

# PROPOSED RULEMAKING

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

[25 PA. CODE CHS. 217 AND 287]

### Safe Fill; Advance Notice of Final Rulemaking

The Department of Environmental Protection (Department) is publishing an advance notice of final rulemaking (ANFR) for the draft final regulations for the management of safe fill to solicit comment on changes made to the proposed rulemaking, which was published at 32 Pa.B. 564 (February 2, 2002). The changes recommended to the proposed rulemaking are based on comments received during the public comment period for the proposed rulemaking, which occurred from February 2, 2002, to April 3, 2002, as well as comments received from the Residual Waste Subcommittee of the Solid Waste Advisory Committee and the Cleanup Standards Scientific Advisory Board. While there is no legal requirement to provide an opportunity to comment upon the Department's recommendations for final rulemaking, the Department believes further discussion would serve the public interest in this instance. A 45-day public comment period will be provided on the recommended changes to the proposed rulemaking, which are detailed in this notice.

#### *Background and Summary*

Guidelines for the management of safe fill were established by Departmental policy in technical guidance #258-2182-773: *Policy And Procedure Establishing Criteria for Use of Uncontaminated Soils, Rock, Stone, Unused Brick And Block, Concrete and Used Asphalt as Clean Fill* (effective February 29, 1996). Subsequent revisions were proposed to the policy in March 2000, which were advertised for public comment and review. During the public comment period, several commentators recommended, and the Department concurred, that the Department regulate fill by regulation, rather than by policy. Additional recommendations were also received during the public comment period on the policy, which were considered and incorporated by the Department into a newly proposed safe fill regulatory package. The final regulatory package will amend the municipal waste and residual waste regulations.

Major changes made to the policy, which are contained in the proposed regulatory package, include the following: the definition of "clean fill" was deleted and replaced with a definition for "safe fill," the definition of "construction/demolition waste" was amended and new definitions were added for "historic fill," "sediment" and "site undergoing remediation activities." In addition to these changes, other significant changes included the addition of five permits-by-rule (PBR), including one to the municipal waste program and four to the residual waste program for the beneficial use of contaminated soil, contaminated dredged material, historic fill, contaminated used asphalt and segregated and contaminated brick, block and concrete and contaminated soil placed at a receiving site undergoing remediation activities.

In response to comments received during the public comment period on the proposed regulatory package for

safe fill, as well as the Department's review of other related information, the Department prepared a draft final regulatory package for public comment. The draft final regulation package contains significant changes in four major areas, including the following:

1. The safe fill definition is revised for clarification and shortened by moving the proposed substantive requirements of due diligence, safe fill exceptions and placement along waterways to the body of the draft final regulations. The distinction between brick, block and concrete from construction/demolition activities at residential and commercial properties versus industrial properties is eliminated from the safe fill definition. Material that qualifies as safe fill should not exhibit visible staining but an exception is made to visible staining resulting from normal vehicular use and dripping of vehicular lubricant. The subparagraphs in the historic fill definition are deleted as the requirements are already addressed in the new § 287.12 (relating to determination that a material is safe fill). Safe fill is not regulated as waste.

2. Two new sections are being created in § 287.12 (relating to determination that a material is safe fill) for additional materials to qualify as safe fill that do not meet the safe fill definition, and § 287.13 (relating to relationship of safe fill to surface waters), which establishes requirements for the placement of safe fill into waters of this Commonwealth.

3. The due diligence standard, which is moved to § 287.11(a) (relating to safe fill numeric standards), now provides for two options instead of the three options originally proposed to evaluate if a material was affected by a spill or release. As a result, Table 3 in Appendix A, which contained safe fill numeric standards for a short list of organic regulated substances, is deleted. Decision on parameters testing from Tables 1 and 2 will depend on the knowledge of the material (or site) and due diligence results. In addition, the use of field screening or laboratory screening methods as part of due diligence is added to this section. In a situation where an analytical method cannot determine the concentration of a regulated substance below its Practical Quantitation Limitation (PQL), the PQL can now be used to demonstrate compliance with the safe fill numeric standards and is added to the safe fill numeric standards determination in § 287.11(b)(1)(iii). Similar language allowing demonstration of compliance with PQLs has been added to the new § 287.12 and the PBRs. Other changes include provision for using statistical analysis procedures to demonstrate compliance of a material with the safe fill or PBR numeric standards.

