

PROPOSED RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 1249]

Home Health Agency Services

The Department of Public Welfare (Department), under the authority of sections 403, 443.2(2) and 509 of the Public Welfare Code (62 P. S. §§ 403, 443.2(2) and 509), proposes to amend Chapter 1249 (relating to home health agency services) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

The proposed amendments to Chapter 1249 remove the requirement that a recipient be homebound to qualify for Home Health Agency (HHA) services and remove service limits for home health services from the regulation by relocating them to the Medical Assistance (MA) Outpatient Fee Schedule.

Need for the Proposed Rulemaking

In accordance with the Department's move to provide for increased emphasis on home and community based services, rather than providing more restrictive and expensive alternatives such as nursing home care, as well as a Federal directive clarifying Federal regulations regarding the Medicaid home health benefit, the Department is removing the requirement that individuals must be homebound to receive home health services.¹

Requirements

In accordance with this determination, the Department proposes to amend Chapter 1249 to remove the requirement that an MA recipient must be homebound to qualify for HHA services. The Department proposes to eliminate the definition and references to "homebound" in §§ 1249.2, 1249.42(1)(ii), 1249.52 and 1249.57(b).

With the removal of the homebound requirement throughout the regulations, and the specific exemption to this requirement in § 1249.57(b) it is no longer appropriate to list prenatal care in this section. Since the remainder of § 1249.57(b) only deals with postpartum and child services, the Department proposes to remove the term "prenatal" from this section. The amount and scope of the MA Fee Schedule prenatal services are not changed by this revision.

The Department also proposes to amend § 1249.59(2) (relating to limitations on payment), which currently provides that, after the first 28 days of unlimited home health care, payment is limited to 15 home visits per month, per treatment plan. The Department proposes to remove this limit on service from regulation and, instead, place it in the MA Fee Schedule, consistent with limits on other MA services. The existing limits will not be altered, however, by removing this requirement from the regulation. A program exception may be granted to exceed this limit if ordered by the attending physician's plan of care and deemed medically necessary. The purpose of this amendment is to allow the flexibility to meet the docu-

mented medical needs of recipients in the least restrictive and most cost-effective setting possible.

Affected Organizations and Individuals

The proposed amendments to Chapter 1249 will have a positive affect on MA participating physicians, HHAs and recipients of MA HHA services. The proposed rulemaking will permit the attending physician to prescribe medically necessary home health services to recipients who are not homebound. In addition, the proposed removal of HHA visit limitations from the regulation will improve access to medically necessary care. This formalizes a process whereby individuals with medically necessary and appropriate need for continued care in excess of the MA Fee Schedule limitations, will be able to apply for a program exception to the fee schedule limitations rather than seeking a waiver from the Secretary of the Department.

Accomplishments/Benefits

The proposed rulemaking benefits MA recipients who meet medically necessary criteria and prior authorization requirements for home health services. There are times when MA eligible individuals are in need of medical care that can be provided cost-effectively in their own homes, rather than in a hospital, long-term care facility or other institutional setting. The proposed rulemaking allows for medically necessary treatment to be provided in the home for clients who normally remain in the home, but who from time to time may, with assistance, be able to go to a doctor's appointment or to visit family for a holiday.

In addition, recipients of MA HHA services and their physicians will benefit from the proposed rulemaking. The proposed amendment to § 1249.59 would permit the attending physician to prescribe, and the MA recipient to receive, medically necessary home health services beyond the existing service limits, if approved through a program exception.

Fiscal Impact

Public Sector

Commonwealth

It is anticipated that there will be minimal cost to the Department based on the proposed rulemaking. The Department has covered and continues to cover medically necessary services. This proposed rulemaking will allow those services to be provided in a home setting, as opposed to a hospital or institutional setting, offsetting any increase in the number of MA recipients qualifying for home health care.

Political Subdivisions

There will be no fiscal impact on political subdivisions as a result of this proposed rulemaking.

Private Sector

There will be no fiscal impact on the private sector as a result of this proposed rulemaking.

General Public

There will be no fiscal impact on the general public as a result of this proposed rulemaking.

Paperwork Requirements

No additional reporting, paperwork or record keeping is required to comply with the proposed rulemaking.

