

RULES AND REGULATIONS

Title 28—HEALTH AND SAFETY

DEPARTMENT OF HEALTH

[28 PA. CODE CH. 18]

Public Swimming and Bathing Places

The Department of Health (Department) amends Chapter 18 (relating to public swimming and bathing places) to read as set forth in Annex A. The final-form rulemaking includes requirements regarding the bacteriological monitoring of water at public bathing beaches to protect the public health while swimming and bathing.

I. Purpose

The final-form rulemaking provides enhanced public health protection to individuals who bathe and swim at public bathing beaches in this Commonwealth. The final-form rulemaking specifies the requirements for notifying the public when a bathing beach is closed, the type of bacteriological water testing that must be done, the level of disease-carrying organisms in the water that requires a beach to be closed, the procedures for collecting water samples and the laboratory testing procedures. Additional requirements for beaches located on Lake Erie are also included. The final-form rulemaking will improve detection of disease-carrying organisms in bathing beach water and reduce public exposure to those organisms.

The final-form rulemaking is consistent with recommendations of the United States Environmental Protection Agency (EPA) regarding bacteriological testing of water at public bathing beaches. The EPA recommends that water at public bathing beaches be tested each week for *Escherichia coli* (*E. coli*) to detect disease-carrying organisms in the water that may cause human illness such as gastroenteritis, salmonellosis, cholera, respiratory infections, hepatitis, giardiasis, dysentery, cryptosporidiosis, parasitic worms and *listeria*. These illnesses can be mild to very serious or deadly. Ingesting even a small mouthful of contaminated water has the potential of causing any of these illnesses. Young children are especially at risk due to the greater likelihood of swallowing bathing water. Children, the elderly and people with weakened immune systems have a greater chance of getting sick if they come in contact with contaminated water.

The most frequent sources of disease-carrying organisms in bathing water are sewage overflows, animal waste, polluted storm runoff, sewage treatment plant and septic system malfunctions, boating waste, trash, pesticides and fertilizers. Pollution is also much higher during and following a rainstorm because stormwater draining into the beach may be carrying sewage from overflowing sewage treatment systems, runoff from farmland or animal waste from parks and forests. By frequent water testing, disease-carrying organisms that may be harmful to humans can be detected earlier and the source can be located and either corrected or a beach can be closed until the contamination is at a nonharmful level.

On October 10, 2000, the Federal Beaches Environmental Assessment and Coastal Health Act (BEACH Act) (Pub. L. No. 106-284) was passed and amended the Federal Water Pollution Control Act (33 U.S.C.A.

§§ 1251—1387) to include significant new beach protections. The BEACH Act applies to coastal beaches on the Great Lakes, including those at Presque Isle State Park in Erie County. The BEACH Act requires that all states with coastal beaches adopt either the *E. coli* or the enterococci testing standard for Great Lakes beaches, as well as public notification of beach closure requirements. The new Federal law governs only Lake Erie beaches in this Commonwealth. However, the final-form rulemaking extend the same level of protection to all public bathing beaches in this Commonwealth to provide a more effective and consistent level of public health protection to all individuals using any of the Commonwealth's public bathing beaches.

Several formal and informal meetings and discussions were held prior to, and during, the drafting of the proposed rulemaking with consumer protection advocates, campground operators, municipal beach operators, health care professionals and local government agencies to present and discuss the Department's proposed rulemaking. A public meeting was held in August 2002 to review the proposed rulemaking, with invitations sent to 26 affected consumer, health care professional, beach operator and municipal organizations. In June 2003, the Department sent a mailer to all laboratories known to be performing bacterial testing of beaches informing them of the proposed rulemaking. In July 2003, the Department sent a representative to the Pennsylvania Association of Accredited Environmental Laboratories Conference in State College to answer questions regarding the proposed rulemaking and to receive additional stakeholder feedback. To further the effectiveness of the final-form rulemaking, the Department coordinated the final-form rulemaking with the Department of Environmental Protection (DEP) to assure compatibility with other regulations regarding water quality. The Department also discussed the proposed rulemaking with the Department of Conservation and Natural Resources to coordinate implementation issues regarding the State park beaches.

The Department published proposed rulemaking at 32 Pa.B. 4850 (October 5, 2002) and provided for a 30-day public comment period. The Department received no comments during the public comment period. The Department received a recommendation from the DEP after the close of the public comment period. The Department also received comments from the Office of Attorney General (OAG) and the Independent Regulatory Review Commission (IRRC). The Department's responses to these comments appear in the summary of this final-form rulemaking.

II. Summary

The DEP raised a concern about the effectiveness of the proposed language in § 18.31 (relating to laboratory testing) requiring laboratories to be registered with the DEP. To make the final-form rulemaking more effective, the DEP suggested language changes requiring laboratories to be registered with the DEP for the testing of drinking water samples and that the laboratory be in compliance with 27 Pa.C.S. Chapter 41 (relating to environmental laboratory accreditation) known as the Environmental Laboratory Accreditation Act, and the regulations promulgated thereunder. These changes were intended to ensure that only qualified laboratories subject to the DEP enforcement actions would be performing

beach bacterial standards. The Department has accepted these recommendations and incorporated them into the final-form rulemaking.

The OAG requested that the Department provide the method by which the EPA recommended the E. coli standard and asked whether this was Federal statute, regulation, guideline or other publication. The BEACH Act requires that all states with coastal beaches adopt the EPA's recommended bacterial monitoring standards for recreational waters. The term "coastal beaches" is defined in the BEACH Act to include beaches on the Great Lakes, including those at Presque Isle State Park on Lake Erie. The EPA's recommendation for bacterial monitoring is published in the guidance document "Ambient Water Quality Criteria for Bacteria" and is available on the EPA's website: www.epa.gov/ost/standards/bacteria/.

The OAG also asked whether the permittee would have to obtain approval from the EPA for whatever method the permittee is using and whether the EPA has published a list of preapproved methods.

The permittee will not have to obtain approval from the EPA for the method used. The laboratory selected by the permittee will have the option of using the method described in *Standard Methods for the Examination of Water and Wastewater* or by using a method that has been preapproved by the EPA. Currently, the EPA has approved one testing method, the modified mTEC test, for testing for E. coli at beaches. The EPA is developing additional testing methods and is expected to grant approval for their use in the future. When approved for use, the additional test will be published on the EPA's website.

Finally, IRRC requested that the Department revise § 18.30 (relating to water samples) of the proposed rulemaking to require that the Department give written notification to the permittee in the event that additional bacterial samples may be required. The Department has accepted this recommendation and incorporated it into the final-form rulemaking.

III. Affected Persons

The final-form rulemaking applies to 328 public bathing beaches that have a fresh water source or flow, including natural and manmade lakes and ponds and beaches located on rivers and streams, which are permitted by the Department. Bathing beaches located at State parks, community locations and privately owned campgrounds, resorts and organized camps are included. Of the 328 bathing beaches, the majority of them are located in the northern part of this Commonwealth with 50% in the northeast, 20% in the northwest and 8% in the north central part of this Commonwealth. Only 22% of the bathing beaches are located in the southeast, southwest and south central parts of this Commonwealth.

The final-form rulemaking also applies to laboratories that perform bacterial testing of water at public bathing places, requiring them to adopt the E. coli testing method for bacterial method and to report all positive bacterial samples. In addition, the final-form rulemaking requires that laboratories performing testing of water samples from public bathing places are properly accredited under 27 Pa.C.S. Chapter 41.

IV. Cost and Paperwork Estimates

A. Cost

The final-form rulemaking will have little fiscal effect on the Commonwealth, local government, the private sector or the general public. The requirement for the

frequency of water sampling has not been changed. There is no cost increase for completing the E. coli test as opposed to the currently required fecal coliform test. The Department conducted a study of laboratory test fees in August 2002. Thirty-eight laboratories across this Commonwealth, New Jersey, Maryland, Ohio and Delaware that are used currently to complete water testing were contacted to compare fees for the new E. coli tests with the current fecal coliform tests. Of the 38 laboratories contacted, 19 charged the same for each test. Three charged slightly less for the E. coli test than the coliform test and three charged slightly more for the E. coli test than the coliform test. Ten of the laboratories do not currently conduct the E. coli test. The Department has contacted these laboratories to explain the new requirements and to encourage the provision of the new test. It is fully expected that additional laboratories will offer the E. coli test once public demand is present.

B. Additional Paperwork

Prior to the amendment of § 18.30, a permittee was required to maintain records of bacterial tests onsite for a minimum of 2 years. While the final-form rulemaking requires laboratories to report positive results to the Department, or the local health department within whose jurisdiction the bathing beach is located, most laboratories were already voluntarily complying with this reporting requirement. The laboratory may report a positive bacterial test result to the Department by phone, fax or e-mail. Therefore, it is not anticipated that the final-form rulemaking will cause any significant increase in paperwork.

V. Effectiveness/Sunset Date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*. No sunset date has been established. The Department will monitor the effectiveness of the regulations on an ongoing basis through its annual health and safety inspections of public swimming and bathing places.

VI. Statutory Authority

The Department's authority to promulgate regulations regarding public swimming and bathing places is established under the Public Bathing Law (35 P. S. §§ 672—680d), the Local Health Administration Law (16 P. S. §§ 12001—12028) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

VII. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 25, 2002, the Department submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 4850, to IRRC and the Chairpersons of the House Health and Human Services Committee and the Senate Public Health and Welfare Committee for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on May 26, 2004, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 27, 2004, and approved the final-form rulemaking. The Office of Attorney General approved the regulations on June 28, 2004.

VIII. *Contact Person*

Questions regarding the final-form rulemaking should be submitted to Dennis C. Wilson, Environmental Health Administrator, Department of Health, Bureau of Community Health Systems, Room 628 Health and Welfare Building, P. O. Box 90, Harrisburg, PA, 17108-0090, (717) 787-4366. Persons with disabilities may submit questions in alternative formats (such as audio tape or Braille) or by using V/TT (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT). Persons who require an alternative format of this document should contact Dennis C. Wilson at the previous address or telephone numbers so that necessary arrangements can be made.

IX. *Findings*

The Department, with the approval of the Board, finds that:

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

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

(c) The adoption of amendments in the manner provided by this order is necessary and appropriate for the administration of the authorizing statutes.

X. *Order*

The Department, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 28 Pa. Code Chapter 18, are amended by amending §§ 18.1, 18.28, 18.30 and 18.31 to read as set forth in Annex A.

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

(c) The Secretary shall submit this order, Annex A and a Regulatory Analysis Form to IRRC, the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for their review and action as required by law.

(d) The Secretary of Health shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(e) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 3078 (June 12, 2004).)

Fiscal Note: Fiscal Note 10-170 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 28. HEALTH AND SAFETY

PART II. LOCAL HEALTH

Chapter 18. PUBLIC SWIMMING AND BATHING PLACES

GENERAL PROVISIONS

§ 18.1. Definitions.

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

Air gap—The unobstructed vertical distance through the free atmosphere between the lowest opening from a pipe or faucet supplying water to a tank, plumbing fixture or other device and the flood level rim of the receptacle.

Backflow—The flow of water or other liquids, mixtures or substances into the distributing pipes of a potable supply of water from a source other than the approved source.

Bathing beach—A body of natural water, impounded or flowing, of a size in relation to the bathing load that the quality and quantity, confined or flowing, need be neither mechanically controlled for the purpose of purification nor contained in an impervious structure.

Cross connection—A physical connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other steam, gas, a chemical or water of unknown or questionable safety, whereby there may be a flow from one system to the other, the direction depending on the pressure differential between the two systems.

Garbage—Putrescible wastes, except sewage and body waste, including animal and vegetable offal.

