

# RULES AND REGULATIONS

## Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

### STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE

[ 49 PA. CODE CH. 42 ]

#### Referrals by Certified Registered Nurse Practitioners and Physician Assistants

The State Board of Occupational Therapy Education and Licensure (Board) amends § 42.25 (relating to orders) to read as set forth in Annex A.

##### *Background and Purpose*

Section 14 of the Occupational Therapy Practice Act (act) (63 P.S. § 1514) formerly provided that licensed occupational therapists were authorized to treat individual patients based on a referral from a licensed physician, licensed optometrist or a licensed podiatrist. The act of July 20, 2007 (P.L. 318, No. 48) (Act 48) amended section 8.2 of The Professional Nursing Law (63 P.S. § 218.2) to provide that certified registered nurse practitioners may “make respiratory and occupational therapy referrals.” Section 4 of Act 48 repealed section 14 of the act “insofar as [it is] inconsistent with the amendment of section 8.2” of The Professional Nursing Law. The Board interpreted this “repealer” language to mean that licensed occupational therapists could accept referrals from certified registered nurse practitioners, although section 14 of the act was not amended to expressly provide that authority.

Subsequently, the act of July 4, 2008 (P.L. 580, No. 45) (Act 45) amended section 13 of the Medical Practice Act of 1985 (63 P.S. § 422.13) and the act of July 4, 2008 (P.L. 589, No. 46) (Act 46) amended section 10 of the Osteopathic Medical Practice Act (63 P.S. § 271.10) to provide similar authority with regard to physician assistants. Act 45 and Act 46 contained the same “repealer” language, repealing section 14 of the act “insofar as inconsistent” with the amendments to the Medical Practice Act and the Osteopathic Medical Practice Act. Again, the Board construed this language to mean that licensed occupational therapists could accept referrals from physician assistants, in spite of the fact that the text of section 14 of the act remained unchanged. Many licensed occupational therapists were confused about the effect of this “repealer” language and were unsure whether they could accept referrals from certified registered nurse practitioners and physician assistants.

Finally, the act of July 5, 2012 (P.L. 1132, No. 138) (Act 138) amended section 14 of the act to expressly permit licensed occupational therapists to accept referrals from certified registered nurse practitioners and physician assistants. Although the Board is undertaking a comprehensive proposed rulemaking package to implement the remainder of Act 138, the Board determined that it can, and should, promulgate a final-omitted rulemaking to amend its regulations to expressly include the statutory authority to accept referrals from certified registered nurse practitioners and physician assistants to conform to the amendments to the act and to end any remaining confusion among licensees.

##### *Omission of Proposed Rulemaking*

Under section 204 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1204), known as the Commonwealth Documents Law (CDL), the Board is authorized to omit the procedures for proposed rulemaking in sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) if the Board finds that the specified procedures are impracticable, unnecessary or contrary to the public interest. The Board determined that publication of proposed rulemaking is unnecessary under the circumstances because the Board is amending § 42.25 to conform to the amendments to The Professional Nursing Law, the Medical Practice Act of 1985, the Osteopathic Medical Practice Act and the act which permit licensed occupational therapists to accept referrals from certified registered nurse practitioners and physician assistants.

##### *Description of the Amendment*

Section 14 of the act originally provided that an occupational therapist could provide occupational therapy to an individual upon referral by a licensed physician, podiatrist or optometrist. Amendments to The Professional Nursing Law, the Medical Practice Act of 1985, the Osteopathic Medical Practice Act and the act allow a licensed occupational therapist to accept referrals from certified registered nurse practitioners and physician assistants. Therefore, the Board is amending § 42.25 to add certified registered nurse practitioners and licensed physician assistants to the list of authorized referring health care providers.

##### *Statutory Authority*

Section 5(b) of the act (63 P.S. § 1505(b)) authorizes the Board to promulgate and adopt rules and regulations not inconsistent with law as it deems necessary for the performance of its duties and the proper administration of the act.

##### *Fiscal Impact and Paperwork Requirements*

The amendments will not have a fiscal impact on, or create additional paperwork for, the regulated community, the Commonwealth or its political subdivisions. There may be savings to the general public because prior to these amendments when a certified registered nurse practitioner or physician assistant determined that a patient would benefit from occupational therapy, the certified registered nurse practitioner or physician assistant had to first obtain the referral from a physician or refer the patient back to the physician to obtain a referral. Savings may result from the direct referral. Commonwealth agencies whose regulations and policy statements limit implementation of direct occupational therapy to situations in which a physician has made a referral or order may want to consider revising their regulations.

##### *Regulatory Review*

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on April 8, 2013, the Board submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee, and the House Professional Licensure Committee. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on April 24, 2013, the final-omitted rulemaking was approved by the House Committee. On May 15, 2013, the final-omitted rulemaking was deemed approved by the Senate Committee. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 16, 2013, and approved the final-omitted rulemaking.

#### *Additional Information*

For additional information about the final-omitted rulemaking, submit inquiries to Judy Harner, State Board of Occupational Therapy Education and Licensure, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-1389, ST-OCCUPATIONAL@state.pa.us.

#### *Findings*

The Board finds that:

(1) Public notice of the Board's intention to amend its regulations under the procedures in sections 201 and 202 of the CDL has been omitted under section 204 of the CDL because public comment is unnecessary in that the amendments merely implement amendments to the act.

(2) The amendment of the Board's regulations in the manner provided in this order is necessary and appropriate for the administration of the act.

#### *Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 42, are amended by amending § 42.25 to read as set forth in Annex A.

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

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

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

ELLEN L. KOLODNER,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 43 Pa.B. 3067 (June 1, 2013).)*

**Fiscal Note:** 16A-678. 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 42. STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE**

#### **MINIMUM STANDARDS OF PRACTICE**

#### **§ 42.25. Orders.**

(a) *Written orders.* An occupational therapist shall accept a referral in the form of a written order from a licensed physician, licensed optometrist, licensed podiatrist, certified registered nurse practitioner or licensed physician assistant.

#### (b) *Oral orders.*

(1) An occupational therapist may accept a referral in the form of an oral order if it is impractical for the licensed physician, licensed optometrist, licensed podiatrist, certified registered nurse practitioner or licensed physician assistant to provide the order in writing.

(2) An occupational therapist receiving an oral order shall immediately transcribe the order in the patient's medical record, including the date and time the order was received, and sign the medical record.

(3) The occupational therapist in a private office setting who has received an oral order shall obtain the countersignature of the licensed physician, licensed optometrist, licensed podiatrist, certified registered nurse practitioner or physician assistant who issued the order within 5 days of receiving the order.

(4) If the occupational therapist who receives an oral order provides services in a setting that is independent of the prescriber's setting, the occupational therapist may accept the countersignature of the ordering licensed physician, licensed optometrist, licensed podiatrist, certified registered nurse practitioner or physician assistant on a written copy of the order that is mailed or faxed to the occupational therapist.

(5) If an occupational therapist provides services in a facility licensed by the Department of Health, the countersignature of the ordering licensed physician, licensed optometrist, licensed podiatrist, certified registered nurse practitioner or physician assistant shall be obtained in accordance with the applicable regulations of the Department of Health governing the facility, including 28 Pa. Code §§ 211.3 and 601.31 (relating to oral and telephone orders; and acceptance of patients, plan of treatment and medical supervision).

[Pa.B. Doc. No. 13-987. Filed for public inspection May 31, 2013, 9:00 a.m.]

## **Title 52—PUBLIC UTILITIES**

### **PHILADELPHIA PARKING AUTHORITY**

[ 52 PA. CODE CH. 1005 ]

[ Doc. No. 126-2 ]

#### **Electronic Testimony at Administrative Hearings**

The Philadelphia Parking Authority (Authority), on December 17, 2012, adopted a final-form rulemaking order which establishes a regulation permitting electronic (telephonic or audio-visual) testimony at certain administrative hearings, under certain limitations.

