

# RULES AND REGULATIONS

## Title 37—LAW

### BOARD OF PROBATION AND PAROLE

[ 37 PA. CODE CH. 79 ]

#### County Probation and Parole Officers' Firearm Education and Training Commission

The County Probation and Parole Officers' Firearm Education and Training Commission (FETC) adds Chapter 79 (relating to the County Probation and Parole Officers' Firearm Education and Training Commission) to read as set forth in Annex A.

#### *Authority*

The FETC under the County Probation and Parole Officers' Firearm Education and Training Law (act) (61 P. S. §§ 332.1—332.9) by this order, adopts the regulation set forth in Annex A under the authority of section 332.5(13) of the act which empowers the FETC commissioners, "to make rules and regulations and to perform other duties as may be reasonably necessary or appropriate to implement the training program for county probation and parole officers." Notice of the proposed rulemaking was published at 36 Pa.B. 6510 (October 28, 2006).

#### *Purpose*

This final-form rulemaking implements the requirements of the act. The regulations contain procedures which must be followed by interested third parties and which are directly applicable to the training programs and reimbursement mechanisms that are available for county probation and parole officers. The first part of the regulations (§§ 79.11—79.33 (relating to initial certification of officers; maintenance of certification; and revocation of certification)) explain the processes involved in obtaining certification to carry firearms from the FETC, maintaining the certifications and revocation of these certifications. The next part (§§ 79.51 and 79.52 (relating to training expense)) explains the procedures, which are applicable to training expense reimbursements. The next part (§§ 79.61—79.65 (relating to approval of instructors, schools and vendors)) explains the procedures that interested instructors, schools and vendors must follow to be approved for use within the various FETC training and education programs. The final part (§§ 79.71—79.87 (relating to request for reconsideration of Commission decisions; and notice and hearings)) explains the procedures that persons or schools who are aggrieved by FETC decisions should follow.

#### *Affected Parties*

The final-form rulemaking is intended to provide guidance and direction to county probation and parole officers pertaining to the processes to be followed so that they can be certified to carry a firearm within their respective counties, maintain the certifications and be afforded an opportunity to be heard in the event their certifications are revoked by the FETC. Additionally, the final-form rulemaking is intended to provide guidance and direction to any schools or vendors who wish to be considered for conducting FETC training and education programs.

#### *Fiscal Impact*

##### *Commonwealth*

The FETC has determined that the final-form rulemaking will have no adverse financial impact on the Commonwealth since all funds budgeted for the FETC are derived from the County Probation and Parole Officers' Firearm Education and Training Fund (Fund), which, under the act, is a restricted receipts account within the General Fund. Moneys for this Fund are derived from costs imposed on any person who accepts Accelerated Rehabilitative Disposition or pleads guilty or nolo contendere or is convicted of a felony or misdemeanor. This Fund is used exclusively for the training activities and expenses of the FETC.

##### *Political Subdivisions*

For those counties that choose to carry firearms, the final-form rulemaking is implementing a program that is already in effect and funding for the program is in place in those counties. Therefore, there is no new significant fiscal impact for these counties, either direct or indirect. For counties electing to participate after the implementation of the final-form rulemaking, the start-up costs of participation could be significant depending on numerous variables such as the number of officers or the type of equipment purchased by the county. Accordingly, it is impossible to estimate these costs.

##### *Private Sector*

The final-form rulemaking will have no adverse fiscal impact on the private sector.

##### *General Public*

The final-form rulemaking will not impose any costs and will have no adverse fiscal impact on the general public.

##### *Cost and Paperwork Requirements*

The final-form rulemaking provides guidance and procedural information for implementing a program, which is already in effect and for which funding is already in place. Therefore, there will be no new fiscal impact. The final-form regulation does not affect the existing reporting, recordkeeping, or other paperwork requirements of the FETC, other government units or the general public.

##### *Public Comment*

No public comments were received in response to the proposed regulations. Comments were received from the Independent Regulatory Review Commission (IRRC); those comments are summarized as follows. No comments were received from the General Assembly or other State agencies.

##### *Discussion of Comments and Major Changes*

Following is a summary of the major comments received from IRRC within the public comment period following publication of the proposed rulemaking and the FETC's response to those comments.

*General Comment—Economic or fiscal impact; clarity and lack of ambiguity; reasonableness of the requirements.*

IRRC expressed concern that many of the phrases within the regulation were vague. The reason for this concern was: (1) without adequate notice of what the requirements the FETC is imposing, the regulated community would have difficulty determining what actions on

its part constitute compliance; (2) reference to nonregulatory documents should not be used to enforce standards contained in the regulation; and (3) the lack of clarity would place the regulated community at a disadvantage with regard to compliance.

The FETC identified and reviewed the vague phrases and made changes as appropriate. In some cases the phrases are needed so that the FETC can quickly respond to needed changes within the FETC processes and documents. It is the FETC's position that the phrases will not work to the detriment of the regulated community since the FETC maintains a close working relationship with it and consistently updates its web site to provide the most current information to it pertaining to the activities of the FETC.

#### *§ 79.2. Definitions.*

IRRC expressed concern that the definition of "certified firearms instructor" was inconsistent with § 79.61(b) (relating to approval of instructors). Accordingly, the FETC changed this definition by adding the verbiage "and who is approved by the Commission under §§ 79.61(a)(1) and deleting "who meets the minimum qualifications for instructors as established by the Commission and."

IRRC expressed concern that the definition of "county-conducted training" was not in conformity with § 79.61(a)(2) which includes training by the FBI, Pennsylvania State Police and the National Rifle Association. It is the FETC's position that § 79.61(a)(2) does not apply to county-conducted training but instead references the types of law enforcement classes that one must have completed to meet the minimum qualifications for a Certified Firearms Instructor (CFI). Accordingly, this change was not made. However, the definition of "county-conducted training" was clarified to explain that it is referencing trainings conducted by a county but approved by the Commission.

IRRC expressed concern that the definition of "in-service training" contained the phrase "under the act" and recommended deleting this phrase. The FETC deleted the phrase "under the act" from this definition.

IRRC expressed three concerns with the definition of "master instructor." IRRC found this definition to be inconsistent with § 79.61(b) because § 79.61(b) requires that master instructors be approved by the FETC. The second concern was that the definition contained the phrase "Commission-CFI" rather than "CFI." The third concern was that a cross-reference was lacking to more specifically describe the minimum qualifications. The FETC made these changes by deleting the word "Commission" from "Commission-certified firearms instructor" and adding "and who is approved by the Commission under § 79.61(a)(2)."

IRRC expressed concern about the potential inability of the regulated community to access the appropriate form for purposes of seeking action from the FETC. The FETC has moved to a virtually paperless process by means of its Firearms Commission Training Management System. Accordingly, a definition for the acronym pertaining to this system was added and the regulations changed to state when the submission is to be made by means of this system.

#### *§ 79.3. Enrollment.*

IRRC expressed concern that this section was too broad and inconsistent with the act since the act states four minimum requirements to participate in the training

program or the participant can be granted a waiver. Accordingly, this section was changed to add at the end of the regulation the following language, "and be based upon all relevant factors pertaining to the ability of the Commission to hold a program including the number of openings in a particular training program, the timing of the submitted application for training, the financial viability of conducting the training and the availability of instructors and facilities to hold the program."

#### *§ 79.12. Applications.*

Paragraph (b) is revised to explain that the submission process is by means of the FCTMS.

#### *§ 79.13. Requirements for Completion.*

Paragraph (1)—IRRC expressed concern about the word "prescribed" because it is not clear what is meant by "prescribed program" nor who prescribes the program. Accordingly, per IRRC's suggestion, the word "prescribed" was replaced with "approved."

Paragraph (2)—IRRC expressed concern about the phrase "Compliance with Student Code of Conduct for the programs as established by the Commission." Its concern was that the phrase was vague because it is not clear who establishes the Student Code of Conduct or where a copy of the document can be obtained. Accordingly, this paragraph was changed to read, "Compliance with Student Code of Conduct for such programs as reviewed and approved annually by the Commission and set forth in the course syllabus for each training program and on the Commission's web site; . . ."

Paragraph (3)—IRRC expressed concern that this section was not clear in explaining when a passing score on a component would be inapplicable and who would make that determination. IRRC expressed concern that the FETC would be unable to determine if a candidate satisfactorily completed a course without administering a written examination. It is the FETC's position that what constitutes a satisfactory completion of a course is different for each course. Some of the courses require that students achieve a passing score on a written examination but not all of the courses have this requirement. The phrase "if applicable" at the beginning of this paragraph serves the purpose of highlighting this fact. Nonetheless, the FETC has deleted "if applicable" from the final regulation and added the phrase "graded or evaluated, or both" before "written, oral and range components of a training program."

#### *§ 79.15. Failure to Complete Basic Training.*

Subsection (b)—IRRC recommended replacing the phrase "for the reasons under § 79.13" with the phrase "requirements for completion under § 79.13." The FETC did not fully follow this recommendation and instead replaced the phrase "for the reasons" with "requirements."

Subsection (d)—IRRC expressed two concerns pertaining to this subsection.

The first concern that IRRC expressed was that this subsection was inconsistent with §§ 79.22 and 79.23 (relating to range requalification examinations; and failure to complete range requalification or in-service training) since these sections use the term "range" and this subsection uses the term "firing." Accordingly, the word "firing" was deleted from this subsection.

The second concern that IRRC expressed pertained to the chief probation officer's submission of ". . . a request to the Executive Director seeking permission . . ." IRRC's concerns was that this subsection did not specify a time

frame within which the Executive Director must respond to this request. Accordingly, this subsection was changed to require that the request be submitted in writing and the following sentence was added, "The Executive Director will grant or deny the permission, in writing, within 15 business days after receiving the written request from the officer's Chief Probation Officer."

*§ 79.21. Maintenance of Certification.*

IRRC recommended that the minimum number of hours of in-service training be set forth somewhere in the regulations. Additionally, IRRC recommended that the regulation state where the specifics of each in-service training will be published. Accordingly, the FETC revised this section of the regulation to explain how long an officer's certification is effective in subsection (a). The FETC added the following language to subsection (b)(1), "At least 4 hours of" to the beginning of this subsection. The FETC also added language indicating that this 4 hours must be completed on an annual basis and that the specifics of the training will be on the FETC web site.

*§ 79.22. Range Requalification Examinations.*

IRRC questioned the need for limiting range requalifications to the period between April 1 and October 31 in subsection (c). This limitation is required due to the possibility of inclement weather during the winter months thereby making the outdoor ranges unavailable and it is required for administrative purposes. Nevertheless, the FETC revised this subsection of the regulation to delete the April 1st starting date but retained the October 31st end date. The FETC also carved out an exception for certain range requalification matters by adding language to the end of subsection (c). Additionally, subsection (e) was revised to add a reference to the FETC's web site.

*§ 79.23. Failure to Complete Range Requalification or In-service Training.*

IRRC recommended that the regulation specify a time limit for achieving a passing score. Accordingly, the FETC revised this section to set forth a time frame within which an officer must achieve a passing score.

*§ 79.24. Extensions.*

Subsection (a) was revised to add a reference to the FETC's web site. Additionally, subsection (a)(1)(iii) was revised to cross-reference subsections (a)(1)(i) and (ii) to better describe some of the types of supporting documentation that must be submitted.

IRRC pointed out that the cross-reference in subsection (d) was incorrect. This incorrect cross-reference has been corrected. Additionally, FETC revised this subsection to require that a request to conduct a range requalification examination be in writing.