Local health department—Each county department of health under the Local Health Administration Law (16 P. S. §§ 12001—12028), and each department of health in a municipality approved for a Commonwealth grant to provide local health services under section 25 of the Local Health Administration Law (16 P. S. § 12025).

National Electrical Code—The *National Electrical Code* published by the National Fire Protection Association, 470 Atlantic Avenue, Boston, Massachusetts, 02210.

Person—An individual, partnership, corporation, association, municipality, county, authority, the Commonwealth or other private or public entity.

Public bathing place—An outdoor or indoor place used for amateur, professional or recreational swimming or bathing whether or not a fee is charged for admission or for the use of the place, exclusive of a bathing place at a private, single-family residence which is used solely by the owner of the residence, his family and their personal guests.

Refuse—Nonputrescible wastes generally regarded and classified as rubbish, trash, junk and similar designations which have been rejected by the owner or possessor thereof as useless or worthless to him.

Sewage—A substance which contains the waste products or excrements or other discharges from the bodies of human beings or animals and a noxious or deleterious substance being harmful or inimical to the public health, or to animal or aquatic life, or to the use of water for domestic water supply or for recreation.

Sewerage system—A community or individual system, whether publicly or privately owned, for the collection and disposal of sewage or industrial wastes of a liquid nature, including various devices for the treatment of sewage or industrial wastes.

Source—A well, spring, cistern, infiltration gallery, stream, reservoir, pond or lake from which, by any means, water is taken either intermittently or continuously for use by the public.

Swimming pool—A body of water of a size in relation to the bathing load that the quality and quantity of the

water confined must be mechanically controlled for the purpose of purification and contained in an impervious structure.

Turnover period—The number of hours required to completely replenish the water in a pool, or recirculate a quantity of water equal to the capacity of the pool.

Wading pool—A body of water designed for use by children which is not deeper than 3 feet and of a size in relation to the bathing load that the quality and quantity of the water confined must be mechanically controlled for the purpose of purification and contained in an impervious structure.

Waters of this Commonwealth—Rivers, streams, creeks, rivulets, lakes, dammed water, ponds, springs and other bodies of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.

Water supply—A source or sources of water, as well as, water treatment, storage, transmission and distribution facilities.

WATER SUPPLY

§ 18.28. Bathing beach contamination.

(a) Use of a bathing beach found to be contaminated shall be discontinued until written approval to reopen the bathing beach for swimming or bathing is obtained from the Department. The permittee shall prominently post legible signs measuring at least 8" by 11" at all entrances to the bathing beach area informing the public that the bathing beach is closed and that swimming or bathing is prohibited. The approval will be given by the Department when the Department finds that the waters of the bathing beach are no longer contaminated.

(b) The water in bathing beaches will be considered contaminated for bathing purposes when one of the following conditions exists:

(1) The Department determines that a substance is being discharged or may be discharged into the water and is or may be hazardous to the health of persons using the bathing beach.

(2) The *E. coli* density of a water sample taken from the bathing beach exceeds 235 per 100 milliliters.

(3) The *E. coli* density in all water samples taken from the bathing beach, in any 30-day period during the bathing beach's operating season, exceeds a geometric mean of 126 per 100 milliliters.

§ 18.30. Water samples.

(a) The permittee shall be responsible for the collection and examination of samples for the purity of the water used for swimming or bathing. The samples shall be examined by a laboratory which complies with § 18.31 (relating to laboratory testing).

(b) A sample shall be taken within 1 week prior to the opening of the bathing beach for the season.

(c) The permittee shall have a bacteriological analysis made at least once each week of a sample collected during the period of maximum use of the public bathing place. The permittee shall furnish additional analyses of samples as described under subsection (d)(3) upon written notification by the Department.

(d) Bathing water shall be sampled in accordance with the following requirements:

(1) Each sample shall be taken from water that is approximately 30 inches deep and at a midpoint between the bottom and the surface of the water.

(2) Each sample shall be tested individually for *E. coli* in accordance with § 18.31.

(3) The Department may require additional samples be taken based upon the size of the bathing area, bather loads, weather conditions, the bacteriological history of the water, as well as other factors that may influence the quality of the water.

(e) For a bathing beach located on Lake Erie, the bathing water shall be sampled in accordance with subsections (a), (b) and (d) and the following additional requirements:

(1) At least three samples of water shall be taken from each beach at least once a week. One sample shall be taken from approximately 50 feet from each end of the beach and the third sample shall be taken from the center of the beach.

(2) The arithmetic mean of the three samples from each beach shall be used to determine if the beach water is contaminated using the standards described in § 18.28 (relating to bathing beach contamination).

(3) A sample may not be taken when the beach is closed due to high wave activity, but shall be taken the day the beach is reopened for swimming and bathing.

(4) The Erie County Department of Health may impose additional requirements that are equal to or more stringent than the requirements of this section.

(f) For a swimming pool, specialty pool, spa and hot tub the bathing water shall be sampled at least once a week from the area of average depth, in accordance with § 18.27 (relating to swimming pool contamination).

(g) Copies of reports of analyses shall be maintained by the permittee for at least 2 years and made available to the Department upon request.

(h) The laboratory conducting the bacteriological testing shall report test results exceeding the criteria specified in §§ 18.27 and 18.28 to the appropriate district office of the Department or the local health department within 24 hours of the availability of the laboratory result.

§ 18.31. Laboratory testing.

(a) Testing and analysis of water samples shall be performed by competent personnel at a drinking water environmental laboratory that is required to register with the Department of Environmental Protection and is in compliance with 27 Pa.C.S. Chapter 41 (relating to environmental laboratory accreditation), known as the Environmental Laboratory Accreditation Act, and the regulations promulgated thereunder. Testing of the water samples shall be performed in accordance with the procedure provided in the *Standard Methods for the Examination of Water and Wastewater*, 20th edition, published jointly by the American Public Health Association and the American Water Works Association, as amended, or in accordance with any other method approved by the United States Environmental Protection Agency for the testing of *E. coli* in water samples taken from waters designated for primary contact recreation.

(b) The laboratory shall document the method used to complete the tests of the water samples and make the documentation available to the Department upon request.

[Pa.B. Doc. No. 04-1280. Filed for public inspection July 16, 2004, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF BARBER EXAMINERS

[49 PA. CODE CH. 3]

Ten Chair Barber Schools

The State Board of Barber Examiners (Board) amends § 3.82 (relating to inspections).

A. Effective Date

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

B. Statutory Authority

The final-form 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 to encourage new schools to open, the Board has reviewed its existing regulations governing licensed schools with a view toward eliminating unnecessarily restrictive regulations. To this end, the Board is amending § 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 decreases the space requirements. With fewer required chairs and desks, schools need less space to operate.

The final-form rulemaking also changes the requirements for inspection prior to a barber school being licensed. The former regulations required both a preliminary inspection of the school and a second inspection after the equipment is installed. The regulation required 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 final-form rulemaking updates § 3.82 to reflect the Board's current practice of conducting only one inspection.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 33 Pa.B. 4686 (September 20, 2003). Publication was followed by a 30-day public comment period during which

the Board received no public comments. Following the close of the public comment period the Board received no comments from the House Professional Licensure Committee (HPLC), Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) or the Independent Regulatory Review Commission (IRRC).

E. Fiscal Impact and Paperwork Requirements

The final-form rulemaking does not impose any additional paperwork requirements on the Board or its licensees. The final-form 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 10, 2003, the Board submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 4686, to IRRC and the Chairpersons of the SCP/PLC and the HPLC for review and comment.

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

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), this final-form rulemaking was approved by the HPLC on May 11, 2004, and deemed approved by SCP/PLC on May 26, 2004. Under section 5g of the Regulatory Review Act, the amendment was deemed approved effective May 26, 2004.

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. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and no comments were submitted.

(3) The final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 33 Pa.B. 4686.

(4) The final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing act identified in Part B of this preamble.

J. Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 3, are amended by amending § 3.82 to read as set forth at 33 Pa.B. 4686.

(b) The Board shall submit this order and 33 Pa.B. 4686 to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and 33 Pa.B. 4686 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

LEROY CAMERONI,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 3078 (June 12, 2004).)

Fiscal Note: Fiscal Note 16A-426 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 04-1281. Filed for public inspection July 16, 2004, 9:00 a.m.]

STATE BOARD OF PHYSICAL THERAPY
[49 PA. CODE CH. 40]
Certificate of Authorization

The State Board of Physical Therapy (Board) amends §§ 40.2 and 40.5 (relating to practice of medicine prohibited; and fees) and adds §§ 40.61—40.63 (relating to certificate of authorization to practice physical therapy without a referral; professional liability insurance; and continuing education) to read as set forth in Annex A.

A. Effective Date

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

B. Statutory Authority

The final-form rulemaking is adopted by the Board under section 3 of the Physical Therapy Practice Act (act) (63 P. S. § 1303) and section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a). The act of February 21, 2002 (P. L. 234, No. 6) (Act 6) (63 P. S. § 1309) amended the act to permit a physical therapist to practice physical therapy without obtaining a referral from a physician if the physical therapist qualifies for and obtains from the Board a certificate of authorization to practice physical therapy without a referral. The final-form rulemaking implements Act 6.

C. Background and Purpose

The final-form rulemaking provides for the issuance of a certificate of authorization by the Board under Act 6. The final-form rulemaking establishes a fee for the issuance of a certificate and otherwise establishes the requirements and conditions for obtaining and practicing under a certificate.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of the proposed rulemaking was published at 33 Pa.B. 5742 (November 22, 2003). The Board received comments from the Independent Regulatory Review Commission (IRRC), the House Professional Licensure Committee (HPLC), the Pennsylvania Medical Society (PMS), the Pennsylvania Physical Therapy Association (PPTA)

and NovaCare Rehabilitation (NovaCare). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not submit comments. Responses to these comments are organized by subject as follows.

§ 40.2. Practice of medicine prohibited.

IRRC pointed out that the existing § 40.2 states “The license issued to those practicing physical therapy does not authorize . . . the right to apply any of these treatments except upon the referral of a physician . . .” Act 6 amended section 9(a) of the act (63 P. S. § 1309(a)) to state “Except as provided in subsection (b), no person licensed under this act as a physical therapist shall treat human ailments by physical therapy or otherwise except by referral.” Subsection (b) provides the conditions for practice without referral. IRRC suggested that § 40.2 be made consistent with section 9 of the act. The Board has agreed with this suggestion and has amended § 40.2 to be consistent with section 9 of the act.

§ 40.61. Certificate of authorization to practice physical therapy without a referral.

IRRC, the PMS and the HPLC commented that § 40.61 does not reflect the requirement of section 9(d)(3) of the act whereby a physical therapist must refer patients to a licensed physician or other appropriate health care practitioner in “cases for which treatment is beyond the education, expertise or experience of the physical therapist.” The Board has added these statutory limitations to § 40.61(d).

The HPLC and the PMS asked if the Board would consider including in these regulations the list of prohibited acts set forth in section 9(b) of the act. The Board has agreed to include the list under § 40.16(f).

IRRC asked the Board to explain its process in determining that “continuous practice” should consist of 200 hours each year of physical therapy in the delivery of patient care. The Board arrived at the 200 hours based upon the standard used by the American Board of Physical Therapist Specialists that requires 2,000 hours of practice over 10 years to maintain certification as a specialist. The Board averaged this out to total 200 hours per year.

IRRC also recommended that the definition of “continuous practice” in subsection (a) should be moved from paragraph (5) to paragraph (3) for clarity purposes. The Board agrees and has implemented this suggestion.

