

# PROPOSED RULEMAKINGS

## FISH AND BOAT COMMISSION

[ 58 PA. CODE CH. 65 ]

### Fishing; Special Fishing Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapter 65 (relating to special fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

#### A. *Effective Date*

The proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2014.

#### B. *Contact Person*

For further information on the proposed rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

#### C. *Statutory Authority*

The proposed amendment to § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of section 2307(a) of the code (relating to waters limited to specific purposes).

#### D. *Purpose and Background*

The proposed rulemaking is designed to enhance and update the Commission's fishing regulations. The specific purpose of the proposed amendment is described in more detail under the summary of proposal.

#### E. *Summary of Proposal*

Penns Creek, Section 03 (confluence of Elk Creek downstream to 600 meters downstream of Swift Run), was managed as a stocked trout fishery until 1992 when it was designated by the Commission as a Class A wild trout stream and the stocking of hatchery trout ceased. During 1993, landowner and angler surveys were conducted to help inform a management direction for this stream section. Based on the survey information gathered as well as biological data collected during 1991 and 1992, miscellaneous special regulations (later renamed all-tackle trophy trout under § 65.4a (relating to all-tackle trophy trout)) were developed for Section 03 and implemented on January 1, 1995. Section 03 has been managed as all-tackle trophy trout for the last 17 years (1995-2012). Commission fishery surveys conducted between 1995 and 2012 documented that the Penns Creek wild brown trout population responded positively since the stocking cessation and the implementation of all-tackle trophy trout regulations and has subsequently maintained itself at a high level over time in terms of both abundance and size structure.

During 2012, Commission staff conducted a review of the management of Penns Creek, Section 03. As a result of the assessment, there was internal support for evaluating whether the size structure of the wild brown trout population could be further enhanced by implementing a more restrictive angling regulation that would provide increased protection to the largest fish in the population. To obtain public feedback on a potential regulation

change, Commission staff contacted landowners with a letter and also conducted a public meeting on June 16, 2012, in Aaronsburg, PA.

To meet the Commission's objective of further improving the size structure of the wild brown trout population in Penns Creek, Section 03, so that the abundance of large fish in the population is maximized while also considering the public feedback received, the Commission proposes that this stream section be removed from the All-Tackle Trophy Trout Program under § 65.4a and a new harvest slot limit be established on an experimental basis. The Commission proposes that the regulation be established for a 7-year period from January 1, 2014, through December 31, 2020, during which time the trout population would be monitored to determine the effectiveness of the regulation at meeting biological and social objectives for the Penns Creek fishery. The new regulation would allow for the harvest of up to 2 trout per day that are at least 7 inches but less than 12 inches in length from the opening day of trout season through Labor Day and no harvest would be permitted for the remainder of the year. The Commission proposes that all tackle types be permitted.

Penns Creek provides a unique opportunity to evaluate a new special regulation on a productive limestone stream. The productive nature of Penns Creek provides ideal conditions to allow for a favorable response of the wild brown trout population to trend toward larger sizes than may be occurring under the current all-tackle trophy trout regulations, which may be limiting the abundance of larger trout and population size structure.

The Commission therefore proposes that § 65.24 be amended to read as set forth in Annex A.

#### F. *Paperwork*

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

#### G. *Fiscal Impact*

The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose new costs on the private sector or the general public.

#### H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/regcomments](http://www.fishandboat.com/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,  
*Executive Director*

**Fiscal Note:** 48A-240. No fiscal impact; (8) recommends adoption.

Annex A  
**TITLE 58. RECREATION**  
**PART II. FISH AND BOAT COMMISSION**  
**Subpart B. FISHING**  
**CHAPTER 65. SPECIAL FISHING REGULATIONS**

**§ 65.24. Miscellaneous special regulations.**

The following waters are subject to the following miscellaneous special regulations:

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
* * * * *		
<b>Centre and Mifflin</b>	<b>Penns Creek, from the confluence of Elk Creek downstream 7 miles to 600 meters downstream of Swift Run</b>	<p><b>Open to fishing year-round. All tackle types are permitted. From 8 a.m. on the first Saturday after April 11 through Labor Day—the daily creel limit for trout is 2 (combined species). Trout must be at least 7 inches but less than 12 inches in length to be killed or possessed.</b></p> <p><b>From the day after Labor Day until 8 a.m. on the first Saturday after April 11, no trout may be killed or possessed.</b></p> <p><b>Inland regulations apply to all other species.</b></p> <p><b>This miscellaneous special regulation will remain in effect until December 31, 2020.</b></p>
* * * * *		

[Pa.B. Doc. No. 13-656. Filed for public inspection April 12, 2013, 9:00 a.m.]

