RULES AND REGULATIONS

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 128b]

CHEMSWEEP Pesticide Disposal Program

The Department of Agriculture (Department) amends Chapter 128b (relating to CHEMSWEEP Pesticide Disposal Program) to read as set forth in Annex A.

Statutory Authority

This final-form rulemaking is adopted under the specific authority of the Secretary of Agriculture to promulgate appropriate regulations for the safe handling, transportation, storage, display, distribution and disposal of pesticides as set forth in section 7(b)(2) of the Pesticide Control Act of 1973 (act) (3 P. S. § 111.27(b)(2)).

Summary of Purpose

This final-form rulemaking amends and expands the existing CHEMSWEEP Pesticide Disposal Program (Program) to include the safe and effective disposal of all canceled, unused or suspended pesticides held by all citizens of this Commonwealth. The previous regulations regarding the Program were limited to agricultural production businesses and "agricultural pesticides."

Since its inception as a pilot program in 1992 and its subsequent promulgation as a regulatory Program in 1993 (see 23 Pa.B. 3933 (August 21, 1993)), the Program has had tremendous success in safely disposing of agricultural pesticides or other crop production chemicals in all counties throughout this Commonwealth. The express goal of the Program was, and continues to be, the prevention of toxic environmental releases and pollution of ground and surface water. As direct result of the Program's successes, the Department received numerous requests from pesticide dealers, distributors, commercial applicators and businesses to expand the Program and include nonagricultural pesticides.

In recent years, in conjunction with the Department of Environmental Protection (DEP), this Program has provided the citizens of this Commonwealth with an environmentally safe method for the disposal of household pesticide products. The Program continues to increase its collection and disposal percentages on a yearly basis. By participating in this Program, citizens of this Commonwealth can legally dispose of waste pesticides at no cost to them.

Funding for the Program continues to be derived from the Pesticide Restricted Account upon the recommendation of the Pesticide Advisory Board. Additional grant funds were received from the United States Environmental Protection Agency (EPA) to assist the Program for the year 2003 and beyond. The expansion of the Program to service additional pesticides and entities has not greatly increased the costs to the Program since the totals of agricultural pesticide inventories have been significantly decreased since 1993. The advent of the DEP alliance created the need to update the Program regulations to more accurately reflect the ongoing process and procedures.

Need for the Final-Form Rulemaking

The final-form rulemaking is needed to bring the existing Program regulations into compliance with the actual Program procedures.

Comments

Notice of proposed rulemaking was published at 35 Pa.B. 3940 (July 16, 2005) and provided for a 30-day public comment period. The only comments the Department received were from the Independent Regulatory Review Commission (IRRC). The Department's response to these comments follows:

Comment 1: For purposes of clarity, IRRC suggested that the reference in § 128b.1 (relating to authority and purpose) to "Chapter 128a (relating to Chemsweep Pesticide Disposal Program—statement of policy)" should be deleted since the statement of policy in Chapter 128a was superseded by Chapter 128b.

Response: The Department agrees with IRRC's suggestion and has deleted all references to Chapter 128a.

Comment 2: In § 128b.2 (relating to definitions), IRRC had several concerns with the proposed definition of "person" and two new proposed phrases in that definition—"citizen of this Commonwealth" and "doing business in this Commonwealth." IRRC believes that the two new phrases are unnecessary since § 128b.6(b) (relating to eligibility of persons to participate) establishes the conditions for eligibility. IRRC suggested that the Department either reference the statutory definition of "person" or incorporate that definition verbatim in the final-form rulemaking.

Additionally, in § 128b.6(b) IRRC suggested that the Department use the word "person" instead of "individuals, corporations, associations or other forms of business entities" since those entities are already included within the definition of "person." Lastly, IRRC suggested that the Department list the substantive requirements for eligibility.

Response: The Department agrees with IRRC's comments and has implemented the appropriate changes to the definition of "person" that will be repeated verbatim from the definition in section 4(29) of the act (3 P. S. § 111.24(29)). The Department has also implemented the change to § 128b.6(b) by deleting the phrase "individuals, corporations, association or other forms of business entities" and replacing it with "persons."

The Department, however, did not agree with IRRC's suggestion to list "the substantive requirements for eligibility" in § 128b.6. The Department believes that the existing criteria in paragraphs (1) and (2) are sufficient and will keep the Program as flexible and inclusive for the citizens of this Commonwealth, without the need for further paperwork by the citizens. Accordingly, the Department has elected not to implement that suggested change.

Comment 3: IRRC suggested that the word "may" in § 128b.3 (relating to selection of participating counties) be replaced with the word "will" in accordance with the *Pennsylvania Code & Bulletin Style Manual*.

Response: The recommendation has been implemented in the final-form rulemaking as suggested.

Comment 4: IRRC suggested that § 128b.4 (relating to limitation of the number of participating counties) should indicate that 21 is the "minimum" number of counties that the Department initially selects for participation in the Program.

Response: The Department typically selects up to three counties per region of this Commonwealth to participate

in the annual Program by soliciting pesticide inventory information and responses from pesticide applicators/dealers by mail. The Department has consistently used 21 as the maximum number of counties because of logistical and budgetary issues and constraints. However, when an emergency situation arises, the Department has in the past allowed more than 21 counties to participate in the Program. The Department wants to maintain that programmatic flexibility and discretion to allow more than 21, and in some instances, allow less than 21 counties to participate. By way of example, in 2006 less than 21 counties sought to participate in the Program. The Department does not believe having a minimum of 21 is appropriate and therefore, the Department declines to implement this suggestion.

Comment 5: Regarding, IRRC suggested that the Department, in its final-form rulemaking, amend § 128b.7(b)(12) (relating to preregistration application) to provide examples of what documents or information could be used by an applicant to provide "verification."

Response: After review and consideration of IRRC's comment, instead of providing "verification" examples, the Department has elected to delete subsection (b)(12), since the Department believes the information in paragraphs (1)—(11) evidences the person's eligibility and is, by itself, sufficient verification. The Department has implemented that change to the final-form rulemaking.

Comment 6: Section 128b.8(c) (relating to preregistration process) provides that the Department has discretion to accept a preregistration application form beyond the 90-day preregistration period. IRRC suggested that the final-form rulemaking should indicate whether an applicant may request an extension and when and how a request can be made.

Response: The Department, in keeping with the informal and relaxed procedures of this section, accepts all preregistration applications even those beyond the 90-day preregistration period. The initial 90-day period is to assist the Department in planning the logistics of a collection event with the contractor at applicable sites. As presently drafted, the applicant need not make any further written request for an extension. The applicant simply has to submit a completed inventory form, which the Department will consider, even after the 90-day cutoff date. Historically, the limited number of preregistration extensions has not impeded any collection event. Therefore, the Department believes that, in accordance with the general intent (safe collection and disposal) of the Program, no further procedural or paperwork requirements should be imposed upon preregistration applicants. Accordingly, the Department declines to implement this suggestion.

Comment 7: IRRC has two concerns with § 128b.12 (relating to program limitations). First, IRRC suggested the Department clarify that there is no charge to the Program participant for the first 2,000 pounds of pesticides collected. Second, IRRC is concerned with the last sentence of this section in which the "Department reserves the right to accept any excess pesticides . . . when deemed necessary by the Department." IRRC clearly recognized the Department's authority and discretion in this matter, but nevertheless suggested that the Department include criteria which it would use to determine whether the Department will accept additional pounds of pesticides beyond the maximum 2,000 pounds.

Response: As to IRRC's first comment, by way of various letters, notices and publications during the preregistration process program, participants are informed that there is no charge to participants for the first 2,000 pounds of pesticides collected. However, the Department would like to maintain the flexibility to charge a fee in the future depending upon the circumstances. Accordingly, the Department believes the regulation is sufficiently clear.

As to IRRC's second suggestion, the Department has included the criteria for the acceptance of excess poundage beyond the maximum amount.

Comment 8: IRRC believes that the word "would" in § 128b.14(b)(3) (relating to bid specifications) could allow the pesticide contractor to deviate from the written, detailed description required with the bid specifications. IRRC suggested that the term be changed to "shall."

Response: The Department shares IRRC's concern with the language in subsection (b)(3) and has implemented the change in the final-form rulemaking.

Comment 9: IRRC questions the need for general references to laws or regulations which apply to pesticide disposal contractors in § 128b.14(b)(4) and §§ 128b.10(a) and 128b.16 (relating to responsibilities of applicant or participant; and central-site). IRRC suggests that as long as approval by DEP and the EPA is required for pesticide disposal contractors, there does not seem to be any need for the general references to other "laws and regulations."

Response: The Department does not completely agree with IRRC's conclusion that because contractors must comply with DEP and EPA laws and regulations to maintain their licensure or permits, or both, there is no need for references to "other laws and regulations" in the final-form rulemaking. The Department has no way of determining the vast number of potential Federal, State or local laws which may be applicable to pesticide contractors and certainly no way of citing to each statutory or regulatory provision. Nevertheless, the Department will implement the suggested changes and delete the general references to "other laws and regulations," since the Department believes that in the Request for Bid process contractors sign a statement of assurance that they will comply with all applicable laws or regulations, or both.

