

PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 117]

Return and Payment of Tax

The Department of Revenue (Department), under section 354 of the Tax Reform Code of 1971 (72 P. S. § 7354), proposes to amend § 117.9 (relating to form of return) and add §§ 117.9b and 117.9c (relating to consistent positions; and execution of return by Secretary of Revenue) to read as set forth in Annex A.

Purpose of Proposed Rulemaking

This proposed rulemaking clarifies the Department's policy on the form of return taxpayers are required to submit for Pennsylvania Personal Income Tax. In addition, the proposed rulemaking provides clear instructions for taxpayers regarding reporting requirements.

Explanation of Regulatory Requirements

Amendments to § 117.9 and proposed §§ 117.9b and 117.9c reflect the Department's policy regarding the form of Pennsylvania Personal Income Tax returns. These amendments provide uniformity and guidance to taxpayers in this Commonwealth.

Affected Parties

Taxpayers and tax practitioners in this Commonwealth may be affected by the proposed rulemaking.

Fiscal Impact

The Department determined that the proposed rulemaking will have minimal fiscal impact on the Commonwealth.

Paperwork

The proposed rulemaking will not create additional paperwork for the public or the Commonwealth.

Effectiveness and Sunset Dates

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. The regulations are scheduled for review within 5 years of final publication. No sunset date has been assigned.

Contact Person

Interested persons are invited to submit in writing comments, suggestions or objections regarding the proposed rulemaking to Mary R. Sprunk, Office of Chief Counsel, Department of Revenue, P. O. Box 281061, Harrisburg, PA 17128-1061 within 30 days after the date of the publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 26, 2010, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the House Committee on Finance and the Senate Committee on Finance. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the

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

C. DANIEL HASSELL,
Secretary

Fiscal Note: 15-449. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE V. PERSONAL INCOME TAX

CHAPTER 117. RETURN AND PAYMENT OF TAX

§ 117.9. Form of return.

(a) **Required form.** A return of tax must be in processible form. To be in processible form, a return must satisfy each of the following requirements:

(1) It shall be filed on the form prescribed by instructions of the Department or transmitted electronically or telephonically in a manner authorized by the Department in instructions.

(2) The taxpayer's name, filing status, postal address and taxpayer identification number must be set forth in the form or transmittal.

(3) The form or transmittal must show, for the reportable period, the self-assessed amounts of the taxpayer's income by class and tax liability before credits and payments and contain the required information (whether on the return or on required attachments or return schedules) sufficient to permit the mathematical verification of the liability.

(4) The form or transmittal shall be verified by a signed declaration that the taxpayer, to the best of the taxpayer's knowledge and belief, believes the information submitted thereon to be true, correct and complete.

(5) The form or transmittal, on its face, must plausibly purport to be in compliance with the tax laws of the Commonwealth and to show an honest and genuine attempt to satisfy the laws.

(6) The form or transmittal may not contain information that, on its face, indicates that:

(i) The self-assessment is substantially incorrect.

(ii) Information required by the form or transmittal or on a required attachment or return schedule has been omitted.

(iii) A required attachment, notice or schedule has been omitted.

(b) **Filing processible returns.** The filing of a processible return is required to:

(1) Commence the running of the statute of limitations for the assessment of the tax shown as due on the return or the assessment of a deficiency.

(2) Commence the running of interest on overpayments of tax showing on the return.

(3) Obtain credit or refund of the overpayment showing on the return under section 347 of the Tax Reform Code of 1971 (72 P. S. § 7347).

(c) *Request for forms.* [Persons filing returns should use the envelopes and preaddressed prescribed forms furnished to them by the Department.] A taxpayer [shall] will not be excused from making a return [, however,] by the fact that no return form has been furnished to him or the one that was furnished becomes lost or damaged. Taxpayers not supplied with or in possession of the proper form should [make application therefor] apply therefore to the Department listing their name, address, and identification number and sending [such] the request to the Department of Revenue [, the Personal Income Tax Bureau, Harrisburg, Pennsylvania 17127]. The application must be made in the manner prescribed by instructions of the Department in effect at the time of application. [Such] The request should be made in ample time to have their returns prepared, certified [,] and filed on or before the due date. [Each taxpayer should carefully prepare his return and set forth fully and clearly the information required to be included therein. Returns which have not been so prepared will not be accepted as meeting the requirements of this article.]

