

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

DEPARTMENT OF ENVIRONMENTAL PROTECTION
[25 PA. CODE CH. 245]

Corrective Amendment to 25 Pa. Code § 245.1

The Department of Environmental Protection has discovered a discrepancy between the agency text of 25 Pa. Code § 245.1 (relating to definitions), as deposited with the Legislative Reference Bureau and the official text published at 31 Pa.B. 6615, 6626 (December 1, 2001), and the text published in the February 2002 *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 327), and as currently appearing in the *Pennsylvania Code*. Subparagraph (iv) should have been deleted.

Therefore, under 45 Pa.C.S. § 901: The Department of Environmental Protection has deposited with the Legislative Reference Bureau a corrective amendment to 25 Pa. Code § 245.1. The corrective amendment to 25 Pa. Code § 245.1 is effective as of February 2, 2002, the date the defective official text was announced in the *Pennsylvania Bulletin*.

The correct version of 25 Pa. Code § 245.1 appears in Annex A, with ellipses referring to the existing text of the regulation.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VI. GENERAL HEALTH AND SAFETY

CHAPTER 245. ADMINISTRATION OF THE STORAGE TANK AND SPILL PREVENTION PROGRAM

Subchapter A. GENERAL PROVISIONS GENERAL

§ 245.1 Definitions.

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

* * * * *

Reportable release—A quantity or an unknown quantity of regulated substance released to or posing an immediate threat to surface water, groundwater, bedrock, soil or sediment. The term does not include the following, if the owner or operator has control over the release, the release is completely contained and, within 24 hours of the release, the total volume of the release is recovered or removed in the corrective action:

- (i) A release to the interstitial space of a double-walled aboveground or underground storage tank.
- (ii) A release of petroleum to an aboveground surface that is less than 25 gallons.
- (iii) A release of a hazardous substance to an aboveground surface that is less than its reportable

quantity under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §§ 9601—9675) and 40 CFR Part 302 (relating to designation, reportable quantities, and notification).

Residential tank—A tank located on property used primarily for dwelling purposes.

* * * * *

[Pa.B. Doc. No. 02-2139. Filed for public inspection November 27, 2002, 9:00 a.m.]

ENVIRONMENTAL HEARING BOARD

[25 PA. CODE CH. 1021]

Practice and Procedure

The Environmental Hearing Board (Board) amends Chapter 1021 (relating to practice and procedure) to read as set forth in Annex A. The final-form rulemaking modifies the rules of practice and procedure before the Board by implementing improvements in practice and procedure.

The Board approved the final-form rulemaking at its July 10, 2002, meeting.

Effective Date

The final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

Contact Person

For further information, contact William T. Phillip IV, Secretary to the Board, 2nd Floor, Rachel Carson State Office Building, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. If information concerning this notice is required in an alternative form, William Phillip may also be contacted. TDD users may telephone the Board through the AT&T Pennsylvania Relay Service, (800) 654-5984.

Statutory Authority

The final-form rulemaking is promulgated under the authority of section 5 of the Environmental Hearing Board Act (act) (35 P.S. § 7515), which empowers the Board to adopt regulations pertaining to practice and procedure before the Board.

Comments and Revisions to Proposed Rulemaking

The Board received comments on the proposed rulemaking from the Independent Regulatory Review Commission (IRRC). The Board received no comments from the public. IRRC's comments are addressed in the following section.

Electronic Filing

Proposed § 1021.31(c) (relating to signing) stated as follows: "The Board may impose an appropriate sanction for a bad faith violation of subsection (b)." IRRC recommended adding a cross-reference to § 1021.161 (relating to sanctions). This has been done in the final-form rulemaking.

Proposed §§ 1021.71—1021.73 (relating to complaints filed by the Department; complaints filed by other persons; and transferred matters) stated as follows: "Service of the complaint shall be by personal service or any form of mail requiring a receipt. . . ." IRRC recommended clari-

fyng the phrase "any form of mail." The final-form rulemaking has been changed to read "certified or registered mail."

Proposed § 1021.73 stated that a complaint shall be filed "within the time period directed to do so by the Board." IRRC recommended specifying the amount of time in which the Board would allow a party to file a complaint. The final-form rulemaking has been revised to read "within the 30-day time period directed by the Board."

