

PROPOSED RULEMAKING

DEPARTMENT OF BANKING AND SECURITIES

[10 PA. CODE CH. 5]

Assessments

The Department of Banking and Securities (Department) proposes to add Chapter 5 (relating to assessments) to read as set forth in Annex A. This chapter is proposed under the authority of 17 Pa.C.S. § 503(a) (relating to regulation by department) and sections 202(C) and 204(A) of the Department of Banking and Securities Code (71 P. S. §§ 733-202(C) and 733-204(A)).

Purpose

The purpose of this proposed rulemaking is to add Chapter 5 to implement an assessment schedule for State-chartered institutions which would provide adequate and sustainable funding for the Department and streamline reporting and billing requirements on State-chartered institutions by eliminating examination-based billing for State-chartered credit unions and State-chartered trust companies.

Explanation of Regulatory Requirements

Proposed § 5.1 (relating to definitions) defines the words and terms used in Chapter 5.

Proposed § 5.2 (relating to semiannual assessment for banks, bank and trust companies, savings banks and savings associations) establishes a semiannual assessment schedule for banks, bank and trust companies, savings banks and savings associations that are chartered by the Department.

Proposed § 5.3 (relating to semiannual assessment for trust companies) establishes a semiannual assessment schedule for trust companies that are chartered by the Department.

Proposed § 5.4 (relating to semiannual assessment for credit unions) establishes a semiannual assessment schedule for credit unions that are chartered by the Department.

Proposed § 5.5 (relating to adjustments to assessments; invoicing) sets forth the criteria for adjustments to the assessments based upon an optional adjustment for inflation which would be applied to all State-chartered institutions in subsection (a) and an optional adjustment to be applied only to specific institutions based upon their Uniform Financial Institutions Rating System or Uniform Interagency Trust Rating System composite rating in subsection (b). Section 5.5(c) establishes that semiannual assessments calculated under Chapter 5 will be rounded to the nearest dollar. The index used to calculate the inflation adjustment in § 5.5(a) is the same one used annually by the Department to calculate the inflation adjustment to the "base figure" under the act of January 30, 1974 (P. L. 13, No. 6) (41 P. S. §§ 101—605), known as the Loan Interest and Protection Law.

Proposed § 5.6 (relating to implementation schedule) sets forth the implementation schedule of the assessments for banks, bank and trust companies, savings banks, savings associations and trust companies.

Affected Parties

The proposed rulemaking would affect Pennsylvania State-chartered banking institutions, credit unions and trust companies.

Fiscal Impact

State government

The proposed rulemaking would provide appropriate and sustainable funding for the Department.

Regulated community

The proposed rulemaking would increase the assessments paid by the regulated community to the Department for the first time since the 1990s. Upon full implementation, the assessments paid by nearly all State-chartered institutions will still be significantly lower than current assessments paid by similar Federally-chartered institutions operating in this Commonwealth.

Paperwork

The proposed rulemaking would eliminate the paperwork associated with examination-based billing for the Department, State-chartered credit unions and State-chartered trust companies. The proposed rulemaking would not impose additional paperwork on the Department, State-chartered banking institutions, credit unions or trust companies.

Effectiveness/Sunset Date

Chapter 5 will be effective upon final-form publication in the *Pennsylvania Bulletin*. The regulations do not have a sunset date because the Department will periodically review the effectiveness of the regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 22, 2013, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Commerce Committee and the Senate Banking and Insurance 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 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.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Office of Chief Counsel, Department of Banking and Securities, Attention: Public Comment on Regulation 3-51, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101-2290, fax (717) 783-8427, ra-pabankreg@pa.gov within 30 days after publication in the *Pennsylvania Bulletin*.

GLENN E. MOYER,
Secretary

Fiscal Note: 3-51. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 10. BANKING AND SECURITIES
PART I. GENERAL PROVISIONS
CHAPTER 5. ASSESSMENTS

- Sec.
 5.1. Definitions.
 5.2. Semiannual assessment for banks, bank and trust companies, savings banks and savings associations.
 5.3. Semiannual assessment for trust companies.
 5.4. Semiannual assessment for credit unions.
 5.5. Adjustments to assessments; invoicing.
 5.6. Implementation schedule.

§ 5.1. Definitions.

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

Bank—As defined in section 102(f) of the Banking Code (7 P. S. § 102(f)).

Bank and trust company—As defined in section 102(g) of the Banking Code.

Consolidated total assets—The total assets as reflected in the FFIEC Call Report’s “Schedule RC-Balance Sheet of the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only—FFIEC 041” or “Schedule RC—Balance Sheet of the Consolidated Report of Condition and Income for a Bank with Domestic and Foreign Offices—FFIEC 031,” as applicable.

Credit union—As defined in 17 Pa.C.S. § 102 (relating to application of title).

FFIEC Call Report—A report promulgated by the Federal Financial Institutions Examinations Council that sets forth consolidated total assets and fiduciary assets.

Fiduciary assets—The sum of the total fiduciary assets in the FFIEC Call Report’s “Schedule RC—T Fiduciary and Related Services of the Consolidated Report of Condition and Income for a Bank with Domestic Offices Only—FFIEC 041.”

NCUA Call Report—A report promulgated by the National Credit Union Administration that sets forth total assets.

Savings association—An association as defined in section 102(3) of the Savings Association Code of 1967 (7 P. S. § 6020-2(3)).

Savings bank—As defined in section 102(x) of the Banking Code.

Total assets—The total assets as reflected on the “Statement of Financial Condition” in the NCUA Call Report.

Trust company—As defined in section 102(dd) of the Banking Code.

UFIRS—The Uniform Financial Institutions Rating System.

UITRS—The Uniform Interagency Trust Rating System.

§ 5.2. Semiannual assessment for banks, bank and trust companies, savings banks and savings associations.

(a) Banks, bank and trust companies, savings banks and savings associations shall pay a semiannual assessment to the Department.

(b) The semiannual assessment on banks, bank and trust companies, savings banks and savings associations will be calculated as follows:

<i>If the amount of the consolidated total assets is:</i>		<i>The semiannual assessment will be:</i>			
<i>Over:</i>	<i>But not over:</i>	<i>Base amount:</i>		<i>The excess over:</i>	<i>Times (x):</i>
0	\$20,000,000	\$6,070	+	0	0
\$20,000,000	\$100,000,000	\$6,070	+	\$20,000,000	0.000112059
\$100,000,000	\$200,000,000	\$15,035	+	\$100,000,000	0.000072836
\$200,000,000	\$1,000,000,000	\$22,319	+	\$200,000,000	0.000061631
\$1,000,000,000	\$2,000,000,000	\$71,623	+	\$1,000,000,000	0.000050425
\$2,000,000,000	\$6,000,000,000	\$122,048	+	\$2,000,000,000	0.000044822
\$6,000,000,000	\$20,000,000,000	\$301,338	+	\$6,000,000,000	0.000038139
\$20,000,000,000		\$835,284	+	\$20,000,000,000	0.000019409

(c) Banks, bank and trust companies, savings banks and savings associations will be billed semiannually in December and June based upon the consolidated total assets reported in the immediately preceding FFIEC Call Report.