(d) *Incomplete forms or transmittals.* Except as provided in subsection (e), an incomplete form or transmittal will be treated as filed only when it is completed.

(e) *Exception.* Required details as to a particular item of gross income or deduction may be omitted only if the taxpayer attaches a statement that he is under investigation and can validly assert that the details might incriminate the taxpayer.

(f) *Partners and Pennsylvania S corporation shareholders.* If a complete partnership or Pennsylvania S corporation return of income for the enterprise's taxable year ending with or within a partner's or shareholder's taxable year has not been filed with the Department, a copy of the Pennsylvania Schedule RK-1 "Resident Shareholder's Share of Income, Loss and Credits" or NRK-1 "Nonresident Shareholder's Share of Income, Loss and Credits" furnished to the partner by the partnership and the Federal Schedule K-1 "Shareholder's Share of Income, Deductions, Credits, etc." furnished to the partner by the partnership or Pennsylvania Schedule RK-1 or NRK-1 furnished to the partner by the Pennsylvania S corporation and Federal Schedule K-1 furnished to the partner by the Pennsylvania S corporation respectively is a required attachment for purposes of this section.

(g) *Notice.* Promptly after the date of a determination by the Department that an incomplete or otherwise nonprocessable return has been filed, the Department will supply the taxpayer with a written statement setting forth in reasonable detail the basis of its determination.

(h) *Deductions, losses or credits.* A taxpayer who fails or refuses to make a required processible return or who makes a false or fraudulent return shall be presumed to have failed to have main-

tained adequate records to substantiate any amount of deduction, loss or credit.

§ 117.9b. Consistent positions.

(a) *In general.* A taxpayer shall take consistent positions with respect to the facts asserted in a prior taxable year. For example, a taxpayer may not treat the receipt of cash as a loan while the statute of limitations is open and declare it to be a dividend once the statute expires.

(b) *Partners and Pennsylvania S corporation shareholders.* Partners of partnerships and shareholders of Pennsylvania S corporations shall report each partnership or Pennsylvania S corporation item consistently with the way it is reported on the entity's return under this article, unless it is reported incorrectly and the Department and the partnership are notified of the correction.

§ 117.9c. Execution of return by Secretary of Revenue.

(a) *Authority of Secretary to make and subscribe return.* If a person fails to make a required processible return at the time prescribed therefore, or makes, willfully or otherwise, a false or fraudulent return, the Secretary or deputy may make the return from his own knowledge and from information obtained through testimony or otherwise.

(b) *Status of return.* A return so made and subscribed shall be prima facie good and sufficient for all legal purposes.

[Pa.B. Doc. No. 10-1083. Filed for public inspection June 11, 2010, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 141]

Hunting and Trapping; Protective Material Required

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 20, 2010, meeting, proposed to amend § 141.20 (relating to protective material required). This proposed rulemaking eliminates the voluntary posting of protective material outside of manufactured blinds allowance. In the alternative, the proposed rulemaking requires that hunters hunting during any firearms season for deer, elk or bear post a minimum of 100 square inches of daylight fluorescent orange-colored material within 15 feet of a blind meeting the requirements in section 2308(b)(3) of the code (relating to unlawful devices and methods) in a manner that is visible within a 360° arc in addition to requirement of the wearing of protective material on their persons.

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 20, 2010, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until June 23, 2010.

1. Purpose and Authority

At its April 18, 2007, Commission meeting, the Commission adopted amendments to § 141.20 that permitted the posting of protective material within 15 feet of a blind meeting the requirements in section 2308(b)(3) of the code instead of wearing the required protective material on their person while hunting during any firearms season for deer, elk or bear. These amendments were made in response to concerns raised by hunters regarding the then current requirement that protective material be worn only on their person inside a manufactured blind where its visual effectiveness is severely diminished. This requirement did not afford adequate safety for hunters. Upon further reflection of this issue, the Commission determined that a mandatory posting of protective material outside a manufactured blind for hunters who choose to utilize them while hunting during any firearms season for deer, elk or bear will better protect their safety rather than the current voluntary alternative. To this end, the Commission is proposing to amend § 141.20 to eliminate the voluntary posting of protective material outside of manufactured blinds allowance and in the alternative require that hunters hunting during any firearms season for deer, elk or bear post a minimum of 100 square inches of daylight fluorescent orange-colored material within 15 feet of a blind meeting the requirements of section 2308(b)(3) of the code in a manner that is visible within a 360° arc in addition to requirement of the wearing of protective material on their persons.

Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 141.20 were proposed under this authority.

2. Regulatory Requirements

The proposed rulemaking amends § 141.20 to eliminate the voluntary posting of protective material outside of manufactured blinds allowance and in the alternative require that hunters hunting during any firearms season for deer, elk or bear post a minimum of 100 square inches of daylight fluorescent orange-colored material within 15 feet of a blind meeting the requirements in section 2308(b)(3) of the code in a manner that is visible within a 360° arc in addition to requirement of the wearing of protective material on their persons.

3. Persons Affected

Persons wishing to hunt during any firearms season for deer, elk or bear from a blind meeting the requirements in section 2308(b)(3) of the code will be affected by the proposed rulemaking.

4. Cost and Paperwork Requirements

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

5. Effective Date

The proposed rulemaking will be effective upon final-form 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 R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,
Executive Director

Fiscal Note: 48-308. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART III. GAME COMMISSION
CHAPTER 141. HUNTING AND TRAPPING
Subchapter A. GENERAL

§ 141.20. Protective material required.

(a) The following requirements apply:

(1) General. Except as otherwise provided in subsection (b), it is unlawful to hunt or assist to hunt game or wildlife or move to or from a hunting location, from 1 hour before legal hunting hours to 1 hour after legal hunting hours outside of a motorized vehicle, at any time without wearing a minimum of 250 square inches of daylight fluorescent orange-colored material on the head, chest and back combined so that it is visible in a 360° arc. This shall include going to or from a hunting location before or after legal shooting hours. Except as provided in subsection (b)(2) and (3), camouflage orange clothing is lawful provided it contains the minimum amount of fluorescent orange-colored material.

(2) Additional requirements. It is unlawful to hunt during any firearms season for deer, elk or bear from any blind meeting the requirements in section 2308(b)(3) of the act (relating to unlawful devices and methods) without placing a minimum of 100 square inches of daylight fluorescent orange-colored material within 15 feet from the blind so it is visible in a 360° arc.

(b) Permitted acts. It is lawful to:

* * * * *

[(5) Hunt during any firearms season for deer, elk or bear from any blind meeting the requirements in section 2308(b)(3) of the act and, in lieu of wearing the required 250 square inches of daylight fluorescent orange-colored material on the head, chest and back combined, place a minimum of 100 square inches of daylight fluorescent orange-colored material within 15 feet from the blind in a manner that it is visible in a 360° arc.]

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[Pa.B. Doc. No. 10-1084. Filed for public inspection June 11, 2010, 9:00 a.m.]

[58 PA. CODE CH. 141]
Hunting and Trapping; Wild Pheasant Recovery Areas

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 20, 2010, meeting, proposed to amend § 141.28 (relating to wild pheasant recovery areas) to create and define the geographic location of the Hegins-Gratz Valley

wild pheasant recovery area (WPRAs) and prohibit the hunting of small game from the first Sunday in February through July 1st within areas designated as WPRAs.

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 20, 2010, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until June 23, 2010.

1. *Purpose and Authority*

The Ring-necked Pheasant Management Plan calls for restoring self-sustaining and huntable ring-necked pheasant populations in suitable habitats by establishing at least four WPRAs by 2015. Wild-trapped pheasants will be released in WPRAs in an effort to establish populations of at least ten hens per square mile in the spring, while WPRAs will remain closed to game farm pheasant stocking, pheasant hunting and dog training activities. Small game hunting within WPRAs will also be restricted during critical periods during the population establishment phase. Three WPRAs were listed in 2009 and one additional area, the Hegins-Gratz Valley WPRAs, is proposed at this time to prepare for pheasant releases in 2011.

Section 322(c)(4) of the code (relating to powers and duties of commission) specifically authorizes the Commission to "Define geographic limitations or restrictions." Section 2102(c) of the code (relating to regulations) directs that "The commission shall promulgate regulations concerning the transportation, introduction into the wild, importation, exportation, sale, offering for sale or purchase of game or wildlife or the disturbing of game or wildlife in their natural habitat." Section 2102(a) of the code provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 141.28 were proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking amends § 141.28 to create and define the geographic location of the Hegins-Gratz Valley WPRAs and prohibits the hunting of small game from the first Sunday in February through July 1st within areas designated as WPRAs.