Fiscal Impact

Commonwealth. The Department has determined that the final-form rulemaking will have little or no adverse financial impact on the Commonwealth since all funds budgeted for the Program are derived from the Pesticide Restricted Account. The funds in the Pesticide Restricted Account are obtained from licensing, permitting and registration fees and civil penalties placed upon pesticide manufacturers, dealers and applicators doing business within this Commonwealth. However, there could be a significant savings since the costs associated with the remediation of an environmental spill or exposure far outweigh the costs associated with administering the Program.

Political Subdivisions. The final-form rulemaking will impose no costs and have no adverse fiscal impact on political subdivisions.

Private Sector. The final-form rulemaking will have no adverse fiscal impact on the private sector. However, the final-form rulemaking will likely reduce costs to the private sector for the individual disposals costs of canceled, unused and suspended pesticides within this Commonwealth.

General Public. The final-form rulemaking will not impose any costs and will have no adverse fiscal impact on the general public. The Department believes there will be a positive impact upon the general public in that the Program will continue to help remove canceled, unused or suspended pesticides presently in this Commonwealth.

Paperwork Requirements

The final-form rulemaking will not appreciably increase the paperwork burden of the Department or other government units or citizens.

Sunset Date

There is no sunset date for the regulations. The Department will review the efficacy of the regulations on an ongoing basis.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Plant Industry, 2301 N. Cameron Street, Harrisburg, PA 17110-9408; Attention: Phillip Pitzer, (717) 772-5206.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 6, 2005, the Department submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 3940, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs 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 31, 2006, 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 June 1, 2006, and approved the final-form rulemaking.

Findings

The Department 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 that were made to this final-form rulemaking in response to comments received do not enlarge the purpose of the proposed rulemaking published at 35 Pa.B. 3940.

(4) The adoption of the final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

Order

The Department, acting under authority of the authorizing statute, orders that:

(a) The regulations of the Department, 7 Pa. Code Chapter 128b, are amended by amending §§ 128b.4, 128b.8, 128b.9, 128b.11, 128b.13, 128b.15, 128b.17 and 128b.18 to read as set forth at 35 Pa.B. 3940; and by amending §§ 128b.1—128b.3, 128b.6, 128b.7, 128b.10, 128b.12, 128b.14 and 128b.16 to read as set forth in Annex A.

(b) The Secretary of Agriculture shall submit this order, 35 Pa.B. 3940 and Annex A to the Office of General Counsel and to the Office of Attorney General for approval as required by law.

(c) The Secretary of Agriculture shall certify this order, 35 Pa.B. 3940 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*.

DENNIS C WOLFF,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 3051 (June 17, 2006).)

Fiscal Note: Fiscal Note 2-143 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 7. AGRICULTURE

PART V. BUREAU OF PLANT INDUSTRY

CHAPTER 128b. CHEMSWEEP PESTICIDE DISPOSAL PROGRAM

§ 128b.1. Authority and purpose.

(a) Under the authority granted it under the act, the Department establishes a pesticide disposal program to be designated as "CHEMSWEEP." This Program will allow the Department to identify and quantify canceled, unused or suspended pesticides held, owned or possessed by citizens of this Commonwealth. The information derived from this inventory shall be used in the solicitation of bids from hazardous waste disposal contractors for the safe collection, transportation and disposal of the pesticides.

(b) This Program will be conducted within counties which are designated by the Department each year.

(c) By addressing the pesticide disposal needs of Commonwealth citizens, the Program addresses the needs of persons who have accumulated and stored chemicals in this Commonwealth with the potential to affect the environment and human safety. Citizens of this Commonwealth currently lack an available, economical, environmentally sound, and effective means of disposing of potentially hazardous pesticides.

§ 128b.2. Definitions.

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

Act—The Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.61).

Agricultural commodities—Agricultural, horticultural, viticultural and dairy products, livestock and the products thereof, ranch raised fur bearing animals and the products thereof, the products of poultry and bee raising, forestry and forestry products, and products raised or produced on farms intended for human consumption and the processed or manufactured products thereof intended for human consumption, transported or intended to be transported in commerce.

Applicant—A person who owns, holds or possesses pesticides within a participating county and who has filed a Program preregistration application form with the Department.

Central-site pesticide collection—The collection by a contractor of a portion of the pesticide inventory of a participating county from a site to which two or more participants have transported their pesticides for collection.

Certified applicator—An individual who is certified by the Department under section 16.1, 17 or 17.1 of the act (3 P. S. §§ 111.36a, 111.37 and 111.37a) as being competent to use or supervise the use or application of a pesticide.

Commercial applicator—A certified applicator, whether or not the applicator is a private applicator with respect to some uses, who uses or supervises the use of a pesticide on the property or premises of another, or on easements granted under State law, or an applicator who uses or supervises the use of a restricted use pesticide on property owned or rented by him or his employer, when not for purposes of producing an agricultural commodity. The Secretary may deem certain types of applicators using a pesticide on their own property or that of their employers as commercial applicators.

Contractor—A person engaged in the business of collecting, packing, transporting and disposing of hazardous waste, who is contractually obligated, through the Program, to collect, pack, transport and dispose of the pesticide inventory of a participating county.

Department—The Department of Agriculture of the Commonwealth.

Emergency situation—An unforeseen or unexpected circumstance involving pesticides that requires immediate action to protect the public health, safety, environment, or general welfare in this Commonwealth.

EPA—The Environmental Protection Agency of the United States.

Onsite pesticide collection—The collection by a contractor of a portion of the pesticide inventory of a participating county from the site, usually a farm, at which it is stored by a participant.

Participating county—A county designated by the Department to participate in the CHEMSWEEP Program.

Participant—An applicant whose application has been accepted by the Department and whose pesticides are the subject of a disposal contract between the Department and a contractor.

Person—An individual, partnership, association, corporation or any organized group of persons whether incorporated or not.

Pesticide—A substance or mixture of substances intended for preventing, destroying, repelling or mitigating a pest, and a substance or mixture of substances intended for use as a plant regulatory, defoliant or desiccant.

Pesticide dealer—A person who distributes or offers for sale pesticides which are classified for restricted use under the act.

Pesticide inventory—The compilation of information with respect to the identification, quantification and safety of pesticides held by a participant within a particular participating county.

Private applicator—A certified applicator who uses or supervises the use of a pesticide which is classified for restricted use for purposes of producing an agricultural commodity on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

Program—The CHEMSWEEP Pesticide Disposal Program.

Secretary—The Secretary of the Department.

USDA—The United States Department of Agriculture.

§ 128b.3. Selection of participating counties.

(a) *County participation*. The Department will conduct the Program yearly in selected counties of this Commonwealth.

(b) *Selection criteria*. In selecting the counties to participate in the Program during a particular fiscal year, the Department will consider:

(1) The amount of funds available for the use of the Program.

(2) The availability of support from agricultural agencies and local governments within the county.

(3) The proximity of the county to other counties selected to participate in the Program in that particular fiscal year.

(4) The environmental or health risks posed by the pesticide inventory of a particular county.

(5) Other factors relevant to the selection of the county on economic, environmental or safety grounds.

§ 128b.6. Eligibility of persons to participate.

(a) *Requirements*. To be eligible to be considered for participation in the Program, a person shall meet the following requirements:

(1) Hold, own or possess pesticides that are or have been registered for sale and use within this Commonwealth.

(2) Hold, own or possess the pesticides within a participating county.

(b) *Exclusions*. Empty pesticide containers may not be accepted for disposal. Persons not located within this Commonwealth are not eligible for participation in the Program.

§ 128b.7. Preregistration application.

(a) *Application required*. A person who seeks to participate in the Program shall complete and file with the Department a preregistration application form.

(b) *Mandatory information*. The Department will develop a Program preregistration application form, and will provide prospective applicants with the form upon request. The form will require that an applicant provide the following information, when known and applicable, with respect to each pesticide for which disposal is sought:

(1) The compound or trade name of the pesticide.

(2) The active ingredient or common name of the pesticide.

(3) The EPA registration number of the pesticide.

(4) The United States Department of Agriculture (USDA) registration number of the pesticide.

(5) The type of formulation of the pesticide.

(6) The type of container of the pesticide.

(7) The number of containers of the pesticide.

(8) The condition of the container holding the pesticide.

(9) The total quantity of the pesticide.

(10) The exact location of the pesticide.

(11) The name, address and telephone number of the applicant.

(c) *Incomplete information*. If an applicant cannot ascertain the identity of a particular pesticide in its possession, or provide other applicable information required by subsection (b), the applicant shall state on the preregistration application form as much information relating to the particular pesticide as is known to the applicant. The Department will then endeavor to obtain the information which the applicant was unable to provide. If the applicable information required by subsection (b) cannot be readily obtained with respect to a particular pesticide, the Department may obtain a sample for analysis, providing that the quantity of pesticide exceeds either 50 pounds or 5 gallons. If no pesticides are found in the sample through analysis, the Department may refuse to accept the product for disposal.

(d) *Additional information*. The Department may require that an applicant provide additional information, which the Department deems relevant to its evaluation of a preregistration application.

(e) *Exception to preregistration*. A person who participates in a household hazardous waste jointly sponsored by the Department and DEP will be exempt from the preregistration portion of this section.

§ 128b.10. Responsibilities of applicant or participant.

