

PROPOSED RULEMAKING

DEPARTMENT OF BANKING

[10 PA. CODE CH. 44]

Mortgage Licensee Education

The Department of Banking (the Department), is soliciting input regarding the Department's proposed rulemaking regarding prelicensure education and testing and continuing education requirements for licensees under 7 Pa.C.S. Chapter 61 (relating to mortgage loan industry licensing and consumer protection) (known as the Mortgage Act).

Purpose of Proposed Rulemaking

The Department is promulgating this regulation as a result of the passage of the Mortgage Act which on November 5, 2008, enacted a new regulatory scheme for mortgage professionals and repealed Chapter 3 of the Mortgage Brokers and Bankers and Consumer Equity Protection Act (the MBBCEPA), 63 P. S. §§ 456.101—456.521 and the Secondary Mortgage Loan Act (the SMLA), 7 P. S. §§ 6601—6626. The Mortgage Act imposes prelicensure education and testing requirements as well as continuing education requirements for all licensees under the act. This proposed rulemaking will amend the currently existing continuing education regulation promulgated under the MBBCEPA at 10 Pa. Code Chapter 44.

Explanation of Proposed Regulatory Requirements

Under the Mortgage Act, the proposed regulation requires the following:

(a) Applicants who are seeking a license as a mortgage broker, mortgage lender and mortgage loan correspondent must have: (i) an individual who is a director, partner or ultimate equitable owner of 10% or more of an applicant successfully complete at least 12 hours of education and testing prior to licensure; and (ii) all mortgage originators to be employed by the licensee to have successfully completed the prelicensing education and testing requirements of the Mortgage Act. Once these applicants have received a mortgage broker, mortgage lender or mortgage loan correspondent license, they must have: (i) at least one individual at each licensed office, who is not a mortgage originator, successfully complete at least 6 hours of education per annual renewal license period; and (ii) ensure that all mortgage originators employed by the licensee successfully complete at least 6 credit hours of education per annual renewal license period; and,

(b) Applicants for a mortgage originator license must successfully complete at least 12 hours of prelicensure education and testing. After licensure, mortgage originators must successfully complete 6 hours of education per annual renewal license period.

Entities Affected

All existing and future licensees under the Mortgage Act will be affected by the proposed rulemaking at the time the regulation is effective. It is anticipated that there will be approximately 9,149 licensees under the Mortgage Act.

Costs and Paperwork Requirements

The proposed rulemaking will have no fiscal impact on the Department, the Commonwealth and its political subdivisions.

Applicants under the Mortgage Act will be required to pay fees and costs associated with taking 12 credit hours of prelicensure education and testing programs and licensees will be required to pay fees and costs associated with taking 6 hours of continuing education programs. Costs may include the tuition for each credit hour of education, testing, travel and travel-related expenses. It is unclear at this time what the credit hour/testing charges by education providers will be. However, for comparison, under the MBBCEPA, licensees were required to annually complete 6 credit hours of continuing education offered by Department approved providers. The cost for 6 hours of continuing education credit ranged from \$95—\$225. Assuming education providers charge in the same range for prelicensure education and testing, the prelicensure education requirement costs will range from \$190—\$450 per licensee.

The ultimate cost to licensees will depend upon variables such as the number of licensed offices the licensee operates (an individual at each licensed office who is not a mortgage originator must complete the continuing education requirements) and whether companies will assume the costs of the education and testing requirements for their mortgage originator employees. The education costs may be mitigated for licensees who are licensed in multiple jurisdictions because the regulation allows for reciprocity with other states' education courses for the non-Pennsylvania specific education programs. Therefore, licensees that have completed non-Pennsylvania specific courses approved by another states' mortgage regulator or by the National Mortgage Licensing System and Registry will receive the equivalent education credit in this Commonwealth. Applicants and licensees that do not comply with the regulation may suffer penalties, including the revocation or suspension of their license or denial of their application.

Lastly, relating to costs, the Department will charge a fee to educate providers for review and approval of their education courses. Under the MBBCEPA, the Department charged a \$750 annual fee to education providers for reviewing and approving proposed education programs. The Department does not intend to increase this fee for the 2009 annual renewal period.

Regarding recordkeeping, promulgation of the regulation will generally increase reporting, recordkeeping and other paperwork requirements for the industry as well as the Department. Licensees will be required to demonstrate to the satisfaction of the Department that they have met all prelicensure and continuing education requirements by maintaining records of successfully completed programs for 2 years after the completion of each program, not counting the year in which the program was completed. The increase in recordkeeping is entirely attributable to the Mortgage Act's creation of a new license type and the imposition of education requirements on licensees that did not previously have mandatory education or testing, or both requirements. Only licensees that were licensed under the MBBCEPA were previously required to maintain records of continuing education programs. Licensees under the SMLA did not have any education requirements and mortgage originators are a new class of licensee and, therefore, the Mortgage Act's education requirements naturally impose new recordkeeping responsibilities.

