PROPOSED RULEMAKING

DEPARTMENT OF HEALTH

[28 PA. CODE CH. 27]

Complete Reporting of CD4 T-Lymphocyte, Viral Load and Genotyping Test Results Relating to HIV

The Department of Health (Department), with the approval of the State Advisory Health Board (Board) proposes to amend 28 Pa. Code §§ 27.21a, 27.22, 27.23, and 27.32a—27.32e. The proposed amendments are to read as set forth in Annex A.

(*Editor's Note*: Exhibits A through C and Exhibit E referenced in this preamble are attached to the Department's Regulatory Analysis Form (RAF) relating to this proposed rulemaking. The RAF may be obtained through the contact information listed as follows, or by searching the regulation number, 10-209, on the Independent Regulatory Review Commission's web site at www.IRRC.state.pa.us.)

A. *Purpose of the Proposed Amendments*

The Department added HIV infection, a virus that can lead to Acquired Immunodeficiency Syndrome (AIDS) if left untreated, to the list of reportable diseases and conditions in this Commonwealth in 2002. As part of those reporting requirements, the Department required the reporting of CD4 T-lymphocyte test results with a count of less than 200 cells/µL or a CD4 T-lymphocyte percentage of less than 14% of total lymphocytes. The Department is now proposing to require the reporting of all CD4 T-lymphocyte cell counts and percentages relating to HIV infection, as well as all viral load test results, including detectable and undetectable viral loads and genotyping results.

The spread of HIV is a serious public health issue. By the end of 2016, 35,483 individuals were diagnosed and living with HIV infection in this Commonwealth. In the last 5 years, 6,168 new HIV cases were diagnosed (2012 to the end of 2016), accounting for 17.4% of all of those diagnosed and living with HIV infection by 2016. The estimated number of people living with HIV has increased each year on average by approximately 1,325 persons. With a growth curve following a very strong linear trend, projections indicate that, by 2020, there could be as many as 42,000 people in this Commonwealth living with HIV.

In order to stop the spread of HIV, prevent the emergence of new cases, and keep those living with HIV healthy, the National HIV/AIDS Strategy for the United States, updated for 2020, has, as its critical foci, widespread testing and linkage to care, broad support for people living with HIV to remain engaged in comprehensive care, universal viral suppression among persons living with HIV, and full access to Pre-Exposure Prophylaxis services to prevent the spread of disease. See National HIV/AIDS Strategy for the United States, updated for 2020 (July 2015), at Executive Summary 3, https://files.hiv.gov/s3fs-public/nhas-update.pdf. Accessed February 23, 2018, (hereinafter referred to as "National HIV/AIDS Strategy"). In order to achieve these goals, the Federal Centers for Disease Control and Prevention (CDC) of the Department of Health and Human Services recommends, among other things, the reporting of all CD4 test results (counts and percentages) and all viral load results (undetectable and detectable specific values). See Letter from Kenneth G. Castro, MD, Assistant United States Surgeon General, United States Public Health Service and Amy Lansky, PhD, MPH, Deputy Director for Surveillance, Epidemiology and Laboratory Sciences, Division of HIV Prevention, CDC. See Exhibit A to the Department's Regulatory Analysis Form (RAF). A letter directly to the former Secretary of Health, Karen Murphy, from the Director of the Office for State, Tribal, Local and Territorial Support and Deputy Director of the CDC, reiterated this position to the Commonwealth, as one of six[1] states that did not collect all CD4 test results. See Letter from Jose T. Montero, MD, MHCDS, Director, Office for State, Tribal, Local and Territorial Support and Deputy Director, CDC and Jonathan A. Mermin, MD, MPH, RADM and Assistant Surgeon General, United States Public Health Services, and Director, National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention to Secretary Karen Murphy, dated February 8, 2017 ("Letter to Secretary Murphy"). See Exhibit B to the RAF. The letter stated the following:

> The updated National HIV/AIDS Strategy for the United States identifies primary goals to guide our collective national fight against HIV. The success in advancing several of these goals, ensuring sustained viral suppression for person living with HIV and measuring progress towards HIV care, relies on *laboratory reporting of HIV-related tests, including all CD4+ T-lymphocyte (CD4) and viral load test results, to local and national HIV surveillance systems*. Complete laboratory data are critical to identifying cases, measuring care and treatment outcomes, and measuring the effectiveness of public health interventions. Specifically, these data are often used to monitor disease progression, determine the stage of HIV infection, monitor receipt of HIV care and treatment, and make decisions about public health interventions. Both viral load and CD4 data are used to assess whether patients are responding to treatment: when treatment is successful, CD4 counts rise and viral loads fall. Current HIV clinical management guidelines call for CD4 and viral load testing at the time of diagnosis and regularly thereafter. When CD4 and viral load results are reported, public health agencies can determine access to care and treatment outcomes. For these reasons, CDC recommends complete state reporting of all HIV test results.

Letter to Secretary Karen Murphy, supra (emphasis added). At the present time, the Commonwealth is one of four states that do not collect all CD4 T-lymphocyte test results. See Email from Richard Selik (CDC/OID/NCHSTP) to Godwin Obiri, Epidemiology Supervisor, Bureau of Epidemiology, Pennsylvania Department of Health (9/11/2018 10:56 AM). See Exhibit C to the RAF. In addition, of the 50 states, only Pennsylvania and Idaho fail to require the reporting of all viral load test results. See Email from Dr. Richard Selik (CDC/OID/NCHSTP) to Dr. Godwin Obiri, Epidemiology Supervisor, Bureau of Epidemiology, Pennsylvania Department of Health (2/28/2018 12:24 PM). See Exhibit C to the RAF.

Persons tested for HIV have recorded CD4 and viral load test results, indicators of HIV progression within the body. Because the Department does not currently require

[1] At the time the letter was sent, the Commonwealth was one of six states that did not collect all CD4 test results. That number has since fallen to four. See Preamble at 3.

the reporting of all CD4 and viral load test results, reporting within this Commonwealth is incomplete. This severely limits the Department's ability to comply with standards set by the CDC recommendations, accurately report on CDC-required core HIV indicators, and monitor and enhance patient outcomes across the continuum of HIV care services.

Ultimately, requiring the reporting of all CD4 T-lymphocyte and viral load test results will allow the Department to better track the epidemic in this Commonwealth, focus resources to meet the needs of the communities impacted and improve the health of the citizens of this Commonwealth. See National HIV/AIDS Strategy, at 46. In addition, the Department would be more able to ensure that those identified as infected living with HIV have access to care, are engaged in care and are virally suppressed. See, for example, National HIV/AIDS Strategy; see also Mahle Gray, et al., Enhanced Collection of Laboratory Data in HIV Surveillance Among 5 States with Confidential Name-Based HIV Infection Reporting, 2005-2006, The Open AIDS Journal, 2012, 6, (Suppl 1: M5) 90—97, 93-94, 96 ("Data collected through the national HIV surveillance system can be used to monitor the outcomes of the national strategy; however the validity of these measures is dependent upon the completeness and quality of the surveillance data"). See Exhibit E to the RAF.