The PPTA, the HPLC and NovaCare asked the Board to consider types of settings other than the delivery of patient care as meeting the “continuous practice” requirement of 200 hours each year of the practice of physical therapy in the delivery of direct patient care. In particular, the PPTA commented that an individual in an academic setting that may qualify as a course sponsor/presenter might not meet this clinical requirement. Similarly, an individual who is involved in the management of a practice and is regularly determining appropriateness of care, adequacy of documentation and quality of care may not meet this requirement. The PPTA contends that these individuals would be in a position of decision making with regard to an applicant’s ability to practice physical therapy without a referral but would not be able to do so themselves. The Board considered this comment but notes that to meet this requirement, academics would only need to practice 4 hours each week and that most institutions provide that clinical opportunity. In addition, the 200 hours per year is only required for initial certification, not

for renewal of the certification. Accordingly, the Board does not believe that an amendment to this requirement is necessary.

The PPTA also asked how the 200 hours will be tracked and how the Board will verify the 200 hour requirement. The Board intends to require the applicant on the application for initial certification to attest that the applicant has completed at least 200 hours each year in the delivery of direct patient care for at least 2 years immediately preceding the filing of the application. If the Board has reason to suspect that the applicant's statement is incorrect, the applicant will be required to provide documentation or other evidence in support of the statement.

The PPTA and NovaCare also asked for clarification on whether the 200 hours of direct patient care would only be required for initial certification or if it would also be required for purposes of renewal of the certification. NovaCare asked if part of the 200 hours could be acquired through additional continuing education rather than through direct patient care. Under Act 6, the 200 hour "continuous practice" requirement relates only to initial certification, not to renewal of the certificate. The final-form rulemaking tracks the act and requires the 200 hours for purposes of initial certification only.

§ 40.63. *Continuing education.*

The PPTA asked for an explanation as to why continuing education is not required until after the first renewal of the certificate of authorization. The reason is that the licensee would not normally have had the entire renewal period to complete the required credit hours. For example, a licensee who receives the initial certificate midway through the renewal cycle would only have half the time to complete all the credits. This would be inherently unfair to the certificateholder.

E. *Fiscal Impact and Paperwork Requirements*

There should be no adverse fiscal impact or additional paperwork requirements incurred by the Board, political divisions or the private sector.

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 November 22, 2003, the Board submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 5742, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on May 26, 2004, the final-form rulemaking was approved by the HPLC. The amendments were deemed approved by the SCP/PLC on June 9, 2004. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 10, 2004, and approved the final-form rulemaking.

H. *Contact Person*

Interested persons may obtain information regarding the final-form rulemaking by writing to Robert Kline, Board Administrator, State Board of Physical Therapy, P. O. Box 2649, 2601 North 3rd Street, Harrisburg, PA 17105-2649.

I. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) The amendments to the final-form rulemaking do not enlarge the purpose of the proposed rulemaking published at 33 Pa.B. 5742.

(4) The final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing act identified in Part B of this preamble.

J. *Order*

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

(1) The regulations of the Board, 49 Pa. Code Chapter 40, are amended by amending §§ 40.2 and 40.5 and by adding §§ 40.61—40.63 to read as set forth in Annex A.

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

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

(4) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

JAMES J. IRRGANG,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 3336 (June 26, 2004).)

Fiscal Note: Fiscal Note 16A-6510 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 40. STATE BOARD OF PHYSICAL THERAPY

**Subchapter A. PHYSICAL THERAPISTS
GENERAL PROVISIONS**

§ 40.2. Practice of medicine prohibited.

The license issued to those practicing physical therapy does not authorize the right to use the title "Doctor of Medicine" or the right to use drugs administered internally. Except as authorized in section 9 of the act (63 P. S. § 1309), a person licensed under the act as a physical therapist may not treat human ailments by physical therapy or otherwise except upon the referral of a physician or other person authorized by law to order the same.

§ 40.5. Fees.

The following fees are charged by the Board:

Physical therapist:

Application for licensure by examination/ endorsement	\$30
Application for licensure through foreign training	\$45
Verification of licensure or temporary permit	\$15
Certification of examination scores or licensure	\$25
Temporary license	\$15
Biennial renewal	\$37
Application for Certificate to Practice Physical Therapy without a referral	\$30
Biennial renewal of Certificate to Practice Physical Therapy without a referral	\$37
Application for approval of continuing education provider or program (per each course offered)	\$40

Athletic trainer:

Application for certification	\$20
Biennial renewal	\$37
Certification of examination scores or certification	\$25
Verification of certification	\$15

Physical therapist assistants:

Initial application for registration by exam or endorsement	\$30
Certification of exam scores or registration	\$25
Biennial renewal of registration	\$20
Verification of registration	\$15

PRACTICE WITHOUT PHYSICIAN REFERRAL

§ 40.61. Certificate of authorization to practice physical therapy without a referral.

(a) An applicant for certification of authorization to practice physical therapy without the referral of a licensed physician shall submit evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met the following requirements:

(1) Holds a current license to practice physical therapy in this Commonwealth.

(2) Has done one of the following:

(i) Passed the National Physical Therapy Examination (NPTE) after January 1, 1990.

(ii) Passed the NPTE prior to January 1, 1990 and successfully completed, within 2 years prior to application, a Board approved course consisting of at least 10 hours on the appropriate evaluative and screening procedures to determine the need for further examination or consultation by a physician, dentist or podiatrist prior to initiating treatment without a referral. The Board will maintain a list of currently approved courses.

(3) Has done one of the following:

(i) Practiced physical therapy in the delivery of patient care on a continuous basis for at least 2 years immediately preceding the application for certificate of authorization.

(ii) Been licensed by endorsement and practiced physical therapy in the delivery of patient care as a licensed

physical therapist in the other state on a continuous basis for at least 2 years immediately preceding the application for certificate of authorization.

(iii) Provided proof of meeting these practice requirements through any combination of subparagraphs (i) and (ii).

(iv) For purposes of this section, "practice of physical therapy on a continuous basis" is defined as a minimum of 200 hours each year in the delivery of direct patient care.

(4) Has obtained professional liability insurance under the requirements of § 40.62 (relating to liability insurance).

(b) A certificateholder shall display the certificate of authorization in a manner conspicuous to the public.

(c) A certificateholder may not delegate the care of a patient being treated without a referral to a physical therapist who is not a certificateholder.

(d) A certificateholder shall refer patients to a licensed physician or other appropriate health care practitioner in the following cases:

(1) Cases where symptoms are present for which physical therapy is a contraindication.

(2) Cases for which treatment is outside the scope of practice of physical therapy.

(3) Cases for which treatment is beyond the education, expertise or experience of the physical therapist.

(e) A certificateholder may treat a person without a referral as provided in this chapter for up to 30 calendar days from the date of the first treatment. A physical therapist may not treat a person beyond 30 days from the date of the first treatment unless the person has obtained a referral from a licensed physician, dentist or podiatrist. The date of the first treatment for purposes of this subsection is the date the person is treated by any physical therapist treating without a referral.

(f) A certificateholder may not treat a condition in any person which is a nonneurologic, nonmuscular or nonskeletal condition or treat a person who has an acute cardiac or acute pulmonary condition unless the certificateholder has consulted with the person's licensed physician, dentist or podiatrist regarding the person's condition and the physical therapy treatment plan or has referred the person to a licensed physician, dentist or podiatrist for diagnosis and referral.

§ 40.62. Professional liability insurance.

(a) Beginning January 1, 2005, or upon applying for a certificate of authorization, whichever occurs earlier, a licensee who applies for and obtains a certificate of authorization shall obtain and maintain professional liability insurance coverage in the minimum amount required to be maintained by physicians under section 711 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. § 1303.711).

(b) A certificateholder shall notify the Board within 30 days of the holder's lapse in coverage of the required insurance.

(c) The certificate of authorization will automatically be suspended upon failure to be covered by the required insurance and will not be restored until submission to the Board of satisfactory evidence that the licensee has the required professional liability insurance.

(d) Satisfactory evidence of insurance coverage is any one of the following:

(1) A self-insurance plan that meets the standards and procedures established by the Insurance Department in 31 Pa. Code Chapter 243 (relating to medical malpractice and health-related self-insurance plans).

(2) Personally purchased professional liability insurance.

(3) Professional liability insurance, coverage provided by the licensee's employer.

(4) A similar type of coverage.

§ 40.63. Continuing education.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Certificateholder—A licensed physical therapist who holds a certificate of authorization to practice physical therapy without a referral.

Contact hour—A unit of measure equaling 60 minutes of participation in an approved continuing education course or program.

(b) *Continuing education requirement for renewal of certificate of authorization.* Beginning after the first renewal of the certificate of authorization, as a condition of certificate renewal, a physical therapist shall have completed during the preceding biennium a minimum of 20 contact hours of physical therapy continuing education related to keeping the certificateholder apprised of advancements and new developments in the practice of the physical therapy profession. At least 10 of the 20 contact hours shall be in evaluative procedures to treat a person without a referral.

(c) *Reports to the Board.* A certificateholder shall certify compliance with the continuing education hours requirement at the time of biennial renewal of the certificate. A certificateholder shall retain for at least 4 years, certificates, transcripts or other documentation showing completion of the prescribed number of hours. These records are subject to audit by the Board.

(d) *Approved sponsors; acceptable courses and programs.*

(1) Courses and programs provided by Board-approved sponsors will be accepted as satisfying the continuing education requirement. It is the responsibility of the certificateholder to ascertain the approval status of the sponsor before undertaking a continuing education activity.

(2) Irrespective of the sponsor, the Board reserves the right to reject a continuing education course or program submitted by a certificateholder if it is outside the scope of practice of physical therapy. The Board will not accept courses or programs which are unrelated to the actual practice of physical therapy—for example, instruction in office management or practice building. A certificate holder will be notified of a rejected course or program in writing, along with the reason for the rejection.

(3) Sponsors of physical therapy continuing education seeking Board approval shall submit an application on forms provided by the Board and pay the required fee. The applicant will be notified of approval or disapproval in writing. Notifications of disapproval will set forth reasons. The Board will not approve a sponsor unless it:

(i) Offers courses or programs, or both, with specific learning objectives geared to improve the professional competence of the participant.

(ii) Verifies attendance of the course.

(iii) Provides each attendee with a certificate which includes participant's name, date, place, course title, presenter and number of contact hours.

(4) The Board may withdraw approval of a sponsor for cause. The sponsor will be notified in writing of the reasons for withdrawal of approval.

(e) *Distance education.* A certificateholder may accrue all required hours in distance education courses offered by approved sponsors of continuing education as long as the course sponsor evaluates and assesses the extent of learning that has taken place.

(f) *Reinstatement of certificate.* Reinstatement of certificate shall be subject to the following conditions:

(1) A person whose certificate has lapsed or been inactive shall show compliance with the continuing education requirement during the biennium immediately preceding the request for reinstatement.

(2) A person whose certificate has been suspended or restricted shall show compliance with the continuing education requirement during the entire period of suspension or restriction.

(g) *Waivers; exemptions for continuing education.* The Board may, in individual cases involving physical disability or illness, or undue hardship, grant a waiver of the continuing education requirements or grant an extension of time to complete the requirements. No waiver or extension of time will be granted unless a written request is submitted by the licensee; or in cases of physical disability or illness, by a physician licensed in this state or another state or territory of the United States or the District of Columbia and whose license is in good standing, or both. All necessary documentation must be received by the Board no later than 90 days preceding the biennial renewal. If the physical disability or illness or undue hardship for which the waiver has been granted continues beyond the period of the waiver, the licensee shall reapply for an extension of the waiver. The Board may, as a condition of any waiver granted, require the applicant to make up all or part of the continuing education waived.

[Pa.B. Doc. No. 04-1282. Filed for public inspection July 16, 2004, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 135]

Lands and Buildings

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 20, 2004, meeting, adopted the following rule-making:

Amend § 135.2 (relating to unlawful actions) by eliminating redundant language.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 34 Pa.B. 1941 (April 10, 2004).