Effectiveness/Sunset Date

All provisions of the proposed rulemaking will be effective 14 days from the date of publication of the final-form regulation in the *Pennsylvania Bulletin*. There is no sunset date.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 27, 2009, the Department submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairperson of the House Committee on Commerce and the Senate Committee on Banking and Insurance. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days after the close of the public comment period, specifying the regulatory review criteria that have not been met. The Regulatory Review Act sets forth procedures that permit the General Assembly and the Governor to review IRRC's comments, recommendations or objections prior to final adoption of the proposed rulemaking.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking within 30 days after publication in the *Pennsylvania Bulletin* to the Office of Chief Counsel, Department of Banking, Attention: Public Comment on Regulation 3-44, 17 North Second Street, Suite 1300, Harrisburg, PA 17101-2290, (717) 787-1471, (717) 783-8427.

STEVEN KAPLAN,
Secretary

Annex A**TITLE 10. BANKS AND BANKING****PART IV. BUREAU OF CONSUMER CREDIT AGENCIES****CHAPTER 44. MORTGAGE [BANKERS AND BROKERS AND CONSUMER EQUITY PROTECTION] LICENSEE EDUCATION****§ 44.1. Definitions.**

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

Act—[**The Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P. S. §§ 456.101—456.3101.)**] 7 Pa.C.S. Chapter 61 (relating to mortgage loan industry licensing and consumer protection).

Annual renewal date—[**July**] January 1 of each calendar year.

Annual renewal period—The licensing term commencing [**July 1 of 1-calendar year**] on the annual renewal date and ending on [**June 30**] December 31 of the [**following**] same calendar year.

Applicant—As defined in 7 Pa.C.S. § 6102 (relating to definitions).

[Continuing education program—

(i) An educational program as required by section 304(e) of the act (63 P. S. § 456.304(e)) which contributes directly to the enhancement of the professional competence of a mortgage professional to engage in the first mortgage loan business.

(ii) The term does not include programs which instruct in matters such as office or business management, personnel management or similar subjects not directly related to the first mortgage loan business.

Continuing education provider—A provider of a continuing education program that has been approved by the Department.]

* * * * *

Education program—

(i) A program providing education and a written or electronic testing component as required under 7 Pa.C.S. § 6131(g) (relating to application for license) offered by an education provider to the public or to its own employees which contributes directly to the enhancement of the professional competence of an applicant, licensee or individual to engage in the mortgage loan business and which has been approved by the Department.

(ii) The term does not include programs which instruct in matters such as office or business management, personnel management or similar subjects not directly related to the mortgage loan business.

Education provider—A provider of an education program. A licensee, other than a mortgage originator, may be an education provider.

[First mortgage loan business—The first mortgage loan business as defined in section 302 of the act (63 P. S. § 456.302).]

Instructor—An individual responsible for teaching [**a continuing**] an education program that has been approved by the Department.

Licensee—A [**person licensed under the act**] licensee as defined in 7 Pa.C.S. § 6102.

[Limited mortgage broker—A limited mortgage broker as defined in section 302 of the act.

Loan correspondent—A loan correspondent as defined in section 302 of the act.

Mortgage banker—A mortgage banker as defined in section 302 of the act.

Mortgage broker—A mortgage broker as defined in section 302 of the act.]

Mortgage loan business—The mortgage loan business as defined in 7 Pa.C.S. § 6102.

Mortgage originator—A mortgage originator as defined in 7 Pa.C.S. § 6102.

[Mortgage professional—

(i) A manager of each licensed office maintained by a licensee; any owner, director, officer or W-2 employee of a licensee who has the authority to underwrite or approve loans, either individually or in combination with other individuals as members of a committee; or any owner, director, officer or W-2 employee of a licensee who, as part of his

official duties, directly contacts borrowers to present, negotiate or advise regarding loan terms.

(ii) A mortgage professional does not include any individual who engages solely in processing loan applications or other administrative or clerical functions, or both.]

Nationwide Mortgage Licensing System and Registry—As defined in 12 U.S.C. § 5103 (relating to definitions).

Person—A person as defined in [section 302 of the act] 7 Pa.C.S. § 6102.

§ 44.2. Requirements for applicant education and testing.

(a) [Except as provided in subsection (b), to renew a license, a licensee shall demonstrate to the satisfaction of the Department that:

(1) In the case of a mortgage banker, mortgage broker or loan correspondent, the licensee maintains at least one separate mortgage professional at each licensed office who has successfully completed during the annual renewal period at least 6 credit hours of continuing education programs which shall include 1 credit hour of Pennsylvania residential mortgage law, including the act and the Loan Interest and Protection Law (41 P. S. §§ 101—605), 1 credit hour of business ethics and 4 credit hours from among one or more of the following subject areas:

(i) Federal residential mortgage law, including the Real Estate Settlement Procedures Act (12 U.S.C.A. §§ 2601—2617), the Truth in Lending Act (15 U.S.C.A. §§ 1601—1667e) and the Equal Credit Opportunity Act (15 U.S.C.A. §§ 1691—1691f).