*Proposed Rulemaking Order; Philadelphia Taxicab and Limousine Regulations; Electronic Testimony; Doc. No. 126-2*

#### **Final Rulemaking Order**

*By the Authority:*

The Authority is required to carry out the provisions of the act of July 16, 2004, (P. L. 758, No. 94), as amended, 53 Pa.C.S. §§ 5701 et seq., (the "act") relating to the regulation of taxicab and limousine service providers in the City of Philadelphia.<sup>1</sup> Pursuant to this obligation, the Authority issued a proposed regulation at this docket

<sup>1</sup> See Sections 13 and 17 of the Act.

number on February 27, 2012. The initial public comment period for this rulemaking proceeding concluded on June 18, 2012, the Independent Regulatory Review Committee submitted its comments on July 18, 2012. The Authority has completed its review of the comments and now issues the final-form regulation. This final-form regulation will be effective upon publication in the *Pennsylvania Bulletin*.

#### *Purpose of the Final-form rulemaking*

The Authority is amending its existing regulations by adding a new subsection to 52 Pa. Code Subpart A. (General Provisions), Chapter 1005 (Formal Proceedings), Subchapter B. (Hearings), at § 1005.114. This electronic testimony regulation will permit members of the public to testify at most administrative hearings before the Authority related to enforcement actions, pursuant to specific terms and conditions. This regulation will create tremendous flexibility for the traveling public who would otherwise be constrained to appear and testify in person at these taxicab and limousine administrative hearings, despite busy work schedules, and family, health or travel challenges. This heightened level of participation will result in the development of fuller and more complete hearing records and provide both the Authority and respondents with access to eye witness testimony that might not otherwise be available.

#### *Discussion*

The Authority has reviewed the comments filed at each stage of this proceeding. Responses to those comments, explanations of the purpose of each subsection of the regulation and references to portions of the regulation that have been altered upon consideration of the comments submitted and additional review as set forth below.

#### *Subpart A. GENERAL PROVISIONS*

#### *CHAPTER 1005. FORMAL PROCEEDINGS*

#### *Subchapter B. HEARINGS*

#### *§ 1005.114. Electronic testimony.*

(a) *Purpose, scope and definitions.* Subsection (a) of the proposed regulation provided the intent and parameters of the regulation, specifically addressing the witnesses to whom the regulation was to apply. The title of this subsection has been amended to reflect the addition of a definition paragraph.

(1) A new paragraph (1) has been added to provide a definition for the term “electronic testimony witness.” This paragraph specifies which individuals may present electronic testimony and in what circumstance pursuant to this section. The language of proposed paragraph (1) has been reidentified as paragraph (2).

IRRC noted the lack of clarity as to the term “non-party” and questioned its application. We agree with IRRC’s comments and have provided the definition of the term “electronic testimony witness” to address those comments and the comments of the Taxi Workers Alliance of Pennsylvania (hereinafter “TWA”) and an attorney on behalf of the Taxi Workers Alliance of Pennsylvania (hereinafter “TWA Attorney”) that seem to raise this issue as well. The definition of electronic testimony witness will also address IRRC’s concern about the definition of the term “witness” as used in the proposed regulation.

This definition eliminates the use of the undefined term “non-party” in this section. In its place, the definition provides that this section applies to individuals only;

narrowed further to exclude an Authority employee (which is a defined term), a regulated party or any agent or employee of a regulated party. The regulation is not intended to make remote testimony by Authority employees and regulated parties or their agents or employees more convenient, or even possible. Instead, this section is intended to ease the burden upon members of the public whose testimony may be necessary at administrative hearings related to enforcement proceedings. That testimony may be on behalf of the TLD prosecutorial staff or the regulated party respondent.

IRRC questioned if a member of the public who files a complaint with the Authority related to taxicab or limousine service is considered to be a petitioner, triggering a need to appear in person at the administrative hearing to testify. Complaints filed by the public with the Authority are considered “informal complaints”. See 52 Pa. Code § 1003.42 (relating to Authority action on informal complaints). In the event that Trial Counsel or the Enforcement Department, or both, determine that the complained of incident requires regulatory enforcement, either may initiate a formal complaint as provided in 52 Pa.C.S. § 1005.11 (relating to formal complaints generally). The complainant in such cases becomes the Authority’s Taxicab and Limousine Division, not the witnesses to the underlying incident. Therefore, the witness who reported the underlying alleged violation would be eligible to be an electronic testimony witness.

IRRC, TWA and TWA’s Attorney commented that respondents to enforcement proceedings may face significant monetary penalties, including the loss of the right to participate in the taxicab or limousine industry. IRRC asked the Authority to explain “how allowing a witness to testify by telephone against a driver is feasible, reasonable and in the public interest” considering the potential penalties. Preliminarily, we note that this regulation will permit both telephone and internet based two-way audio and video telecommunications. The latter will permit the witness to view the administrative hearing room and those at the hearing to view the witness.

The use of electronic testimony is feasible because of great advances made to the quality and scope of the communication media we use every day. High quality conference call equipment can easily be used to permit everyone in attendance at an administrative hearing to simultaneously hear an electronic testimony witness, and for that witness to hear those at the hearing. Internet based audio and video telecommunications has expanded upon the capability of mere voice communication as referenced above. TWA specifically suggested that lost connections, equipment failures and such things as static on the line could hinder the use of electronic witness testimony. The telephone is a tried and true technology and internet based audio and video telecommunications are now just as common. These means of communication are widely available at little to no cost. To the extent any hearing is interrupted by faulty utilities, including natural gas service or electricity or telephone service, hearings may simply need to be continued. Therefore, electronic testimony is exceedingly feasible. This is now common, everyday technology.

The use of electronic testimony is reasonable because it will permit live, real time testimony subject to cross examination and objections. The creditability, relevance and reliability of the testimony of a particular witness can be raised regardless of whether the witness is in the hearing room or at the other end of a telephone line or audio-visual internet communication protocol.

In several instances IRRC, TWA and TWA's Attorney questioned the viability of an electronic testimony witness in scenarios where in-person identification of an individual, including the witnesses themselves, is important to the case. We recognize and specifically provide in paragraph (2) below that in-person testimony is always preferred to electronic testimony. The Authority will always strive to have witnesses appear in person at hearings because such an appearance will eliminate arguments as to the reduced weight of electronic testimony that will inevitably be made by opposing parties at these hearings.

TWA notes that body language may contribute to the consideration of oral testimony. TWA's Attorney suggests that it will now be easy for any taxicab passenger to be an electronic testimony witness, generally. The use of an electronic testimony witness in scenarios where in-person identification is necessary or important may severely weaken the value of the testimony of an electronic testimony witness and would in such cases create an excellent argument in favor of discounting or disregarding that testimony. The value or relevance of the testimony of individuals who appear in-person at hearings is similarly argued by the parties and weighed by the presiding officer in regard to every single hearing. Credibility, reliability and relevance are common issues that are addressed at the time the witness testifies or after the testimony has been received. There is no reason that the same rules can not apply to electronic testimony witnesses. The value of the electronic witness testimony is as subject to legal argument as any other evidence and may be weighed by the presiding officer in the exercise of delegated discretion.

As the comments of TWA's Attorney suggest, the use of telephone testimony has been in use for some time by the Unemployment Compensation Board of Review. See 43 P. S. § 825 (relating to rules of procedure). Testimony by telephone or other electronic means is also available in other forums. See 20 Pa.C.S. § 5906 (relating to taking testimony in another state; see also 20 Pa.C.S. §§ 4342(j), 5411, 7316(f) and 8311(g) (relating to expedited procedure; taking testimony by telephone; special rules of evidence and procedure; and special rules of evidence and procedure). While the TWA commented that some agencies or traffic courts do not permit electronic testimony, there are a growing number that do. Advancements in technology and the need to fully develop hearing records will inevitably lead to an expanded use of electronic testimony. We also see no reason to expend time and resources compiling data related to the usage of electronic testimony witnesses as suggested by TWA's Attorney because we do not see this as a pilot program, but the use of proven technology in limited circumstances.

