

PROPOSED RULEMAKING

GAME COMMISSION

[58 PA. CODE CH. 137]

Wildlife

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 24, 2003, meeting, proposed the following amendment:

Amend § 137.2 (relating to release of turkeys) to make the release of captive held wildlife without a permit or domestic dogs or cats into the wild unlawful.

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 June 24, 2003, meeting of the Commission. Comments can be sent until October 3, 2003, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Introduction

The Commission is proposing to amend § 137.2 to make the release of captive held wildlife or domestic dogs or cats into the wild unlawful.

2. Purpose and Authority

Currently, the Commission has no laws or regulations that prohibit the release of captive held wildlife or domestic dogs or cats into the wild. Release of captive held wildlife and domestic dogs or cats into the wild raises a big concern in light of the possibility of disease spread. The recent outbreak of monkey-pox is a prime example. If animals carrying this or other diseases were released among our native wild animals, the impact could be devastating. These animals also impact our native species by direct predation and by competition for habitat. Amending § 137.2 would make the release of captive held wildlife or domestic dogs or cats into the wild unlawful.

Section 2102(c) of the code (relating to regulations) directs that "The Commission shall promulgate regulations concerning the transportation, introduction into the wild, importation, exportation, sale, offering for sale or purchase of game or wildlife or the disturbing of game or wildlife in their natural habitat." Section 2102(a) of the code 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." These provisions provide the statutory authority for the proposed rulemaking.

3. Regulatory Requirements

The proposed rulemaking will make the release of captive held wildlife or domestic dogs or cats into the wild unlawful.

4. Persons Affected

Persons who release captive held wildlife or domestic dogs or cats into the wild in this Commonwealth 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: 48-172. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 137. WILDLIFE

§ 137.2. Release of [turkeys] animals.

[It is unlawful to release turkeys into the wild without first obtaining a permit from the Commission. The permit applicant shall provide proof the turkeys to be released have been tested using procedures prescribed by the Department of Agriculture in 7 Pa. Code Chapter 15 (relating to control and eradication of pullorum disease) and have been found free of disease. If the turkeys to be released have been raised in this Commonwealth in accordance with 7 Pa. Code Chapter 15 and regularly tested under those regulations within 12 months of release, a permit is not required.] Except as otherwise provided, it is unlawful to release captive held or captive raised game or wildlife onto any lands, public or private, without first securing a permit from the Commission. Lawfully acquired mallard ducks, ringneck pheasant, bobwhite quail and chukar partridge may be released for dog training or hunting purposes. Domestic dogs (*canis familiaris*) and domestic cats (*felis catus*) may not be released into the wild.

[Pa.B. Doc. No. 03-1838. Filed for public inspection September 19, 2003, 9:00 a.m.]

[58 PA. CODE CH. 141]

Hunting and Trapping

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 24, 2003, meeting, proposed the following amendments:

Amend §§ 141.4, 141.22, 141.41, 141.43 and 141.45 and add § 141.20 (relating to protective material required) to reduce confusion concerning the wearing of protective material by consolidating related regulations into one section.

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

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

The proposed rulemaking was made public at the June 24, 2003, meeting of the Commission. Comments can be sent until October 3, 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, 141.22, 141.41, 141.43 and 141.45 and add § 141.20 to reduce confusion concerning the wearing of protective material by consolidating related regulations into one section.

2. *Purpose and Authority*

Florescent orange requirements are currently in section 2524 of the code (relating to protective material required) and at least nine different sections of the attendant regulations in Chapter 141 (relating to hunting and trapping). These requirements have been amended many times and are so varied that Commission officers, the court system and hunters have a difficult time interpreting them. By consolidating the related regulations into one section, there would be a reduction in confusion concerning the wearing of protective material for all who must abide by or enforce, or both, the regulations. The proposed rulemaking will not be effective until the 2004-2005 hunting license year.

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 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 rule-making.

3. *Regulatory Requirements*

The proposed rulemaking will consolidate sections related to the wearing of protective material into one section to reduce confusion.

4. *Persons Affected*

Persons wishing to hunt game and wildlife in this Commonwealth will be affected by the proposed rule-making.

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 rule-making, 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: 48-171. 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.)

