

PROPOSED RULEMAKING

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 63]

Proportional Registration of Fleet Vehicles

The Department of Transportation (Department), Bureau of Motor Vehicles (Bureau), under 75 Pa.C.S. §§ 6103 and 7501—7506, proposes to amend Chapter 63 (relating to proportional registration of fleet vehicles) to read as set forth in Annex A.

Purpose of Chapter 63

The purpose of Chapter 63 is to establish rules and procedures to implement bilateral agreements and the International Registration Plan entered into with other jurisdictions for the registration of fleets of vehicles on an apportioned basis as authorized by 75 Pa.C.S. §§ 6142 and 6145 (relating to reciprocity agreements, arrangements and declarations authorized; and proportional registration of fleet vehicles).

Purpose of this Proposed Rulemaking

The purpose of this proposed rulemaking is to extend the term of the temporary permits under Chapter 63 and to update Chapter 63 with the current fees for registration and titling in 75 Pa.C.S. Chapter 19 (relating to fees).

Summary of Significant Provisions

In § 63.51(a) (relating to Pennsylvania temporary authorization certificates), the general rule has been amended to increase the duration of temporary authorization certificates from 30 to 60 days for a Commonwealth-based vehicle while an application for a change in fleet registration is being processed by the Bureau. The amendment is also reflected in the definition in § 63.4 (relating to definitions). The 60-day temporary registration affords a more reasonable period to operate a proportioned vehicle without the inconvenience of applying for a second or third temporary authorization certificate.

In § 63.52(d) (relating to telegrams of authority), the effective time period for a telegram of authority has been amended to increase the duration of the temporary registration from 30 to 60 days for a Commonwealth-based vehicle while an application for a change in fleet registration is being processed by the Bureau. The amendment is also reflected in the definition in § 63.4. The 60-day temporary registration affords a more reasonable period to operate a proportioned vehicle without the inconvenience of applying for a second or third temporary authorization certificate.

In §§ 63.116, 63.117, 63.118 and 63.122, the fees have been amended to be consistent with fees in 75 Pa.C.S. Chapter 19.

Persons and Entities Affected

Extension of the temporary registration period from 30 to 60 days potentially may affect approximately 15,000 apportioned carriers. The additional time will have a positive effect in allowing the Bureau to complete the title and registration work in a more reasonable period. It eliminates the need for carriers to request additional temporary registration because the application has not been processed.

Fiscal Impact

The proposed rulemaking will not require additional expenditure by the Bureau or the temporary issuing agents. Apportioned carriers may realize a cost savings by not having to request additional temporary registration.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 8, 2004, 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 and Senate Transportation 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, 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.

Sunset Date

The Department is not establishing a sunset date for this proposed rulemaking because it is needed to administer provisions of 75 Pa.C.S. (relating to the Vehicle Code). The Department, however, will continue to closely monitor this proposed rulemaking for effectiveness.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Kurt Myers, Director, Bureau of Motor Vehicles, 1101 S. Front St., Harrisburg, PA 17104 within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Contact Person

The contact person for this proposed rulemaking is Joseph Centurione, Manager, Customer Service Division, Bureau of Motor Vehicles, 1101 S. Front Street, Harrisburg, PA 17104, (717) 787-2304.

ALLEN D. BIEHLER, P. E.,
Secretary

Fiscal Note: 18-396. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE III. REGISTRATION

CHAPTER 63. PROPORTIONAL REGISTRATION OF FLEET VEHICLES

Subchapter A. GENERAL PROVISIONS

§ 63.4. Definitions.

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

* * * * *

Telegram of authority—A temporary registration transmitted by a wire service authorizing the operation of a Commonwealth-based vehicle for [30] 60 days while application for a change in fleet registration is being processed by the Bureau.

Temporary authorization certificate—A temporary registration authorizing the operation of a Commonwealth-based vehicle for [30] 60 days while application for a change in fleet registration is being processed by the Bureau.

* * * * *

Subchapter D. TEMPORARY REGISTRATION

§ 63.51. Pennsylvania temporary authorization certificates.

(a) *General rule.* Temporary authorization certificates may be obtained from the Commercial Registration Section in bulk, by registrants with five or more apportionable vehicles, for use on an additional vehicle or when it is necessary to increase a vehicle's registered weight. The registrant's fees on its original apportioned registration application shall be paid prior to approval of the request for temporary authorization certificates. Temporary authorization certificates are not transferable and may not be used by another carrier. A temporary authorization certificate is valid for [30] 60 days for the date of its first use. A temporary authorization certificate may not be used in conjunction with 75 Pa.C.S. § 1311(c) (relating to registration card to be signed and exhibited on demand) to avoid prosecution under 75 Pa.C.S. § 1301 (relating to registration and certificate of title required).

* * * * *

§ 63.52. Telegrams of authority.

* * * * *

(d) *Effect of telegram.* A telegram of authority issued by the Department is valid for [30] 60 days. An extension of a telegram of authority may be granted if, in the judgment of the Department, the supplemental application for proportional registration was submitted and fees were paid on a timely basis but there was insufficient time to process the application and forward the credentials to the carrier.

* * * * *

Subchapter G. FEES

§ 63.116. Cab cards.

The fee for a cab card issued in connection with the filing of an application requiring no Pennsylvania registration fees [,] is [\$3] \$4.50.

§ 63.117. Duplicate cab cards.

The fee for each duplicate cab card [shall be \$1] is \$1.50 when ordered at the time of vehicle registration or transfer, or renewal of registration. The fee for each duplicate cab card ordered at any other time shall be [\$3] \$4.50.

§ 63.118. Transfer of registration.

The fee for transfer of registration from a vehicle within an apportioned fleet to another vehicle within the same fleet or another apportioned fleet of the same carrier is [\$4] \$6.

§ 63.122. Nontitled fleet registration.

The fee for establishing a registration record for an apportioned vehicle not titled in this Commonwealth is [\$15] \$22.50.

[Pa.B. Doc. No. 04-1715. Filed for public inspection September 17, 2004, 9:00 a.m.]