(a) *Generally*. An applicant or participant is responsible for the safe storage of pesticides held, owned or possessed by the applicant or participant. This exclusive responsibility does not lapse with the filing of a preregistration application, with an inspection of the pesticide or pesticide storage area or with the notice of acceptance of the pesticide for disposal through the Program as described in § 128b.15 (relating to notification of participants). Action by the Department does not relieve the applicant or participant of the responsibility to store pesticides in a safe and lawful manner. With respect to central-site pesticide collection, the participant shall retain sole responsibility for the safe transport of pesticides and for the cleanup, if necessary, of the site at which the pesticide was stored. With respect to onsite pesticide collection, the contractor is responsible for the cleanup, if necessary, of the site at which the pesticide was stored. The contractor is responsible for property damage, personal injuries and the cleanup of spills or other contamination which it causes. The contractor will not be responsible for the clean up of any areas outside of the site at which the pesticides are stored.

(b) *Right to withdraw*. An applicant or participant may withdraw from the Program at any time.

§ 128b.12. Program limitations.

(a) The Department will accept a maximum of 2,000 pounds of pesticide for disposal from any one participant annually. The participant may pay the contractor directly for collection, transport and disposal of pesticides in excess of 2,000 pounds at the Commonwealth's contract price. The Department reserves the right to accept any excess pesticides or renegotiate acceptable poundage when deemed necessary by the Department.

(b) Criteria for acceptance or renegotiation of excess acceptable poundage when deemed necessary by the Department will include the following:

(1) Quantity of excess over 2,000 pounds.

(2) Condition of pesticides or containers to be collected.

(3) Location and condition of storage area.

(4) Ability of participant to pay for excess poundage.

§ 128b.14. Bid specifications.

(a) *General*. After the Department completes its compilation of the pesticide inventory for a particular participating county, it shall develop bid specifications for use in contracting for the disposal of the pesticide inventory. The Department may make the pesticide inventories of two or more participating counties the subject of a single disposal contract.

(b) *Contractor qualifications*. The bid specifications for the collection, packing, transportation and disposal of a pesticide inventory shall require that the following requirements are met:

(1) A contractor shall be approved by the EPA to collect, handle, transport and dispose of hazardous materials.

(2) A contractor shall be approved by the Department of Environmental Protection to collect, handle, transport and dispose of hazardous materials.

(3) A contractor shall provide a written, detailed description of the procedures which it shall use in collection, packing, transportation, and disposal of the pesticide inventory, including packing procedures, transportation methods, selection of pesticide collection sites, disposal sites and methods of disposal, including a description of required State and Federal permits and documentation necessary to accomplish disposal.

(4) A contractor shall handle, collect, pack, transport and dispose of pesticides, in compliance with the written description provided the Department.

(5) A contractor shall provide a specific time within which it shall complete its work under the contract.

(c) The bid specification in subsection (b) shall contain other requirements the Department deems appropriate.

(d) *Pesticide collection options*. The Department may solicit bids for several different pesticide collection options: The Department may require that participants arrange for the safe transportation of their pesticides to a central site from which the contractor shall collect, pack, transport and dispose of the pesticides, or the Department may require that the contractor collect, pack, transport and dispose of pesticides from the individual storage locations throughout the participating county, or the Department may require that a contractor employ a combination of onsite pesticide collection and central-site pesticide collection. Regardless of the pesticide collection options with respect to which the Department solicits bids, the contractor shall perform onsite pesticide collection when required under § 128b.17 (relating to conditions requiring on-farm pesticide collection).

§ 128b.16. Central-site.

Although the Department will assist the contractor in obtaining a central site for pesticide collection prior to transportation and disposal, the decision whether to use a particular site for pesticide collection is exclusively the contractor's. The contractor is responsible for establishing, insuring and operating the site and is responsible in the event of a pesticide spill or other environmentally-impacting incident which gives rise to legal liability.

[Pa.B. Doc. No. 06-1198. Filed for public inspection June 30, 2006, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF OSTEOPATHIC MEDICINE

[49 PA. CODE CH. 25]

Deletion of Exam Fees

The State Board of Osteopathic Medicine (Board) amends §§ 25.223 and 25.231 (relating to applications for examination; and schedule of fees) by deleting references to examination applications and examination fees.

A. *Effective Date*

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

B. *Statutory Authority*

The final-form rulemaking is authorized under section 13.1 of the Osteopathic Medical Practice Act (act) (63 P. S. § 271.13a).

C. *Background and Purpose*

The Board is eliminating references to Nationally established examination fees over which the Board has no control or involvement. The fees for examinations are established by the National examiners and are subject to being changed periodically by the National examiner. Thus, it is unnecessary and impractical for the Board to continue to publish the National examiners' examination fees in the Board's regulations. Also, the Board is eliminating the reference to the osteopathic diagnosis and manipulative therapy examination fee. This examination is administered by Professional Credential Services (PCS) and the applicant for this examination pays the examination fee directly to PCS.

The Board is also deleting references in § 25.223(b) to specific dates for the administration of examinations and related deadlines for submission of examination applications because the examinations are now computer-based, rather than written, and therefore are administered regularly as scheduled by the applicant.

D. *Summary of Comments and Responses on Proposed Rulemaking*

Notice of proposed rulemaking was published at 35 Pa.B. 2639 (April 30, 2005). The Board did not receive any comments on the regulations from the public, the House Professional Licensure Committee (HPLC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) or the Independent Regulatory Review Commission (IRRC).

E. *Fiscal Impact and Paperwork Requirements*

There is no adverse fiscal impact or paperwork requirement imposed on the Commonwealth, political subdivisions 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 April 20, 2005, the Board submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 2639, 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, the HPLC and the SCP/PLC 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 HPLC and the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on April 4, 2006, the final-form rulemaking was approved by the HPLC. On April 18, 2006, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective April 18, 2006.

H. *Contact Person*

Interested persons may obtain information regarding this final-form rulemaking by writing to Beth Sender Michlovitz, Board Counsel, State Board of Osteopathic Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, bmichlovit@state.pa.us.

I. *Findings*

The Board finds that:

(1) Public notice of intention to adopt this 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 received.

(3) This 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 25, are amended by amending §§ 25.223 and 25.231 to read as set forth at 35 Pa.B. 2639.

(b) The Board shall submit this order and 35 Pa.B. 2639 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 35 Pa.B. 2639 and deposit them with the Legislative Reference Bureau as required by law.

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

OLIVER C. BULLOCK, D.O.,
Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 2251 (May 6, 2006).)

Fiscal Note: Fiscal Note 16A-5315 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 06-1199. Filed for public inspection June 30, 2006, 9:00 a.m.]

STATE BOARD OF PHARMACY

[49 PA. CODE CH. 27]

Drug Therapy and Injectable Medications, Biologicals and Immunizations

The State Board of Pharmacy (Board) amends §§ 27.1, 27.32 and 27.91 (relating to definitions; continuing education; and schedule of fees) and adds §§ 27.301, 27.311 and 27.401—27.407 to read as set forth in Annex A. The final-form rulemaking adds definitions, updates and adds additional requirements in § 27.32, adds two new fees to § 27.91 and provides regulations regarding drug therapy management and the administration of injectable medications, biologicals and immunizations.

Notice of proposed rulemaking was published at 34 Pa.B. 5598 (October 9, 2004). Publication was followed by a 30-day public comment period. The Board received comments from the Pennsylvania Pharmacists Association, Louis F. Pauzano, Jr. and the Pennsylvania Academy of Family Physicians (PAFP). The House Professional Licensure Committee (HPLC) submitted 14 comments to the proposed rulemaking on November 10, 2004. The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) made no comments. The Independent Regulatory Review Commission (IRRC) submitted seven comments to the proposed rulemaking on December 10, 2004.

Summary of Comments and Responses to Proposed Rulemaking

§ 27.1. Definitions.

The HPLC and IRRC commented that the Board should use the definition of "institution" in section 2 of the Pharmacy Act (act) (63 P. S. § 390-2) or reference the statutory definition. The Board declines to make this change. Section 2 of the act defines "institution" as a "health care facility" defined in section 103 of the Health Care Facilities Act (35 P. S. § 448.103) and adds the qualifier "which offers care and medical treatment to patients who require food, board and overnight sleeping facilities." The Board included the definition of "health care facility" in section 103 of the Health Care Facilities Act with the qualifying language of the act's definition for ease of reference for pharmacists. Having the definition completely set forth in the regulations negates the necessity for pharmacists to refer to another act to understand the definition of "institution." The Board did not alter the definition as found in the Health Care Facilities Act, but included the language as referenced in the act with the qualifier. The definition is not confusing and does nothing more than clarify the definition found in the act.

The HPLC and IRRC commented that the proposed rulemaking used the term "order" whereas "drug order" is defined and used in existing regulations. The HPLC and IRRC commented that if the Board meant "drug order," that term should be used or the Board should add the a new definition of the term "order." The term "drug order" is specific to institutions. In the proposed rulemaking, the Board is referring to any order from a physician within the context of management of drug therapy. Accordingly, the Board has added a definition of the term "order."

IRRC commented that the regulatory definition of "practice of pharmacy" was practically, but not completely, identical to the statutory definition. The Board added the last sentence of the definition of "practice of pharmacy" to the regulatory definition and it is now completely identical to the statutory definition.

The HPLC and IRRC recommended that the statutory definition of "drug therapy management" be added to the proposed regulations. The Board agrees and has added the definition.