IRRC expressed concern that subsection (e) was inconsistent with § 79.14 (relating to duration of certification). Subsection (e) provided that an officer who has been granted an extension will have his certification suspended on October 31 of the year in which the officer's current certification expires whereas § 79.14 provided that a certification would remain valid through December 31. The FETC reconciled these two provisions by deleting the October 31 date and adding language providing that a granted extension shall be effective to the ending date of the granted period of extension.

*§ 79.31. Reasons for Revocation of Certification.*

IRRC expressed concern about the provision in this section that provided the FETC with the authority "to revoke an officer's certification for any reason . . ." IRRC

alleged that this was inconsistent with the FETC legislation, specifically 61 P.S. § 332.5(2). Accordingly, the FETC revised this regulation by deleting the "for any reason" verbiage and cross-referencing § 79.21 (relating to maintenance of certification).

In referencing paragraph (3), IRRC recommended that "Commission-sponsored event" be defined. The FETC revised this subpart by deleting the phrase "Commission-sponsored event" and adding "an event or training that is conducted by the Commission." The FETC also clarified what constitutes "unprofessional conduct" for purposes of revoking certifications.

IRRC expressed three concerns with paragraph (5): (1) that this paragraph did not comport with the FETC act, namely 61 P.S. § 332.5(2); (2) that an individual officer's certification could be revoked due to the actions or inactions of others; and (3) that an individual officer's certification could be revoked when an individual officer may not even have knowledge that the FETC is in need of information. Accordingly, this subpart was deleted in its entirety.

*§ 79.32. Revocation of Certification for Failure to Pass Range Requalification Examination.*

IRRC expressed concern that under subsection (a), certification is revoked immediately whereas under § 79.14 a certification remains valid through December 31. The FETC reconciled these provisions by revising § 79.21 to better recognize the requirements of not only § 79.32 (relating to revocation of certification for failure to pass range requalification examination) but also §§ 79.31 and 79.33 (relating to reasons for revocation of certification; and revocation of certification for failure to submit a timely request).

IRRC questioned why range requalification examinations were not permitted after October 31. This limitation is required due to the possibility of inclement weather during the winter months thereby making the outdoor ranges unavailable and it is required for administrative purposes.

*§ 79.41. Failure to Achieve a Passing Score on a Range Requalification Examination.*

Paragraph (1) was subsequently revised to explain that the submission process is done by means of the FCTMS.

*§ 79.42. Failure to Complete Range Requalification Within Required Time Frames.*

Based upon the comments received from IRRC, the title of this section is changed to "Failure to meet range requalification requirements time frames." Based upon this change, subsection (a) is revised to add language that is consistent with the title change.

Subsection (a)(1) was revised to add a reference to the FETC's web site.

IRRC expressed concern about subsection (b) limiting requalification to "in no case later than March 31st of the year in which the application is filed with the Executive Director." IRRC questioned how an officer could comply by March 31st when subsection (a)(3) and § 79.22(c) limit range requalification examinations to the period between April 1 and October 31. IRRC also questioned why there is a limitation on requalifications to the months of January, February or March. The FETC revised this subsection to require that the recertification requirements set forth in § 79.42 (relating to failure to meet range requalification within required time frames) be satisfied within 180 calendar days of the date that the application

for recertification is granted by the FETC. Since there are a variety of reasons that officers seek recertification with a variety of different time frames the FETC reserves the right to grant the officer additional time depending upon the circumstances surrounding the request. The time frame that the officer must satisfy will be set forth in the FETC's approval letter that is sent to the affected officer.

*§ 79.43. Failure to Meet Mandatory In-Service Training Requirements.*

Revisions were made to this section to add appropriate cross-references within this section to the FETC's web site. Additionally, subsection (b) was revised to reference the approval letter process pertaining the recertification process.

*§ 79.44. Non-Recertifiable Revocations.*

IRRC commented that the cross-reference printed in the *Pennsylvania Bulletin* was incorrect. This correction has been made.

*§ 79.51. Reimbursement of Expenses.*

In subsection (a), IRRC commented that the phrase "...but will, from time to time, be further specified by the Commission" was vague. It has been deleted.

In subsection (d), IRRC commented that the phrase "...in accordance with Commission policies in effect on the dates of the county-conducted basic training or county-conducted in-service training" was vague. The Commission does not find this phrase to be vague. This phrase, when taken in the context of the entire section is explaining what types of reimbursements counties that conduct basic or in-service trainings can expect. These reimbursements vary and are generally based upon the FETC's annual budget. While the FETC did not revise this phrase, the last sentence of this subpart was deleted, per later comments received informally from IRRC, which were received after the allowable time period for submission of comments.

*§ 79.61. Approval of Instructors.*

IRRC recommended including a cross-reference in subsection (d) explaining how an instructor can appeal an action by the FETC under this section. Accordingly, subsection (d) is revised to cross-reference § 79.72 (relating to procedure for officers, CFIs, MIs or schools seeking reconsideration). Section 79.62(f) of the regulations was also changed to comply with IRRC's recommendation.

Subsection (a) was revised to explain that the submission process is by means of the FCTMS.

Subsection (a)(1) was revised to comply with existing FETC practice in that the Academic CFI is not used by the FETC in designating CFIs. Accordingly, the bifurcation of CFI between Academic and Range was deleted.

Subsection (a)(2) was revised to require that an instructor serve as a CFI for at least a 36-month period prior to being eligible for MI status.

Subsection (b) was revised to indicate which date controls for purposes of calculating the 36-month period when a CFI subsequently attains MI status.

Subsection (c)(1) was revised to comply with existing FETC practice.

Subsection (d) was revised to reference the available reconsideration procedure should a CFI or MI whose certification is revoked by the FETC wish to pursue reconsideration.

*§ 79.62. Approval of Schools and Vendors.*

Subsection (f) was revised to reference the available reconsideration procedure should a school or vendor whose certification is revoked by the FETC wish to pursue reconsideration.

*§ 79.63. Requirements for In-Service Training Course(s).*

Subsection (b) was revised based upon an informal comment received from IRRC that the phrase "in such format and follow such procedures as established by the Executive Director" was vague. This comment was received after the allowable time period for submission of comments. Nonetheless, the FETC is deleting this phrase and simply requiring that the proposal be submitted in writing.

*§ 79.64. County-Conducted Basic Training and § 79.65. County-Conducted In-Service Training.*

IRRC commented that various phrases within subsections (a), (c), (d) and (g) were vague. The referenced phrases in subsections (a) and (c) have been revised to make reference to the FETC's web site as well as the terms and conditions which will be set forth in the FETC's written approval letter. Additionally, subsection (c) was revised to reference Forms 19b and 19c, respectively, which sets forth the procedures that a county must follow when conducting this training. It is the FETC's position that subsection (d) is not vague. It specifically states that all training sites that a county wishes to utilize to conduct training must be pre-approved by the FETC's Executive Director. This is clear and not vague. However, at the suggestion of IRRC, the phrase "meet Commission standards" was deleted. Subsection (g) was revised to add a specific time frame of 30 days for the submission to the FETC's Executive Director all required training forms and to reference the approval letter for purposes of determining which forms and materials must be submitted within the 30-day time frame.

*§ 79.72. Procedure for Officers or Schools Seeking Reconsideration.*

IRRC expressed concerns about subsection (a)(5) which stated, "Results and opinion in letter-rulings will have no precedential authority and are subject to withdrawal or change at any time to conform to new or different interpretations of the law." IRRC alleged that the wording of this subsection would allow the FETC to independently reverse decisions based upon internal "new or different interpretations of the law." IRRC also questioned how an officer or school could rely on letter-ruling decisions if they can be changed or withdrawn. Finally, IRRC expressed concern that if a letter ruling is changed, the officer or school who wishes to appeal the change would not be able to do so because the appeal time period would have passed. Based upon these concerns, the FETC deleted the following language in subsection (a)(5), "... and are subject to withdrawal or change at any time to conform to new or different interpretations of the law." Additionally, the title of this section was changed to allow CFIs and MIs to seek reconsideration of FETC decisions. This latter change is also reflected in subsections (a) and (a)(1). Finally, subsections (a)(1) and (a)(2)(ii) were changed to address vendors who may be aggrieved by FETC decisions.

*§ 79.84. Hearings.*

IRRC commented that this section was not identical to the cross-referenced 1 Pa. Code § 35.111 (relating to conferences to adjust, settle or expedite proceedings). Accordingly, the FETC revised this language by deleting

the identical reference and adding, "If a prehearing conference is held, it will be under . . ."

*§ 79.86. Failure to Appear at a Hearing.*

IRRC questioned the necessity of subsection (c). IRRC also questioned why there was not a "good cause" requirement in subsection (c). Subsection (c) addresses a situation that is not addressed in subsections (a) and (b). It addresses those situations whereby a hearing examiner, for whatever reason, appears for a hearing when none of the parties appear. This can occur due to the fault of the hearing examiner or due to miscommunications among the parties and the hearing examiner. Subsection (c) mandates that in such instances, regardless of whether good cause exists or not, that the hearing be rescheduled. Accordingly, no change was made based upon this comment. However, subsections (a) and (c) were revised to include CFIs and MIs in the process.

*§ 79.87. Hearing Examiner Recommendation.*

IRRC recommended that the FETC review and explain the cross reference to appeals "in accordance with Pa.R.A.P. and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law)." The FETC has reviewed this cross reference and finds it to be accurate and correct. It is a cross reference to the statutory law and rules of court related to appeals of administrative agency adjudications.

*Effective Date*

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

*Sunset Date*

No sunset date has been assigned. The FETC will review the efficacy of this regulation on an ongoing basis.

*Regulatory Review Act*

Under § 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), the FETC submitted a copy of this regulation to IRRC and to the Chairpersons of the House and Senate Standing Committees on Judiciary (Committees) on April 6, 2009. In compliance with the Regulatory Review Act, the FETC also provided the Committees and IRRC with copies of all public comments received, as well as other documentation.

In preparing the final-form regulation, the FETC reviewed and considered comments received from the Committees, IRRC and the public.

In accordance with § 5.1(j.1) and (j.2) of the Regulatory Review Act, this regulation was deemed approved by the Committees on April 23, 2009. IRRC met on April 23, 2009, and approved the regulation.

In addition to submitting the final-form rulemaking, the FETC has provided IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the FETC. A copy of this form is available to the public upon request.

*Findings*

The FETC finds:

(a) The public notice of intention to adopt the administrative regulation by this Order has been given under §§ 201 and 202 of the Commonwealth Documents Law (45 P. S. §§ 1201 and 1202) and the regulations at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(b) That the adoption of this regulation in the manner provided by this Order is necessary and appropriate for the administration and enforcement of the act.

*Order*

The FETC acting under section 332.5(13) of the act orders:

(a) The regulations of the FETC, 37 Pa. Code Chapter 79, are amended by adding §§ 79.1—79.3, 79.11—79.15, 79.21—79.24, 79.31—79.33, 79.41—79.44, 79.51, 79.52, 79.61—79.65, 79.71, 79.72 and 79.81—79.87 to read as set forth in Annex A.

(b) The Chairperson of the FETC shall submit this Order and Annex A to the Offices of General Counsel and Attorney General for approval as to legality and form as required by law.

(c) The Chairperson of the FETC shall certify and deposit this Order and Annex A with the Legislative Reference Bureau as required by law.

(d) This Order shall take effect upon final publication in the *Pennsylvania Bulletin*.