3. *Persons Affected*

Persons wishing to hunt wild pheasants, release propagated pheasants, train dogs or hunt small game within areas designated as WPRAs may be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

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

5. *Effective Date*

The proposed rulemaking will be effective upon final-form 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 R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,
Executive Director

Fiscal Note: 48-307. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter B. SMALL GAME

§ 141.28. Wild pheasant recovery areas.

(a) *Definition.* For the purpose of this section, the phrase "wild pheasant recovery area" (WPRAs) includes and is limited to the following geographic locations.

* * * * *

(4) *Hegins-Gratz Valley WPRAs.* That portion of WMU 4E in Schuylkill and Dauphin Counties from Matterstown Road (Rt. 1007) to PA Rt. 901 at Taylorsville. The WPRAs is bounded on the north by the Mahantango Creek. Beginning at the town of Pillow in Dauphin County, proceeding east on Market Street (Rt. 1026) to the Mahantango Creek, which is the Northumberland and Dauphin County border until entering Schuylkill County at Klingerstown. Continuing northeast along the Mahantango Creek in Schuylkill County to Taylorsville Road (Rt. 4039) at Haas, to Taylorsville and then proceeding south on PA Rt. 901. Proceeding south and southeast on PA Rt. 901 to I-81. Proceeding southwest on I-81 and then west on PA Rt. 25, then from PA Rt. 25, proceeding south and west on Dell Road and then northwest and west on Pine Drive (State Hwy. 4009), continuing west on Pine Drive, T593 and north on T592 to Pine Creek. The southern boundary then follows Pine Creek west along the northern side of Broad Mountain to Spring Glen. From Spring Glen, continuing west on PA Rt. 25, crossing into Dauphin County to Gratz, then proceeding southwest from Gratz on Specktown Road (State Hwy. 1014) to South Crossroads Road (PA Rt. 1009). Proceeding south on South Crossroads Road (PA Rt. 1009) to PA Rt. 209 and southwest to Elizabethville. From Elizabethville continue west on Main Street (PA Rt. 209), then turn north onto Botts Road (T462). At the first intersection, turn north onto Feidt Road (T461), then turn east onto West Matterstown Road (Rt. 4008), turn north onto Matterstown Road (Rt. 1007). Turn right or east onto Berrysburg Road (PA Rt. 25) which turns into Market St. Turn left or north onto Lykens St. Turn right or east onto Mountain Road (T639). Turn left or north on PA Rt. 225 into Pillow on PA Rt. 225, ending at Market St. (Rt. 1026).

(b) *Prohibitions.* It is unlawful to:

* * * * *

(2) Train dogs in any manner or hunt small game from [the end of small game season] the first Sunday in February through July 31 within any area designated as a [wild pheasant recovery area] WPRA.

[Pa.B. Doc. No. 10-1085. Filed for public inspection June 11, 2010, 9:00 a.m.]

[58 PA. CODE CH. 131]

Preliminary Provisions; Disclosure of Certain Records

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 20, 2010, meeting, proposed to add § 131.9 (relating to disclosure of certain records) to establish and define the manner that the Commission will respond to certain types of record requests.

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 20, 2010, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until June 23, 2010.

1. *Purpose and Authority*

It is the duty of the Commission to propagate, manage and preserve the game or wildlife of this Commonwealth. To effectively manage the wildlife resources of this Commonwealth, the Commission participates in various reviews for development projects across this Commonwealth. The two most common types of records and reviews are those collected under the Voluntary Wind Power Cooperative Agreements and those collected through the screening process with the Pennsylvania Natural Heritage Program. While some records may overlap, these are two distinct bodies of records. Many times the information gathered and shared is with regard to threatened and endangered species and even more often the information is with regard to species of special concern and greatest conservation need. In many cases, it is developed by developers themselves and is proprietary with regard to the site, the protocol and the findings. In all cases, information gathered and shared during these reviews is necessary to formulate policy and recommendations regarding policy and actions, including regulations and decisions about legal actions with regard to various types of development. In addition, the Commission keeps records regarding hunting and furtaking licenses to effectively manage the wildlife resources of this Commonwealth. Finally, many records contain personal identifying information which is necessary to predeliberative action, proprietary or the disclosure of which carries substantial and demonstrable risk of physical harm.