§ 27.32. Continuing education.

Mr. Pauzano commented that the 2-hour continuing education requirement for the administration of injectable medications, biologicals and immunizations was not a sufficient number of hours. The Board disagrees. In drafting the rulemaking, the Board consulted several other states' regulations and the standard continuing education requirement for the administration of injectables was 2 hours per biennial renewal period. Pharmacists are required to complete at least a 10-hour course to apply for the authority to administer injectables, which will give sufficient knowledge to administer injectables. The Board is satisfied that the minimum 2-hour continuing education requirement is satisfactory and declines to make a change.

The HPLC commented that the Board is required to establish education and training standards for the administration of injectables and noted that the proposed rulemaking was silent as to these standards. With respect to continuing education, the Board disagrees. The Board added the requirement that for renewal of the authority to administer injectables, pharmacists must complete at least 2 hours of continuing education concerning administration of injectable medications, biologicals and immunizations, including disease epidemiology, vaccine characteristics, injections technique, emergency response to adverse events and related topics. With regard to the education needed to apply for the initial authority to administer injectables, the Board added § 27.407 (relating to education requirements) to the final-form rulemaking. Section 27.407 lays out in detail the requirements for the course of education and training necessary to apply for the initial authority to administer injectables.

§ 27.301. Written protocol.

The HPLC commented that the Board should state that drug therapy management may only take place in an institutional setting. The Board declines to make the change. The act already states in both the definition of "drug therapy management" and section 9.1 of the act (63 P. S. § 390-9.1) that drug therapy management can only take place in an institutional setting. Stating this again in § 27.301 would be redundant and unnecessary. Moreover, § 27.301 concerns the parameters of the written protocol, not the requirements to enter into a written protocol as these are already stated in the act.

The HPLC, IRRC and the PAFP commented that the notification provisions for drug therapy management under a written protocol gave a pharmacist up to 72 hours to notify a physician of a change in drug therapy and 72

hours for the pharmacist to document a change in the medical records and questioned the appropriateness of that time frame. The Board notes that 72 hours set the outside limit for notification. The pharmacist and physician would be free to agree to a shorter time frame in drafting the written protocol. To address the concerns raised, the Board added language to the final-form rulemaking for notification and documentation to occur as soon as practicable, but no later than 72 hours after the change or intervention. The HPLC also asked for the Board's rationale for choosing the 72-hour time frame. The Board's rationale for choosing 72 hours is twofold. First, the General Assembly already set the maximum time for notification in section 9.1(e)(9) of the act, the Board simply adopted that. Second, the 72 hours allowed for a period of time when the physician may not have been available (for example, over a weekend).

The HPLC commented that the act requires that the written protocol be available to representatives of the State Board of Medicine, the State Board of Osteopathic Medicine and the State Board of Pharmacy and that § 27.301(b)(5) should include these entities. These entities are already covered by § 27.301(b)(5). The Board specifically chose to use the term "Bureau" instead of listing the individual boards because a specific board does not employ the inspectors and investigators. Because the Bureau of Professional and Occupational Affairs encompasses all the professional licensing boards, using the term "Bureau" covers all the boards named in the act. Use of the term "Bureau" is consistent with other collaborative practice agreement regulations. See the certified registered nurse practitioner regulations in § 21.285(a)(7) (relating to collaborative agreement).

§ 27.311. Certification of professional liability insurance.

The HPLC commented that the proposed rulemaking is silent as to the professional liability insurance requirement. The HPLC commented that the rulemaking should at least require proof of insurance be submitted to the Board. The Board has added a section to the final-form rulemaking that requires certification of professional liability insurance to the Board when filing the written protocol.

§ 27.401. Qualifications for authority.

The HPLC commented that the Board had not established education and training standards for the administration of injectables. IRRC commented that the Board needed to identify the specific minimum education and training requirements that must be included in an approved course. In the proposed rulemaking, the Board intended to establish education and training guidelines by accepting any course that was Accreditation Council for Pharmacy Education (ACPE) (formerly called American Council of Pharmaceutical Education) approved and included the current guidelines and recommendations regarding the administration of injectable medications, biologicals and immunizations of the Centers for Disease Control and Prevention and offered by providers accredited by the ACPE. However, in response to these comments, the Board added § 27.407 which lays out specific requirements for the education needed to apply for the authority to administer injectables. With respect to the treatment guidelines, these are addressed in a new subsection added to § 27.403 and in § 27.404 (relating to authority and requirements), which establish the guidelines for injectable administration.

IRRC further commented that the proposed rulemaking was silent as to how a course provider would apply for approval by the Board. The Board has added to § 27.407(b) that preapproves courses offered by ACPE-accredited providers and education institutions that meet the course criteria in § 27.407(a). The Board will only accept ACPE-accredited courses, as the ACPE is the accreditation body for pharmacy education and continuing education. With the new section added to the final-form rulemaking, the Board has removed the option to approve other course providers.

§ 27.402. Application and renewal procedures.

IRRC commented that § 27.402 was silent as to the professional liability coverage required to manage drug therapy. However, § 27.402 does not pertain to managing drug therapy; it pertains to the authority to administer injectable medications, biologicals and immunizations. Professional liability insurance is not required to administer injectables. Therefore, the Board has not addressed it in this section. Professional liability insurance for managing drug therapy is addressed in section 9.1(d)(1) of the act and § 27.301 (relating to written protocol).

§ 27.403. Conditions for administration.

The HPLC remarked in a comment concerning § 27.401 (relating to qualifications for authority) that the education and training standards and practice guidelines that the Board must establish must include a "definitive set of treatment guidelines established by a physician and approved by the board." The Board has added language to this section with respect to immunizations. Treatment guidelines are also dealt with in § 27.404.

§ 27.404. Authority and requirements.

The HPLC asked for an explanation with regard to subsection (c) and asked if the Board intended to address drug therapy management under section 9.1(f) of the act. In this section, the Board is detailing what must be in a written protocol for the administration of injectable medications, biologicals and immunizations. This section is unrelated to § 27.301 or section 9.1(f) of the act, which concerns management of drug therapy in an institution under a medical order by a licensed physician approved by the medical staff of the institution. Therefore, § 27.404(c) does not need to track the language of section 9.1(f) of the act.

§ 27.405. Recordkeeping.

The HPLC recommended that the Board remove the words "or identifiable initials" from subsection (a)(5). The Board declines to make this change. Under § 27.18 (relating to standards of practice), prescription records kept on file in the pharmacy must be identified with the name or initials of the dispensing pharmacist. The Board is being consistent with existing regulations in allowing initials to be placed on the administration records. There have been no reported problems with identifying a pharmacist by his or initials and patient safety is not compromised with placing the pharmacist's initials on the pharmacy records. The HPLC also recommended that the Board remove the words "of provision" from subsection (a)(6). The Board has changed the final-form rulemaking accordingly.

The PAFP commented that the Board should adopt the 7-year recordkeeping requirement applied to medical records because the administration of injectables implicates the patient's medical condition. IRRC also commented that the Board should make this change in the final-form rulemaking or justify the 2-year requirement. The purpose of the 2-year requirement is to maintain the current recordkeeping standards in pharmacies. There-

fore, the Board declines to make the suggested change. Every administration done by a pharmacist must be reported to the patient's physician who records this information in the patient's medical file. Inasmuch as the physician is maintaining this information for 7 years, it is not necessary for the pharmacy to also maintain the record of administration for 7 years. The PAFP's rationale that the administration of drugs implicates the patient's medical condition fails to consider that when pharmacists dispense any drug for the patient's consumption it implicates the patient's medical condition as well. The only difference is the route of administration. Therefore, the Board does not see the need to retain records for more than the standard 2 years.

§ 27.406. Notification requirements.

The PAFP commented that the 72-hour notification requirement for injections done under an order and 14 days for injections done under a written protocol was not consistent with good medical care. IRRC echoed the PAFP's comment. The Board has amended the final-form rulemaking to require notification as soon as practicable, but no longer than 72 hours after administration of the injectable. This change requires the pharmacist to notify the physician as soon as practicable, but allows for up to 72 hours in case the physician is unavailable, such as over a weekend when many physicians' offices are closed. The HPLC and IRRC recommended that the Board change the wording to require a pharmacist to notify the physician of an adverse reaction as soon as practicable. The Board has changed the final-form rulemaking by adding paragraph (3) pertaining to adverse reactions and requiring notification as soon as is practicable, and in no event later than 24 hours after learning of the adverse event or reaction.

§ 27.407. Education requirements.

In response to comments from the HPLC and IRRC, the Board has added this section to address the education and training requirements required to apply for the authority to administer injectable medications, biologicals and immunizations. In drafting this section, the Board looked at several other states' regulations, including North Dakota, South Dakota, Iowa, Oregon, Texas, Nevada, Ohio and Delaware, and adopted standards similar to those of these states. Pharmacists will have to complete a course within the 2-year period prior to applying for the authority to administer injectables. The course must be an evidence-based course that includes study material, includes hands-on training and techniques for administration, requires testing with a passing score, provides a minimum of 10 hours of instruction and experiential training, and complies with the current guidelines and recommendations by the Centers for Disease Control and Prevention, the ACPE or a similar health authority or professional body. The course must provide instruction on: basic immunology and the human immune response; mechanics of immunity, adverse effects, dose and administration schedule of available vaccines; response to an emergency situation as a result of the administration of an injectable medication, biological or immunization; administration of subcutaneous, intradermal and intramuscular injections; disease epidemiology; standards for immunization practices; vaccine-preventable diseases; recommended immunization schedules; vaccine storage and management; biohazard waste disposal and sterile techniques; informed consent; and authority and recordkeeping requirements. The Board approves courses offered by ACPE-accredited providers and educational institutions that meet these criteria.