¹ On July 25, 2000, the Health Care Financing Administration, now the Centers for Medicare and Medicaid Services (CMS), issued "Olmstead Update No. 3." See Attachment 3-g: Prohibition of Homebound Requirements in Home Health (www.cms.hhs.gov/states/letters/smd725a0.asp). Based upon *Olmstead v. L.C.*, 527 U.S. 581 (1999), this document clarified the CMS's position that the use of a "homebound" requirement to qualify for Medicaid HHA services is a violation of Federal regulatory requirements in 42 CFR 440.230(c) and 440.240(b).

Effective Date

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

Sunset Date

There is no sunset date.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Department of Public Welfare, Office of Medical Assistance Programs, Attention: Regulations Coordinator, c/o Deputy Secretary's Office, Room 515, Health and Welfare Building, Harrisburg, PA 17120 within 30 days after the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Persons with a disability may use the AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 30, 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 Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. 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.

ESTELLE B. RICHMAN, Secretary

Fiscal Note: 14-491. No fiscal impact; (8) recommends adoption

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1249. HOME HEALTH AGENCY SERVICES

GENERAL PROVISIONS

§ 1249.2. Definitions.

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

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[**Homebound**—A condition due to illness or injury that restricts the individual's ability to leave his residence without assistance or makes leaving medically contraindicated. The term does not relate to maternal/child services.]

* * * * *

PROVIDER PARTICIPATION

§ 1249.42. Ongoing responsibilities of providers.

Ongoing responsibilities of providers are established in Chapter 1101 (relating to general provisions). The home health agency shall:

(1) Have written policies concerning the acceptance of recipients and the feasibility of meeting the recipient's needs in the home care setting, which include, but are not limited to:

* * * * *

(ii) [**The homebound status of the recipient. Assessment and documentation of the need for continued home health agency services.**]

* * * * *

PAYMENT FOR HOME HEALTH SERVICES

§ 1249.52. Payment conditions for various services.

(a) Home health agencies are reimbursed for services furnished to MA recipients **within the MA Program Fee Schedule limits** if the following conditions are met:

* * * * *

(2) [**The attending physician certifies that the recipient is homebound and as part of the treatment plan review certifies that the recipient continues to remain homebound. To be considered homebound, the recipient shall have a condition due to illness or injury that restricts the individual's ability to leave his residence without assistance or makes leaving medically contraindicated. The attending physician certifies that the recipient requires care in the home and either of the following conditions exist:**

(i) **The only alternative to home health agency services is hospitalization.**

(ii) **The recipient has an illness, injury or mental health condition, documented in the recipient's medical records, which justifies that the service must be provided at the recipient's residence instead of a physician's office, clinic or other outpatient setting.**

(3) The attending physician certifies that the recipient requires the skilled services of a nurse, physical therapist, occupational therapist [**or**], speech therapist **or home health aide**. If the recipient requires only home health aide services, the physician shall certify the need for these services.

* * * * *

(6) **A new treatment plan may be started with the onset of a new primary diagnosis or the exacerbation of an existing diagnosis which causes a significant change in the recipient's condition and requires a change in the treatment. If home health services are provided following the onset of an illness which does not involve a hospitalization, the initial evaluation home health visit begins a new treatment plan.**

(7) **The Department has determined that prior authorization requirements have been met.**

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§ 1249.57. Payment conditions for maternal/child services.

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(b) [**Prenatal, postpartum Postpartum and child services. [A recipient is not required to be homebound to receive these services.]** When the mother no longer requires postpartum visits for medical reasons, but the child continues to need medical services,

payment will be made for the additional visits for care of the child only if the services are ordered by the attending physician and are part of a written plan of care written specifically for the child.

§ 1249.59. Limitations on payment.

The following limits apply to payment for covered services:

* * * * *

(2) [After the first 28-days of unlimited home health care, payment is limited to 15 home visits per month per treatment plan. A new period of unlimited care begins following hospitalization, the onset of a new primary diagnosis or the exacerbation of an existing diagnosis which causes a change in the recipient's conditions and requires a change in the plan of treatment, subject to § 1249.52(a)(4) (relating to payment conditions for various services).] Home visits which exceed the MA Program Fee Schedule maximums are not compensable. If a new treatment plan is instituted, the payment limitations begin with the first service provided in the new treatment plan.