The Commonwealth established the Right-to-Know Law (act) (65 P. S. §§ 67.101—67.3104), effective January 1, 2009. Under the act, the definition of “public record” has changed and the list of exemptions to disclosure has grown. Under the prior law, documents regarding reviews would not have been of the kind or character to be a public record; under the act, they would be classified as public record. In addition, hunting and furtaking license

records were specifically exempt from disclosure by section 325 of the code (relating to limitation on disclosure of certain records). However, with the passage of the act, questions have again arisen with regard to these two classes of sensitive information. To clarify for Commission staff and the public how the act will be implemented with regard to the classes of records indicated as those collected for review and those regarding hunting and furtaking licenses, the Commission is proposing to add § 131.9.

Section 2722(g) of the code (relating to authorized license-issuing agents) directs the Commission to adopt regulations for the administration, control and performance of license issuing activities. Section 2102(a) of the code (relating to regulations) 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 addition of § 131.9 is proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking adds § 131.9 to establish and define the manner that the Commission will respond to certain types of record requests.

3. *Persons Affected*

Persons seeking wind power records, Pennsylvania Natural Heritage Program records or recreational license records from the Commission may be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

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

5. *Effective Date*

The proposed rulemaking will be effective upon final-form 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 R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,
Executive Director

Fiscal Note: 48-306. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 131. PRELIMINARY PROVISIONS

§ 131.9. Disclosure of certain records.

In accordance with the Right-to-Know Law (65 P. S. §§ 67.101—67.3104), public access to the following records, wherever located, will only be made as set forth in paragraphs (1)—(3):

(1) *Wind power records.* Commission annual reports and Pennsylvania Natural Heritage Program clearance correspondence respecting existing or proposed windpower facilities will be provided upon request, but redacted as necessary. All other records are predeliberative, proprietary or tending to identify the location of threatened or endangered species and will not be disclosed.

(2) *Pennsylvania Natural Heritage Program records.* Pennsylvania Natural Heritage Program clearance correspondence will be provided upon request, but redacted as necessary. All other records are predeliberative, proprietary or tending to identify the location of threatened or endangered species and will not be disclosed.

(3) *License records.* All annual accounts of license sales, all fiscal reports of license sales revenues and all summary wildlife harvest report records will be provided upon request. Under the limitations of section 325 of the act (relating to limitation on disclosure of certain records), individual license information or related harvest information will not be disclosed.

(4) *Personal identifying information.* Any request, the response to which includes personal identifying information will be redacted so as to only provide that information necessary to identify the person to the Commission. Personal identifying information will not be disclosed as predeliberative, proprietary or tending to result in a substantial and demonstrable risk of physical harm to the person or the personal security of an individual and will not be disclosed without due process of law authorizing and ordering the disclosure.

[Pa.B. Doc. No. 10-1086. Filed for public inspection June 11, 2010, 9:00 a.m.]

MILK MARKETING BOARD

[7 PA. CODE CH. 143]

Transactions Between Dealers and Producers

The Milk Marketing Board (Board) proposes to add § 143.29 (relating to weighing and sampling of direct load milk) and to amend § 143.46 (relating to producer receipt for farm bulk milk) to read as set forth in Annex A.

Purpose of Proposed Rulemaking

The purpose of this proposed rulemaking is to establish regulations governing the weighing and sampling of milk when it is loaded directly from the milking parlor or milkhouse on a dairy farm into a movable bulk milk tanker for transportation. Most milk produced on dairy farms in this Commonwealth is pumped into bulk tanks on the farm for cooling and storage and is picked up every day or every other day and loaded onto bulk milk tankers for transport to the processor. Current Board regulations establish procedures to ensure accurate weighing and sampling of this milk for purposes of payment to producers and require a receipt for the milk to be left with the producer at the time of pickup. While the number of dairy herds in this Commonwealth is decreasing, the average size of dairy herds in this Commonwealth is increasing. Many dairy herds in this Commonwealth produce enough milk to fill a semitrailer bulk milk tanker in 24 hours or less. In these cases, it is more efficient and cost effective to rapidly cool the milk and pump it directly onto a bulk milk tanker rather than storing the milk in a bulk tank for later pickup and

transport. The existing regulations rely upon bulk tank calibration charts to determine the volume of milk and require agitation by means of the bulk tank agitator prior to sampling of milk in a stationary onfarm bulk tank and, therefore, will not work for milk loaded directly into mobile bulk tankers. Currently there are several farms in this Commonwealth direct-loading their milk, using a variety of methods for weighing and sampling that milk. The proposed rulemaking establishes uniform procedures to ensure the accurate weighing and sampling of this milk and will also amend the requirements for the producer's receipt for direct load milk.