§ 5.3. Semiannual assessment for trust companies.

(a) Trust companies shall pay a semiannual assessment to the Department.

(b) The semiannual assessment on trust companies will be calculated on consolidated total assets plus fiduciary assets as follows:

<i>If the amount of the consolidated total assets is:</i>		<i>The semiannual assessment will be:</i>			
<i>Over:</i>	<i>But not over:</i>	<i>Base amount:</i>		<i>The excess over:</i>	<i>Times (x):</i>
0	\$20,000,000	\$6,070	+	0	0
\$20,000,000	\$100,000,000	\$6,070	+	\$20,000,000	0.000112059
\$100,000,000	\$200,000,000	\$15,035	+	\$100,000,000	0.000072836
\$200,000,000	\$1,000,000,000	\$22,319	+	\$200,000,000	0.000061631
\$1,000,000,000	\$2,000,000,000	\$71,623	+	\$1,000,000,000	0.000050425
\$2,000,000,000	\$6,000,000,000	\$122,048	+	\$2,000,000,000	0.000044822
\$6,000,000,000	\$20,000,000,000	\$301,338	+	\$6,000,000,000	0.000038139
\$20,000,000,000		\$835,284	+	\$20,000,000,000	0.000019409

plus

<i>If the amount of the fiduciary assets is:</i>		<i>The semiannual assessment will be:</i>			
<i>Over:</i>	<i>But not over:</i>	<i>Base amount:</i>		<i>The excess over:</i>	<i>Times (x):</i>
0	\$500,000,000	\$6,746	+	\$0	0
\$500,000,000	\$1,000,000,000	\$13,492	+	\$500,000,000	0
\$1,000,000,000	\$10,000,000,000	\$13,492	+	\$1,000,000,000	0.000002689
\$10,000,000,000	\$100,000,000,000	\$37,689	+	\$10,000,000,000	0.000000449
\$100,000,000,000		\$78,081	+	\$100,000,000,000	0.0000001425

(c) Trust companies will be billed in December and June based upon the consolidated total assets and fiduciary assets reported in the immediately preceding FFIEC Call Report.

§ 5.4. Semiannual assessment for credit unions.

(a) Credit unions shall pay a semiannual assessment to the Department.

(b) The semiannual assessment on credit unions will be calculated as follows:

<i>If the amount of the total assets is:</i>		<i>The semiannual assessment will be:</i>			
<i>Over:</i>	<i>But not over:</i>	<i>This amount:</i>		<i>The excess over:</i>	<i>Times (x):</i>
0	\$24,503,168	\$2,500	+	\$0	0
\$24,503,168	\$1,115,871,488	\$2,500	+	\$24,503,168	0.00010739750
\$1,115,871,488	\$3,376,610,357	\$119,842	+	\$1,115,871,488	0.00003130250
\$3,376,610,357		\$190,609	+	\$3,376,610,357	0.00001045000

(c) Credit unions will be billed in December and June based upon the total assets reported in the immediately preceding NCUA Call Report.

§ 5.5. Adjustments to assessments; invoicing.

(a) *Inflation adjustment to assessments.* The Department may increase the amount of assessments generated by the calculations in §§ 5.2—5.4 (relating to semiannual assessment for banks, bank and trust companies, savings banks and savings associations; semiannual assessment for trust companies; and semiannual assessment for credit unions) in an amount up to the increase in the Consumer Price Index indicated by the “Consumer Price Index—All Urban Consumers: U.S. All Items 1982=100” published by the United States Department of Labor Bureau of Labor Statistics, or other similar index published by the United States Department of Labor Bureau of Labor Statistics, if the projected assessments are insufficient to provide for the Department’s budget due to inflation.

(b) *Surcharge based on condition.* The Department may increase the amount of a specific assessment generated by the calculations in §§ 5.2—5.4 by:

(1) Thirty percent for a bank, bank and trust company, savings bank, savings association, trust company or credit union with a UFIRS or UITRS composite rating of 4.

(2) Fifty percent for a bank, bank and trust company, savings bank, savings association, trust company or credit union with a UFIRS or UITRS composite rating of 5.

(c) *Assessment invoicing.* The Department will round the assessments calculated under this chapter to the nearest dollar on the semiannual assessment invoice issued to each assessed entity.

§ 5.6. Implementation schedule.

(a) *General rule.* The Department will provide an implementation schedule for banks, bank and trust companies, savings banks, savings associations and trust companies to adjust to the assessments generated by this chapter.

(b) *Implementation schedule.* Banks, bank and trust companies, savings banks, savings associations and trust companies shall pay assessments according to the following implementation schedule:

(1) Seventy percent of the total assessment calculated by §§ 5.2, 5.3 and 5.5 (relating to semiannual assessment

for banks, bank and trust companies, savings banks and savings associations; semiannual assessment for trust companies; and adjustments to assessments; invoicing) for the first 12 months after _____ (*Editor’s Note:* The blank refers to the effective date of adoption of this proposed rulemaking.).

(2) Eighty-five percent of the total assessment calculated by §§ 5.2, 5.3 and 5.5 for the second 12 months after _____ (*Editor’s Note:* The blank refers to the effective date of adoption of this proposed rulemaking.).

(3) One hundred percent of the total assessment calculated by §§ 5.2, 5.3 and 5.5 for the third 12 months after _____ (*Editor’s Note:* The blank refers to the effective date of adoption of this proposed rulemaking.).

[Pa.B. Doc. No. 13-1665. Filed for public inspection September 13, 2013, 9:00 a.m.]

**ENVIRONMENTAL
QUALITY BOARD**

[25 PA. CODE CH. 78]

Oil and Gas Well Fee Amendments

The Environmental Quality Board (Board) proposes to amend §§ 78.1 and 78.19 (relating to definitions; and permit application fee schedule) to read as set forth in Annex A. This proposed rulemaking satisfies the obligation of the Department of Environmental Protection (Department), as specified in § 78.19(f), to provide the Board with an evaluation of the Chapter 78 fees and recommend regulatory changes to address any disparity between Oil and Gas Program (Program) income generated by the fees and the Department’s cost of administering the Program. The proposed rulemaking includes several changes to the structure of oil and gas well permit fees, including establishing increased flat fees for unconventional well permits.

This proposed rulemaking was adopted by the Board at its meeting of July 16, 2013.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Kurt Klappowski, Director, Bureau of Oil and Gas Planning and Program Management, Rachel Carson State Office Building, 15th Floor, 400 Market Street, P. O. Box 8765, Harrisburg, PA 17105-8765, (717) 772-2199; or Trisha Salvia, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department's web site at www.dep.state.pa.us (DEP Search/Keyword: Public Participation).

C. *Statutory Authority*

This proposed rulemaking is authorized under 58 Pa.C.S. § 3274 (relating to regulations), which directs the Board to adopt regulations necessary to implement 58 Pa.C.S. Chapter 32 (relating to development), 58 Pa.C.S. § 3211(d) (relating to well permits), which authorizes the Board to establish permit fees that bear a reasonable relationship to the cost of administering 58 Pa.C.S. Chapter 32, and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which authorizes the Board to promulgate regulations of the Department.