General Comments

Mr. Pauzano commented that the Board should address emergency situations, such as a smallpox outbreak, and promulgate regulations that would enable pharmacists to administer injectables without a physician order in an emergency situation. The Board notes that in an emergency situation, under the appropriate emergency declaration from the Governor, the Board may suspend enforcement of its regulations. In the case of a smallpox outbreak, the Board would look at suspending the requirement of a physician order to administer injectables. However, the Board declines to promulgate specific regulations concerning emergency situations at this time.

The HPLC requested an explanation from the Board regarding its discussions with the Insurance Commissioner regarding self-insurance. In late 2002/early 2003, the Board's legal counsel contacted the Insurance Department (Department) concerning what kind of regulations would be necessary for self-insurance by pharmacists. Counsel was referred to the Department's regulations for self-insurance evaluation by the Department in 31 Pa. Code Chapter 243 (relating to medical malpractice and health-related self-insurance plans). At that time, the decision was made to reference the Department's regulations in the Board's proposed rulemaking. At a later time, the issue of pharmacists not being a health care provider as defined by the Department's regulations was raised. Board counsel again contacted the Department to inquire further about self-insurance regulations. At that time, the Department identified several issues with reviewing self-insurance plans that the Board and Department must work out before regulations can be promulgated. As the Board does not anticipate that many pharmacists who engage in drug therapy management will self-insure, the Board decided that this issue could be taken up at a future time and removed the self-insurance language from the proposed rulemaking.

Statutory Authority

The final-form rulemaking is authorized under section 9.1(d)(3) and (e) of the act and sections 4(j), 6(k)(1) and (9) and 9.2(a) of the act (63 P. S. §§ 390-(4)(j), 390-6(k)(1) and (9) and 390-9.2(a)).

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have a fiscal impact on the Board in that there will be revenue to the Board through the licensure and renewal fees for the authority to administer injectable medications, biologicals and immunizations. The final-form rulemaking requires the Board to develop an application for the authority to administer injectable medications, biologicals and immunizations. The Board will also have to revise the pharmacist license renewal form to allow for the renewal of the authority to administer injectable medications, biologicals and immunizations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 29, 2004, the Board submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 5598, 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, the HPLC and the SCP/PLC 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 HPLC and the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on May 2, 2006, the final-form rulemaking was approved by the HPLC. On May 17, 2006, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 18, 2006, and approved the final-form rulemaking.

Additional Information

Individuals who need information about the final-form rulemaking should contact Melanie Zimmerman, R.Ph., Executive Secretary, State Board of Pharmacy, P. O. Box 2649, Harrisburg, PA 17105-2649.

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) This final-form rulemaking is necessary and appropriate for the administration of the act.

(4) The amendments to this final-form rulemaking do not enlarge the original purpose of the proposed regulation published at 34 Pa.B. 5598.

Order

The Board orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 27, are amended by amending §§ 27.1, 27.32, 27.91 and by adding §§ 27.301, 27.311 and 27.401—27.407 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

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

MICHAEL J. ROMANO, R.Ph.,
Chairperson

(*Editor's Note*: The proposal to add §§ 27.311 and 27.407 was not included in the proposed rulemaking at 34 Pa.B. 5598. For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 2781 (June 3, 2006).)

Fiscal Note: Fiscal Note 16A-5412 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 27. STATE BOARD OF PHARMACY

GENERAL PROVISIONS

§ 27.1. Definitions.

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

* * * * *

Bureau—The Bureau of Professional and Occupational Affairs of the Department of State of the Commonwealth.

* * * * *

Drug therapy management—Any of the following processes performed in an institutional setting pursuant to a written agreement, protocol or order as set forth in section 9.1 of the act (63 P. S. § 390-9.1):

(i) Adjusting a drug regimen.

(ii) Adjusting drug strength, frequency of administration or route.

(iii) Administration of drugs.

(iv) Ordering laboratory tests and ordering and performing other diagnostic tests necessary in the management of drug therapy, consistent with the testing standards of the institution.

* * * * *

Institutions—

(i) A health care facility that offers care and medical treatment to patients who require food, board and overnight sleeping facilities and provides clinically related health services, including, a general or special hospital, including psychiatric hospitals, rehabilitation hospitals, ambulatory surgical facilities, long-term care nursing facilities, cancer treatment centers using radiation therapy on an ambulatory basis, and inpatient drug and alcohol treatment facilities, both profit and nonprofit and including those operated by an agency or State or local government.

(ii) The term also includes a hospice that offers care and medical treatment to patients who require food, board and overnight sleeping facilities.

(iii) The term does not include an office used primarily for the private or group practice by health care practitioners where no reviewable clinically related health service is offered, a facility providing treatment solely on the basis of prayer or spiritual means in accordance with the tenets of any church or religious denomination or a facility conducted by a religious organization for the purpose of providing health care services exclusively to clergy or other persons in a religious profession who are members of the religious denominations conducting the facility.

* * * * *

Order—Any directive from a medical practitioner.

* * * * *

Practice of pharmacy—

(i) The provision of health care services by a pharmacist, which includes:

(A) The interpretation, evaluation and implementation of medical orders for the provision of pharmacy services or prescription drug orders.

(B) The delivery, dispensing or distribution of prescription drugs.

(C) Participation in drug and device selection.

(D) Drug administration.

(E) Drug regimen review.

(F) Drug or drug-related research.

(G) Compounding.

(H) Proper and safe storage of drugs and devices.

(I) Managing drug therapy in an institutional setting consistent with the institution's assignment of clinical duties.

(J) Maintaining proper records.

(K) Patient counseling.

(L) Acts, services, operations or transactions necessary or incident to the provision of these health care services.

(ii) The term does not include the operations of a manufacturer or distributor as defined in The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144).

* * * * *

RENEWAL OF PHARMACIST LICENSE AND PHARMACY PERMIT

§ 27.32. Continuing education.

(a) The Board will renew the license of a pharmacist who has completed a minimum of 30 contact hours (3 CEU) of continuing education during the preceding biennial renewal period. For licensees with authority to administer injectable medications, biologicals and immunizations in accordance with section 9.2 of the act (63 P. S. § 390-9.2) and §§ 27.301 and 27.302 (relating to qualifications for authority; and application and renewal procedures), at least 2 of the required 30 hours shall concern the administration of injectable medications, biologicals and immunizations, including disease epidemiology, vaccine characteristics, injection technique, emergency response to adverse events and related topics. Programs offered by providers accredited by the ACPE are approved by the Board.

* * * * *

FEES

§ 27.91. Schedule of fees.

An applicant for a license, certificate, permit or service shall pay the following fees at the time of application:

Application for pharmacy intern certificate	$30
Application for pharmacist license	$40
Certification of examination scores or internship hours	$25
Verification of licensure	$15
Assistant pharmacist biennial renewal	$120
Registered pharmacist biennial renewal	$150
Registered pharmacist late renewal penalty	$25
New pharmacy permit application	$100
Reinspection of new pharmacy after failure at first inspection	$90
Pharmacy permit change without inspection	$30
Pharmacy permit change when inspection required	$95
Change in pharmacy ownership or Board of Directors	$30
Verification of permit	$15
Biennial renewal of pharmacy permit	$100
Pharmacy permit late renewal penalty	$25
Application for approval to administer injectables	$30
Biennial renewal of approval to administer injectables	$30

DRUG THERAPY MANAGEMENT

§ 27.301. Written protocol.

(a) The written protocol for drug therapy management between licensed physicians and pharmacists must contain:

(1) A statement identifying the physician responsible for authorizing drug therapy management.

(2) A statement identifying the pharmacist authorized to perform the drug therapy management.

(3) A statement requiring that drug therapy regimens be initiated by a licensed physician for patients referred to a pharmacist for drug therapy.

(4) A statement identifying the types of drug therapy management decisions that the pharmacist is authorized to make, including a statement of the ailments or diseases involved within the physician's scope of practice, and types of drug therapy management authorized.

(5) A statement of the functions and tasks the pharmacist shall follow in the course of exercising drug therapy management authority, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made. Documentation of each intervention shall occur as soon as practicable, but no later than 72 hours after the intervention in the patient medical record and shall also be recorded in the pharmacist's records.

(6) A statement that requires notification to the authorizing physician of any changes in dose, duration or frequency of medication prescribed as soon as practicable but not longer than 72 hours after the change.

(7) A provision for execution of the agreement when any licensed physician or licensed pharmacist may be temporarily absent from a practice setting or temporarily unavailable to participate in its execution.

(8) A provision for notification of the role of the pharmacist by a licensed physician to each referred patient whose drug therapy management may be affected by the agreement and providing an opportunity for the patient to refuse drug therapy management by a pharmacist.

(9) The signatures of the licensed physicians and licensed pharmacists who are entering into the written protocol, and the dates signed.

(10) A statement allowing for the termination of the agreement at the request of any party to it at any time.