(1) During the regular antlered and antlerless deer seasons, it is unlawful to take or attempt to take other wild birds or mammals from 1/2 hour before sunrise to sunset. Game birds on regulated hunting grounds and migratory waterfowl are excepted. Coyotes may be taken from the first day to the last day inclusive of any deer or bear season only by persons who possess a valid furtaker's license [**and wear 250 square inches of daylight fluorescent orange-colored material on the head, chest and back combined visible in a 360° arc from 2 hours before sunrise to 2 hours after sunset**], or by persons lawfully engaged in hunting deer or bear who have a valid tag.

* * * * *

§ 141.20 Protective material required.

(a) **It is unlawful to hunt or assist to hunt game or wildlife or move to or from a hunting location, from 1 hour before legal hunting hours to 1 hour after legal hunting hours outside of a motorized vehicle, at any time without wearing a minimum of 250 square inches of daylight fluorescent orange-colored material on the head, chest and back combined so that it is visible in a 360° arc. This shall include going to or from a hunting location before or after legal shooting hours.**

(b) *Permitted acts.* It is lawful to:

(1) **Hunt waterfowl, doves or crows without wearing daylight fluorescent orange-colored material.**

(2) **Except during any big game season hunt for woodchucks while wearing a hat made of solid daylight fluorescent orange-colored material on the head only.**

(3) **Move about or relocate while hunting for turkey during the spring turkey season while wearing a hat made of a solid daylight fluorescent orange-colored material on the head only. When stationary, orange-colored material is not required.**

(4) **Move about or relocate while hunting with a bow and arrow or crossbow during archery deer season while wearing a hat made of solid daylight fluorescent orange-colored material on the head only. When stationary, orange-colored material is not required. This paragraph does not apply to any archery season which is concurrent with any season for small game other than woodchucks or any big game firearms season.**

(c) A person who violates any provision of this section shall be subject to the penalties as provided in the act.

Subchapter B. SMALL GAME

§ 141.22. Small game.

(a) *Unlawful activities.* It is unlawful to:

* * * * *

(6) [Hunt for groundhogs without a cap or hat made of a daylight fluorescent orange material as a part of the requirements in section 2524 of the act (relating to protective material required).

(7) Hunt for or assist to hunt for other small game, except waterfowl, mourning doves and crows without wearing a minimum of 250 square inches of daylight fluorescent orange-colored material. The material shall be worn on the head, chest and back combined so it is visible in a 360° arc.

(8)] Unless otherwise provided in the act or this title, hunt or take small game with anything other than a shotgun with fine shot, muzzleloading rifle or handgun .40 caliber or less, rimfire rifle or handgun .22 caliber or less, or bow and arrow with or without broadheads. The caliber restrictions do not apply to rifles or handguns while hunting woodchuck.

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Subchapter C. BIG GAME

§ 141.41. General.

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(b) *It is unlawful to:*

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(2) [Hunt for or assist to hunt for deer, bear or elk during the regular firearms season or special firearms season without wearing a minimum of 250 square inches of daylight fluorescent orange-colored material. The material shall be worn on the head, chest and back combined so it is visible in a 360° arc.

(3)] Hunt for deer or bear through the use of any one or more of the following:

* * * * *

[(4)] (3) * * *

[(5)] (4) * * *

§ 141.43. Deer.

(a) *Archery season.* It is unlawful while hunting deer with a bow and arrow or crossbow during the archery season to:

* * * * *

(3) [Move about or relocate during that portion of the archery deer season that is concurrent with any firearms deer season (antlerless only) that precedes the regular firearms season for deer or is concurrent with the fall turkey season without wearing a minimum of 250 square inches of daylight fluorescent orange-colored material. The material shall be worn on the head, chest and back combined so it is visible in a 360° arc.

(4) Be on stand and stationary during that portion of the archery deer season that is concurrent with any firearms deer season (antlerless only) that

precedes the regular firearms season for deer or is concurrent with the fall turkey season without placing a band containing a minimum of 100 square inches of daylight fluorescent orange-colored material, in lieu of the required 250 square inches, within 15 feet of their location so it is visible in a 360° arc.

(5)] Hunt or take deer with a crossbow without a valid disabled persons crossbow permit.

* * * * *

(f) *Prohibitions.* While hunting deer during muzzleloading season it is unlawful to:

* * * * *

[(3) Hunt for or assist to hunt for deer during any muzzleloading season for deer without wearing a minimum of 250 square inches of daylight fluorescent orange-colored material on the head, chest and back combined so that it is visible in a 360° arc.]