At the present time, Pennsylvania is one of only four states in the nation that do not require the reporting of all CD4 test results and one of only two states that do not require the reporting of all viral load test results. See Exhibit C to the RAF. See also http://www.cdc.gov/hiv/pdf/library/reports/surveillance/cdc-hiv-surveillance-supplemental-report-vol-21-4.pdf, at p. 63, accessed February 23, 2018. Goal 1 of the National HIV/AIDS Strategy, which calls for reducing new HIV infections, see National HIV/AIDS Strategy at 1, sets forth as a recommended action the allocation of public funding consistent with the geographic distribution of the epidemic. Id. at 19. The Strategy recommends a similar action with regard to Goal 4, achieving a more coordinated national response to the HIV epidemic. Id. at 43; see also 45 ("The Federal government should review the methods used to distribute Federal HIV funds and take steps to ensure that resources go to the States and localities with the greatest burden of disease."). If, in the future, Federal funding is tied to disease burden, this Commonwealth would be at a disadvantage among other states with more complete data. See Exhibit B to the RAF.

Although the recommendations are directed mainly towards complete laboratory reporting, the Department's proposed amendments would not merely revise the existing laboratory reporting section. The Department is proposing to make the same changes to reporting by health care practitioners and facilities and other persons or entities who diagnose AIDS or who receive or provide CD4 or HIV viral load test results. Those persons are currently required to report some of these test results, as are laboratories. In the interest of complete reporting, the Department is proposing to require complete reporting of these particular providers, as well as of laboratories. As the National HIV/AIDS Strategy notes:

> HIV surveillance data are used extensively to target and evaluate HIV prevention and care programs. Therefore, comprehensive and timely data are critical, as are continued improvements in electronic laboratory reporting as timely receipt of laboratory data is critical. *Surveillance necessitates a complex system of reporting from providers, laboratories, and State and local health departments to coordinate accurate, complete, and timely reporting*.

See National HIV/AIDS Strategy, at 46 (emphasis added). Reporting from all available sources is the best avenue to obtain all required information, and to work towards the vision that "The United States will become a place where new HIV infections are rare, and when they do occur, every person, regardless of age, gender, race/ethnicity, sexual orientation, gender identity, or socio-economic circumstance, will have unfettered access to high quality, life-extending care, free from stigma and discrimination." National HIV/AIDS Strategy, VISION.

B. *Requirements of the Proposed Amendments*

Section 27.21a. Reporting of cases by health care practitioners and health care facilities.

This section requires health care practitioners and health care facilities to report the listed diseases, infections and conditions to the Department within a specified time frame. The Department is proposing to amend this section to require the reporting of all CD4 T-lymphocyte test results, not just results at or below a certain count or percentage. This would include counts and percentages of T-lymphocyte cells of all tests. In addition, the Department is proposing to require the reporting of all HIV viral load test results, even those that are undetectable, and all HIV genotype test results.

The availability of highly effective retroviral therapy makes it much more important to monitor all test results, including CD4 T-lymphocyte counts in individual patients, viral loads and HIV genotype test results, and to use that information to track population health improvements and quality of care among persons infected with HIV. Obtaining data on all test results would help to identify HIV cases, identify when persons with HIV infection enter treatment, determine the stage of disease, measure unmet health care needs among HIV infected persons, and evaluate HIV testing and screening activities. With this information, the Department should be able to offer to practitioners and their patients more effective tools to combat each individual's infection and would be itself better prepared to assign resources and recommend strategies for combatting the epidemic.

Section 27.22. Reporting of cases by clinical laboratories.

This section requires reporting of test results by clinical laboratories. The Department is proposing to amend this section to require the reporting of all CD4 T-lymphocyte counts and percentages, not just results at or below a certain count or percentage. In addition, the Department is proposing the reporting of all HIV viral load test results and all HIV genotype test results. The Department believes that this addition is necessary to track the spread of the disease across this Commonwealth and to more effectively target prevention and intervention efforts.

Section 27.23. Reporting of cases by persons other than health care practitioners, health care facilities, veterinarians or laboratories.

This section requires the reporting of cases of reportable diseases and conditions by persons other than health care practitioners, health care providers and laboratories. The Department has made revisions to this section to reflect the additions and revisions to §§ 27.21a and 27.22, supra.

Section 27.32a. Reporting AIDS, HIV, CD4 T-lymphocyte counts and percentages, HIV viral load test results, including detectable and nondetectable viral load results and genotype test results, and perinatal exposure of newborns to HIV.

This section currently requires reporting of AIDS, CD4 T-lymphocyte counts and percentages below a certain amount and perinatal exposure of newborns to HIV by both physicians and laboratories. The Department proposes to amend the title, and the remainder of the section, to reflect the proposed reporting of all CD4 T-lymphocyte counts and percentages, all viral load results and all genotype test results, as well as the required reporting of the other listed tests.

In subsection (a), relating to reporting by clinical laboratories, the Department has maintained the time frame for reporting for CD4 T-lymphocyte counts and percentages at 5 days, and has clarified that these would be work days, and not calendar days. The Department has proposed adding a time frame for viral load test results and HIV genotype test results, which would also be reportable within 5 days of the reporting entity obtaining those test results. See new subsection (a)(3). The Department also proposed revisions acknowledging that the Department's electronic disease surveillance system (NEDSS) is operational; it was not at the time the current regulations were promulgated. See proposed revisions to subsection (a)(1) and (2).

The Department has proposed the same revisions regarding time frames and its NEDSS system to revised subsection (b), relating to reporting by health care practitioners, hospitals, and other persons or entities, who diagnose AIDS or who receive or provide HIV test results, CD4 T-lymphocyte counts and percentages, or HIV viral load test results and HIV genotype test results. The Department also proposes to revise subsection (b) to clarify that clinicians, other than physicians, are required to report cases of AIDS, HIV, CD4 T-lymphocyte counts and percentages pertaining to HIV infection, HIV viral load test results and HIV genotype testing and perinatal exposure of newborns to HIV. The Department has, therefore, replaced the term, "physician," with the more general term, "health care practitioner."

Finally, the Department has proposed eliminating the term, "LMRO," or "Local Morbidity Reporting Office," from the regulation. At the time HIV reporting was added to the Department's regulations relating to communicable and noncommunicable diseases, electronic reporting had not yet been introduced. Reporting was done on paper or by telephone and through the Department's 6 regional offices and 10 county/municipal health departments, known as its local morbidity reporting offices, or LMROs. Now that electronic reporting has become the norm, there is no need for this type of reporting structure. The Department, therefore, is proposing to replace the term, "LMRO," with the term previously in use, "local health department." See proposed revisions to subsection (b)(4).

Section 27.32b. Confidential and anonymous testing.

This section details the requirements for anonymous testing sites within this Commonwealth. The Department is proposing to amend the section to reflect the proposed additions and revisions to §§ 27.21a and 27.22, supra.

Section 27.32c. Partner services relating to HIV and AIDS.

This section would be significantly revised. The Department is proposing to revise this section to reflect proposed amendments to §§ 27.21a and 27.22 of these regulations, and changes to terminology relating to public health services offered to a patient being provided with an AIDS diagnosis, HIV test result, CD4 T-lymphocyte count or percentage, HIV viral load test result, including detectable and nondetectable viral load test results, or genotype test result. The regulations do not require a reference to the Confidentiality of HIV-Related Information Act (35 P.S. §§ 7601—7612), as amended, in order for the requirements of that act to be in place and followed. The Department has, however, added proposed subsection (b) to make it clear that a person providing that information must also inform his or her client that the Department or a local health department might be contacting the client to discuss the availability of partner services beneficial to that client and the client's partners.