(b) The written protocol must be available as follows:

(1) At the practice site of any licensed physician who is a party to the agreement.

(2) At the practice site of any licensed pharmacist who is a party to the agreement.

(3) At the institution where a written agreement or protocol is in place.

(4) To any patient whose drug therapy management is affected by the agreement.

(5) Upon request, to representatives of the Bureau and the Department of Health.

(c) The written protocol shall be filed with Bureau.

(d) The written protocol must be effective for a period not to exceed 2 years from the date of execution. At the end of the 2-year period, or sooner, the parties shall review the agreement and make a determination as to its renewal, necessary modifications or termination.

PROFESSIONAL LIABILITY INSURANCE

§ 27.311. Certification of professional liability insurance.

(a) A licensee who engages in drug therapy management under a written protocol shall maintain professional liability insurance in the minimum amount of $1,000,000 per occurrence or claims made.

(b) A licensee who engages in drug therapy management under a written protocol shall certify compliance with subsection (a) on a form provided by the Board. The form shall be provided with the written protocol.

(c) A licensee who engages in drug therapy management under a written protocol shall upon request make available to the Board or its agents all records, relating to the licensee's maintenance of professional liability insurance, including policies, cancelled checks, receipts or other proofs of premium payment.

ADMINISTRATION OF INJECTABLE MEDICATIONS, BIOLOGICALS AND IMMUNIZATIONS

§ 27.401. Qualifications for authority.

A candidate for authority to administer injectable medications, biologicals and immunizations shall meet the following requirements:

(1) The pharmacist holds an active license to practice pharmacy in this Commonwealth.

(2) The pharmacist has completed a course of education and training which meets the requirements of § 27.407 (relating to education requirements).

(3) The pharmacist holds a current basic cardiopulmonary resuscitation (CPR) certificate issued by the American Heart Association, American Red Cross or a similar health authority or professional body approved by the Board.

§ 27.402. Application and renewal procedures.

(a) An applicant for authority to administer injectable medications, biologicals and immunizations shall submit the following to the Board:

(1) An application obtained from the Board along with the fee required by § 27.91 (relating to schedule of fees).

(2) Certification that the pharmacist has completed the required education and training in § 27.407 (relating to education requirements).

(3) Certification that the pharmacist holds an acceptable, current CPR certificate.

(b) A holder of the authority to administer injectable medications, biologicals and immunizations shall renew the authority every 2 years along with the license to practice pharmacy. Renewal requires completion of a form provided to the pharmacist by the Board in advance of the renewal period, payment of the fee specified by § 27.91, certification of completion of 2 hours of continuing education required by section 9.2 of the act (63 P. S. § 390-9.2) and § 27.32 (relating to continuing education), and proof of a current CPR certificate.

§ 27.403. Conditions for administration.

(a) A pharmacist who is granted authority may administer injectable medications, biologicals and immunizations to persons who are more than 18 years of age. A person is more than 18 years of age on the day following the person's 18th birthday.

(b) A pharmacist may not delegate the administration of injectable medications, biologicals and immunizations to another person.

(c) A pharmacist shall administer injectable immunizations in accordance with treatment guidelines established by the Centers for Disease Control and Prevention and which have been approved by the Board.

§ 27.404. Authority and requirements.

(a) A pharmacist authorized by the Board to administer injectable medications, biologicals and immunizations may only do so under either an order or written protocol.

(b) The order from a licensed prescriber must be written, received electronically or if received orally be reduced to writing, and contain at a minimum the following:

(1) The identity of the licensed prescriber issuing the order.

(2) The identity of the patient to receive the injection.

(3) The identity of the medication, immunization or vaccine, and dose, to be administered.

(4) The date of the original order and the date or schedule, if any, of each subsequent administration.

(c) An authorized pharmacist may enter into a written protocol, either approved by a physician or authorized by the medical staff of an institution, governing the administration of injectable medications, biologicals and immunizations for a specific period of time or purpose. The written protocol may be valid for a time period not to exceed 2 years. The protocol must include the following:

(1) The identity of the participating pharmacist and physician or institution.

(2) The identification of the medication, biological or immunization, which may be administered.

(3) The identity of the patient or groups of patients to receive the authorized injectable medication, biological or immunization.

(4) The identity of the authorized routes and sites of administration allowed.

(5) A provision establishing a course of action the pharmacist shall follow to address emergency situations including, but not limited to, adverse reactions, anaphylactic reactions and accidental needle sticks.

(6) A provision establishing a length of time the pharmacist shall observe an individual for adverse events following an injection.

(7) The identity of the location at which the pharmacist may administer the authorized medication, biological or immunization.

(8) Recordkeeping requirements and procedures for notification of administration.

(9) A provision that allows for termination of the protocol at the request of any party to it at any time.

§ 27.405. Recordkeeping.

(a) A pharmacist who administers an injectable medication, biological or immunization shall maintain the following records regarding each administration for a minimum of 2 years:

(1) The name, address and date of birth of the patient.

(2) The date of the administration and site of the injection.

(3) The name, dose, manufacturer, lot number and expiration date of the medication, biological or immunization.

(4) The name and address of the patient's primary health care provider, as identified by the patient.

(5) The name or identifiable initials of the administering pharmacist.

(6) Documentation of informed consent for administration of injectable medications, biologicals and immunizations.

(7) The nature of an adverse reaction and who was notified.

(b) A pharmacist who administers an immunization shall also maintain the following records regarding each administration for a minimum of 2 years:

(1) An identification of the Vaccine Information Statement (VIS) that was provided.

(2) The date of publication of the VIS.

(3) The date and to whom the VIS was provided.

(c) In an institution, the information required to be maintained in subsections (a) and (b) may be maintained in the patients' medical records.

§ 27.406. Notification requirements.

A pharmacist administering injectable medications, biologicals or immunizations shall meet the following notification requirements:

(1) When administration has occurred under an order, the pharmacist shall notify the ordering prescriber as soon as practicable, but no longer than 72 hours after administration of the following:

(i) The identity of the patient.

(ii) The identity of the medication, biological or immunization administered.

(iii) The route of administration.

(iv) The site of the administration.

(v) The dose administered.

(vi) The date of administration.

(2) When the administration has occurred under a written protocol, the pharmacist shall notify the participating physician as soon as practicable, but no longer than 72 hours after administration of the following:

(i) The identity of the patient.

(ii) The identity of the medication, biological or immunization administered.

(iii) The site of the administration.

(iv) The dose administered.

(v) The date of administration.

(3) In the event of any adverse event or reaction experienced by the patient either under an order or a written protocol, the pharmacist shall notify the patient's physician as soon as is practicable, and in no event later than 24 hours after learning of the adverse event or reaction.

§ 27.407. Education requirements.

(a) To apply for the authority to administer injectable medications, biologicals and immunizations, a pharmacist shall meet the following education requirements:

(1) Complete within the 2-year period prior to application an evidence-based course that meets the following criteria:

(i) Includes study material.

(ii) Includes hands-on training and techniques for administration.

(iii) Requires testing with a passing score.

(iv) Provides a minimum of 10 hours of instruction and experiential training.

(v) Complies with current guidelines and recommendations by the Centers for Disease Control and Prevention, ACPE or a similar health authority or professional body.

(2) The course must provide instruction on the following topics:

(i) Basic immunology and the human immune response.

(ii) Mechanics of immunity, adverse effects, dose and administration schedule of available vaccines.

(iii) Response to an emergency situation as a result of the administration of an injectable medication, biological or immunization.

(iv) Administration of subcutaneous, intradermal and intramuscular injections.

(v) Disease epidemiology.

(vi) Standards for immunization practices.

(vii) Vaccine-preventable diseases.

(viii) Recommended immunization schedules.

(ix) Vaccine storage and management.

(x) Biohazard waste disposal and sterile techniques.

(xi) Informed consent.

(xii) Authority and recordkeeping requirements as provided in this chapter.

(b) The Board approves courses offered by ACPE-accredited providers and educational institutions that meet the criteria and provide instruction on the topics listed in subsection (a).

[Pa.B. Doc. No. 06-1200. Filed for public inspection June 30, 2006, 9:00 a.m.]

Title 58—RECREATION

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 18, 2006, meeting, adopted amendments to § 139.4 (relating to seasons and bag limits for the license year).

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 36 Pa.B. 13 (January 7, 2006).

1. *Purpose and Authority*

The Commission is required to set hunting and furtaking seasons and bag limits on an annual basis. Although the 2006-2007 seasons and daily season and possession limits are similar to those set in 2005-2006, the 2006-2007 seasons and bag limits have been amended to conform to current scientific data, population and harvest records, field surveys and professional staff observations, as well as recommendations received from staff, organized sporting groups, members of the agricultural community and others interested in the wildlife resources of this Commonwealth. Some notable changes for hunters next season will be expanded beaver trapping opportunities in Wildlife Management Units (WMU) 2E, 5A, 5B, 5C and 5D, as well as expanded bear hunting opportunities in WMUs 2F, 2G, 3A, 4A, 4B and 4D. The expanded bear hunting opportunities are the result of the creation of a trial bear archery season that will take place during the week prior to the traditional Statewide bear season. The Commission created this trial bear archery season in response to substantial requests from a portion of the bear hunting community for the same. However, it is important to note that the Commission has created this season with some reservation due to its concerns with the creation of new administrative challenges in implementing the new season as well as the creation of additional demands on the bear resource through increased harvest rates. Nonetheless, as the next license year is approaching, the Commission has amended § 139.4 to provide updated seasons and bag limits for the 2006-2007 license 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(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 amendment to § 139.4 was adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amends § 139.4 by establishing 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 during the 2006-2007 license year.