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§ 141.45. Turkey.

(a) While hunting wild turkey it is unlawful to:

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[(5) Move about or relocate during the fall season without wearing a minimum of 100 square inches of daylight fluorescent orange-colored material on the head or in such a manner so it is visible in a 360° arc in a wildlife management area unit limited to shotguns and bows and arrows only.

(6) Move about or relocate during the fall season in a wildlife management area unit not limited to shotguns and bows and arrows only, without wearing a minimum of 250 square inches of daylight fluorescent orange-colored material. The material shall be worn on the head, chest and back combined so it is visible in a 360° arc, except stationary turkey hunters may, in lieu of the 250 square inch requirement, place a band containing a minimum of 100 square inches of daylight fluorescent orange-colored material within 15 feet of their location so it is visible in a 360° arc.]

(b) While hunting turkey during the spring gobbler season it is:

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[(4) Unlawful to move about or relocate without wearing a minimum of 100 square inches of daylight fluorescent orange-colored material on the head or in such a manner so that it is visible in a 360° arc.]

[Pa.B. Doc. No. 03-1839. Filed for public inspection September 19, 2003, 9:00 a.m.]

**[58 PA. CODE CHS. 147, 147b AND 147c]
Depredation**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 24, 2003, meeting, proposed the following amendment:

Add Subchapter U (relating to depredation) to provide permanent regulations regarding the co-signing of Federal depredation permits for migratory birds (both waterfowl and nonwaterfowl).

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

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

The proposed rulemaking was made public at the June 24, 2003, meeting of the Commission. Comments can be sent until October 3, 2003, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Introduction*

The Commission is proposing to add Subchapter U to provide policy and procedure relating to the co-signing of Federal depredation permits for migratory birds (both waterfowl and nonwaterfowl).

2. *Purpose and Authority*

Subchapter U will replace Chapter 147a (relating to temporary guidelines relating to the co-signing of Federal depredation permits—statement of policy), established in January 1995, that provided temporary guidelines relating to the co-signing of Federal depredation permits for migratory birds other than waterfowl. Subchapter U, in addition to providing definitions, will provide procedures for the Commission's co-signing of depredation permits relating to migratory birds other than waterfowl.

Sections 147.744 and 147.745 (relating to depredation permits for migratory waterfowl; and exclusions) will replace Chapter 147b (relating to guidelines relating to the issuance of depredation permits for waterfowl—statement of policy), which references depredation permits for migratory waterfowl. These sections will identify the procedures under which the Commission will co-sign Federal migratory bird depredation permits for the purpose of reducing nuisance and damage problems from waterfowl, as well as provide a listing of those migratory bird species which are excluded from permitting by standing Federal depredation order. Though waterfowl are recognized as a valuable natural resource enjoyed by millions of residents in this Commonwealth, there are many situations when they can have devastating effects on natural and man-altered environments including agriculture, particularly during the late winter and spring. Regulated hunting is the preferred method and most effective tool to control waterfowl populations over the long term and must be given first priority in their management, as required by the proposed rulemaking.

However, there are some situations when hunting is ineffective or impractical. In these situations, mitigation of nuisance and damage problems may require alternative methods, including both nonlethal and lethal procedures. Since the United States Fish and Wildlife Service has the authority under the Migratory Bird Treaty Act (16 U.S.C.A. §§ 703—711) to issue migratory bird permits authorizing the taking of migratory birds and their nests, eggs and young to address depredation and damage problems, the Commission has developed the proposed rulemaking under which applications for depredation permits for waterfowl may be co-signed.

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 activi-

ties which may be performed under authority of any permit issued." 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 . . . in this Commonwealth, including regulations relating to the . . . management of game or wildlife and game or wildlife habitat . . . in this Commonwealth." These provisions provide the statutory authority for the proposed rulemaking.

3. *Regulatory Requirements*

The proposed rulemaking will establish certain prerequisites and procedures before a Federal depredation permit will be co-signed by the Commission. These include the exhaustion of all reasonable nonlethal methods for damage control and, in the case of waterfowl, having the site open to hunting; an agreement to follow recommendations for working toward a permanent solution and having the situation verified by means of a visit from a Wildlife Conservation Officer.