Section 27.32d. Department authority to require complete reporting.

This section is not new; however, the Department is proposing to change the language to comport with revisions proposed to §§ 27.21a, 27.22 and 27.32a.

Section 27.32e. Record audits.

This section is not new; however, the Department is proposing to change the language to comport with revisions proposed to §§ 27.21a, 27.22 and 27.32a.

C. *Affected Persons*

This proposed rulemaking, which add reporting requirements, would impact all health care practitioners, health care facilities and other persons or entities providing HIV services who diagnose AIDS or who provide or receive HIV, CD4 T-lymphocyte counts or percentages, viral load test results or HIV genotype test results. They are required to report to the Department diagnosed cases of AIDS, HIV test results, all CD4 T-lymphocyte counts and percentages, all viral loads, both detectable and undetectable, and all HIV genotype test results. The proposed amendments would also affect laboratories, which are required to report to the Department HIV test results, all CD4 T-lymphocyte counts and percentages, all viral loads, both detectable and undetectable, and all HIV genotype test results.

This proposed rulemaking would also affect the 10 county/municipal health departments that are involved in the reporting system.

This proposed rulemaking would also impact all persons who have been given an HIV, CD4, viral load or HIV genotyping test. The required reporting of these test results permits the Department to obtain more accurate information regarding the trends of the disease, and, therefore, to better target funding to programs that would provide maximum benefit to these individuals. Obtaining data on all test results would help to identify HIV cases, identify when persons with HIV infection enter treatment, determine the stage of disease, measure unmet health care needs among HIV infected persons and evaluate HIV testing and screening activities.

The Department provides requested updates to the Statewide HIV Planning Group (HPG). The HPG is established by the Department under sections 301(a) and 317 of the Public Health Service Act (42 U.S.C.A. §§ 241(a) and 247b), and provides input on jurisdictional HIV prevention planning, a required activity of the Department's CDC grant for Comprehensive HIV Prevention Programs for Health Department. The HPG also fulfils the requirement under the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Pub. Law 111-87), previously known as the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (42 U.S.C.A. §§ 300ff-21—300ff-38), that the Department engage in a

public advisory planning process in developing a comprehensive plan. The HPG is in support of CD4 and viral load reporting. See Letter from HIV Planning Group, dated December 21, 2016.

D. *Cost and Paperwork Estimate*

1. *Cost*

The amendments would have no measurable fiscal impact on the Commonwealth, local government, the private sector or the general public because the disease reporting system already exists in the Commonwealth. The financial and economic impact of this proposed rulemaking outside of healthcare settings is very minimal. Healthcare practitioners, health care facilities and clinical laboratories currently are required to have systems in place to report some CD4 T-lymphocyte and HIV viral load test results into the electronic disease surveillance system (PA-NEDSS), so although this proposed rulemaking would result in reporting of all CD4 T-lymphocyte and HIV viral load results, they will not need to develop new systems. Currently, healthcare practitioners and clinical laboratories must separate out the CD4 T-lymphocyte and viral load test results required to be reported from those not required to be reported, and this process takes time and adds cost. The proposed change would allow reporters to report all the test results received and remove the need to separate the results into those reported and those not reported.

Healthcare practitioners and laboratories without the ability to send data electronically directly to PA-NEDSS would be required to keystroke enter these additional test results into PA-NEDSS. However, most CD4 and HIV viral load information is received from clinical laboratories with IT systems allowing direct electronic access. For these facilities, once their IT system is modified to capture the additional test results, the data would automatically be extracted and uploaded to PA-NEDSS. There would therefore be no ongoing cost associated with the additional reporting requirements, and the cost of the additional reports required as a result of the proposed changes to the regulation would be negligible.

The costs to both the Commonwealth and to local governments would not increase because of these amendments. The Commonwealth, through the Department, and local health departments, already have infrastructure in place to accept reporting of diseases and conditions, and to carry out, as required by law, disease prevention and control activities relating to HIV and AIDS, among other things. The additional work and cost relating to the reporting of more cases would be minimal and is outweighed by the benefit accruing from better understanding of the epidemic that allows for more targeted intervention and prevention strategies.

2. *Paperwork*

Because the electronic surveillance system that receives and stores reports of diseases and conditions is already in place in this Commonwealth, PA-NEDSS is expanding the list to include mandatory reports of all test results for an existing disease or condition and additional testing relating to that disease or condition would create no measurable increase in paperwork. Healthcare practitioners, health care facilities and clinical laboratories currently are required to have systems in place to report some CD4 T-lymphocyte and HIV viral load test results into PA-NEDSS, so although the amendments to the regulation would result in reporting of all CD4 T-lymphocyte and HIV viral load results, existing reporters should not need to develop new systems. Reporters without access to PA-NEDSS would still be able to send the report by mail; the number of reporters not using PA-NEDSS to report to the Department is very small.

The ongoing savings each year from more effective HIV disease control, prevention and timely treatment of individuals infected with HIV which would be expected to occur from this expanded reporting are immeasurable. All Pennsylvanians would benefit from these proposed amendments through the improved tracking of trends in HIV infection and treatment success, as well as assisting patients with linkage to care and treatment before those patients develop significant and expensive medical complications. When people living with HIV are in continuous medical care and have a suppressed viral load, the chances of those persons transmitting HIV to other people is tremendously reduced. These proposed amendments would help to protect Commonwealth citizens from exposure to HIV and subsequent hardship, disability or death. In addition, it would enable the Commonwealth to comply with the CDC's recommendations for effective HIV disease surveillance, control and patient management.

E. *Statutory Authority*

The Department's overarching authority to promulgate these regulations is found in the act. Section 16(a) of the Disease Prevention and Control Law of 1955 (the act) (35 P.S. § 521.16(a)) gives the Board the authority to issue rules and regulations on a variety of matters relating to communicable and noncommunicable diseases, including the following: the diseases that are to be reported; the methods of reporting diseases; the contents of reports; the health authorities to whom diseases are to be reported; the control measures that are to be taken with respect to different diseases; the enforcement of control measures; the immunization and vaccination of persons and animals; the prevention and control of disease in public and private schools; the treatment of sexually transmitted diseases, including patient counseling; and any other matters the Board may deem advisable to address for the prevention and control of disease and for carrying out the provisions and purposes of the act. Section 16(b) of the act (35 P.S. § 521.16(b)) gives the Secretary of Health (Secretary) the authority to review existing regulations and make recommendations to the Board for changes the Secretary considers to be desirable.

The Department also finds general authority for the promulgation of its regulations in The Administrative Code of 1929 (code) (71 P.S. §§ 51 et seq.) Section 2102(g) of the code (71 P.S. § 532(g)) gives the Department this general authority. Section 2111(b) of the code of 1949 (71 P.S. § 541(b)) provides the Board with additional authority to promulgate regulations deemed by the Board to be necessary for the prevention of disease, and for the protection of the lives and the health of the people of this Commonwealth. That section further provides that the regulations of the Board shall become the regulations of the Department. Section 2106(a) of the code (71 P.S. § 536(a)) provides the Department with additional authority to declare diseases to be communicable, and to establish regulations for the prevention and control of disease.

Section 2111(b) of the code provides the Board with additional authority to promulgate regulations deemed by the Board to be necessary for the prevention of disease, and for the protection of the lives and the health of the people of this Commonwealth. That section further provides that the regulations of the Board shall become the regulations of the Department.