Proposed § 1021.94 (relating to dispositive motions) contained requirements for the filing of dispositive motions. IRRC recommended that the section should also contain a cross-reference to § 1021.34 (relating to service by a party). This has been done in the final-form rulemaking.

Sunset Date

A sunset date has not been established for the final-form rulemaking. The effectiveness of the regulations will be evaluated on an ongoing basis by the Board and the Rules Committee.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 10, 2002, the Board submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 1980 (April 20, 2002), to IRRC and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Board has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on September 26, 2002, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 24, 2002, and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of the proposed rulemaking was 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 final-form rulemaking is necessary and appropriate for administration of the act.

Order

The Board, acting under its authorizing statute, orders that:

(1) The regulations of the Board, 25 Pa. Code Chapter 1021, are amended by amending §§ 1021.2, 1021.31—1021.38, 1021.74, 1021.91—1021.93, 1021.95, 1021.101, 1021.104, 1021.141, 1021.182, 1021.183 and 1021.201 and by adding §§ 1021.39 and 1021.75 to read as set forth at 32 Pa.B. 1980 and by amending §§ 1021.71—1021.73 and 1021.94 and by adding § 1021.31 to read as set forth in Annex A.

(2) The Chairperson of the Board shall submit this order, 32 Pa.B. 1980 and Annex A to the Office of

Attorney General and Office of General Counsel as to legality and form as required by law.

(3) The Chairperson of the Board shall submit this order, 32 Pa.B. 1980 and Annex A to the House and Senate Committees and IRRC, as required by law.

(4) The Chairperson of the Board shall certify this order, 32 Pa.B. 1980 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(5) This order shall take effect upon final-form publication in the *Pennsylvania Bulletin*.

GEORGE J. MILLER,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 5582 (November 9, 2002).)

Fiscal Note: Fiscal Note 106-7 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART IX. ENVIRONMENTAL HEARING BOARD

CHAPTER 1021. PRACTICE AND PROCEDURE

DOCUMENTARY FILINGS

SIGNING, FILING AND SERVICE OF DOCUMENTS

§ 1021.31. Signing.

(a) Every notice of appeal, motion, legal document or other paper directed to the Board and every discovery request or response of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, or if a party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number.

(b) The signature to a document described in subsection (a) constitutes a certification that the person signing, or otherwise presenting it to the Board, has read it, that to the best of his knowledge or information and belief there is good ground to support it, and that it is submitted in good faith and not for any improper purpose such as to harass, cause unnecessary delay, or needless increase in the cost of litigation. There is good ground to support the document if the signer or presenter has a reasonable belief that existing law supports the document or that there is a good faith argument for the extension, modification or reversal of existing law.

(c) The Board may impose an appropriate sanction in accordance with § 1021.161 (relating to sanctions) for a bad faith violation of subsection (b).

SPECIAL ACTIONS

§ 1021.71. Complaints filed by the Department.

(a) When authorized by statute the Department may commence the action by filing a complaint or petition and a notice of a right to respond. The action is commenced when the complaint or petition is filed with the Board.

(b) Service of the complaint or petition shall be by personal service or by certified or registered mail. In the instance of mail, service shall be complete upon delivery. Service of all other documents shall be made in accordance with § 1021.34 (relating to service by party).

(c) The complaint shall set forth the statutory authority under which the Board is authorized to act and shall

set forth in separate numbered paragraphs the specific facts and circumstances upon which the request for action is based.

(d) The notice of a right to respond or defend shall conform to the following:

[Case Caption]
NOTICE

If you wish to defend against the claims set forth in the following pages, you must take action within thirty (30) days after this complaint and notice are served by entering a written appearance personally or by attorney and filing in writing with the Board your answers, defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Board without further notice for any claim or relief requested by the Department.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, contact the Secretary to the Board at (717) 787-3483.

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.5—35.7 and 35.9—35.11 (relating to informal complaints; and formal complaints).

§ 1021.72. Complaints filed by other persons.

(a) When authorized by statute, a person may institute an action against the Department by filing a complaint.

(b) Service of the complaint or petition shall be by personal service or by certified or registered mail. In the instance of mail, service shall be complete upon delivery. Service of all other documents shall be made in accordance with § 1021.34 (relating to service by a party).