Summary of Proposed Rulemaking

Proposed § 143.29 defines "direct load milk" as "[p]roducer milk that is loaded directly from the farm milking parlor into a bulk milk tanker and is not weighed or sampled, or both, by means of an onfarm bulk tank." The proposed rulemaking provides the following: (1) allows for weighing of direct load milk either by scales or by means of a mass flow meter and sets out the procedures that shall be followed for each method to ensure accuracy; (2) establishes procedures for sampling of milk, including proper agitation before sampling to ensure a representative sample is obtained; and (3) allows the Board to approve other methods of weighing/measuring, agitation and sampling of direct load milk on a case-by-case basis.

The proposed rulemaking adds § 143.46(c), which requires additional information pertaining to the method of weighing and sampling to be included on the producer's receipt. This proposed subsection also relaxes the requirement that the receipt be left at the farm at the time of pick-up, since in many cases the milk will not be weighed or sampled before leaving the farm.

Statutory Authority

Section 307 of the Milk Marketing Law (act) (31 P. S. § 700j-307) provides the Board with the authority to adopt and enforce regulations necessary or appropriate to carry out the provisions of the act.

Public Hearing

On December 15, 2004, the Board, after due notice, conducted a public hearing to receive comments on the proposed rulemaking. Among the attendees were representatives of the Department of Agriculture's Bureau of Ride and Measurement Standards and the Division of Milk Sanitation, milk sanitarians from this Commonwealth, milk marketing cooperatives, the Pennsylvania Farm Bureau and Board staff. As a result of the discussion and comments at that public hearing, the proposed rulemaking was drafted and circulated among the attendees to receive further comment. The proposed rulemaking was further revised as a result of that process. Board staff then conducted onfarm visits with several producers in this Commonwealth who are already direct-loading their milk for transport. Staff observed the procedures currently being used on these farms and received comments from these producers regarding the proposed rulemaking. Based upon these observations and discussions, a final draft was prepared and circulated among the interested parties, including the producers, for their review. The proposed rulemaking is the result of the foregoing process.

Fiscal Impact

The proposed rulemaking will have no fiscal impact on the majority of dairy producers who still store milk in bulk tanks on the buyers or haulers of that milk. The proposed rulemaking should not have a negative fiscal

impact on those few producers, haulers, weighers/samplers or dealers who will be affected by the regulations. These affected persons may see a positive fiscal impact in the form of time savings and increased efficiency by being able to eliminate the step of pumping milk from bulk tanks into tankers for transport.

Paperwork Requirements

The proposed rulemaking requires additional information pertaining to the method of weighing and sampling to be included on the producer's receipt for milk picked up from farms, but relaxes the requirement that the receipt be left at the farm at the time of pick-up.

Effective and Sunset Dates

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. There is not a sunset date.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 27, 2010, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the House and Senate Committees on Agriculture and Rural Affairs. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections concerning the proposed rulemaking to the Chief Counsel, Milk Marketing Board, 2301 North Cameron Street, Harrisburg, PA 17110 within 30 days following publication in the *Pennsylvania Bulletin*.

RICHARD KRIEBEL,
Chairperson

Fiscal Note: 47-14. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART VI. MILK MARKETING BOARD

CHAPTER 143. TRANSACTIONS BETWEEN DEALERS AND PRODUCERS

TESTING

(Editor's Note: The following section is new and printed in regular type to enhance readability.)

§ 143.29. Weighing and sampling of direct load milk.

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

Bulk milk tanker or tanker—

(i) A mobile bulk container used to transport milk or fluid milk products in bulk from a dairy farm, or to or from a dairy processing plant which is designed to be towed by a motor vehicle.

(ii) The term includes equipment and accessories related to the mobile bulk container.

*Bureau—*The Bureau of Ride and Measurement Standards, of the Department.