The use of electronic testimony is in the public interest because it will close an age old loophole that has contributed to a lower standard of taxicab and limousine service in Philadelphia. For too long, some taxicab and limousine service providers have operated with the knowledge that some passengers will simply not be able to pursue regulatory complaints against them. Often passengers are easily identified as "out of town" travelers who are on their way home or will only be in the Philadelphia area for a brief period. These travelers will clearly not return to Philadelphia to testify at a taxicab or limousine administrative hearing. Contrary to the suggestions of the TWA, the offer of a ride to the administrative hearing

will not secure the in-person testimony of people who are unavailable because they reside in Texas or Japan or for any witness who cannot appear because of non-transportation related challenges. The lack of witness testimony at those hearings is often fatal to an administrative prosecution, if such a prosecution is initiated at all. See *Sule v. Philadelphia Parking Authority*, 26 A.3d 1240 (Pa. Cmwlth 2011).

Similarly, people who live in and around Philadelphia often use taxicabs and limousines. Those people may find it challenging to leave school, work, and childcare responsibilities to attend administrative hearings. Some of those people also have mobility or healthcare issues that prohibit or greatly hinder their ability to appear at administrative hearings. The unavailability of witnesses at administrative hearings can be debilitating to the Authority's goal of providing "a clean, safe, reliable and well-regulated taxicab and limousine industry. . ." 53 Pa.C.S. § 5701.1(2). Unfortunately, some regulated parties will behave badly given the knowledge that the Authority will be unable to advance the prosecution of an enforcement complaint without a witness.

It is worth remembering that the use of electronic testimony witnesses is a two-way street. Respondents who believe that the testimony of a witness may be necessary to properly defend an enforcement proceeding currently have no recourse if the witness is unable to appear at the administrative hearing. This regulation will correct that problem as well. Contrary to the comment of TWA, the use of an electronic testimony witness does not insinuate that the opposing party is "already guilty." The mere participation of a witness is not dispositive or even suggestive of the liability or non-liability of a respondent.

The public interest is clearly advanced by additional, efficient, cost effective and reliable modes of allowing a narrow, but crucial, classification of witnesses to participate in administrative hearings. TWA's Attorney commented that the Authority should only grant electronic testimony witness status to individuals with "compelling" reasons for their unavailability. We believe the reasonable standard is more appropriate as we discuss in response to similar comments in section (b)(1). Through this regulation, bad actors will be more likely to receive appropriate penalties and wrongly accused respondents will find it easier to defend formal complaints through the introduction of exculpatory evidence by way of electronic testimony witnesses. TWA's Attorney also suggested that lawyers should be able to appear at hearings by telephone in order to drive down defense costs. The purpose of this regulation is to ease the challenges associated with those not in the taxicab and limousine industries to participate in administrative hearings. Electronic testimony witness status as suggested by TWA's Attorney would needlessly expand the scope of this regulation. Such an expansion would also be contrary to the balance of the comments of the TWA and the TWA's Attorney as to the use of electronic testimony witnesses generally.

IRRC noted that the proposed regulation used the term "enforcement action" and that that term was undefined. IRRC recommended using the defined term "enforcement proceeding". That change has been made throughout the regulation.

(2) This paragraph was identified as "(1)" in the proposed regulation and has been reidentified as paragraph (2) in order to make way for the new definition paragraph referenced above. This paragraph identifies the purpose of this section, which is to permit the reasonable use of electronic testimony witnesses at administrative hearings.

(3) This paragraph was identified as “(2)” in the proposed regulation and has been reidentified as paragraph (3) in order to make way for the new definition paragraph referenced above. This paragraph simply provides that this section will control in the event of any conflicts with the general rules of this subpart.

(4) This paragraph was identified as “(3)” in the proposed regulation and has been reidentified as paragraph (4) in order to make way for the new definition paragraph referenced above. This paragraph clarifies that this section is intended only to allow the use of an electronic testimony witnesses at an enforcement proceeding initiated by Trial Counsel or the Enforcement Department. IRRC’s comments related to who may be a witness and the role of a citizen who raises the initial informal complaint, as well as the roll of the Authority, were answered above under paragraph (1). The language found in paragraph (4) of the proposed regulation has been eliminated in light of the more specific definition of electronic testimony witness provided in paragraph (1).

(b) *Scheduling of telephone or audio-visual testimony.* Subsection (b) provides for the manner in which the scheduling of an electronic testimony witness may occur. IRRC strongly suggested that an advanced notification process of the intent to use an electronic testimony witness be incorporated into the final-form regulations. TWA and TWA’s Attorney also questioned if electronic testimony witnesses will be used at scheduled hearings and questioned procedures for notification of the intent to use electronic testimony witnesses. We have addressed these comments in this subsection.

(1) Paragraph (1) of the proposed regulation provided for the scheduling of an electronic testimony witness by the Authority or a presiding officer sua sponte. We agree with IRRC’s comments about this issue and the comments of TWA and TWA’s Attorney and have deleted the proposed regulation language found in this paragraph in its entirety. This paragraph contained language related to the distance that a potential electronic testimony witness lived from the location of the administrative hearing and the ability of the Board or a presiding officer to schedule an electronic witness sua sponte. There are many factors that will contribute to the reasonable unavailability of a witness for in-person testimony, physical distance is merely one. Such distance may continue to be considered through this section, but will not be determinative in any event. We note the distance of party witnesses from the site of an administrative hearing may no longer be considered as a basis to grant or deny a request to provide testimony by telephone at unemployment compensation hearings. See 43 P. S. § 825.

We would; however, like to clarify a misconception expressed by all commentators as to the use of the term “Authority” in this context and as used in the balance of the regulation. Because the Authority’s regulations could conceivably result in a hearing before the Authority’s Board, powers available to presiding officers are also made available to the Authority in the event of such a Board level hearing. Because the term “Authority” has been misinterpreted as meaning any officer or department of the Authority, we have deleted this term as used in this context and will simply use the term presiding officer, a defined term which encompasses both meanings. We believe this change will address the comments made about the other portions of the regulation as well and will clarify the intent of the regulation.

IRRC questioned the ability of a party to object to the scheduling of an electronic testimony witness, as well as the process and standards that would apply to such an objection. We agree that the proposed regulation was unclear on this point and have revised subsection (b) to address that issue. Revised paragraph (1) provides the procedure that must be followed in order to employ the use of an electronic testimony witness. The process is delineated in five subparagraphs.

(i) Pursuant to subparagraph (i) a party must provide written notice of the intent to use an electronic testimony witness, but not within 20 days of the scheduled hearing. The notice must provide the name of the proposed witness, the reason electronic testimony witness status is requested and an offer of proof related to the proposed electronic testimony.

(ii) Subparagraph (ii) clarifies that a party may object to the use of an electronic testimony witness within 10 days of receiving the notice required by subparagraph (i). IRRC questioned the ability of a party to raise this objection; this subparagraph clarifies the power of a party to object to the use of an electronic testimony witness. There is no requirement that the objection meet a heightened standard of proof, such as the “compelling evidence” standard, as questioned by IRRC.

(iii) Subparagraph (iii) requires that any notice or objection related to the use of an electronic testimony witness be served on each party and the presiding officer and that a certificate of service be filed with the Clerk.

(iv) Subparagraph (iv) provides that the failure to object to the notice of intent to use an electronic testimony witness will be considered consent to such testimony.

(v) Subparagraph (v) permits the parties to mutually agree to waive the timelines for notice and objection provided in this paragraph.

TWA’s Attorney suggested that respondents’ and particularly unrepresented respondents be specifically advised at the time of the administrative hearing of the right to object to the use of an electronic testimony witness. Because the electronic testimony witness scheduling process now occurs in advance of the hearing, objections to such scheduling are due prior to the date of the hearing. We believe the elimination of the language in the proposed regulation permitting the immediate scheduling of electronic testimony witnesses at the time of a hearing alleviates the concern raised in this comment. The creation of this notice process also addresses the comment of TWA’s Attorney regarding penalties detailed in the regulations of the Unemployment Compensation Board of Review, but absent here. An electronic testimony witness cannot be used unless the notice process delineated in this regulation is followed.