(c) The complaint shall set forth the statutory authority under which the Board is authorized to act and shall set forth in separate numbered paragraphs the specific facts and circumstances upon which the request for action is based.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.5—35.7 and 35.9—35.11 (relating to informal complaints and formal complaints).

§ 1021.73. Transferred matters.

(a) This rule addresses matters transferred to the Board from a court.

(b) Within the 30-day time period directed by the Board, the party who initiated the transferred action shall file a complaint with the Board.

(c) Service of the complaint or petition shall be by personal service or by certified or registered mail. In the instance of mail, service shall be complete upon delivery. Service of all other documents shall be made in accordance with § 1021.34 (relating to service by a party).

(d) The complaint shall set forth in separate numbered paragraphs the specific facts and circumstances upon which the request for relief is based.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.5—35.7 and 35.9—35.11 (relating to informal complaints and formal complaints).

MOTIONS

§ 1021.94. Dispositive motions.

(a) This section applies to dispositive motions. Dispositive motions shall contain a concise statement of the

relief requested, the reasons for granting that relief, and, where necessary, the material facts that support the relief sought.

(b) Motions for summary judgment or partial summary judgment and responses shall conform to Pa.R.C.P. 1035.1—1035.5 (relating to motion for summary judgment).

(c) Dispositive motions, responses and replies shall be in writing, signed by a party or its attorney and served on the opposing party in accordance with § 1021.34 (relating to service by a party). Dispositive motions shall be accompanied by a supporting memorandum of law or brief. The Board may deny a dispositive motion if a party fails to file a supporting memorandum of law or brief.

(d) A response to a dispositive motion may be filed within 30 days of the date of service of the motion and shall be accompanied by a supporting memorandum of law or brief.

(e) A reply to a response to a dispositive motion may be filed within 15 days of the date of service of the response and may be accompanied by a supporting memorandum of law or brief. Reply briefs or memoranda of law shall be as concise as possible and may not exceed 25 pages. Longer briefs or memoranda of law may be permitted at the discretion of the presiding administrative law judge.

(f) An affidavit or other document relied upon in support of a dispositive motion or response, that is not already a part of the record, shall be attached to the motion or response or it will not be considered by the Board in ruling thereon.

(g) Subsection (c) supersedes 1 Pa. Code § 35.177 (relating to scope and content of motions). Subsection (d) supersedes 1 Pa. Code § 35.179 (relating to objections to motions).

[Pa.B. Doc. No. 02-2140. Filed for public inspection November 27, 2002, 9:00 a.m.]

**Title 49—PROFESSIONAL
AND VOCATIONAL
STANDARDS**

**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) amends §§ 47.4 and 47.34 (relating to licensure fees; and registration of continuing education providers, courses and programs) and adds §§ 48.4 and 49.4 (relating to applicability of general provision in Chapter 47) to read as set forth in Annex A.

A. Effective Date

The rulemaking take effect upon final-form publication in the *Pennsylvania Bulletin*.

B. *Statutory Authority*

The final-form 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 act of December 21, 1998 (P. L. 1017, No. 136), which necessitated a determination of fees for services to the new licensees and applicants. Additionally, it was determined that the existing fees for applications for licensure and original licensure as a licensed social worker and approval as a continuing education provider or program fell short of the actual cost involved in providing the services.

In this final-form rulemaking, fees for the services identified will allocate costs to those who use the service or application.

D. *Response to Comments*

Notice of proposed rulemaking was published at 31 Pa.B. 4651 (August 25, 2001). Publication was followed by a 30-day public comment period during which the Board received comments from the Pennsylvania Society for Clinical Social Work and the Pennsylvania Chapter of the National Association of Social Workers. Both groups objected to the increase in the application fee for approval as a provider or program of continuing education from \$25 to \$40. In developing this fee, an analysis was made of the time it would take to perform all of the functions necessary to review and process an application. In particular, Board staff receives the request for approval of continuing education programs that licensees are required to complete as a condition of license renewal. The Board staff must review these applications. The Board administrator then sends the application and supporting documents to a Board member for evaluation and recommendation to approve or deny. Following the decision, the applicant is notified of the decision. If approved, the program is entered into the computer system. Based upon the analysis that was undertaken to consider the time and manpower involved in performing these functions, a \$40 fee is required.