(ii) The first mortgage loan business.

(2) In the case of a limited mortgage broker, the licensed individual has successfully completed during the annual renewal period at least 2 credit hours of continuing education programs which shall include 1 credit hour of Pennsylvania residential mortgage law, including the act and the Loan Interest and Protection Law and 1 credit hour from among one or more of the following subject areas:

(i) Business ethics.

(ii) Federal residential mortgage law, including the Real Estate Settlement Procedures Act, the Truth in Lending Act and the Equal Credit Opportunity Act.

(iii) The first mortgage loan business.

(b) The continuing education requirements imposed by this chapter shall apply to all renewals of licenses except when an initial licensee has been licensed by the Department for less than 6 months prior to its first annual renewal date, in which case the licensee shall be in compliance with this chapter within 6 months after its first annual renewal date.

(c) A mortgage professional who acts as an instructor shall be credited with 2 credit hours of continuing education for every 1 credit hour taught per annual renewal period.

(d) Continuing education program credit hours earned in excess of the minimum requirement established by this section during any annual re-

newal period may not be carried over to a successive annual renewal period.]

To qualify for a license, an applicant shall demonstrate to the satisfaction of the Department that one of the following applies:

(1) In the case of a mortgage originator license applicant, the applicant has successfully completed at least 12 credit hours of education programs as delineated under subsection (b).

(2) In the case of any other license applicant:

(i) An individual who is a director, partner or ultimate equitable owner of 10% or more of an applicant has successfully completed at least 12 credit hours of education programs as delineated under subsection (b).

(ii) All of the mortgage originators to be employed by the applicant have successfully completed at least 12 credit hours of education programs as delineated under subsection (b).

(b) The 12 credit hours of education programs required under subsection (a) must consist of 2 credit hours of Pennsylvania residential mortgage law, including the act and the Loan Interest and Protection Law (41 P. S. §§ 101—605), 1 credit hour of business ethics and 9 credit hours from among one or more of the following subject areas:

(1) Federal residential mortgage law, including the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601—2617), the Truth in Lending Act (15 U.S.C. §§ 1601—1667e) and the Equal Credit Opportunity Act (15 U.S.C. §§ 1691—1691f).

(2) The mortgage loan business.

(c) Testing components of the education programs required by subsection (a) shall address the subjects delineated by subsection (b).

(d) Other than the 2 credit hours of Pennsylvania residential mortgage law education programs delineated by subsection (b) and the testing requirements set forth in subsection (c), education credit hours and testing completed pursuant to another state mortgage regulator's requirements will be accepted by the Department as fulfilling the requirements of this section, subject to the following conditions:

(1) The education credit hours have been approved by another state mortgage regulator or the Nationwide Mortgage Licensing System and Registry.

(2) The education credit hours have been successfully completed within the 12 months immediately preceding the date of the submission of the applicant's license application.

§ 44.2a. Requirements for licensee continuing education.

(a) Except as provided in subsection (c), to renew a license, a licensee shall demonstrate to the satisfaction of the Department that one of the following applies:

(1) In the case of a mortgage originator, the licensee has successfully completed at least 6 credit hours of education programs during the annual renewal period immediately preceding each annual renewal date.

(2) In the case of any other licensee the following apply:

(i) At least one individual at each licensed office who is not licensed as a mortgage originator has successfully completed at least 6 credit hours of education programs delineated under subsection (b) during the annual renewal period immediately preceding each annual renewal date, unless all of the nonclerical staff of a particular licensed office are licensed as mortgage originators.

(ii) All of the mortgage originators employed by the licensee have successfully completed the education programs as delineated under subsection (b).

(b) The 6 credit hours of education programs required under subsection (a) shall consist of 1 credit hour of Pennsylvania residential mortgage law, including the act and the Loan Interest and Protection Law (41 P. S. §§ 101—605), 1 credit hour of business ethics and 4 credit hours from among one or more of the following subject areas:

(1) Federal residential mortgage law, including the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601—2617), the Truth in Lending Act (15 U.S.C. §§ 1601—1667e) and the Equal Credit Opportunity Act (15 U.S.C. §§ 1691—1691f).

(2) The mortgage loan business.

(c) The education requirements imposed by this chapter are waived for the first annual renewal period for licensees that received an initial license from the Department less than 2 months prior to the licensee's first annual renewal date.

(d) Education program credit hours earned in excess of the minimum requirement established by this section during any annual renewal period may not be carried over to a successive annual renewal period.