(2) Paragraph (2) has been amended to address the concerns of IRRC, TWA and TWA’s Attorney about the scheduling of electronic testimony witness and the process of reviewing objections to the use of such testimony. This paragraph now clarifies that the presiding officer has the discretion to permit or deny the use of an electronic testimony witness upon consideration of the notice required by paragraph (1)(i) and general guideposts provided in four subparagraphs. Issues related to the propriety of the scheduling of an electronic testimony witness must be raised as provided in this subsection. IRRC

questioned the ability of a party to raise an objection to the use of an electronic testimony witness at the time of a hearing, in regard to now deleted subsection (c) of the proposed regulations. TWA's Attorney questioned why the regulation does not include a specific provision prohibiting a party from "directing the testimony" of an electronic testimony witness. Once the electronic testimony witness has been scheduled as provided in this subsection, objections to the use of the witness will be limited to those applicable to any other proposed witness. No special rules are necessary to address this issue. The use of witnesses is debated and subject to objection as a matter of course in all administrative hearings, including as to leading questions.

(i) Subparagraph (i) provides that when considering the scheduling of an electronic testimony witness a presiding officer must consider the value of the witness in developing a full and complete record.

(ii) Subparagraph (ii) provides that when considering the scheduling of an electronic testimony witness, a presiding officer must consider the reason the individual seeks electronic testimony witness status, directing attention of the presiding officer certain criteria, including work commitments and mobility issues.

(iii) Subparagraph (iii) provides that when considering the scheduling of an electronic testimony witness a presiding officer must consider the rebuttable presumption that a police officer is authorized to testify electronically in relation to a taxicab or limousine related impoundment matter and has been amended to include the alleged criminal conduct of a regulated party. Law enforcement officers often initiate motor vehicle stops that result in the impoundment of taxicabs and limousines because the driver has lost state-issued driving privileges or upon accusations of criminal conduct by members of the public. See 75 Pa.C.S. § 6309.2 (relating to immobilization, towing and storage of vehicle for driving without operating privileges or registration).

(iv) Subparagraph (iv) provides that when considering the scheduling of an electronic testimony witness, a presiding officer must consider if the probative value of the proposed electronic testimony is substantially outweighed by the danger or any unfair prejudice to the opposing party. This is a reasonable standard often applicable to the review of proposed evidence at hearings and applies equally as well in this context.

(3) Paragraph (3) provides that only individuals scheduled by a presiding officer to testify by telephone or audio-visual means may do so and that other witnesses must appear in-person. The reference to a procedure in former subsection (d) in this paragraph has been deleted in consideration of the single electronic testimony witness scheduling process now provided for through subsection (b)(1).

(4) The language of paragraph (4) as it appeared in the proposed regulation has been deleted in the final-form regulation as unnecessary in light of the new and much more specific process for scheduling electronic testimony witnesses as provided this subsection. The language of paragraph (5) that appeared in the proposed regulation is now at paragraph (4).

(c) *Procedures subsequent to scheduling.* Subsection (c) as it appeared in the proposed regulation has been deleted in its entirety in light of the scheduling process that is provided in subsection (b), which identifies the

process for objecting to the use of an electronic testimony witness. As noted in response to comments in subsection (a)(1), the testimony of an electronic testimony witness is just as subject to objection at the time provided as the testimony of an in-person witness. It is the status of the individual as an electronic testimony witness that must be addressed prior to the hearing; therefore, the language of subsection (c) is unnecessary in light of revised subsection (b).

(d) *Hearing process.* Subsection (d) of the proposed regulations has been reidentified as subsection (c) due to the deletion of subsection (c) as it appeared in the proposed regulations. Subsection (c) provides relevant guidelines as to the manner in which a hearing at which an electronic testimony witness will proceed, although for the most part, standard administrative hearing procedures will be used.

(1) Paragraph (1) provides requirements for the initiation of the electrical contact between the administrative hearing room and the electronic testimony witness. IRRRC questioned the use of seemingly conflicting terms such as "parties" in regard to who may be an electronic testimony witness. We agree and have deleted and replaced that language with the defined term of electronic testimony witness throughout the regulation. Also, language related to the appearance of counsel or an "authorized agent" by way of telephone or audio-visual means has been deleted as inconsistent with the definition of an electronic testimony witness.

(2) Paragraph (2) permits the parties to an administrative hearing to question the electronic testimony witness in furtherance of assuring the identity of the witness. This section has been amended to clarify that it applies to electronic testimony witnesses. TWA's Attorney questioned the failure to include language threatening prosecution and punishment for those who misidentify themselves. There is no need for an Authority regulation that makes such a threat, although section (c)(2) specifically prohibits that practice. Lying under oath is a serious offense and does not require additional threatening language in this regulation.

(3) The language of paragraph (3) of the proposed regulation has been deleted as unnecessary in light of the pre-hearing scheduling process adopted in this final-form regulation in subsection (b). IRRRC, the TWA and TWA's Attorney raised questions regarding the actual process through which an electronic testimony witness's testimony will be presented and received at a hearing. Language has been added to this paragraph to clarify that electronic testimony witnesses are equally subject to examination, cross-examination, objections, consideration of relevance and admissibility as in-person witnesses. The weight assigned to oral testimony presented at an administrative hearing will continue to be decided in the sole discretion of the presiding officer.

(4) Paragraph (4) requires the presiding officer to include in the oath administered to an electronic testimony witness that the witness will not testify from a document. This paragraph has been amended to clarify that it applies to electronic testimony witnesses. IRRRC, the TWA and the TWA's Attorney questioned the reliability of an oath given by an electronic testimony witness that the witness will not testify from documents. Preliminarily, we anticipate that electronic testimony witnesses will increasingly testify by audio-video means, meaning

all parties will be able to see and hear each other in real time. Seeing the electronic testimony witness may provide a means of assuring that they are not testifying from documents. However, at the end of the day, our entire hearing process, at all levels of government, is based on the premise that witnesses when sworn will tell the truth. Attorneys question and probe to assure the truth is being provided by witnesses. The Authority is unaware of any absolutely reliable means of assuring that a witness testifies truthfully.

(5) Paragraph (5) provides that the electronic testimony witness must be capable of being heard by the presiding officer and those in attendance at the administrative hearing. This section remains largely unchanged from the proposed regulation, except that the term electronic testimony witness has been added in place of less specific language and references to the Authority have been deleted for clarity purposes, as noted above.

#### *Affected Parties*

The regulation is not targeted at a specific class of regulated parties; therefore, the number of individuals or entities impacted is impossible to predict. However, an unlimited number of individuals will directly benefit from the ability to testify at certain Authority administrative hearings remotely and without need to substantially interrupt business, school and family obligations. Both the Authority and respondents to most enforcement complaints will be affected by this positive change to the administrative hearing procedure.

#### *Fiscal Impact*

Those who lodge complaints with the Authority regarding inadequate service or other taxicab or limousine related service issues will benefit from the ability to testify at administrative hearings remotely. All parties to these administrative hearings will benefit by the ability to present certain witnesses in support of their respective positions, particularly when those witnesses might otherwise have been precluded from testifying in the administrative hearing courtroom due to mobility problems, work or family commitments or being located a long distance from the site of the hearing.

The purpose of this regulation is not to impact costs of any party, but to improve the functionality of administrative hearings and the development of full and complete records at those hearings. However, this regulation may reduce the likelihood of hearing continuances, eliminate unnecessary travel time, and will reduce the need for witnesses who are employees of small and large businesses to take time away from work to attend these hearings. While this benefit is very difficult to quantify in dollars, it is believed that it will result in reduced costs and overall efficiencies related to the administrative hearing process.

