits.

* * * * *

(b) Notwithstanding the other provisions of this subchapter, this section constitutes a general permit for the Commission[,] and cooperative nurseries recognized by the Commission [and holders of artificial propagation licenses under section 3301 of the code (relating to artificial propagation licenses)] to draw down impounded waters without applying for an individual permit when the waters to be drawn down are located on hatchery property and the draw down is in connection with hatchery operations. The general permit authorized by this subsection does not waive a requirement for a permittee to apply for and obtain other necessary permits.

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.5. [Fishing devices] Methods of fishing.

It is unlawful to use a method for taking fish from the waters of this Commonwealth, including boundary lakes and rivers, unless the use of the method is specifically authorized by this part.

§ 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] 2507 of the code (relating to sale of certain fish, reptiles and amphibians prohibited) that eels caught lawfully under this section may not be sold or offered for sale.

* * * * *

§ 63.15. Field dressing of fish.

* * * * *

(c) This section does not apply to fish caught or sold in compliance with [Chapters] Chapter 31 [and 33] of the code (relating to regulated fishing lakes[; and propagation and sale of fish]). This section applies to catches of fish caught under a Lake Erie commercial

license under Chapter 29 of the code (relating to special licenses and permits) only until the fish reach established retail or wholesale markets.

* * * * *

§ 63.21. Designation of fishing regulations.

(a) The following regulations are designated under section 2102(a) of the code (relating to rules and regulations) as being for the protection of fish or fish habitat or for the health and safety of persons who fish:

* * * * *

(4) Section 63.5 (relating to methods of fishing).

* * * * *

[Pa.B. Doc. No. 01-1562. Filed for public inspection August 24, 2001, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 137]

Possession of Live Wildlife

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its June 12, 2001, meeting, proposed the following amendments:

Amend § 137.31 (relating to possession of live wildlife) by limiting the number of live foxes that may be taken from the wild for the purpose of collecting fox urine, and establishing guidelines relating to same.

This amendment will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for this proposal is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

This proposal was made public at the June 12, 2001, meeting of the Commission, and comments on this proposal can be sent to the Director of Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until September 21, 2001.

1. Introduction

To better manage the number of live foxes being collected and held from the wild, the Commission at its June 12, 2001, meeting proposed placing a limit on the number of foxes that can be held for urine collection purposes. The possession of live foxes for urine collection by a permittee under § 137.31(a)(1), is an exception to § 137.31(a), which makes it unlawful to take or possess live wildlife taken from the wild. The proposal would limit the number of live foxes that can be held for urine collection to five. This change is proposed under authority contained in section 2901(b) of the code (relating to authority to issue permits).

2. Purpose and Authority

As indicated in the Introduction, § 137.31(a) makes it unlawful to possess game or wildlife unlawfully taken from the wild. Section 137.31(a)(1) currently makes an exception for a person to possess live foxes taken from a wild state in this Commonwealth, under a permit issued for the collection of fox urine. The proposed change would limit this exception to five foxes.

Section 2901(b) of the code permits the Commission to adopt regulations to properly manage game and wildlife

and control activities performed under to a permit. This section provides the authority for the proposed change.

3. *Regulatory Requirements*

The proposed change would limit the number of live foxes a permittee may keep under the current exception provision in § 137.31.

4. *Persons Affected*

Persons wishing to keep live foxes may be affected by the proposed change.

5. *Cost and Paperwork Requirements*

The proposed change should not result in any additional cost or paperwork.

6. *Effective Date*

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

7. *Contact Person*

For further information regarding this change, contact David E. Overcash, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-133. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 137. WILDLIFE

§ 137.31. Possession of live wildlife.

(a) It is unlawful for a person to possess live wildlife taken from a wild state within this Commonwealth [.] **except:**

(1) **[A permit issued to a person for the collection of fox urine is excepted from this section. A permittee may possess live fox only.] A permit to possess no more than five live foxes may be issued to a person for the sole purpose of collecting fox urine. The permit to possess live fox will expire on the last day of the fox-trapping season. Any foxes held under the authority of this permit shall be euthanized and may be pelted and the pelt may be sold. No fox held under the authority of this permit may be released into the wild.**

(2) A person **lawfully** operating under the authority of a permit issued in accordance with the act is excepted from this section.

* * * * *

[Pa.B. Doc. No. 01-1563. Filed for public inspection August 24, 2001, 9:00 a.m.]