1. Introduction

The Commission amends § 135.2(6) by eliminating redundant language.

2. Purpose and Authority

Section 135.2 provides a list of actions deemed unlawful by the Commission. Specifically, § 135.2(6) makes it unlawful, except with the permission of the person in charge of State owned or controlled lands, to "remove or attempt to remove any manmade or natural object except wildlife and fish lawfully taken *during the open season*" (emphasis added). "During the open season" is redundant and unnecessary. Therefore, the Commission amends § 135.2(6) by removing "during the open season."

Section 721(a) of the code (relating to control of property) provides "the administration of all lands and waters owned, leased or otherwise controlled by the Commission shall be under the sole control of the Director, and the Commission shall promulgate regulations . . . for its use and protection as necessary to properly manage these lands or waters." The amendment to § 135.2 was adopted under this authority.

3. Regulatory Requirements

The final-form rulemaking does not change the substance of any existing regulations, but rather simply removes redundant language.

4. Persons Affected

Persons wishing to remove natural or manmade objects from lands under Commission control or ownership will be affected by the final-form rulemaking.

5. Comment and Response Summary

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

6. Cost and Paperwork Requirements

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

7. Effective Date

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

8. Contact Person

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

Findings

The Commission finds that:

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

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

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 135, are amended by amending § 135.2 to read as set forth at 34 Pa.B. 1941.

(b) The Executive Director of the Commission shall certify this order and 34 Pa.B. 1941 and deposit them with the Legislative Reference Bureau as required by law.

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

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-184 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 04-1283. Filed for public inspection July 16, 2004, 9:00 a.m.]

GAME COMMISSION [58 PA. CODE CH. 139] Seasons and Bag Limits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 20, 2004, meeting, adopted the following final-form rulemaking:

Amend § 139.4 (relating to seasons and bag limits for the license year) to provide updated seasons and bag limits for the 2004-2005 hunting license year.

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

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

Notice of proposed rulemaking was published at 34 Pa.B. 1776 (April 3, 2004).

1. Introduction

The Commission amends § 139.4 to provide for updated seasons and bag limits for the 2004-2005 license year.

2. Purpose and Authority

The Commission is required to set hunting and furtaking seasons and bag limits on an annual basis. Although the 2004-2005 seasons and daily season and possession limits are similar to those set in 2003-2004, the 2004-2005 seasons and bag limits are amended to conform to current scientific data, harvest reports, field surveys and observations and staff and field input, as well as recommendations received from organized sporting groups, members of the agricultural community and others interested in the wildlife resources of this Commonwealth.

Section 322(c)(1) of the code (relating to powers and duties of commission) specifically empowers the Commission to "fix seasons, daily shooting or taking hours, and any modification thereof, and daily, season and possession limits for any species of game or wildlife." Section 2102(b)(1) of the code (relating to regulations) authorizes the Commission to "promulgate regulations relating to seasons and bag limits for hunting or furtaking. . . ." The amendments to § 139.4 were adopted under this authority.

3. Regulatory Requirements

The adopted seasons and bag limits will establish when and where it is lawful to hunt and trap various game species and also place limits on the numbers that can be legally taken.

4. *Persons Affected*

Persons wishing to hunt and trap in this Commonwealth are affected by the adopted seasons and bag limits.

5. *Comment and Response Summary*

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

6. *Cost and Paperwork Requirements*

The adopted seasons and bag limits do not result in any additional cost either to the Commission or to hunters and furtakers.

7. *Effective Date*

The effective dates are July 1, 2004, to June 30, 2005.

8. *Contact Person*

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

Findings

The Commission finds that:

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

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

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 139, are amended by amending § 139.4 to read as set forth in Annex A.

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

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin* and apply retroactively to July 1, 2004.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-177 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 139. SEASONS AND BAG LIMITS

§ 139.4. Seasons and bag limits for the license year.

(SEASONS AND BAG LIMITS TABLE)

**2004-2005 OPEN HUNTING AND FURTAKING SEASONS, DAILY LIMIT,
FIELD POSSESSION LIMIT AND SEASON LIMIT
OPEN SEASON INCLUDES FIRST AND LAST DATES LISTED**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Squirrels—(Combined species) Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law	Oct. 9	Oct. 15	6	12
Squirrels—(Combined species)	Oct. 16	Nov. 27	6	12
	and	Dec. 23		
	Dec. 13	and		
	Dec. 27	Feb. 5, 2005		
Ruffed Grouse—(Statewide)	Oct. 16	Nov. 27	2	4
	and	Dec. 23		
	Dec. 13	and		
	Dec. 27	Jan. 15, 2005		
Ruffed Grouse—There is no open season for taking ruffed grouse in that portion of State Game Lands No. 176 in Centre County which is posted "RESEARCH AREA—NO GROUSE HUNTING"				
Rabbits, Cottontail	Oct. 23	Nov. 27	4	8
	and	Dec. 23		
	Dec. 13	and		
	Dec. 27	Feb. 5, 2005		

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Ringneck Pheasant—Male only in Wildlife Management Units 2A, 2B, 2C, 4B, 4C, 4E, 5A, 5B, 5C & 5D Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law	Oct. 9	Oct. 11	2	4
Ringneck Pheasant—Male or female combined in Wildlife Management Units 1A, 1B, 2D, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A & 4D Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law	Oct. 9	Oct. 11	2	4
Ringneck Pheasant—Male only in Wildlife Management Units 2A, 2B, 2C, 4B, 4C, 4E, 5A, 5B, 5C & 5D	Oct. 23	Nov. 27	2	4
Ringneck Pheasant—Male or female combined in Wildlife Management Units 1A, 1B, 2D, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A & 4D	Oct. 23 Dec. 13 Dec. 27	and and	Nov. 27 Dec. 23 Feb. 5, 2005	2 2 2
Bobwhite Quail—The hunting and taking of bobwhite quail is permitted in all Wildlife Management Units except in Wildlife Management Units 4A, 4B, 5A, 5B, 5C & 5D where the season is closed.	Oct. 23	Nov. 27	4	8
Hares (Snowshoe Rabbits) or Varying Hares	Dec. 27	Jan. 1, 2005	1	2
Woodchucks (Groundhog)	No closed season except during the regular firearms deer seasons and until noon daily during the spring gobbler turkey season.		Unlimited	
<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Turkey—Male or Female			1	1
Wildlife Management Units 1A, 2A & 2B (Shotgun, Bow & Arrow only)	Oct. 30	Nov. 20		
Wildlife Management Unit 1B (Shotgun, Bow & Arrow only)	Oct. 30	Nov. 13		
Wildlife Management Units 2C, 2E, 4A, 4B & 4D	Oct. 30	Nov. 13		
Wildlife Management Units 2D, 2F, 2G, 3A, 3B, 3C, 3D, 4C & 4E	Oct. 30	Nov. 20		
Wildlife Management Units 5A & 5B	Closed to fall turkey hunting			
Wildlife Management Unit 5C & 5D	Oct. 30	Nov. 6		
Turkey (Spring Gobbler) Statewide ⁵ Bearded Bird only	April 30, 2005	May 28, 2005	1	1

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Turkey (Spring Gobbler) Statewide Youth Hunt ⁵ Bearded Bird only Eligible junior hunters only with the required license and when properly accompanied	April 23, 2005	April 23, 2005	1	1

MIGRATORY GAME BIRDS

Except as further restricted by this chapter, the seasons, bag limits, hunting hours and hunting regulations for migratory game birds shall conform to regulations adopted by the United States Secretary of the Interior under authority of the Migratory Bird Treaty Act (16 U.S.C.A. §§ 703—711) as published in the Federal Register on or about August 27 and September 28 of each year. Exceptions:

- (a) Hunting hours in § 141.4 (relating to hunting hours).
- (b) Nontoxic shot as approved by the Director of the United States Fish and Wildlife Service is required for use Statewide in hunting and taking of migratory waterfowl.
- (c) Subject to approval by the United States Fish and Wildlife Service, an early season for Canada geese will be held as defined in § 141.25.

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Crows (Hunting permitted on Friday, Saturday and Sunday only)	July 2	Nov. 28		Unlimited
	Dec. 26	April 3, 2005		
Starlings and English Sparrows	No closed season except during the regular firearms deer seasons and until noon daily during the spring gobbler turkey season			Unlimited

FALCONRY

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Squirrels—(Combined species)	Sept. 1	Mar. 31, 2005	6	12
Quail	Sept. 1	Mar. 31, 2005	4	8
Ruffed Grouse	Sept. 1	Mar. 31, 2005	2	4
Cottontail Rabbits	Sept. 1	Mar. 31, 2005	4	8
Snowshoe or Varying Hare	Sept. 1	Mar. 31, 2005	1	2
Ringneck Pheasant—Male and Female—(Combined)	Sept. 1	Mar. 31, 2005	2	4

Migratory Game Birds—Seasons and bag limits shall be in accordance with Federal regulations.

DEER

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Season Limit</i>
Deer, Antlered & Antlerless—(Statewide) ¹ (Archery—Bows and Arrows Only) Crossbows may be used in Wildlife Management Units 2B, 5C and 5D	Oct. 2	Nov. 13	One antlered and an antlerless deer with each required antlerless license.
	Dec. 27	Jan. 15, 2005	
Deer, Regular Antlered & Antlerless—(Statewide) ¹	Nov. 29	Dec. 11	One antlered, and an antlerless deer with each required antlerless license.
Deer, Antlerless only—(Statewide) Only Junior and Senior License Holders, ² PGC Disabled Person Permit Holders (to use a vehicle as a blind), and Residents	Oct. 21	Oct. 23	An antlerless deer with each required antlerless license.

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Season Limit</i>
servicing on active duty in the U.S. Armed Forces, or in the U.S. Coast Guard, with required antlerless license			
Deer, Antlerless only—(Statewide) (Muzzleloading season)	Oct. 16	Oct. 23	An antlerless deer with each required antlerless license.
Deer, Antlered or Antlerless—(Statewide) ¹ (Flintlock Muzzleloading season)	Dec. 27	Jan. 15, 2005	One antlered, or one antlerless—plus an additional antlerless deer with each required antlerless license.
Deer, Antlerless Wildlife Management Units 2B & 5C	Dec. 27	Jan. 15, 2005	An antlerless deer with each required antlerless license.
Deer, Antlerless Wildlife Management Unit 5D	Dec. 13 and Dec. 27	Dec. 18 and Jan. 29, 2005	An antlerless deer with each required antlerless license.
Deer, Antlerless (Letterkenny Army Depot, Franklin County and New Cumberland Army Depot, York County and Fort Detrick, Raven Rock Site, Adams County)	Hunting is permitted on days established by the United States Department of the Army.		An antlerless deer with each required antlerless license.

BEAR

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Bear, any age—(Statewide) ⁴	Nov. 22	Nov. 24	1	1
Bear, any age ⁴ Wildlife Management Units 3D, 4C and that portion of 4E, East of Rt. 487 and that portion of 3B, East of 487 and South of Rt. 87 and that portion of 3C, East of I-81.	Nov. 29	Dec. 4	1	1
Portion of Wildlife Management Units 2G and 3B in Lycoming County that lie North of the West branch of the Susquehanna River from the Rt. 405 bridge, West to the Rt. 220 bridge, East of Rt. 220 to Rt. 44 and East of Rt. 44 to Rt. 973, South of Rt. 973 to Rt. 87, West of Rt. 87 to Rt. 864, South of Rt. 864 to Rt. 220 and West of Rt. 220 to Rt. 405 and West of Rt. 405 to the West Branch of the Susquehanna River.				