**[ 58 PA. CODE CH. 65 ]**  
**Fishing; Special Fishing Regulations**

The Fish and Boat Commission (Commission) proposes to amend Chapter 65 (relating to special fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

**A. Effective Date**

The proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication in the *Pennsylvania Bulletin*.

**B. Contact Person**

For further information on the proposed rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

**C. Statutory Authority**

The proposed amendments to § 65.24 (relating to miscellaneous special regulations) are published under the statutory authority of section 2307(a) of the code (relating to waters limited to specific purposes).

**D. Purpose and Background**

The proposed rulemaking is designed to enhance and update the Commission's fishing regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposal.

**E. Summary of Proposal**

At its October 2012 meeting, the Commission removed 45 waters from the Early Season Trout Stocked Waters program under § 65.10 (relating to Early Season Trout Stocked Waters Program) and re-designated them as approved trout waters open to year-round fishing under § 65.19 (relating to approved trout waters open to year-round fishing). Included in this action were the Shenango River (from the Shenango River Dam downstream 1.5 miles to SR 3025) and the Youghiogheny River (from the Youghiogheny Reservoir downstream to the confluence with the Casselman River). These two river sections are also currently regulated under miscellaneous special regulations under § 65.24. The language of these miscellaneous special regulations is consistent with § 65.10. Therefore, to be consistent with the Commission's prior action, the miscellaneous special regulations on these waters should be removed.

The Executive Director exercised his authority under § 65.25 (relating to temporary changes to fishing regulations) to remove these miscellaneous special regulations.

See 42 Pa.B. 7788 (December 22, 2012). These temporary modifications became effective on January 1, 2013, and will remain in effect until the Commission, by appropriate action, amends § 65.24.

The Commission therefore proposes that § 65.24 be amended as set forth in Annex A.

*F. Paperwork*

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

*G. Fiscal Impact*

The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose new costs on the private sector or the general public.

*H. Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rule-

making to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/regcomments](http://www.fishandboat.com/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,  
*Executive Director*

**Fiscal Note:** 48A-241. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart B. FISHING**

**CHAPTER 65. SPECIAL FISHING REGULATIONS**

**§ 65.24. Miscellaneous special regulations.**

The following waters are subject to the following miscellaneous special regulations:

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
* * * * *		
[ Mercer	Shenango River from the dam downstream to SR 3025, a distance of 1.5 miles.	Closed season on trout: April 1 until 8 a.m., first Saturday after April 11. Daily limit—First Saturday after April 11 until Labor Day: 5 trout per day; day after Labor Day to midnight, March 31 of the following year—3 trout per day. Inland regulations apply to warmwater/coolwater species. ]
* * * * *		
[ Somerset, Fayette, Westmoreland and Allegheny	Youghioghny River from Reservoir downstream to confluence with Casselman River.	Closed season on trout: April 1 until 8 a.m., first Saturday after April 11. Daily limit—First Saturday after April 11 until Labor Day—5 trout per day; day after Labor day to midnight, March 31 of following year: 3 trout per day. Inland regulations apply to warmwater/coolwater species. ]
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[Pa.B. Doc. No. 13-657. Filed for public inspection April 12, 2013, 9:00 a.m.]

# GAME COMMISSION

[ 58 PA. CODE CH. 143 ]

## Hunting and Furtaker Licenses; Hunter Education Training

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its January 29, 2013, meeting to amend § 143.12 (relating to hunter education training) to give the Director the authority to establish hunter education course registration fees or certificate replacement fees.

The proposed rulemaking will not have an 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 January 29, 2013, meeting of the Commission. Comments can be sent until April 12, 2013, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

*(Editor's Note: The Commission requested the comment due date in the previous paragraph.)*

### 1. Purpose and Authority

The proposed amendments provide for future hunter education program flexibility. These proposed amendments will enable implementation of planned improvements to the hunter education replacement training certificate process by providing for online fulfillment capabilities. This will result in a significant improvement to customer service. The Commission is proposing to amend § 143.12 to give the Director the authority to establish hunter education course registration fees and certificate replacement fees.

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 amendments to § 143.12 were proposed under this authority.

### 2. Regulatory Requirements

The proposed rulemaking will amend § 143.12 to give the Director the authority to establish hunter education course registration fees or certificate replacement fees.

### 3. Persons Affected

Persons wishing to participate in hunter education programs within this Commonwealth 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:** 48-353. No fiscal impact; (8) recommends adoption.

## Annex A

### TITLE 58. RECREATION

### PART III. GAME COMMISSION

### CHAPTER 143. HUNTING AND FURTAKER LICENSES

### Subchapter A. GENERAL

### § 143.12. Hunter education training.

\* \* \* \* \*

(b) *Training certificate.* The Commission will issue an appropriate certificate of training to each student who successfully completes an approved hunter education course. The Commission will issue a replacement hunter education training certificate to a person who provides sufficient affirmation or evidence of successful completion of that course of instruction. A [ \$10 ] **certificate replacement** fee shall be remitted by any person requesting a replacement hunter education training certificate.