Individuals and businesses will benefit from the ability of their employees to testify at administrative hearings from work, as opposed to taking time off to appear at such hearings. The public and the business community will benefit from the improved quality of taxicab service that result from the effective prosecution of service violations. The removal or penalization of bad actors is crucial to improving taxicab and limousine service, which the General Assembly has linked to the stability and growth of our economy. 53 Pa.C.S. § 5701.1. Regulated parties will benefit from the ability to have exculpatory

witnesses appear on their behalf remotely as well. There are no fees or additional costs directly associated with this regulation.

#### *Commonwealth*

The Authority does not anticipate any increase in regulatory demands associated with this regulation. The Authority's Taxicab and Limousine Division anticipates additional filings with the Clerk associated with the electronic testimony witness notice filing and Adjudication Department Hearing Officers will be required to rule on requests to use electronic testimony witnesses. However, these departments routinely handle similar filings and the Authority does not expect cost increases as a result of this final-form rulemaking.

#### *Political subdivisions*

This final-form rulemaking will not have direct fiscal impact on political subdivisions of this Commonwealth.

#### *Private sector*

This final-form rulemaking will not have a fiscal impact on certificate holders or other regulated parties.

#### *General Public*

This final-form rulemaking will not have a fiscal impact on the general public.

#### *Paperwork Requirements*

This final-form rulemaking will not affect the paperwork generated by the Authority or the regulated communities, except for the de minimis notice requirement associated with identifying a potential electronic testimony witness prior to the date of a hearing.

#### *Effective Date*

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

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 7, 2012, the Authority submitted a copy of the notice of proposed rulemaking, published at 42 Pa.B. 2746 (May 19, 2012), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Urban Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on April 3, 2013, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 4, 2013, and approved the final-form rulemaking.

#### *Conclusion*

Accordingly, under sections 13 and 17 of the Act, 53 Pa.C.S. §§ 5722 and 5742; section 5505(d) of the Parking Authorities Act, act of June 19, 2001, (P. L. 287, No. 22), as amended, 53 Pa.C.S. §§ 5505(d)(17), (d)(23), (d)(24); sections 201 and 202 of the Act of July 31, 1968, P. L. 769 No. 240, 45 P. S. §§ 1201—1202, and the regulations

promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P.S. § 732.204(b); section 745.5a of the Regulatory Review Act, 71 P.S. § 745.5a, the Authority proposes adoption of the final regulation pertaining to the regulation of taxicab and limousine service providers in the City of Philadelphia set forth in Annex A<sup>2</sup>; *Therefore,*

*It Is Ordered That:*

1. The regulations of the Authority, 52 Pa. Code Chapter 1005, are amended by adding § 1005.114 to read as set forth in Annex A.

2. The Executive Director shall cause this order and Annex A to be submitted to the Office of Attorney General for approval as to legality.

3. The Executive Director shall cause this order and Annex A to be submitted for review by the designated standing committees of both Houses of the General Assembly, and for formal review by the Independent Regulatory Review Commission.<sup>3</sup>

4. The Executive Director shall cause this order and Annex A to be deposited with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

5. The Executive Director shall serve copies of this order and Annex A upon each of the commentators.

6. The order becomes effective upon publication in the *Pennsylvania Bulletin*.

7. The contact person for this rulemaking is James R. Ney, Director, Taxicab and Limousine Division, (215)-683-9417.

VINCENT J. FENERTY, Jr.,  
*Executive Director*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 43 Pa.B. 2242 (April 20, 2013).)*

**Annex A**

**TITLE 52. PUBLIC UTILITIES**

**PART II. PHILADELPHIA PARKING AUTHORITY**

**Subpart A. GENERAL PROVISIONS**

**CHAPTER 1005. FORMAL PROCEEDINGS**

**Subchapter B. HEARINGS**

**HEARINGS**

**§ 1005.114. Electronic testimony.**

(a) *Purpose, scope and definitions.*

(1) The following term, when used in this section, has the following meaning, unless the context clearly indicates otherwise:

*Electronic testimony witness—*

(A) An individual offered to provide testimony or other evidence at a hearing conducted under Chapter 1005, Subchapter B (relating to hearings) in an enforcement proceeding by telephone or audio-visual means.

(B) This term does not apply to an individual who is one of the following:

(I) An Authority employee.

(II) A regulated party.

(III) An agent or employee of a regulated party.

(2) In-person testimony is normally preferable to testimony by telephone or audio-visual means. There can be reasons to justify receiving testimony by telephone or audio-visual means, including the transitory nature of many of the users of taxicabs and limousines. This section is promulgated to provide the conditions under which testimony by telephone or audio-visual means will be scheduled and received, to safeguard the due process rights of the parties, and to ensure that testimony by telephone or audio-visual means is received under uniformly applied rules.

(3) When the general rules of this subpart conflict with this section, this section controls.

(4) This section applies to the use of an electronic testimony witness in enforcement proceedings initiated by Trial Counsel or the Enforcement Department, or both.

(b) *Scheduling of telephone or audio-visual testimony.*

(1) Scheduling of electronic testimony witnesses shall proceed as follows:

(i) The party seeking to present an electronic testimony witness shall file a written notice with the Clerk. The notice shall be filed more than 20 days before the scheduled hearing date. The notice must contain the name of the proposed electronic testimony witness, the reason an exemption from standard in-person testimony is requested and an offer of proof as to the proposed electronic testimony witness may be obtained on the Authority's web site at [www.philapark.org/tld](http://www.philapark.org/tld) or from TLD Headquarters.

(ii) A party may file written objections to the use of an electronic testimony witness with the Clerk within 10 days of the filing of the notice required under paragraph (2)(i). The objection must set forth the reasons in support thereof.

(iii) The notice required under this paragraph, and any objection thereto, shall be served as provided in Chapter 1001, Subchapter F (relating to service of documents) on the same day the document is filed with the Clerk. A certificate of service shall be filed with the Clerk.

(iv) If a timely objection is not filed under this paragraph, the parties will be deemed to consent to the use of the electronic testimony witness.

(v) The parties may mutually agree to waive the time limitations in this paragraph.

(2) It is within the sole discretion of the presiding officer to permit the use of an electronic testimony witness in consideration of the notice and objection, if any, required under this section. The presiding officer will consider the following factors prior to scheduling the testimony of an electronic testimony witness:

(i) The value of the proposed witness in developing a full and complete record.

(ii) The reason the proposed witness is unable to testify. Particular consideration will be given to reasonable conflicts or challenges associated with employment, childcare, transportation, mobility issues or health reasons.

<sup>2</sup> The Authority does not receive money from the State Treasury and is; therefore, not subject to section 612 of the Administrative Code of 1929, 71 P.S. § 232.

<sup>3</sup> The Governor's Budget Office has determined that rulemakings related to the Authority's Taxicab and Limousine Regulations do not require a fiscal note.

(iii) The rebuttable presumption that a police officer within the definition of 234 Pa. Code Rule 103 (relating to definitions) should be permitted to testify by telephone or audio-visual means in matters related to the impoundment of a taxicab or limousine, a vehicle acting as a taxicab or limousine, or the alleged criminal conduct of a regulated party.

(iv) If the probative value of the proposed electronic testimony is substantially outweighed by the danger of an unfair prejudice to the opposing party.

(3) Only a witness scheduled to testify by telephone or audio-visual means may testify by telephone or audio-visual means. The testimony of each other witness shall be received in person.

(4) A witness scheduled to testify by telephone or audio-visual means will be permitted to testify in person.

(c) *Hearing process.*

(1) At the start of the hearing, the presiding officer will state on the record the time and telephone or audio-visual numbers at which the presiding officer initiates the contact with an electronic testimony witness.

(2) The presiding officer will permit parties a reasonable opportunity to question electronic testimony witnesses for the purpose of verifying the identity of these witnesses. Falsification of identity is prohibited.