[67 PA. CODE CH. 86]

Occupational Limited License

The Department of Transportation (Department), under 75 Pa.C.S. §§ 1553 and 6103 (relating to occupational limited license; and promulgation of rules and regulations by department), proposes to amend Chapter 86 (relating to occupational limited license—statement of policy) to read as set forth in Annex A.

Purpose of Chapter 86

The purpose of Chapter 86 is to provide guidance regarding when the Department will require additional information or additional evidence to verify the information contained in a petition for an occupational limited license (OLL). Chapter 86 also provides that the Department may conduct an investigation to verify the information contained in the petition and itemizes the information that is required to be on the Occupational Limited License Affidavit.

Persons and Entities Affected

This proposed rulemaking will affect drivers petitioning for the issuance of an OLL under 75 Pa.C.S. § 1553.

Fiscal Impact

The proposed rulemaking will not require the expenditure of significant additional funds by the Commonwealth. Marginal cost to the Commonwealth would result if the Department conducts further investigation regarding the information on an applicant's petition under § 86.102 (relating to investigation). Marginal cost to members of the regulated community may result if the Department requires an applicant to submit additional information to support the petition for an OLL.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 8, 2004, 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 and Senate Transportation 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, 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.

Sunset Date

The Department is not establishing a sunset date for this proposed rulemaking because it is needed to administer provisions required by 75 Pa.C.S. (relating to the

Vehicle Code). The Department, however, will continue to closely monitor this proposed rulemaking for effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Rebecca L. Bickley, Director, Bureau of Driver Licensing, 4th Floor, Riverfront Office Center, 1101 S. Front Street, Harrisburg, PA 17104 within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Contact Person

The contact person for this proposed rulemaking is Anne P. Titler, Acting Manager, Driver Safety Division, Bureau of Driver Licensing, 4th Floor, Riverfront Office Center, 1101 S. Front Street, Harrisburg, PA 17104, (717) 783-4737.

ALLEN D. BIEHLER, P. E.,
Secretary

Fiscal Note: 18-397. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE IV. LICENSING

CHAPTER 86. OCCUPATIONAL LIMITED LICENSE [—STATEMENT OF POLICY]

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to delete the text of §§ 86.1—86.3 (relating to occupational limited license—statement of policy), which appears at 67 Pa. Code pages 86-1—86-2, serial pages (302675) to (302676).)

§§ 86.1—86.3. (Reserved).

§ 86.101 Additional information.

(a) The Department may require the submission of additional information or evidence if it is determined that the information provided in a petition for an occupational limited license submitted under 75 Pa.C.S. § 1553(b) (relating to occupational limited license) is ambiguous, incomplete or of questionable veracity.

(b) Additional information or evidence required may include:

(1) Written statements from appropriate individuals verifying employment, study or medical appointments or treatment.

(2) Proof of vehicle ownership.

(3) Proof of insurance.

(4) A schedule of driving time anticipated under the occupational limited license.

(5) A description or radius of the territory anticipated to be driven under the occupational limited license.

§ 86.102 Investigation.

The Department may conduct its own investigation to verify the information contained in the petition for an occupational limited license or additional information or evidence submitted in accordance with this chapter. Investigation may include contacting employers, school administrators, medical providers or other appropriate individuals.

§ 86.103 Occupational Limited License Affidavit.

The Occupational Limited License Affidavit required under 75 Pa.C.S. § 1553(f)(5) (relating to occupational limited license) to be carried by a driver who has been issued an occupational limited license shall include:

(1) The name, address, date of birth and driver license number of the petitioner.

(2) The year, make, model, license plate number and state of registration of every vehicle that will be driven by the petitioner.

(3) The insurance company name, policy number, effective date and expiration date of each insurance policy on every vehicle listed as being driven by the petitioner.

(4) The place of employment, study, or medical treatment or appointment for which the occupational limited licenses is needed.

(5) The hours of operation necessary for travel to the employment, study, or medical treatment or appointment.

(6) The name, signature and position of the employer, school administrator or medical provider attesting that the information provided on the form is true and correct.

[Pa.B. Doc. No. 04-1716. Filed for public inspection September 17, 2004, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 51]

Administrative Provisions

The Fish and Boat Commission (Commission) proposes to amend § 41.33 (relating to effective dates of licenses and trout/salmon permits). 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 amendment relates to the effective dates of licenses and trout/salmon permits for 2005.

A. Effective Date

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

B. Contact Person

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposed rulemaking is available on the Commission's website: www.fish.state.pa.us.

C. Statutory Authority

The proposed amendment to § 51.33 is published under the statutory authority of section 506 of The Administrative Code of 1929 (71 P. S. § 186).

D. Purpose and Background

The proposed rulemaking is designed to update, modify and improve the Commission's regulations pertaining to administration. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposal.

E. Summary of Proposal

It is possible that the General Assembly will enact legislation affecting the price and mix of fishing licenses, stamps and permits late in the 2004 calendar year. These changes, if enacted, will be in effect for the 2005 year. To facilitate the orderly distribution and proper accounting for new license types and license prices, it will be necessary for Commission staff to delay the distribution of license materials until after enactment of legislation.

The current regulation specifies that annual licenses are effective for the year printed on the license certificate and the month of December of the preceding year. The proposed rulemaking will make 2005 licenses effective on January 1, 2005, or the date of sale in December 2004, whichever is earlier. Limited duration licenses, such as the 1-day, 3-day and 7-day licenses, will remain valid only for the dates specified on the license certificates. The Commission proposes to amend § 51.33 to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no 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 to ra-pfbcregs@state.pa.us. A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: 48A-161. 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

§ 51.33. Effective dates of licenses and trout/salmon permits.

(a) Fishing licenses and permits, such as trout/salmon permits are valid for the year printed on the license certificate or permit, and the month of December of the preceding year, except for tourist licenses that are valid for the dates specified on the license certificate.

(b) Annual licenses and permits for 2005 are valid for the 2005 year and any part of December 2004 commencing on the date of sale.

[Pa.B. Doc. No. 04-1717. Filed for public inspection September 17, 2004, 9:00 a.m.]