ELK

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Elk, Antlered & Antlerless ⁶ (With each required license)	Nov. 8	Nov. 13	1	1

FURTAKING—TRAPPING

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Minks and Muskrats—(Statewide)	Nov. 20	Jan. 8, 2005		Unlimited
Beaver—(Statewide)	Dec. 26	Mar. 31, 2005		
Wildlife Management Units 1A, 1B, 2F & 2G (Combined)			20	20
Wildlife Management Unit 3A, 3B, 3C & 3D (Combined)			20	40
Wildlife Management Units 2A, 2B, 2C, 2D, 2E, 4A, 4B, 4C, 4D & 4E (Combined)			10	10
Wildlife Management Units 5A, 5B, 5C & 5D (Combined)			6	6
Coyotes, Foxes, Opossums, Raccoons, Skunks, Weasels—(Statewide)	Oct. 17	Feb. 19, 2005		Unlimited

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Bobcat ³ Wildlife Management Units 2C, 2E, 2F, 2G, 3A, 3B, 3C & 3D	Oct. 17	Feb. 19, 2005	1	1

FURTAKING—HUNTING

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Coyotes—(Statewide)				Unlimited
Coyotes—(During any archery deer season)				May be taken while lawfully hunting deer or with a furtaker's license.
Coyotes—(During the regular firearms deer season and any bear season)				May be taken while lawfully hunting deer or bear or with a furtaker's license while wearing 250 square inches of daylight fluorescent orange-colored material in a 360° arc.
Coyotes—(During the spring gobbler turkey season)				May be taken by persons who have a valid tag and meet fluorescent orange and shot size requirements.
Opossums, Skunks, Weasels ⁷ (Statewide)				No closed season. These species maynot be hunted prior to noon during the spring gobbler turkey season.
Raccoons and Foxes—(Statewide) ⁷	Oct. 16	Feb. 19, 2005		Unlimited
Bobcat ³ Wildlife Management Units 2C, 2E, 2F, 2G, 3A, 3B, 3C & 3D	Oct. 16	Feb. 19, 2005	1	1
No open seasons on other wild birds or wild mammals.				

¹ Only one antlered deer (buck) may be taken during the hunting license year.
² Includes persons who have reached or will reach their 65th birthday in the year of the application for the license and hold a valid adult license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions).
³ Bobcat may only be taken by furtakers in possession of a Bobcat Hunting-Trapping Permit and may not be taken during the regular antlered and antlerless deer season from 1/2 hour before sunrise to sunset.
⁴ Only one bear may be taken during the hunting license year.
⁵ Only one spring gobbler may be taken during the hunting license year.
⁶ Only one elk may be taken during the hunting license year.
⁷ May not be taken during the regular antlered and antlerless deer season from 1/2 hour before sunrise to sunset.

GAME COMMISSION
[58 PA. CODE CH. 141]
Hunting and Trapping; Crossbow

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 20, 2004, meeting, adopted the following rule-making:

Amend §§ 141.41 and 141.43 (relating to general; and deer) to permit all hunters to hunt and take deer with a crossbow during any firearms deer season and also permit hunters within Wildlife Management Units (WMU) 2B, 5C and 5D to hunt and take deer with a crossbow during any deer season.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 34 Pa.B. 1781 (April 3, 2004).

1. Introduction

The Commission amends §§ 141.41 and 141.43 to permit all hunters to hunt and take deer with a crossbow during any firearms deer season and also permit hunters within WMUs 2B, 5C and 5D to hunt and take deer with a crossbow during any deer season.

2. Purpose and Authority

Formerly, the use of a crossbow for deer hunting purposes was permitted, but only in limited circumstances. Most hunters were permitted to hunt and take deer with a crossbow only during the regular firearms deer season. Disabled hunters possessing a valid disabled persons crossbow permit were additionally permitted to hunt and take deer with a crossbow during archery season. The final-form rulemaking provides expanded deer hunting opportunities for all hunters in this Commonwealth by permitting the use of crossbows to hunt and take deer during any firearms season. In addition, the final-form rulemaking allows even greater hunting opportunities in WMUs 2B, 5C and 5D by permitting hunters within these WMUs to hunt and take deer with a crossbow during any deer season. The purpose of the increased allowance in these WMUs is to offset the increasing difficulty for hunters to safely hunt deer using firearms in these urban areas with high population centers.

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 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." The amendments to §§ 141.41 and 141.43 were adopted under this authority.

3. Regulatory Requirements

The final-form rulemaking will permit hunters in WMUs 2B, 5C and 5D to hunt and take deer with a crossbow during any deer season. For all other WMUs, the final-form rulemaking makes it unlawful for hunters to hunt and take deer with a crossbow during any deer seasons other any of the firearms seasons.

4. Persons Affected

Persons who wish to hunt deer with a crossbow are affected by the final-form rulemaking.

5. Comment and Response Summary

In total, 68 comments were received by letter and 141 comments were received by e-mail regarding the proposed rulemaking. Regarding the comments received by letter, 7 comments were in support while 61 comments were in opposition to the proposed rulemaking. Regarding the comments received by e-mail, 21 were in support while 120 were in opposition to the proposed rulemaking.

The comments received were very diversified in their support and opposition to the proposed rulemaking. Not all comments received solely supported or solely opposed the proposed rulemaking. Rather, a good portion of the comments received both supported and opposed different parts of the proposed rulemaking for a variety of reasons.

6. Cost and Paperwork Requirements

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

7. Effective Date

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

8. Contact Person

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

Findings

The Commission finds that:

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

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

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending §§ 141.41 and 141.43 to read as set forth at 34 Pa.B. 1781.

(b) The Executive Director of the Commission shall certify this order and 34 Pa.B. 1781 and deposit them with the Legislative Reference Bureau as required by law.

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

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-178 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 04-1285. Filed for public inspection July 16, 2004, 9:00 a.m.]

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GAME COMMISSION
[58 PA. CODE CH. 141]

Hunting and Trapping; Firearm Caliber Limitations

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 20, 2004, meeting, adopted the following rulemaking:

Amend § 141.22 (relating to small game) to permit rimfire and centerfire firearms of less than .23 caliber to hunt small game; and § 141.43 (relating to deer) to permit the use of rimfire firearms of .22 caliber or less to dispatch legally trapped furbearers during the regular or special firearms deer seasons to make the regulations more consistent and reduce confusion related to firearm caliber limitations.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 34 Pa.B. 1941 (April 10, 2004).

1. Introduction

The Commission amends § 141.22 to permit rimfire and centerfire firearms of less than .23 caliber to hunt small game and amends § 141.43 to permit the use of rimfire firearms of .22 caliber or less to dispatch legally trapped furbearers during the regular or special firearms deer seasons to make the regulations more consistent and reduce confusion related to firearm caliber limitations.

2. Purpose and Authority

Formerly, § 141.22 made it unlawful to take small game with a centerfire firearm. Only rimfire, .22 caliber or less firearms were permitted to take small game. The Commission amends § 141.22 to permit the use of rimfire and centerfire firearms of less than .23 caliber to take small game.

Formerly, § 141.43 permitted trappers to dispatch legally trapped furbearers during the regular or special firearms deer seasons with a .22 caliber firearm only. However, the Commission has recently amended the restrictions regarding the caliber of single projectile firearms that are permitted during the small game season to include smaller caliber firearms such as the .17 caliber. To maintain consistency between the regulations and reduce confusion related to the calibers permitted, the Commission amends § 141.43 to permit the use of .23 caliber or less firearms for the dispatch of legally trapped furbearers during the regular or special firearms deer seasons.

Section 2102(d) of the code (relating to regulations) authorizes the Commission to "promulgate regulations stipulating the size and type of traps, 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

322(c)(5) of the code (relating to powers and duties of commission) specifically empowers the Commission to "fix the type and number of devices which may be used to take game or wildlife." Section 2102(a) of the code 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 ways, manner, methods and means of hunting or furtaking . . . in this Commonwealth." The amendments to §§ 141.22 and 141.43 were adopted under this authority.

3. Regulatory Requirements

The final-form rulemaking permits the use of rimfire and centerfire firearms of less than .23 caliber to hunt small game and will also permit trappers to dispatch legally trapped furbearers during the regular or special firearms deer seasons with firearms of .22 caliber or less.

4. Persons Affected

Persons wishing to hunt small game in this Commonwealth with single projectile firearms will be affected by the final-form rulemaking. Additionally, persons wishing to dispatch legally trapped furbearers during the regular or special firearms deer seasons will be affected by the final-form rulemaking.

5. Comment and Response Summary

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

6. Cost and Paperwork Requirements

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

7. Effective Date

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

8. Contact Person

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

Findings

The Commission finds that:

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

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

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending §§ 141.22 and 141.43 to read as set forth at 34 Pa.B. 1941.

(b) The Executive Director of the Commission shall certify this order and 34 Pa.B. 1941 and deposit them with the Legislative Reference Bureau as required by law.

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

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-183 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 04-1286. Filed for public inspection July 16, 2004, 9:00 a.m.]

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GAME COMMISSION
[58 PA. CODE CH. 141]

Hunting and Trapping; Furbearer Tagging Requirements

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 20, 2004, meeting, adopted the following rule-making:

Rescind § 141.5 (relating to furbearer tagging requirements) to eliminate fur tagging requirements for bobcat, otter, fisher, pine marten and beaver.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 34 Pa.B. 1942 (April 10, 2004).

1. *Introduction*

The Commission rescinds § 141.5 to eliminate fur tagging requirements for five species.

2. *Purpose and Authority*

To lawfully possess or transfer bobcat, otter, fisher, pine marten and beaver pelts from this Commonwealth, former regulations required a trapper to first obtain a tag from the Commission to be secured upon the pelt. At one time, the Commission considered the information gathered from the tagging process to be essential data for maintaining and monitoring furbearer populations across this Commonwealth. However, the Bureau of Wildlife Management has since indicated that it is no longer necessary to collect the data in this manner. Therefore, the Commission eliminated the fur tagging requirements for the five species involved and rescinds § 141.5. By eliminating these requirements, trappers and wildlife conservation officers should be relieved of the time consuming burdens of arranging meetings throughout the state to tag beavers taken.

Section 2102(b)(1) of the code (relating to regulations) authorizes the Commission to "promulgate regulations relating to seasons and bag limits for hunting or furtaking, the possession of certain species or parts thereof . . ." 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 . . . in this Commonwealth." The rescission of § 141.5 was adopted under this authority.

3. *Regulatory Requirements*

The final-form rulemaking will eliminate fur tagging requirements.

4. *Persons Affected*

Persons wishing to trap the five species involved in this Commonwealth will be affected by the final-form rule-making.

5. *Comment and Response Summary*

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

6. *Cost and Paperwork Requirements*

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

7. *Effective Date*

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

8. *Contact Person*

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

Findings

The Commission finds that:

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

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

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by deleting § 141.5 to read as set forth in Annex A.

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

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

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-185 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter A. GENERAL

§ 141.5. (Reserved.)

[Pa.B. Doc. No. 04-1287. Filed for public inspection July 16, 2004, 9:00 a.m.]

GAME COMMISSION
[58 PA. CODE CH. 141]

Hunting and Trapping; Table of Hunting Hours

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 20, 2004, meeting, adopted the following rule-making:

Amend Chapter 141, Appendix G (relating to hunting hours) to reflect the annual change in days and subsequent hunting times.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 34 Pa.B. 1943 (April 10, 2004).

1. *Introduction*

The Commission amends Appendix G to reflect the annual change in days and subsequent hunting times.

2. *Purpose and Authority*

Each year, there is a shift in calendar days for each month. As a result of this occurrence, the table of hunting hours in Appendix G must be amended and updated to reflect the current year's hunting dates and corresponding legal hunting hours. The Commission amends Appendix G by updating the table of hunting hours for the 2004-2005 hunting year.