3. *Persons Affected*

Persons wishing to hunt and trap in this Commonwealth during the 2006-2007 license year will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

The Commission received a total of 3,302 official comments concerning this final-form rulemaking. The comments received concerned the following subtopics:

Deer Season (in general)

Out of a total of 815 comments received concerning this subtopic, 69 support the Commission's current deer program, 18 oppose permitting hunters to harvest more than 1 antlerless deer per license year, 2 oppose permitting hunters to harvest more than 2 antlerless deer per license year, 5 oppose antlerless deer hunting outside of October, 550 oppose the concurrent antlered/antlerless deer seasons or the length of the antlerless deer season, or both, 120 support the concurrent antlered/antlerless deer seasons, 28 oppose the opening of any antlerless deer seasons, 1 opposes all antlered deer hunting prior to the rut, 1 supports combining the archery, rifle and muzzleloader seasons into one 2-week season, 6 support opening the deer rifle season on the Saturday after Thanksgiving, 1 supports antlerless deer hunting prior to the rut, 1 supports limiting the antlerless deer season to youth hunters only, 1 supports extending deer rifle season, 3 support extending youth antlerless firearms season to two Saturdays and 9 support limiting or closing all early antlerless deer seasons.

Deer Archery Season

Out of a total of 515 comments received concerning this subtopic, 220 oppose the duration of the deer archery season (too long), 288 support the duration of the deer archery season and 7 support increasing the duration of the deer archery season.

Deer Muzzleloader Season

Out of a total of 444 comments received concerning this subtopic, 123 support the early deer muzzleloader season, 318 oppose the early deer muzzleloader season, 2 support permitting hunters to harvest antlered deer in the October muzzleloader season and 1 supports extending the early deer muzzleloader season to 2 weeks.

Bear Season

Out of a total of 1,505 comments received concerning this subtopic, 1,485 support the bear archery season, 9 oppose the bear archery season, 1 supports extending the bear archery season, 5 support the concurrent deer/bear seasons, 3 oppose the concurrent deer/bear seasons and 2 support extending the traditional bear season.

Turkey Seasons

Out of a total of three comments received concerning this subtopic, one opposes the two-bird limit for the spring turkey season, one supports extending the duration of the fall turkey season and one opposes the youth spring turkey season on Earth Day.

Small Game Season

Out of a total of 16 comments received concerning this subtopic, 11 support expanding or opening small game season earlier, 1 opposes the duration/opening of pheasant season in WMU 2C, 1 supports permitting hunters to take male and female pheasants in WMU 2C, 2 oppose the opening of the spring and fall turkey seasons due to the spread of bird flu and 1 supports expanding crow season due to the spread of bird flu.

Furbearer Hunting/Trapping Season

The single comment received concerning this subtopic supported opening the raccoon, fox and coyote seasons later.

Waterfowl Seasons

Out of a total of three comments received concerning this subtopic, one supports reducing goose season at Middle Creek, one supports the establishment of a spring goose season and one supports the establishment of a swan season.

5. *Cost and Paperwork Requirements*

The final-form rulemaking may result in some additional cost and paperwork associated with the creation of the bear archery season due to the need to ensure necessary administrative and enforcement support for the same. However, the Commission has determined that if there is any additional expense associated with the proposed bear archery season, it will not be substantial and would be absorbed by the current budget.

6. *Effective Date*

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

7. *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*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-216 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)
2006-2007 OPEN HUNTING AND FURTAKING SEASONS, DAILY LIMIT, FIELD POSSESSION LIMIT AND SEASON LIMIT
OPEN SEASON INCLUDES FIRST AND LAST DATES LISTED

Species	First Day		Last Day	Daily Limit	Field Possession Limit After First Day
Squirrels—(Combined species) Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law	Oct. 7		Oct. 13	6	12
Squirrels—(Combined species)	Oct. 14	and	Nov. 25	6	12
	Dec. 11	and	Dec. 23		
	Dec. 26		Feb. 3, 2007		
Ruffed Grouse—(Statewide)	Oct. 14	and	Nov. 25	2	4
	Dec. 11	and	Dec. 23		
	Dec. 26		Jan. 27, 2007		
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"					

Species	First Day	Last Day	Daily Limit	Field Possession Limit After First Day
Rabbits, Cottontail	Oct. 21 and Dec. 11 and Dec. 26	Nov. 25 Dec. 23 Feb. 3, 2007	4	8
Ringneck Pheasant—Male only in Wildlife Management Units 2A, 2B, 2C, 4C, 4E, 5A, 5B, 5C and 5D Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law	Oct. 7	Oct. 13	2	4
Ringneck Pheasant—Male or female combined in Wildlife Management Units 1A, 1B, 2D, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A, 4B and 4D Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law	Oct. 7	Oct. 13	2	4
Ringneck Pheasant—Male only in Wildlife Management Units 2A, 2B, 2C, 4C, 4E, 5A, 5B, 5C and 5D	Oct. 21	Nov. 25	2	4
Ringneck Pheasant—Male or female combined in Wildlife Management Units 1A, 1B, 2D, 2E, 2F, 2G, 3A, 3B, 3C, 3D 4A, 4B and 4D	Oct. 21 and Dec. 11 and Dec. 26	Nov. 25 Dec. 23 Feb. 3, 2007	2	4
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 and 5D where the season is closed.	Oct. 21	Nov. 25	4	8
Hares (Snowshoe Rabbits) or Varying Hares	Dec. 26	Jan. 1, 2007	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	

Species	First Day Limit	Last Day	Daily Limit	Season Limit
Turkey—Male or Female			1	1
Wildlife Management Units 1A & 1B (Shotgun, Bow and Arrow only)	Oct. 28	Nov. 11		
Wildlife Management Units 2A & 2B (Shotgun, Bow and Arrow only)	Oct. 28	Nov. 18		
Wildlife Management Units 2C, 2E, 4A, 4B and 4D	Oct. 28	Nov. 11		
Wildlife Management Units 2D, 2F, 2G, 3A, 3B, 3C, 3D, 4C and 4E	Oct. 28	Nov. 18		
Wildlife Management Units 5A and 5B	Closed to fall turkey hunting			
Wildlife Management Units 5C and 5D (Shotgun, Bow and Arrow only)	Oct. 28	Nov. 3		
Turkey (Spring Gobbler) Statewide[5] Bearded Bird only	April 28, 2007	May 26, 2007	1	2

Species	First Day Limit	Last Day	Daily Limit	Season Limit
Turkey (Spring Gobbler) Statewide Youth Hunt[5] Bearded Bird only Eligible junior hunters only with the required license and when properly accompanied	April 21, 2007	April 21, 2007	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.

Species	First Day	Last Day	Daily Limit	Field Possession Limit After First Day
Crows (Hunting permitted on Friday, Saturday and Sunday only)	July 1 and Dec. 29	Nov. 25 and April 1, 2007		Unlimited
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				
Squirrels—(Combined species)	Sept. 1	Mar. 31, 2007	6	12
Quail	Sept. 1	Mar. 31, 2007	4	8
Ruffed Grouse	Sept. 1	Mar. 31, 2007	2	4
Cottontail Rabbits	Sept. 1	Mar. 31, 2007	4	8
Snowshoe or Varying Hare	Sept. 1	Mar. 31, 2007	1	2
Ringneck Pheasant—Male and Female—(Combined)	Sept. 1	Mar. 31, 2007	2	4

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

DEER

Species	First Day	Last Day	Season Limit
Deer, Antlered and Antlerless—(Statewide)[1] (Archery—Bows and Arrows Only) Crossbows may be used in Wildlife Management Units 2B, 5C and 5D	Sept. 30 and Dec. 26	Nov. 11 and Jan. 13, 2007	One antlered and an antlerless deer with each required antlerless license.
Deer, Regular Antlered and Antlerless—(Statewide)[1]	Nov. 27	Dec. 9	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 serving on active duty in the U. S. Armed Forces, or in the U. S. Coast Guard, with required antlerless license	Oct. 19	Oct. 21	An antlerless deer with each required antlerless license.