SCOTT SCHLECHTER,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 2420 (May 9, 2009).)*

**Fiscal Note:** Fiscal Note 41-18 remains valid for the final adoption of the subject regulation.

**Annex A**

**TITLE 37. LAW**

**PART II. BOARD OF PROBATION AND PAROLE  
CHAPTER 79. COUNTY PROBATION AND PAROLE  
OFFICERS' FIREARM EDUCATION AND  
TRAINING COMMISSION**

**GENERAL PROVISIONS**

79.1. Scope.  
79.2. Definitions.  
79.3. Enrollment.

**INITIAL CERTIFICATION OF OFFICERS**

79.11. Certification.  
79.12. Application.  
79.13. Requirements for completion.  
79.14. Duration of certification.  
79.15. Failure to complete basic training.

**MAINTENANCE OF CERTIFICATION**

79.21. Maintenance of certification.  
79.22. Range requalification examinations.  
79.23. Failure to complete range requalification or in-service training.  
79.24. Extensions.

**REVOCATION OF CERTIFICATION**

79.31. Reasons for revocation of certification.  
79.32. Revocation of certification for failure to pass range requalification examination.  
79.33. Revocation of certification for failure to submit a timely request.

**RECERTIFICATION OF OFFICERS FOLLOWING REVOCATION**

79.41. Failure to achieve a passing score on a range requalification examination.  
79.42. Failure to complete range requalification within required time frames.  
79.43. Failure to meet mandatory in-service training requirements.  
79.44. Non-recertifiable revocations.

**TRAINING EXPENSE**

79.51. Reimbursement of expenses.  
79.52. Reimbursement limitations.

**APPROVAL OF INSTRUCTORS, SCHOOLS AND VENDORS**

79.61. Approval of instructors.  
79.62. Approval of schools and vendors.  
79.63. Requirements for approval of in-service training courses.  
79.64. Requirements for county-conducted basic training.  
79.65. Requirements for county-conducted in-service training.

**REQUEST FOR RECONSIDERATION OF COMMISSION DECISIONS**

- 79.71 Decisions of instructors.
- 79.72 Procedure for officers, CFIs, MIs or schools seeking reconsideration.

**NOTICE AND HEARINGS**

- 79.81 General rules of administrative practice and procedure.
- 79.82 Notice.
- 79.83 Appointment of hearing examiner.
- 79.84 Hearings.
- 79.85 Continuances.
- 79.86 Failure to appear at a hearing.
- 79.87 Hearing examiner recommendation.

**GENERAL PROVISIONS**

**§ 79.1. Scope.**

This part sets forth standards and procedures relating to the certification of county probation and parole officers and their qualification to carry or use firearms in the performance of their duties.

**§ 79.2. Definitions.**

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

*Act*—The County Probation and Parole Officers' Firearm Education and Training Law (61 P. S. §§ 332.1—332.9).

*Basic training*—The initial training provided by the Commission.

*CFI—Certified Firearms Instructor*—A firearms instructor who is approved by the Commission under § 79.61(a)(1) (relating to approval of instructors.)

*Commission*—Firearm Education and Training Commission.

*County conducted training*—Any Commission-approved training not presented by the Commission but presented by a county.

*Executive Director*—The administrative officer reporting directly to the Commission who is responsible for program management.

*FCTMS*—Firearms Commission Training Management System.

*In-service training*—The continuing training necessary for county probation and parole officers to maintain certification.

*MI—Master Instructor*—A CFI who meets the minimum qualifications to become an MI and who is approved by the Commission under § 79.61(a)(2).

(b) The definitions in section 2 of the act (61 P. S. § 332.2) are incorporated by reference.

**§ 79.3. Enrollment.**

Enrollment in programs under this part will be based upon all relevant factors pertaining to the ability of the Commission to hold a program including the number of openings in a particular training program, the timing of the submitted application for training, the financial viability of conducting the training and the availability of instructors and facilities to hold the program.

**INITIAL CERTIFICATION OF OFFICERS**

**§ 79.11. Certification.**

Certification of those county probation/parole officers who have satisfactorily completed basic training or who have been granted a waiver by the Commission will be recognized through the issuance of a certificate, which will bear a certification number.

**§ 79.12. Applications.**

(a) The requirements for program participation or waiver in section 7 of the act (61 P. S. § 332.7) are incorporated by reference.

(b) Application procedures to participate in training programs approved by the Commission will require any officer or county, or both, to submit information in a format as specified on FCTMS (<http://www.fetc.state.pa.us/fetc/site/default.asp>).

**§ 79.13. Requirements for completions.**

Satisfactory completion is defined as meeting the following requirements:

(1) Attendance at the entire approved training program.

(2) Compliance with Student Code of Conduct for the programs as reviewed and approved annually by the Commission and set forth in the course syllabus for a training program and on the Commission's web site.

(3) Attainment of a passing score on all components of a training program that are graded or evaluated, or both, including written, oral and range components of a training program.

**§ 79.14. Duration of certification.**

The certification of officers by the Commission as a result of satisfactory completion of the basic training during a calendar year will remain valid through December 31 of the following calendar year, unless revoked under § 79.31 (relating to reasons for revocation of certification).

**§ 79.15. Failure to complete basic training.**

(a) An officer who fails to achieve a passing score on the written examination portion of basic training will not be allowed to continue in that basic training program. The officer may reapply to the Commission to enroll and participate in subsequent basic training programs.

(b) If an officer achieves a passing score on the written examination, but otherwise fails to complete the basic training requirements under § 79.13 (relating to requirements for completion), the officer's passing score will be recognized by the Commission for 1 year from the date of attainment of the passing score on the written examination. If the officer enrolls in a subsequent basic training program during this 1-year period, the officer will be required to attend and complete only the portion of the basic training that was not successfully completed.

(c) If an officer fails to achieve a passing score on the range portion of basic training, the Executive Director will notify the officer's chief probation officer, by means of certified mail, that the officer did not achieve a passing score on this portion of basic training.

(d) An officer who fails to achieve a passing score on the range portion of basic training may be afforded one additional opportunity to shoot the range portion of basic training within 90 calendar days from the date the officer fails to achieve a passing score if the officer's chief probation officer submits a written request to the Executive Director seeking permission for the officer to shoot the range portion of basic training within 45 calendar days of the date that the officer failed to achieve a passing score. The Executive Director will grant or deny the permission, in writing, within 15 business days after receiving the written request from the officer's chief probation officer.

- (1) The request must include the following:
- (i) A proposed date, time and location for the shoot.
  - (ii) The name of the CFI who will conduct the examination.
  - (iii) A written statement from a CFI that the CFI provided remedial range training and that the officer is competent to pass the range portion of basic training.
- (2) The examination may be subject to monitoring by the Commission without notice.

#### MAINTENANCE OF CERTIFICATION

##### § 79.21. Maintenance of certification.

(a) Certifications are effective until December 31 of the calendar year following the issuance of the original or renewed certification unless the Certification has been revoked under §§ 79.31, 79.32 or 79.33 (relating to revocation of certification).

(b) To maintain certification beyond December 31 of the calendar year following the issuance of the original Certification or renewed certification, an officer must successfully complete the following:

(1) At least 4 hours of in-service training, on an annual basis, the specifics of which the Commission will publish by the end of the first quarter of each calendar year on the Commission's web site (<http://www.fetc.state.pa.us/fetc/site/default.asp>).

(2) A range requalification examination under § 79.22 (relating to range requalification examinations).

(c) This section does not apply to the extent an officer's certification is revoked under § 79.31 (relating to reasons for relocation of certification).

##### § 79.22. Range requalification examinations.

(a) Range requalification examinations will require the officer to demonstrate continuing proficiency which includes weapons handling, range safety and marksmanship.

(b) A range requalification examination shall be completed during a Commission-conducted event or a training event sanctioned by the Commission.

(c) Range requalification examinations must be conducted by October 31 of each calendar year, except as specified in § 79.42(b) (relating to failure to meet range requalification requirements time frames).

(d) The course of fire for the range requalification examination shall be conducted using the same procedures that are followed for the range portion of basic training.

(e) Counties or departments desiring to conduct a range requalification examination shall follow an application process specified on the FCTMS (<http://www.fetc.state.pa.us/fetc/site/default.asp>).

(1) The first time that a county or CFI conducts a Commission-sanctioned range requalification examination, oversight must be provided by a member of the Commission, a Commission-approved representative, or a CFI who is not employed by the county or counties whose personnel are being examined.

(2) In subsequent years, the county may conduct the Commission sanctioned range requalification examination without oversight.

(3) Any county conducting Commission-sanctioned range requalification examinations is subject to periodic

inspection and audit by the Executive Director or a representative of the Commission.

##### § 79.23. Failure to complete range requalification or in-service training.

(a) An officer who fails to achieve a passing score on any evaluation, which is a part of the range requalification examination or in-service training, will be permitted one additional opportunity to achieve a passing score on the portion failed within 30 calendar days of failing to achieve a passing score on any portion of an evaluation, or prior to October 31st of each calendar year, whichever time frame is shorter.

(b) An officer who fails to satisfactorily complete an in-service training requirement will not receive credit for the Commission-specified number of hours of training for that course, and may be subject to revocation of certification under §§ 79.31—79.33 (relating to revocation of certification).

##### § 79.24. Extensions.

(a) An officer who is unable to comply with § 79.21 (relating to maintenance of certification) due to extraordinary circumstances may, through his chief probation officer, submit a written request, on a form and in a format set forth on the FCTMS (<http://www.fetc.state.pa.us/fetc/site/default.asp>) to the Executive Director by October 31 of the year in which the officer's current certification will expire.

(1) The request must include the following:

(i) The specific reason for the requested extension of time.

(ii) The specific length of time of the requested extension.

(iii) Documentation to support the information that the officer supplied under subparagraph (1)(i) and (ii) including, documents such as copies of military orders or a letter from the chief probation officer.

(2) When the request is due to medical reasons, the supporting documentation must include a written statement from the officer's physician indicating that at the present time and for the period of the requested extension the officer is not medically capable of participating in a range requalification examination or in-service training.

(b) The Executive Director will review the written request for extension of time and make a recommendation to the Commission. The Commission will provide written notification to the officer and the officer's chief probation officer of its decision.

(c) If the request for extension is approved, the officer shall comply with § 79.21 no later than the ending date of the granted period of extension.

(d) If the extension is to comply with § 79.21(b)(2), the officer's chief probation officer shall send a written request to the Executive Director to conduct a range requalification examination.

(1) The Executive Director must receive the request no later than 15 business days prior to the date of the range requalification examination.

(2) The range requalification examination may occur at any time during the period of the Commission-approved extension.

(e) The certification of an officer who has been granted an extension under § 79.24 (relating to extensions) shall be effective to the ending date of the granted period of extension.

**REVOCAION OF CERTIFICATION**

**§ 79.31. Reasons for revocation of certification.**

The Commission may revoke an officer's certification for failure to comply with § 79.21 (relating to maintenance of certification) or for any of the following:

(1) Conviction of any crime that subjects the officer to the disabilities under the Gun Control Act of 1968 (18 U.S.C.A. §§ 921—930), or 18 Pa.C.S. Chapter 61, Subchapter A (relating to the Pennsylvania Uniform Firearms Act of 1995), or both.

(2) Unsafe conduct during any Commission training.

(3) Unprofessional conduct, as delineated in the Student Code of Conduct, during an event or training that is conducted by the Commission.

(4) Providing false or misleading information, either orally or in writing, to the Commission, its employees or agents.

**§ 79.32 Revocation of certification for failure to pass range requalification examination.**

(a) The Executive Director, upon receipt of the range requalification examination results, will immediately revoke the certification of an officer who fails to requalify.

(b) The officer who has failed to requalify will be notified of the revocation of certification in writing.

(1) Copies of the revocation notification will be sent to the chief probation officer and president judge of the officer's employing county and judicial district.