- 4(a). In the proposed PBR in § 271.103(i) (relating to permit-by-rule for municipal waste processing facilities other than for infectious or chemotherapeutic waste; qualifying facilities; general requirements) in the municipal waste regulations, the term "segregated" is deleted and language is added to clarify that brick, block or concrete may be separate or mixed together, but it should be separate from other waste materials from construction and demolition activities and also recognizable to qualify for use under this PBR. The numeric standards the material must meet are changed from the proposed residential Statewide health standards (SHS) to the nonresidential SHS. As a result of using higher numeric standards, several new requirements added to this PBR are: prohibition to placement of waste in waters of this Commonwealth (proposed § 271.103(i)(4) has been de-

leted); documentation of longitude/latitude where material will be placed; elimination of direct contact pathways promptly and permanently through the use of engineering controls; and submission of records to the Department, including a copy of a recorded deed notice for the property.

4(b). Three of the four PBRs (subsections (j), (k) and (l)) in the residual waste regulations in § 287.102 (relating to PBR) are now consolidated into one PBR in § 287.102(j), and nonresidential SHS (instead of the proposed residential SHS) are used as the numeric standards that designated waste materials must meet to be used beneficially under the consolidated PBR. As a result of using higher numeric standards, several new requirements added to the consolidated PBR are: prohibition to placement of waste in waters of this Commonwealth, documentation of longitude/latitude where material will be placed, elimination of direct contact pathways promptly and permanently through the use of engineering controls, and submission of records to the Department including a copy of a recorded deed notice for the property.

During the 45-day comment period, the Department is also seeking comments on how to address areas where the natural background levels for arsenic exceed the proposed safe fill generic number. While these areas are isolated, when these materials are tested, their offsite movement and placement must be properly managed. Based on recent data submitted for our review, the Department has been advised that there may be areas in this Commonwealth that are not affected by a spill or release but have natural concentrations of arsenic that exceed the residential SHS. While this is not something that is addressed in the proposed regulations, if this situation occurs care should be taken when these materials are excavated and moved offsite. The placement of these materials at another location should take into consideration factors such as the potential for the arsenic to leach, the bioavailability of the arsenic, the background concentration at the receiving site and the potential use of the site receiving the material.

*Contact Persons, Availability of the Draft Final Regulations and Submission of Comments*

The Department will accept written comments as well as comments transmitted by means of e-mail on the draft final regulations for the management of safe fill. Comments will not be accepted by facsimile or by telephone or voice mail. Comments sent by means of e-mail must include the following in the subject heading of the transmission: "Comments on Safe Fill ANFR." E-mail transmissions as well as all written comments must include the commentator's name and address. Written comments must be received by the Department on or before August 5, 2003. Please direct comments to:

William F. Pounds  
Bureau of Land Recycling and Waste Management  
Rachel Carson State Office Building  
400 Market Street  
14th Floor  
Harrisburg, PA 17105-8472  
E-mail: wpounds@state.pa.us

To request a copy of the draft final regulations and a summary of the changes, contact the Bureau of Land Recycling and Waste Management at (717) 787-7381. The draft final regulations are also available through the Department's website at: <http://www.dep.state.pa.us> (select "Public Participation Center—Proposals Open for Comment—Regulations & Other Proposals"). Persons

with a disability may use the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users) and request that the call be relayed to the Department.

KATHLEEN A. MCGINTY  
*Secretary*

[Pa.B. Doc. No. 03-1178. Filed for public inspection June 20, 2003, 9:00 a.m.]