(c) *Waiver.* The Director may waive any course registration fee required by this section when the waiver is determined to be consistent with the Commission's hunter education training program or the intent of the act.

(d) *Establishment of fees.* **The Director will establish the value of a course registration fee or certificate replacement fee required under this section.**

[Pa.B. Doc. No. 13-658. Filed for public inspection April 12, 2013, 9:00 a.m.]

## [ 58 PA. CODE CH. 139 ]

[ Correction ]

### Seasons and Bag Limits

Two errors occurred in the proposed rulemaking which appeared at 43 Pa.B. 1712, 1715 (March 30, 2013). In the preamble, the time period for incidental fisher captures in WMUs 3A, 3D and 4E was incorrect. In § 139.4 (relating to seasons and bag limits for the license year), the listing for "Deer, Archery (Antlered and Antlerless) WMUs 2B, 5C and 5D" was incomplete. The correct version of this text is as follows, with ellipses referring to the remaining text of the proposed rulemaking.



1. Purpose and Authority

\* \* \* \* \*

Concerning furbearer seasons, the Commission is proposing to increase the daily and season bag limit for beaver to 20 daily, 20 per season in WMUs 2C and 5C. Increases in nuisance complaints warrant this change which is consistent with the Beaver Management Plan. Also, the numbers and density of incidental fisher captures during the past 3 years in WMUs 3A, 3D and 4E are comparable to those observed in WMUs currently open to harvest and would warrant adding these WMUs to the list of WMUs with an established fisher trapping season.

\* \* \* \* \*

**Annex A**

**TITLE 58. RECREATION**

**PART III. GAME COMMISSION**

**CHAPTER 139. SEASONS AND BAG LIMITS**

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

**(SEASONS AND BAG LIMITS TABLE)**

**2013-2014 OPEN HUNTING AND FURTAKING SEASONS, DAILY LIMIT, FIELD POSSESSION LIMIT AND SEASON LIMIT OPEN SEASON INCLUDES FIRST AND LAST DATES LISTED**

\* \* \* \* \*

**WHITE-TAILED DEER**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Season Limit</i>
Deer, Archery (Antlered and Antlerless) <sup>2</sup> (Statewide)	Oct. 5 and Dec. 26	Nov. 16 and Jan. 11, 2014	One antlered and an antlerless deer with each required antlerless license.
Deer, Archery (Antlerless) WMUs 2B, 5C and 5D	Sept. 21 and Nov. 18	Oct. 4 and Nov. 30	An antlerless deer with each required antlerless license.
Deer, Archery (Antlered and Antlerless) <sup>2</sup> WMUs 2B, 5C and 5D	Jan. 13, 2014	Jan. 25, 2014	One antlered and an antlerless deer with each required antlerless license.
Deer, Regular firearms (Antlered and Antlerless) <sup>2</sup> WMUs 1A, 1B, 2B, 3A, 3D, 4A, 4C, 5A, 5B, 5C and 5D	Dec. 2	Dec. 14	One antlered, and an antlerless deer with each required antlerless license.
Deer, Regular firearms (Antlered only) <sup>2</sup> WMUs 2A, 2C, 2D, 2E, 2F, 2G, 3B, 3C, 4B, 4D and 4E	Dec. 2	Dec. 6	One antlered deer.
Deer, Regular firearms (Antlered and Antlerless) <sup>2</sup> WMUs 2A, 2C, 2D, 2E, 2F, 2G, 3B, 3C, 4B, 4D and 4E	Dec. 7	Dec. 14	One antlered, and an antlerless deer with each required antlerless license.
Deer, Special firearms (Antlerless only) (Statewide) Only Junior and Senior License Holders, <sup>3</sup> Commission Disabled Person Permit Holders (to use a vehicle as a blind), and Residents serving on active duty in the United States Armed Forces, or in the United States Coast Guard, with required antlerless license	Oct. 24	Oct. 26	An antlerless deer with each required antlerless license.
Deer, Muzzleloading (Antlerless only) (Statewide)	Oct. 19	Oct. 26	An antlerless deer with each required antlerless license.
Deer, Flintlock (Antlered or Antlerless) <sup>2</sup> (Statewide)	Dec. 26	Jan. 11, 2014	One antlered, or one antlerless-plus an additional antlerless deer with each required antlerless license.
Deer, Flintlock (Antlered or Antlerless) <sup>2</sup>	Dec. 26	Jan. 25, 2014	One antlered, or

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Season Limit</i>
WMUs 2B, 5C and 5D			one antlerless-plus an additional antlerless deer with each required antlerless license.
Deer, Extended Regular firearms (Antlerless) Allegheny, Bucks, Chester, Delaware, Montgomery and Philadelphia Counties	Dec. 26	Jan. 25, 2014	An antlerless deer with each required antlerless license.
Deer, Antlerless (Letterkenny Army Depot, Franklin County and New Cumberland Army Depot, York County and Fort Detrick, Raven Rock Site, Adams County)	Hunting is permitted on days established by the United States Department of the Army.		An antlerless deer with each required antlerless license.