DEER

Species	First Day	Last Day	Season Limit
Deer, Antlerless only—(Statewide) (Muzzleloading season)	Oct. 14	Oct. 21	An antlerless deer with each required antlerless license.
Deer, Antlered or Antlerless—(Statewide)[1] (Flintlock Muzzleloading season)	Dec. 26	Jan. 13, 2007	One antlered, or one antlerless—plus an additional antlerless deer with each required antlerless license.
Deer, Antlerless Wildlife Management Unit 2B	Dec. 26	Jan. 13, 2007	An antlerless deer with each required antlerless license.
Deer, Antlerless Wildlife Management Units 5C and 5D	Dec. 11 and Dec. 26	Dec. 23 and Jan. 27, 2007	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

Species	First Day	Last Day	Daily Limit	Season Limit
Bear, any age—(Bows and Arrows only)[4] Wildlife Management Units 2C, 2D, 2E, 2F, 2G, 3A, 4A, 4B and 4D	Nov. 15	Nov. 16	1	1
Bear, any age—(Statewide)[4]	Nov. 20	Nov. 22	1	1
Bear, any age[4] Wildlife Management Units 3C, 3D and that portion of 3B, East of Rt. 14 from Troy to Canton, East of Rt. 154 from Canton to Rt. 220 at Laporte and East of Rt. 42 from Laporte to Rt. 118 and that portion of 4E, East of Rt. 42.	Nov. 27	Dec. 2	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.				
Bear, any age[4] Rockview Prison	Nov. 27	Dec. 2	1	1

ELK

Elk, Antlered and Antlerless[6] (With each required license)	Nov. 6	Nov. 11	1	1
Elk, Antlered and Antlerless[6] (With each required license)	Sept. 17, 2007	Sept. 22, 2007	1	1

FURTAKING—TRAPPING

Minks and Muskrats—(Statewide)	Nov. 18	Jan. 6, 2007	Unlimited	
Beaver—(Statewide)	Dec. 26	Mar. 31, 2007		
Wildlife Management Units 2E, 2F and 2G (Combined)			20	20

Species	First Day	Last Day	Daily Limit	Season Limit
Wildlife Management Units 1A, 1B, 3A, 3B, 3C and 3D (Combined)			20	40
Wildlife Management Units 2A, 2B, 2C, 2D, 4A, 4B, 4C, 4D, 4E, 5A, 5B, 5C and 5D (Combined)			10	10
Coyotes, Foxes, Opossums, Raccoons, Skunks, Weasels—(Statewide)	Oct. 22	Feb. 17, 2007		Unlimited
Coyotes and Foxes—(Statewide) (Cable restraint devices may be used)	Jan. 1	Feb. 17, 2007		Unlimited
Bobcat[3] Wildlife Management Units 2C, 2E, 2F, 2G, 3A, 3B, 3C and 3D	Oct. 22	Feb. 17, 2007	1	1
FURTAKING—HUNTING				
Coyotes—(Statewide)	Outside of any deer or bear season may be taken with a hunting license or a furtaker's license and without wearing orange.			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 may not be hunted prior to noon during the spring gobbler turkey season.			
Raccoons and Foxes—(Statewide)[7]	Oct. 21	Feb. 17, 2007		Unlimited
Bobcat[3] Wildlife Management Units 2C, 2E, 2F, 2G, 3A, 3B, 3C and 3D	Oct. 21	Feb. 17, 2007	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 antleress deer season from 1/2 hour before sunrise to sunset.

[4] Only one bear may be taken during the hunting license year.

[5] Second spring gobbler may only be taken by persons who possess a valid special wild turkey license as provided for in section 2709 of the act (relating to license costs and fees).

[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.

[Pa.B. Doc. No. 06-1201. Filed for public inspection June 30, 2006, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 141]

Hunting and Trapping; Electronic Devices for Dogs

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 18, 2006, meeting, adopted an amendment to § 141.18 (relating to permitted devices).

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 36 Pa.B. 1400 (March 25, 2006).

1. *Purpose and Authority*

The Commission has recently received a number of requests from various persons who use dogs to hunt a variety of game species to amend existing regulations to specifically permit the use of electronic devices used for the purpose of locating dogs while hunting or training. The devices specifically requested for permitted use are e-collars, radio-telemetry tracking systems and beeper collars. The requests have resulted from fears that strict interpretation of the provisions prohibiting use of electronic devices to hunt or take wildlife could put persons who use electronic devices to locate their dogs while hunting or training at risk of being found in violation.

From a fundamental perspective, Commission accepts the use of electronic devices to locate dogs while hunting or training just as much as it currently accepts the use of electronic devices to locate fellow hunters (that is, two-way radios, cell phones, and the like). Use of electronic devices in this manner does not give a hunter an unfair advantage over game or violate principles of fair chase. However, the Commission is concerned that the specific permitted use of these types of electronic devices intended to locate dogs while hunting or training will encourage hunters to misuse these devices to also locate game. Despite this concern, after consideration of the relevant issues, the Commission believes that it is appropriate to accommodate the requests. Therefore, the Commission is amending § 141.18 to specifically permit the use of electronic devices used for locating dogs while hunting or training, including devices such as e-collars, radio-telemetry dog tracking systems and beeper collars.

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(b)(1) of the code (relating to regulations) authorizes the Commission to "promulgate regulations relating to . . . the number and types of devices and equipment allowed, the identification of devices and the use and possession of devices." 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 amendment to § 141.18 was adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amends § 141.18 to specifically permit the use of electronic devices used for locating dogs while hunting or training, including devices such as e-collars, radio-telemetry dog tracking systems and beeper collars.

3. *Persons Affected*

Persons wishing to use electronic devices to locate dogs while hunting or training will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

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

5. *Cost and Paperwork Requirements*

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

6. *Effective Date*

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

7. *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 § 141.18 to read as set forth at 36 Pa.B. 1400.

(b) The Executive Director of the Commission shall certify this order and 36 Pa.B. 1400 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*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-228 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 06-1202. Filed for public inspection June 30, 2006, 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 June 6, 2006, meeting, adopted an amendment to Chapter 141, Appendix G (relating to hunting hours).

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 36 Pa.B. 2529 (May 27, 2006).

1. *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 on an annual basis to accurately reflect the upcoming year's dates and hours for legal hunting. Towards this end, the Commission amended Appendix G by updating the table of hunting hours to accurately reflect the dates and hours of legal hunting for the 2006-2007 hunting year. It is important to note that beginning in the year 2007, the Daylight Saving Time changeovers will begin on the second Sunday of March and end the first Sunday of November rather than the traditional second Sunday of April and last Sunday of October. These new Daylight Saving Time changeovers are the result of the Energy Policy Act of 2005, the act of August 8, 2005 (Pub. L. No. 109-58, 119 Stat. 594), signed into law by President George W. Bush on August 8, 2005.

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 § 141.4 was adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amends Appendix G to update the table of hunting hours to accurately reflect the dates and hours of legal hunting for the 2006-2007 hunting year.

3. *Persons Affected*

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

4. *Comment and Response Summary*

The Commission received two official comments regarding this final-form rulemaking. Both comments were in support of expanding legal hunting hours to 1/2 hour after sunset in Wildlife Management Units 2B, 5C and 5D.

5. *Cost and Paperwork Requirements*

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

6. *Effective Date*

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

7. *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 36 Pa.B. 2529.

(b) The Executive Director of the Commission shall certify this order and 36 Pa.B. 2529 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*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-231 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 06-1203. Filed for public inspection June 30, 2006, 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 18, 2006, meeting, adopted amendments to §§ 147.552—147.554 (relating to application; permit; and subpermit).

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 36 Pa.B. 1401 (March 25, 2006).

1. *Purpose and Authority*

The Commission recognizes the unique challenges faced by farmers in this Commonwealth's most urban areas. White-tailed deer have certainly proven themselves able to create significant agricultural destruction, even in moderate numbers. Unfortunately, for farmers in highly developed or urban areas deer population issues are

complicated. As a measure to help combat high deer populations and their associated problems, the Commission provides farmers with a number of deer management programs, including agricultural deer control permits. The permits generally allow for a focused deer harvest in a designated area in addition to the harvest authorized by the various traditional hunting seasons. Unfortunately, it appears that despite the availability of these permits, farmers in Wildlife Management Units (WMU) 5C and 5D continue to suffer significant agricultural destruction.

In response to the aforementioned damage, a number of farmers or those representing their interests, or both, have requested additional relief from the Commission. Specifically, these individuals are requesting that the following requirements be eliminated for permittees in WMUs 5C and 5D: 1) minimum of 2 years and current enrollment in one of the Commission's public access programs; 2) conspicuous posting of deer control permit signs on the boundaries of and along all public roadways traversing the permitted property; and 3) limitation preventing permittees from issuing more than one subpermit to a qualified individual. Although the Commission's staff has some reservation in eliminating public access requirements from agricultural deer control permits, the Commission is nonetheless convinced that it needs to provide some measure of additional relief to affected farmers in WMUs 5C and 5D. Therefore, the Commission amended §§ 147.552, 147.553 and 147.554 to modify the public access, signage posting and subpermit issuance requirements for agricultural deer control permit permittees in WMUs 5C and 5D.

Section 2901(b) of the code (relating to authority to issue permits) provides "the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." Section 2102(a) of the code (relating to regulations) provides 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 §§ 147.552, 147.553 and 147.554 were adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amends §§ 147.552, 147.553 and 147.554 to modify the public access, signage posting and subpermit issuance requirements for Agricultural Deer Control Permit permittees in WMUs 5C and 5D.

3. *Persons Affected*

Persons wishing to obtain an agricultural deer control permit or operate under the authority of another's agricultural deer control permit in WMUs 5C and 5D will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

The Commission received two comments regarding this rulemaking, both in support of either limiting or ending the Red Tag Program.

5. *Cost and Paperwork Requirements*

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

6. *Effective Date*

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

7. *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 the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending §§ 147.552—147.554 to read as set forth at 36 Pa.B. 1401.

(b) The Executive Director of the Commission shall certify this order and 36 Pa.B. 1401 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*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-227 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 06-1204. Filed for public inspection June 30, 2006, 9:00 a.m.]