Following the close of the public comment period, the Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). The final-form rulemaking responds to the comments and suggestions made by IRRC and the HPLC.

The HPLC questioned why the proposal did not delete § 47.4(a)(3) pertaining to a one-time \$30 assessment for licensed social workers licensed during the 1988–1991 licensure cycle. The Board has deleted this in final-form rulemaking. IRRC noted that the proposed rulemaking would have required registration of continuing education providers, courses and programs for licensed marriage

and family therapists or professional counselors but that these two new licensing groups do not yet have requirements for continuing education. IRRC recommended that the course registration be deleted from the final-form rulemaking and that the Board consider developing future rulemaking pertaining to continuing education and registration of program providers. The Board agrees and has deleted these references.

E. *Compliance with Executive Order 1996-1, "Regulatory Review and Promulgation"*

The Board reviewed this rulemaking and considered its purpose and likely impact on the public and the regulated population under the directives of Executive Order 1996-1. Additionally, in accordance with Executive Order 1996-1, the Board, in developing the rulemaking, solicited comments from the major professional associations representing social workers and the new licensure classes.

F. *Fiscal Impact and Paperwork Requirements*

This final-form rulemaking would have a fiscal impact and impose additional paperwork requirements on this Commonwealth in that there are three new licensure groups for which applications would be processed and fees would be received.

The proposed rulemaking should not impose any legal, accounting or reporting requirements on the regulated community.

G. *Sunset Date*

The Board continually monitors the effectiveness of its regulations through communication with the regulated population; accordingly, 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 October 3, 2002, the Board submitted a copy of the notice of proposed rulemaking published at 31 Pa.B. 4651, to IRRC and to the Chairpersons of the SCP/PLC and the HPLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC the SCP/PLC and the HPLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Board has considered the comments received from IRRC, the SCP/PLC and the HPLC and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on October 22, 2002, this final-form rulemaking was deemed approved by the HPLC. On October 23, 2002, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 24, 2002, and approved the final-form rulemaking.

I. *Contact Person*

Further information may be obtained by contacting Clara Flinchum, Administrative Assistant, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-1389.

J. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was 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 promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking does not enlarge the purpose of proposed rulemaking.

(4) The final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in Part B of this Preamble.

K. Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapters 47—49, are amended by amending §§ 47.4 and 47.34 and adding §§ 48.4 and 49.4 to read as set forth in Annex A.

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

(c) 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 take effect on publication in the *Pennsylvania Bulletin*.

THOMAS F. MATTA, Ph.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 5582 (November 9, 2002).)

Fiscal Note: Fiscal Note 16A-659 remains valid for the final adoption of the subject regulations.

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

GENERAL PROVISIONS

§ 47.4. Licensure fees.

(a) The fee schedule for licensure as a licensed social worker, 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	\$ 25
(2) Biennial renewal for a licensed social worker, clinical social worker, marriage and family therapist or professional counselor	\$ 45
(3) Application fee for provisional license and provisional license issuance	\$ 25
(4) Verification of licensure	\$ 15
(5) Certification of license, scores or hours	\$ 25
(6) Application fee for licensure and original license issuance as a clinical social worker, marriage and family therapist or professional counselor	\$ 45

(b) Applicants who were issued licenses prior to June 24, 1989, and who have not paid the appropriate fee in subsection (a) are required to remit the fee within 30

days of receipt of notice from the Board to maintain active licensure status. Failure to remit the required fee within that time will result in the license being placed on inactive status. A licensee holding oneself out as a "licensed social worker" while the license is on an inactive status may be subject to disciplinary proceedings before the Board.

CONTINUING EDUCATION

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

(a) An agency, organization, institution, association or center seeking to offer an organized course or program may apply to the Board as a provider.

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

(c) The application shall include the following information:

- (1) The full name and address of the applicant.
- (2) The title of the course or program and core subjects covered.
- (3) The dates and location of the course or program.
- (4) The instructor names, titles, affiliations and degrees.
- (5) The schedule of the course or program—syllabus, lecturer, time allocated and the like.
- (6) The total number of clock hours requested.
- (7) The method of certifying attendance.
- (8) The objectives.
- (9) The course or program coordinator.
- (10) The instruction and evaluation methods.
- (11) The evidence of meeting standards set forth in § 47.35 (relating to standards for courses and programs).