## GAME COMMISSION

[58 PA. CODE CH. 141]

### Hunting and Trapping; Coyote

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 8, 2003, meeting, proposed the following amendment:

Amend § 141.4 (relating to hunting hours) to require hunters wishing to harvest a coyote while hunting during the spring gobbler season to have a valid spring turkey tag and meet the fluorescent orange and shot size requirements to make the regulations consistent and enforceable.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed amendment is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the April 8, 2003, meeting of the Commission, and comments can be sent until June 23, 2003, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

#### 1. Introduction

The Commission is proposing to amend § 141.4 to require hunters wishing to harvest a coyote while hunting during the spring gobbler season to have a valid spring turkey tag and meet the fluorescent orange and shot size requirements to make the regulations consistent and enforceable.

#### 2. Purpose and Authority

Currently, § 139.4 (relating to seasons and bag limits for the license year) contains language requiring coyote hunters hunting, during the spring gobbler season, to have a valid spring gobbler tag and meet the fluorescent orange and shot size requirements. Currently, § 141.4 contains no reference to these same requirements. Section 141.4(2) expressly forbids the taking of coyotes prior to 12 p.m. during the spring gobbler season. The Commission is proposing to incorporate the requirements that hunters hunting during the spring gobbler season have a valid spring turkey tag and meet the fluorescent orange and shot size requirements in § 141.4 to make the regulations consistent and enforceable. As a result, the regulations will consistently permit hunters hunting during the spring gobbler season who meet all the requirements to harvest a coyote.

Section 2102(d) of the code (relating to regulations) authorizes the Commission to "promulgate regulations stipulating the . . . type of firearms and ammunition and

other devices which may be used, the manner in which and the location where the devices may be used, the species the devices may be used for and the season when the devices may be used." Section 2102(a) of the code provides "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." These provisions provide the statutory authority for the proposed rulemaking.

3. *Regulatory Requirements*

The proposed rulemaking requires hunters wishing to harvest a coyote while hunting during the spring gobbler season to have a valid spring turkey tag and meet the fluorescent orange and shot size requirements to make the regulations consistent and enforceable.

4. *Persons Affected*

Persons wishing to take a coyote during the spring gobbler season will be affected by the proposed rulemaking.

5. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in additional cost or paperwork.

6. *Effective Date*

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

7. *Contact Person*

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,  
*Executive Director*

**Fiscal Note:** 48-168. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART III. GAME COMMISSION**

**CHAPTER 141. HUNTING AND TRAPPING**

**Subchapter A. GENERAL**

**§ 141.4. Hunting hours.**

During open hunting seasons, wild birds and animals may be taken 1/2 hour before sunrise to sunset unless further restricted. (See Pennsylvania Meridian Map and Table of Hunting Hours in Appendix G.)

\* \* \* \* \*

(2) Raccoon, fox, skunk, opossum, coyote, bobcat and weasel may be taken any hour, day or night, except during restricted periods in paragraph (1), and woodchuck, coyote, opossum, skunk and weasel may not be hunted prior to 12 noon during the spring gobbler season. **Coyotes may be taken by persons who have a valid spring turkey tag and meet fluorescent orange and shot requirements.**

\* \* \* \* \*

[Pa.B. Doc. No. 03-1179. Filed for public inspection June 20, 2003, 9:00 a.m.]

**[58 PA. CODE CH. 141]**

**Hunting and Trapping; Elk**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 8, 2003, meeting, proposed the following amendment:

Amend § 141.47 (relating to elk) to make it unlawful to drive or herd elk.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the April 8, 2003, meeting of the Commission, and comments can be sent until June 23, 2003, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Introduction*

The Commission is proposing to amend § 141.47 to make it unlawful to drive or herd elk.

2. *Purpose and Authority*

Recently the Commission has experienced a number of problems with elk hunters and guides driving elk from one management zone to another or out of safety zones. The proposed rulemaking would make driving or herding elk unlawful.

Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." This provision provides the statutory authority for the proposed amendment.

3. *Regulatory Requirements*

The proposed rulemaking will make it unlawful to drive or herd elk.

4. *Persons Affected*

Persons wishing to hunt elk will be affected by the proposed rulemaking.

5. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in additional cost or paperwork.