(3) This section does not create special procedures or standards for the presentation, cross-examination, exclusion or weighing of the testimony of an electronic testimony witness or for establishing the creditability of a witness once the witness is scheduled by the presiding officer.

(4) The oath or affirmation administered to an electronic testimony witness shall indicate that the witness will not testify from documents that are not in the record.

(5) The presiding officer, the electronic testimony witness and persons in the room in which the presiding officer is present while telephone or audio-visual testimony is presented shall be able to hear and speak to one another through the telephone or audio-visual connection used to submit testimony under this section.

[Pa.B. Doc. No. 13-988. Filed for public inspection May 31, 2013, 9:00 a.m.]

## Title 58—RECREATION

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

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its April 15, 2013, meeting amended § 139.4 (relating to seasons and bag limits for the license year) to provide updated seasons and bag limits for the 2013-2014 hunting license year.

The final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 43 Pa.B. 1712 (March 30, 2013) with a correction published at 43 Pa.B. 2037 (April 13, 2013).

#### 1. Purpose and Authority

The Commission is required to set hunting and furtaking seasons and bag limits on an annual basis. Although the 2013-2014 seasons and daily season and possession limits are similar to those set in 2012-2013, the 2013-2014 seasons and bag limits have been amended to reflect current available scientific data, population and harvest records, field surveys and professional staff observations, as well as recommendations received from staff, organized sporting groups, members of the agricultural community and others interested in the wildlife resources of this Commonwealth.

Due to a shift in 2013 calendar dates, season opening dates are about 1 week later than in 2012. Changes to small game seasons include reopening snowshoe hare hunting Statewide with a daily bag of one hare.

In regard to wild turkey season changes, 2013 marks the third year of the hen harvest rate and survival study. The study design provided for 2 years (2011 and 2012) of a 2-week fall season in Study Area 1 (wildlife management units (WMU) 2C, 2E, 4A, 4B and 4D) and a 3-week fall season in Study Area 2 (WMUs 2F and 2G), followed by switching season lengths between study areas and maintaining this structure for 2 additional years (2013 and 2014). The changes to these seven WMUs accomplish the purposes of the “cross-over” design. Simultaneously increasing the season length in Study Area 1 and shortening the season length in Study Area 2 will allow the Commonwealth to detect differences in harvest rates within study areas as well as any differences in the pattern of change between study areas, thereby improving the management of the wild turkey.

Four changes to the extended bear hunting season have been made: 1) add a Wednesday—Saturday extended season in WMU 4B; 2) move the opening day of the extended season in WMU 3D from Wednesday to Monday; 3) eliminate the Monday—Saturday extended season in portions of WMUs 3B and 2G and replace them with a Monday—Saturday extended season open in WMU 3B; and 4) eliminate separate opening days that occur in different portions of WMU 4E and implement a Wednesday—Saturday extended season in WMU 4E.

Concerning furbearer seasons, the Commission increased 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.

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

#### 2. Regulatory Requirements

The final-form rulemaking amends § 139.4 by establishing when and where it is lawful to hunt and trap various game species and also places limits on the numbers that can be legally taken during the 2013-2014 license year.

### 3. *Persons Affected*

Persons wishing to hunt or trap game or wildlife within this Commonwealth during the 2013-2014 license year will be affected by the final-form rulemaking.

### 4. *Comment and Response Summary*

The Commission received a total of 78 official comments concerning this final-form rulemaking. The comments received concerned the following subtopics.

*Deer seasons.* A total of 53 comments were received concerning this subtopic: 1 expressed support for the deer management plan; 1 requested that the opening day for regular firearms deer season remain the Monday after Thanksgiving; 1 requested that the opening day for regular firearms deer season be changed to the Saturday after Thanksgiving; 3 requested generally to open firearms deer season on a Saturday; 1 requested that firearms deer season open on Christmas; 1 requested that State Game Lands 54 be closed to deer hunting for 3 years; 7 supported a 12-day concurrent season for all WMUs; 1 requested that junior hunters be permitted a Statewide concurrent deer season; 3 opposed the WMU 2G split season; 1 requested a 2- to 3-day concurrent deer season during the first week of regular firearms deer season in WMU 2G; 1 requested that WMU 2F be changed to a concurrent antlered/antlerless season; 1 requested that WMU 3C be changed to a concurrent antlered/antlerless season; 3 requested a return to the 2-week buck/3-day doe season structure; 3 requested that the split seasons be kept as they are; 1 requested that WMU 3B be kept as a split season; 3 requested a continuation of the extended antlerless deer seasons in WMUs 2B, 5C and 5D; 1 requested a continuation of the extended antlerless deer season in Berks and Lehigh Counties; 4 requested a continuation of the extended antlerless deer seasons in WMU 2B; 1 requested an elimination of the extended antlerless deer seasons in WMU 2B; 1 requested a closure to antlerless deer hunting during the early archery season; 1 requested that archery season be shortened in Berks County; 1 requested that archery season be extended into the rut; 2 requested that archery season be extended 1 week; 2 requested that archery season be opened 1 week later; 4 requested that archery deer/bear seasons run concurrently; 1 requested the ability to harvest an "inferior" buck with an antlerless license; 1 requested that archers be permitted the ability to harvest an antlerless deer with an unused antler deer tag during the late archery season; 1 requested that the early muzzleloading deer season be changed to October 12-19 to avoid conflicts with archery hunting; and 1 requested that a antlered inline muzzleloading season be created.

*Small game seasons.* A total of six comments were received concerning this subtopic: four opposed opening squirrel season in September; one requested that hen pheasant hunting be allowed in WMU 2A; and one requested that late season pheasant hunting be permitted in WMU 2A.

*Turkey seasons.* A total of three comments were received concerning this subtopic: one requested that WMU 1B be shotgun only; one requested that fall turkey season be shortened in WMUs 2F, 2G and 2H; and one requested that fall turkey season be shortened in WMUs 2F, 2G and 2H if the first week is eliminated.

*Waterfowl seasons.* A total of six comments were received concerning this subtopic: two requested that the second part of the split season be moved a week or two later; three requested that Codorus State Park be removed from the AP Zone; and one requested that that the RP Zone be extended farther east.

*Furbearer hunting/trapping seasons.* A total of ten comments were received concerning this subtopic: two requested that bobcat hunting season open at the same time as bobcat trapping season; one requested that fisher season be opened in WMU 1B; one requested that furbearer seasons be opened around the first weekend in November; one requested that all trapping seasons be opened on the same date; one requested that a season for river otter be opened; one requested that bobcat hunting season run from December 15 through February 5; one requested that bobcat hunting season run prior to bobcat trapping season; one requested that fisher season be lengthened; and one requested that fisher trapping season be adjusted so that it does not interfere with Christmas (December 28 through January 2).

### 5. *Cost and Paperwork Requirements*

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

### 6. *Effective Date*

The effective dates of the final-form rulemaking are July 1, 2013, to June 30, 2014.

### 7. *Contact Person*

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

### *Findings*

The Commission finds that:

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

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

### *Order*

The Commission, acting under authorizing statute, orders that:

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

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

(c) This order will be effective from July 1, 2013, to June 30, 2014.