(d) Statements made in the application shall be sworn to be true and correct to the best of the applicant's information, knowledge and belief.

(e) Upon approval as a qualified provider of a course or program, a Board approval number will be assigned.

(f) The Board reserves the right to reject a submitted course or program which is outside the scope of practice of social work or is otherwise unacceptable because of presentation, content or failure to meet the criteria in § 47.35.

(g) Disapproval of a course or program will include a statement setting forth reasons. Applicants may submit new applications within 10 days after receipt of disapproval. New applications shall document alterations made to meet Board requirements. Notification on new applications will occur as soon as possible within the Board's capability.

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 (relating to applicability of general rules; meetings of the board; and licensure fees) apply to this chapter.

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

GENERAL PROVISIONS

§ 49.4. Applicability of general provisions in Chapter 47.

Sections 47.2—47.4 (relating to applicability of general rules; meetings of the board; and licensure fees apply to this chapter.

[Pa.B. Doc. No. 02-2141. Filed for public inspection November 27, 2002, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
[52 PA. CODE CHS. 29, 33 AND 35]**

[L-00010154]

Street Railway Transportation

The Pennsylvania Public Utility Commission (Commission) will delete the existing regulations governing street railway transportation in this Commonwealth. The existing regulations are outdated in light of changes in street railway operations in the Commonwealth.

Executive Summary

At one time, street railway companies provided passenger service to many areas of this Commonwealth. Over the years, many of these street railway companies went out of business due to the widespread use of automobiles. To preserve street railway passenger service in the Pittsburgh and Philadelphia metropolitan areas, the General Assembly passed legislation authorizing the creation of transportation authorities and empowered those transportation authorities to purchase the assets of the street railway companies operating in those metropolitan areas. These transportation authorities, Southeastern Pennsylvania Transportation Authority (SEPTA) and Port Authority of Allegheny County (PAT) purchased the assets of the street railway companies and began operating street railway systems in the Philadelphia and Pittsburgh metropolitan areas. The Philadelphia and Pittsburgh metropolitan areas are the only places in this Commonwealth where street railway systems still operate.

SEPTA's and PAT's enabling legislation provides that those agencies shall determine the facilities they will operate, the services they will provide and the rates they will charge. The Commission is thus precluded from regulating SEPTA or PAT in these areas. In addition, SEPTA and PAT receive Federal funds for their operations. Receipt of the Federal funds is conditioned upon the authorities having safety programs in place that are monitored by the Department of Transportation (Department). Since the Department monitors the safety programs initiated by SEPTA and PAT, the Commission's regulations at §§ 35.1—35.44 are unnecessary.

The Commission initiated this rulemaking by order adopted November 30, 2001. On December 18, 2001, the Office of Attorney General approved the proposed regulations as to form and content. The *Pennsylvania Bulletin* published the proposed rulemaking on February 9, 2002. The only comments to the proposed rulemaking were filed

by the Independent Regulatory Review Commission (IRRC). The Commission has incorporated those comments into the final-form rulemaking. The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

The contact person in the Law Bureau is David A. Salapa (717) 783-2841.

Public Meeting held
June 13, 2002

Commissioners Present: Glen R. Thomas, Chairperson; Robert K. Bloom, Vice Chairperson; Aaron Wilson, Jr.; Terrance J. Fitzpatrick; Kim Pizzingrilli

Deletion of Street Railway Transportation Regulations at 52 Pa. Code §§ 35.1—35.44; Doc. No. L-00010154

Order

By the Commission:

By Order adopted November 30, 2001, at L-00010154, we initiated a proposed rulemaking under sections 501 and 1501 of the Public Utility Code (66 Pa.C.S. §§ 501 and 1501) and the Commonwealth Documents Law (45 P. S. §§ 1201 et seq.) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5. The purpose of the proposed rulemaking was to delete existing Commission regulations governing street railway transportation in this Commonwealth. The current regulations are outdated in light of changes in street railway operations in this Commonwealth.

On December 18, 2001, the Office of Attorney General issued its approval of the proposed rulemaking as to form and legality. On January 24, 2002, we delivered copies of the proposed rulemaking to the House Committee on Consumer Affairs, the Senate Consumer Protection and Professional Licensure Committee, IRRC and the Legislative Reference Bureau. The *Pennsylvania Bulletin* published the proposed rulemaking for comment at 32 Pa.B. 797 (February 9, 2002).