\* \* \* \* \*

[Pa.B. Doc. No. 13-562. Filed for public inspection March 29, 2013, 9:00 a.m.]

[ 58 PA. CODE CH. 137 ]

**Wildlife; Feral Swine and Wild Boar Eradication**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its January 29, 2013, meeting to add § 137.35 (relating to feral swine and wild boar eradication) to remove protection for feral swine and wild boar Statewide, wherever found, and also to prohibit the importation, possession and release into the wild of feral swine and wild boar.

The proposed rulemaking will not have an 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 January 29, 2013, meeting of the Commission. Comments can be sent until April 12, 2013, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

(*Editor's Note:* The Commission requested the comment due date in the previous paragraph.)

1. *Purpose and Authority*

The Commission has determined that the complete eradication of feral swine and wild boar from the wild in this Commonwealth is necessary to prevent further harm to its natural resources, agricultural industry, forest products industry and threats to human health and safety. The Commission previously promulgated an Executive Order to remove protection for feral swine. The Pennsylvania Supreme Court declared that the Commission has jurisdiction over matters relating to wild boars (a member of the family *Suidae*, and also a feral swine) in *Seaton v. PGC*, 937 A.2d 1028 (Pa. 2007). The Commission is proposing to remove protection for feral swine and wild boar Statewide, wherever found, to protect the natural resources of this Commonwealth, its traditional agricultural and forest products industries and mitigate threats to human health and safety. The Commission is also proposing to prohibit the importation, possession and release into the wild of feral swine and wild boar to further these ends.

Section 322(c)(2) of the code (relating to powers and duties of commission) specifically empowers the Commission to "Remove protection, declare an open season or increase, reduce or close a season." 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." Section 137.35 is proposed to be added under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will add § 137.35 to remove protection for feral swine and wild boar Statewide, wherever found, and also to prohibit the importation, possession and release into the wild of feral swine and wild boar.

3. *Persons Affected*

Persons wishing to take, trap or possess wild of feral swine or wild boar within this Commonwealth 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:** 48-351. No fiscal impact; (8) recommends adoption.

### Annex A

#### TITLE 58. RECREATION

#### PART III. GAME COMMISSION

#### CHAPTER 137. WILDLIFE

#### § 137.35. Feral swine and wild boar eradication.

(a) *Protection removed.* Protection on feral swine and wild boar is removed Statewide, except in those areas designated as containing broad scale official eradication trapping operations as designated by Executive Order of the Director.

(b) *Eligibility to take.* Persons who possess a valid hunting or furtaking license or persons who qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions) are eligible to participate in the unlimited taking of feral swine and wild boar by firearm, bow or crossbow in areas where protection on feral swine and wild boar has been removed. Takings of feral swine and wild boar shall be conducted in conformance with the limitations of section 2308 of the act (relating to unlawful devices and methods) and §§ 141.4 and 141.20 (relating to hunting hours; and protective material required).

(c) *Eligibility to trap.* Persons who possess a valid hunting or furtaking license or persons who qualify for license and fee exemptions under section 2706 of the act are eligible to apply for a permit authorizing them to engage in feral swine and wild boar eradication trapping operations. Trapping of feral swine and wild boar shall be conducted in conformance with best management practices identified by the Commission and listed on the permit.

(d) *Reporting.* Takings of feral swine and wild boar resulting from authorized shooting or trapping operations shall be reported to the appropriate local Commission regional office within 24 hours of the kill. The report must include:

(1) The name, address and pertinent license or permit information.

(2) The date, time and an accurate description of the location of kill.

(3) A report number and sex of wild boar and feral swine.

(e) *Surrender of carcass.* The carcasses of feral swine and wild boar killed under the authorizations of this section shall be surrendered to the Commission for disease sampling and testing upon request.

(f) *Importation prohibited.* Effective July 1, 2013, it is unlawful to import feral swine or wild boar of any description or other name into this Commonwealth.

(g) *Possession prohibited.* Effective July 1, 2014, it is unlawful to possess feral swine or wild boar of any description or other name within this Commonwealth.

(h) *Release into the wild prohibited.* It is unlawful to release feral swine or wild boar into the wild.

(i) *Inapplicability.*

(1) This section may not be construed to limit the applicability of sections 2121 and 2141 of the act (relating to killing game or wildlife to protect property; and killing game or wildlife to protect person) and § 141.3 (relating to protection removed under certain circumstances).