D. *Background and Purpose*

Applicants for permits to drill oil and gas wells in this Commonwealth shall pay the permit fee established by the Board. These permits fees fund the entire operation of the Department's Office of Oil and Gas Management (Oil and Gas Program), which is responsible for Statewide oil and gas conservation and environmental programs to facilitate the safe exploration, development and recovery of Pennsylvania's oil and gas reservoirs in a manner that will protect this Commonwealth's natural resources, the environment and public health, safety and welfare. The permit fees are placed in the Well Plugging Fund.

The Department prepared and presented to the Board a 3-Year Regulatory Fee and Program Cost Analysis Report (Report) as part of this proposed rulemaking. A copy of the Report is available from the persons listed in Section B. The conclusions of the Report are outlined in this section of the preamble.

The Well Plugging Fund balance is declining as the Department's expenses to operate the Program have exceeded permit fee revenues for the past several fiscal years. Fiscal Year (FY) 2011-12 revenues totaled \$13.5 million and expenditures exceeded \$16.6 million. The Program is projected to have increasing expenditures with declining revenues in future fiscal years, which will continue to deplete the existing fund reserves. At current permit fee and expenditure levels, with projected permitting levels, the Department expects a \$1.8 million deficit of the Well Plugging Fund by the end of FY 2015-16.

In addition to declining Well Plugging Fund balances, the Program is facing increasing operational expenditures due to increased activity in the area of oil and gas exploration associated with previously unexplored unconventional gas formations, as well as the development of

natural gas infrastructure throughout this Commonwealth. These expenditures are only expected to increase as exploration of other unconventional formations and infrastructure development expands.

The proposed rulemaking increases the well permit fee to provide adequate revenue to support the ongoing operations of the Program as well as to meet future Program needs, including permitting, inspection, enforcement and information technology needs. Compounding the problem of declining funds due to increasing expenditures is the decrease of well permit applications. Since 2010, the Department has experienced a 22% decrease in the number of unconventional well permit applications received. The decline in permit applications is met with declining revenues but with the passage of the act of February 2, 2012 (P. L. 67, No. 9) and the act of February 14, 2012 (P. L. 87, No. 13), the overall responsibility of the Program has increased. It is imperative that the Department has the resources and technology necessary to ensure industry compliance and environmental protection as Office of Oil and Gas Management responsibilities in this area continue to expand.

This increase in workload coupled with declining permit revenues creates a situation where the incoming permit revenue is insufficient to cover the current operational costs of the Program, not allowing any room for flexibility in terms of future staff and resource needs. As the oil and gas industry continues to expand in this Commonwealth, additional Department staff and technology will be critical to ensure the Department's proper oversight of the industry.

Two areas where this increased workload and expenditures make the proposed permit fee increase critical are streamlined electronic review and staffing.

Streamlined electronic review

The Department will allocate a substantial portion of the increased fee revenue to Information Technology projects for the Program, such as electronic permitting, mobile digital inspections, upgrades to existing reporting systems and modernization of forms and databases. This investment in technology will yield efficiencies for both the Department and the regulated community in terms of more predictable and timely permit issuance, more effective site inspections, increased availability of staff for compliance assistance, and more streamlined reporting to and communication with the Department. It will also make the Department's work more transparent to the public as electronic documents can be easily made available on the Internet. The two key initiatives on the forefront of information technology priorities for the Department are the ePermitting initiative and enabling staff with devices and the capability to conduct mobile digital inspections.

The ePermitting system will provide the ability to process applications for oil and gas permits online. The new system will replace the manual process that requires applicants to complete paper forms and deliver multiple copies of documentation to a Department district office. This change should reduce data transcription errors from entering data on paper forms into the Department's databases. The new ePermitting system is designed to increase review efficiency through electronic workflow and to significantly decrease the time from initial application submission to permit issuance. It will enable applicants to submit online payment and provide for permit review transparency as an applicant will be able to closely follow a permit through the approval process and receive automatic notifications as it completes the out-

lined benchmarks. Upon approval, the system will deliver the permit electronically to the applicant, thereby eliminating the lag time from permit issuance to receipt by the applicant.

Electronic receipt and storage of the permitting documents will also result in significant savings in terms of storage and of staff time and costs associated with related Right-to-Know requests. The Department is second in the Commonwealth in terms of Right-to-Know requests, much of which is attributed to the Program. The public will enjoy greater access to timely data as the Department receives it.

Creation and deployment of a mobile digital inspection platform and mobile devices will create marked improvement and efficiencies in terms of how the organization conducts site inspections. Current paper based inspection forms necessitate staff spending at least 1 day a week in the office to manually enter data from paper inspection reports and mail the resulting inspection report and findings to operators. Mobile digital inspections will allow entry of data into the system while onsite, eliminate the need to return to the office for data entry and enable employees to spend their time where they are needed, on location for inspections and compliance assistance.

Staffing needs

Currently, there are 202 full time equivalents (FTE) assigned to the Office of Oil and Gas Management. The Program has grown considerably; in 2004 the Program had 64 FTEs. Approximately 80% of the current staff is assigned to engineering, scientific or permit/inspection-related work, as oil and gas inspectors or oil and gas inspector supervisors. Another 20% are assigned to clerical, administrative or legal work to support the Program.

The Department is proposing that additional positions are needed within the Office of Oil and Gas Management to implement the additional responsibilities required under 58 Pa.C.S. Chapter 32 to review well pad and pipeline development permit applications in an efficient and timely manner and to support the Bureau of Oil and Gas Planning and Program Management.

Chapter 32 of 58 Pa.C.S. comprehensively amended the Oil and Gas Act of 1984 and established a number of new responsibilities on the oil and gas industry as well as the Department. Under 58 Pa.C.S. Chapter 32, the Department must inspect well sites before drilling can begin and well drillers must now notify the Department prior to cementing all strings of casing and before hydraulic fracturing operations begin. These new requirements have stretched thin the current staff and therefore necessitate additional inspectors to fulfill the increased inspection requirements and expectations of 58 Pa.C.S. Chapter 32. Absent additional inspection staff, well sites will not be inspected at the frequency envisioned by 58 Pa.C.S. Chapter 32.

In addition to responding to new requirements, additional staff is needed to timely review the increase in permits received by the Department due to substantial natural gas infrastructure development throughout this Commonwealth. Failure to review permit applications within a reasonable time period can result in substantial cost increases for these projects and ultimately prevents natural gas from reaching consumers, thus increasing commodity costs.

Finally, as a result of the Department's 2011 reorganization, the Office of Oil and Gas Management was created to unify the planning and program management staff with the permitting, inspection and enforcement

staff under a common Deputate. As a result of this reorganization, additional staff is necessary to support the Office of Oil and Gas Management's Bureau of Oil and Gas Planning and Program Management. These additional staff will enable the Office of Oil and Gas Management to better develop new regulations, policies and technical guidance documents pertaining to well construction and surface activities on a timely basis. Failure to promptly develop these rules and policies can lead to uncertainty and inconsistent application of 58 Pa.C.S. Chapter 32. Additional staff will better serve the public as well as the industry by making more transparent how the Department interprets and implements 58 Pa.C.S. Chapter 32.