(2) The notice of revocation of certification will advise the officer that one additional opportunity to successfully complete the range requalification examination is available after the officer participates in Commission-sanctioned remedial training.

(i) Before an officer takes a Commission-sanctioned remedial training, a CFI, who has previously conducted remedial training, shall provide written documentation to the Executive Director stating that the officer to be reexamined has demonstrated sufficient improvement which warrants another opportunity to take a requalification reexamination.

(ii) The requalification examination shall occur within no more than 30 days of the initial failure of the range requalification examination.

(iii) Range requalification examinations will not be permitted after October 31 of the calendar year in which the failure occurred.

(c) Unless the officer successfully completes the range requalification examination after completion of the Commission sanctioned remedial training, the revocation of certification will remain in effect.

**§ 79.33 Revocation of certification for failure to submit a timely request.**

If the officer's chief probation officer fails to submit a request for a range requalification examination to the Executive Director prior to the expiration of the extension period granted by the Commission under § 79.24 (relating to extensions), the officer's certification will be immediately revoked upon expiration of the extension period and no further extensions will be granted.

**RECERTIFICATION OF OFFICERS FOLLOWING REVOCATION**

**§ 79.41. Failure to achieve a passing score on a range requalification examination.**

When an officer's certification has been revoked due to the officer's failure to achieve a passing score under

§ 79.23 (relating to failure to complete range requalification or in-service training), the officer seeking recertification shall do the following:

(1) Submit an application in a format as specified on the FCTMS (<http://www.fetc.state.pa.us/fetc/site/default.asp>). The application shall be co-signed by the chief probation officer who shall state that the officer is competent and safe to participate in Commission training activities.

(2) Enroll in, attend, and satisfactorily complete a Commission-sponsored basic training.

**§ 79.42. Failure to meet range requalification within required time frames.**

(a) When an officer's certification has been revoked due to the officer's failure to meet the time requirements of range requalifications in § 79.22 (relating to range requalifications), the officer seeking recertification shall do the following:

(1) Submit an application to the Executive Director within 20 calendar days of the effective date of the revocation of certification. The application must be on a form set forth on the FCTMS (<http://www.fetc.state.pa.us/fetc/site/default.asp>) and shall be co-signed by the chief probation officer.

(2) Pass any written examinations, as described in § 79.13 (relating to requirements for completion). The examinations will be administered by the Executive Director, a designee, or other authorized Commission staff or a Commission member.

(3) Successfully complete the range requalification requirements as set forth in § 79.22.

(b) The requirements for recertification set forth in § 79.42 (relating to failure to meet range requalification within required time frames) shall be completed within 180 calendar days of the date in which the application is granted by the Commission, unless, due to extraordinary circumstances, the Commission grants additional time.

**§ 79.43. Failure to meet mandatory in-service training requirements.**

(a) When an officer's certification is revoked due to the officer's failure to meet any mandatory in-service training requirements set forth in § 79.21(b) (relating to maintenance of certification), the officer seeking recertification shall do the following:

(1) Submit an application to the Executive Director which must be in such format as specified on the FCTMS (<http://www.fetc.state.pa.us/fetc/site/default.asp>) and shall be co-signed by the chief probation officer.

(2) Enroll in, attend and complete a Commission-sponsored basic training program, or enroll in, attend and complete the next available offerings of any mandatory in-service training, which were not completed as required by the Commission.

(3) Successfully complete the range requalification examination as set forth in § 79.22 (relating to range requalification examinations).

(b) The requirements for recertification set forth in § 79.43 (relating to failure to meet mandatory in-service training requirements) shall be set forth in the Commission's written approval letter which will direct the officer to the training or examination that must be completed and the time frame within which this must be completed prior to the officer being recertified.



**§ 79.44. Nonrecertifiable revocations.**

When an officer's certification is revoked under § 79.31(1) or (4), or both, (relating to reasons for revocation of certificate), the officer shall be ineligible for recertification.

**TRAINING EXPENSE****§ 79.51. Reimbursement of expenses.**

(a) Subject to the availability of funds, the Commission may assume the costs or reimburse expenses incurred, or both, during an officer's attendance at a basic training program or in-service training (including range requalification). The reimbursement will not include personnel costs. Expenses determined eligible by the Commission will be reimbursed at rates that are currently recognized by the Commonwealth.

(b) Instructors are not eligible for Commission reimbursement for any expenditure incurred when engaged in county-conducted basic training under § 79.64 (relating to county-conducted basic training) or an in-service training course developed by an entity other than the Commission or a Commission-approved vendor under § 79.63 (relating to requirements for in-service training courses) or county-conducted in-service training under § 79.65 (relating to county-conducted in-service training).

(c) Students are not eligible for Commission reimbursement for any expenditure incurred when they participate in county-conducted basic training under § 79.64 or an in-service training course developed by an entity other than the Commission or a Commission-approved vendor under § 79.63 or county-conducted in-service training under § 79.65.

(d) The Commission may reimburse, in accordance with Commission policies in effect on the dates of the county-conducted basic training or county-conducted in-service training, the county for selected expenditures associated with the county-conducted basic training or county-conducted in-service training, or both.

**§ 79.52. Reimbursement limitations.**

The Commission will assume only the costs or reimburse eligible training expenses, or both, incurred for an officer's initial basic training. Reimbursement of expenses will be contingent upon the county's compliance with all Commission regulations, policies and procedures and upon the satisfactory submission of any requested information, data, forms, reports or documents. Commission reimbursement for ammunition and lodging is available for only one basic training per officer.

**APPROVAL OF INSTRUCTORS, SCHOOLS AND VENDORS****§ 79.61. Approval of instructors.**

(a) An individual seeking approval to become a CFI or MI in programs offered by the Commission shall submit an application in a format as specified on the FCTMS (<http://www.fetc.state.pa.us/fetc/site/default.asp>).

(1) *Minimum qualifications for CFI.* The application for approval as a CFI in any Commission training, waiver or requalification examination program will include, but not be limited to, verification that the applicant has satisfactorily completed a law enforcement firearms instructor training course offered by entities such as: FBI, Pennsylvania State Police, National Rifle Association or any other course which may be approved by the Commission and documentation that the applicant has conducted at least 12 hours of law enforcement firearms instruction within the 24 months preceding the application submission date.

(2) *Minimum qualifications for an MI.* The applicant shall be a Commission CFI for 36 months following approval as a CFI by the Commission and submit an application for designation as an MI to the Executive Director. The applicant shall have been a lead instructor for the academic/classroom portion of a Commission Basic Training Program and a range master for the range portion of the training.

(b) Certifications for both CFI and MI shall be for a period of 36 months following approval by the Commission unless sooner revoked by the Commission. When a CFI attains MI status, the 36-month period shall be calculated based upon the date that MI status is attained.

(c) To renew certification an instructor shall be required to submit an application for renewal of certification. The application must at least include documentation demonstrating that the instructor has provided the following:

(1) For CFI certification renewal, a minimum of 12 hours of relevant academic and range instruction to county probation personnel in the preceding 36 months, including at least one basic training. The requirement to conduct one basic training during the preceding 36-month period for CFI renewal may be waived by the Commission.

(2) For MI certification renewal, a minimum of 12 hours of relevant academic instruction and a minimum of 12 hours of range firearms instruction to county probation personnel in the preceding 36 months.

(d) The Commission reserves the right to revoke its certification of any CFI or MI, or both, without notice. An affected CFI or MI may seek reconsideration of the revocations under § 79.72 (relating to procedure for officers, CFIs, MIs or schools seeking reconsideration).

**§ 79.62. Approval of schools and vendors.**

(a) Schools certified under 53 Pa.C.S. §§ 2162—2171 (relating to municipal police education and training) are preapproved to conduct training as the Commission may, in particular geographic areas of the Commonwealth, require.

(b) Vendors and other entities may become approved to conduct Commission training, as the needs of the Commission dictate, through the Commonwealth's competitive bid process. Selected vendors will enter into a contract with the Commission to conduct specific training, to a particular population, for a specific period of time and to contractual standards. Approval of these entities to conduct Commission training may terminate upon expiration of the contract.

(c) Schools and vendors conducting training for the Commission shall use only instructors and curricula which have been preapproved by the Commission.

(d) Training conducted by a school or vendor must be approved and scheduled through the Executive Director, in writing, prior to any advertisement, registration or other obligation for that training.

(e) The Commission will inspect each approved school or vendor actively providing training at least once every 2 years, but reserves the right to monitor, without notice, any training conducted by approved schools or vendors, and to review and inspect related program records, materials and facilities at any time.

(f) The Commission reserves the right to suspend or revoke the approval of any school or vendor without notice. An affected school or vendor may seek reconsideration.

tion of the revocations under § 79.72 (relating to procedure for officers, CFIs, MIs or schools seeking reconsideration.)

**§ 79.63. Requirements for in-service training courses.**

(a) To receive credit toward Commission mandated in-service training, counties shall obtain preapproval from the Commission to conduct an in-service training course developed by an entity other than the Commission or a Commission-approved school or vendor.

(b) Counties seeking approval of an in-service training course developed by an entity other than the Commission or a Commission-approved school or vendor shall submit an application to the Executive Director at least 90 calendar days prior to the first proposed day of training. The proposal must be submitted in writing to the Executive Director.

(c) Upon approval by the Commission, the approved in-service training course may be conducted by the county in accordance with § 79.65 (relating to county-conducted in-service training).

(d) The Commission prior to the first proposed day of training must approve any changes or modifications to the in-service training course that is approved by the Commission.

**§ 79.64. County-conducted basic training.**

(a) To be recognized by the Commission, a basic training conducted by a county must be preapproved by the Commission and be carried out in accordance with the terms and conditions in the Commission's approval letter.

(b) An MI shall supervise all county-conducted basic training.

(c) A county desiring to conduct a basic training shall submit an application for county-conducted basic training, including all required documentation, to the Executive Director on Form 19b as found on the Commission's web site (<http://www.fetc.state.pa.us/fetc/site/default.asp>).

(d) County-conducted basic training must be conducted on training sites, both classroom and range, that are preapproved by the Executive Director.

(e) Only students who have submitted a basic training application, which has been approved by the Executive Director, shall participate in a county-conducted basic training.

(f) The entire county-conducted basic training must be completed within 30 consecutive calendar days and on the dates, times and at locations specified in the application.

(g) Upon request of the Executive Director or at the conclusion of the training, the county shall submit to the Executive Director all forms and materials referenced in the Commission's basic training approval letter in 30 calendar days.

(h) A county that is conducting an approved basic training may accept any Commission-approved student for participation in the training.

(i) Materials to support county-conducted basic training may be provided to the county by the Commission solely at the discretion of the Commission.

(j) The Commission reserves the right to monitor and inspect all aspects of county-conducted basic training without notice to the county that is conducting the training.

**§ 79.65. County-conducted in-service training.**

(a) To be recognized by the Commission, an in-service training course must be preapproved by the Commission and conducted in accordance with the terms and conditions set forth in the Commission's approval letter.

(b) An MI shall supervise all county-conducted in-service training.

(c) A county desiring to conduct in-service training shall submit an application for county-conducted in-service training, including the required documentation, to the Executive Director on Form 19c as found on the Commission's web site (<http://www.fetc.state.pa.us/fetc/site/default.asp>).

(d) County-conducted in-service training must be conducted on training sites, both classroom and range, that are preapproved by the Executive Director.

(e) Only students who have submitted an application for in-service training that has been approved by the Executive Director shall participate in county-conducted in-service training.

(f) The entire county-conducted in-service training must be completed within 30 consecutive calendar days and on the dates, times and at the locations specified in the application.