6. *Effective Date*

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

7. *Contact Person*

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,  
*Executive Director*

**Fiscal Note:** 48-166. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART III. GAME COMMISSION**

**CHAPTER 141. HUNTING AND TRAPPING**

**Subchapter C. BIG GAME**

**§ 141.47. Elk.**

It is unlawful while hunting elk to:

\* \* \* \* \*

**(11) Drive or herd elk.**

[Pa.B. Doc. No. 03-1180. Filed for public inspection June 20, 2003, 9:00 a.m.]

**[58 PA. CODE CH. 143]**

**Hunting and Furtaker Licenses; Elk Licenses**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 8, 2003, meeting, proposed the following amendment:

Amend § 143.203 (relating to drawing) to eliminate the cap on the number of nonresident elk licenses and establish a preference system for people who have applied for elk licenses in previous years.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed amendment is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the April 8, 2003, meeting of the Commission, and comments can be sent until June 23, 2003, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Introduction*

The Commission is proposing to amend § 143.203 to eliminate the cap on the number of nonresident elk licenses and establish a preference system for people who have applied for elk licenses in previous years.

2. *Purpose and Authority*

Currently, the regulations require a 10% yearly cap on the number of nonresident elk licenses that are issued in a given year. This cap is determined by the percentage of

nonresident general licenses that have been sold in the current year. The Commission is proposing to eliminate the cap on the number of nonresident elk licenses that may be issued and establish a preference system for all persons who have applied for elk licenses in previous years.

More specifically, the proposed rulemaking to § 143.203 will provide for a preference for applicants who have applied annually for an elk license but have been unsuccessful in having their application drawn. Under this preference, applicants who have applied in the previous year or years will have their prior years' applications remain in the pool of applications from which successful applicants are drawn, thus accruing preference and increasing their chances of being drawn for a license. For example, if a person has applied for the 5th year, but has not been successfully drawn during the previous 4 years, that person will have five chances to be drawn in that 5th year's drawing.

Section 2705(15) of the code (relating to classes of licenses) provides that "To ensure sound management of Pennsylvania's wild elk population, the commission may promulgate regulations to establish a limited number of licenses." 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 license issuing activities. Section 2102(a) of the code (relating to regulations) authorizes the Commission to "promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting . . . ." These provisions provide the statutory basis for the proposed rulemaking.

3. *Regulatory Requirements*

The proposed rulemaking will eliminate the 10% cap on nonresident elk licenses and implement a system that will allow elk license applicants to accrue preference and increase their chances of being drawn by applying annually.

4. *Persons Affected*

Persons who wish to apply for an elk license will be affected by the proposed rulemaking.

5. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in additional cost or paperwork.

6. *Effective Date*

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

7. *Contact Person*

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,  
*Executive Director*

**Fiscal Note:** 48-165. No fiscal impact; (8) recommends adoption.

**Annex A**  
**TITLE 58. RECREATION**  
**PART III. GAME COMMISSION**  
**CHAPTER 143. HUNTING AND FURTKAKER**  
**LICENSES**  
**Subchapter K. ELK LICENSES**

**§ 143.203. Drawing.**

\* \* \* \* \*

(b) [ In any given year, no more than 10% of the applications drawn and issued may be non-resident. A yearly cap on the number of nonresident applications that may be drawn and issued shall be based on the percentage of nonresident general hunting licenses issued the previous year. ] Applications from current applicants who have applied in the 2003-2004 license year and proceeding years will be included in the drawing until the applicant is successfully drawn and issued a permit.

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[Pa.B. Doc. No. 03-1181. Filed for public inspection June 20, 2003, 9:00 a.m.]

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**[58 PA. CODE CH. 147]**  
**Special Permits**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 8, 2003, meeting, proposed the following amendment:

Amend § 147.222 (relating to permits for bird dog trials on Commission controlled lands) to clarify that permits for dog trials other than bird dog trials may be issued for State game lands (SGL).

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

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the April 8, 2003, meeting of the Commission, and comments can be sent until June 23, 2003, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

*1. Introduction*

The Commission is proposing to amend § 147.222 to clarify that permits for dog trials other than bird dog trials may be issued for SGL.