Without additional revenue provided by a regulatory fee package, additional staff complement will not be possible, which will jeopardize the Department's ability to provide high quality compliance assistance, ensure timely permitting, ensure adequate inspection and enforcement operations, and leverage existing technology to streamline inspection and permitting activities.

The Department consulted with the Oil and Gas Technical Advisory Board (TAB) in the development of this proposed rulemaking. The Department presented the draft proposed rulemaking to TAB at its April 23, 2013, meeting. Because the proposed rulemaking does not address technical issues relating to oil and gas, TAB did not take a formal action relative to the proposed rulemaking.

E. Summary of Regulatory Requirements

Current fee structure

The current permit fee structure is outlined in § 78.19 and establishes three classes of wells. Two are based on the type of wellbore that will be used to produce oil or natural gas—vertical or nonvertical (deviated or horizontal) and the third is based on the Marcellus Shale being the target formation. Permit fees for an individual well are determined by use of a sliding scale based on the total well bore length in feet. The sliding scales for the nonvertical and Marcellus wells are identical and are roughly two to three times the fee paid for a vertical well of the same total well bore length. As an example, an applicant requesting a permit for a 5,000-foot vertical well pays a fee of \$550, while an applicant for a nonvertical or Marcellus Shale well of the same well bore length would pay \$1,600. The current average nonvertical unconventional well permit fee is approximately \$3,200 and the current average vertical unconventional well permit fee is \$2,000.

Proposed fee structure

The proposed rulemaking amends § 78.19 to create two classes of wells for permit fee purposes. These classes are "conventional wells" and "unconventional wells." This part of the proposed rulemaking follows the general structure of 58 Pa.C.S. Chapter 32, which established the "conventional vs. unconventional well" distinction in a number of different areas. For example, 58 Pa.C.S. § 3215 (relating to well location restrictions) establishes differing setback requirements for the two classes of wells and 58 Pa.C.S. § 3218 (relating to protection of water supplies) establishes differing presumptions of liability for the two classes of wells.

It is important to be clear that the proposed rulemaking does not include any changes to the current permit fee structure for applicants for permits to drill "conventional" oil and gas wells. Although "conventional" wells and formations are not defined in 58 Pa.C.S. § 3203

(relating to definitions), proposed amendments to § 78.1 would define those terms with reference to definitions in 58 Pa.C.S. § 3203 of “unconventional well” and “unconventional formation.”

By reviewing the “unconventional” definitions, “conventional wells” include: (1) any wells drilled to produce oil; (2) wells drilled to produce natural gas from formations other than shale formations; (3) wells drilled to produce natural gas from shale formations located above the base of the Elk Group or its stratigraphic equivalent; and (4) wells drilled to produce natural gas from shale formations located below the base of the Elk Group where natural gas can be produced at economic flow rates or in economic volumes without the use of vertical or nonvertical well bores stimulated by hydraulic fracture treatments or by using multilateral well bores or other techniques to expose more of the formation to the well bore. For permit applicants to drill these wells, this proposed rulemaking will not have an impact.

Permit applicants for conventional wells will not see an impact from this proposed rulemaking because the rulemaking retains the current “vertical well” fee structure as the new “conventional well” fee structure. Typically, “conventional wells,” as defined in this proposed rulemaking, would currently pay the “vertical well” fee.

For “unconventional nonvertical wells” and “unconventional vertical wells,” the proposed rulemaking establishes flat permit fees of \$5,000 and \$4,200, respectively, regardless of the total well bore length of the well. The Department determined that this increase will enable the Department to operate the Program in the manner contemplated by the current rules and regulations, as well as undertake the initiatives previously described.

F. *Benefits, Costs and Compliance*

Benefits

The increased oil and gas permit fee revenue would be used to adequately fund the Department’s Office of Oil and Gas Management. Revenue to the Department from the fee increase would be used solely to operate the regulatory program overseeing the responsible development of this Commonwealth’s oil and natural gas resources. In addition, the Department will be able to pursue streamlined electronic review initiatives and increase the Office of Oil and Gas Management staffing levels to meet the challenges of increased responsibilities and timely oversight, responsiveness and transparency. Finally, the proposed rulemaking reduces the burden on the regulated community and the Department because it replaces the sliding scale permit fees, which require proper calculation and review, with flat fees that are easy to understand and implement.

Compliance Costs

Nonvertical unconventional wells

The average permit fee paid for a nonvertical unconventional well or Marcellus Shale well during 2012 was approximately \$3,200 per well. The proposed rulemaking establishes a fixed \$5,000 fee for each nonvertical unconventional well which is an increase of \$1,800 per well. The Department projects that approximately 2,600 well permit applications will be received annually following this adoption of this proposed rulemaking. This would result in an additional annual incremental permit cost of \$4.68 million to the regulated community.

Vertical unconventional wells

The proposed rulemaking establishes a fixed \$4,200 fee for each vertical unconventional well. The Department

projects that approximately 80 well permit applications for vertical unconventional wells will be received annually following this adoption of these proposed amendments. This would result in an additional annual incremental permit cost of \$176,000 to the regulated community.

No new legal, accounting or consulting procedures would be required.

Compliance Assistance Plan

The Department plans to educate and assist the public and regulated community in understanding the proposed requirements and how to comply with them. This outreach initiative will be accomplished through the Department’s ongoing compliance assistance program. Permit application forms and instructions would be amended to reflect the new permit fee structure.

Paperwork Requirements

There are no additional paperwork requirements associated with this proposed rulemaking with which the industry would need to comply.

G. *Pollution Prevention*

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. The anticipated increased revenues would allow the Department to continue providing adequate oversight of the oil and gas industry in this Commonwealth, ensuring continued protection of the environment and the public health and welfare of the citizens of this Commonwealth.

H. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended. In addition, in accordance with § 78.19(f), the Department will evaluate these fees and recommend regulatory changes to the Board to address any disparity between the Program income generated by the fees and the Department’s cost of administering the Program with the objective of ensuring fees meet all Program costs and programs are self-sustaining. This report and any proposed regulatory changes will be presented to the Board no later than 3 years after the promulgation of the final-form rulemaking.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 4, 2013, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. 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, recom-

mendations 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.

J. Public Comments

Written comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by October 15, 2013. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by October 15, 2013. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic comments. Comments may be submitted electronically to the Board at RegComments@pa.gov and must also be received by the Board by October 15, 2013. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission. If the sender does not receive an acknowledgement of electronic comments within 2 working days, the comments should be retransmitted to ensure receipt.

E. CHRISTOPHER ABRUZZO,
Acting Chairperson

Fiscal Note: 7-483. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

**Subpart C. PROTECTION OF NATURAL
RESOURCES**

ARTICLE I. LAND RESOURCES

CHAPTER 78. OIL AND GAS WELLS

Subchapter A. GENERAL PROVISIONS

§ 78.1. Definitions.