(2) This section may not be construed to extend to any member of the family *Suidae* defined as a domestic animal by the Department of Agriculture and held as part of a commercial production agricultural operation regulated by the Department of Agriculture.

(j) *Penalties.* A person violating this section is subject to the penalties in the act.

[Pa.B. Doc. No. 13-659. Filed for public inspection April 12, 2013, 9:00 a.m.]

## LIQUOR CONTROL BOARD

[ 40 PA. CODE CH. 11 ]

### Sale by Licensed Limited Distilleries and Distilleries

The Liquor Control Board (Board), under the authority of sections 207(i) and 505.4 of the Liquor Code (47 P. S. §§ 2-207(i) and 5-505.4), proposes to add § 11.221 (relating to sale by licensed limited distilleries and distilleries).

#### Summary

The act of December 22, 2011 (P. L. 530, No. 113) (Act 113) made changes to numerous sections of the Liquor Code, including section 505.4, regarding distilleries. Under section 505.4 of the Liquor Code, the Board may issue, effective February 20, 2012, a limited distillery license that allows the holder to: operate a distillery that may not produce more than 100,000 gallons of distilled liquor per year; and sell bottled liquors produced on the licensed premises to the Board, to licensees and to the public.

This proposed rulemaking permits licensed limited distilleries and distilleries to deliver their products directly to consumers, retail licensees or the Board, similar to licensed limited wineries. While section 505.4 of the Liquor Code does not explicitly address the issue, legislative staff members have confirmed that the intent of Act 113 was to enable limited distillery and distillery licensees to have the same privileges as limited wineries. Toward that end, the licensed limited distillery language was modeled after section 505.2 of the Liquor Code (47 P. S. § 5-505.2), which allows the Board to issue limited winery licenses. Section 505.4 of the Liquor Code authorizes limited distillery and distillery licensees to sell their products to consumers, retail licensees and the Board and does not place constraints on the manner in which products are delivered. Therefore, this proposed rulemaking would promote clarity and reduce confusion as to whether limited distilleries and distilleries have privileges identical to limited wineries. Therefore, consistent with § 11.111 (relating to sale by limited winery licensees), this proposed rulemaking allows licensed limited distilleries and distilleries to deliver their products through the use of vehicles properly registered with the Board or through properly licensed transporters.

#### Affected Parties

The proposed rulemaking will affect licensed limited distilleries and distilleries. Currently, there are eight active and two pending limited distilleries licensed by the Board and two active distilleries licensed by the Board. Potentially affected parties licensed by the Board have been or will be given notice of this proposed rulemaking.

*Paperwork Requirements*

This proposed rulemaking is not expected to have adverse impact on the amount of paperwork required to be completed by the regulated community.

*Fiscal Impact*

This proposed rulemaking is not expected to have adverse fiscal impact on the regulated community or State and local governments. The proposed rulemaking is likely to have a positive fiscal impact on limited distilleries and distilleries, similar to that experienced by limited wineries.

*Effective Date*

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

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 27, 2013, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Liquor Control Committee and Senate Committee on Law and Justice. 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.

*Contact Person*

Written comments, suggestions or objections will be accepted for 30 days after publication of the proposed rulemaking in the *Pennsylvania Bulletin* and should be addressed to Rodrigo J. Diaz, Executive Deputy Chief Counsel, or Alan Kennedy-Shaffer, Assistant Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

JOSEPH E. BRION,  
*Chairperson*

**Fiscal Note:** 54-73. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 40. LIQUOR**

**PART I. LIQUOR CONTROL BOARD  
CHAPTER 11. PURCHASES AND SALES**

**Subchapter N. LICENSED LIMITED  
DISTILLERIES AND DISTILLERIES**

Sec.

11.221. Sale by licensed limited distilleries and distilleries.

**§ 11.221. Sale by licensed limited distilleries and distilleries.**

(a) A licensed limited distillery or distillery may sell on the licensed premises liquor produced on the premises in accordance with the Liquor Code and this title.

(b) Liquor produced by a licensed limited distillery or distillery may be shipped by common carrier or

transporter-for-hire, as provided in Chapter 9, Subchapter A (relating to transportation of liquor, malt or brewed beverages or alcohol).

(c) A licensed limited distillery or distillery may accept checks drawn by the purchaser on his account, and from retail customers, credit cards issued by banking or financial institutions, subject to State or Federal regulations.

(d) Mail, Internet and telephone orders may be accepted. Delivery of products must be accomplished through the use of vehicles properly registered by the licensed limited distillery or distillery or through properly licensed transporters. It is the responsibility of the licensed limited distillery or distillery licensee to ensure that liquor is not delivered to minors and that proper invoices and records are maintained.