In addition, Section 803 of the Health Care Facilities Act (35 P.S. § 448.803) provides the Department with the authority to promulgate regulations relating to the

licensure of health care facilities and allows the Department to require certain actions relating to disease control and prevention to occur within health care facilities.

F. *Effectiveness/Sunset Dates*

This proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. No sunset date has been established. The Department will continually review and monitor the effectiveness of these regulations.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act, the act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§ 745.1—745.15), the Department submitted a copy of this proposed rulemaking on May 15, 2019, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Health Committee and the Senate Health and Human Services Committee. In addition to submitting this proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form. 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 this proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The act specifies detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly and the Governor of comments, recommendation or objections raised.

H. *Contact Person*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Sharon Watkins, PhD, Director, Bureau of Epidemiology, Department of Health, 625 Forster Street, Room 933, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-3350, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Persons with a disability who wish to submit comments, suggestions or objections regarding this proposed rulemaking may do so by using V/TT (717) 783-6514 for speech and/or hearing-impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT). Persons who require an alternative format of this document may contact Sharon Watkins so that necessary arrangements may be made.

RACHEL L. LEVINE, MD,
Secretary

Fiscal Note: 10-209. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 28. HEALTH AND SAFETY

PART III. PREVENTION OF DISEASES

CHAPTER 27. COMMUNICABLE AND NONCOMMUNICABLE DISEASES

Subchapter B. REPORTING OF DISEASES, INFECTIONS AND CONDITIONS

GENERAL

§ 27.21a. Reporting of cases by health care practitioners and health care facilities.

(a) Except as set forth in this section or as otherwise set forth in this chapter, a health care practitioner or health care facility is required to report a case of a disease, infection or condition in subsection (b) as specified in § 27.4 (relating to reporting cases), if the health care practitioner or health care facility treats or examines a person who is suffering from, or who the health care practitioner or health care facility suspects, because of symptoms or the appearance of the individual, of having a reportable disease, infection or condition:

(1) A health care practitioner or health care facility is not required to report a case if that health care practitioner or health care facility has reported the case previously.

* * * * *

(b) The following diseases, infections and conditions in humans are reportable by health care practitioners and health care facilities within the specified time periods and as otherwise required by this chapter:

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(2) The following diseases, infections and conditions are reportable within 5 work days after being identified by symptoms, appearance or diagnosis:

AIDS.

Amebiasis.

Brucellosis.

CD4 T-lymphocyte **[test result with a count of less than 200 cells/µL or a CD4 T-lymphocyte percentage of less than 14% of total lymphocytes (effective October 18, 2002)]** **counts and percentages**.

Campylobacteriosis.

* * * * *

HIV (Human Immunodeficiency Virus) **[(effective October 18, 2002)]**.

HIV viral load test results, including detectable and undetectable viral load results, and all genotyping results.

Hepatitis, viral, acute and chronic cases.

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§ 27.22. Reporting of cases by clinical laboratories.

(a) A person who is in charge of a clinical laboratory in which a laboratory test of a specimen derived from a human body yields microscopical, cultural, immunological, serological, chemical, virologic, nucleic acid (DNA or RNA) or other evidence significant from a public health standpoint of the presence of a disease, infection or condition listed in subsection (b) shall promptly report the findings, no later than the next work day after the close of business on the day on which the test was completed, except as otherwise noted in this chapter.

(b) The diseases, infections and conditions to be reported include the following:

* * * * *

CD4 T-lymphocyte **[test result with a count of less than 200 cells/µL or less than 14% of total lymphocytes (effective October 18, 2002)]** **counts and percentages**.

* * * * *

Granuloma inguinale.

HIV (Human Immunodeficiency Virus) **[(effective October 18, 2002)]**.

HIV viral load results, including detectable and undetectable viral load results, and genotype test results.

Haemophilus influenzae infections—invasive from sterile sites.

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§ 27.23. Reporting of cases by persons other than health care practitioners, health care facilities, veterinarians or laboratories.

Except with respect to reporting cancer, AIDS, CD4 T-lymphocyte **[test result with a count of less than 200 cells/µL or less than 14% of total lymphocytes]** **counts and percentages**, HIV test results or perinatal exposure of a newborn to HIV, **HIV viral load results, including detectable and undetectable viral load results, and genotype test results,** individuals in charge of the following types of group facilities identifying a disease, infection or condition listed in § 27.21a (relating to reporting of cases by health care practitioners and health care facilities) by symptom, appearance or diagnosis shall make a report within the timeframes required in § 27.21a (relating to reporting of cases by health care practitioners and health care facilities):

(1) Institutions maintaining dormitories and living rooms.

(2) Orphanages.

(3) Child care group settings.

§ 27.32a. Reporting AIDS, HIV, CD4 T-lymphocyte counts **and percentages, HIV viral load test results, including detectable and nondetectable viral load results and genotype test results,** and perinatal exposure of newborns to HIV.

(a) *Reporting by clinical laboratories.*

(1) A person in charge of a clinical laboratory shall report CD4 T-lymphocyte **[test results as defined in § 27.22(b) (relating to reporting of cases by clinical laboratories)]** **counts and percentages** electronically to the **[HIV/AIDS Epidemiology Section, Division of Infectious Disease Epidemiology, Bureau of Epidemiology,]** **Department through the Department's electronic disease surveillance system** within 5 **work** days of obtaining the test results.

(2) A person in charge of a clinical laboratory shall report positive test results of any test approved by the FDA to establish the presence of HIV, including a serologic, virologic, nucleic acid (DNA or RNA) or any other type of test the FDA approves to establish the presence of HIV. The report shall be made to the **[HIV/AIDS Epidemiology Section, Division of Infectious Disease Epidemiology, Bureau of Epidemiology,]** **Department through the Department's electronic disease surveillance system** within 5 **work** days of obtaining the test results.

(3) **A person in charge of a clinical laboratory shall report HIV viral load test results, including detectable and undetectable viral load results, and genotyping results, to the Department through the Department's electronic disease surveillance system, within 5 work days of obtaining the test results.**

[(3)] **(4)** The report shall include the following information:

(i) The individual's name and the address, city, county, and zip code of the individual's residence.

(ii) The patient identifying number assigned to the individual by the physician or at the facility requesting the laboratory test.

* * * * *

[(4)] **(5)** To enable the laboratory to complete the report it is required to file with the Department, a person or entity that requests a laboratory test for HIV **[or],** a CD4 T-lymphocyte count **or percentage, or HIV viral load test results, including detectable or nondetectable test results, and genotype test results** shall provide to the laboratory the information in subsection **[(a)(3)]** **(a)(4)**, with the exception of subparagraphs (vi)—(ix). In addition to the information included in subsection **[(a)(3)]** **(a)(4)**, a person or entity that requests a laboratory test for HIV **[or],** a CD4 T-lymphocyte count **or percentage, an HIV viral load test result, including detectable or nondetectable test results, and genotype test results** shall provide to the laboratory the date each test was requested and the type of test or tests requested.

(b) *Reporting by* **[*physicians*]** ***health care practitioners***, *hospitals,* ***and other*** *persons or entities, who diagnose AIDS or who receive or provide HIV* **[*and*]** ***test results,*** *CD4 T-lymphocyte* **[*test results*]** **counts and percentages, or HIV viral load test results, including detectable and nondetectable results, and genotype test results**.