(g) Upon request of the Executive Director or at the conclusion of the training, the county shall submit to the Executive Director all forms and materials referenced in the Commission's in-service training approval letter in 30 calendar days.

(h) A county that is conducting approved in-service training may accept any Commission-approved student for participation in the training.

(i) Materials to support county-conducted in-service training may be provided to the county by the Commission solely at the discretion of the Commission.

(j) The Commission reserves the right to monitor and inspect all aspects of any county-conducted in-service training without notice to the county conducting the training.

**RECONSIDERATION OF COMMISSION DECISIONS**

**§ 79.71. Decisions of instructors.**

Commission instructors have the authority to summarize and immediately terminate an officer's participation in any Commission sanctioned training activity if any Commission instructor believes, in the Commission instructor's sole discretion, that an officer presents a safety concern, disrupts the learning environment, or violates the Commission's Student Code of Conduct.

**§ 79.72. Procedure for officers, CFIs, MIs or schools seeking reconsideration.**

(a) *Procedure.* An officer, CFI, MI or school shall first seek reconsideration of a Commission decision through a letter-ruling process, which consists of the following steps:

(1) The officer, CFI, MI or school shall submit to the Executive Director a written request for reconsideration no later than 20 days after mailing of a Commission notice, which results in adverse action for the school or individual.

(2) The request for reconsideration must, at a minimum, contain the following details:

(i) The name, address, telephone number and electronic mail address of the aggrieved individual or school.

(ii) A copy of the Commission notice, which results in adverse action for the school or individual.

(iii) A concise and thorough explanation of the basis for the Request for Reconsideration.

(iv) The relief being sought.

(3) The Commission will review the request for reconsideration at its next regularly scheduled meeting. The individual or entity seeking reconsideration will be notified of the time and place of the meeting.

(4) Following review of the request for reconsideration, the Commission will render a decision regarding the request for reconsideration. Within 10 days of the date of the decision, the Commission will forward to the individual or entity, by means of certified mail, return receipt requested, a letter ruling specifying the decision and the reasons for the Commission's decision and explaining the right to a formal hearing if the individual/school/vendor does not accept the results set forth in the letter.

(5) Results and opinions set forth in letter-rulings will have no precedential authority.

(b) *Cross-reference.* This section supplements 1 Pa. Code § 35.10 (relating to form and content of formal complaints).

#### NOTICE AND HEARINGS

##### § 79.81. General Rules of Administrative Practice and Procedure.

Title 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) is applicable to the proceedings of the Commission insofar as it is not superseded by §§ 79.82—79.87.

##### § 79.82. Notice.

(a) If an officer, CFI, MI or school wishes to pursue an appeal to a formal hearing, the officer, CFI, MI or school shall submit to the Executive Director a written request for hearing no later than 30 calendar days after mailing of the Commission's letter-ruling regarding the request for reconsideration.

(b) A request for hearing must be in writing and contain at least the following information:

(1) The name, address, telephone number and electronic mail address of the officer or school filing the written request for hearing.

(2) A copy of the Commission's letter-ruling on the request for reconsideration.

(3) A concise statement of the complaint.

(4) A concise statement of all relevant facts and the grounds upon which the complaint is based.

(5) The relief being sought.

(c) The date of receipt by the Executive Director of the written hearing request from the officer, CFI, MI or school and not the date of deposit in the mails is determinative of a timely request for a hearing.

(d) This section supplements 1 Pa. Code § 35.10 (relating to form and content of formal complaints).

##### § 79.83. Appointment of hearing examiner.

(a) When the Executive Director receives a request for hearing, the Commission's Chairperson or a designee will appoint a hearing examiner to preside over the formal hearing.

(b) It will be the responsibility of the appointed hearing examiner to schedule the hearing and conduct it in accordance with this section and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(c) Subsection (a) supplements 1 Pa. Code § 35.185 (relating to designation of presiding officers). Subsection (b) supplements 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers).

##### § 79.84. Hearings.

(a) Hearings will be conducted in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law).

(b) Legal counsel may represent the aggrieved individual or entity and the costs incurred for the representation shall be borne by the individual or entity.

(c) The hearing examiner will notify the aggrieved individual and, if applicable, the aggrieved entity and the Commission of the date, time and location of the hearing at least 60 days prior to the selected date. A courtesy copy will be forwarded to the appropriate chief probation officer and president judge. This subsection supersedes 1 Pa. Code § 35.105 (relating to notice of nonrulemaking proceedings).

(d) A prehearing conference may be held at the discretion of the hearing examiner. If a prehearing conference is held, it will be under 1 Pa. Code § 35.111 (relating to conferences to expedite hearings).

##### § 79.85. Continuances.

(a) Continuances of hearings conducted under this section will only be granted upon a showing of good cause by the party requesting the continuance.

(b) Requests for continuances shall be made in writing to the hearing examiner.

(c) A party's objections, if any, to a request for a continuance must be in writing and delivered to the hearing examiner and the other party. Objections shall be made immediately upon receipt of notification of a request for a continuance.

(d) This section supersedes 1 Pa. Code § 31.15(b) (relating to extensions of time).

##### § 79.86. Failure to appear at a hearing.

(a) If an officer, CFI, MI or school or the officer's, CFI's, MI's or school's representative fails to appear at the scheduled hearing without good cause, as determined by the hearing examiner, the request for hearing shall be deemed abandoned and shall be dismissed with prejudice.

(b) If the Commission fails to appear at the hearing without good cause as determined by the hearing examiner, the hearing shall proceed in absentia.

(c) If neither the officer, CFI, MI or school nor the Commission or their representatives appear at the hearing, the hearing examiner shall reschedule the hearing.

##### § 79.87. Hearing examiner recommendation.

(a) Within 30 days of conclusion of the hearings, the hearing examiner will propose findings of fact and conclusions of law to the Commission.

(b) Upon receipt and after review of the hearing examiner's proposed findings of fact and conclusions of law and any exceptions and briefs, which may be submitted by either party, the Commission, or its designees, shall issue a final adjudication.

(c) The Executive Director shall forward the final adjudication to the officer, CFI, MI or school, or their legal counsel, if the officer, CFI, MI or school has made the Executive Director aware of the representation, and the appropriate chief probation officer and president judge.

(d) The officer, CFI, MI, school or Commission shall have the right to appeal the final adjudication in accordance with Pa.R.A.P. and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law).

[Pa.B. Doc. No. 09-1015. Filed for public inspection June 5, 2009, 9:00 a.m.]

## Title 58—RECREATION

### GAME COMMISSION [ 58 PA. CODE CH. 131 ] Preliminary Provisions

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 21, 2009, meeting, adopted the following rulemaking:

Amend § 131.8 (relating to replacement costs for wildlife killed) to provide a more comprehensive list of applicable costs for all of the various wildlife species found within this Commonwealth.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 39 Pa.B. 1531 (March 28, 2009).

#### 1. Purpose and Authority

Section 925(i) of the code specifically states that “In addition to the fines and costs imposed for violations pursuant to subsection (b), the costs incurred by the Commission for the replacement of the species involved in the violation shall be assessed by the magisterial district judges in the amount as is fixed by the regulation of the Commission.” Despite the fact that the Commission has set replacement cost values for bear, elk and threatened or endangered species, it has never done so for many other species. Without clear authority or guidance on assessing replacement costs for these other species, the courts rarely assess replacement costs for the same resulting in unanswered losses to the Commonwealth. In an effort to avoid these losses, the Commission amended § 131.8 to provide a more comprehensive list of applicable costs for all of the various wildlife species found within this Commonwealth.

Section 2102(a) of the code (relating to regulations) provides that “The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth.” The amendments to § 131.8 were adopted under this authority.

#### 2. Regulatory Requirements

The final-form rulemaking amends § 131.8 to provide a more comprehensive list of applicable costs for all of the various wildlife species found within this Commonwealth.

#### 3. Persons Affected

Persons unlawfully killing game or wildlife within this Commonwealth may be affected by the final-form rulemaking.

#### 4. Comment and Response Summary

There were no official comments received regarding this final-form rulemaking.

#### 5. Cost and Paperwork Requirements

The final-form rulemaking should not result in any additional cost or paperwork.

#### 6. Effective Date

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

#### 7. Contact Person

For further information regarding the final-form rulemaking, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

#### Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

#### Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 131, are amended by amending § 131.8 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall certify this order and 39 Pa.B. 1531 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,  
Executive Director

**Fiscal Note:** Fiscal Note 48-281 remains valid for the final adoption of the subject regulation.

#### Annex A

### TITLE 58. RECREATION

#### PART III. GAME COMMISSION

#### CHAPTER 131. PRELIMINARY PROVISIONS

#### § 131.8. Replacement costs for wildlife killed.

Under section 925(i) of the act (relating to fines and penalties for violations), in addition to any fines and costs

imposed for violations of the act and this title, any person who unlawfully kills or possesses wildlife may be assessed replacement costs according to the following minimum cost scale:

(1) *General class:*

(i) Each threatened or endangered bird or mammal, \$5,000.

(ii) Each elk, \$1,500.

(iii) Each bear, \$1,500.

(iv) Each deer, \$800.

(v) Each bobcat, \$500.

(vi) Each otter, \$500.

(vii) Each turkey, \$300.

(viii) Each beaver, \$300.

(ix) Any other wildlife, \$200.

(2) *Trophy class:*

(i) Each elk with a Boone and Crockett green score of 200 points or more, \$5,000.

(ii) Each deer with a Boone and Crockett green score of 115 point or more, \$5,000.

(iii) Each black bear with a field dressed weight of 350 pounds or more, \$5,000.

[Pa.B. Doc. No. 09-1016. Filed for public inspection June 5, 2009, 9:00 a.m.]

**GAME COMMISSION**  
**[ 58 PA. CODE CH. 139 ]**  
**Seasons and Bag Limits**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 21, 2009, meeting, adopted the following rulemaking:

Amend § 139.4 (relating to seasons and bag limits for the license year) to provide updated seasons and bag limits for the 2009-2010 hunting license year.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 39 Pa.B. 1532 (March 28, 2009).

1. *Purpose and Authority*

The Commission is required to set hunting and furtaking seasons and bag limits on an annual basis. Although similar to last year, the 2009-2010 seasons and bag limits have been amended to conform to current available scientific data, population and harvest records, field surveys and professional staff observations, as well as recommendations received from staff, organized sporting groups, members of the agricultural community and others interested in the wildlife resources of the Commonwealth. Some notable changes for hunters next season will be closures to all pheasant hunting in any area designated as a wild pheasant recovery area within any wildlife management unit, reduced wild turkey hunting opportunities in WMU's 2D, 5C and 5D, expanded wild turkey hunting opportunities in WMU 2F, and finally

expanded flintlock muzzleloader deer hunting opportunities in WMU's 2B, 5C and 5D. As the next license year is fast approaching, the Commission amended § 139.4 to provide updated seasons and bag limits for the 2009-2010 license year.

Section 322(c)(1) of the code (relating to powers and duties of the commission) specifically empowers the Commission to "fix seasons, daily shooting or taking hours, and any modification thereof, and daily, season and possession limits for any species of game or wildlife." Section 2102(b)(1) of the code authorizes the Commission to "promulgate regulations relating to seasons and bag limits for hunting or furtaking . . ." The amendments to § 139.4 were adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amended § 139.4 to provide updated seasons and bag limits for the 2009-2010 license year.