(3) [If home health services are provided following the onset of an illness which does not involve a hospitalization, payment is made for the initial evaluation home health visit which will begin the 28-day period of unlimited service.

(4)] For prenatal and postpartum care, the following limits apply:

(i) [Payment for prenatal care is limited to one visit per month.] Complications [attributable to] of pregnancy are not counted as [part of the one visit per month limit] prenatal care but are classified for invoicing purposes as acute illness.

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[(5)] (4) * * *

[Pa.B. Doc. No. 04-2178. Filed for public inspection December 10, 2004, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 111]

Boating

The Fish and Boat Commission (Commission) proposes to amend Chapter 111 (relating to special regulations counties). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). This proposed rulemaking creates a slow, no wake zone in the Kernsville Pool of the Schuylkill River, Berks County, and convert the 8 miles per hour zones on the McKean County portion of Willow and Sugar Bays, Allegheny River Reservoir, to slow, no wake and remove the 8 miles per hour restriction on the Warren County portion of the bays.

A. Effective Date

The proposed rulemaking, if approved on final-form, will go into effect immediately upon publication 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 amendments to §§ 111.6, 111.42 and 111.62 (relating to Berks County; McKean County; and Warren County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. Purpose and Background

The proposed rulemaking is designed to update, modify and improve the Commission's boating regulations. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposals. The Commission's Boating Advisory Board considered the proposed amendments and recommended that the Commission publish a proposed rulemaking containing the proposed amendments.

E. Summary of Proposals

(1) *Section 111.6.* The Commission received a petition from Blue Mountain Wildlife, Inc. (BMW) to amend this section to prohibit the operation of internal combustion motors on boats using the Schuylkill River behind the Kernsville Dam to encourage the preservation of the peacefulness and beauty of the impoundment. The Kernsville Dam is located in Berks County near Hamburg, PA. The dam is owned by the Commonwealth and is managed by the Department of Environmental Protection (Department). BMW holds a lease to manage and develop the area around the impoundment for passive recreational use. The Department maintains an access area at the impoundment that has been closed because it falls within a 200-foot restricted area near this dam. Only hand-carry access is currently available.

Commission staff reviewed BMW's petition to ensure that it met the requirements of § 51.6 (relating to petitions or requests for regulations) and determined that it was appropriate for further consideration. In accordance with the Commission's regulations, BMW was afforded an opportunity to make a presentation at the January 2004 Commission meeting. The Commission accepted the petition for further review and directed staff to prepare a report and recommendations.

Staff recently completed its report. Based upon the recommendations contained in the report, the Commission proposes the creation of a slow, no wake zone in the Kernsville Pool. The Commission proposes that § 111.6 be amended to read as set forth in Annex A.

(2) *Sections 111.42 and 111.62.* In 1980, the Commission adopted regulations to control the speed of boats on the various bays of the Kinzua Reservoir. All of the larger bays were restricted to 8 miles per hour while the smaller ones were made slow, no wake. These regulations were subsequently modified in 1989 and 1994. Boat speed was restricted to slow, no wake in most of the coves, but in Willow Bay and Sugar Bay, an 8 mph speed limit was retained. This speed was selected because the size of the bays was too large for slow, no wake but not large enough for unrestricted operation.

The Commission has reviewed these restrictions and has determined that the regulations could be further improved and provide additional boating opportunities by

converting the 8 mph zones on the McKean County portion of Willow and Sugar Bays to slow, no wake and by removing the 8 miles per hour restriction on the Warren County portion of these bays. The Commission proposes that §§ 111.42 and 111.62 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 by completing the form at www.state.pa.us/Fish/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

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

Fiscal Note: 48-163. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART II. FISH AND BOAT COMMISSION
Subpart C. BOATING
CHAPTER 111. SPECIAL REGULATIONS
COUNTIES

§ 111.6. Berks County.

* * * * *

(e) Schuylkill River; Kernsville Pool. Boats are limited to slow, no wake speed.

§ 111.42. McKean County.

Allegheny River Reservoir (Kinzua Dam).

(1) [Boats are limited to a maximum of 8 miles per hour, and water skiing is prohibited in the following areas:

- (i) Willow Bay.
(ii) Sugar Bay.