The only comments to the proposed rulemaking were filed by IRRC on April 11, 2002. IRRC noted that three additional sections of 52 Pa. Code refer to terms found at Chapter 35, which these regulations propose to delete. IRRC's comments state that § 5.11(b) refers to § 35.1; that § 29.73 uses the term "street railway cars" in the posting notice prohibiting conversation; and that § 33.1 uses the term "street railway" in the definition of "carrier." IRRC recommends that these terms and references should be deleted in the final-form rulemaking since they will become obsolete with the deletion of Chapter 35.

The Commission notes that the regulation at § 5.11(b), cited to in IRRC's comments, actually refers to 1 Pa. Code § 35.1, not 52 Pa. Code § 35.1. The Commission therefore declines to make this change suggested by IRRC.

The Commission agrees with the remaining comments filed by IRRC regarding references to Chapter 35 in §§ 29.73 and 33.1. Section 29.73 refers to "street railway cars" in the posting notice, which prohibits operators of motor or trackless trolley buses, as well as street railway cars, from conversing with passengers while the vehicle is in motion. Our deletion of Chapter 35 eliminates Commission authority over street railway operations. Since the Commission will no longer regulate street railway operations in this Commonwealth, the prohibition of conversation between operators and passengers on street railway cars is unnecessary and will be deleted.

Section 33.1 includes the term "street railway" in the definition of "carrier." Since deleting Chapter 35 will

eliminate the Commission's regulations regarding street railway operations in this Commonwealth, street railways will no longer be carriers for purposes of our regulations. Therefore, it is appropriate to delete their inclusion within the definition of carriers at § 33.1.

After considering the comments filed to the proposed rulemaking, the Commission believes that the regulations as set forth here in Annex A should be adopted as the final-form rulemaking. Accordingly, under sections 501 and 1501 of the Public Utility Code, the Commonwealth Document Law and regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5, we amend the regulations at §§ 29.73, 33.1 and 35.1—35.44 to read as set forth in Annex A; *Therefore,*

It Is Ordered That:

1. The regulations of the Commission, 52 Pa. Code Chapters 29, 31 and 35, are amended by amending §§ 29.73 and 33.1 and by deleting 35.1—35.3., 35.11—35.13, 35.21—35.26, 35.31—35.36 and 35.41—35.44 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.
2. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.
3. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.
4. The Secretary shall submit this order and Annex A for formal review by the designated standing committees of both Houses of the General Assembly and for formal review and approval by IRRC.
5. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. These regulations shall become effective upon publication in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

(Editor's Note: The amendments to §§ 29.73 and 33.1 were not included in the proposal at 32 Pa.B. 797. For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 5582 (November 9, 2002).)

Fiscal Note: Fiscal Note 57-225 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart B. CARRIERS OF PASSENGERS OR PROPERTY

CHAPTER 29. MOTOR CARRIERS OF PASSENGERS

Subchapter B. COMMON CARRIERS

MARKINGS AND POSTING NOTICE

§ 29.73. Posting notice prohibiting conversation.

The following notice or a notice approved by the Commission shall be posted in a conspicuous place in the front part of the interior of each bus having seating capacity in excess of nine passengers:

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
ORDER PROHIBITING CONVERSATION**

BY THE COMMISSION:

It is ordered: That operators of motor or trackless trolley buses engaged in intrastate common carrier service be and are hereby prohibited from conversing with passengers while the vehicle is in motion; and, further, that all passengers in such vehicles in motion be prohibited from distracting the attention of the operator by conversation or otherwise.

CHAPTER 33. RAILROAD TRANSPORTATION

Subchapter A. GENERAL PROVISIONS

§ 33.1. Definitions.

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

* * * * *

Carrier—A railroad, railway company or corporation subject to Commission jurisdiction, which operates a steam or electric railroad in this Commonwealth.

* * * * *

CHAPTER 35. (Reserved)

§§ 35.1—35.3. (Reserved).

§§ 35.11—35.13. (Reserved).

§§ 35.21—35.26. (Reserved).

§§ 35.31—35.36. (Reserved).