*2. Purpose and Authority*

Currently, two sections provide for permits to hold dog trials: § 147.222 applies to trials held on SGL and § 147.223 (relating to permits for dog trials on privately-owned lands) applies to privately owned lands. Although the Commission issues permits for many types of dog trials on SGL, the language in § 147.222 refers to permits for "bird" dog trials. Section 147.223 refers to dog trials with no reference to "bird." By removing the

reference "bird" from the section heading and § 147.222(a), this confusion can be eliminated. This amendment will clarify that permits for dog trials other than bird dog trials may be issued for SGL.

Section 2901(b) of the code (relating to authority to issue permits) provides "the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." Section 2102(a) of the code (relating to regulations) provides "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat. . . ." These provisions provide the statutory authority for the proposed rulemaking.

*3. Regulatory Requirements*

The proposed rulemaking will clarify that permits for dog trials other than bird dog trials may be issued for SGL by eliminating the word "bird" from § 147.222.

*4. Persons Affected*

Persons wishing to apply for a permit to hold dog trials on SGL will be affected by the proposed rulemaking.

*5. Cost and Paperwork Requirements*

The proposed rulemaking should not result in additional cost or paperwork.

*6. Effective Date*

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

*7. Contact Person*

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,  
*Executive Director*

**Fiscal Note:** 48-167. No fiscal impact; (8) recommends adoption.

**Annex A**  
**TITLE 58. RECREATION**  
**PART III. GAME COMMISSION**  
**CHAPTER 147. SPECIAL PERMITS**  
**Subchapter L. PERMITS RELATING TO DOGS**

§ 147.222. Permits for [ **bird** ] dog trials on Commission controlled lands.

(a) A request for permission to hold a trial for [ **bird** ] dogs on lands under the control of the Commission shall be made in writing, at least 30 days in advance of the requested trial date, to the regional office under whose jurisdiction the lands are located.

\* \* \* \* \*

[Pa.B. Doc. No. 03-1182. Filed for public inspection June 20, 2003, 9:00 a.m.]

# STATE BOARD OF PRIVATE LICENSED SCHOOLS

[22 PA. CODE CH. 73]

## General Provisions

The State Board of Private Licensed Schools (Board), under the Private Licensed Schools Act (act) (24 P. S. §§ 6501—6518), proposes to amend Chapter 73 (relating to general provisions) to read as set forth in Annex A.

### *Description of Proposed Rulemaking*

The proposed amendments to § 73.1 (relating to definitions) add a definition for “quarter credit hour” and remove the term “entry level” from the definition of “seminars.” The addition of a definition for “quarter credit hour” is consistent with the program requirements in § 73.81(1)(ii) (relating to application requirements). The elimination of “entry level” from the definition of “seminar” reflects the Board’s intention to include nonentry level training in this definition.

The proposed amendments to §§ 73.21—73.23 (relating to contents of student records; short-term retention of student records; and long-term retention of transcript of academic performance) specify the content of student records and eliminate the distinction between long-term and short-term retention of records. They also require the annual consolidation of student records. The proposed rulemaking relieves the schools of the requirement to maintain the enrollment agreement, financial records and financial aid documentation for 5 years following graduation, withdrawal or termination and eliminates the distinction between long-term and short-term retention of records. These amendments are designed to ease recordkeeping requirements and facilitate record storage and transfer. The requirement of annual consolidation of student records is designed to organize and facilitate the storage of records.

The proposed amendment to § 73.25 (relating to content of disposition statement) prescribes the content of the disposition of records agreement. The proposed rulemaking includes a reference to the contents of the student records defined in § 73.21 to improve clarity.

The proposed amendment to § 73.51(b) (relating to general requirements) requires applicants for licensure to attend a new school orientation. The application process can be cumbersome for uninitiated applicants. Applicants who choose not to attend the optional orientation seminars often encounter obstacles and delays that could have been avoided. These delays and the staff time required to resolve issues increases the cost of processing these applications. As a public service to applicants and in the interest of resource management, the Board is proposing to make the orientation seminars mandatory.