3. *Persons Affected*

Persons wishing to hunt or trap game or wildlife within this Commonwealth during the 2009-2010 license year will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

The Commission received a total of 79 official comments concerning this final-form rulemaking. The comments received concerned the following subtopics:

*Deer Season (in general)*

Out of a total of 61 comments received concerning this subtopic, three supported and 29 opposed the Commission's current deer program, one supported and 12 opposed retaining concurrent deer seasons, two supported retaining concurrent deer seasons for youth, one requested split antlered/antlerless seasons in all WMU's, two opposed the split antlered/antlerless season in WMU 2G, one opposed the split antlered/antlerless season in WMU 3C, one opposed the split antlered/antlerless season in WMU 4B, one requested a closure to antlerless deer hunting for the first 5 days of the regular firearms deer season in WMU 5A, two requested opening deer rifle season the first Saturday after Thanksgiving, one requested a general expansion of deer seasons in urban WMU's, one requested that seniors be permitted to harvest an antlered or an antlerless deer with an antlered tag, one requested that the Commission limit hunters to one deer a year, one requested an extension of the deer seasons in the special regulations areas until February or March, one requested a general reduction in the length of regular firearms deer season and one requested a closure of all deer seasons for 1 year to permit the herd to recover.

*Deer Archery Season*

The single comment received concerning this subtopic opposed the length of the archery deer seasons.

*Turkey Season*

Out of a total of four comments received concerning this subtopic, one opposed the closure to fall turkey hunting in WMU 5A, requested the creation of a winter turkey season and one requested the creation of a senior-only day for the fall and/or spring turkey seasons.

*Small Game Season*

Out of a total of four comments received concerning this subtopic, one requested the addition of 6 days to the snowshoe hare season in 2009-2010, two requested a

general expansion of rabbit season and one requested an increase to the squirrel bag limit.

*Furbearers*

Out of a total of three comments received concerning this subtopic, one requested opening a season on river otters, one requested a general expansion of muskrat season and one requested a general reduction to the liberal harvesting of coyotes.

*Waterfowl*

Out of a total of six comments received concerning this subtopic, one requested a general extension of Canada goose season until April, one requested an increase in Canada goose harvest opportunities due to airline concerns, one requested an increase in Canada goose harvest in the Atlantic Population Zone and one requested a general expansion of crow season.

5. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in any additional cost or paperwork.

6. *Effective Date*

The effective dates of the final-form rulemaking are July 1, 2009, to June 30, 2010.

7. *Contact Person*

For further information regarding the final-form rulemaking, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

*Findings*

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) The adoption of these amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

*Order*

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 139, are amended by amending § 139.4 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48-278 remains valid for the final adoption of the subject regulation.

**Annex A**

**TITLE 58. RECREATION**

**PART III. GAME COMMISSION**

**CHAPTER 139. SEASONS AND BAG LIMITS**

**§ 139.4. Seasons and bag limits for the license year.**

**(SEASONS AND BAG LIMITS TABLE)**

**2009-2010 OPEN HUNTING AND FUR TAKING SEASONS, DAILY LIMIT, FIELD POSSESSION LIMIT AND SEASON LIMIT  
OPEN SEASON INCLUDES FIRST AND LAST DATES LISTED**

<b>Species</b>	<b>First Day</b>	<b>Last Day</b>	<b>Daily Limit</b>	<b>Field Possession Limit After First Day</b>
Squirrels—(Combined species) Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law	Oct. 10	Oct. 16	6	12
Squirrels—(Combined species)	Oct. 17 and Dec. 14 and Dec. 26	Nov. 28 and Dec. 23 and Feb. 6, 2010	6	12
Ruffed Grouse	Oct. 17 and Dec. 14 and Dec. 26	Nov. 28 and Dec. 23 and Jan. 23, 2010	2	4

<b>Species</b>	<b>First Day</b>	<b>Last Day</b>	<b>Daily Limit</b>	<b>Field Possession Limit After First Day</b>
Rabbits, Cottontail	Oct. 24	Nov. 28	4	8
	Dec. 14	Dec. 23		
	Dec. 26	Feb. 6, 2010		
Ring-necked Pheasant—There is no open season for the taking of pheasants in any area designated as a wild pheasant recovery area within any wildlife management unit.				
Ring-necked Pheasant—Male only in WMUs 2A, 2B, 2C, 4C, 4E, 5A and 5B Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law.	Oct. 10	Oct. 17	2	4
Ring-necked Pheasant—Male or female combined in WMUs 1A, 1B, 2D, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A, 4B, 4D, 5C and 5D Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law.	Oct. 10	Oct. 17	2	4
Ring-necked Pheasant—Male only in WMUs 2A, 2B, 2C, 4C, 4E, 5A and 5B	Oct. 24	Nov. 28	2	4
Ring-necked Pheasant—Male or female combined in WMUs 1A, 1B, 2D, 2E, 2F, 2G, and 3A, 3B, 3C, 3D, 4A, 4B, 4D, 5C and 5D	Oct. 24	Nov. 28	2	4
	Dec. 14	Dec. 23		
	Dec. 26	Feb. 6, 2010		
Bobwhite Quail—The hunting and taking of bobwhite quail is permitted in all WMUs except in WMUs 4A, 4B, 5A, 5B, 5C and 5D where the season is closed.	Oct. 24	Nov. 28	4	8
Hares (Snowshoe Rabbits) or Varying Hares	Dec. 26	Jan. 1, 2010	1	2
Woodchucks (Groundhog)	No closed season except during the regular firearms deer seasons and until noon daily during the spring gobbler turkey season.			Unlimited
<b>Species</b>	<b>First Day</b>	<b>Last Day</b>	<b>Daily Limit</b>	<b>Season Limit</b>
Turkey—Male or Female			1	1
WMUs 1A, 1B and 2A (Shotgun, Bow and Arrow only)	Oct. 31	Nov. 14		
WMU 2B (Shotgun, Bow and Arrow only)	Oct. 31	Nov. 21		
WMUs 2C, 2D, 2E, 2F, 4A and 4B	Oct. 31	Nov. 14		
WMUs 2G, 3A, 3B, 3C, 3D, 4C, 4D and 4E	Oct. 31	Nov. 21		
WMUs 5A and 5B	Closed to fall turkey hunting			
WMUs 5C and 5D (Shotgun, Bow and Arrow only)	Oct. 31	Nov. 4		

Species	First Day	Last Day	Daily Limit	Season Limit
Turkey (Spring Gobbler) Statewide <sup>1</sup> Bearded Bird only	May 1, 2010	May 31, 2010	1	2
Turkey (Spring Gobbler) Statewide Youth Hunt <sup>1</sup> Bearded Bird only Eligible junior hunters only, with the required license and when properly accompanied	April 24, 2010	April 24, 2010	1	1

**MIGRATORY GAME BIRDS**

Except as further restricted by this chapter, the seasons, bag limits, hunting hours and hunting regulations for migratory game birds shall conform to regulations adopted by the United States Secretary of the Interior under authority of the Migratory Bird Treaty Act (16 U.S.C.A. §§ 703—711) as published in the *Federal Register* on or about August 27 and September 28 of each year. Exceptions:

(a) Hunting hours in § 141.4 (relating to hunting hours).

(b) Nontoxic shot as approved by the Director of the United States Fish and Wildlife Service is required for use Statewide in hunting and taking of migratory waterfowl.

Species	First Day	Last Day	Daily Limit	Field Possession Limit After First Day
Crows (Hunting permitted on Friday, Saturday and Sunday only)	July 3	April 4, 2010		Unlimited
Starlings and English Sparrows	No closed season except during the Unlimited regular firearms deer seasons and until noon daily during the spring gobbler turkey season			

**FALCONRY**

Squirrels—(Combined species)	Sept. 1	Mar. 31, 2010	6	12
Quail	Sept. 1	Mar. 31, 2010	4	8
Ruffed Grouse	Sept. 1	Mar. 31, 2010	2	4
Cottontail Rabbits	Sept. 1	Mar. 31, 2010	4	8
Snowshoe or Varying Hare	Sept. 1	Mar. 31, 2010	1	2
Ring-necked Pheasant—Male and Female—(Combined)	Sept. 1	Mar. 31, 2010	2	4

Migratory Game Birds—Seasons and bag limits shall be in accordance with Federal regulations.

**WHITE-TAILED DEER**

Species	First Day	Last Day	Daily Limit
Deer, Archery (Antlered and Antlerless) <sup>2</sup> (Statewide)	Oct. 3	Nov. 14	One antlered and an antlerless deer with each required antlerless license.
	Dec. 26	Jan. 9, 2010	
Deer, Archery (Antlerless) WMUs 2B, 5C and 5D	Sept. 19	Oct. 2	An antlerless deer with each required antlerless license.
	Nov. 16	Nov. 28	
	Dec. 14	Dec. 23	
Deer, Regular firearms (Antlered and Antlerless) <sup>2</sup> WMUs 1A, 1B, 2A, 2B, 2C, 2E, 2F, 3A, 3B, 3D, 4A, 4C, 4D, 4E, 5A, 5B, 5C and 5D	Nov. 30	Dec. 12	One antlered, and an antlerless deer with each required antlerless license.



<b>Species</b>	<b>First Day</b>	<b>Last Day</b>	<b>Daily Limit</b>
Deer, Regular firearms (Antlered only) <sup>2 and 3</sup> WMUs 2D, 2G, 3C and 4B	Nov. 30	Dec. 4	One antlered deer.
Deer, Regular firearms (Antlered and Antlerless) <sup>2 and 3</sup> WMUs 2D, 2G, 3C and 4B	Dec. 5	Dec. 12	One antlered, and an antlerless deer with each required antlerless license.
Deer, Special firearms (Antlerless only) (Statewide) Only Junior and Senior License Holders, <sup>4</sup> Commission Disabled Person Permit Holders (to use a vehicle as a blind), and Residents serving on active duty in the U.S. Armed Forces, or in the U.S. Coast Guard, with required antlerless license	Oct. 22	Oct. 24	An antlerless deer with each required antlerless license.
Deer, Muzzleloading (Antlerless only) (Statewide)	Oct. 17	Oct. 24	An antlerless deer with each required antlerless license.
Deer, Flintlock (Antlered or Antlerless) <sup>2</sup> (Statewide)	Dec. 26	Jan. 9, 2010	One antlered, or one antlerless-plus an additional antlerless deer with each required antlerless license.
Deer, Flintlock (Antlered or Antlerless) <sup>2</sup> WMUs 2B, 5C and 5D	Dec. 26	Jan. 23, 2010	An antlerless deer with each required antlerless license.
Deer, Extended Regular firearms (Antlerless) WMUs 2B, 5C and 5D	Dec. 14 Dec. 26	Dec. 23 Jan. 23, 2010	An antlerless deer and with each required antlerless license.
Deer, Antlerless (Letterkenny Army Depot, Franklin County and New Cumberland Army Depot, York County and Fort Detrick, Raven Rock Site, Adams County)	Hunting is permitted on days established by the United States Department of the Army.		An antlerless deer with each required antlerless license.

