

# PROPOSED RULEMAKING

## DEPARTMENT OF REVENUE

[ 61 PA. CODE CHS. 7 AND 901 ]

### Board of Appeals; Small Games of Chance

The Department of Revenue (Department), under the authority in section 6 of The Fiscal Code (72 P. S. § 6) and the Local Option Small Games of Chance Act (10 P. S. §§ 311—327), proposes to amend Chapters 7 and 901 (relating to Board of Appeals; and local option small games of chance) to read as set forth in Annex A.

#### *Purpose of Proposed Rulemaking*

This proposed rulemaking consolidates the administrative appeals under the jurisdiction of the Department's Board of Appeals (Board). Additionally, the proposed rulemaking will streamline the administrative appeals process by creating a uniform set of procedures for administrative appeals within the Department. The proposed rulemaking preserves the Board's jurisdiction over tax appeals.

#### *Explanation of Regulatory Requirements*

Section 7.1—7.7 are proposed to be rescinded.

Proposed § 7.11 (relating to definitions) contains the definition for “Board” currently in § 7.1 (relating to definitions) and definitions of “administrative proceeding” and “appeal.”

Proposed § 7.12 (relating to jurisdiction) explains that the Board's jurisdiction includes appeals and administrative proceedings as defined in § 7.11.

Proposed § 7.13 (relating to manner of proceeding before the Board) explains that proceedings before the Board are initiated by the filing of a petition.

Proposed § 7.14 (relating to petitions) contains the text in current § 7.3 (relating to petitions) with some minor modifications explained as follows:

Subsection (a) contains language in § 7.3(a) stating that petitions should be filed with the Board.

Subsection (b) is an expansion of language in § 7.3(a) regarding the time limits for filing a petition.

Subsection (c) is an expansion of language in § 7.3(a) regarding receipt of a petition.

Subsection (d) is language that is in § 7.3(b) expanded to include electronically filed petitions.

Subsection (e) is language in § 7.3(b)(1). This subsection explains the general requirements and contents of a petition and also the additional requirements for an appeal petition.

Subsection (f) is language in § 7.3(c) that has been revised to explain the process of docketing petitions.

Subsection (g) is language in § 7.3(b)(1)(ix) regarding additional information.

Subsection (h) is new language added to include electronic signatures.

Proposed § 7.15 (relating to Board practice and procedure) contains the text in current § 7.5 (relating to Board practice and procedure) with minor modifications explained as follows.

Subsection (a)(1), which explains the burden of proof before the Board, is identical to § 7.5(c)(2).

Subsection (a)(2) is nearly identical to § 7.5(b) with minor rewording and describes the petitioner's right to have representation.

Subsection (a)(3) explains the Board's discretion to consolidate or sever multiple proceedings.

Subsection (a)(4) is made up primarily of the language in § 7.5(c) and (d) regarding the conduct and procedures of hearings.

Subsection (a)(5) contains the identical language in § 7.5(e) regarding evidence.

Subsection (a)(6) is language from § 7.5(f) regarding subpoenas with minor rewording.

Subsection (a)(7) is language from § 7.5(h) regarding additional hearings and evidence.

Subsection (a)(8) contains language from § 7.6 (relating to decision and order) regarding the Board's decision and order.

Subsection (a)(9) is generally the language from § 7.7 (relating to reconsideration) modified to clarify the Board's ability to issue corrected orders for clerical and computational errors.

Subsection (b) contains language from §§ 7.5(c)(5) and (7), 7.6(c) and 7.3(b)(2)(ii).

Subsection (c) explains additional practices and procedures for administrative proceedings before the Board.

Proposed § 7.16 (relating to security upon petition for review) outlines the requirements and procedures for taxpayers to file appropriate security with their petition for review filed in Commonwealth Court.

Section 901.1 (relating to definitions) is proposed to be amended to change the definition of “Board” to mean the Board of Appeals rather than the Small Games of Chance Board.

The last sentence of § 901.161 (relating to jurisdiction and purpose), regarding the Board's recommendation to the Secretary, is proposed to be deleted to maintain consistency with other amendments in this proposed rulemaking.

Sections 901.162 and 901.163 (relating to composition; and powers and duties) are proposed to be rescinded.

Section 901.164(b)—(e) (relating to petitions) is proposed to be deleted.

Section 901.165 (relating to Board practice and procedure) is amended by deleting the existing language and adding new language that states what sections in the regulations govern the practice and procedures before the Board.