4. *Persons Affected*

Persons suffering damage from and wishing to apply for depredation permits for migratory birds 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 on 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: 48-170. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART III. GAME COMMISSION
CHAPTER 147. SPECIAL PERMITS
Subchapter U. DEPREDAATION

- Sec. 147.741. Definitions.
- 147.742. Depredation permits for migratory birds other than waterfowl.
- 147.743. Disposition of birds destroyed.
- 147.744. Depredation permits for migratory waterfowl.
- 147.745. Exclusions.

§ 147.741. Definitions.

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

Applicant—The owner or principal officer of an aquaculture facility, which is suffering severe economic loss, or a person suffering property damage from migratory birds.

Aquaculture—The controlled culture of aquatic organisms, particularly finfish, under artificial circumstances—that is, ponds, raceways—for economic profit or by the Fish and Boat Commission. Net pens are excluded for the

purposes of this policy due to the lack of effective deterrence of depredation by killing birds in open waters.

WCO—Wildlife Conservation Officer.

WS—United States Department of Agriculture Wildlife Services.

§ 147.742. Depredation permits for migratory birds other than waterfowl.

(a) A depredation permit issued by the United States Fish and Wildlife Service to an applicant may be co-signed under the following circumstances:

(1) A visit to the applicant's facility has been made by a WCO and the WS representative and a problem is verified to exist. A copy of WS Migratory Bird Damage Project Report will be furnished to the Commission by the WS investigator before submitting the form to the United States Fish and Wildlife Service.

(2) The applicant has exhausted all recommendations for reasonable nonlethal control methods provided by the Commission and the WS representative.

(3) The applicant agrees to implement WS/Commission recommendations for working towards a permanent solution within a period of time agreed to by the applicant, if economically feasible for the facility.

(b) Upon receipt of an application for a United States Fish and Wildlife Service depredation permit that meets the requirements of subsection (a)(1)–(3), the Commission will review the application and if approved forward the application to the United States Fish and Wildlife Service Migratory Bird Permit office.

§ 147.743. Disposition of birds destroyed.

Unless otherwise specified in a particular permit, the following apply:

(1) Within 48 hours of killing birds, the permittee shall notify the Commission by phone of the killing, the number of birds killed and the species of birds killed.

(2) Birds shall be disposed of as specified in the permit or as directed by the Commission.

§ 147.744. Depredation permits for migratory waterfowl.

(a) A depredation permit issued by the United States Fish and Wildlife Service to an applicant may be co-signed by the Commission when the following criteria are met:

(1) Subsequent to a complaint, the site has been visited by a WCO to verify that a problem exists. A Commission waterfowl complaint form will be furnished to the Commission by the WCO. A copy of the Federal depredation permit application will be furnished to the complainant by the WCO.

(2) The applicant has demonstrated the site is open to hunting and hunting has been ineffective or hunting is impractical.

(3) The applicant shall demonstrate that reasonable nonlethal control methods have been attempted. Nonlethal control methods shall include the following:

(i) Feeding of waterfowl is prohibited. The applicant shall address this issue and include evidence of the enforcement of a "no feeding" policy.

(ii) Exclusion and harassment measures (fencing, repellents, scare devices, and the like).

(iii) Habitat manipulation (eliminate feeding areas, resting and breeding habitat).

(b) The following control methods are approved for population reduction and will be specifically identified in the depredation permit:

(1) Oiling or addling or freezing of eggs.

(2) Shooting may be used to reinforce nonlethal measures according to the following guidelines:

(i) The permit will specify the number of birds to be shot with no more than 10% of the nuisance flock to be killed.

(ii) Waterfowl may only be taken with shotgun using nontoxic shot no larger than size T.

(iii) The use of blinds, bait, decoys and calls are prohibited.

(3) Depopulation of waterfowl by the applicant, its employees, wildlife control agents, WS or authorized Federal or State wildlife agency personnel will be specified in the permit under the following guidelines:

(i) Number of birds to be killed may not exceed that specified in the permit.

(ii) Killing will be conducted only by persons specified in the permit by shooting with shotguns using nontoxic shot no larger than size T, or capturing birds and euthanasia by chemical or mechanical devices approved for use by the Executive Director or a designee.

(4) Care will be taken to preserve carcasses for human consumption and shall be made available to food banks or others specified in the permit. Birds euthanized by chemical means will not be utilized for human consumption.