(2)] Boats are limited to slow, no wake swell speed in the following areas:

* * * * *

(ii) [The bay formed by Morris Run] Morrison Run Bay.

* * * * *

- (iv) Willow Bay.
(v) Sugar Bay.

[(3)] (2) * * *

§ 111.62. Warren County.

(a) Allegheny River Reservoir[.] (Kinzua Dam).

(1) [Boats are limited to a maximum of 8 miles per hour and waterskiing is prohibited in the following areas:

- (i) Willow Bay.
(ii) Sugar Bay.

(2)] Boats are limited to slow, no wake speed in the following areas:

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(vii) Willow Bay beginning at the boat launch ramp

[(3)] (2) * * *

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[Pa.B. Doc. No. 04-2179. Filed for public inspection December 10, 2004, 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), at its October 5, 2004, meeting, proposed the following rulemaking:

Amend § 141.63 (relating to definitions) to expand the listed definitions and add § 141.66 (relating to cable restraints) to permit the use of cable restraints for taking certain furbearers.

This proposed rulemaking will have no 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 October 5, 2004, meeting of the Commission, and comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until January 21, 2005.

1. Purpose and Authority

Commonwealth trappers have requested that the use of cable restraints be permitted to take certain furbearers, namely coyotes and foxes. The Commission has weighed this public input against wildlife management interests and determined that the use of this additional device for these specific furbearers can be reasonably permitted. To make cable restraints lawful for taking these specific furbearers the Commission is proposing to expand the list of definitions found in § 141.63 to include and specifically define "cable restraint" and also add § 141.66 to establish the lawful methods, uses and periods during which cable restraints may be used.

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." Section

322(c)(5) of the code (relating to powers and duties of the 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(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 ways, manner, methods and means of . . . furtaking . . . in this Commonwealth." This rulemaking is proposed under this authority.

2. *Regulatory Requirements*

This proposed rulemaking will specifically define "cable restraint" and will establish the lawful methods, uses and periods during which cable restraints may be used.

3. *Persons Affected*

Persons wishing to use cable restraints for the taking of certain furbearers, namely coyotes and foxes, will be affected by this proposed rulemaking.

4. *Cost and Paperwork Requirements*

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

5. *Effective Date*

This proposed rulemaking will be effective on 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 Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Chairperson

Fiscal Note: 48-196. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter D. TRAPPING

§ 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(a)(11) of the act (relating to unlawful acts concerning taking of furbearers) have the following meanings, unless the context clearly indicates otherwise:

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 or 19 bundles comprised of 7 wires per bundle and be equipped with a mechanical sliding metal release lock. The

cable may not exceed 6 feet in length from the anchor point to the relaxing lock contacting the 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. A cable restraint must include a breakaway device affixed to the lock or cable that is rated at 325 pounds or less. The cable must be maintained in good condition so that all components operate properly.

* * * * *

§ 141.66. Cable restraints.

(a) Cable restraint devices may be used from January 1 until the end of the established trapping season to harvest red fox, gray fox and coyote.

(b) Cable restraint devices may only be set by furtakers who possess a valid furtakers license and who have completed a certified cable restraint training course approved by the Director. The Director will establish a fee for the course and the fee will only be what is necessary to cover the cost of the course. The trapper shall have a certificate from this course in possession while setting or checking sets using cable restraints and present the certificate upon the request of any person whose duty it is to enforce this title.

(c) Cable restraints must be anchored to prevent the animal caught in the restraint from moving the restraint from the point it was originally anchored.

(d) Cable restraints must be set to allow the animal caught in the restraint to move freely in a 360° arc for the entire length of the restraint without the risk of the cable restraint becoming entangled by any object.

(e) Cable restraints must be set so that the bottom of the restraint cable loop is no less than 6 inches or greater than 12 inches above the first surface beneath the bottom of the cable restraint where the surface is ground, ice, crusted or packed snow or any other hard material.

(f) Cable restraints will be considered traps for the purposes of the section 2361(a)(3), (4), (7), (8), (10), (12) and (14)—(16) of the act (relating to unlawful acts concerning taking of furbearers).

(g) Unlawful acts. It is unlawful to:

(1) Use a bent washer as a relaxing lock that has an outside diameter less than 1 1/4 inches.