(1) A **[physician]** **health care practitioner**, hospital, person providing HIV services or person in charge of an entity providing HIV services, who makes a diagnosis of AIDS or who receives HIV **[or]** **test results,** CD4 T-lymphocyte **[test results]** **counts and percentages, HIV viral load test results, including detectable and nondetectable results, or genotype test results,** or **who** provides **an AIDS diagnosis,** HIV **[or]** **test results,** CD4 T-lymphocyte **[test results]** **counts and percentages, HIV viral load test results, including detectable and nondetectable test results, and genotype test results** to patients, shall report the following to the **[LMRO responsible for the geographic area in which the person is tested or diagnosed]** **Department through the Department's electronic disease surveillance system** within 5 **[business]** **work** days of the diagnosis of AIDS or the receipt of the results of the test:

(i) A diagnosis of AIDS.

(ii) A positive result of any test approved by the FDA to establish the presence of HIV, including a serologic, virologic, nucleic acid (DNA or RNA) or any other type of test the FDA approves to establish the presence of HIV **[(effective October 18, 2002)]**.

(iii) **[A]** CD4 T-lymphocyte **[test result with a count of less than 200 cells/µL or a CD4 T-lymphocyte percentage of less than 14% of total lymphocytes (effective October 18, 2002)]** **counts and percentages**.

(iv) A perinatal exposure of a newborn to HIV **[(effective October 18, 2002)]**.

(v) HIV viral load results, including detectable and undetectable viral load results, and genotype test results.

(2) A report of an HIV test result, CD4 T-lymphocyte count **and percentage, HIV viral load test result, including detectable and nondetectable test results, and genotype test result,** AIDS case based on the CDC case definition, or perinatal exposure of a newborn to HIV shall include the following information:

* * * * *

(xi) The name, address and telephone number of the **[physician]** **health care practitioner**, hospital, or other person or entity that secured a specimen from the individual and submitted it for laboratory testing.

(xii) The name, address and telephone number of the entity in which the **AIDS** diagnosis was made or that received the HIV test result **[or],** CD4 T-lymphocyte count **and percentage, HIV viral load test results, including detectable and nondetectable test results, or genotype test results.**

* * * * *

(4) **[An LMRO]** **A local health department** receiving reports of diagnoses of AIDS, positive HIV test results, **[reportable]** CD4 T-lymphocyte counts **and percentages, HIV viral load test results, including detectable and nondetectable test results, and genotype test results**, and perinatal exposures to HIV shall forward completed case reports containing the information included in paragraph (2) **[electronically]** to the **[Department's Bureau of Epidemiology through a secure electronic medium specified by the]** Department **through the Department's electronic disease surveillance system**.

§ 27.32b. Confidential and anonymous testing.

* * * * *

(b) Anonymous test results shall be reported in accordance with § 27.32a(b)(2) (relating to reporting AIDS, HIV, CD4 T-lymphocyte counts **and percentages, HIV viral load test results, including detectable and nondetectable test results, and genotype test results** and perinatal exposure of newborns to HIV). In lieu of the information required in § 27.32a(b)(2)(i), the report of an anonymous test shall include an assigned number preprinted on the HIV counseling and testing report form. The report shall also include the individual's county of residence.

* * * * *

§ 27.32c. **[Counseling, testing, referral and partner notification services]** **Partner services relating to HIV and AIDS**.

[Counseling, testing referral and partner notification services shall be performed in accordance with the Confidentiality of HIV-Related Information Act (35 P.S. §§ 7601—7612).]

(a) A person providing **an AIDS diagnosis,** HIV test results**, CD4 T-lymphocyte counts and percentages, HIV viral load test results including detectable and nondetectable viral load test results, or genotype test results** to a patient may ask for the Department's assistance with counseling if the person chooses to do so.

(b) A person who provides an AIDS diagnosis, HIV test results, CD4 T-lymphocyte counts and percentages, HIV viral load test results, including detectable and nondetectable viral load test results, or genotype test results to an individual shall inform the individual that the Department or a local health department may contact the patient for a voluntary confidential interview to discuss partner services, including counseling, testing, referral and partner notification.

§ 27.32d. Department authority to require complete reporting.

The Department will have access to and may review the patient records of **[physicians]** **health care practitioners**, hospitals, persons providing HIV services and persons in charge of entities providing HIV services, who make diagnoses of AIDS, or who receive or provide HIV **[and]** **test results,** CD4 T-lymphocyte **[test results]** **counts or percentages, HIV viral load test results including detectable and nondetectable test results, or genotype test results**. Access and review will enable the Department to conduct case investigations, to determine whether under-reporting is occurring, to investigate reporting delays and to investigate other reporting problems.

§ 27.32e. Record audits.

(a) The Department may conduct record audits of the records of **[physicians]** **health care practitioners**, hospitals, persons providing HIV services and persons in charge of entities providing HIV services**,** who make diagnoses of AIDS or who receive or provide HIV test results**, CD4 T-lymphocyte counts and percentages, HIV viral load test results including detectable and nondetectable test results, or genotype test results** for the purpose of obtaining information allowing the Department to complete HIV **[and],** CD4 T-lymphocyte case reports**, and viral load and genotyping case reports** to aid it in tracking trends in disease and obtaining additional funding for prevention and treatment programs. The Department may audit records going back to January 1, 2000, for this purpose.

(b) The Department may require special reports of persons or entities required to report under this chapter to ensure compliance with this chapter.

[Pa.B. Doc. No. 19-781. Filed for public inspection May 24, 2019, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 141]

Hunting and Trapping; Big Game

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its April 9, 2019, meeting to amend § 141.47 (relating to elk) to reduce the minimum caliber and bullet weight to .26 caliber and 120 grains, respectively.

This proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

This proposed rulemaking was made public at the April 9, 2019, meeting of the Commission. Comments can be sent until July 17, 2019, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

At present, the minimum caliber and bullet weight requirements to hunt elk are .27 caliber and 130 grains, respectively. These requirements do not currently permit the use of the 6.5 mm Creedmoor round. Sportsmen have requested that the Commission review current regula-

tions and consider adjustments to allow use of the 6.5 mm Creedmoor round and related .26 caliber firearms. The Commission has since reviewed the .26 caliber range and determined that these firearms provide adequate and commonly accepted kinetic energies to efficiently and ethically harvest elk. The Commission is proposing to amend § 141.47 to reduce the minimum caliber and bullet weight to .26 caliber and 120 grains, respectively.

Section 2102(d) of the code (relating to regulations) authorizes the Commission to "promulgate regulations stipulating the size and type of traps, the type of firearms and ammunition and other devices which may be used, the manner in which and the location where the devices may be used, the species the devices may be used for and the season when the devices may be used." The amendments to § 141.47 are proposed under this authority.

2. *Regulatory Requirements*

This proposed rulemaking will amend § 141.47 to reduce the minimum caliber and bullet weight to .26 caliber and 120 grains, respectively.

3. *Persons Affected*

Persons wishing to hunt or take elk within this Commonwealth may be affected by this proposed rulemaking.

4. *Cost and Paperwork Requirements*

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

5. *Effective Date*

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

6. *Contact Person*

For further information regarding this proposed rulemaking, contact Randy L. Shoup, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

BRYAN J. BURHANS,
Executive Director

Fiscal Note: 48-444. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter C. BIG GAME

§ 141.47. Elk.