(5) When the condition of the birds is unsuitable for human consumption or food banks, or individuals are not available to accept carcasses, the birds may be disposed of in a sanitary method by burying, incineration or depositing in approved landfills or refuse facilities.

§ 147.745. Exclusions.

(1) A permit is not required for any species covered by the United States Fish and Wildlife Service's standing depredation order which is limited to red winged and rusty blackbirds, cowbirds, all grackles and crows.

(2) A depredation permit will not be issued for the taking of any endangered or threatened species, as defined in 50 CFR Part 17 (relating to endangered and threatened wildlife and plants) and § 133.21 (relating to classification of birds).

(3) Depredation permits for waterfowl will only be issued during the waterfowl hunting season for areas where hunting cannot be used as a control method.

(4) A depredation permit will not be renewed if the permittee has not made a good faith effort to implement nonlethal control recommendations by the Commission or the WS.

(Editor's Note: As part of this proposed rulemaking, the Commission is proposing to delete Chapters 147a and 147b as they currently exist at 58 Pa. Code pages 147a-1, 147a-2 and 147b-1–147b-3, serial pages (276245)–(276249).)

CHAPTER 147a. (Reserved)

CHAPTER 147b. (Reserved)

[Pa.B. Doc. No. 03-1840. Filed for public inspection September 19, 2003, 9:00 a.m.]

**STATE BOARD OF
AUCTIONEER EXAMINERS**

[49 PA. CODE CH. 1]

Examination Fees

The State Board of Auctioneer Examiners (Board) proposes to amend §§ 1.23 and 1.41 (relating to auctioneer licensure examination; and schedule of fees) to read as set forth in Annex A. The proposed rulemaking deletes references to the fees charged by testing organizations from the schedule of fees for the examination for auctioneers and directs applicants for examination to apply and pay fees directly to the professional testing organization.

Effective Date

The proposed rulemaking is effective on final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

Section 812.1 of The Administrative Code of 1929 (code) (71 P. S. § 279.3a) and sections 5 and 6 of the Auctioneer and Auction Licensing Act (63 P. S. §§ 734.5 and 734.6) set forth the powers and duties of the Board with regard to the administration of examinations.

Background and Need for the Proposed Rulemaking

Provision and Submission of Applications for Examination

The proposed amendment to § 1.23 reflects that applicants shall apply to the professional testing organization, not the Board, to take the examination. The professional testing organization determines a candidate's eligibility to take the exam and administers the examination to eligible candidates. Section 812.1 of the code requires that the auctioneer licensing examination be prepared and administered by a professional testing organization. This proposed rulemaking clears confusion that may result from the existing regulation which directs candidates to apply to the Board to be tested.

Elimination of References to Examination Fees

The proposed amendment to § 1.41 deletes the reference to the fee for the examination for auctioneers. This fee is set by the professional testing organization, not by the Board. To avoid the necessity of amending the regulation whenever the professional testing organization changes the fee, the Board proposes to delete the reference to the examination fee.

Description of Proposed Rulemaking

The proposed rulemaking deletes references to the fee for the licensing examination. The fee is set by the professional testing organization. The proposed rulemaking also clarifies that examination applicants apply directly to the professional testing organization and not to the Board.

Fiscal Impact

The proposed rulemaking will have no fiscal impact on the Board or its licensees. The proposed rulemaking

should have no fiscal impact on the private sector, the general public or political subdivisions.

Paperwork Requirements

The proposed rulemaking will avoid preparation of new regulations each time that an examination fee is changed and should not create additional paperwork for the private sector.

Sunset Date

The Board monitors its regulations on a continuing basis. 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 September 9, 2003, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, 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 which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Tammy Radel, Administrator, State Board of Auctioneer Examiners, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

RALPH M. STEWART,
Chairperson

Fiscal Note: 16A-647. 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 1. STATE BOARD OF
AUCTIONEER EXAMINERS
LICENSURE**

§ 1.23. Auctioneer licensure examination.

(a) The Board will [**schedule**] **have a professional testing organization conduct** the auctioneer licensure examination **at least** two times each year.

(b) The applicant for auctioneer's license shall apply to the **professional testing organization designated by the Board** for admission to the licensure examination and pay the fee **directly to that organization**.

* * * * *

FEES**§ 1.41. Schedule of fees.**

Applicants shall pay the following fees:

[Examination fee for auctioneer license ... \$87]

* * * * *

[Pa.B. Doc. No. 03-1841. Filed for public inspection September 19, 2003, 9:00 a.m.]