(2) Set any cable restraint where entanglement may occur or in any manner which could result in an animal held in the restraint being suspended.

(3) Use a device commonly known as a drag with any cable restraint.

(4) Equip cable restraints with a spring-activating mechanism or any device designed to aid the closing of the cable loop.

(5) Fail to comply with any other provisions of this section.

[Pa.B. Doc. No. 04-2180. Filed for public inspection December 10, 2004, 9:00 a.m.]

**[58 PA. CODE CHS. 147]
Special Permits; Bobcats**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 5, 2004, meeting, proposed the following rulemaking:

Amend § 147.701 (relating to general) to permit the Executive Director to set application submission period requirements for bobcat hunting-trapping permits to facilitate a more convenient and standardized application process for permit applicants.

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

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

This proposed rulemaking was made public at the October 5, 2004, meeting of the Commission, and comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until January 21, 2005.

1. *Purpose and Authority*

Currently, the Commission maintains specific submission and post marking requirements related to bobcat hunting-trapping permits within its regulations. To make the process of applying for bobcat hunting-trapping permits more convenient for applicants and also standardize the procedures for paper and online applications among different species, the Commission is proposing to require all applications to be submitted in accordance with periods set by the Executive Director. This proposed rulemaking would continue to give applicants the option of applying for bobcat hunting-trapping permits online, using the Commission's Outdoor Shop or applying through the mail.

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 . . ." 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 . . . in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife . . . in this Commonwealth." This proposed rulemaking is made under this authority.

2. *Regulatory Requirements*

This proposed rulemaking will require applicants for bobcat hunting-trapping permits to abide by submission requirements established by the Executive Director to facilitate a more convenient and standardized application process for applicants.

3. *Persons Affected*

Persons who wish to apply for a bobcat hunting-trapping permit will be affected by this proposed rulemaking.

4. *Cost and Paperwork Requirements*

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

5. *Effective Date*

This proposed rulemaking will be effective on 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 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: 48-198. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 147. SPECIAL PERMITS

Subchapter S. BOBCAT HUNTING-TRAPPING PERMIT

§ 147.701. General.

This section provides for permits to be issued for the hunting and trapping of bobcat during the season established and in areas designated under § 139.4 (relating to seasons and bag limits for the license year).

* * * * *

(4) Applications [**may only be submitted between July 1 and the third Friday in August. Applications post marked later than the third Friday in August will be rejected**] **must be submitted in accordance with periods set by the Executive Director.**

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[Pa.B. Doc. No. 04-2181. Filed for public inspection December 10, 2004, 9:00 a.m.]

[58 PA. CODE CH. 147]

Special Permits; Possession of Deer Accidentally Killed by a Motor Vehicle

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 5, 2004, meeting, proposed the following rulemaking:

Amend § 147.142 (relating to possession of deer accidentally killed by a motor vehicle) to permit the issuance of permit "numbers" rather than "paper" permits to validate lawful possession of road-killed deer and facilitate cost and personnel timesavings for the Commission.

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).

The proposed rulemaking was made public at the October 5, 2004, meeting of the Commission, and comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until January 21, 2005.

1. *Purpose and Authority*

Currently, any individual who wishes to take possession of an accidentally road-killed deer shall apply for a possession permit through his local Commission regional office within 24 hours of taking possession of the deer. After the Commission receives an application for a per-

mit, its personnel must commit time to completing and issuing the "paper" permit and recording its information. The cumulative cost of the time spent executing these tasks in addition to the postage costs for mailing a "paper" permit to each applicant is quite substantial. To promote cost and personnel timesavings, as well as streamline and simplify the permitting process, the Commission is proposing to amend § 147.142 to allow the issuance of permit "numbers" by phone rather than "paper" permits by mail. This should make it easier for applicants to receive a permit as well as make it less costly and time consuming for the Commission to issue the same.

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 . . . in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife . . . in this Commonwealth." The proposed rulemaking is made under this authority.

2. Regulatory Requirements

The proposed rulemaking will require possession permit applicants to obtain a permit "number" rather than a "paper" permit to validate lawful possession of an accidentally road-killed deer.

3. Persons Affected

Persons who wish to take possession of an accidentally road-killed deer will be affected by the proposed rulemaking.