(e) Other than the credit hour of Pennsylvania residential mortgage law delineated under subsection (b), education credit hours completed pursuant to another state mortgage regulator's requirements will be accepted by the Department as fulfilling the requirements of this section, subject to the following conditions:

(1) The education credit hours have been approved by another state mortgage regulator or the Nationwide Mortgage Licensing System and Registry.

(2) The education credit hours have been completed during the annual renewal period.

§ 44.3. Reporting, verification and recordkeeping.

(a) [Except as provided in § 44.2(b) (relating to requirements), a licensee shall include as part of its renewal application a statement that the requirements of this chapter have been completed by at least one separate mortgage professional at each licensed office, or in the case of a limited mortgage broker, by the licensed individual. The statement shall include a list of continuing education programs completed by the designated mortgage professional for each licensed office or the individual limited mortgage broker licensee. The list shall include:

- (1) The name of continuing education providers.
- (2) The name of continuing education programs.
- (3) The number of credit hours attended by the mortgage professional.
- (4) The locations and dates attended.]

Applicants and licensees shall provide evidence of the completion of the requirements of this chapter on a form prescribed by the Department.

(b) The Department may verify satisfactory completion of the requirements of this chapter [by methods including examination of the licensee] under its authority under 7 Pa.C.S. § 6138(a)(1) (relating to authority of Department).

(c) The Department may assess licensees [examination] the costs [for examinations made under subsection (b) consistent with section 308(a)(4) of the act (63 P. S. § 456.308(a)(4))] of verifying a licensee's compliance with this chapter under its authority under 7 Pa.C.S. § 6138(a)(1).

(d) A licensee shall retain all original documents relating to the successful completion of each [continuing] education program by [each mortgage professional] the licensee for [3] the 4 annual renewal periods immediately following the annual renewal period during which the licensee successfully completed the education program.

§ 44.4. Review and approval of education programs.

(a) *Approval of programs.* The Department will have the sole authority to approve or deny continuing education programs. The Department [does] may not approve or endorse continuing education providers. Education programs that are approved by another state mortgage regulator or the National Mortgage Licensing System and Registry and do not relate to Pennsylvania residential mortgage law are deemed approved by the Department.

(b) *Applying for program approval.* A prospective [continuing] education provider may apply for [continuing] education program approval on an application provided by the Department. The application shall be submitted to the Department at least [90] 60 days prior to the first date [that] of the annual renewal period in which the [proposed continuing] education program [will] is proposed to be offered. The [applicant] prospective education provider shall attach:

(1) An outline of the proposed [continuing] education program, and the method of instruction and testing, either in-person or through interactive technology.

* * * * *

(c) *Program requirements.*

(1) The proposed [continuing] education program is required to satisfy the following criteria to be considered. The program shall be:

[(1)] (i) A formal program of learning and testing which contributes directly to the professional competence of [a mortgage professional] an applicant, licensee or individual to engage in the mortgage loan business.

[(2)] (ii) At least 1 credit hour.

[(3)] (iii) Conducted by one or more **individuals qualified to be [instructors] an instructor**. The following individuals are not qualified to be an instructor, unless the Department determines otherwise:

[(i)] (A) An individual who has had his license suspended or revoked by the Department.

[(ii)] (B) An individual who has been the owner, director, member, partner or officer of a licensee that has had its license suspended or revoked by the Department.

[(iii)] (C) An individual who has been a party, or who has been the owner, director, member, partner or officer of a licensee which has been a party to a Department order or agreement prohibiting the individual from engaging in the [first] mortgage loan business in this Commonwealth or acting in any other capacity related to activities regulated by the Department.

(D) An individual who has pled guilty, been convicted of or pled nolo contendere to a crime of moral turpitude or felony.

(2) The Department shall be notified in writing at least 10 days prior to any change in instructors. Any new instructor is subject to the criteria contained in paragraph (1)(iii).

(3) A licensee or individual who acts as an instructor shall be credited with 2 credit hours of education for every 1 credit hour taught per annual renewal period.

(4) Education programs offered solely to satisfy the requirements of § 44.2a (relating to requirements for licensee continuing education) are not required to include a testing component.

(d) The Department will have [60] 45 days from receipt of a completed application to approve or deny the proposed [continuing] education program. An application will be deemed completed when the requirements of subsections (b) and (c) have been fulfilled. If the Department fails to approve or deny an application submitted by a prospective [continuing] education provider within [60] 45 days of its receipt, the [continuing] education program will be deemed approved by the Department. The Department may deny an application submitted by a prospective [continuing] education provider if the [continuing] education program or provider fails to satisfy any of the conditions or requirements contained in this chapter or the act.

(e) Approval of [a continuing] an education program by the Department is valid for 1 annual renewal period and does not constitute permanent approval of the [continuing] education program.