[58 PA. CODE CH. 65]

Fishing; Special Fishing Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapter 65 (relating to special fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa. C.S. (relating to the Fish and Boat Code) (code). The proposed amendments relate to the elimination of the Selective Harvest and All-Tackle Selective Harvest Programs and the imposition of a catch and release/no harvest fishery for all species on waters located in the Wyoming State Forest, Columbia and Northumberland Counties.

A. Effective Date

The proposed rulemaking, if approved on final-form, will go into effect on January 1, 2005.

B. Contact Person

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposed rulemaking is available on the Commission's website: www.fish.state.pa.us.

C. Statutory Authority

The proposed amendments to §§ 65.1, 65.4b and 65.24 (relating to Selective Harvest Program; All-Tackle Selective Harvest Program; and miscellaneous special regulations) are published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. Purpose and Background

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

E. Summary of Proposal

(1) *Section 65.1.* At the July 1994 meeting, the Commission adopted regulations for the Selective Harvest Program. These regulations went into effect beginning with the 1995 season. The Select Harvest Program was designed to enhance wild trout populations while providing an opportunity for limited harvest of some larger trout. The regulations provided an alternative to trophy trout management on wild trout waters where habitat limitations may preclude the stockpiling of older and larger trout as intended under the 14-inch minimum length limit that is applied to trophy trout waters. The regulations also were designed to reflect differences in longevity and growth rates, particularly between brown and brook trout. Under the regulations, species specific minimum length limits apply with a 12-inch minimum length limit for brown trout and a 9-inch minimum for other trout species. Angling is permitted on a year-round basis with a two trout per day creel limit (combined species) during the harvest season. On the waters managed under the Select Harvest Program, gear is restricted to the use of artificial lures, flies and streamers.

Based on data collected from follow-up examinations, the trout populations did not always respond as the Commission intended on some of the waters managed under the Select Harvest Program. Therefore, to consolidate the number of special regulations used in managing trout populations, the Commission has moved three of the remaining four waters in the program to other special regulations programs, effective January 1, 2005. The Commission intends to move the last water in the Select Harvest Program prior to the end of the year. Thus, there is no need to retain the regulations for the Select Harvest Program. The Commission accordingly proposes to delete § 65.1 to read as set forth in Annex A.

(2) *Section 65.4b.* At the January 1998 meeting, the Commission adopted regulations for the All-Tackle Selective Harvest Program. These regulations went into effect beginning with the 1999 season. The regulations were designed to enhance wild trout populations and provide the opportunity for limited harvest of some larger trout. As with the Selective Harvest Program, species specific minimum length limits apply with a 12-inch minimum for brown trout and a 9-inch minimum for all other trout species. Angling is permitted on a year-round basis with a two trout per day creel limit (combined species) during the harvest season. However, in contrast to the Selective Harvest Program where angling is restricted to the use of artificial lures, flies and streamers, the All-Tackle Selective Harvest Program was designed to appeal to a broader angling base by allowing the use of natural bait, baitfish and fishbait in addition to artificial lures, flies and streamers.

Based on information from follow-up inventories, the trout populations did not always respond as the Commission intended on the waters managed under the All-Tackle Selective Harvest Program. Therefore, to consolidate the number of special regulations programs used in managing trout populations, the Commission has moved the remaining four waters in the program to other special regulations programs, effective January 1, 2005. Thus, there is no need to retain the regulations for the All Tackle Selective Harvest Program. The Commission proposes to delete § 65.4b to read as set forth in Annex A.

(3) *Section 65.24.* Early in 2004, the Bureau of Forestry requested the Commission to implement no-kill regulations on waters within a recently acquired 9,000-acre tract being incorporated into the Wyoming State Forest. The rationale for the request was to give Commission staff an opportunity to survey various fish populations and to prepare and implement fisheries management plans. Also, because these waters had not been open for public use since the 1880s, it seemed prudent to afford some degree of protection to fish populations until Commission staff could develop an appropriate course of action. By notice published at 34 Pa.B. 456 (January 17, 2004), former Deputy Executive Director Guise, acting under the authority of § 65.25 (relating to temporary changes to fishing regulations) took immediate action to temporarily modify fishing regulations to permit catch and release only of all species on waters located in the Wyoming State Forest. The temporary modifications went into effect January 17, 2004, and will remain in effect until further notice but in no event will they remain in place after January 1, 2005.

Commission surveys of these waters were completed during the spring of 2004. Results of the lake surveys found that the fish communities consisted of a very low density of gamefish and panfish that exhibited characteristics of unexploited (unfished) populations. Although lake

water quality work has not yet been completed, it is apparent from voltages required during the electrofishing phase of the surveys as well as the abundance of bladderwort (an acid loving aquatic plant) that these systems are not very productive. The stream evaluation found very few trout (brook trout) between the reservoirs and no trout upstream from the reservoirs. As was the case in the lakes, the infertile waters are likely the cause of the very sparse trout population. The portions of the stream downstream from the reservoirs would also be negatively impacted during the summer months by the warm (surface) discharges. It is evident that lake fish populations could easily be overexploited under the most conservation of harvest-orientated regulations. The Commission therefore proposes that all of the waters within the South Branch Roaring Creek tract of the Wyoming State Forest remain under catch and release regulations.

The 6 to 7-mile valley under the direct responsibility of the Department of Conservation and Natural Resources (DCNR) will offer a variety of activities for outdoor enthusiasts. For the most part, access will be walk-in or by bicycle. Boating may be restricted to the upper two reservoirs and even then without gasoline motors. Thus, no-kill regulations are quite appropriate in this rather unique setting.

The DCNR District Forester and practically every angler encountered during the lengthy survey period in the valley support the proposed rulemaking for catch and release angling on these newly acquired public waters—specifically, Bear Gap Reservoir, McWilliams Reservoir, Klines Reservoir and the South Branch of Roaring Creek from the bridge on State Route 3008 at Bear Gap upstream to the bridge on State Route 42 (Columbia and Northumberland Counties). The Commission proposes that § 65.24 be amended to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no 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 to ra-pfbcregs@state.pa.us. A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: 48A-160. No fiscal impact; (8) recommendations adoption.

Annex A
TITLE 58. RECREATION
PART II. FISH AND BOAT COMMISSION
Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS
 § 65.1. [Selective Harvest Program] (Reserved).