[(a) The words and terms defined in section 103 of the act (58 P. S. § 601.103), section 2 of the Coal and Gas Resource Coordination Act (58 P. S. § 502),

section 2 of the Oil and Gas Conservation Law (58 P. S. § 402), section 103 of the Solid Waste Management Act (35 P. S. § 6018.103) and section 1 of The Clean Stream Law (35 P. S. § 691.1), have the meanings set forth in those statutes when the terms are used in this chapter.

(b)] The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise, or as otherwise provided in this chapter:

* * * * *

Conductor pipe—A short string of large-diameter casing used to stabilize the top of the wellbore in shallow unconsolidated formations.

Conventional formation—A formation that is not an unconventional formation.

Conventional well—A bore hole drilled or being drilled for the purpose of or to be used for the production of oil or gas from a conventional formation.

Deepest fresh groundwater—The deepest fresh groundwater bearing formation penetrated by the wellbore as determined from drillers logs from the well or from other wells in the area surrounding the well or from historical records of the normal surface casing seat depths in the area surrounding the well, whichever is deeper.

* * * * *

L.E.L.—Lower explosive limit.

[*Marcellus Shale well*—A well that when drilled or altered produces gas or is anticipated to produce gas from the Marcellus Shale geologic formation.]

Noncementing material—A mixture of very fine to coarse grained nonbonding materials, including unwashed crushed rock, drill cuttings, earthen mud or other equivalent material approved by the Department.

* * * * *

Nonvertical unconventional well—

(i) [A] An unconventional well drilled intentionally to deviate from a vertical axis.

(ii) The term includes wells drilled diagonally and wells that have [**horizontal**] horizontal bore holes.

* * * * *

Vertical unconventional well—[A] An unconventional well with a single vertical well bore.

* * * * *

Subchapter B. PERMITS, TRANSFERS AND OBJECTIONS

PERMITS AND TRANSFERS

§ 78.19. Permit application fee schedule.

(a) An applicant for a conventional well shall pay a permit application fee according to the following schedule:

[Vertical] Conventional Wells		[Nonvertical Wells]		[Marcellus Shale Wells]	
Total Well Bore Length in Feet	Total Fee	[Total Well Bore Length in Feet	Total Fee]	[Total Well Bore Length in Feet	Total Fee]
0 to 2,000	\$250	[0 to 1,500	\$900]	[0 to 1,500	\$900]
2,001 to 2,500	\$300	[1,501 to 2,000	\$1,000]	[1,501 to 2,000	\$1,000]
2,501 to 3,000	\$350	[2,001 to 2,500	\$1,100]	[2,001 to 2,500	\$1,100]
3,001 to 3,500	\$400	[2,501 to 3,000	\$1,200]	[2,501 to 3,000	\$1,200]

[Vertical] Conventional Wells		[Nonvertical Wells]		[Marcellus Shale Wells]	
Total Well Bore Length in Feet	Total Fee	[Total Well Bore Length in Feet	Total Fee]	[Total Well Bore Length in Feet	Total Fee]
3,501 to 4,000	\$450	[3,001 to 3,500	\$1,300]	[3,001 to 3,500	\$1,300]
4,001 to 4,500	\$500	[3,501 to 4,000	\$1,400]	[3,501 to 4,000	\$1,400]
4,501 to 5,000	\$550	[4,001 to 4,500	\$1,500]	[4,001 to 4,500	\$1,500]
5,001 to 5,500	\$650	[4,501 to 5,000	\$1,600]	[4,501 to 5,000	\$1,600]
5,501 to 6,000	\$750	[5,001 to 5,500	\$1,700]	[5,001 to 5,500	\$1,700]
6,001 to 6,500	\$850	[5,501 to 6,000	\$1,800]	[5,501 to 6,000	\$1,800]
6,501 to 7,000	\$950	[6,001 to 6,500	\$1,900]	[6,001 to 6,500	\$1,900]
7,001 to 7,500	\$1,050	[6,501 to 7,000	\$2,000]	[6,501 to 7,000	\$2,000]
7,501 to 8,000	\$1,150	[7,001 to 7,500	\$2,100]	[7,001 to 7,500	\$2,100]
8,001 to 8,500	\$1,250	[7,501 to 8,000	\$2,200]	[7,501 to 8,000	\$2,200]
8,501 to 9,000	\$1,350	[8,001 to 8,500	\$2,300]	[8,001 to 8,500	\$2,300]
9,001 to 9,500	\$1,450	[8,501 to 9,000	\$2,400]	[8,501 to 9,000	\$2,400]
9,501 to 10,000	\$1,550	[9,001 to 9,500	\$2,500]	[9,001 to 9,500	\$2,500]
10,001 to 10,500	\$1,650	[9,501 to 10,000	\$2,600]	[9,501 to 10,000	\$2,600]
10,501 to 11,000	\$1,750	[10,001 to 10,500	\$2,700]	[10,001 to 10,500	\$2,700]
11,001 to 11,500	\$1,850	[10,501 to 11,000	\$2,800]	[10,501 to 11,000	\$2,800]
11,501 to 12,000	\$1,950	[11,001 to 11,500	\$2,900]	[11,001 to 11,500	\$2,900]
		[11,501 to 12,000	\$3,000]	[11,501 to 12,000	\$3,000]

(b) An applicant for a [vertical] conventional well exceeding 12,000 feet in total well bore length shall pay a permit application fee of \$1,950 + \$100 for every 500 feet the well bore extends over 12,000 feet. Fees shall be rounded to the nearest 500-foot interval **under this subsection.**

(c) An applicant for [a nonvertical well or Marcellus Shale well exceeding 12,000 feet in total well bore length] an unconventional well shall pay a permit application fee [of \$3,000 + \$100 for every 500 feet the well bore extends over 12,000 feet. Fees shall be rounded to the nearest 500-foot interval.] according to the following:

- (1) \$4,200 for a vertical unconventional well.
- (2) \$5,000 for a nonvertical unconventional well.

(d) If, when drilled, the total well bore length of the conventional well exceeds the length specified in the permit application **due to target formation being deeper than anticipated at the time of application submittal**, the operator shall pay the difference between the amount paid as part of the permit application and the amount required by subsections [(a)—(c)] (a) and (b).

(e) An applicant for a [vertical] conventional well with a well bore length of 1,500 feet or less for home use shall pay a permit application fee of \$200.

* * * * *

[Pa.B. Doc. No. 13-1666. Filed for public inspection September 13, 2013, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE. CH. 51]

Administrative Provisions; Resident and Nonresident Fishing Licenses

The Fish and Boat Commission (Commission) proposes to amend Chapter 51 (relating to administrative provisions). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments

modify and update the Commission's general regulations pertaining to fishing licenses.

A. Effective Date

The proposed rulemaking, if approved on final-form rulemaking, will go into effect upon final-form 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.