(f) [Continuing education] Education providers shall provide free access to Department personnel to monitor their [continuing] education programs. **To ensure the Department's access to education programs, education providers shall provide the Department with notification of the date, time and location of each education program that is offered by the education provider during the annual renewal period.**

(g) [Continuing education] Education providers shall retain original records of attendance for each [continuing] education program conducted by the [continuing] education provider for [3] the 4 annual renewal periods **immediately following the annual renewal period during which the education program was conducted** and shall provide the Department access to the records upon request.

§ 44.5. Enforcement.

(a) [The Department may levy a fine of up to \$2,000 for each offense under section 314(c) of the act (63 P. S. § 456.314.(c)) or suspend, revoke or refuse to renew a license under section 313(a) of the act (63 P. S. § 456.313(a)), if a licensee fails to comply with any requirements of this chapter] **Violations of this chapter shall be violations of the act.**

(b) The Department may revoke its approval of [a continuing] an education provider's [continuing] education program if the [continuing] education provider fails to comply with any requirement of this chapter or the act.

[Pa.B. Doc. No. 09-1023. Filed for public inspection June 5, 2009, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CHS. 141 AND 147]

Hunting and Trapping and Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed the following rulemaking at its April 21, 2009, meeting:

Amend §§ 141.47 and 147.701 (relating to elk; and general), remove § 141.49 (relating to elk guide permits) and add Chapter 147, Subchapter Y (relating to guiding permit) to relocate, consolidate and more clearly define the permitting process for persons interested in guiding other hunters or trappers for certain designated species.

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

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

The proposed rulemaking was made public at the April 21, 2009, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until July 3, 2009.

1. Purpose and Authority

Currently, §§ 141.47, 141.49 and 147.701 separately provide for the permitting of persons guiding other hunters or trappers in their pursuit of elk and bobcats. The Commission is proposing to amend §§ 141.47 and 147.701, remove § 141.49, and add Subchapter Y, §§ 147.901—147.905, to Chapter 147 to relocate, consolidate and more clearly define the permitting process for persons interested in guiding other hunters or trappers for certain designated species. Some notable changes will be increases in the permit fees as well as more stringent eligibility standards.

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." The amendments to §§ 141.47, 141.49, 147.701 and Chapter 147, Subchapter Y were proposed under this authority.

2. Regulatory Requirements

The proposed rulemaking will amend §§ 141.47 and 147.701, remove § 141.49, and add Subchapter Y, §§ 147.901—147.905, to Chapter 147 to relocate, consolidate and more clearly define the permitting process for persons interested in guiding other hunters or trappers for certain designated species.

3. Persons Affected

Persons unlawfully interested in guiding other hunters or trappers for certain designated species will be affected by the proposed rulemaking.

4. Cost and Paperwork Requirements

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

5. Effective Date

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

6. Contact Person

For further information regarding the proposed rulemaking, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE, Executive Director

Fiscal Note: 48-288. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter C. BIG GAME

§ 141.47. Elk.

* * * * *

(b) *Prohibitions.* While hunting elk during the elk season, it is unlawful to:

* * * * *

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

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

(6)] Drive or herd elk.

[(7)] (5) * * *

[(8)] (6) * * *

§ 141.49. [Elk guide permits] (Reserved).

[The fee for elk guide permits shall be:

(1) Resident—\$10.

(2) Nonresident—\$25.]

CHAPTER 147. SPECIAL PERMITS

Subchapter S. BOBCAT HUNTING-TRAPPING PERMIT

§ 147.701. General.

This section provides for permits to be issued for the hunting and trapping of bobcat during the season established and in areas designated under § 139.4 (relating to seasons and bag limits for the license year).

* * * * *

[(9) A bobcat guide permit will be issued as follows:

(i) A person who assists another person to hunt or take bobcats in any manner shall first secure a bobcat guide permit from the Commission.

(ii) The fee for a bobcat guide permit is \$10 for residents and \$25 for nonresidents.]

(Editor's Note: The following text is new and has been printed in regular print to enhance readability.)

Subchapter Y. GUIDING PERMIT

- Sec. 147.901. Purpose and scope.
- 147.902. Definitions.
- 147.903. Application.
- 147.904. Permit.
- 147.905. Violations.

§ 147.901. Purpose and scope.

The purpose of this subchapter is to provide for the issuance of guiding permits to authorize eligible applicants to serve as guides for persons hunting, trapping or otherwise taking certain designated species of game or wildlife.

§ 147.902. Definitions.

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

Guide—A person who assists another person in any manner to hunt, trap or otherwise take certain designated species of game or wildlife.

Guiding—

(i) The act of assisting or conspiring to assist another person in any manner to hunt, trap or otherwise take certain designated species of game or wildlife by locating, calling or directing another person to the quarry.

(ii) The term is not intended to include or authorize assistance taking the form of any overt act directly connected with harvesting game or wildlife by discharging a firearm, bow or crossbow or setting or resetting a trap or snare.