**BLACK BEAR**

<b>Species</b>	<b>First Day</b>	<b>Last Day</b>	<b>Daily Limit</b>	<b>Season Limit</b>
Bear, any age (Archery only) <sup>5</sup> WMUs 2C, 2D, 2E, 2F, 2G, 3A, 4A, 4B & 4D	Nov. 18	Nov. 19	1	1
Bear, any age (Statewide) <sup>5</sup>	Nov. 23	Nov. 25	1	1
Bear, any age <sup>5</sup> Portions of WMU 3B, East of Rt. 14 from Troy to Canton, East of Rt. 154 from Canton to Rt. 220 at Laporte and East of Rt. 42 from Laporte to Rt. 118 and that portion of 4E, East of Rt. 42.	Nov. 30	Dec. 5	1	1
Portions of WMUs 2G in Lycoming and Clinton Counties and 3B in Lycoming County that lie North of the West Branch of the Susquehanna River from the Rt. 405 Bridge, West to Rt. 15 at Williamsport, Rt. 15 to Rt. 220, and North of Rt. 220 to the Mill Hall exit, North of SR 2015 to Rt. 150; East of Rt. 150 to Lusk Run Rd. and South of Lusk Run Rd. to Rt. 120, Rt. 120 to Veterans Street Bridge to SR 1001; East of SR 1001 to Croak Hollow Rd., South of Croak Hollow Rd. to Rt. 664 (at Swisssdale), South of Rt. 664 to Little Plum Rd. (the intersection of SR 1003), South of SR 1003 to SR 1006, South of SR 1006 to Sulphur Run Rd., South of Sulphur Run Rd. to Rt. 44, East of Rt. 44 to Rt. 973, South of Rt. 973 to Rt. 87, West of Rt. 87 to Rt. 864, South of Rt. 864 to Rt. 220 and West of Rt. 220 to Rt. 405 and West of Rt. 405 to the West Branch of the Susquehanna River.				
Bear, any age <sup>5</sup> WMUs 4C, 4D, 4E, 5B and 5C	Dec. 2	Dec. 5	1	1

Species	First Day	Last Day	Daily Limit	Season Limit
<b>ELK</b>				
Elk, (Antlered and Antlerless) <sup>6</sup> With each required license	Nov. 2	Nov. 7	1	1
Elk, (Antlered and Antlerless) <sup>6</sup> With a special conservation license	Sept. 1	Nov. 7	1	1
<b>FUR TAKING—TRAPPING</b>				
Minks and Muskrats (Statewide)	Nov. 21	Jan. 10, 2010		Unlimited
Beaver (Statewide)	Dec. 26	Mar. 31, 2010		
WMUs 2E, 2F and 2G (Combined)			20	20
WMUs 1A, 1B, 3A, 3B, 3C and 3D (Combined)			20	40
WMUs 2A, 2B, 2C, 2D, 4A, 4B, 4C, 4D, 4E, 5A, 5B, 5C and 5D (Combined)			10	10
Coyotes, Foxes, Opossums, Raccoons, Skunks, Weasels—(Statewide)	Oct. 25	Feb. 21, 2010		Unlimited
Coyotes & Foxes—(Statewide) (Cable restraint devices may be used)	Jan. 1	Feb. 21, 2010		Unlimited
Bobcat <sup>7</sup> WMUs 2A, 2C, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A, 4D and 4E	Oct. 25	Feb. 21, 2010	1	1
<b>FUR TAKING—HUNTING</b>				
Coyotes—(Statewide)	Outside of any deer or bear season may be taken with a hunting license or a furtaker's license and without wearing orange.			Unlimited
Coyotes—(During any archery deer season)	May be taken while lawfully hunting deer or with a furtaker's license.			
Coyotes—(During the regular firearms deer season and any bear season)	May be taken while lawfully hunting deer or bear or with a furtaker's license while wearing 250 square inches of daylight fluorescent orange-colored material in a 360° arc.			
Coyotes—(During the spring gobbler turkey season)	May be taken by persons who have a valid tag and meet fluorescent orange and shot size requirements.			
Opossums, Skunks, Weasels <sup>8</sup> (Statewide)	No closed season. These species may not be hunted prior to noon during the spring gobbler turkey season.			
Raccoons and Foxes—(Statewide) <sup>8</sup>	Oct. 24	Feb. 20, 2010		Unlimited
Bobcat <sup>7</sup> WMUs 2A, 2C, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A, 4D and 4E	Oct. 24	Feb. 20, 2010	1	1

No open seasons on other wild birds or wild mammals.

<sup>1</sup> Only persons who possess a special wild turkey license as provided for in section 2709 of the act (relating to license costs and fees) may take a second spring gobbler during the hunting license year; all other persons, including mentored youth hunters, may take only one spring gobbler. A maximum of 2 gobblers per license year may be taken by any combination of licenses or exceptions for mentored youth.

<sup>2</sup> Only one antlered deer (buck) may be taken during the hunting license year.

<sup>3</sup> Season changes in WMUs 2D, 2G, 3C and 4B are for the purpose of a 4 year study which must be completed before additional units are modified.

<sup>4</sup> Includes persons who have reached or will reach their 65th birthday in the year of the application for the license and hold a valid adult license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions).

<sup>5</sup> Only one bear may be taken during the hunting license year.

<sup>6</sup> Only one elk may be taken during the hunting license year.

<sup>7</sup> Bobcat may only be taken by furtakers in possession of a Bobcat Hunting-Trapping Permit and may not be taken during the regular antlered and antlerless deer season.

<sup>8</sup> May not be taken during the regular antlered and antlerless deer season.

[Pa.B. Doc. No. 09-1017. Filed for public inspection June 5, 2009, 9:00 a.m.]

**GAME COMMISSION**  
**[ 58 PA. CODE CH. 141 ]**  
**Hunting and Trapping**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 21, 2009, meeting, adopted the following rule-making:

Add § 141.28 (relating to wild pheasant recovery areas) to define the geographic locations of the wild pheasant recovery areas and prohibit the release of propagated pheasants and certain dog training activities within the locations.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 39 Pa.B. 1391 (March 21, 2009).

*1. Purpose and Authority*

The Ring-necked Pheasant Management Plan calls for restoring self-sustaining and huntable ring-necked pheasant populations in suitable habitats by establishing Wild Pheasant Recovery Areas (WPRAs). Wild-trapped pheasants will be released in WPRAs in an effort to establish populations of at least ten hens per square-mile in the spring. WPRAs will remain closed to game farm pheasant stocking, pheasant hunting, and dog training activities. The moratorium on game farm pheasant releases is aimed at minimizing the possibility of reducing genetic diversity and improving survivorship of wild pheasants. Pheasant hunting curtailment is important to eliminating the incidental taking of hen pheasants thus limiting population viability. Dog training restrictions are essential to maximizing survivorship and direct taking of hens, especially during the spring nesting and summer brood rearing periods. The Commission added § 141.28 to define the geographic locations of the wild pheasant recovery areas and prohibit the release of propagated pheasants and certain dog training activities within same.

Section 322(c)(4) of the code (relating to powers and duties of the commission) specifically authorizes the Commission to "Define geographic limitations or restrictions." Section 2102(c) of the code (relating to regulations) directs that "The commission shall promulgate regulations concerning the transportation, introduction into the wild, importation, exportation, sale, offering for sale or purchase of game or wildlife or the disturbing of game or wildlife in their natural habitat." 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 protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 141.28 were adopted under this authority.

*2. Regulatory Requirements*

The final-form rulemaking added § 141.28 to define the geographic locations of the wild pheasant recovery areas and prohibit the release of propagated pheasants and certain dog training activities within the locations.

*3. Persons Affected*

Persons wishing to hunt wild pheasants, release propagated pheasants or train dogs within this Commonwealth may be affected by the final-form rulemaking.

*4. Comment and Response Summary*

There were no official comments received regarding this final-form rulemaking.

*5. Cost and Paperwork Requirements*

The final-form rulemaking should not result in any additional cost or paperwork.

*6. Effective Date*

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

7. *Contact Person*

For further information regarding the final-form rule-making, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

*Findings*

The Commission finds that:

(1) Public notice of intention to adopt the administrative regulation adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) The adoption of this regulation of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

*Order*

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by adding § 141.28 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48-279 remains valid for the final adoption of the subject regulation.

**Annex A**

**TITLE 58. RECREATION**

**PART III. GAME COMMISSION**

**CHAPTER 141. HUNTING AND TRAPPING**

**Subchapter B. SMALL GAME**

**§ 141.28. Wild pheasant recovery areas.**

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

(1) *Pike Run WPRAs.* The portion of Washington County, WMU 2A, bounded on the east by the Monongahela River, on the north by I-70, on the west by PA Rt. 917 to Swagler Rd. to Spring Valley Rd. to PA Rt. 2015 to Lone Pine Rd. to the intersection with Tenmile Creek in West Zollarsville, and bounded on the south by Tenmile Creek.

(2) *Somerset WPRAs.* That portion of Somerset County, WMU 2C, bounded on the western side starting at the intersection of Coleman Station Rd. and Stutzmantown Rd. proceeding south on Coleman Station Rd., crossing SR 31, to Brotherton Rd., continuing south to Round Hill Rd., then east onto Wills Church Rd., then to Archery Rd. The boundary then follows Berlin Plank Rd. (US Rt. 219) south into the town of Berlin where it joins the Mason Dixon Hwy. (US Rt. 219) proceeding south to Pine Hill Rd. to Walker School Rd. then east on Maple Valley Rd., to Sawmill Rd. to the Cumberland Hwy. (SR 160). The boundary then follows the Cumberland Hwy. (SR 160)

south to Salco Rd. and then proceeds north on Salco Rd. to Huckleberry Hwy. (SR 160) in the town of Berlin. The boundary follows Huckleberry Hwy. (SR 160) north, crossing SR 31, to the intersection of Roxbury Rd., then north to Shanksville Rd. The boundary then proceeds north to Stutzmantown Rd., then west to the beginning at the intersection of Coleman Station Rd.

(3) *Central Susquehanna WPRAs.* Portions of WMU 4E in Northumberland, Montour, Columbia and Lycoming counties from the West Branch of the Susquehanna River south to the intersection with PA Rt. 642 and the West Branch of the Susquehanna River in Milton. The southern boundary is defined by PA Rt. 642 east from Milton to Maudsley, then north on PA Rt. 642 to just south of Jerseytown, proceeding east on Eversgrove Rd. to Evers Grove at PA Rt. 42. Proceeding south on PA Rt. 42 to Mordansville, northeast of Mordansville along Robbins Rd. (Rt. 600) to Mordansville Rd. (Rt. 541), south on Millertown Rd. (Rt. 4011), then continuing east to follow Mount Pleasant Rd. (Rt. 4020) and Mount Pleasant St. (PA Rt. 4034) to Orangeville at the southeast corner of the WPRAs. PA Rt. 487 lines the eastern boundary from Orangeville north to Maple Grove/intersection with PA Rt. 254. The northern boundary begins with PA Rt. 254 west of Maple Grove to the intersection with Winters Rd. (Rt. 459) proceeding west to the intersection with Austin Trail (PA Rt. 4039). Continuing west on Owl Rd. (Rt. 599), north and west on Reese Rd. (Rt. 578), and north and west on Trivelpiece Rd. (Rt. 576). Eagle Rd. (PA Rt. 4037) then continues northwest to the intersection with Whitehorse Rd./Whitehorse Pike (Rt. 661) heading west to just south of Sereno, and then south on PA Rt. 42 to Millville. From Millville, proceeding southwest on PA Rt. 254 to Jerseytown. Then northwest on PA Rt. 44, north on Swartz Rd., west on Shultz Rd., north on Ants Hill Rd., west on Wolf Hollow Rd., then north on Katy's Church Rd. Crossing into Lycoming County and proceeding northwest on G Wagner Rd., west on Ridge Rd., crossing into Montour County, southwest on County Line Rd., south on Muncy Exchange Rd. (PA Rt. 1003), west on Hickory Rd. (PA Rt. 1008), west on Mingle Rd. (Rt. 433), west on Hickory Rd. (PA Rt. 1008) for the second time, and proceeding north on Gearhart Hollow Rd. (Rt. 441). Continuing west on Showers Rd. (PA Rt. 1010), crossing into Northumberland County, proceeding north and west on Pugmore Lane, north on Hockley Hill Rd. (PA Rt. 1011), west on Miller Rd. (Rt. 653), continuing southwest on Balliet Rd. (Rt. 664). Proceeding northwest and west on Schmidt Rd. (Rt. 564). continuing north on Susquehanna Trail (PA Rt. 1007), continuing west on Hughes Rd. (Rt. 655), crossing under I-180, proceeding south on Crawford Rd. (Rt. 507) to PA Rt. 54. Proceeding northwest on PA Rt. 54 to the West Branch of the Susquehanna River.