Section 322(c)(1) of the code (relating to powers and duties of commission) specifically empowers the Commission to "fix seasons, daily shooting or taking hours, and any modification thereof, and daily, season and possession limits for any species of game or wildlife." 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 . . ." The amendment to Appendix G was adopted under this authority.

3. *Regulatory Requirements*

The final-form rulemaking amends Appendix G to update the table of hunting hours to reflect the annual change in days and subsequent hunting times.

4. *Persons Affected*

Persons wishing to hunt or trap in this Commonwealth will be affected by the final-form rulemaking.

5. *Comment and Response Summary*

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

6. *Cost and Paperwork Requirements*

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

7. *Effective Date*

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

8. *Contact Person*

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

Findings

The Commission finds that:

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

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

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending Appendix G to read as set forth at 34 Pa.B. 1943.

(b) The Executive Director of the Commission shall certify this order and 34 Pa.B. 1943 and deposit them with the Legislative Reference Bureau as required by law.

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

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-181 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 04-1288. Filed for public inspection July 16, 2004, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CHS. 141 AND 143]

Hunting and Trapping; Hunting and Furtaker Licenses

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 20, 2004, meeting, adopted a final-form rule-making:

Amend § 141.47 (relating to elk) to create a 150-yard wide no elk hunting zone on each side of the center line of Rt. 555 from Weedville to Hicks Run and a Hick's Run no hunting zone; § 141.48 (relating to elk management units) to allow the Director to establish elk management units prior to the opening of elk season; § 143.203 (relating to drawing) to permit elk hunters to meet the orientation requirement by completing one of the available orientation programs and also permit elk hunters whose military obligations prevent them from hunting during the current elk season to transfer their elk hunting eligibility to the next available season; and § 143.207 (relating to unlawful acts) to permit elk hunters to submit one application for an elk license for each elk season available.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 34 Pa.B. 1944 (April 10, 2004).

1. Introduction

The Commission amends § 141.47 to create a 150-yard wide no elk hunting zone on each side of the center line of Rt. 555 from Weedville to Hick's Run and a Hick's Run no hunting zone which includes a cemetery; amends § 141.48 to allow the Director to establish elk management units prior to the opening of elk season; amends § 143.203 to permit elk hunters to meet the orientation requirement by completing one of the available orientation programs and also permit elk hunters whose military obligations prevent them from hunting during the current elk season to transfer their elk hunting eligibility to the next available season; and amends § 143.207 to permit elk hunters to submit one application for an elk license for each elk season available.

2. Purpose and Authority

Currently, there is an area along Rt. 555 where elk are highly visible to the public from the roadway. These elk are often found in both private and public places. However, due to the proximity of these elk to the public, hunting them creates a danger for individuals located in or passing through this area. The proximity of these elk to Rt. 555 also encourages illegal poaching and the violation of the fair chase element to legal hunting. The Commission amends § 141.47 to create a 150-yard wide no elk hunting zone on each side of the center line of Rt. 555 from Weedville to Hicks Run to protect people and elk in this exposed area from unsafe, illegal or incorrigible hunting practices.

Formerly, elk management units were "set in semipermanent stone" in the regulations. While the units could be amended as needed, the process required to amend the regulations created a substantial time delay before a change could be implemented and enforced. For elk management units, this delay meant that by the time the units were established and implemented the information used to establish the new units was no longer current. The Commission relies on various ever-changing information to determine unit locations including known elk herd locations, estimated elk populations and current elk problem areas. The Commission amends § 141.48 to allow the Director to establish the elk management unit boundaries prior to the opening of elk season. This change will allow the Commission to more effectively manage the elk herd by allowing the elk management units to be defined in a more responsive manner. In turn, this means that hunters will have a greater opportunity to be successful and will also enable the Commission to reduce elk numbers in the most critical areas based upon the most recent information available.

Unfortunately, many successful applicants for elk licenses are burdened with conflicts that prevent them from attending the orientation program sponsored by the Commission. As this orientation program is a required step to be completed before being issued an elk license, these conflicts can create an unfortunate dilemma for hunters. The Commission intends to relax this requirement and allow more flexibility in meeting the orientation requirement. Specifically, the Commission amends § 143.203 to permit other options in programming to give the hunters the necessary orientation. The Commission also amends § 143.203 to allow a person serving in the armed forces, who was successfully drawn for an elk license but unable to hunt during a current elk season because of military obligation, to be issued an elk license for the following elk season.

Recently, the Commission considered (but deferred) a second, early elk season. However, if implemented former

regulations would prevent an applicant from lawfully submitting an application for each season available. Specifically, § 143.207 formerly made it unlawful for a person to submit more than one application for an elk license during any hunting license year. The Commission amended this language in § 143.207 to permit hunters to submit one application for each elk season available in any given hunting license year should additional seasons be implemented.

Section 322(c)(4) of the code (relating to powers and duties of commission) specifically authorizes the Commission to "define geographic limitations or restrictions." 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." The amendments to §§ 141.47 and 141.48 were adopted under this authority.

Section 2722(g)(2) of the code (relating to authorized license-issuing agents) directs the Commission to adopt regulations for the administration, control and performance of activities related to license issuing. 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 . . . in this Commonwealth." The amendments to §§ 143.203 and 143.207 were adopted under this authority.

3. Regulatory Requirements

The final-form rulemaking makes it unlawful to hunt within the 150-yard wide no elk hunting zone on each side of Rt. 555 from Weedville to Hicks Run, allows the Director to establish elk management units prior to the opening of elk season, permits elk hunters to meet the orientation by completing one of the available orientation programs, permits hunters whose military obligations prevent them from hunting during a current elk season to transfer their elk hunting eligibility to the next available season and allows elk hunters to submit one application for an elk license for each elk season available.

4. Persons Affected

Persons wishing to hunt for elk in this Commonwealth may be affected by the final-form rulemaking.

5. Comment and Response Summary

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

6. Cost and Paperwork Requirements

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

7. Effective Date

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

8. *Contact Person*

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

Findings

The Commission finds that:

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

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

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 141 and 143, are amended by amending §§ 141.48, 143.203 and 143.207 and deleting Appendix F in Chapter 141 to read as set forth at 34 Pa.B. 1944 and by amending § 141.47 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall certify this order, 34 Pa.B. 1944 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-179 remains valid for the final adoption of the subject regulations.

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:

(1) Use any rifle or handgun which is not centerfire and at least .27 caliber.

(2) Use any projectile which is not all lead or designed to expand on impact and at least 130 grains.

(3) Use muzzleloading firearms other than long guns which are at least .50 caliber and propel a single-projectile that weighs at least 210 grains.

(4) Use any shotgun less than 12 gauge.

(5) Use any bow with a draw weight less than 45 pounds.

(6) Use any arrow that is not equipped with a broadhead that has an outside diameter or width of at least 1 inch with no less than 2 fixed, steel cutting edges and each cutting edge must be in the same plane throughout the length of the cutting surface.

(7) Use any crossbow with a draw weight less than 125 pounds or more than 200 pounds.

(8) After lawfully killing an elk, fail to mark the kill sight under Commission instructions provided at the orientation.

(9) Act or conspire to act as a guide for any person without first securing a permit from the Commission and attending an orientation program sponsored by the Commission.

(10) Act or conspire to act as a client for any guide who has not secured a permit from the Commission and attended an orientation program sponsored by the Commission.

(11) Drive or herd elk.

(12) Hunt within 150 yards from the center line of Route 555, from the intersection of Routes 255 and 555, to the intersection of Huston Hill Road and Route 555.

(13) Hunt within the Hick's Run no hunt zone, this being the area immediately adjacent to and north of Route 555, between Hick's Run Road and Huston Hill Road and within .3 mile of Route 555.

[Pa.B. Doc. No. 04-1289. Filed for public inspection July 16, 2004, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 143]

Hunting and Furtaker Licenses

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 20, 2004, meeting, adopted the following final-form rulemaking:

Amend § 143.48 (relating to first-come-first-served license issuance) to remove the reference to § 143.45(g) (relating to completing and submitting applications, which will be eliminated; § 143.53 (relating to reapplication) to permit an applicant to receive a replacement license from any county treasurer; and §§ 143.55 and 143.56 (relating to unlawful acts; and penalties) to permit the revalidation of a license by submission of the required payment and fees despite prior submission of a nonnegotiable check.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 34 Pa.B. 1782 (April 3, 2004).

1. *Introduction*

The Commission amends § 143.48 to remove the reference to § 143.45(g), which will be eliminated, amends § 143.53 to permit an applicant to receive a replacement license from any county treasurer and amends §§ 143.55 and 143.56 to permit the revalidation of a license by submission of the required payment and fees despite prior submission of a nonnegotiable check.

2. *Purpose and Authority*

Formerly, § 143.48(b) referenced § 143.45(g). Section 143.45(g) provided the requirement that an applicant for an antlerless deer license or licenses identify the number of applications enclosed in the application envelope by circling the appropriate preprinted number on the outside of the envelope. Since this subsection was eliminated, the

Commission eliminates the reference to § 143.45(g) in § 143.48(b) to maintain clarity and eliminate "dead-end references" in the regulations.

Former regulations required replacement license applicants to apply to a county treasurer within the management unit where the original license was issued. The Commission amends § 143.53 to allow applicants to apply to any current treasurer for a replacement license. This amendment is intended to make the reapplication process more convenient for hunters and allow county treasurers to provide better service to their constituents.

Former regulations stated that a non-negotiable check submitted as payment for a license automatically voids the license and subjects it to confiscation by an officer of the Commission. The Commission amends §§ 143.55 and 143.56 to the extent that a license will not be automatically and permanently voided when it is paid for with a non-negotiable check. Rather, the Commission will permit a license holder to revalidate the license by submitting the required payment and fees charged for processing the nonnegotiable check to the county treasurer.

Section 2722(g)(2) of the code (relating to authorized license-issuing agents) directs the Commission to adopt regulations for the administration, control and performance of activities related to license issuing.

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." The amendments to §§ 143.48, 143.53, 143.55 and 143.56 were adopted under this authority.

3. *Regulatory Requirements*

The final-form rulemaking relaxes the existing requirements including removing reference to § 143.45(g) in § 143.48. The amendment to § 143.53 permits an applicant to receive a replacement license from any county treasurer rather than just the original license issuing county treasurer. The amendments to §§ 143.55 and 143.56 also permit the revalidation of a license by submission of the required payment and fees despite prior submission of a non-negotiable check.

4. *Persons Affected*

Persons applying for antlerless deer licenses, persons applying for replacement licenses and persons wishing to revalidate a license voided by the submission of a non-negotiable check are affected by the final-form rulemaking.

5. *Comment and Response Summary*

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

6. *Cost and Paperwork Requirements*

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

7. *Effective Date*

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

8. *Contact Person*

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

Findings

The Commission finds that:

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

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

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 143, are amended by amending §§ 143.48, 143.53, 143.55 and 143.56 to read as set forth at 34 Pa.B. 1782.

(b) The Executive Director of the Commission shall certify this order and 34 Pa.B. 1782 and deposit them with the Legislative Reference Bureau as required by law.

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

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-180 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 04-1290. Filed for public inspection July 16, 2004, 9:00 a.m.]

GAME COMMISSION [58 PA. CODE CH. 147] Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 20, 2004, meeting, adopted the following rulemaking:

Amend the following sections § 147.672 (relating to definitions) to expand the list of definitions; § 147.673 (relating to eligibility and application for DMAP) to remove limitations and expand eligibility for the Deer Management Assistance Program (DMAP); § 147.674 (relating to issuance of DMAP harvest permits) to establish separate fees related to submitting a DMAP coupon for a DMAP harvest permit for residents and nonresidents; and § 147.676 (relating to unlawful acts) to make it unlawful for a nonresident to apply for or possess a resident DMAP harvest permit.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 34 Pa.B. 1946 (April 10, 2004).