§ 147.903. Application.

(a) Applications for guiding permits issued under this subchapter shall be made through the applicant's local district wildlife conservation officer on the appropriate form provided by the Commission.

(b) Each application must include the name, address, telephone number and date of birth of the applicant, as

well as the specific eligible species of game or wildlife sought to be covered by the permit.

(c) Applications for guiding permits will only be accepted from persons who possess a valid hunting license or qualify for license and fee exemptions under section 2706 of the act (relating to license and fee exemptions) and have no prior record of violations of the act or this title or related license revocations within the previous 10 years.

(d) The fee for guiding permits will be \$25 for residents and \$50 for nonresidents for each respective eligible species of game or wildlife to be covered by the permit.

§ 147.904. Permit.

(a) *General rule.* A guiding permit issued under this subchapter is required for any person to engage in any guiding activities for the following designated species of game or wildlife: elk and bobcat.

(b) *Additional permits.* Possession of a guiding permit issued under this subchapter does not diminish an individual's obligation to obtain any other applicable Federal, State or local permits concerning the guiding activities.

(c) *Guiding on State game lands.* Notwithstanding the general prohibitions of § 135.41 (relating to state game lands), a guiding permit issued under this subchapter will authorize its holder to engage in commercial guiding activities on State game lands for an eligible species of game or wildlife.

(d) *Orientation.* In any year the Commission establishes an orientation program for an eligible species of game or wildlife, the continuing validity of any guiding permit issued under this subchapter covering the eligible species is premised upon the permit holder's completion of the orientation program prior to engaging in any guiding activities for the eligible species of game or wildlife.

§ 147.905. Violations.

The Director may deny, revoke or suspend any permit for any violation of this subchapter upon written notice to the permittee.

[Pa.B. Doc. No. 09-1024. Filed for public inspection June 5, 2009, 9:00 a.m.]

**[58 PA. CODE CH. 135]
Lands and Buildings**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed the following rulemaking at its April 21, 2009, meeting:

Amend § 135.41 (relating to state game lands) to specifically prohibit the use or possession of drug paraphernalia on State game lands (SGL).

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

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

The proposed rulemaking was made public at the April 21, 2009, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until July 3, 2009.

1. Purpose and Authority

Drug use and related drug crime has been a recurring problem that has plagued SGLs properties across this Commonwealth for decades. The Commission has and will continue to maintain a zero tolerance policy for drug use and related drug crime on SGLs in its continuing efforts to maintain these lands for their primary purposes of providing and conserving habitat for the Commonwealth's wildlife resources as well as providing public access to open lands for recreational hunting and trapping activities. The Commission has determined that although current regulatory provisions clearly prohibit the use and possession of controlled substances, they fail to clearly prohibit the use and possession of drug paraphernalia. The Commission has also determined that the use and possession of drug paraphernalia on SGLs is just as deleterious as their related drug substances. In an effort to address this concern, the Commission is proposing to amend § 135.41 to specifically prohibit the use or possession of drug paraphernalia on SGLs.

Section 721(a) of the code (relating to control of property) provides "The administration of all lands and waters owned, leased or otherwise controlled by the commission shall be under the sole control of the director, and the commission shall promulgate regulations . . . for its use and protection as necessary to properly manage these lands or waters." Section 741(b) of the code (relating to commission actions for damage to buildings or property) provides "The commission shall promulgate regulations to protect users, improvements, lands and buildings under its control. These regulations shall cover, but need not be limited to . . . regulations required to properly protect and preserve these lands for their intended use." The amendments to § 135.41 were proposed under this authority.

2. Regulatory Requirements

The proposed rulemaking will amend § 135.41 by adding language to specifically prohibit the use or possession of drug paraphernalia on SGLs.

3. Persons Affected

Persons unlawfully using or possessing drug paraphernalia on SGLs will be affected by the proposed rulemaking.

4. Cost and Paperwork Requirements

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

5. Effective Date

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

6. Contact Person

For further information regarding the proposed rulemaking, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,
Executive Director

Fiscal Note: 48-285. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART III. GAME COMMISSION
CHAPTER 135. LANDS AND BUILDINGS
Subchapter C. STATE GAME LANDS

§ 135.41. State game lands.

* * * * *

(c) *Additional prohibitions.* In addition to the prohibitions contained in the act pertaining to State game lands and § 135.2, except with the written permission of the Director, it is unlawful to:

* * * * *

(10) Use or possess any controlled substance **or drug paraphernalia** as defined or classified under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-143).

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[Pa.B. Doc. No. 09-1025. Filed for public inspection June 5, 2009, 9:00 a.m.]