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

(1) Release artificially propagated pheasants any time within any area designated as a wild pheasant recovery area.

(2) Train dogs in any manner from the end of small game season through July 31 within any area designated as a wild pheasant recovery area.

[Pa.B. Doc. No. 09-1018. Filed for public inspection June 5, 2009, 9:00 a.m.]

**GAME COMMISSION**  
**[ 58 PA. CODE CH. 141 ]**  
**Hunting and Trapping**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 21, 2009, meeting, adopted the following rule-making:

Amend § 141.66 (relating to cable restraints) to permit properly licensed trappers to take and utilize nontarget furbearing species captured in a cable restraint device during an open season for the same.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 39 Pa.B. 1392 (March 21, 2009).

1. *Purpose and Authority*

In January 2005, the Commission first defined and authorized the limited use of cable restraint devices to harvest red fox, gray fox and coyote. Since the inception of its lawful use by this Commonwealth's trappers, the Commission has identified a low but recognizable incidence of nontarget furbearing species (including raccoons, opossum, skunk and bobcat) being captured in legal sets of these devices. Due to the limited authorization on the species that can be lawfully harvested through the use of the cable restraint devices, the Commission has historically treated the capture of all other nontarget furbearing species as mistake catches despite the fact that there are typically open seasons on these species at the time of capture. In an effort to avoid this result, the Commission amended § 141.66 to permit properly licensed trappers to take and utilize nontarget furbearing species captured in a cable restraint device during an open season for the same. The amendment will also allow an incidentally captured bobcat to be harvested if the trapper possesses a valid bobcat harvest permit. This modification does not in any manner change the legal definition of a legal cable restraint or the manner or location where these devices may be set.

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 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 protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 141.66 were adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amended § 141.66 to permit properly licensed trappers to take and utilize nontarget

furbearing species captured in a cable restraint device during an open season for the same.

3. *Persons Affected*

Persons wishing to trap furbearing species with cable restraint devices within this Commonwealth may be affected by the final-form rulemaking.

4. *Comment and Response Summary*

There were no official comments received regarding this final-form rulemaking.

5. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in any additional cost or paperwork. Rather, the final-form rulemaking will likely reduce costs and paperwork associated with the disposition of furbearing species mistakenly captured in cable restraint devices.

6. *Effective Date*

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

7. *Contact Person*

For further information regarding the final-form rulemaking, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

*Findings*

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

*Order*

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.66 to read as set forth at 39 Pa.B. 1392.

(b) The Executive Director of the Commission shall certify this order and 39 Pa.B. 1392 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48-280 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 09-1019. Filed for public inspection June 5, 2009, 9:00 a.m.]

**GAME COMMISSION**  
**[ 58 PA. CODE CH. 141 ]**  
**Hunting and Trapping**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 21, 2009, meeting, adopted the following rule-making:

Amend Chapter 141, Appendix G to update the tables of hunting hours for the 2009-2010 hunting year to reflect the annual change in days and subsequent hunting times.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 39 Pa.B. 1393 (March 21, 2009).

1. *Purpose and Authority*

Each year there is a shift in calendar days for each month. As a result of this occurrence, the tables of hunting hours found in Chapter 141, Appendix G must be amended and updated each year to reflect the current year's hunting dates and corresponding legal hunting hours. The Commission amended Chapter 141, Appendix G to update the tables of hunting hours for the 2009-2010 hunting year to reflect the annual change in days and subsequent hunting times.

Section 322(c)(1) of the code (relating to powers and duties of the Commission) specifically empowers the Commission to "fix seasons, daily shooting or taking hours, and any modification thereof, and daily, season and possession limits for any species of game or wildlife." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to Chapter 141, Appendix G were adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amended Chapter 141, Appendix G to update the tables of hunting hours for the 2009-2010 hunting year to reflect the annual change in days and subsequent hunting times.

3. *Persons Affected*

Persons wishing to hunt or trap within this Commonwealth during the 2009-2010 hunting year will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

The Commission received one comment regarding this final-form rulemaking in support of all day hunting during the spring gobbler season.

5. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in any additional cost or paperwork.

6. *Effective Date*

The effective dates of the final-form rulemaking are July 1, 2009, to June 30, 2010.

7. *Contact Person*

For further information regarding the final-form rule-making, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

*Findings*

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

*Order*

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending Appendix G to read as set forth at 39 Pa.B. 1393.

(b) The Executive Director of the Commission shall certify this order and 39 Pa.B. 1393 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48-282 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 09-1020. Filed for public inspection June 5, 2009, 9:00 a.m.]

**GAME COMMISSION**  
**[ 58 PA. CODE CH. 141 ]**  
**Hunting and Trapping**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 21, 2009, meeting, adopted the following rule-making:

Amend §§ 141.43 and 141.44 (relating to deer; and bear) to remove the prohibition on the use of magnifying telescopic sights on bows and crossbows during deer and bear archery seasons.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 39 Pa.B. 1668 (April 4, 2009).

### 1. Purpose and Authority

On January 27, 2009, the Commission adopted regulatory amendments that, in relevant part, authorized the use of the crossbow during deer and bear archery seasons. This authorization was qualified by language prohibiting the use of magnifying telescopic sights on bows and crossbows. In light of extensive public comment received by the Commission concerning the prohibition on the use of magnifying telescopic sights on bows and crossbows during the respective archery seasons, the Commission revisited and promoted further discussion on the issue. To this end, the Commission amended §§ 141.43 and 141.44 to remove the prohibition on the use of magnifying telescopic sights on bows and crossbows.

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 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 protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to §§ 141.43 and 141.44 were adopted under this authority.

### 2. Regulatory Requirements

The final-form rulemaking amended §§ 141.43 and 141.44 to remove the prohibition on the use of magnifying telescopic sights on bows and crossbows during deer and bear archery seasons.

### 3. Persons Affected

Persons wishing to hunt white-tailed deer or black bear during their respective archery seasons within this Commonwealth may be affected by the final-form rulemaking.

### 4. Comment and Response Summary

Out of a total of 366 comments received concerning this rulemaking, 303 supported and 63 opposed the removal of the prohibition against magnifying telescopic sights on crossbows during deer archery seasons.

### 5. Cost and Paperwork Requirements

The final-form rulemaking should not result in any additional cost or paperwork.

### 6. Effective Date

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

### 7. Contact Person

For further information regarding the final-form rulemaking, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

### Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given

under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder; 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) The adoption of these amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

### Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending §§ 141.43 and 141.44 to read as set forth at 39 Pa.B. 1668.

(b) The Executive Director of the Commission shall certify this order and 39 Pa.B. 1668 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,  
Executive Director

**Fiscal Note:** Fiscal Note 48-284 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 09-1021. Filed for public inspection June 5, 2009, 9:00 a.m.]

## GAME COMMISSION

### [ 58 PA. CODE CHS. 143 AND 147 ]

## Hunting and Furtaker Licenses and Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 21, 2009, meeting, adopted the following rulemaking:

Eliminate Chapter 143, Subchapter M (relating to mentored youth hunting program license exemption) and add Chapter 147, Subchapter X (relating to mentored youth hunting program permit) to implement a permitting process to gain authorization to participate in the program.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 39 Pa.B. 1529 (March 28, 2009).

### 1. Purpose and Authority

Since the successful implementation of the Mentored Youth Hunting Program (MYHP) in the fall of 2006, the Commission has been striving to find ways to improve this innovative new program. In October this past fall, the Commission first improved the program with the addition of the coyotes to the list of species that may be lawfully pursued by mentored youth. The Commission has since improved the MYHP by implementing a permitting process to gain authorization to participate in the program. The use of a permitting process will provide a

two-fold benefit by providing the Commission with an accurate identification and count of participants in the program as well as provide participants with official big game tags appropriate for the species that may be taken by mentored youth.

When the MYHP was in its initial development, the steering committee recommended that a permit or a junior license be required. Unfortunately, the Commission did not have access to a financially feasible administrative process to issue the permit in this manner at that time. Now, with the advent of the Pennsylvania Automated License System (PALS), there is an economical and efficient mechanism to facilitate issuance of the permits and their big game tags. While functionality of the MYHP in the field will remain largely the same, participants will now be required to apply for and receive a permit through the PALS system at any of its issuing agent locations across the Commonwealth prior to participating in the program. Permit applications will require participants to supply the required identification information and pay a nominal fee of \$1, plus any transactional and issuing agent fees.

Section 2701(a) of the code (relating to license requirements) states that "Except in defense of person or property or pursuant to exemptions authorized by the commission for implementing a mentored youth hunting program, every person, prior to engaging in any of the privileges granted by this title, shall first obtain the applicable license subject to any conditions or other requirements imposed by this title." 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 elimination of Chapter 143, Subchapter M and creation of Chapter 147, Subchapter X was adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking eliminated Chapter 143, Subchapter M (relating to mentored youth hunting program license exemption) and added Chapter 147, Subchapter X (relating to mentored youth hunting program permit) to implement a permitting process to gain authorization to participate in the program.

3. *Persons Affected*

Persons wishing to hunt or trap within this Commonwealth under the mentored youth hunting program will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

Out of a total of four comments received concerning this rulemaking, two supported and two opposed the MYHP permit.

5. *Cost and Paperwork Requirements*

The final-form rulemaking may result in some additional cost and paperwork associated with the implementation of the MYHP permit within the Commission's new PALS. However, the Commission has determined that if there is any additional expense associated with this effort, it will not be substantial and would be absorbed by the current budget.

6. *Effective Date*

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

7. *Contact Person*

For further information regarding the final-form rulemaking, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

*Findings*

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) The adoption of these amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

*Order*

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 143 and 147, are amended by deleting §§ 143.241—143.247 and adding §§ 147.801—147.803 and 147.805—147.807 at 39 Pa.B. 1529 and by adding § 147.804 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall certify this order, 39 Pa.B. 1529 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48-283 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 58. RECREATION**

**PART III. GAME COMMISSION**

**CHAPTER 147. SPECIAL PERMITS**

**Subchapter X. MENTORED YOUTH HUNTING PROGRAM PERMIT**

**§ 147.804. General.**

(a) A mentor shall possess a valid Pennsylvania hunting license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions) prior to engaging in any mentored youth hunting activities.

(b) A mentored youth shall possess a valid mentored youth hunting permit prior to engaging in any mentored youth hunting activities.

(c) A mentored youth's hunting eligibility is restricted to the following species: squirrel, woodchuck, coyote, deer and wild turkey. A mentored youth's hunting eligibility is further limited to:



- (i) Spring gobbler season only for turkey.
- (ii) Antlered deer only during any applicable deer seasons. However, mentored youth hunters are subject to the same antler restrictions that apply to junior license holders as provided in the definition of antlered deer in § 131.2 (relating to definitions).
- (d) A mentored youth's hunting eligibility is further constrained by applicable hunting seasons, daily limits, field possession limits and season limits provided in § 139.4 (relating to seasons and bag limits for the license year).
- (e) A mentored youth is eligible to hunt during any special youth hunting seasons that apply to any species specified in subsection (c).
- (f) A mentored youth shall tag and report all big game harvested in the manner provided for in section 2323 of the act (relating to tagging and reporting big game kills).

[Pa.B. Doc. No. 09-1022. Filed for public inspection June 5, 2009, 9:00 a.m.]