C. *Statutory Authority*

The proposed amendment to § 51.32 (relating to resident and nonresident licenses) is published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. *Purpose and Background*

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

E. *Summary of Proposal*

Under § 51.32(d), a Senior Resident Lifetime Fishing License becomes invalid when the holder establishes residency in another state. While not as specific as § 51.32(d), § 51.32(a) and (c) have been interpreted to mean that other fishing licenses become invalid upon a change in residency.

With the advent of multiyear fishing licenses, the Commission anticipates some confusion arising among anglers who purchase a multiyear license, move out-of-State and expect to be able to continue fishing with the multiyear license. The Commission believes that the benefits of providing clarity to anglers and encouraging fishing outweigh revenue to be gained by requiring license holders to purchase a new fishing license after they change their state of residence. License holders will still be required to display their license and possess a positive means of identification as required under section 2703(a) of the code (relating to possession and display of licenses).

The Commission proposes to amend § 51.32 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. Fiscal impacts to the Commission will be nominal.

The proposed rulemaking will not impose new costs on the private sector or the general public. It will result in a cost savings to anglers who purchase a resident license and then move out of this Commonwealth prior to the expiration of the license. These anglers will not be required to purchase a nonresident license until their current license expires.

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 of this proposed rulemaking 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. 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-250. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 51. ADMINISTRATIVE PROVISIONS

Subchapter D. ISSUING AGENTS

§ 51.32. Resident and nonresident licenses.

(a) Only bona fide residents of this Commonwealth who establish their resident status by producing a Pennsylvania motor vehicle driver’s license or other positive means of identification are entitled to **obtain** one of the various forms of a resident fishing license.

* * * * *

(d) **[A Senior Resident Lifetime Fishing License is valid only so long as the holder is a bona fide resident of this Commonwealth. A holder of a Senior Resident Lifetime Fishing License who establishes residence in another state and continues to fish in this Commonwealth without purchasing a Nonresident Fishing License may be charged with violating sections 923(c) and 2703 of the code (relating to additional penalty for fishing without license; and possession and display of licenses).] A resident fishing license will remain valid for the year or years for which it is issued regardless of whether the holder is no longer a bona fide resident of this Commonwealth.**

[Pa.B. Doc. No. 13-1667. Filed for public inspection September 13, 2013, 9:00 a.m.]

[58 PA. CODE CH. 93]

Boating; Registration and Numbering

The Fish and Boat Commission (Commission) proposes to amend Chapter 93 (relating to boat registration and numbering). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments modify and update the Commission’s boating regulations.

A. *Effective Date*

The proposed rulemaking, if approved on final-form rulemaking, will go into effect on April 1, 2014, or upon final-form publication in the *Pennsylvania Bulletin*, whichever occurs later.

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.

C. Statutory Authority

The proposed amendments to § 93.2 (relating to permanent and temporary registration) are published under the statutory authority of section 5122 of the code (relating to registrations, licenses, permits, plates and statistics). The proposed amendments to § 93.13 (relating to issuing agents) are published under the statutory authority of section 5304 (relating to issuing agents).

D. Purpose and Background

The proposed rulemaking is designed to improve, enhance and update the Commission's boating regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposals. On May 8, 2013, the Commission's Boating Advisory Board considered the proposal and recommended that the Commission approve the publication of a proposed rulemaking.

E. Summary of Proposals

Currently, the Commission and authorized issuing agents issue temporary boat registrations to persons applying for the registration of boats in this Commonwealth. Temporary boat registration is used for boats that are new or were not previously registered in this Commonwealth, boats being transferred between owners and boats currently registered in this Commonwealth as unpowered that are being changed to a power boat registration status. Under current regulations, applicants complete Form REV-336, Application for Pennsylvania Boat Registration and/or Title, and are issued a Temporary Validation Decal (T-decal) to affix to the boat.

The annual cost to the Commission to produce, distribute and account for the T-decals is estimated to be \$42,000. The Commission proposes to eliminate the use of the T-decal to save approximately \$42,000 annually in decal production costs, postage for mailing decals to issuing agents and personnel costs associated with accounting and inventorying of the decals. Elimination of the T-decals will also result in time and cost savings to issuing agents in that they will no longer have to issue T-decals, maintain a supply or pay \$52 for each lost decal.

Issuing agents will continue to collect currently required registration information on Form REV-336. Form REV-336 is a carbonless, three-copy form used in the registration process. The green copy, or customer copy, is provided to the applicant upon completion of the registration process by the issuing agent. Boaters will continue to be required to produce the green customer copy of Form REV-336 to verify a temporary registration but will no longer be required to display T-decals on the side of the boat that has been registered.

Currently, boaters shall remove previously issued or expired registration decals from boats. With the elimination of the T-decals, an empty space following the registration number sequence on the hull of the boat will indicate that the boat may have a temporary registration status. Upon request by a waterways conservation officer (WCO), a boater will be required to produce the green customer copy of Form REV-336 as proof of the temporary registration. Elimination of the T-decal will not change the current requirement to carry and produce the customer copy of Form REV-336. It is also expected that elimination of the T-decal may increase customer contact between boaters and WCOs and provide WCOs with an opportunity to share additional educational information with boaters.

The Commission therefore proposes to amend §§ 93.2 and 93.13 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 result in cost savings to the Commission in the amount of approximately \$42,000 per year in decal production costs, postage for mailing decals to issuing agents and personnel costs associated with accounting and inventorying of the decals. The proposed rulemaking will not impose new costs on the private sector or the general public. The proposed rulemaking will result in cost savings to issuing agents in that they will no longer have to issue T-decals, maintain a supply or pay \$52 for each lost decal.

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 of this proposed rulemaking 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/reg comments. 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-247. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 93. BOAT REGISTRATION AND NUMBERING

Subchapter A. REGISTRATION OF BOATS

§ 93.2. Permanent and temporary registration.

(a) *Boat not previously registered in this Commonwealth.*

(1) A person acquiring a boat which has not been previously registered in the person's name in this Commonwealth shall complete an application for boat registration as set forth in § 93.3 (relating to application for boat registration). The applicant will receive a copy of the completed application which will be recognized as the boat's certificate of registration for **[a period specified in subsection (e)] 60 days including the date of issuance**. This temporary certificate of registration shall be carried on the boat when the boat is in operation and shall be available for inspection by an authorized officer. **[The new owner will receive a set of temporary validation decals from the authorized issuing agent who will enter the expiration date (month/day/year), calculated in accordance with subsection (e), on the decal. Before the boat is operated, these temporary validation decals shall be displayed on**

each side of the bow—the front half—of the boat in a position to provide for maximum visibility.]

(2) The owner or operator shall [remove and replace the temporary validation decals with] apply the biannual validation decals when received from the Commission. The biannual validation decals shall be displayed on the boat in accordance with § 93.5 (relating to display of registration number and validation decal). The Commission will assign a registration number to the boat which shall be displayed in accordance with § 93.5. This assigned registration number will remain with this boat as long as the boat is registered in this Commonwealth. The new owner will also receive, from the Commission, a biannual certificate of registration card which shall be carried onboard the boat while it is being operated.