4. Cost and Paperwork Requirements

The proposed rulemaking should reduce cost and paperwork related to possession permits for accidentally road-killed deer.

5. 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.

6. 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: 48-197. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 147. SPECIAL PERMITS

Subchapter H. PROTECTED SPECIMEN

§ 147.142. Possession of deer accidentally killed by a motor vehicle.

(a) A resident of this Commonwealth may immediately take possession of a deer accidentally killed on the

highway and transport it to a place of safekeeping within this Commonwealth. The person taking possession shall **[apply, through]** contact a regional office or a local **[commission]** Commission officer, for a permit **number** within 24 hours after having taken possession of the deer. The permit **number shall be considered a valid permit for the purposes of the act and this part** and shall be valid for a period not to exceed 120 days from the date of issuance **[and shall set forth other conditions which may be required. The deer shall be retained on the premises of the permittee unless otherwise provided on the permit]**. The whole or any part of the deer may not be given to any person nor may any edible part be removed from the recipient's place of residence. The recipient may not sell or transfer the hide to another party except the hide may be given to the deer processor. Unused parts of the deer must be disposed of lawfully.

(b) It is unlawful:

(1) To possess a deer accidentally killed on the highway for more than 24 hours without applying for a permit number.

* * * * *

(3) To fail to comply with one or more conditions **[on]** of the permit.

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[Pa.B. Doc. No. 04-2182. Filed for public inspection December 10, 2004, 9:00 a.m.]

**PENNSYLVANIA PUBLIC
UTILITY COMMISSION**

Advance Notice of Proposed Rulemaking Order

Public Meeting held
November 18, 2004

Commissioners Present: Wendell F. Holland, Chairperson;
Robert K. Bloom, Vice Chairperson; Glen R. Thomas;
Kim Pizzingrilli

Advance Notice of Proposed Rulemaking for Revision of 52 Pa. Code Chapter 57 pertaining to adding Inspection and Maintenance Standards for the Electric Distribution Companies; Doc. No. L-00040167

Advance Notice of Proposed Rulemaking Order

By the Commission:

On May 7, 2004, the Commission entered a Final Rulemaking Order¹ at L-00030161 which amended the Electric Distribution Companies' (EDCs) reporting requirements found at 52 Pa. Code § 57.195. The Final Rulemaking Order improved the Commission's ability to monitor EDC service reliability.

Specifically, the Commission now receives quarterly and annual reliability reports as opposed to only annual reports. This allows the Commission to better track a company's performance and contact the company earlier regarding corrective action. The rulemaking also increased the amount of information an EDC must report to

¹ On September 18, 2004, the Final Rulemaking Order was published in the *Pennsylvania Bulletin* at 34 Pa.B. 5135; thus, the regulations stemming from that Order are effective as of September 18, 2004.

the Commission. EDCs must now provide the causes of outages and percentages categorized by type as well as an annual report of each company's plans for the upcoming year's inspection and maintenance of transmission systems including: (1) vegetation management; (2) distribution and substation maintenance activity; and (3) capital improvement projects. The EDC must report its own standards regarding vegetation management and other inspection and maintenance procedures. The EDC must report whether it is meeting its goals regarding inspection, maintenance and repair and, if not, explain what efforts are being made to do so in the future.

The Commission also determined that, based on more recent experience and information, the issue of whether EDCs should be subject to specific inspection and maintenance standards should be evaluated.

In particular, new information arising out of the blackout in August 2003 formed a basis for evaluating the need for inspection and maintenance standards. One of the causes of the blackout was the failure to adequately manage tree growth along transmission lines. *Final Report on the August 14 Blackout in the U.S. and Canada*, U.S.—Canada Power System Outage Task Force, pp. 17, 57-64 (April 2004). In the wake of the blackout, the Federal Energy Regulatory Commission (FERC) commissioned a study of utility vegetation management practices. This led to a report entitled "Utility Vegetation Management Final Report" prepared by CN Utility Consulting, LLC and released by FERC in March, 2004. The report concluded, among other things, that the "[c]urrent oversight of UVM [utility vegetation management] activities by appropriate agencies or organizations is overwhelmingly inadequate" (Report, p. 68).