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48-350 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 139. SEASONS AND BAG LIMITS

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

(SEASONS AND BAG LIMITS TABLE)  
 2013-2014 OPEN HUNTING AND FURTAKING SEASONS, DAILY LIMIT,  
 FIELD POSSESSION LIMIT AND SEASON LIMIT  
 OPEN SEASON INCLUDES FIRST AND LAST DATES LISTED

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Squirrels—(Combined species) Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law	Oct. 12	Oct. 18	6	12
Squirrels—(Combined species)	Oct. 19	Nov. 30	6	12
	Dec. 16	Dec. 24		
	Dec. 26	Feb. 22, 2014		
Ruffed Grouse	Oct. 19	Nov. 30	2	4
	Dec. 16	Dec. 24		
	Dec. 26	Jan. 25, 2014		
Rabbits, Cottontail— Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law	Oct. 12	Oct. 19	4	8
Rabbits, Cottontail	Oct. 26	Nov. 30	4	8
	Dec. 16	Dec. 24		
	Dec. 26	Feb. 22, 2014		
Ring-necked Pheasant—There is no open season for the taking of pheasants in any area designated as a wild pheasant recovery area within any wildlife management unit.				
Ring-necked Pheasant—Male only in WMUs 2A, 2C, 4C, 4E, 5A and 5B Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law	Oct. 12	Oct. 19	2	4
Ring-necked Pheasant—Male or female combined in WMUs 1A, 1B, 2B, 2D, 2E, 2F, 2G, 2H, 3A, 3B, 3C, 3D, 4A, 4B, 4D, 5C and 5D Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law	Oct. 12	Oct. 19	2	4
Ring-necked Pheasant—Male only in WMUs 2A, 2C, 4C, 4E, 5A and 5B	Oct. 26	Nov. 30	2	4
	Dec. 16	Dec. 24		
	Dec. 26	Feb. 22, 2014		
Ring-necked Pheasant—Male or female combined in WMUs 1A, 1B, 2B, 2D, 2E, 2F, 2G, 2H, 3A, 3B, 3C, 3D, 4A, 4B, 4D, 5C and 5D	Oct. 26	Nov. 30	2	4
	Dec. 16	Dec. 24		
	Dec. 26	Feb. 22, 2014		

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Bobwhite Quail—The hunting and taking of bobwhite quail is permitted in all WMUs except in WMUs 4A, 4B, 5A, 5B, 5C and 5D where the season is closed.	Oct. 26	Nov. 30	4	8
Hares (Snowshoe Rabbits) or Varying Hares in WMUs 3B, 3C and 3D	Dec. 26	Dec. 28	1	2
Hares (Snowshoe Rabbits) or Varying Hares in WMUs 1A, 1B, 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 3A, 4A, 4B, 4C, 4D, 4E, 5A, 5B, 5C and 5D	Dec. 26	Jan. 1, 2014	1	2
Woodchucks (Groundhog)	No closed season except during the regular firearms deer seasons. Hunting on Sundays is prohibited.		Unlimited	
Porcupines Season closed during the overlap with the regular firearms deer seasons.	Sept. 1	Mar. 31, 2014	3	10
<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Turkey—Male or Female WMU 1B	Nov. 2	Nov. 9	1	1
	Nov. 28	and Nov. 30		
WMU 2B (Shotgun, Bow and Arrow only)	Nov. 2	Nov. 22		
	Nov. 28	and Nov. 30		
WMUs 1A, 2A and 2D	Nov. 2	Nov. 16		
	Nov. 28	and Nov. 30		
WMUs 2C, 2E, 4A, 4B and 4D	Nov. 2	Nov. 22		
	Nov. 28	and Nov. 30		
WMUs 2F, 2G and 2H	Nov. 2	Nov. 16		
	Nov. 28	and Nov. 30		
WMUs 3A, 3B, 3C, 3D, 4C and 4E	Nov. 2	Nov. 22		
	Nov. 28	and Nov. 30		
WMU 5A	Nov. 5	Nov. 7		
WMUs 5B, 5C and 5D	Closed to fall turkey hunting			
Turkey (Spring Gobbler) Statewide <sup>1</sup> Bearded Bird only			1	2
	May 3, 2014	May 17, 2014	May be hunted 1/2 hour before sunrise to 12 noon	
	and May 19, 2014	May 31, 2014	May be hunted 1/2 hour before sunrise to 1/2 hour after sunset	
Turkey (Spring Gobbler) Statewide Youth Hunt <sup>1</sup> Bearded Bird only Eligible junior hunters only with the required license and when properly accompanied	April 26, 2014		1	1

#### MIGRATORY GAME BIRDS

Except as further restricted by this chapter, the seasons, bag limits, hunting hours and hunting regulations for migratory game birds shall conform to regulations adopted by the United States Secretary of the Interior under authority of the Migratory Bird Treaty Act (16 U.S.C.A. §§ 703—712) as published in the *Federal Register* on or about August 27 and September 28 of each year.

*Exceptions:*

(a) Hunting hours in § 141.4 (relating to hunting hours).

(b) Nontoxic shot as approved by the Director of the United States Fish and Wildlife Service is required for use Statewide in hunting and taking of migratory waterfowl.

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Crows (Hunting permitted on Friday, Saturday and Sunday only)	July 5	April 6, 2014	Unlimited	
Starlings and English Sparrows	No closed season except during the regular firearms deer seasons.		Unlimited	

**FALCONRY**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Squirrels—(Combined species)	Sept. 1	Mar. 31, 2014	6	12
Quail	Sept. 1	Mar. 31, 2014	4	8
Ruffed Grouse	Sept. 1	Mar. 31, 2014	2	4
Cottontail Rabbits	Sept. 1	Mar. 31, 2014	4	8
Snowshoe or Varying Hare	Sept. 1	Mar. 31, 2014	1	2
Ring-necked Pheasant—Male and Female—(Combined)	Sept. 1	Mar. 31, 2014	2	4

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

**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	Nov. 16	One antlered and an antlerless deer with each required antlerless license.
	Dec. 26	Jan. 11, 2014	
Deer, Archery (Antlerless) WMUs 2B, 5C and 5D	Sept. 21	Oct. 4	An antlerless deer with each required antlerless license.
	Nov. 18	Nov. 30	
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, 2H, 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, 2H, 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.

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Season Limit</i>
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> WMUs 2B, 5C and 5D	Dec. 26	Jan. 25, 2014	One antlered, or one antlerless—plus an additional antlerless deer with each required antlerless license.
Deer, Extended Regular firearms (Antlerless) Counties of Allegheny, Bucks, Chester, Delaware, Montgomery and Philadelphia	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.

**BLACK BEAR**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Bear, any age (Archery only) <sup>4</sup> (Statewide)	Nov. 18	Nov. 22	1	1
Bear, any age (Archery only) <sup>4</sup> WMUs 2B, 5C and 5D	Sep. 21	Nov. 16	1	1
Bear, any age (Archery only) <sup>4</sup> WMU 5B	Oct. 5	Nov. 16	1	1
Bear, any age (Muzzleloader) <sup>4</sup> WMUs 2B, 5B, 5C and 5D	Oct. 19	Oct. 26	1	1
Bear, any age (Special Firearms) <sup>4</sup> WMUs 2B, 5B, 5C and 5D Junior and Senior License holders, disabled and Pennsylvania residents on active duty in armed services	Oct. 24	Oct. 26	1	1
Bear, any age (Regular Firearms) <sup>4</sup> (Statewide)	Nov. 23	Nov. 27	1	1
Bear, any age, Extended Firearms <sup>4</sup> WMUs 4C, 4D and 4E	Dec. 4	Dec. 7	1	1
Bear, any age, Extended Firearms <sup>4</sup> WMUs 2B, 5B, 5C and 5D	Dec. 2	Dec. 14	1	1
Bear, any age, Extended Firearms <sup>4</sup> WMUs 3A, 3B, 3C and 3D	Dec. 2	Dec. 7	1	1

**ELK**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Elk, Special Conservation <sup>5</sup> (Antlered and Antlerless)	Sep. 2	Nov. 9	1	One elk with required license
Elk, Regular <sup>5</sup> (Antlered and Antlerless)	Nov. 4	Nov. 9	1	One elk with required license
Elk, Extended <sup>5</sup> (Antlered and Antlerless)	Nov. 11	Nov. 16	1	One elk with required license