(a) *Permitted devices*. It is lawful to hunt elk during the elk season with any of the following devices:

(1) A manually operated, centerfire rifle or handgun. The firearm must be a **[.27]** **.26** caliber or larger firearm that propels single-projectile ammunition **[130]** **120** grains or larger.

* * * * *

[Pa.B. Doc. No. 19-782. Filed for public inspection May 24, 2019, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 141]

Hunting and Trapping; Furbearers

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its April 9, 2019, meeting to amend §§ 141.63, 141.67 and 141.68 (relating to definitions; furbearer seasons; and prohibited devices) to provide greater clarity in common trapping terminology and increased understanding in what trapping devices are permitted within this Commonwealth.

This proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

This proposed rulemaking was made public at the April 9, 2019, meeting of the Commission. Comments can be sent until July 17, 2019, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

The Commission is proposing a number of amendments to §§ 141.63, 141.67 and 141.68 to provide greater clarity in common trapping terminology and increased understanding in what trapping devices are permitted within this Commonwealth. To this end, the Commission is proposing to amend § 141.63 to add the definitions of the terms body-gripping trap, cage or box trap and leg-hold trap.

The Pennsylvania Trapper's Association has also requested that the Commission amend the definition of a snare to establish consistent definitions for the locks that are legal for use for cable restraints and snares. Cable restraint regulations and definitions were developed to allow live restraint of canids, whereas regulations and definitions for snares were developed to allow for live restraint or kill sets for beaver and otter. Current language in § 141.63 requires that a snare be "equipped with a mechanical sliding metal release lock" and that "Cable restraints must be equipped with an approved lock." The "approved" locks are listed and visually represented in § 141.66(g) (relating to cable restraints). The current list of approved locks is based upon research conducted during the development of Best Management Practices for Trapping in the United States. The change is intended to expand the number and types of locks available to trappers using snares. Furthermore, these changes will provide consistency in the legal lock requirements for cable restraints and snares.

Cage or box traps are efficient, selective and humane tools for harvesting furbearers. Section 2361 of the code (relating to unlawful acts concerning taking of furbearers) references the Commission's authority to approve cage or box type traps for taking furbearers, but their permitted use has not been asserted in the trapping regulations. The Commission is proposing to amend §§ 141.67 and 141.68 to specifically add cage or box traps, as well as other currently accepted trapping devices, to the list of approved devices.

Section 2102(d) of the code (relating to regulations) authorizes the Commission to "promulgate regulations stipulating the size and type of traps, the type of firearms and ammunition and other devices which may be used, the manner in which and the location where the devices may be used, the species the devices may be used for and the season when the devices may be used." The amendments to §§ 141.63, 141.67 and 141.68 are proposed under this authority.

2. *Regulatory Requirements*

This proposed rulemaking will amend §§ 141.63, 141.67 and 141.68 to provide greater clarity in common

trapping terminology and increased understanding in what trapping devices are permitted within this Commonwealth.

3. *Persons Affected*

Persons wishing to trap or take furbearers within this Commonwealth may be affected by this proposed rulemaking.

4. *Cost and Paperwork Requirements*

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

5. *Effective Date*

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

6. *Contact Person*

For further information regarding this proposed rulemaking, contact Randy L. Shoup, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

BRYAN J. BURHANS,
Executive Director

Fiscal Note: 48-443. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter D. FURBEARERS

§ 141.63. Definitions.

In addition to the definitions contained in the act and this part, the following words, when used in the enforcement of section 2361 of the act (relating to unlawful acts concerning taking of furbearers) have the following meanings, unless the context clearly indicates otherwise:

Artificial cubby—A baited enclosure constructed of natural or artificial material that is designed to house and corral a furbearer into a body-gripping trap.

***Body-gripping trap*—A jawed trap device designed to capture and kill a furbearer by compression of the neck or body through the operation of one or two rotating, spring-loaded jaws activated by a trigger.**

Cable restraint—A galvanized stranded steel cable with a minimum diameter of 3/32 inches. The cable must be constructed of either 7 bundles comprised of 7 wires per bundle, 7 bundles comprised of 19 wires per bundle or 1 bundle comprised of 19 wires. The cable may not exceed 7 feet in length from the anchor point to the lock contacting the fully closed loop stop, must be equipped with at least one swivel device (which allows for 360° rotation) between the loop and the anchor and must have stops affixed to the cable to ensure that the circumference of the cable which makes up the loop may not be greater than 38 inches when fully open, or less than 8 inches when fully closed. Cable restraints must be equipped with an approved lock. The lock may not be constructed with moving parts. A cable restraint must include a breakaway device affixed between the lock and cable or at the end of the cable that is rated at 375 pounds or less. The cable must be maintained in good condition so that all components operate properly.

***Cage* or *box trap*—An enclosure trap designed to capture and restrain a live furbearer by confinement in a cage or box through the operation and closure of a door or portal activated by a trigger.**

Foot encapsulating trap—A device that has all triggering and restraining mechanisms enclosed by a housing which, once set, allows access to the triggering mechanism through a single opening not to exceed 2 inches in diameter or diagonally and is anchored by a swivel-mounted anchoring mechanism.

***Leg-hold trap*—A jawed trap device designed to capture and restrain a live furbearer by the foot through operation of one or two rotating, spring-loaded jaws activated by a trigger.**

Marsh, pond or *dam*—A standing body of water.

Snare—A looped **[galvinized] galvanized** or stainless stranded steel cable 3/32 inches in diameter equipped with **[a mechanical sliding metal release lock] an approved lock listed in § 141.66(g) (relating to cable restraints)**. A metal ferrule shall be crimped on the cable to prevent the snare loop from closing to a circumference less than 7 inches.

Waterway or *watercourse*—A riverine system that contains water which includes the semi-permanent flooded area.

§ 141.67. Furbearer seasons.

(a) *Permitted devices*. It is lawful to hunt or take furbearers during any furtaking season with the following devices:

(1) A manually operated or semiautomatic rifle or manually operated handgun that propels single-projectile ammunition.

(2) A manually operated or semiautomatic, centerfire shotgun or muzzleloading shotgun. The firearm must be 10 gauge or less, that propels single-projectile ammunition or multiple-projectile shotgun ammunition not larger than # 4 buckshot. The centerfire shotgun's magazine capacity may not exceed two rounds. The shotgun's total aggregate ammunition capacity may not exceed three rounds.

(3) A muzzleloading rifle or handgun that propels single-projectile ammunition.

(4) A bow and arrow.

(5) A crossbow and bolt.

(6) A manually operated or semiautomatic air rifle or manually operated air handgun .22 caliber or larger that propels single-projectile pellet or bullet ammunition. BB ammunition is not authorized.

(7) A leg-hold trap, except as prohibited under section 2361(a)(8) of the act (relating to unlawful acts concerning taking of furbearers).

(8) A body-gripping trap, except as prohibited under section 2361(a)(11) of the act.

(9) A cable restraint device authorized by § 141.66 (relating to cable restraints).

(10) A snare, except as prohibited under § 141.62(b) (relating to beaver and otter trapping).

(11) A cage or box trap, except as prohibited under section 2361(a)(17) of the act.

(b) *Prohibitions*. While hunting furbearers during any furbearer hunting or trapping season, it is unlawful to:

(1) Use or possess multiple-projectile shotgun ammunition larger than # 4 buckshot, except as authorized under

section 2525 of the act (relating to possession of firearm for protection of self or others).