[(a) The Executive Director, with the approval of the Commission, may designate waters as Selective Harvest Areas. The designation of waters as selective harvest areas shall be effective when the waters are so posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in designated and posted selective harvest areas except in compliance with the following requirements:

(1) Fishing may be done with artificial lures only, constructed of metal, plastic, rubber or wood or with flies or streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly fishing gear. Anything other than these items is prohibited. Specifically prohibited are the use of molded facsimiles or replicas of insects, earthworms, fish eggs, fish or any invertebrate or vertebrate either singly or in combination with the other materials.

(2) The use or possession of fishbait, natural bait or baitfish and the use of a device, natural or synthetic, capable of catching fish other than artificial lures is prohibited.

(3) The program is open to fishing the entire year; no closed season.

(4) The minimum size is 12 inches for brown trout and 9 inches for all other salmonids caught on or in possession on the waters under selective harvest regulation.

(5) The daily creel limit is two trout—combined species—except during the period from the day after Labor Day to 8 a.m. of the opening day of

regular trout season of the following year, when no trout may be killed or had in possession on the waters under regulation.

(6) Taking of baitfish or fishbait is prohibited.]

§ 65.4b. [All-Tackle Selective Harvest Program] (Reserved).

[(a) The Executive Director, with the approval of the Commission, may designate waters as all-tackle selective harvest areas. The designation of waters as all-tackle selective harvest areas will be effective when the waters are so posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in designated and posted all-tackle selective harvest areas except in compliance with the following requirements:

(1) The program is open to fishing year-round; there is no closed season.

(2) The minimum size is 12 inches for brown trout and 9 inches for all other salmonids caught on, or in possession on, the waters under the all-tackle selective regulations.

(3) The daily creel limit is two trout—combined species—from 8 a.m. on the opening day of trout season in April until midnight Labor Day, except during the period from the day after Labor Day to 8 a.m. on the opening day of regular trout season of the following year, when no trout may be killed or had in possession on the waters under regulation.

(4) A current trout/salmon permit is required.

(c) This section applies to trout only. Inland regulations apply to all other species.]

§ 65.24. Miscellaneous special regulations.

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

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
	* * * * *	
Columbia and Northumberland	Bear Gap Reservoir, McWilliams Reservoir, Klines Reservoir and the South Branch of Roaring Creek from the bridge on State Route 3008 at Bear Gap upstream to the bridge on State Route 42	This is a catch and release/no harvest fishery for all species. It is unlawful to take, kill or possess any fish. All fish caught must be immediately returned unharmed.
	* * * * *	

[Pa.B. Doc. No. 04-1718. Filed for public inspection September 17, 2004, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 141]
Hunting and Trapping; Permitted Devices

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 29, 2004, meeting, proposed the following rulemaking to amend § 141.18 (relating to permitted devices).

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

1. *Introduction*

The Commission is proposing to amend § 141.18 to make lawful the use of sound amplification devices that completely cover the ears.

2. *Purpose and Authority*

Current regulations specifically prohibit the use of sound amplification devices that completely cover the ears. With the advances in technology, many of the available electronic hearing protection devices now also amplify sound. Current regulations prohibit many of these devices because they could be used to give the hunters an unfair advantage. Many of the new hearing protection devices are electronic, enabling the hunter to hear normal conversation but preventing sounds over a certain decibel level from entering the ear. They amplify sound and completely cover the ears. By removing the relevant language in § 141.18, these hearing protection devices can be made lawful for use.

Section 322(c)(5) of the code (relating to powers and duties of commission) specifically empowers the Commission to "Fix the type and number of devices which may be used to take game or wildlife." Section 2102(b)(1) of the code (relating to regulations) authorizes the Commission to "promulgate regulations relating to . . . the number and types of devices and equipment allowed, the identification of devices and the use and possession of devices." Section 2102(d) of the code authorizes the Commission to "promulgate regulations stipulating . . . 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." Section 2102(a) of the code provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to . . . the 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 amendment to § 141.18 was proposed under this authority.

3. *Regulatory Requirements*

The proposed rulemaking will make lawful the use of sound amplification devices that completely cover the ears.

4. *Persons Affected*

Persons who wish to use sound amplification devices that completely cover the ears will be affected by the proposed rulemaking.

5. *Cost and Paperwork Requirements*

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

6. *Effective Date*

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

7. *Comments*

Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797 until September 27, 2004.

8. *Contact Person*

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-192. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter A. GENERAL

§ 141.18. Permitted devices.

The following devices may be used to hunt or take wildlife:

* * * * *

(2) Electronic sound amplification devices that are **incorporated into hearing protection devices and completely contained in [and]** or on the hunter's ear. **[This does not include any device or devices that completely cover the ear or ears.]**

[Pa.B. Doc. No. 04-1719. Filed for public inspection September 17, 2004, 9:00 a.m.]

[58 PA. CODE CH. 143]

Hunting and Furtaker Licenses

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 29, 2004, meeting, proposed to add § 143.12 (relating to fee for replacement hunter education training certificate).

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

1. *Introduction*

The Commission is proposing to add § 143.12 to permit the Commission to implement a fee for the replacement of hunter education training certificates to offset administrative costs.

2. *Purpose and Authority*

Each year the Commission receives over 2,000 requests from individuals needing replacement certificates to verify that they have completed hunter education training. Most of the requests come from individuals wishing to hunt in another state where proof of having completed hunter education training is required to purchase a hunting license in that state. Currently, fulfilling these requests results in substantial administrative costs. To offset a portion of these costs, the Commission is proposing to add § 143.12 to permit the Commission to implement a fee for the replacement of hunter education training certificates.

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 amendment to § 143.12 is proposed under this authority.

3. *Regulatory Requirements*

The proposed rulemaking will add § 143.12 to permit the Commission to implement a fee for the replacement of hunter education training certificates.

4. *Persons Affected*

Persons requesting replacement hunter education training certificates from the Commission will be affected by the proposed rulemaking.

5. *Cost and Paperwork Requirements*

The proposed rulemaking will result in a fee of \$10 to persons requesting replacement hunter education training certificates from the Commission.

