

# PROPOSED RULEMAKING

## GAME COMMISSION

[58 PA. CODE CH. 135]

### Lands and Buildings; Licenses for Rights-of-Way

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 3, 2006, meeting, proposed to add Subchapter L (relating to licenses for rights-of-way).

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 3, 2006, meeting of the Commission. Comments can be sent, until January 22, 2007, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

#### 1. Purpose and Authority

The Commission last set rights-of-way license fees by policy in 1999. The Commission has since determined that its current rights-of-way license fee structure occasionally fails to capture the proper value of some rights-of-way licenses. In an effort to assemble a rights-of-way license structure that better captures the appropriate value of its resources, the Commission is proposing to add Subchapter L to establish regulations governing the granting of rights-of-way licenses on Commission-owned lands and waters.

Section 721(a) of the code (relating to control of property) provides "The administration of all lands and waters owned, leased or otherwise controlled by the commission shall be under the sole control of the Director, and the commission shall promulgate regulations . . . for its use and protection as necessary to properly manage these lands or waters." 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 addition of Subchapter L was proposed under this authority.

#### 2. Regulatory Requirements

The proposed rulemaking will add Subchapter L to establish regulations governing the granting of rights-of-way licenses on Commission-owned lands and waters.

#### 3. Persons Affected

Persons wishing to obtain rights-of-way licenses on Commission owned lands and water will be affected by the proposed rulemaking.

#### 4. Cost and Paperwork Requirements

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

#### 5. Effective Date

The proposed rulemaking will be effective upon 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 Richard A. Palmer, Acting Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** 48-241. No fiscal impact; (8) recommends adoption.

### Annex A

#### TITLE 58. RECREATION

#### PART III. GAME COMMISSION

#### CHAPTER 135. LANDS AND BUILDINGS

#### Subchapter L. LICENSES FOR RIGHTS-OF-WAY

(*Editor's Note:* The following subchapter is new and is printed in regular type to enhance readability.)

#### Sec.

- 135.221. Scope.
- 135.222. Definitions.
- 135.223. Application process and application and processing fee.
- 135.224. Damage assessments.
- 135.225. Annual fees and security requirements.

#### § 135.221. Scope.

This subchapter provides for licensing rights-of-way across land to which title has been acquired for the Commission's use. Except as noted, this subchapter does not apply to Letters of Authorization or leases for natural resources recovery that are approved by the Commission under other provisions of law.

#### § 135.222. Definitions.

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

*Application and processing fee*—A one time cost recovery charge that reimburses the Commission in advance for some of the expected administrative costs incurred in the processing of right-of-way applications, assignments and amendments.

*Double stumpage*—A multiple of two times the value of timber as calculated under standard operating procedure of the Commission.

*Inflationary provision*—An automatic adjustment to the license fee.

*Late fee*—A charge imposed upon license fees remaining unpaid after the due date.

*License fee*—A yearly charge that compensates the Commission annually in advance for the privilege of using the property as outlined in the license.

*License for right-of-way*—A revocable permission for uses as allowed under section 725 of the code (relating to rights-of-way, easements and licenses).

*Surface damage assessment*—A one time cost recovery fee that reimburses the Commission in advance for loss of shrubs and herbaceous growth, wildlife food and cover, or other habitat and management impacts and environmental degradation, whether permanent or temporary in nature.

*Temporary road use permits*—Temporary permit for use of existing State game lands roads which would otherwise be licenses for rights-of-way, but which are limited in duration to 12 months or less.

*Timber damage assessment*—A one time cost recovery charge that reimburses the Commission in advance for timber damage, whether permanent or temporary in nature.

**§ 135.223. Application process and application and processing fee.**

(a) *Application process.* A person or entity desiring a license for right-of-way shall submit a completed application, an alternatives analysis and a nonrefundable application and processing fee made payable to the "Pennsylvania Game Commission."

(b) *Application and processing fee.* There will be assessed an application and processing fee of \$150, payable to the "Pennsylvania Game Commission," at the time of application. This fee is nonrefundable whether the license is ultimately approved or denied.

**§ 135.224. Damage assessments.**

(a) *Surface damage assessment.* A minimum fee of \$400 per acre or partial acre, prorated for each acre over 1, will be charged.

(b) *Timber damage assessment.* Cutting of timber products shall be assessed the greater of double stumpage value or as assessed by conducting a comprehensive timber value assessment. Values for timber or areas not originally assessed but damaged during the construction process, may be assessed at any time and billed to the licensee.

(c) *Multiple assessment.* Both surface damage assessments and timber damage assessments will be charged.

**§ 135.225. Annual fees and security requirements.**

(a) *License fee.* The Commission will negotiate charges and fees as it deems conditions and circumstances warrant, with an assessed minimum annual license fee consisting of an areal minimum of \$200 per acre or partial acre impacted, prorated for every acre over 1, plus a linear minimum of 5¢ per foot. Rates and fees established may be adjusted annually in accordance with the Consumer Price Index (CPI) of the immediately preceding license year.

(b) *Late fees.* Late fees may be assessed in accordance with Commonwealth or Commission policies, or regulations governing late payments.

(c) *Security requirements.* Licenses shall require a bond or other security. The amount of the bond shall be based upon the estimated cost of the removal of the facilities, reclamation and revegetation of the site. Licenses which include reclamation, revegetation and maintenance of Commission roads require security at a minimum of \$2,500 per mile.

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