1. *Introduction*

The DMAP has been in effect for almost a full season and has already proven to be an asset to public and private landowners as a tool for the future management of local white-tailed deer herds on lands where excessive deer numbers have compromised the landowners' land uses and other interests. In response to these successes, the Commission has identified a few changes that could make the DMAP even more successful in the future.

2. *Purpose and Authority*

When the Commission first approved the DMAP regulations, they included language limiting DMAP applications to public land and private land enrolled in one of the Commission's public access programs for the 2003-2004 license year only. This language will no longer be in effect for the upcoming 2004-2005 license year. Therefore, the Commission amends § 147.673 by removing this language. In addition, the Commission amends § 147.673 to expand eligibility for the DMAP by allowing more private land, such as eligible hunting clubs, to be enrolled in the DMAP.

The Commission amends § 147.672 to expand the list of definitions to include "hunting club" and "private land." Adding the definition of "hunting club" permits the Commission to effectively limit the types and size of clubs eligible for the DMAP. Defining "private land" permits the Commission to deny eligibility to private landowner applicants where hunting rights on that land are leased or where there is a fee charged for hunting.

Former regulations did not establish separate fees for residents and nonresident hunters who submit DMAP coupons for DMAP harvest permits. To stay consistent with related fee scales for antlerless deer licenses, the Commission amends § 147.674 to establish separate fees for residents and nonresident hunters who submit DMAP coupons for DMAP harvest permits

Formerly, there was no distinction between a resident and nonresident DMAP harvest permit. Since the separate fee schedule for resident and nonresident hunters was finally adopted, the regulations must provide limitations to prevent a nonresident hunter from applying for or possessing a resident DMAP harvest permit. The Commission amends § 147.676 to make it unlawful for a nonresident to apply for or possess a resident DMAP harvest permit.

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 322(c)(4) of the code (relating to powers and duties of commission) specifically authorizes the Commission to "define geographic limitations or restrictions." 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." The amendments to §§ 147.672—147.674 and 147.676 were adopted under this authority.

3. *Regulatory Requirements*

The final-form rulemaking defines and limits eligibility for the DMAP, establishes separate fees regarding submitting DMAP coupons for DMAP harvest permits for residents and nonresidents and makes it unlawful for nonresidents to apply for or possess resident DMAP harvest permits.

4. *Persons Affected*

Persons wishing to apply to have their land enrolled in the DMAP or persons wishing to submit DMAP coupons for DMAP harvest permits will be affected by the final-form rulemaking.

5. *Comment and Response Summary*

Twenty-six official comments were received regarding this final-form rulemaking. These comments were comprised of 1 letter and 20 e-mails in favor and 5 e-mails in opposition of the final-form rulemaking.

6. *Cost and Paperwork Requirements*

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

7. *Effective Date*

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

8. *Contact Person*

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

Findings

The Commission finds that:

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

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

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending §§ 147.672, 147.673 and 147.676 to read as set forth at 34 Pa.B. 1946 and by amending § 147.674 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall certify this order, 34 Pa.B. 1946 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-182 remains valid for the final adoption of the subject regulations.

Annex A
TITLE 58. RECREATION
PART III. GAME COMMISSION
CHAPTER 147. SPECIAL PERMITS
Subchapter R. DEER CONTROL
DEER MANAGEMENT ASSISTANCE
PROGRAM PERMITS

§ 147.674. Issuance of DMAP harvest permits.

(a) DMAP harvest permits will be made available without regard to quota limitations and will be issued by the Commission.

(b) One coupon for the DMAP area may be issued each license year to persons who possess a valid Pennsylvania hunting license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions).

(c) Coupon holders shall mail the completed coupons to the Commission along with a check or money order payable to the "Pennsylvania Game Commission." The fee for the coupon is \$6 for residents and \$26 for nonresidents.

(d) While hunting deer, the DMAP harvest permit shall be possessed by the hunter at all times.

[Pa.B. Doc. No. 04-1291. Filed for public inspection July 16, 2004, 9:00 a.m.]

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION
[67 PA. CODE CH. 83]

Physical and Mental Criteria, Including Vision Standards Relating to the Licensing of Drivers

The Department of Transportation, under the authority of 75 Pa.C.S. §§ 1517, 1518 and 6103 (relating to medical advisory board; reports on mental or physical disabilities or disorders; and promulgation of rules and regulations by department), amends Chapter 83 (relating to physical and mental criteria, including vision standards relating to the licensing of drivers) to read as set forth Annex A.

Purpose

The purpose of Chapter 83 is to set forth physical and mental criteria, including vision standards, for the licensing of drivers, formulated by the Medical Advisory Board (Board) under 75 Pa.C.S. §§ 1517 and 1518. In addition to their use by the Department in connection with its responsibilities under 75 Pa.C.S. (relating to the Vehicle Code), these physical and mental criteria are to be used by medical providers in conducting physical examinations of applicants for learner permits and driver licenses, and by physicians and other persons authorized to diagnose and treat disorders and disabilities covered in Chapter 83 to determine whether a person should be reported to the Department as having a disorder affecting the ability of the person to drive safely.

Summary of Comments and Changes in the Final-Form Rulemaking

The proposed rulemaking was published at 33 Pa.B. 4171 (August 23, 2003). The proposed rulemaking was

also submitted to the Independent Regulatory Review Commission (IRRC) and the House and Senate Transportation Committees.

IRRC submitted several comments regarding clarity and consistency of the language in the proposed rulemaking. The first comment noted a discrepancy between the definition of "aura" in the proposed rulemaking and the description of an aura in the preamble. The definition describes an aura as a seizure which did not interfere with mechanical or sensory ability, while the preamble indicated it was an event experienced prior to a seizure. In response to the comment, the definition in the final-form rulemaking has been clarified to state that an "aura" is "an epileptic episode, sometimes experienced before or in lieu of a seizure, which does not alter an individual's ability to think clearly or interfere with an individual's mechanical or sensory ability to operate a motor vehicle."

IRRC also pointed out inconsistency in the phrasing in § 83.3 (relating to visual standards) describing visual acuity standards. In response, all references have been changed to "visual acuity of less than." IRRC also requested in § 83.3(c)(3) regarding drivers limited to roads other than freeways a cross-reference to the definition of "freeway" in 75 Pa.C.S. The cross-reference has been inserted.

IRRC also suggested that the language in § 83.3(5), regarding drivers limited to driving "within a specific geographic area," lacked clarity. The paragraph was clarified to read: "If determined by the Department to be appropriate, the person's driving privilege is limited to driving within a limited radius of the person's residence as recommended by a licensed physician." This language permits drivers with visual limitations to be permitted to drive in familiar territory near to their home as their physician may recommend.

IRRC noted that § 83.4 (relating to seizure disorder), strictly construed, permitted drivers who experienced only one aura in the previous 6 months to continue driving but would disqualify drivers who had experienced more than one aura. This was not the intent. The section has been clarified to provide that drivers who have experienced only auras within the previous 6 months are not disqualified to drive.

In § 83.5(b)(2)(i) and (3)(i) (relating to other physical and medical standards), IRRC noted that the proposed rulemaking provided that the "provider shall inform the patient of the prohibition against driving due to the functional impairment" and questioned how the Department planned to enforce the requirement. There is no mechanism to enforce this provision and it was intended as a reminder to providers that, even if the functional impairment does not require reporting to the Department, patients should be advised that it is unlawful to drive. The subparagraphs have been made advisory by changing "shall" to "should."

IRRC also noted that § 83.5(b)(5), regarding evidence of mental disorder, used the phrase "examination by a physician." IRRC pointed out that the Pennsylvania Psychological Association (PPA) had also commented that this phrase excluded nonphysician providers who also diagnose mental disorder. The phrase has been changed to "examination by a provider." IRRC commented further that the language regarding behavioral history "provided by self or others" lacked clarity with respect to who the "others" might be. The provision has been changed to "as provided by self or others familiar with the person's

behavior." It is thought that this language is broad enough to include relatives, friends, coworkers and neighbors with the qualification that they have familiarity with the person's behavior. This language is preferable to a list of specific relationships which could include many with little knowledge of the person's behavior and exclude individuals with considerable knowledge.

IRRC also sought clarity in § 83.5(c) permitting the Department to require a driver to undergo a "special driving examination." IRRC questioned what a "special driving examination" would entail. There is no "special" driving examination intended by this section and the word "special" has been eliminated. The section now provides that, if the Department has reason to believe that a driver, otherwise apparently qualified to drive under Chapter 83, does not have the ability to safely operate a motor vehicle, the Department may require the driver to undergo a driving examination to determine competency.

Finally, IRRC noted an inconsistency in the references to "physicians" and "licensed physicians" throughout the proposed rulemaking. Since "licensed physician" is defined in § 83.2 (relating to definitions), IRRC suggested that this term be used throughout. The change to "licensed physician" has been made with respect to provisions requiring a condition to be verified by a physician to clarify that the verification must be made by a properly credentialed professional. However, § 83.4(c) and § 83.6 (relating to providers to report unqualified person) impose a reporting requirement consistent with 75 Pa.C.S. § 1518. Section 1518 of 75 Pa.C.S. uses the term "physician," not "licensed physician." The change suggested by IRRC, if applied in § 83.4(c), could inappropriately limit the reporting requirement to "licensed physicians." Clarification in § 83.4(c) has been achieved by changing the word "physician" to "provider." No change to the language of § 83.6, which mirrors that of 75 Pa.C.S. § 1518, has been made.

Alan Welder of Shillington, PA, proposed changes to § 83.3(e) regarding the 120° field of vision requirement. He specifically suggested that measurement of a driver's field of vision be permitted within 5° of the horizontal meridian to allow for consideration of the height of an individual driver. The optometrist serving on the Board has indicated that, to the extent that the comment urges that more specific visual field standards be quantified, the comment has merit. The optometrist opined that this one specific change in the regulation would not be beneficial as it does not address all of the many complex factors to be considered in the development of more specific visual field standards. On this advice of the member of the Board, the Department has not made the suggested change.

Comment was also received from the Pennsylvania Optometric Association fully supporting the proposed rulemaking.

The PPA commented that § 83.5(b) as drafted reads that a person will not be qualified to drive if they have a condition "likely to impair the ability to control and safely perform motor functions necessary to drive a motor vehicle." The PPA notes that some of the skills delineated thereafter in the section regard cognitive skills, not motor skills. The language has been changed to "likely to impair the ability to control and safely operate a motor vehicle" to capture all types of conditions. The PPA also commented that § 83.5(b)(5) used the phrase "examination by a physician." The PPA notes that this phrase excluded

nonphysician providers who also diagnose mental disorder. As previously noted, the phrase has been changed to "examination by a provider."

Edward H. Dench, Jr., MD submitted comments as President of the Pennsylvania Medical Society (PMS) and noted that generally, there was no opposition to the proposed rulemaking. With respect to § 83.4, Dr. Dench commented that the reduction of the required seizure-free period from 12 to 6 months before restoration of driving privileges and the amendment permitting persons who only experience auras to drive both seemed reasonable given advances in treatment regimens for seizure disorders. Dr. Dench commented, however, that persons who experience an aura prior to seizure should not be allowed to drive unless they complete the 6-month seizure-free period, with possible noted exemptions. First, the Department notes that § 83.4(b) provides for a waiver of the seizure-free period requirement only upon the recommendation of a licensed physician. Individual physicians may disagree in their judgment regarding whether a person who has had a seizure or seizures within the previous 6 months which were preceded by "a specific prolonged aura accompanied by sufficient warning" should be permitted to drive. The restriction proposed by Dr. Dench would prohibit a person from driving who may continue to have periodic seizures but who is able, because of the prolonged aura preceding the seizure, to safely cease operation of the vehicle before the onset of the seizure. The Department does not believe the medical community is united in the view that this should always be the case. The Department again notes that the recommendation of a licensed physician would be required before the driving privilege would be restored.