(b) *Boat previously registered in this Commonwealth but having expired registration.*

(1) A person acquiring a boat which has been previously registered in another person's name in this Commonwealth and possesses an expired registration shall complete an application for boat registration as set forth in § 93.3. The applicant will receive a copy of the completed application which will be recognized as the boat's certificate of registration for [a period specified in subsection (e)] 60 days including the date of issuance. This temporary certificate of registration shall be carried on the boat when the boat is in operation and shall be available for inspection by an authorized officer. [The new owner will receive a set of temporary validation decals from the authorized issuing agent who will enter the expiration date (month/day/year), calculated in accordance with subsection (e), on the decal. Before the boat is operated, these temporary validation decals shall be displayed on each side of the bow—the front half—of the boat in a position to provide for maximum visibility.] If the boat is displaying expired validation decals, the owner or operator shall remove the expired validation decals [and replace them with the temporary validation decals]. The previously assigned registration number currently on the boat will remain with the boat as long as the boat is registered in this Commonwealth.

(2) The owner or operator shall [remove and replace the temporary validation decals with] apply the biannual validation decals when received from the Commission. The biannual validation decals shall be displayed on the boat in accordance with § 93.5. The new owners will also receive from the Commission a biannual certificate of registration card which shall be carried onboard the boat while it is being operated.

(c) *Boat previously registered in this Commonwealth having current registration.*

(1) A person acquiring a boat which has been previously registered in another person's name in this Commonwealth displaying current biannual validation decals shall complete an application for boat registration as set forth in § 93.3. The applicant will receive a copy of the completed application which will be recognized as the boat's certificate of registration for [a period specified in subsection (e)] 60 days including the date of issuance. This temporary certificate of registration shall be carried on the boat when the boat is in operation and shall be available for inspection by an authorized officer. [The new owner will receive a set of temporary validation decals from the authorized issuing agent

who will enter the expiration date (month/day/year), calculated in accordance with subsection (e), on the decal.] Before operating the boat on the waters of this Commonwealth, the owner or operator shall remove the prior validation decals [and replace them with the temporary validation decals]. The previously assigned registration number will remain with the boat as long as the boat is registered in this Commonwealth. It is unlawful for a person acquiring a boat described in this subsection to operate the boat on the waters of this Commonwealth until the registration is transferred to the new owner as provided in this section.

* * * * *

(e) [*Temporary decals.* The temporary validation decals are valid for 60 days including the date of issuance. The owner or operator shall ensure that the temporary validation decals are removed and the biannual validation decals, when received from the Commission, are displayed in place of the temporary validation decals. The temporary validation decal shall display the date on which it expires in the following format: "Expires (month)/(day)/(year)." The authorized issuing agent shall enter the expiration date (month/day/year) on the decal.

(f) *Temporary Internet registration renewals.* Temporary Internet registration renewals shall be valid for [30] 60 days from the date of issuance. A temporary Internet registration renewal shall be available at all times for inspection on the boat for which it was issued whenever the boat is in operation and shall be carried so that it can be presented upon request to an officer authorized to enforce the code.

§ 93.13. Issuing agents.

* * * * *

(b) *Maintaining an agency.*

* * * * *

(2) To maintain an agency, the agent or a designee who is routinely involved in the issuance of temporary [validation decals or the registration of boats] boat registrations shall successfully complete, at least once every 2 years, training offered by the Commission at a location designated by the Executive Director.

* * * * *

(e) *Operation of an agency.*

* * * * *

(3) [Issuing agents shall store temporary validation decals and related documentation in a secure location within the agent's premises and may not remove the decals or related documentation from the agent's premises without the Commission's written permission.

(4) Issuing agents shall retain copies of all applications and related documentation for the current calendar year and the 2 previous years.

[(5)] (4) Issuing agents shall have access to nonpublic information concerning holders of boat registrations and titles, including their home addresses. Issuing agents who are provided nonpublic information about boat registration holders or boat owners in the course of their duties may not release or disclose the nonpublic information except for official purposes.

[(6)] (5) Issuing agents shall permit the inspection during regular business hours of the agent's premises and business records by Commission employees designated by the Executive Director or officers authorized to enforce the code.

(f) *Issuance of temporary boat registrations.*

* * * * *

(6) [**An issuing agent shall issue temporary validation decals in numerical sequence, beginning with the lowest number.**] An issuing agent shall enter the expiration date (month/day/year) on the completed application which will be recognized as the boat's temporary registration.

(7) [**An issuing agent shall indicate on temporary validation decals the month, day and year the temporary registration expires, using a black waterproof permanent ink marker or paint marker. The agency may not place any other marks on the decal.**]

(8)] Within 10 days of the issuance of a temporary boat registration, the issuing agent shall submit to the Commission a properly completed "[**T-Sticker**] **Temporary Registration Summary Report**" (Form PFBC-725) along with all applications, related documentation, applicable fees and Sales and Use Tax as required by the code, this chapter and the *Handbook for Issuing Pennsylvania Boat Registrations and Titles*.

(g) [**Inventory of decals.** Upon the Commission's request, an issuing agent shall submit an inventory report on the form prescribed by the Commission, accounting for all temporary validation decals in the agent's possession. The agent shall submit a complete and accurate inventory within 10 days of the agent's receipt of the Commission's request.

(h) *Voided decals.* When an issuing agent voids a temporary validation decal, the agent shall forward to the Commission the voided decal along with a report on the form prescribed by the Commission, explaining why the decal was voided. The agent shall forward the voided decal and the report within 10 days of the decal being voided.

(i) *Lost, stolen or missing decals.* An issuing agent shall notify the Commission in writing of any lost, stolen or missing temporary validation decal within 48 hours of the agent's discovery of the lost, stolen or missing decal. The Commission may charge the agent a fee that is two times the highest annual boat registration fee for each decal that is lost, stolen or missing.

(j) *Replacement decals.* An issuing agent may not issue a replacement temporary validation decal without the Commission's approval.

(k)] *Used boats sold by dealers.* An issuing agent may not submit to the Commission a Form REV-336 and related documentation from an applicant who purchased a used boat from a dealer and does not possess a properly completed "Dealer Notification of Boat Trade-In" (Form PFBC-TS1).

[(l)] (h) *Acceptance of applications for permanent registrations or titles.* Within 10 days of the acceptance of the Form REV-336 and related documentation for a permanent registration or title, the issuing agent shall forward to the Commission, using the "[**T-Sticker**] **Temporary Registration Summary Report**" (Form

PFBC-725), all applications, related documentation, applicable fees and Sales and Use Tax as required by the code [**or**], this chapter **and the Handbook for Issuing Pennsylvania Boat Registrations and Titles**.

[(m)] (i) *Commission offices.* The Commission will collect and deposit in the Boat Fund the \$2 issuing agent fee for all temporary boat registrations issued by Commission offices and boat registration renewals issued online.