*Department—*The Department of Agriculture of the Commonwealth.

*Direct load milk—*Producer milk that is loaded directly from the farm milking parlor into a bulk milk tanker and is not weighed or sampled, or both, by means of an onfarm bulk tank.

*Milk Sanitation Division—*The Bureau of Food Safety and Laboratory Services, Milk Sanitation Division, of the Department.

(b) *General.*

(1) For purposes of payment to producers, direct load milk shall be weighed and sampled in accordance with the provisions of this section.

(2) Sampling and weighing of direct load milk shall take place as close as practicable to the farm and shall take place in this Commonwealth or in a state with a reciprocal agreement for recognition of direct load weighing and sampling methods.

(3) An in-line temperature recorder and indicating thermometer must be located between the chiller and the bulk milk tanker to record the temperature of the milk.

(4) Direct load milk shall be weighed and sampled by a weigher/sampler certified by the Board for direct load milk pickup.

(5) This section does not replace or supersede the requirements, standards and procedures for weighing and sampling of milk established by the Bureau or the Milk Sanitation Division.

(c) *Weighing.* Direct load milk weight shall be established by type-approved scales of appropriate size and location, tested and approved by the Bureau or by a mass flow meter certified to be in compliance with National Institute of Standards Technology Handbook 44 and tested and approved by the Bureau.

(1) *Weighing by scales.*

(i) Scale weight shall be certified by a person licensed as a public weighmaster by the Bureau.

(ii) Snow, ice, mud and other debris shall be removed from the bulk milk tanker before weighing on scales.

(iii) Weighing methods must comply with 3 Pa.C.S. Chapter 41 (relating to Consolidated Weights and Measures Act).

(iv) The weighmaster shall complete and provide to the weigher/sampler, at the time of weighing, a weigh slip approved by the Bureau. Weigh slips with the weighmaster's license number shall be deemed to be completed by the weighmaster, in accordance with 3 Pa.C.S. § 4153 (relating to preparation of weighmaster's certificate).

(A) A licensed public weighmaster may not enter on a weighmaster's certificate issued by the weighmaster weight values which the weighmaster has not personally determined. The weighmaster may not make entries on a weighmaster's certificate issued by another person.

(B) A weighmaster's certificate shall be prepared to show clearly what weights were actually determined.

(C) If the certificate form provides for the entry of gross, tare and net weights in any case in which only the gross, the tare or the net weight is determined by the weighmaster, the weighmaster shall strike through or otherwise cancel the printed entries for the weights not determined or computed.

(D) If gross and tare weights are shown on a weighmaster's certificate and both of these were not determined on the same scale and on the day for which the certificate is dated, the weighmaster shall identify on the certificate the scale used for determining each weight and the date of each determination.

(v) A standard empty weight may be established for a tanker that is regularly used to haul direct load milk from a producer.

(A) The standard empty weight shall be established at least every month.

(B) The producer shall maintain a record for each tanker. A copy of the record shall be kept with each tanker and available on demand with the following information:

(I) The tanker serial number.

(II) The manufacturer's rated capacity of the tanker.

(III) The date the tanker was put into service hauling direct load milk of the producer.

(IV) The date and location of the scale where the standard empty weight was last established

(V) Whether the tanker was equipped with a spare tire when the standard empty weight was last established.

(C) After the standard empty weight is established, the tanker must be equipped with the same spare tire, or not be equipped with a spare tire, whichever was the case when the standard empty weight was last established.

(D) If tires are changed, maintenance is performed that may affect the weight of the tanker or other equipment or utensils are attached to the tanker, the standard empty weight of the tanker must be established before the tanker is placed back into service.

(vi) A tanker for which a standard empty weight has not been established shall be weighed before each loading.

(A) The empty tanker weight may be established by unhooking the tanker on the scales and weighing the tanker alone.

(B) A tractor and empty tanker combination may be weighed together if either of the following occur:

(I) The tractor and tanker will remain coupled until after the milk is loaded onto the tanker at the farm and the tractor and loaded tanker combination is reweighed.

(II) The tractor and loaded tanker combination is weighed at or near a dairy in this Commonwealth before unloading at the dairy, and the tractor and empty tanker combination is reweighed after unloading at or near the dairy where unloaded.

(vii) To establish milk weight, subtract the weight of the empty tanker or combination from the weight of the loaded tanker or combination.