[Pa.B. Doc. No. 13-660. Filed for public inspection April 12, 2013, 9:00 a.m.]

**STATE BOARD OF  
CRANE OPERATORS**

[ 49 PA. CODE CH. 6 ]

**Fees**

The State Board of Crane Operators (Board) proposes to amend § 6.4 (relating to fees) to read as set forth in Annex A.

*Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The increased biennial renewal fees will be implemented with the November 1, 2014, biennial renewal.

*Statutory Authority*

Section 701(a) of the Crane Operator Licensure Act (act) (63 P. S. § 2400.701(a)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties imposed under the act are not sufficient to meet expenditures over a 2-year period.

*Background and Need for Proposed Rulemaking*

Under section 701 of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board must increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises the majority of its revenue through biennial renewal fees. A small percentage of its revenue comes from application fees and civil penalties.

The current biennial renewal fee of \$100 was established with the Board's initial rulemaking in 2010. The fee was established based upon an estimate of the costs of administering the functions of the Board and an expected licensed population of approximately 2,750 licensees. As of October 2012, there are approximately 2,780 licensed crane operators. Therefore, under the present fee structure, the Board produces approximately \$278,000 in biennial renewal revenues. In addition, the Board receives approximately \$40,000 in other revenue from application fees and civil penalties for a total of \$318,000 in revenue over a 2-year period.



However, at the May 23, 2012, Board meeting, representatives from the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for Fiscal Years (FY) 2010-2011 and 2011-2012 and projected revenue and expenses through FY 2014-2015. Although the Board received an initial appropriation of \$85,000 from the Professional Licensure Augmentation Account (PLAA) when it was created in 2008, it incurred expenses in excess of that amount since then and was required to pay that amount back to the PLAA within 3 years (by December 8, 2011). As of the beginning of FY 2012-2013, the Board incurred a deficit of \$182,660.46. Licenses renew for the first time as of November 1, 2012, so there will be renewal revenue during this fiscal year. However, it is not sufficient to recoup the current deficit and cover budgeted expenses for the year. The BFO projects a remaining deficit of \$15,660.46 by the end of the fiscal year. In addition, under the present fee structure, the Board can expect biennial revenue of approximately \$318,000. The BFO projects expenses of approximately \$337,000 over the next 2 fiscal years (FYs 2013-2014 and 2014-2015) and expenses of approximately \$357,000 during the following biennium (FYs 2015-2016 and 2016-2017), adding to the deficit situation. Without an increase in the biennial renewal fee, the BFO projects continuing deficits for the foreseeable future.

Therefore, the Board determined that it was necessary to raise fees to meet or exceed projected expenditures in compliance with section 701(a) of the act. As a result, the Board voted at its October 1, 2012, meeting to increase the biennial renewal fees, beginning with the November 2014 renewal, to read as set forth in Annex A. The proposed new biennial renewal fees will enable the Board to avoid the projected deficits and meet its estimated expenditures for a number of years to come.

*Description of Proposed Amendments*

The proposed rulemaking would amend § 6.4 to increase the biennial renewal fee for licensed crane operators from \$100 to \$160.

*Fiscal Impact*

The proposed rulemaking will increase the biennial renewal fees for licensees of the Board. There are currently approximately 2,780 licensees that will be required to pay \$60 more to renew their licenses when they expire in 2014 and thereafter. The proposed rulemaking should not have other fiscal impact on the private sector, the general public or political subdivisions of this Commonwealth.

*Paperwork Requirements*

The proposed rulemaking will require the Board to alter some of its forms to reflect the new fee. However, the proposed rulemaking will not create additional paperwork for the regulated community or for the private sector.

*Sunset Date*

The act requires the Board to monitor its revenue and costs on a fiscal year and biennial basis. Therefore, a sunset date has not been assigned.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 2, 2013, 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 the Chairpersons of the

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

Under section 5(g) of the Regulatory Review Act, IRRC may convey 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 regarding this proposed rulemaking to Christopher McNally, Board Counsel, State Board of Crane Operators, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication in the *Pennsylvania Bulletin*. When submitting comments, reference Regulation No. 16A-7102—Fees.

RAYMOND A. FEIDT,  
*Chairperson*

**Fiscal Note:** 16A-7102. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 6. STATE BOARD OF CRANE OPERATORS**

**GENERAL PROVISIONS**

**§ 6.4. Fees.**

(a) The schedule of fees charged by the Board is as follows:

* * * * *	
Biennial renewal fee . . . . .	[ \$100 ] \$160
* * * * *	

[Pa.B. Doc. No. 13-661. Filed for public inspection April 12, 2013, 9:00 a.m.]

**STATE BOARD OF EXAMINERS IN SPEECH-LANGUAGE AND HEARING**

[ 49 PA. CODE CH. 45 ]

**Termination of Grandfather Provisions**

The State Board of Examiners in Speech-Language and Hearing (Board) proposes to amend § 45.21 (relating to waivers) to read as set forth in Annex A.