The proposed amendment to § 73.51(d) removes the requirement that the Board provide a signed receipt for all materials. This amendment reflects practice in which verification of receipt can be made by staff members, by phone and by e-mail.

The proposed amendment to § 73.52 (relating to content of application) authorizes the Board to refuse to issue a license if the name of the proposed school or program is misleading. A few schools have proposed names that do not represent the content of the instruction offered or are designed to associate the school with

another institution or organization. This change would enable the Board to protect the public from potential misrepresentation.

The proposed amendment to § 73.54 (relating to surety) mandates that surety be maintained throughout the period of licensure. This amendment is designed to provide regulatory protection to prevent a school from canceling surety following approval for licensure.

The proposed amendment to § 73.71 (relating to licensure required) clarifies the licensure requirement for admissions representatives.

The proposed amendments to § 73.81 (relating to application requirements) include the appropriate reference to credit hours and quarter credits and authorize the Board to refuse to approve a program if the name of the proposed program is misleading. The specific reference to quarter credits confirms the Board’s current policy of allowing schools to use a quarter credit system. The current regulations do not provide for reporting progress in quarter credit hours. Some schools prefer to count credits in quarter hours and this proposed rulemaking will facilitate that flexibility. A few schools have proposed program names that do not represent the content of the instruction offered or are designed to imply a higher level of training or certification than is actually offered. This change would enable the Board to protect the public from potential misrepresentation.

The proposed amendment to § 73.104 (relating to instructor) eliminates the maintenance of attendance records from the responsibilities of instructors. The Board does not require schools to take attendance, so this duty for instructors is no longer necessary.

The proposed amendment to § 73.136 (relating to period of refund) includes a student’s failure to return from a leave of absence under the conditions for which a refund must be made within 30 days. The proposed rulemaking is designed to protect the student and guarantee a refund when a student fails to return from a leave of absence. It also protects the school from the potential implication that the refund was required within 30 days of the last date of student attendance even though the school could not have known the student would not return at that time.

The proposed amendment to § 73.141 (relating to issuance) regarding issuance includes authorization for the Board to refuse to issue a license if the name of the school is misleading. The amendment is proposed to provide consistency with the proposed amendment to § 73.52.

The proposed amendment to § 73.151 (relating to fees) specifies that only one program approval is included under the \$1,500 initial license application fee paid by a new school. Applicants with multiple programs will be required to pay a \$700 program application fee for each additional program to be offered. This proposed rulemaking is designed to address an inequity in previous policy regarding fees, under which the original license application was accepted with an unlimited number of programs for one license application fee. A separate program approval fee was only required in cases where the program approval applications were submitted separately at a later time. The effort involved in reviewing each program was, however, similar and schools were submitting numerous programs upon initial licensure even if they would not immediately be offered, to avoid additional fees. The proposed amendment to § 73.151 addresses this inequity by providing that only one new program application will be included in the initial \$1,500 licensure fee. Applicants will need to pay the standard

program application fee for each additional program application, regardless of whether those applications are submitted at the time of the license application or subsequently. This amendment will provide equity, with every school paying for the costs of Board and staff time and resources for program review and approval.

The proposed amendment to § 73.173 (relating to advertisements and representations) includes the general public under sectors that may not be misled by advertisements or representations on behalf of a licensed school. The proposed rulemaking broadens the prohibition against misleading advertising and representations to include the general public instead of prospective students only.

*Fiscal Impact*

There is minimal fiscal impact from the proposed rulemaking. The requirement that all prospective applicants attend the orientation seminar will increase revenues from the \$200 fee for the seminar, but the revenue increase will be minimal, at \$10,000 or less.

Revenues will also be generated by the fees charged for each additional program application submitted with the initial license and new program application. These revenues are estimated at \$44,100 per year and will cover staff and Board costs for the review of these applications, which is not currently recovered.

The costs of complying with the proposed rulemaking to the requirements for records compilation and storage are estimated at \$1 per student for copying, materials, storage and staff time. This cost will be assumed by the school and recovered through student fees and tuition. This activity will not generate any revenue for the Commonwealth.