[58 PA. CODE CH. 135]
Lands and Buildings

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed the following rulemaking at its April 21, 2009, meeting:

Amend § 135.48 (relating to state game lands roads open to vehicular traffic for disabled persons) to remove the one-way travel limitation affecting the limited travel permitted on designated State game land (SGL) roads and replace it with an open travel allowance that is subject to further limitation based upon existing weather or road conditions as indicated by conspicuous signage or postings.

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

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

The proposed rulemaking was made public at the April 21, 2009, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until July 3, 2009.

1. Purpose and Authority

During the fall hunting seasons each year, the Commission enhances disabled hunter/trapper access to interior portions of its various SGL landholdings across this Commonwealth by opening certain designated roads normally closed to public travel to limited vehicular travel by persons issued a Disabled Persons Permit. Traditionally, travel on these designated roads has been strictly limited to one-way travel. In an effort to further expand this access, the Commission has determined that directional travel and related limitations should be determined on a location specific rather than on an across the board basis. Under this structure, some roads will remain limited to one-way travel while other roads may be expanded to two-way travel, all based upon location and specific conditions. The Commission is proposing to amend

§ 135.48 to remove the one-way travel limitation affecting the limited travel permitted on designated SGL roads and replace it with an open travel allowance that is subject to further limitation based upon existing weather or road conditions as indicated by conspicuous signage or postings.

Section 721(a) of the code (relating to control of property) provides “The administration of all lands and waters owned, leased or otherwise controlled by the commission shall be under the sole control of the director, and the commission shall promulgate regulations . . . for its use and protection as necessary to properly manage these lands or waters.” Section 741(b) of the code (relating to commission actions for damage to buildings or property) provides “The commission shall promulgate regulations to protect users, improvements, lands and buildings under its control. These regulations shall cover, but need not be limited to . . . regulations required to properly protect and preserve these lands for their intended use.” The amendments to § 135.48 were proposed under this authority.

2. Regulatory Requirements

The proposed rulemaking will amend § 135.48 by replacing the language limiting travel on designated SGL roads to one-way travel only with an open travel allowance that is subject to further limitation based upon existing weather or road conditions as indicated by conspicuous signage or postings.

3. Persons Affected

Eligible persons wishing to travel on designated SGL roads may be affected by the proposed rulemaking.

4. Cost and Paperwork Requirements

The proposed rulemaking may result in some additional cost and paperwork associated with the production and deployment of any necessary signage or postings. However, the Commission has determined that if there is any additional expense associated with this effort, it will be minimal and will be absorbed by the current budget.

5. Effective Date

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

6. Contact Person

For further information regarding the proposed rulemaking, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,
Executive Director

Fiscal Note: 48-286. No fiscal impact; (8) recommends adoption.

Annex A
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CHAPTER 135. LANDS AND BUILDINGS
Subchapter C. STATE GAME LANDS

§ 135.48. State game lands roads open to vehicular traffic for disabled persons.

(a) *Vehicular traffic permitted.* Vehicular traffic will be permitted on designated roads on State game lands for persons issued a Disabled Persons Permit under section 2923(a) of the act (relating to disabled person permits). State game lands roads open to vehicular traffic for

disabled persons will be designated by the Director. The Commission will make a list of these open roads available to the permittee.

(1) [Roads will be open for one-way travel, weather permitting, from 14 days prior to the opening day of archery season to the closing day of the muzzleloader/archery season] Roads designated for limited open travel will be open from 14 days prior to the opening day of archery season to the closing day of the muzzleloader/archery season. Any travel authorized by this section is subject to further limitation based upon existing weather or road conditions as indicated by conspicuous signage or postings.

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[Pa.B. Doc. No. 09-1026. Filed for public inspection June 5, 2009, 9:00 a.m.]

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

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed the following rulemaking at its April 21, 2009, meeting:

Amend § 147.142 (relating to possession of wildlife accidentally killed by a motor vehicle) to expand the section's coverage to apply to wildlife disposition generally under a consumption permit.

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

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

The proposed rulemaking was made public at the April 21, 2009, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until July 3, 2009.

1. Purpose and Authority

The code and its attendant regulations limit the circumstances in which residents of this Commonwealth may possess and consume the edible portions of game or wildlife to the current eligibility criteria of § 147.142. There are no provisions for other circumstances, including, but not limited to, mistake kills, agricultural or property protection kills and illegal kills. Despite this absence of a specific permit classification, the Commission has found pragmatic approaches to informally authorize the possession and consumption of the edible portions of the applicable game or wildlife to make legitimate use of these valuable wildlife resources. The Commission has determined that it has become necessary to more formally and clearly define and implement a permitting process by which these distributions should occur. The Commission is proposing to amend § 147.142 to expand the section's coverage to apply to wildlife disposition generally under a consumption permit.

Section 2901(b) of the code (relating to authority to issue permits) provides "the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activi-

ties which may be performed under authority of any permit issued." The amendments to § 147.142 were proposed under this authority.