*Effective Date*

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

*Statutory Authority*

Section 5(2) of the Speech-Language and Hearing Licensure Act (act) (63 P. S. § 1705(2)) authorizes the Board to adopt and revise rules and regulations consistent with the act as may be necessary to implement the provisions of the act.

*Background and Need for the Rulemaking*

In 1984, the General Assembly created the Board and first authorized and required licensure of speech-language pathologists, audiologists and teachers of the hearing impaired. To be licensed under section 7(a) of the act (63 P. S. § 1707(a)), an applicant shall: hold a master's degree in speech-language pathology, audiology or education of the hearing impaired, as appropriate, or the equivalent from an accredited institution; have at least 1 year of supervised professional experience in the appropriate field; and pass a licensure examination. However, at the time the act was passed, the General Assembly recognized that persons were already practicing who may not meet the newly established licensure standards and did not intend to prohibit these existing practitioners from continuing to practice if they met certain minimum qualifications. Accordingly, section 7(c) of the act provides a waiver of the newly enacted requirements for existing practitioners who, as of the effective date of the act, held a bachelor's degree in the appropriate field, had been employed as a practitioner for at least 9 consecutive months in the 3 years immediately preceding the effective date of the act and filed an application with the Board. The act was effective February 19, 1985. Therefore, in its initial regulations promulgated in 1988, the Board provided in § 45.21(c) that it would waive the newly enacted requirements for an applicant who held an appropriate bachelor's degree by February 19, 1985, and was employed as a practitioner for at least 9 consecutive months between February 19, 1982, and February 19, 1985. The regulations do not include a termination date for licensure of existing practitioners under this waiver provision.

In providing for licensure of these existing practitioners, the General Assembly required under section 7(c)(2) of the act that the Board apply the relaxed licensure "requirements for any applicant who, on the effective date of this act: (2) files an application with the board. . . ." While it would not be reasonable to require each existing practitioner to apply exactly on February 19, 1985, the General Assembly must have intended that existing practitioners apply within a reasonable time after enactment of the act. It has now been 27 years since the act was enacted. Clearly, 27 years is much longer than a reasonable period of time in which to apply for licensure under the more relaxed standards for "existing practitioners." Accordingly, the Board proposes to eliminate the process by which those individuals that qualified as "existing practitioners" in 1985 apply for licensure under the waiver provision.

*Description of Proposed Rulemaking*

The proposed rulemaking would amend § 45.21 to provide that the Board will no longer license applicants who apply under the "existing practitioner" provision in the act.

*Fiscal Impact and Paperwork Requirements*

The proposed rulemaking would not have a fiscal impact on, or create additional paperwork for, the regu-

lated community, the general public or the Commonwealth and its political subdivisions as it is eliminating an outdated waiver provision.

*Sunset Date*

The Board continuously monitors the effectiveness of its regulations. Therefore, a sunset date has not been assigned.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 2, 2013, 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 the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey 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, recommendations or objections regarding this proposed rulemaking to Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, ST-SPEECH@pa.gov within 30 days of publication in the *Pennsylvania Bulletin*. When submitting comments, reference No. 16A-6806 (termination of grandfather provisions).

JAMES L. SHAFER, Au.D.,  
*Chairperson*

**Fiscal Note:** 16A-6806. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 45. STATE BOARD OF EXAMINERS IN SPEECH-LANGUAGE AND HEARING**

**Subchapter B. LICENSURE**

**§ 45.21. Waivers.**

(a) The Board will waive the education, experience and examination requirements of this subchapter for an applicant who:

\* \* \* \* \*

[ (4) Earned a bachelor's degree, as of February 19, 1985, with a major, as appropriate, in speech-language pathology, audiology or teaching of the hearing-impaired from an accredited college or university, and was employed in the appropriate field as a speech-language pathologist, audiologist or teacher of the hearing-impaired for at least 9 consecutive months during the period February 19,

1982—February 19, 1985. The applicant shall file an application with the Board, and shall cause the degree-awarding institution and the applicable employer to submit to the Board certification of degree and certification of employment status. An applicant who was self-employed during the applicable period shall so certify. ]

(b) The Board will not grant a license under section 7(c) of the act (63 P. S. § 1707(c)) to an applicant who applies after \_\_\_\_\_ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*).

[Pa.B. Doc. No. 13-662. Filed for public inspection April 12, 2013, 9:00 a.m.]

## STATE BOARD OF FUNERAL DIRECTORS

[ 49 PA. CODE CH. 13 ]

### Fees

The State Board of Funeral Directors (Board) proposes to amend § 13.12 (relating to fees) to read as set forth in Annex A.