(2) Use or possess a device or ammunition not provided for in the act or in this section, except as authorized under section 2525 of the act.

(3) Use any firearm, other than authorized in this paragraph, to dispatch legally trapped furbearers during the overlap with the regular or special firearms deer seasons:

(i) A manually operated or semiautomatic rimfire rifle or manually operated rimfire handgun .22 caliber or less.

(ii) A manually operated or semiautomatic air rifle or manually operated air handgun between .177 and .22 caliber, inclusive, that propels single-projectile pellet or bullet ammunition. BB ammunition is not authorized.

§ 141.68. Prohibited devices.

It is unlawful to take furbearers through the use of the following devices:

(1) Fish hooks, snagging hooks or any other hooks of similar design.

(2) Implements that are not lawful traps, **snares, cable restraints,** firearms, bows or crossbows.

[Pa.B. Doc. No. 19-783. Filed for public inspection May 24, 2019, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 141]

Hunting and Trapping; Wild Pheasant Recovery Areas

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its April 9, 2019, meeting to amend § 141.28 (relating to wild pheasant recovery areas) by eliminating the Hegins-Gratz Valley Wild Pheasant Recovery Area (WPRA), modifying the boundaries of the Central Susquehanna and Franklin County WPRAs and removing the dog training restriction within areas designated as WPRAs to better represent and protect existing populations of wild pheasants.

This proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

This proposed rulemaking was made public at the April 9, 2019, meeting of the Commission. Comments can be sent until July 17, 2019, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

The Commission has completed a final report on the WPRA project and are recommending several changes to WPRA status and regulations based on the findings of the report. The Hegins-Gratz Valley WPRA was established by the Commission in 2010. In 2011, 300 wild pheasants were trapped and transferred to the WPRA and annual population and habitat monitoring have continued through 2018. Population surveys show that current wild pheasant numbers in this WPRA are very low, and much lower than the initial population at the conclusion of releases. The Commission has concluded that due to habitat conditions, a huntable wild pheasant population is not achievable or sustainable within this WPRA, and that in keeping with guidelines established in the Pennsylvania Ring-necked Pheasant Management Plan for unsuccessful WPRAs, the Hegins-Gratz Valley WPRA should be dissolved and the area should be reopened to either-sex pheasant hunting and to the stocking of game farm pheasants. Boundary changes are recommended for both the Central Susquehanna and Franklin County WPRAs, reducing the size of each WPRA to better represent existing populations of wild pheasants. Finally, removal of the dog training restriction within WPRAs is recommended as there is low likelihood of negative impacts from this activity on now-established pheasant populations.

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 § 141.28 are proposed under this authority.

2. *Regulatory Requirements*

This proposed rulemaking will amend § 141.28 by eliminating the Hegins-Gratz Valley WPRA, modifying the boundaries of the Central Susquehanna and Franklin County WPRAs and removing the dog training restriction within areas designated as WPRAs to better represent and protect existing populations of wild pheasants.

3. *Persons Affected*

Persons wishing to hunt or take pheasants or train dogs on small game within areas designated as WPRAs may be affected by this proposed rulemaking.

4. *Cost and Paperwork Requirements*

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

5. *Effective Date*

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

6. *Contact Person*

For further information regarding this proposed rulemaking, contact Randy L. Shoup, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

BRYAN J. BURHANS,
Executive Director

Fiscal Note: 48-442. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter B. SMALL GAME

§ 141.28. Wild pheasant recovery areas.

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

(1) *Central Susquehanna WPRA*. Portions of WMU 4E in Northumberland, Montour and Columbia Counties, bounded and described as follows. Beginning in the southwestern extent of the WPRA at the intersection of Interstate 80 and Interstate 180, proceed north on Interstate 180 for approximately 7.2 miles to the intersection of Hughes Road. The boundary follows Hughes Road east for 0.2 mile to Susquehanna Trail. Follow Susquehanna Trail south for 0.2 mile to Schmidt Road. Follow Schmidt Road for 1.6 miles to Miller Road. Follow Miller Road east for 1.1 miles to intersection of Hockey Hill Road. Go right on Hockey Hill Road then left onto Pugmore Lane. Follow Pugmore Lane for 0.7 mile to Harrison Road. The boundary follows Harrison Road south for 0.7 mile to Showers Road. Follow Showers Road for 1.2 miles east to intersection of Gearhart Road. Turn right on Gearhart Road and go south for 0.6 mile to the intersection of Hickory Road. The boundary follows Hickory Road east for 0.6 mile then left onto Mingle Road for 0.9 mile until rejoining Hickory Road for another 0.8 mile to the intersection of Muncy Exchange Road. The boundary follows Muncy Exchange Road south for 1.4 miles to bridge over the West Branch of Chillisquaque Creek near the intersection of State Highway 44. The boundary follows the West Branch of Chillisquaque Creek south for approximately 2.1 miles to the bridge on Arrowhead Road. The boundary follows Arrowhead Road west for 0.8 mile to the intersection of State Highway 54. Follow State Highway 54 south for 2.6 miles to the intersection of State Highway 254. Follow State Highway 254 west for 6.6 miles to the intersection of **[State Highway 44. Follow State Highway 44 south for 1.1 miles to the intersection of State Highway 642. Follow State Highway 642 southwest for 2.3 miles to the intersection of Billhime Road. Turn right onto Billhime Road and go 1.1 miles to the intersection of East Diehl Road. Turn left on East Diehl Road then right onto Cameltown Hill Road. Follow Cameltown Hill Road for 1 mile to the intersection of Blee Hill Road. The boundary follows Blee Hill Road northwestward for 0.6 mile to the intersection of Hillside Drive. Turn left onto Hillside Drive and follow west for 3.2 miles until State Highway 54. Cross State Highway 54 onto Steckermill Road and go 0.4 mile to the intersection of Keefer Mill Road. Turn right onto Keefer Mill Road and follow north for 0.8 mile to the intersection Mexico Road. Turn right on Mexico Road for 0.1 mile and then turn left onto Keefer Mill Road for 0.6 mile to the intersection of State Highway 254. The boundary follows State Highway 254 west for 5.5 miles to the intersection of Interstate 80. Follow Interstate 80 west for 3.4 miles to the intersection Interstate 180 and the point of origin]** Interstate 80. Follow Interstate 80 west for 3.4 miles to the intersection of Interstate 180 and the point of origin.