To remedy this inadequacy, the report recommended that oversight organizations should work with the utilities, the utility vegetation management industry and other stakeholders to develop measurable and achievable program objectives to identify what can be done to reduce the likelihood of a recurrence of tree and power line conflicts. (Report at 68-69).

Furthermore, the Public Utility Code at 66 Pa.C.S. § 2802(20) provides:

(20) Since continuing and ensuring the reliability of electric service depends on adequate generation and on conscientious inspection and maintenance of transmission and distribution systems, the independent system operator or its functional equivalent should set, and the Commission shall set through regulations, inspection, maintenance, repair and replacement standards and enforce those standards.

In view of this provision, and in light of the national attention to inspection and maintenance standards with particular regard to vegetation management procedures, a rulemaking proceeding is hereby initiated at this docket to consider revising 52 Pa. Code, Chapter 57, relating to electric distribution reliability.

The Commission will be considering the establishment of inspection, maintenance, repair and replacement standards under Chapter 57 of the *Pennsylvania Code*. This advance notice solicits comments from electric distribution companies and other parties of interest.

Comments are requested on the following topics:

1. Whether it is appropriate for the Commission to adopt specific inspection and maintenance standards.
2. Whether standards should be placed in the regulations which are specific to each individual EDC, or

whether all EDCs should be held to the same standard, and how would this be monitored and regulated.

3. What the standards should be regarding vegetation management practices, pole inspections, transmission and distribution line inspections, substations, transformers, reclosers, and other types of inspection and maintenance practices.

4. Whether standards should be established for repair and maintenance of electric distribution company equipment or facilities that are critical for system reliability.

5. Whether there should be automatic civil penalties written into the regulations for failure to meet standards for more than three consecutive quarters or some other reasonable time period, depending upon the type of inspection and maintenance that is at question.

Comments may be filed by any interested person or on behalf of an entity, and each comment should clearly indicate: (1) the numerical designation of the subject section(s) if applicable; (2) the reason for the proposed change(s); and (3) specific proposed language for the regulation(s). These three factors are vital to enable the Commission to give due consideration to each comment received.

Due to the comprehensive nature of a rulemaking and the fact that there are no pre-existing inspection and maintenance standards, interested parties will be given 60 days from the date of publication of the Advance Notice of Proposed Rulemaking in the *Pennsylvania Bulletin* for the submission of an original and 15 copies of comments and 90 days from the date of publication to submit an original and 15 copies of reply comments. Since the comment periods are generous, no extensions will be granted for the filing of comments. An electronic copy of all comments should be electronically mailed to Elizabeth Barnes at ebarnes@state.pa.us.

The contact persons are Blaine Loper, Bureau of Conservation, Economics and Energy Planning, (717) 787-3810 (technical) and Elizabeth Barnes, Law Bureau, (717) 772-5408 (legal).

This is an advance notice of proposed rulemaking and is in addition to the normal rulemaking procedures for publication and comment established under the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law.

Therefore,

It Is Ordered That,

1. A rulemaking proceeding is hereby initiated at this docket to consider the revision of the regulations appearing in 52 Pa. Code, Chapter 57, relating to electric distribution reliability.

2. An Advance Notice of Proposed Rulemaking regarding revision of regulations appearing in 52 Pa. Code, Chapter 57 be published in the *Pennsylvania Bulletin*.

3. Interested parties shall have 60 days from the date of publication in the *Pennsylvania Bulletin* of the Advance Notice of Proposed Rulemaking to file written comments and 90 days from the date of publication to file reply comments.

4. Comments should, where appropriate, address the five issues identified in this Order and should include, where applicable, a numerical reference to the existing regulation(s) which the comment(s) address, proposed language for revision, and a clear explanation for the recommendation.

5. Interested parties should file an original plus 15 copies of each comment to the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265.

6. An electronic copy of the comments should be electronically mailed to Elizabeth Barnes, Assistant Counsel, at ebarnes@state.pa.us, and these comments in turn will be placed on the Commission's website for public viewing at www.puc.state.pa.us.

7. The contact persons for this rulemaking are Blaine Loper (Bureau of Conservation, Economics and Energy Planning, (717) 787-3810 (technical) and Elizabeth Barnes, Law Bureau, (717) 772-5408 (legal).

JAMES J. MCNULTY,
Secretary

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