**FUR TAKING—TRAPPING**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Minks and Muskrats (Statewide)	Nov. 23	Jan. 5, 2014	Unlimited	
Beaver (Statewide)	Dec. 26	Mar. 31, 2014		
WMUs 1A, 1B, and 3C (Combined)			20	40
WMUs 2A, 2B, 2C, 2D, 2E, 2F, 3A, 3B, 3D, 5C and 5D (Combined)			20	20
WMUs 2G, 2H, 4A, 4B, 4C, 4D, 4E, 5A and 5B (Combined)			5	5
Coyotes, Foxes, Opossums, Raccoons, Skunks, Weasels—(Statewide)	Oct. 27	Feb. 23, 2014	Unlimited	
Coyotes and Foxes—(Statewide) (Cable restraint devices may be used)	Dec. 26	Feb. 23, 2014	Unlimited	
Bobcat (with appropriate permit) WMUs 2A, 2C, 2E, 2F, 2G, 2H, 3A, 3B, 3C, 3D, 4A, 4C, 4D and 4E	Dec. 21	Jan. 12, 2014	1	1
Fisher (with appropriate permit) WMUs 2C, 2D, 2E, 2F, 2G, 2H, 3A, 3D, 4D and 4E	Dec. 21	Dec. 26	1	1

**FUR TAKING—HUNTING**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Coyotes—(Statewide)			Unlimited	
Coyotes—(During any big game season)				
Opossums, Skunks, Weasels (Statewide)				
Raccoons and Foxes—(Statewide)	Oct. 26	Feb. 22, 2014	Unlimited	
Bobcat (with appropriate permit) WMUs 2A, 2C, 2E, 2F, 2G, 2H, 3A, 3B, 3C, 3D, 4A, 4C, 4D and 4E	Jan. 21	Feb. 11, 2014	1	1

No open seasons on other wild birds or wild mammals.

<sup>1</sup> Only persons who possess a special wild turkey license as provided for in section 2709 of the act (relating to license costs and fees) may take a second spring gobbler during the hunting license year; all other persons, including mentored youth hunters, may take only one spring gobbler. A maximum of 2 gobblers per license year may be taken by any combination of licenses or exceptions for mentored youth.

<sup>2</sup> Only one antlered deer (buck) may be taken during the hunting license year.

<sup>3</sup> Includes persons who have reached or will reach their 65th birthday in the year of the application for the license and hold a valid adult license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions).

<sup>4</sup> Only one bear may be taken during the hunting license year.

<sup>5</sup> Only one elk may be taken during the hunting license year.

[Pa.B. Doc. No. 13-989. Filed for public inspection May 31, 2013, 9:00 a.m.]

**GAME COMMISSION**  
[ 58 PA. CODE CH. 139 ]

**Seasons and Bag Limits; Wildlife Management Units**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its April 15, 2013, meeting amended § 139.17 (relating to wildlife management units) to provide updated wildlife management unit (WMU) boundaries.

The final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 43 Pa.B. 1718 (March 30, 2013).

1. *Purpose and Authority*

A uniform system of WMUs was implemented in 2003 to replace the system of multiple species-specific management units. The primary objective of this new WMU system was to develop and implement wildlife management decisions on a system of more homogenous units based on physiographic, land cover and use, human population density and land ownership. WMU boundaries were defined using readily recognizable features on the landscape rather than hard to identify political boundaries. In 2008, the Commission conducted a 5-year evaluation of the structure of the WMU system which resulted in the development and implementation of four WMU map revisions. The Commission again conducted a 5-year evaluation of the structure of the WMU system and developed two WMU map revisions: 1) split current WMU 2G into WMU 2G (eastern part) and WMU 2H (western part) on a line from Coudersport (RT 6) to DuBois (I-80) following RT 872 to RT 607 to RT 155 to RT 120 to RT 555 to RT 255 to RT 80; and 2) modify the description of the boundary line between WMUs 3C and 3D to differentiate RT 6 from Industrial RT 6 to clarify that in the Scranton area, Industrial RT 6, the Casey Highway, is used as the boundary between these WMUs. The amendments to WMU boundary lines will have minimal impact on wildlife management databases. Therefore, the Commission amends § 139.17 to provide updated WMU boundaries.

Section 322(c)(4) of the code (relating to powers and duties of commission) specifically authorizes the Commission to "Define geographic limitations or restrictions." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 139.17 are adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amends § 139.17 to provide updated WMU boundaries.

3. *Persons Affected*

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

4. *Comment and Response Summary*

The Commission received two comments in support and two comments in opposition of the final-form rulemaking.

5. *Cost and Paperwork Requirements*

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

6. *Effective Date*

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

7. *Contact Person*

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

*Findings*

The Commission finds that:

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

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

*Order*

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 139, are amended by amending § 139.17 to read as set forth at 43 Pa.B. 1718.

(b) The Executive Director of the Commission shall certify this order and 43 Pa.B. 1718 and deposit them with the Legislative Reference Bureau as required by law.

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

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48-354 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 13-990. Filed for public inspection May 31, 2013, 9:00 a.m.]

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

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its April 15, 2013, meeting amended Chapter 141, Appendix G (relating to hunting hours) by replacing the current hunting hours table and migratory bird hunting hours table to accurately reflect the dates and hours of legal

hunting for the 2013-2014 hunting license year. The Commission also amended § 141.4 (relating to hunting hours) to add feral swine and wild boar to the list of species that may be lawfully taken during the regular antlered and antlerless deer seasons and expand references to the seasons during which coyotes may be hunted to “big game.”

The final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 43 Pa.B. 1710 (March 30, 2013).

1. *Purpose and Authority*

Each year there is a shift in calendar days for each month. As a result of this occurrence, the time tables in Appendix G must be amended and updated on an annual basis to accurately reflect the upcoming year’s dates and hours for legal hunting. The Commission amended Appendix G to replace the current hunting hours table and migratory bird hunting hours table to accurately reflect the dates and hours of legal hunting for the 2013-2014 hunting license year. The Commission amended § 141.4 to add feral swine and wild boar to the list of species that may be lawfully taken during the regular antlered and antlerless deer seasons and expand references to the seasons during which coyotes may be hunted to “big game” to maintain consistency with § 139.4 (relating to seasons and bag limits for the license year).

Section 322(c)(1) of the code (relating to powers and duties of commission) specifically empowers the Commission to “fix seasons, daily shooting or taking hours, and any modification thereof, and daily, season and possession limits for any species of game or wildlife.” Section 2102(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 § 141.4 and Appendix G are adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amends Appendix G by replacing the current hunting hours table and migratory bird hunting hours table to accurately reflect the dates and hours of legal hunting for the 2013-2014 hunting license year. The final-form rulemaking also amends § 141.4 by adding feral swine and wild boar to the list of species that may be lawfully taken during the regular antlered and antlerless deer seasons and expand references to the seasons during which coyotes may be hunted to “big game.”

3. *Persons Affected*

Persons wishing to hunt or trap game or wildlife within this Commonwealth during the 2013-2014 hunting year will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

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

5. *Cost and Paperwork Requirements*

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

6. *Effective Date*

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

7. *Contact Person*

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

*Findings*

The Commission finds that:

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

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

*Order*

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.4 and Appendix G to read as set forth at 43 Pa.B. 1710.

(b) The Executive Director of the Commission shall certify this order and 43 Pa.B. 1710 and deposit them with the Legislative Reference Bureau as required by law.

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

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48-352 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 13-991. Filed for public inspection May 31, 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) at its April 15, 2013, meeting amended § 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 final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 43 Pa.B. 2037 (April 13, 2013).

### 1. *Purpose and Authority*

The amendments provide for future hunter education program flexibility. The 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 amends § 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 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 are adopted under this authority.

### 2. *Regulatory Requirements*

The final-form rulemaking amends § 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 final-form rulemaking.

### 4. *Comment and Response Summary*

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

### 5. *Cost and Paperwork Requirements*

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

### 6. *Effective Date*

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

### 7. *Contact Person*

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

### *Findings*

The Commission finds that:

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

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

### *Order*

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 143, are amended by amending § 143.12 to read as set forth at 43 Pa.B. 2037.

(b) The Executive Director of the Commission shall certify this order and 43 Pa.B. 2037 and deposit them with the Legislative Reference Bureau as required by law.

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

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48-353 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 13-992. Filed for public inspection May 31, 2013, 9:00 a.m.]