2. Regulatory Requirements

The proposed rulemaking will amend § 147.142 by expanding the section's coverage to apply to wildlife disposition generally under a consumption permit.

3. Persons Affected

Persons wishing to possess and consume the edible portions of game or wildlife killed by means other than lawful hunting or trapping will be affected by the proposed rulemaking.

4. Cost and Paperwork Requirements

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

5. Effective Date

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

6. Contact Person

For further information regarding the proposed rulemaking, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,
Executive Director

Fiscal Note: 48-289. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 147. SPECIAL PERMITS

Subchapter H. PROTECTED SPECIMEN

§ 147.142. **[Possession of wildlife accidentally killed by a motor vehicle] Wildlife disposition.**

[(a) A resident of this Commonwealth may immediately take possession of a deer accidentally killed on the highway and transport it to a place of safekeeping within this Commonwealth. The person taking possession shall contact a regional office or a local Commission officer, for a permit number within 24 hours after having taken possession of the deer. The permit number shall be considered a valid permit for the purposes of the act and this part and shall be valid for a period not to exceed 120 days from the date of issuance. The whole or any part of the deer may not be given to any person nor may any edible part be removed from the recipient's place of residence. The recipient may not sell or transfer the hide to another party except the hide may be given to the deer processor. Unused parts of the deer must be disposed of lawfully.

(b) Holders of a valid furtakers license may take possession of a furbearer, except river otters, bobcats and fishers, accidentally killed on the highway. Persons taking possession of any furbearer under this section during the closed season for taking that furbearer shall within 24 hours contact any Commission regional office to make notification of said possession.

(c) It is unlawful:

(1) To possess a deer accidentally killed on the highway for more than 24 hours without applying for a permit number.

(2) To give the whole or an edible part of a deer to a person.

(3) To fail to comply with one or more conditions of the permit.

(4) For a nonresident to possess a deer accidentally killed on the highway.

(5) To possess a furbearer accidentally killed on the highway during the closed season for more than 24 hours without notifying the Commission.

(6) To possess a river otter, bobcat or fisher accidentally killed on the highway, unless otherwise permitted by the Commission.

(d) This section is not applicable under circumstances when a person is charged with violating another statute or regulation involving deer or furbearers. This section may not be used nor will it be accepted as a defense in a legal proceeding involving these cases.

(e) This section may not be construed in any manner to limit lawful possession of furbearers under § 147.141 (relating to sale of wildlife and wildlife parts).]

(a) *Consumption permit.* The Commission, in its sole discretion, may issue a consumption permit to a resident of this Commonwealth to authorize the possession and consumption of the edible portions of any game or wildlife carcass. A permit issued under this subsection will be valid for a period not to exceed 120 days from the date of issuance. The whole or any part of any game or wildlife possessed under this subsection may not be transferred to another person nor may any edible portion be removed from the possessor's place of residence for any purpose other than processing. Inedible portions of any game or wildlife possessed under this subsection shall be surrendered to the Commission or disposed of in a manner directed by the Commission.

(1) *General procedures.* Except as otherwise provided in paragraph (2), a person shall contact the

Commission to obtain a paper consumption permit prior to taking possession of the carcass of any game or wildlife.

(2) *Special procedures for deer and turkey accidentally killed by a motor vehicle.* A person is authorized to take immediate possession of the carcass of a deer or turkey evidently killed accidentally by a motor vehicle and transport it to a place of safekeeping within this Commonwealth. A person taking possession of a deer or turkey carcass under this paragraph shall contact the Commission to obtain a permit number within 24 hours after having taken possession of the deer or turkey carcass. The issued permit number itself shall be considered a valid permit for the purposes of authorizing the continued possession of the edible portions of the deer or turkey carcass.

(b) *Furbearing species accidentally killed by a motor vehicle.* A person holding a valid Pennsylvania furtaker's license is authorized to take immediate possession of and utilize the edible and inedible portions of any furbearer, except river otters, bobcats and fishers, evidently killed accidentally by a motor vehicle. Any person taking possession of any furbearer under this subsection during the closed season for the taking of same shall contact the Commission to make notification of the possession within 24 hours.

(c) *Unlawful acts.* It is unlawful to:

(1) Possess the whole or any part of any wildlife without receiving any required permit, making any required notification or meeting any applicable eligibility standards within any applicable time restrictions.

(2) Fail to surrender the inedible portions of any game or wildlife possessed under the authorizations of subsection (a) to the Commission or to dispose of the same in the manner directed by the Commission.

(3) Violate other provisions of this section.

(d) *Inapplicability.* This section does not limit the lawful possession of the whole or any part of any wildlife that is otherwise authorized by § 147.141 (relating to the sale of wildlife and wildlife parts).

[Pa.B. Doc. No. 09-1027. Filed for public inspection June 5, 2009, 9:00 a.m.]