Dr. Dench's letter also conveyed a comment of a PMS member regarding § 83.4(c)(4). As proposed, the language appears to permit a person who has been seizure-free for 6 months but suffers a seizure as a result of a head injury to receive a waiver to continue driving. The comment notes that the presence of an early post-traumatic seizure may increase the likelihood of subsequent seizures and recommends that the 6-month seizure-free period not be waived in the case of post-traumatic seizures. The Department's consulting physician agrees and "nonrecurring trauma" has been deleted from the final-form rulemaking.

Persons and Entities Affected

The final-form rulemaking affects persons qualified or wishing to be qualified to drive, health care providers and the State Police.

Fiscal Impact

Implementation of the final-form rulemaking will not require the expenditure of any additional funds by the Commonwealth or local municipalities. The final-form rulemaking will not impose any additional costs on the medical community and may reduce costs by providing clearer medical criteria and thus reduce unnecessary reporting by physicians and the need for follow-up medical examinations for drivers. It may impose additional costs on drivers wishing to apply for the restricted license for low vision drivers because of the requirement for an annual vision examination.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 11, 2003, the Department submitted a copy of the notice of proposed rulemaking, published at 33 Pa. B. 4171, to IRRC and the Chairpersons of the House and Senate Transportation Committees for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on May 12, 2004, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 13, 2004, and approved the final-form rulemaking.

Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

Sunset Provisions

The Department is not establishing a sunset date for the final-form rulemaking, since the amendments are needed to administer provisions required under 75 Pa.C.S. The Department will continue to closely monitor the regulations for their effectiveness.

Contact Person

The contact person for technical questions about this final-form rulemaking is Michael P. Kistler, Manager, Driver Safety Division, Bureau of Driver Licensing, 1101 S. Front Street, 4th Floor, Harrisburg, PA 17104, (717) 772-2119.

Order

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 83, are amended by amending §§ 83.2—83.5 and by adding § 83.6 to read as set forth in Annex A.

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

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

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

ALLEN D. BIEHLER, P. E.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 2893 (May 29, 2004).)

Fiscal Note: Fiscal Note 18-374 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE IV. LICENSING

CHAPTER 83. PHYSICAL AND MENTAL CRITERIA, INCLUDING VISION STANDARDS RELATING TO THE LICENSING OF DRIVERS

§ 83.2. Definitions.

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

Act—75 Pa.C.S. § 101—9910 (relating to Vehicle Code).

Aura—An epileptic episode, sometimes experienced before or in lieu of a seizure, which does not alter an individual's ability to think clearly or interfere with an individual's mechanical or sensory ability to operate a motor vehicle.

CRNP—Certified registered nurse practitioner—A registered nurse licensed in this Commonwealth who is certified, by both the State Board of Nursing and the State Board of Medicine, in a particular clinical specialty area and who, while functioning in the expanded role as a professional nurse, performs acts of medical diagnosis or prescription of medical therapeutic or corrective measures in collaboration with and under the direction of a physician licensed to practice medicine in this Commonwealth.

Daylight—Hours between sunrise and sunset.

Department—The Department of Transportation of the Commonwealth.

Licensed optometrist—A doctor of optometry licensed by the State Board of Optometry.

Licensed physician—A doctor of medicine licensed by the State Board of Medicine or a doctor of osteopathy licensed by the State Board of Osteopathic Medical Examiners.

Nocturnal—As used in relation to seizures, the term means occurring during sleep.

Seizure—A paroxysmal disruption of cerebral function characterized by altered consciousness, altered motor activity or behavior identified by a licensed physician as inappropriate for the individual.

Seizure disorder—Condition in which an individual has experienced a single seizure of electrically diagnosed epilepsy, or has experienced more than one seizure not including seizures resulting from an acute illness, intoxication, metabolic disorder, or trauma.

Telescopic lens—A telescopic low vision device.

§ 83.3. Visual standards.

(a) *Driving without corrective lenses.* A person with visual acuity of 20/40 or better combined vision may drive without corrective lenses.

(1) If a person with visual acuity of 20/40 or better combined vision, however, has visual acuity of less than 20/40 in one eye, the vision in that eye shall be corrected to its best visual acuity.

(2) A person with visual acuity of 20/40 or better combined vision and who has visual acuity of less than 20/40 in one eye, may drive without corrective lenses upon determination by a licensed optometrist or ophthalmologist that the person's combined vision would not be improved by the use of corrective lenses.

(b) *Driving with corrective lenses.* A person with visual acuity of less than 20/40 combined vision shall wear lenses correcting combined vision to 20/40 or better while driving, except that if correction to 20/40 is not possible, the person may drive in daylight hours only if one of the following are met:

(1) The combined vision has been corrected to 20/60 or better.

(2) Visual acuity is less than 20/60 combined vision but at least 20/70 combined vision with best correction, but only upon recommendation of a licensed optometrist or licensed physician who has equipment to properly evaluate visual acuity.

(c) *Visual acuity of less than 20/70.*

(1) A person with visual acuity of less than 20/70 combined vision but at least 20/100 combined vision with best correction may apply for and may be issued a restricted license only upon recommendation of a licensed optometrist or ophthalmologist or licensed physician who has equipment to properly evaluate visual acuity, and only if the following conditions or limitations are satisfied:

(i) The person takes and successfully passes a complete vision examination, including plotted visual fields, upon application and annually thereafter.

(ii) The person takes and successfully passes a driver's examination upon application.

(iii) The person's driving privilege is limited to roads other than freeways, as defined in 75 Pa.C.S. § 102 (relating to definitions).

(iv) The person's driving privilege is limited to passenger vehicles weighing no more than 10,000 pounds, and excludes operation of a motorcycle.

(v) If determined by the Department to be appropriate, the person's driving privilege is limited to driving within a limited radius of the person's residence as recommended by a licensed physician.

(2) Violation of these conditions or limitations shall result in the recall of the restricted license. In addition, an annual review of the person's accident and violation history will be conducted by the Department and the restricted license may be recalled if the Department determines that the person was involved in an at fault accident or convicted of two moving violations committed within a 1-year period.

(d) *Visual acuity of less than 20/100.* A person with visual acuity of less than 20/100 combined vision with best correction will not be qualified to drive.

(e) *Vision requirements.* A person shall have a combined field of vision of at least 120° in the horizontal meridian, excepting the normal blind spots.

(f) *Sight in one eye.* A person may be adequately sighted in only one eye and still meet the requirements of this section. The person's driving privilege will be restricted to vehicles having mirrors so located as to reflect to the person a view of the highway for a distance of at least 200 feet to the rear.

(g) *Telescopic lenses.* Correction through the use of telescopic lenses is not acceptable for purposes of meeting acuity requirements.

§ 83.4. Seizure disorder.

(a) *General.* A person who has a seizure disorder will not be qualified to drive unless a licensed physician reports that the person has been free from seizure for at least 6 months immediately preceding, with or without medication. A person will not be disqualified if the person has experienced only auras during that period.

(b) *Waiver.* Waiver of the freedom from seizure requirement may be made upon specific recommendation by a licensed physician if one of the following conditions apply:

(1) A strictly nocturnal pattern of seizures or a pattern of seizures occurring only immediately upon awakening has been established over a period of at least 2 years immediately preceding, with or without medication.

(2) A specific prolonged aura accompanied by sufficient warning has been established over a period of at least 2 years immediately preceding, with or without medication.

(3) The person previously had been free from seizure for a 6 month period and the subsequent seizure or seizures occurred as a result of a prescribed change in or removal from medication while under the supervision of a licensed physician. This waiver will only be provided upon reinstatement of previous medication.

(4) The person previously had been free from seizure for 6 months and the subsequent seizure or seizures occurred during or concurrent with a nonrecurring transient illness, toxic ingestion, or metabolic imbalance.

(c) *Reporting requirements for provider.* Every provider who treats a person who has experienced a single seizure shall provide, consistent with 75 Pa.C.S. § 1518(b) (relating to reports on mental or physical disabilities or disorders), a report to the Department which shall constitute cause for the Department to direct the person to undergo an examination prescribed under 75 Pa.C.S. § 1519 (relating to determination of incompetency).

§ 83.5. Other physical and medical standards.

(a) *General disqualifications.* A person who has any of the following conditions will not be qualified to drive:

(1) Unstable or brittle diabetes or hypoglycemia, unless there has been a continuous period of at least 6 months freedom from a related syncopal attack.

(2) Cerebral vascular insufficiency or cardiovascular disease which, within the preceding 6 months, has resulted in one or more of the following:

(i) Syncopal attack or loss of consciousness.

(ii) Vertigo, paralysis or loss of qualifying visual fields.

(3) Periodic episodes of loss of consciousness which are of unknown etiology or not otherwise categorized, unless the person has been free from episode for the year immediately preceding.

(b) *Disqualification on provider's recommendation.* A person who has any of the following conditions will not be qualified to drive if, in the opinion of the provider, the condition is likely to impair the ability to control and safely operate a motor vehicle:

(1) Loss of a joint or extremity as a functional defect or limitation.

(2) Impairment of the use of a joint or extremity as a functional defect or limitation.

(i) The provider should inform the patient of the prohibition against driving due to the functional impairment.

(ii) The provider shall inform the Department in writing of the impairment if the condition has lasted or is expected to last longer than 90 days.

(3) Rheumatic, arthritic, orthopedic, muscular, vascular or neuromuscular disease.

(i) The provider should inform the patient of the prohibition against driving due to the functional impairment.

(ii) The provider shall inform the Department in writing of the impairment if the condition has lasted or is expected to last longer than 90 days.

(4) Cerebral vascular insufficiency or cardiovascular disease which, within the preceding 6 months, has resulted in lack of coordination, confusion, loss of awareness, dyspnea upon mild exertion or any other sign or

symptom which impairs the ability to control and safely perform motor functions necessary to operate a motor vehicle.

(5) Mental disorder, whether organic or without known organic cause, as described in the current Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association, 1700 18th Street NW, Washington, DC 20009, especially as manifested by the symptoms set forth in (i)—(iii). While signs or symptoms of mental disorder may not appear during examination by the provider, evidence may be derived from the person's history as provided by self or others familiar with the person's behavior.

(i) Inattentiveness to the task of driving because of, for example, preoccupation, hallucination or delusion.

(ii) Contemplation of suicide, as may be present in acute or chronic depression or in other disorders.

(iii) Excessive aggressiveness or disregard for the safety of self or others or both, presenting a clear and present danger, regardless of cause.

(6) Periodic episodes of loss of attention or awareness which are of unknown etiology or not otherwise categorized, unless the person has been free from episode for the year immediately preceding, as reported by a licensed physician.

(7) Use of any drug or substance, including alcohol, known to impair skill or functions, regardless whether the drug or substance is medically prescribed.

(8) Other conditions which, in the opinion of a provider, is likely to impair the ability to control and safely operate a motor vehicle.

(c) *Driving examination.* A person who has any of the conditions enumerated in subsection (b)(1), (2), (3) or (8) may be required to undergo a driving examination to determine driving competency, if the Department has reason to believe that the person's ability to safely operate a motor vehicle is impaired. The person may be restricted to driving only when utilizing appropriate adaptive equipment.

§ 83.6. Providers to report unqualified persons.

Physicians and other persons authorized to diagnose and treat disorders and disabilities defined by the Medical Advisory Board shall report to the Department, in writing, the full name, date of birth and address of every person 16 years of age and older diagnosed as having any specified disorder or disability within 10 days, under 75 Pa.C.S. § 1518 (relating to reports on mental or physical disabilities or disorders).

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