6. *Effective Date*

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

7. *Comment*

Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797 until September 27, 2004.

8. *Contact Person*

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-193. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 143. HUNTING AND FURTAKER LICENSES

Subchapter A. GENERAL

§ 143.12. Fee for replacement hunter education training certificate.

A \$10 fee shall be remitted by any person requesting a replacement Hunter Education Training Certificate.

[Pa.B. Doc. No. 04-1720. Filed for public inspection September 17, 2004, 9:00 a.m.]

[58 PA. CODE CH. 147]

Special Permits; Deer Control

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 29, 2004, meeting, proposed to amend § 147.663 (relating to fencing).

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

1. *Introduction*

The Commission is proposing to amend § 147.663 to permit the Executive Director to establish approved woven wire fencing designs and specifications.

2. *Purpose and Authority*

Section 147.661 (relating to general) provides for permits to control deer within fenced enclosures constructed for the purpose of improving forest regeneration. The fences are constructed by managers of private and public forest land, including the Commission. Currently, § 147.663 requires these fences to be constructed of woven wire and be at least 8 feet high with the bottom edge tight to the ground. The industry standard fencing commonly used in this application is built from two widths of 47 woven wire with the bottom 1 foot (approximately) folded over the ground to the outside, leaving an approximate total aboveground height of only 7 feet. The fences are in widespread use by the Department of Conservation and Natural Resources and the Commission and clearly do not meet the Commission's current regulatory requirements. Upgrading existing 7-foot fences to meet current regulatory requirements would require substantial modification and add cost to forest management practices and would not likely result in any greater effectiveness in excluding deer. In fact, the foot of fencing sealing the structure at the ground actually increases the effectiveness of the fencing more than the additional 1 foot in height. The Commission is proposing to amend § 147.663 to permit the Executive Director to establish approved woven wire fencing designs and specifications to be consistent with current industry standards.

Section 2901(b) of the code (relating to authority to issue permits) provides "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." 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 amendment to § 147.663 is proposed under this authority.

3. *Regulatory Requirements*

The proposed rulemaking will permit the Executive Director to establish approved woven wire fencing designs and specifications.

4. *Persons Affected*

Persons wishing to apply for a deer control permit will be affected by the proposed rulemaking.

5. *Cost and Paperwork Requirements*

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

6. *Effective Date*

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

7. *Comments*

Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797 until September 27, 2004.

8. *Contact Person*

For further information regarding the proposed rule-making, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-195. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART III. GAME COMMISSION
CHAPTER 147. SPECIAL PERMITS
Subchapter R. DEER CONTROL
FORESTRY

§ 147.663. Fencing.

Fences shall be inspected and approved by a Commission officer as part of the application.

* * * * *

(2) The fence shall be constructed of woven wire [at least 8 feet high with the bottom edge maintained tight to the ground, and with openings no larger than 6 inches square] according to the design and specifications approved by the Director, or high tensile electrified wire at least 5 feet high. Woven wire fencing may not have openings larger than 6 inches square. Individual wires on electrified fencing may not be spaced greater than 10 inches apart. Other designs of barrier-type fencing enclosures may be acceptable if the Commission is satisfied the design will exclude deer. Fences constructed after April 4, 2000, shall be woven wire as described in this paragraph to be eligible for a deer control forestry permit.

* * * * *

[Pa.B. Doc. No. 04-1721. Filed for public inspection September 17, 2004, 9:00 a.m.]

[58 PA. CODE CH. 147]
Special Permits; Deer Management Assistance Program Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 29, 2004, meeting, proposed to amend § § 147.674 (relating to issuance of DMAP harvest permits).

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

1. *Introduction*

The Commission is proposing to amend § 147.674 to permit the Commission to deny issuance of Deer Management Assistance Program (DMAP) harvest permits to

persons who fail to complete and submit report and survey information from the prior season.

2. *Purpose and Authority*

Harvest information is critical to evaluate this Commonwealth's deer population and to evaluate the effectiveness of the DMAP. To help insure that all DMAP harvest permit holders complete and submit the required harvest and survey information this proposed amendment will prohibit persons who have not submitted the information in the previous year from purchasing a DMAP harvest permit.

Section 2901(b) of the code (relating to authority to issue permits) provides "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." 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 amendment to § 147.674 was proposed under this authority.

3. *Regulatory Requirements*

The proposed rulemaking will permit the Commission to deny issuance of DMAP harvest permits to persons who fail to complete and submit report and survey information from the prior season.

4. *Persons Affected*

Persons wishing to acquire DMAP harvest permits who have failed to complete and submit report and survey information from the prior season will be affected by the proposed rulemaking.

5. *Cost and Paperwork Requirements*

The proposed rulemaking will result in very limited additional cost and paperwork related to the submission of reports and survey information from the prior season.

6. *Effective Date*

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

7. *Comments*

Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797 until September 27, 2004.

8. *Contact Person*

For further information regarding the proposed rule-making, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-194. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART III. GAME COMMISSION
CHAPTER 147. SPECIAL PERMITS
Subchapter R. DEER CONTROL
DEER MANAGEMENT ASSISTANCE
PROGRAM PERMITS

§ 147.674. Issuance of DMAP harvest permits.

* * * * *

(e) Permits will not be issued to persons who failed to complete and submit harvest report and survey information from the prior season.

[Pa.B. Doc. No. 04-1722. Filed for public inspection September 17, 2004, 9:00 a.m.]

SECURITIES COMMISSION

[64 PA. CODE CHS. 203, 303, 304 AND 404]
Investment Advisors; Exchange Transactions

The Securities Commission (Commission), under sections 203(r), 303(a) and (d) and 304(b) of the Pennsylvania Securities Act of 1972 (act) (70 P. S. §§ 1-203(r), 1-303(a) and (d) and 1-304(b)), proposes to amend regulations concerning the subject matter of the act to read as set forth in Annex A.

Summary and Purpose of the Proposed Rulemaking

The Commission proposes to add § 203.203 (relating to certain Rule 144A exchange transactions exempt) to provide a self-executing exemption for certain exchange transactions of debt securities in which certain accredited investors receive registered debt securities of the issuer in exchange for the issuer's debt securities that originally were issued in a private transaction under SEC Rule 144A (Rule 144A Exchange Transactions).