*Paperwork Requirement*

The proposed amendments to §§ 73.21—73.23 will relieve the regulated community of paperwork requirements regarding the maintenance of student records.

The proposed amendment to § 73.51 relieves the Board of the paperwork requirement of providing a signed receipt for all application materials received.

The proposed amendment to § 73.104 will relieve the schools of the additional paperwork to maintain student attendance records.

No additional forms or reporting are required by the regulated schools or the Commonwealth.

*Effective Date*

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

*Sunset Date*

The act requires that the Board monitor its revenues and costs on a biennial basis and revise its regulations as necessary. Therefore, no sunset date has been assigned.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 10, 2003, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Education Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)), IRRC may convey any comments, recommendations or objections to the proposed rulemaking

within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comments and Contact Person*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking within 30 days following publication in the *Pennsylvania Bulletin* to Patricia Landis, Coordinating Secretary, State Board of Private Licensed Schools, 333 Market Street, Harrisburg, PA 17126-0333, (717) 783-8228, TTY: (717) 783-8445.

PATRICIA LANDIS,  
*Coordinating Secretary*

**Fiscal Note:** 6-286. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 22. EDUCATION**

**PART III. STATE BOARD OF PRIVATE LICENSED SCHOOLS**

**CHAPTER 73. GENERAL PROVISIONS**

**DEFINITIONS**

**§ 73.1. Definitions.**

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

\* \* \* \* \*

**Quarter credit hour**—A unit of curricular material which normally can be taught in a minimum of 10 clock hours of lecture:

(i) For laboratory and shop instruction, a quarter credit hour represents a minimum of 20 clock hours.

(ii) For externship/internship experiences, a quarter credit hour represents a minimum of 30 clock hours.

\* \* \* \* \*

**Seminar**—Training or instruction that is one of the following:

\* \* \* \* \*

(ii) Instruction for an [ **entry-level** ] occupation offered at a total contract price [ , ] of less than \$300, which includes all costs charged to students, including tuition, fees, books and supplies, provided that the total contract price for all courses to any enrolled student is less than \$300 in any one calendar year.

\* \* \* \* \*

**STUDENT RECORDS**

**§ 73.21. Contents of student records.**

Student records shall contain a transcript of academic performance, which shall include [ **but not be limited to,** ] student name, identifying number, program or course attended, grades for all subjects taken, date of entrance, date of graduation or withdrawal and the award received upon completion[ ; **enrollment agree-**

ment; student financial account record; and the financial aid documentation required by State and Federal agencies ] .

§ 73.22. [ Short-term retention of student records ] (Reserved).

[ A school shall provide for a method of maintenance of and access to the student records defined in § 73.21 (relating to contents of student records) for a period of 5 years after graduation, termination or withdrawal of the student. ]

§ 73.22a. Annual consolidation of student transcripts.

Annually, a school shall consolidate copies of all transcripts of academic performance for all students who have graduated, terminated or withdrawn during the previous calendar year. These transcripts of academic performance for each year shall be stored in a hard copy file or printable electronic record.

§ 73.23. [ Long-term retention ] Retention of transcript of academic performance.

[ After the 5-year retention period, a ] A school shall provide for a method of maintenance of and access to the transcript of academic performance for [ a period of ] 50 years after graduation, termination or withdrawal.

§ 73.25. Content of disposition statement.

\* \* \* \* \*

(b) Proper disposition of student records shall be subject to approval of the Board and shall include a means of access by the student for copies of records [ that relate to that student's enrollment ] as defined in § 73.21 (relating to contents of student records).

APPLICATION FOR SCHOOL LICENSE OR REGISTRATION

§ 73.51. General requirements.

\* \* \* \* \*

(b) A person, partnership or corporation desiring to operate a private licensed school in this Commonwealth shall attend a new school orientation seminar conducted by Board staff and shall file an application for licensure or registration with the Board in the manner prescribed by the Board.

\* \* \* \* \*

(d) Original letters, proof of surety, forms and applications sent to the Board shall become the property of the Board, shall constitute records of the Board and may be retained by the Board. [ Letters, applications, forms or other papers will not be considered received by the Board without signed verification of receipt from the Board. ]

\* \* \* \* \*

§ 73.52. Contents of application.