#### *Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. It is anticipated that the increased biennial renewal fees will be implemented with the January 31, 2014, biennial renewal.

#### *Statutory Authority*

Section 18.1 of the Funeral Director Law (act) (63 P. S. § 479.18.1) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period.

#### *Background and Need for Amendment*

Under section 18.1 of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board must increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises the majority of its revenue through biennial renewal fees. A small percentage of its revenue comes from other fees, fines and civil penalties. In 2006, facing rising deficits for the foreseeable future, the Board undertook a proposed rulemaking to implement a fee increase in an attempt to avoid continued deficits and restore the Board's fiscal integrity. At the time, it was anticipated that the increase would be implemented in time for the February 1, 2008, biennial renewal. Unfortunately, due to circumstances beyond the Board's control, the final-form rulemaking was not published until January 24, 2009, and was not implemented until the 2010 biennial renewal. This delay caused additional deficits to accrue. For that reason, the Board recognized that it might have to look into the possibility of another fee increase to address the lingering deficits.

At the December 7, 2011, Board meeting, representatives from the Department of State's Bureau of Finance

and Operations (BFO) presented a summary of the Board's revenue and expenses for Fiscal Years (FY) 2009-2010 and 2010-2011, and projected revenue and expenses through FY 2014-2015. By the beginning of FY 2009-2010, the Board accrued a deficit of over \$1 million. At the end of FY 2010-2011, in spite of the implementation of the fee increase, the BFO reported that the Board continued to run a deficit of \$790,540.68. At the current fee levels, the Board receives revenue of approximately \$2.06 million over a 2-year period (consisting of a renewal year and a nonrenewal year). Budgeted expenditures for the next 2 fiscal years (FYs 2012-2013 and 2013-2014) are approximately \$2.406 million. Therefore, the Board determined that it was necessary to raise fees to meet or exceed projected expenditures in compliance with section 18.1 of the act and to eliminate the existing deficit. The Board asked the BFO to provide several alternatives with recommendations for a fee increase to remedy the situation. Thereafter, in January 2012, the BFO provided several scenarios, including the possibility of a \$100—\$115 increase, as well as alternatives if the Board were to change to an annual license renewal cycle.

At the time, the Board determined to wait until the close of FY 2011-2012 and review revenue and expenditure projections at that time. In June 2012, the BFO returned with revised estimates and recommended a \$75 increase to the biennial renewal fees as sufficient to eliminate the existing deficit, provide for the current level of operations and return the Board to firm financial ground. As a result, the Board voted at its July 5, 2012, meeting to increase biennial renewal fees from \$325 to \$400 to read as set forth in Annex A.

#### *Description of Proposed Rulemaking*

The proposed rulemaking would amend § 13.12 to increase the biennial renewal fees for funeral directors, funeral supervisors and funeral establishments from \$325 to \$400.

#### *Fiscal Impact*

The proposed rulemaking will increase the biennial renewal fees for licensees of the Board. There are currently approximately 3,240 licensed funeral directors, 1,234 licensed funeral supervisors and 1,642 funeral establishments (including the following license categories: branch, estate, professional corporation, sole proprietor, partnership, restricted business corporation, widow and pre-1935 business corporation) that will be required to pay more to renew their licenses when they expire in 2014 and thereafter. The vast majority of funeral establishments are considered small businesses. They will be impacted because their license fees will increase. The degree to which small businesses will be impacted depends on whether they elect to pay the licensure fees on behalf of their licensed employees, as well as the establishment's license. The proposed rulemaking should not have other fiscal impact on the private sector, the general public or political subdivisions of this Commonwealth.

#### *Paperwork Requirements*

The proposed rulemaking will require the Board to alter some of its forms to reflect the new fees. However, the proposed rulemaking will not create additional paperwork for the regulated community or for the private sector.

*Sunset Date*

The act requires the Board to monitor its revenue and costs on a fiscal year and biennial basis. Therefore, a sunset date has not been assigned.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 2, 2013, 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 the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey 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 regarding this proposed rulemaking to Cynthia Montgomery, Regulatory Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication in the

*Pennsylvania Bulletin*. When submitting comments, reference Regulation No. 16A-4822.

MICHAEL J. YEASOCK,  
*Chairperson*

*(Editor's Note:* For a corrective amendment relating to this proposed rulemaking, see 43 Pa.B. 2033 (April 13, 2013).)

**Fiscal Note:** 16A-4822. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 13. STATE BOARD OF FUNERAL DIRECTORS LICENSURE**

**§ 13.12. Fees.**

Following is the schedule of fees charged by the Board:

	*	*	*	*	*
Biennial renewal .....					<b>[ \$325 ] \$400</b>
	*	*	*	*	*

[Pa.B. Doc. No. 13-663. Filed for public inspection April 12, 2013, 9:00 a.m.]