Since the American Institute of Certified Public Accountants no longer permits its members to issue management responsibility letters, the Commission proposes to amend § 303.012 (relating to investment advisor registration procedure) to delete use of a management responsibility letter instead of an audit report where the investment adviser applicant is a certified public accountant (CPA) or a firm consisting of CPAs. The Commission also proposes to delete the definition of "principal" which was used to define who could sign a management responsibility letter. Also, the Commission proposes to delete the ability of public accountants to render an audit report which is required by changes made to section 609(c) of the act (70 P. S. § 1-609(c)) by the act of November 24, 1998 (P. L. 829, No. 109) (Act 109).

The Commission proposes to amend § 303.032 (relating to examination requirements for investment advisors and investment advisor representatives) to require CPAs and attorneys to notify the Commission of eligibility for a waiver of the examination requirement for investment advisers and investment adviser representatives. Applications for registration as an investment adviser or investment adviser representative are processed electronically through the web-based Investment Adviser Registration Depository (IARD). The IARD only recognizes exam waivers for certain uniform designations which do not include attorneys or CPAs. Therefore, the only way the Commis-

sion knows that the applicants are eligible for a waiver of the exam requirement is to impose a notification requirement on the applicant.

The Commission proposes to amend § 303.042 (relating to investment advisor capital requirements) to make it clear that an investment adviser will not be deemed to have custody of a client's funds or securities and thereby be subject to a higher net worth requirement solely due to the investment adviser receiving a fee directly from the assets of the client, serving as a general partner of a pooled investment vehicle or serving as a trustee of a family beneficial trust if the investment adviser meets certain conditions.

Since the American Institute of Certified Public Accountants no longer permits its members to issue management responsibility letters, the Commission proposes to amend § 304.022 (relating to investment advisor required financial reports) to delete use of a management responsibility letter instead of an audit report where the investment adviser applicant is a CPA or a firm consisting of CPAs. Also, the Commission proposes to delete the ability of public accountants to render an audit report which is required by changes made to section 609(c) of the act by Act 109. The Commission further proposes to delete the definition of "principal" which was used to define who could sign a management responsibility letter. Lastly, the Commission proposes to exempt investment advisers with custody of clients' funds or securities from filing an annual audited balance sheet if they only inadvertently held clients' funds or securities and returned them to the client within 3 business days.

The Commission proposes to amend § 404.013 (relating to investment advisor custody or possession of funds or securities of clients) to permit an investment adviser to send itemized client statements to another person authorized by the client or to reasonably rely on a qualified custodian of the client's funds or securities to send an itemized statement to the client.

Persons Affected by the Proposed Rulemaking

Investment advisers who are required to be registered with the Commission and have custody of clients' funds or securities, which the Commission estimates to be less than ten registrants, will be affected by the proposed rulemaking. Also affected will be issuers that engage in a Rule 144A Exchange Transaction with a holder of debt securities in this Commonwealth.

Fiscal Impact

The new exemption for Rule 144A Exchange Transactions will eliminate a current requirement that transactions be registered under section 205 or section 206 of the act (70 P. S. §§ 1-205 and 1-206). The Commission anticipates an annual revenue loss to the General Fund of approximately \$7,500. The proposed amendments applicable to the few investment adviser registrants who have custody of clients' funds or securities will not impose significant additional recordkeeping costs beyond those which currently exist.

Paperwork

The next exemption for Rule 144A Exchange Transactions will eliminate the filing of Commission Form R. The Commission proposes to eliminate Form 203-I. The proposed amendments applicable to the few investment adviser registrants who have custody of clients' funds or securities will require some new recordkeeping.

Effective Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 1, 2004, the Commission 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 Committee on Commerce and Economic Development and the Senate Committee on Banking and Insurance. 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 Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

Availability in Alternative Formats

This proposed rulemaking is available in alternative formats upon request. The Commission also will receive comments on this proposed rulemaking in alternative formats. TDD users should use the AT&T Relay Center, (800) 854-5984. To make arrangements for alternative formats, contact Sam Dengel, ADA Coordinator, (717) 787-6828.

Contact Person

Interested persons should send comments concerning the proposed rulemaking within 30 days of publication to Mary E. Peters, Deputy Chief Counsel, Securities Commission, Eastgate Building, 1010 N. Seventh Street, 2nd Floor, Harrisburg, PA 17102-1410, (717) 783-4186. Mary E. Peters also is the contact person for an explanation of the proposed rulemaking.

JEANNE S. PARSONS,
Secretary

Fiscal Note: 50-119. (1) General Fund; (2) Implementing Year 2003-04 is \$7,500; (3) 1st Succeeding Year 2004-05 is \$7,500; 2nd Succeeding Year 2005-06 is \$7,500; 3rd Succeeding Year 2006-07 is \$7,500; 4th Succeeding Year 2007-08 is \$7,500; 5th Succeeding Year 2008-09 is \$7,500; (4) 2002-03 Program—\$7,500; 2001-02 Program—\$7,500; 2000-01 Program—\$7,500; (8) recommends adoption. This proposed rulemaking will codify the Exemptive Order issued by the Commission and published on March 4, 2004. The exemption of certain transactions from registration will cause the revenue loss previously outlined.

Annex A

TITLE 64. SECURITIES

PART I. SECURITIES COMMISSION

Subpart B. REGISTRATION OF SECURITIES

CHAPTER 203. EXEMPT TRANSACTIONS

§ 203.203. Certain Rule 144A exchange transactions exempt.

Under section 203(r) of the act (70 P. S. § 1-203), the Commission finds that it is neither necessary nor appropriate for the protection of investors to require registra-

tion under section 201 of the act (70 P. S. § 1-201) for the offer or sale of a security in a transaction if the following requirements are met:

(1) A person who owns outstanding debt securities (and any related guarantees) exchanges those securities for debt securities (and any related guarantees) of the same issuer which are the subject of an effective registration statement filed with the United States Securities and Exchange Commission (SEC) under section 5 of the Securities Act of 1933 (15 U.S.C.A. §§ 77(e)) (exchange transaction).