(A) The loaded tanker weight may be established by unhooking the tanker on the scales and weighing the tanker alone.

(B) If a loaded tanker will not be unhooked from the tractor when weighing the loaded tanker, the weight of the tractor shall be established independently before hooking on to the loaded tanker. The tractor weight shall be added to the empty weight of the tanker to establish the empty weight of the combination.

(viii) When a tractor is weighed, either alone or in combination with an empty or loaded tanker, the weigher/sampler shall account for the weight of the fuel as follows:

(A) If the tractor has traveled 15 miles or more between weighing empty and weighing loaded, the weigher/sampler shall account for the weight of the fuel consumed by subtracting 20 pounds from the empty weight of the tractor for every 15 miles traveled.

(B) If the tractor has been refueled between weighing empty and weighing loaded, the weigher/sampler shall account for the additional weight of the fuel by adding 7.15 pounds to the weight of the tractor for every gallon of fuel added.

(2) *Meter weight.*

(i) Only a food grade, 3-A approved, volumetric flow meter capable of direct pound computations approved by the Board and by the Milk Sanitation Division may be used for establishing milk weight.

(ii) A meter shall be installed by an installer or repair person registered by the Bureau.

(iii) Meters must be National Type Evaluation Program approved, tested and approved by the Bureau and certified for custody transfer.

(iv) The Bureau will annually inspect, test and approve these meters.

(v) The meter shall be positioned at a stationary point between the chiller and the milk tanker.

(vi) The weigher/sampler shall permanently record on paper:

(A) The manufacturer's rated capacity of the tanker.

(B) The date and time the milk tanker began and ended filling.

(C) The meter weight of the milk that entered the milk tanker.

(D) The date that the meter was last verified for accuracy.

(3) *Other weighing or measuring devices, or both.* Other weighing or measuring devices, or both, may be approved on a case-by-case basis by the Bureau and the Board.

(d) *Sampling.*

(1) Samples must comply with §§ 143.23, 143.26 and 143.27 (relating to quantity of sample; refrigeration of samples; and transportation of samples).

(2) Samples shall only be taken after agitation sufficient to ensure that the milk is in a homogenous condition by one of the following methods:

(i) *In-tanker agitation.*

(A) Agitation by a mechanical device placed inside the tanker may be used if the agitation method and equipment are approved by the Board.

(B) Sampling takes place immediately when the agitator is turned off.

(ii) *Over-the-road agitation.*

(A) Agitation by the normal movement of the milk inside the tanker during transport over the road may be used only when the tanker is filled to no more than 97% of the tanker manufacturer's rated volumetric capacity.

(B) A sensor, metering device or other measurement strategy, coupled with an automatic shut-off or alarm system, shall be used to ensure that the tanker is filled to not more than 97% of its rated capacity.

(C) Agitation must take place in not less than a 3-mile trip during which at least three stops and starts shall have occurred.

(D) Sampling shall take place without delay, but less than 5 minutes after the tanker has stopped, and the sample shall be taken from the hatch in accordance with the guidelines of the Milk Sanitation Division.

(iii) *Other agitation methods.* Other agitation methods, such as air agitation, may be used if the agitation method has been certified as effective in at least five repeatable trials and if the method is approved by the Milk Sanitation Division. The Board will provide testing and certification of other agitation methods on a case-by-case basis.

(3) *Other sampling methods.* Other sampling methods, including in-line sampling devices, may be approved by the Board on a case-by-case basis.

MISCELLANEOUS PROVISIONS

§ 143.46. Producer receipt for farm bulk milk.

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(c) For direct load milk weighed and sampled under § 143.29 (relating to weighing and sampling of direct load milk), the following provisions apply:

(1) In addition to the information required in subsection (a), the bill of lading or similar document must also contain:

(i) When milk weight is established by scales, a copy of the weigh slip required under § 143.29(c)(1)(iv).

(ii) When milk weight is established by a flow meter, a copy of the information required under § 143.29(c)(2)(vi).

(iii) The method of sampling.

(iv) The method of agitation, if applicable.

(2) If weighing and sampling was done at the farm, the information shall be left with the producer at the time of pick-up. If weighing or sampling was done at a distant location, the information shall be provided to the producer within 24 hours of pick-up, or at the time the next tanker is picked up, whichever is earlier.

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