[(n)] (j) *Recall of agency.* The Commission may recall the agency of an issuing agent who violates the code or this chapter. A conviction of an offense under the code or this chapter is not a prerequisite to initiating an action to recall an agency. The Executive Director or a designee may initiate action to recall an agency by serving an order to show cause on the agent, which order will describe the alleged violation of the code or this chapter. Proceedings to recall an agency shall be governed by 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

[(o)] (k) *Renewal of boat registrations.* It is unlawful for a person, other than the Commission, Commission offices and on-line messenger services approved by the Department of Transportation, to issue renewals for boat registrations or collect the applicable fees.

[Pa.B. Doc. No. 13-1668. Filed for public inspection September 13, 2013, 9:00 a.m.]

[58 PA. CODE CH. 63]

Fishing; Authorized Devices

The Fish and Boat Commission (Commission) proposes to amend Chapter 63 (relating to general 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 final-form 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.

C. *Statutory Authority*

The proposed amendments to § 63.6 (relating to authorized devices for game fish, baitfish and fishbait) are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. *Purpose and Background*

The proposed rulemaking is designed to improve, 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*

Section 63.6(a) limits the number of hooks per line to three (a single hook, as defined in this Commonwealth, may contain up to three points). Recently, several individuals and a representative from a tournament angling

organization requested that the Commission accommodate use of the "Alabama rig." The Alabama rig is an umbrella type rig that contains five lures on short wire lines that merge to one point for attachment to a fishing line. The Alabama rig has been observed to be used in this Commonwealth by the Division of Fisheries Management staff as fished with three hooked lures and two "teaser" lures not containing hooks. After the Bureau of Fisheries and the Bureau of Law Enforcement explored the issue, a sound biological or enforcement reason was not found to change the regulation to allow for this type of tackle.

Although initial interest to change the regulation came from a black bass organization, changes to the regulation would affect other species as well. Striped bass anglers also use this type of device.

With respect to black bass, it appears that use of the rig in other states has been directed to a rather small component of black bass populations, that is, bass that occupy habitats that were lightly exploited or that were previously not vulnerable to capture using conventional gear types. Where habitats exist and are occupied by black bass in this Commonwealth, the Commission might expect an increase in catch. The fraction of catch that is harvested is typically low for black bass, 7% as measured in the 2007 Susquehanna River Creel survey. Likewise, the percentage of released bass that perish is typically low (10-12%) as measured in reservoirs in this Commonwealth and elsewhere using conventional tackle. Commission staff presume that catch and release loss associated with the Alabama Rig will likewise be low.

Commission staff looked at the regulations of surrounding states and found that there is not a real consensus in terms of a limit on hooks. Several states allow more than three hooks or do not have a limit on hooks. New Jersey allows up to nine hooks or three treble hooks per line while New York allows five baits/lures. Virginia and West Virginia do not have limits on rods or hooks except for trout fishing. Ohio is the only state that has a regulation that closely mirrors the Commonwealth's with a two-rod/three-hook maximum.

The Commission therefore proposes to amend § 63.6 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 of this proposed rulemaking 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. 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-249. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.6. Authorized devices for game fish, baitfish and fishbait.

(a) It is unlawful to fish for game fish with more than three lines of any description, whether fished by rod or by hand, at one time except while ice fishing in accordance with § 63.10 (relating to ice fishing). **[No more than three hooks may be attached to line used in fishing for game fish.]** There is not a restriction on the number of hooks used for fishing for game fish. Rods, lines and hooks shall be under the immediate control of the person using them. A fishing device shall be deemed to be under the immediate control of the person using it if, when the terminal device (hook, bait or lure) is taken by a fish, the person using the device has direct control over it and it is not connected at that point to a casting or depth placement aid such as a casting boat or downrigger. Casting or depth placement aids such as downriggers or small remote controlled boats are not prohibited by this chapter.

(b) It is unlawful to fish for baitfish with more than three lines of any description, whether fished by rod or by hand, at one time **[with not more than three hooks attached to each line]**; a dip-net or minnow seine not over 4 feet square or 4 feet in diameter, and a minnow trap, with not more than two openings, which may not exceed 1 inch in diameter. **There is not a restriction on the number of hooks used for fishing for baitfish.** Rods, lines, hooks, nets and seines used in fishing for fishbait and baitfish shall be under the immediate control of the person using the same. For the purposes of this subpart, gizzard shad (*Dorosoma cepedianum*) 8 inches or less in length are considered baitfish.

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[Pa.B. Doc. No. 13-1669. Filed for public inspection September 13, 2013, 9:00 a.m.]

[58 PA. CODE CH. 69]
Fishing; Lake Erie and Boundary Lakes

The Fish and Boat Commission (Commission) proposes to amend Chapter 69 (relating to fishing in Lake Erie and boundary lakes). 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 final-form 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.

C. Statutory Authority

The proposed amendments to § 69.12 (relating to seasons, sizes and creel limits—Lake Erie, Lake Erie tributaries and Presque Isle Bay including peninsula waters) are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. Purpose and Background

The proposed rulemaking is designed to improve, 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 the October 2012 Commission meeting, 45 waters were moved from the Early Season Trout Stocked Waters Program to the Approved Trout Waters Open to Year-Round Fishing Program. Included in these changes were the Water Works Ponds (East Basin Pond and West Basin Pond) on Presque Isle Bay. Regulations under the Approved Trout Waters Open to Year-Round Fishing Program permit fishing for trout year-round, except from March 1 through the opening day of trout season, when only catch and release fishing is permitted for trout. The current regulations on Lake Erie tributary streams and the Waters Works Ponds prohibit fishing from 12:01 a.m. on the Friday before the first Saturday after April 11 until 8 a.m. on the first Saturday after April 11. This was irrelevant under the Early Season Trout Stocked Waters Program since fishing was not permitted from April 1 to the opening day. However, with the change in designation to approved trout waters open to year-round fishing, fishing is permitted during the period that is currently closed to fishing immediately prior to the opening day.

The Commission therefore proposes to amend § 69.12 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 of this proposed rulemaking 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/reg comments. 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-248. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 58. RECREATION****PART II. FISH AND BOAT COMMISSION****Subpart B. FISHING****CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES****Subchapter B. SPORT FISHING AND ANGLING**

§ 69.12. Seasons, sizes and creel limits—Lake Erie, Lake Erie tributaries and Presque Isle Bay including peninsula waters.

* * * * *

(d) It is unlawful to fish in or along any Lake Erie tributary stream [**or the Water Works Ponds at Presque Isle State Park**] from 12:01 a.m. on the Friday before the first Saturday after April 11 until 8 a.m. on the first Saturday after April 11.

(e) It is unlawful to possess trout or salmon in or along any Lake Erie tributary stream [**or the Water Works Ponds at Presque Isle State Park**] from 12:01 a.m. on the Friday before the first Saturday after April 11 until 8 a.m. on the first Saturday after April 11.

(f) [**Subject to the provisions of**] **Except as otherwise provided in** subsections (d) and (e) **and this subpart**, the following seasons, sizes and creel limits apply to Lake Erie, Lake Erie tributaries and Presque Isle Bay, including peninsula waters:

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[Pa.B. Doc. No. 13-1670. Filed for public inspection September 13, 2013, 9:00 a.m.]