(2) The outstanding debt securities (and any related guarantees) are "restricted securities" as that term is defined in 17 CFR 230.144(a)(3) (relating to persons deemed not to be engaged in a distribution and therefore not underwriters).

(3) No consideration is paid by the owner of the outstanding debt securities (and any related guarantees) in connection with the exchange transaction.

(4) There are no material differences in the terms of the outstanding debt securities (and any related guarantees) and the debt securities (and any related guarantees) which are the subject of the exchange transaction.

**Subpart C. REGISTRATION OF
BROKER-DEALERS, AGENTS, INVESTMENT
ADVISERS AND INVESTMENT ADVISER
REPRESENTATIVES AND NOTICE FILINGS BY
FEDERALLY-COVERED ADVISERS**

CHAPTER 303. REGISTRATION PROCEDURE

§ 303.012. Investment adviser registration procedure.

* * * * *

(b) Except as set forth in subsection (f), the following statements of financial condition shall accompany an application for initial registration as an investment adviser:

(1) An applicant that has custody of client funds or securities or an applicant that requires payment of advisory fees 6 months or more in advance and in excess of \$1,200 per client shall file an audited balance sheet of the applicant prepared in accordance with generally accepted accounting principles and accompanied by a standard audit report containing an unqualified opinion of an independent certified public accountant [or an independent public accountant]. The accountant shall submit, as a supplementary opinion, comments based upon the audit as to material inadequacies found to exist in the accounting system, the internal accounting controls and the procedures for safeguarding securities and funds and shall indicate corrective action taken or proposed. The balance sheet required by this paragraph shall be as of the end of the applicant's most recent fiscal year. If that balance sheet is as of a date more than 45 days prior to the date of filing the application, the applicant also shall file a subsequent balance sheet prepared in accordance with generally accepted accounting principles as of a date within 45 days of the date of filing. This balance sheet may be unaudited and may be prepared by management of the applicant. [If the applicant is a certified public accountant or a public accountant or whose principals include one or more certified public accountants or public accountants, the applicant, in lieu of filing an audit report, may file a report modeled after the management responsibility letter contained in paragraph 9600.22

of the American Institute of Certified Public Accountant's Technical Information Service and signed by a certified public accountant or public accountant who either is the applicant or one of the principals of the applicant.]

* * * * *

(e) For purposes of this section, the following terms [shall] have the following meanings:

[**Principal**—The chairperson, president, chief executive officer, general manager, chief operating officer, chief financial officer, vice president or other officer in charge of a principal business function (including sales, administration, finance, marketing, research and credit), secretary, treasurer, controller and any other natural person who performs similar functions.]

* * * * *

§ 303.032. Examination requirements for investment advisers and investment adviser representatives.

* * * * *

(c) *Waivers of exam requirements.* Compliance with subsection (a) is waived if:

* * * * *

(2) The individual is licensed as a certified public accountant, is currently in good standing and has no disciplinary history that requires an affirmative response to Items [23A-E] 14A-E or Item [23H] 14H of Form U-4 or successor items thereto, and has notified the Commission that the individual is eligible for a waiver of the examination requirement imposed by subsection (a).

(3) The individual is licensed as an attorney, is currently in good standing and has no disciplinary history that requires an affirmative response to Items [23A-E] 14A-E or Item [23H] 14H of Form U-4 or successor items thereto, and has notified the Commission that the individual is eligible for a waiver of the examination requirement imposed by subsection (a).

* * * * *

§ 303.042. Investment adviser capital requirements.

(a) Every investment adviser registered [or required to be registered] under section 301 of the act (70 P. S. § 1-301) shall maintain at all times the following net worth requirements:

(1) [An] The following applies when an investment adviser [that] has its principal place of business in a state other than this Commonwealth [shall maintain the net worth required by the state where the investment adviser maintains its principal place of business if the investment adviser currently is licensed in that state and is in compliance with that state's net worth requirements].

(i) If the investment adviser currently is licensed as an investment adviser in the state in which it maintains its principal place of business and is in compliance with that state's net worth requirements, the net worth required by this section shall be the same as the net worth requirement imposed by that state.

(ii) If the investment adviser currently is not licensed as an investment adviser in the state in which it maintains its principal place of business, the net worth required by this section shall be the same as if the investment adviser had its principal place of business in this Commonwealth.

* * * * *

(3) An investment adviser that has its principal place of business in this Commonwealth and has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000[.] unless the investment adviser meets any of the following:

(i) The investment adviser has custody solely as a result of receiving fees directly deducted from clients' funds or securities if the investment adviser:

(A) Possesses written authorization from the client to deduct advisory fees from an account held by a qualified custodian.

(B) Sends the qualified custodian written notice of the amount of the fee to be deducted from the client's account.

(C) Sends the client a written invoice itemizing the fee, including any formulae used to calculate the fee, the time period covered by the fee and the amount of assets under management on which the fee was based.

(ii) The investment adviser has custody solely as a result of serving as a general partner, manager of a limited liability company or a person occupying a similar status or performing a similar function which gives the investment adviser or its supervised person legal ownership or access to client funds or securities if:

(A) The pooled investment vehicle is subject to audit at least annually and distributes its audited financial statements which have been prepared by an independent certified public accountant in accordance with generally accepted accounting principles to all limited partners, members or beneficial owners within 120 days of the end of its fiscal year.

(B) The investment adviser:

(I) Hires an independent party to review all fees, expenses and capital withdrawals from the accounts included in the pooled investment vehicle prior to forwarding them to the qualified custodian with the independent party's approval for payment.

(II) Sends written invoices or receipts to the independent party which describe the amount of the fees (including any formulae used to calculate the fees, the time period covered by the fees and the amount of assets under management on which the fees were based), expenses or capital withdrawals for the independent party to verify that payment of the fees, expenses or capital withdrawals is in accordance with the documents governing the operation of the pooled investment vehicle and any statutory requirements applicable thereto.

(iii) The investment adviser has custody solely as a result of acting as trustee for a beneficial trust in which the beneficial owners of the trust are a parent or step-parent; grandparent or step-grandparent; spouse, brother or step-brother, sister or step-sister; or grandchild or step-grandchild of the investment adviser.