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

(3)] *Franklin County WPRA*. That portion of WMUs 4A and 5A in Franklin County **[from PA Rt. 30 on the northern border to the Pennsylvania/Maryland state border on the southern border, and from Cove Mountain on the western border to the towns of Laurich and Williamson and the Conococheague Creek on the eastern border. The WPRA is bounded on the north by PA Rt. 30 (Lincoln Highway). Beginning at the town of Fort Loudon at the intersection of PA Rt. 30 (Lincoln Highway) and PA Rt. 75, proceed east on PA Rt. 30 (Lincoln Highway), through St. Thomas and continue east to Laurich. Just east of Laurich, proceed south along Back Creek to SR 3012 (Jack Road). Proceed west along SR 3012 (Jack Road), then south along Weber Road. Continue south and southwest along Weber Road to the intersection of Weber, Grapevine and Jacks Mill Roads. Proceed southwest along Grapevine Road and then northwest to intersection with SR 3013. Turn south onto SR 3013 (St. Thomas Williamson Road) and then west onto State Rt. 995. Proceed west and then south on State Rt. 995 through Williamson to the West Branch of the Conococheague Creek (northeast of Welsh Run). Proceed along the West Branch of the Conococheague Creek to the confluence with Conococheague Creek. Follow the Conococheague Creek south to the Pennsylvania/Maryland state border. Proceed west along the Pennsylvania/Maryland state border to State Rt. 456. Proceed northeast along State Rt. 456 to State Rt. 16. Proceed east on State Rt. 16 to Mountain Road. Proceed northeast on Mountain Road to State Rt. 75. Proceed northwest on State Rt. 75 to the intersection of State Rt. 75 and State Rt. 30 at Fort Loudon]** bounded and described as follows: Beginning at the town of Mercersburg at the intersection of PA Rt. 16 (N. Main St.) and Johnstons Ln., proceed 1.9 miles west on Johnstons Ln. At the intersection of Johnstons Ln. and Charlestown Rd., proceed 0.7 mile due west following the Montgomery/Peters Township lines to the top of Cove Mountain. Proceed south along the Montgomery/Warren Township lines following the

spine of Cove Mountain 7.9 miles to its intersection with cleared gas line utility right-of-way. Proceed 4.3 miles northeast along utility right-of-way to its intersection with Blairs Valley Rd. Proceed 1 mile south on Blairs Valley Rd. to the intersection with Hunter Rd. Proceed 2.5 miles east on Hunter Rd. to the intersection with Rt. 75 (Fort Loudon Rd.). Proceed across Rt. 75 onto Garnes Rd. and follow 2.6 miles northeast to the intersection with Rt. 416 (Mercersburg Rd.). Proceed 2.4 miles north on Rt. 416 to the intersection with Rt. 16 (Buchanan Trail West). Proceed 2.7 miles northwest on Rt. 16 through the town of Mercersburg to the intersection with Johnstons Ln. at point of origin.

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

(1) Release artificially propagated pheasants any time within any area designated as a WPRA.

(2) **[Train dogs in any manner from March 1 through July 31 within any area designated as a WPRA.**

(3)] Hunt pheasants within any area designated as a WPRA, except the Director may authorize limited youth pheasant hunting opportunities by Commission-issued access permit in the Central Susquehanna WPRA. During any year youth pheasant hunting opportunities are authorized in the Central Susquehanna WPRA, the Director will establish the number of hunting access permits to be issued, a manner of distribution for a limited number of access permits to be raffled off by an organization promoting pheasant recovery efforts within this Commonwealth, and designate one or more pheasant hunt zones within the WPRA prior to the opening of the earliest established youth pheasant season. The Director or a designee will establish the application deadline and the date, time and location for the random drawing of applications for the issuance of any remaining limited youth pheasant hunting access permits within the Central Susquehanna WPRA. Limited youth pheasant hunting access permits are not transferrable. A pheasant hunting access permit shall be signed and carried on person when hunting or taking pheasants within the Central Susquehanna WPRA.

[Pa.B. Doc. No. 19-784. Filed for public inspection May 24, 2019, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 147]
Deer Control; Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its April 9, 2019, meeting to amend § 147.322 (relating to application for deer control permit) to require applicants to provide specific hunter and hunter harvest information from previous public hunting activities upon their application.

This proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

This proposed rulemaking was made public at the April 9, 2019, meeting of the Commission. Comments can be sent until July 17, 2019, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

Section 147.322 has historically required that all "[p]ublic land within the proposed boundaries shall be open to lawful public hunting unless otherwise prohibited under this title or as otherwise authorized or waived by the Director." In large part, this requirement is derived directly from section 103 of the code (relating to ownership, jurisdiction and control of game and wildlife) which provides, in relevant part, that "[t]he commission shall utilize hunting and trapping as methods of effecting necessary management of game, furbearer and wildlife populations." While section 103 does not limit management of wild resources to public hunting only, the Commission has concluded that it is clearly intended as the primary method of management.

Over the years, the Commission has observed that deer control permit applicants utilize varying degrees of use of public hunting as a prerequisite to meeting the public hunting requirement of § 147.322. Many applicants have established organized controlled hunts, while others have organized or invited established hunting clubs onto the public or private, or both, properties covered by the permit to help reduce deer populations. However, at present, the Commission has no way to validate the information provided within deer control applications concerning these public hunt activities. The Commission is proposing to amend § 147.322 to require applicants to provide specific hunter and hunter harvest information from previous public hunting activities with the application. This action will improve the use and prominence of public hunting as the primary method of wild resource management without unduly restricting the purpose and ultimate goals of the deer control permit program.

Section 2901(b) of the code (relating to authority to issue permits) provides that "the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." The amendments to § 147.322 are proposed under this authority.

2. *Regulatory Requirements*

This proposed rulemaking will amend § 147.322 to require applicants to provide specific hunter and hunter harvest information from previous public hunting activities with the application.

3. *Persons Affected*

Persons wishing to make application for a deer control permit within this Commonwealth may be affected by this proposed rulemaking.

4. *Cost and Paperwork Requirements*

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

5. *Effective Date*

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

6. *Contact Person*

For further information regarding this proposed rulemaking, contact Randy L. Shoup, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

BRYAN J. BURHANS,
Executive Director

Fiscal Note: 48-445. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 147. SPECIAL PERMITS

Subchapter R. DEER CONTROL

POLITICAL SUBDIVISIONS

§ 147.322. Application for deer control permit.

(a) An application for a deer control permit shall be completed and submitted by an authorized officer or employee of the political subdivision, homeowners association or nonprofit land-holding organization in the form and manner required by the Director.

(b) An application for a deer control permit must contain the following information:

(1) *Description*. A comprehensive description of the background and scope of the white-tailed deer population or damage problem, or both. The description must include a report of all alternative solutions or other steps taken by the applicant to mitigate the white-tailed deer population or damage problem, or both, prior to application for this permit **[and must specifically define how licensed public hunting for white-tailed deer has been utilized in the problem area and what results hunting activities have had on the population or damage problem, or both]**.

(2) ***Public hunting requirement*. The application must specifically define how licensed public hunting for white-tailed deer has been utilized in the problem area and what results hunting activities have had on the population or damage problem, or both. The application must list the name, C.I.D. number and hunter harvest information related to public hunting activities that have previously taken place in the problem area.**

(3) *Deer management plan*. A comprehensive deer management plan which sets forth the applicant's white-tailed deer management goals, recommended implementation plan and a reference to the specific number of animals sought to be removed. The applicant shall specifically define how licensed public hunting for white-tailed deer will be utilized in the problem area during the term of the requested deer control permit.

[(3)] **(4)** *Map*.

(i) A map or set of maps showing the proposed project area and its boundaries and clearly illustrating all of the following distinct features and areas within the proposed project area:

(A) Land uses.

(B) Cover types.

(C) Areas open to public hunting for white-tailed deer.

(D) Areas damaged by white-tailed deer.

(E) Areas of white-tailed deer congregation.

(F) Applicable safety zones.

(G) Proposed white-tailed deer control areas.

(ii) The map must indicate the individual acreage values for each of the listed features and acres.

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[Pa.B. Doc. No. 19-785. Filed for public inspection May 24, 2019, 9:00 a.m.]