STATE BOARD OF BARBER EXAMINERS

[49 PA. CODE CH. 3]
Ten Chair Barber Schools

The State Board of Barber Examiners (Board) proposes to amend § 3.82 (relating to inspection) to read as set forth in Annex A.

A. *Effective Date*

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

B. *Statutory Authority*

The proposed rulemaking is authorized under section 15-A.4(b) of the act of June 19, 1931 (P. L. 589, No. 202) (63 P. S. § 566.4(b)), known as the Barbers' License Law.

C. *Background and Purpose*

Barber schools in this Commonwealth have, over the last several years, experienced a decrease in enrollment. To encourage schools to remain in business as well as encourage new schools to open, the Board has reviewed its existing regulations governing licensed schools with a view toward eliminating unnecessarily restrictive regulations. The Board proposes to amend § 3.82 to delete the requirement that a barber school have 20 chairs in the clinic room and 20 desks in the theory room and to require only 10 chairs and desks in each room. This minimum 10 chair/desk requirement will eliminate the need to have unused equipment in the schools. The Board also anticipates that this will allow more schools to become licensed. In conjunction with lowering the number of chairs and desks required for schools, the Board proposes to decrease the space requirements. With fewer required chairs and desks it follows that schools would need less space to operate.

The proposed rulemaking also amends the requirements for inspection prior to a barber school being licensed. Currently, the regulations require both a preliminary inspection of the school and a second inspection after the equipment is installed. The regulation requires a Board member to accompany the inspector on the second inspection. The Board feels that its resources would be better utilized if one inspection was required. Furthermore, the Board feels that it is improper for a Board member to accompany the inspector on the second inspection given that there may be violations that could result in the license being denied. This proposed rulemaking updates the regulation to reflect the Board's current practice of conducting only one inspection.

D. *Description of Proposed Rulemaking*

The proposed rulemaking reduces the minimum number of barber chairs and desks for licensed barber schools. Currently, § 3.82(a) requires that barber schools have 20 barber chairs in the clinic room and 20 desks in the theory room. The proposed rulemaking lowers this requirement to ten chairs and desks in each room. In conjunction with lowering the minimum number of chairs and desks required for a barber school, the proposed rulemaking lowers the minimum amount of square footage required for a school. In § 3.82(a)(1), the Board has lowered the minimum amount of square footage from 2,000 square feet to 1,250 square feet. The Board has determined that this amount of square footage is appropriate to accommodate ten barber chairs, a theory room, a restroom and a waiting area. The size of the theory room has also been decreased. The proposed amendment to § 3.82(a)(12) decreases the theory room from the specific dimensions of 20 feet by 20 feet (400 square feet) to 200 square feet. The Board feels that requiring square footage instead of the specific dimensions of the room will allow each school the freedom to design the theory room to best fit the needs of the school.

The proposed rulemaking also eliminates an obsolete provision in § 3.82(b) and further modifies § 3.82(a). The current regulation calls for a preliminary inspection before the application for a barber school is completed, then a follow-up inspection after the equipment has been installed. It also calls for a member of the Board to accompany the investigator on the follow-up inspection. The current Board policy is to conduct one inspection of the school after the application is submitted and before the permit is issued. The Board feels that doing one inspection after the application is filed but before the permit is issued is appropriate. This inspection verifies that the school conforms to the plans that were submitted and that the equipment and supply requirements are met. The Board feels that it is improper and unnecessary for a Board member to accompany the investigator on the inspection. Therefore, the Board is proposing to modify these two subsections to reflect the current Board practice.

E. *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking would not impose any additional paperwork requirements on the Board or its licensees. The proposed rulemaking will have a beneficial fiscal impact on existing and new barber school owners by reducing the costs for unnecessary equipment such as chairs and desks for schools with a small enrollment.

F. *Sunset Date*

The Board continuously monitors 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 September 9, 2003, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, 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, recom-

mendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

H. Contact Person

Further information may be obtained by contacting Sara Sulpizio, Administrative Assistant, State Board of Barber Examiners, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-3402, www.dos.state.pa.us.

I. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Sara Sulpizio, State Board of Barber Examiners, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

CHERYL MCDERMOTT,
Chairperson

Fiscal Note: 16A-426. 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 3. STATE BOARD OF BARBER EXAMINERS

SCHOOLS OF BARBERING

§ 3.82. Inspection.

(a) Before [**completing application for registration**] a school license is issued, each proposed school will be preliminarily inspected for the purpose of determining if the following requirements are met:

(1) At least [**2,000**] **1,250** square feet of floor space.
* * * * *

(11) A clinic room with [**20**] a minimum of 10 barber chairs.

(12) A theory room [, **approximately 20 feet by 20 feet, with 20**] with at least 200 square feet of floor space and a minimum of 10 desks or tablet arm chairs.

(b) [**A second inspection will be made after the required equipment has been installed but before the school begins operation. A member of the Board will accompany the investigator on this inspection.**

(c)] Copies of school forms and contracts to be used shall be submitted to and approved by the Board before the school begins operation.

[(d)] (c) * * *

[Pa.B. Doc. No. 03-1842. Filed for public inspection September 19, 2003, 9:00 a.m.]

STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

[49 PA. CODE CH. 19]
Emergency Vehicles

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) proposes to amend § 19.18 (relating to established place of business for dealers) to create an exception to the size of the display area required of a vehicle dealer who sells only new firefighting equipment or other emergency service vehicles to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The proposed rulemaking is authorized under section 4(a)(9) of the Board of Vehicles Act (63 P. S. § 818.4(a)(9)).

Background and Need for the Proposed Rulemaking

The Board's current regulations require all vehicle dealers to maintain a display lot large enough to display five vehicles of the type the dealer normally sells. Vehicle dealers who sell only new firefighting and emergency service vehicles contacted the Board to explain that these vehicles are sold only on special order, are built to specification by the manufacturer and are delivered by the manufacturer directly to the customer. The Board concluded that the current display area size requirement in § 19.18(3)(i) creates a hardship on these dealers because of the large square footage required to display five of these vehicles, which are not usually displayed at the dealerships. In addition, the regulation is not necessary to protect the public. Therefore, the Board proposes to exempt licensed vehicle dealers who sell only new firefighting or other emergency service vehicles from the minimum display area requirements in § 19.18(3)(i).

Description of Proposed Rulemaking

The proposed rulemaking would exempt licensed vehicle dealers who sell only new firefighting or emergency service vehicles from the requirement that their established place of business include a display area large enough to display at least five of these types of vehicles.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. 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 September 9, 2003, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional

Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, 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 which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Teresa Woodall, Administrative Assistant, State Board of Vehicle Manufacturers, Dealers and Salespersons, P. O. Box 2649, Harrisburg, PA 17105-2649, vehicle@pados.state.pa.us within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

EDWARD J. CERNIC, Jr.,
Chairperson

Fiscal Note: 16A-606. 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 19. STATE BOARD OF VEHICLE
MANUFACTURERS, DEALERS AND
SALESPERSONS**

DEALERSHIP LICENSE

§ 19.18. Established place of business for dealers.

A licensed dealer shall maintain an established place of business that meets the following criteria:

* * * * *

(3) *Display area.* The dealership shall have a display area—whether indoors, outdoors or partly indoors and partly outdoors—where the public is permitted and invited in the regular course of business to inspect or test drive the vehicles that are being offered for sale, purchase or exchange by the dealership. The display area may not include areas of the dealership premises on which are placed vehicles that are wrecked or damaged, that are awaiting reconditioning or preparation for sale, purchase or exchange, that are being serviced or repaired, that are part of general inventory, or that are otherwise not being offered for sale, purchase or exchange to the public. The display area shall meet the following requirements:

(i) *Size.*

(A) The display area of a dealership that buys, sells or exchanges vehicles shall be large enough for the display of at least five vehicles—with doors opened—of the kind that are bought, sold or exchanged by the dealership. The display area of a dealership that buys, sells or exchanges recreational vehicles, manufactured housing and mobile homes shall have a display area of at least 5,000 square feet, unless exempted by section 5(e)(3) or (4) of the act (63 P. S. § 815.5(e)(3) **and (4)**).

(B) The minimum size display area requirements of this paragraph do not apply to a licensed vehicle dealer that sells only new firefighting or emergency service vehicles.

* * * * *

[Pa.B. Doc. No. 03-1843. Filed for public inspection September 19, 2003, 9:00 a.m.]