* * * * *

(c) For the purpose of this section, the following terms have the following meanings:

* * * * *

Independent party—A person who meets all of the following requirements:

(i) Is engaged by an investment adviser with respect to payment of fees, expenses or capital withdrawals from a pooled investment vehicle in which the investment adviser has custody solely as a result of serving as a general partner, manager of a limited liability company or a person occupying a similar status or performing a similar function which gives the investment adviser or its supervised person legal ownership or access to client funds or securities.

(ii) Does not control, is not controlled by and is not under common control with the investment adviser.

(iii) Within the preceding consecutive 12 month period, did not derive 5% or more of its gross revenues from the investment adviser who hired the person to be an independent party, including the amount to be received from the investment adviser under the terms of the independent party engagement.

* * * * *

Pooled investment vehicle—

(i) A limited partnership, limited liability company or an entity with a similar legal status and performing similar functions.

(ii) The term does not include an investment company that has filed a registration statement under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64).

* * * * *

Qualified custodian—The following shall be considered qualified custodians for purposes of this section:

(i) A bank as that term is defined in section 102(d) of the act (70 P. S. § 1-102(d)).

(ii) A Federally covered adviser as that term is defined in section 102(f.1) of the act.

(iii) A broker dealer registered with the Commission under section 301 of the act (70 P. S. § 1-301).

Supervised person—A person who meets the definition in section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-2(a)(25)).

CHAPTER 304. POSTREGISTRATION PROVISIONS
§ 304.022. Investment adviser required financial reports.

(a) Except as provided in [subsection] subsections (b) and (c), the following investment advisers registered under section 301 of the act (70 P. S. § 1-301) shall file the following reports of financial condition with the Commission within 120 days of the investment adviser's fiscal year end:

(1) An investment adviser that has custody of client funds or securities or requires prepayment of advisory fees 6 months or more in advance and in excess of \$1,200 per client shall file with the Commission an audited

balance sheet as of the end of its fiscal year. The balance sheet shall be prepared in accordance with generally accepted accounting principles and contain an unqualified opinion of an independent certified public accountant [or independent public accountant]. The accountant shall submit, as a supplementary opinion, comments based on the audit as to material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities and funds, and shall indicate corrective action taken or proposed. [If the investment adviser is a certified public accountant or a public accountant or whose principals include one or more certified public accountants or public accountants, the investment adviser, in lieu of filing an audit report, may file a report modeled after the management responsibility letter contained in paragraph 9600.22 of the American Institute of Certified Public Accountant's Technical Information Service signed by a certified public accountant or public accountant or one of the principals of the investment adviser.]

* * * * *

(c) [For purposes of this section, the following terms have the following meanings:

Principal—The chair, president, chief executive officer, general manager, chief operating officer, chief financial officer, vice president or other officer in charge of a principal business function (including sales, administration, finance, marketing, research and credit), secretary, treasurer, controller and any other natural person who performs similar functions.

Principal place of business—The meaning set forth in 17 CFR 275-203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).] When an investment adviser registered under section 301 of the act inadvertently held or obtained a client's securities or funds and returned them to the client within 3 business days or has forwarded third party checks within 24 hours, the investment adviser will not be deemed to have custody and subject to the requirements of subsection (a) if the investment adviser maintains records which contains the following information about the securities or funds returned to the client:

- (i) If a security:
 - (A) The name of the issuer.
 - (B) The type of security.
 - (C) The date of issuance.
 - (D) A certificate number or other identifying information.
 - (E) The denomination, interest rate and maturity date applicable to a debt security.
 - (F) The name in which the securities are registered.
- (ii) If funds:
 - (A) The name of the payee or beneficial owner.
 - (B) The check number, transmittal number, payor name and address and any other identifying information.

(iii) The date on which the funds or securities were received by the investment adviser.

(iv) The date on which the funds or securities were sent by the investment adviser to the client.

(v) The form of delivery used by the investment adviser to transmit the funds or securities to the client and a copy of written confirmation of receipt of the funds or securities by the client.

(d) For purposes of this section, the following term has the following meaning:

Principal place of business—The meaning set forth in 17 CFR 275-203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).

Subpart D. FRAUDULENT AND PROHIBITED PRACTICES

CHAPTER 404. PROHIBITED ACTIVITIES; INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

§ 404.013. Investment adviser custody or possession of funds or securities of clients.

* * * * *

(b) An investment adviser registered under section 301 of the act (70 P. S. § 1-301) that has custody or possession of any funds or securities in which any client has any beneficial interest shall:

* * * * *

(7) At least once every 3 months, send each client or the client's authorized representative as defined in this section an itemized statement showing the funds and securities in the investment adviser's custody at the end of each period and all debits, credits and transactions in the client's account during that period or have a reasonable basis for believing that a qualified custodian will send an itemized statement to each client or the client's authorized representative during the same time interval containing substantially the same information.

(8) At least once every calendar year, engage an independent certified public accountant [or independent

public accountant] to verify all client funds and securities by actual examination at a time chosen by the accountant without prior notice to the investment adviser. A report stating that an accountant has made an examination of the client funds and securities, and describing the nature and extent of the examination, [shall] must be filed with the Commission within 30 days after each examination.

(c) When an independent certified public accountant makes an examination described in subsection (b)(8) and, upon examination, finds material discrepancies, the accountant shall notify the Commission within 1 business day of the finding by means of facsimile transmission or electronic mail, followed by first class mail, directed to the Commission's Division of Licensing.

(d) For purposes of this section, a person will be deemed to have custody if the person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

(e) For the purpose of this section, the following terms have the following meanings:

Authorized representative—The person specified in a written authorization which the client has signed and filed with the investment adviser or qualified custodian authorizing the investment adviser or qualified custodian to deliver the client's account statements to that person.

Qualified custodian—The following will be considered qualified custodians for purposes of this section:

(i) A bank as that term is defined in section 102(d) of the act (70 P. S. § 1-102(d)).

(ii) A Federally covered adviser as that term is defined in section 102(f.1) of the act.

(iii) A broker dealer registered with the Commission under section 301 of the act.

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