An application for an original license or registration shall contain, at a minimum, the following prepared in the manner and form prescribed by the Board:

\* \* \* \* \*

(2) The name of the school, ownership or governing body and officials. A copy of a fictitious name registration,

articles of incorporation or charter. School names which the applicant wishes to appear on the license or registration shall be submitted, along with a fictitious name registration for each name. The Board may refuse to issue a license, when in the Board's judgment, a name chosen by the applicant appears to be misleading to the public regarding the nature or scope of the school.

\* \* \* \* \*

(6) Descriptions of proposed courses or programs of instruction prepared under §§ 73.81—73.83 (relating to approval of programs). The Board may refuse to approve a program, when in the Board's judgment, the name of the program chosen by the applicant appears to be misleading to the public regarding the nature or scope of the program.

\* \* \* \* \*

§ 73.54. Surety.

\* \* \* \* \*

(b) Levels of surety. Regardless of the form of surety selected by the school, surety shall be demonstrated to exist at the following levels:

\* \* \* \* \*

(5) Schools are required to maintain surety at the levels under this subsection throughout the period of licensure.

\* \* \* \* \*

ADMISSIONS REPRESENTATIVES

§ 73.71. License required.

[ As defined in the act, no ] A person may not solicit or procure through an enrollment agreement off the premises of the school, a prospective student within this Commonwealth to enroll in a licensed or registered school unless the person has been licensed as an admissions representative [ by the Board ] of the school.

APPROVAL OF PROGRAMS

§ 73.81. Application requirements.

A school seeking original licensure or registration shall submit programs to the Board for approval in the manner and form established by the Board. This section applies to licensed or registered schools wishing to offer new programs.

(1) Minimum requirements for program approval include the following:

\* \* \* \* \*

(ii) Each program—curriculum—shall be outlined in detail showing the courses, major subjects, hours/lessons (in clock hours, credit hours or quarter credit hours) devoted to each subject and the award at completion of program. The school shall provide a list of instructional equipment.

\* \* \* \* \*

(2) Programs shall be approved by the Board before they can be advertised or offered.

\* \* \* \* \*

(iv) If the name that is proposed for the program may be misleading in regard to the program's nature and scope, the Board may refuse to approve the program.



**ADMINISTRATORS, SUPERVISORS AND INSTRUCTORS**

**§ 73.104. Instructor.**

(a) *Duties.* The primary duties of an instructor involve teaching, advising students and maintaining accurate [ **attendance and** ] academic records.

\* \* \* \* \*

**TUITION AND FEES; REFUND AND WITHDRAWAL POLICIES; SCHOLARSHIP**

**§ 73.136. Period of refund.**

Refunds shall be made within 30-calendar days of the date the student fails to enter [ **or** ], leaves the program or fails to return from a leave of absence.

**ISSUANCE AND RENEWAL OF SCHOOL LICENSE OR REGISTRATION**

**§ 73.141. Issuance.**

The Department will issue an original school license or registration to a school approved by the Board as meeting the requirements of the act and this chapter. **The Board may refuse to issue a license when the Board determines that the applicant's school name appears to be misleading to the public concerning the nature or scope of the school.**

**FEES**

**§ 73.151. Fees.**

(a) *License fees.* The fees for school and admissions representative licenses shall accompany both original and renewal license and registration applications. The fee schedule is:

(1) For an original school license or registration—\$1,500 annually. **The fee for an original school license or registration includes the user fee for the application for approval of one new program. Each additional new program application submitted with a new license application shall be accompanied by an additional new program approval fee.**

\* \* \* \* \*

**REQUIREMENTS FOR LICENSURE AND OPERATION**

**§ 73.173. Advertisements and representations.**

(a) The advertising and representations made by a person representing the school may neither misrepresent facts relating to the school nor mislead prospective students **or the general public.**

\* \* \* \* \*

[Pa.B. Doc. No. 03-1183. Filed for public inspection June 20, 2003, 9:00 a.m.]

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