§§ 35.41—35.44. (Reserved).

[Pa.B. Doc. No. 02-2142. Filed for public inspection November 27, 2002, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 141]

Small Game

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 8, 2002, meeting, adopted the following change:

Amend § 141.22 (relating to small game) to provide lawful methods for taking small game.

This final-form rulemaking was adopted under the authority of 34 Pa.C.S. (relating to the Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 32 Pa.B. 1219 (March 2, 2002).

1. Introduction

The Commission amended § 141.22(a) by adding paragraph (8) to make it unlawful to hunt or take small game except woodchucks with a handgun using larger than .40 caliber ammunition.

2. Purpose and Authority

Since the codification of the code, lawful methods for taking small game have not been clearly defined. The

language will clearly define the size of firearms for lawfully taking small game.

Section 322(c)(5) of the code (relating to powers and duties of commission) authorizes the Commission to fix the type and number of devices which may be used to take game or wildlife. Section 2102(a) of the code (relating to regulations) authorizes the Commission to promulgate regulations relating to the hunting of game or wildlife in this Commonwealth. These sections provide the regulatory authority for the final-form rulemaking.

3. *Regulatory Requirements*

The final-form rulemaking will restrict the size of firearms that small game hunters can use.

4. *Persons Affected*

Small game hunters will be affected by this final-form rulemaking.

5. *Comment and Response Summary*

There were no official comments received with regard to this final-form rulemaking.

6. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in any additional cost or paperwork.

7. *Effective Dates*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

8. *Contact Person*

For further information regarding this final-form rulemaking, contact David E. Overcash, 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 amendment 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 amendment of the 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 Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.22 to read as set forth at 32 Pa.B. 1219.

(b) The Executive Director of the Commission shall certify this order and 32 Pa.B. 1219 and deposit them with the Legislative Reference Bureau as required by law.

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

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-139A remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 02-2143. Filed for public inspection November 27, 2002, 9:00 a.m.]

GAME COMMISSION [58 PA. CODE CH. 143] Elk Licenses

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 8, 2002, meeting adopted the following changes:

Reserve §§ 143.204 and 205 (relating to unlawful acts; and penalties) and add §§ 143.206—143.208 (relating to validity of license; unlawful acts; and penalties) to establish where elk licenses are valid and whether an elk license is valid for an antlered or antlerless elk.

The final-form rulemaking was adopted under the authority of 34 Pa.C.S. (relating to the Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 32 Pa.B. 3952 (August 10, 2002).

1. *Introduction*

The Commission amended Subchapter K (relating to elk licenses) by reserving §§ 143.204 and 143.205 and adding §§ 143.206 and 143.208.

2. *Purpose and Authority*

There are currently no provisions in Subchapter K describing where elk licenses are valid or whether an elk license is valid for an antlered or antlerless elk.

Section 2102(a) of the code (relating to regulations) directs the Commission to promulgate regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth. In addition, section 2722(g)(2) of the code (relating to authorized license-issuing agents) directs the Commission to adopt regulations for the administration, control and performance of activities relating to hunting licenses. These sections provide the regulatory authority for the final-form rulemaking.

3. *Regulatory Requirements*

The final-form rulemaking will establish limited validity of elk licenses and establish procedures relating to elk licenses.

4. *Persons Affected*

Licensed elk hunters will be affected by the final-form rulemaking.

5. *Comment and Response Summary*

There were no official comments received regarding the final-form rulemaking.

6. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in any additional cost or paperwork.

7. *Effective Date*

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

8. *Contact Person*

For further information regarding the final-form rulemaking, contact David E. Overcash, 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 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 Commission, 58 Pa. Code Chapter 143, are amended by deleting §§ 143.204 and 143.205 and adding §§ 143.207 and 143.208 to read as set forth at 32 Pa.B. 3952 and by adding § 143.206 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall certify this order, 32 Pa.B. 3952 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-148 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 143. HUNTING AND FURTKER LICENSES

Subchapter K. ELK LICENSES

§ 143.206. Validity of license.

An elk license is valid for taking elk only in the elk management area designated on the elk license and is valid for an antlerless or antlered elk as designated on the elk license.

[Pa.B. Doc. No. 02-2144. Filed for public inspection November 27, 2002, 9:00 a.m.]