Sections 901.166 and 901.167 (relating to Board recommendation; and decision and order) are proposed to be deleted.

Section 901.168(a) and (b) (relating to stay of appeal) is proposed to be amended by updating language to be consistent with other amendments in this proposed rulemaking.

#### *Affected Parties*

Pennsylvania taxpayers and tax practitioners may be affected by the proposed rulemaking.

*Fiscal Impact*

The Department has determined that the proposed rulemaking will not have fiscal impact on the Commonwealth.

*Paperwork*

The proposed rulemaking will not create additional paperwork for the public or the Commonwealth.

*Effectiveness/Sunset Dates*

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. The regulations are scheduled for review within 5 years of final-form publication. A sunset date has not been assigned.

*Contact Person*

Interested persons are invited to submit in writing comments, suggestions or objections regarding the proposed rulemaking to Mary R. Sprunk, Office of Chief Counsel, Department of Revenue, P. O. Box 281061, Harrisburg, PA 17128-1061 within 30 days after the date of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 28, 2012, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

DANIEL MEUSER,  
Secretary

**Fiscal Note:** 15-454. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 61. REVENUE**

**PART I. DEPARTMENT OF REVENUE**

**Subpart A. GENERAL PROVISIONS**

**CHAPTER 7. BOARD OF APPEALS**

*(Editor's Note:* As part of this proposed rulemaking, the Board is proposing to rescind §§ 7.1—7.7 which appear in 61 Pa. Code pages 7-1—7-7, serial pages (198141)—(198147).)

**§§ 7.1—7.7. (Reserved).**

*(Editor's Note:* Sections 7.11—7.16 are new and printed in regular type to enhance readability.)

**§ 7.11. Definitions.**

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

*Administrative proceeding*—As defined in 2 Pa.C.S. § 101 (relating to definitions), including proceedings related to registrations and licenses.

*Appeal*—A request for or a review or protest of one of the following:

(i) A resettlement, reassessment, redetermination, review or refund of taxes, interest, penalties, additions or payments made into the State Treasury, including a reassessment or refund as provided under section 2703(a) of the TRC (72 P. S. § 9703(a)).

(ii) A denial of an application for tax exempt status as a charitable, volunteer firemen's or religious organization or nonprofit educational institution.

(iii) A reconsideration of interest payable on a tax overpayment.

(iv) A redetermination of the Department's action regarding a claim for a property tax rebate or rent rebate as provided for under section 1311 of the Taxpayer Relief Act (53 P. S. § 6926.1311).

(v) A review of other actions, other than administrative proceedings, arising under statutes administered by the Department.

*Board*—The Board of Appeals of the Department consisting of the Chairperson and members as designated by the Secretary.

**§ 7.12. Jurisdiction.**

The Board will exercise the powers and duties of the Department and the Secretary with respect to appeals and administrative proceedings before the Department.

**§ 7.13. Manner of proceeding before the Board.**

A proceeding before the Board shall be initiated by the filing of a petition, whether the proceeding is an appeal or administrative proceeding.

**§ 7.14. Petitions.**

(a) *Place.* Petitions shall be filed with the Board.

(b) *Time.*

(1) Petitions shall be filed within the time limits prescribed by statute, this title or other regulation. The burden is on the petitioner to present evidence sufficient to prove that a petition is timely filed.

(2) In the absence of a specific time limit for filing as prescribed in paragraph (1), a petition shall be filed no later than 90 days after the date of the Department's decision or action that is the subject of the petition.

(3) The date of a Department decision or action for purposes of the filing of a petition is the date of the notice of the decision or action. If there is not a notice, then the date is when the petitioner became aware of the Department's decision or action.

(c) *Receipt.*

(1) *General rule.* A petition is filed with the Board on the date the Board receives it. A petition that is received by electronic means after the close of business is received on the date of transmission as long as the Board receives the transmission by 12 midnight.

(2) *Appeals.* Section 1102.1 of the FC (72 P. S. § 1102.1) and section 3003.6 of the TRC (72 P. S. § 10003.6) apply to appeals that are transmitted to the Department by mail.

(3) *Department personnel.* A petition that the Board receives after the date prescribed by statute or

this title that is presented to other Department personnel prior to or on the date prescribed by statute or this title is deemed filed as of the date the other Department personnel receives it.

(d) *Manner and form.* A petition may be delivered to and filed with the Board by hand delivery, mail or electronically, including facsimile transmittal or through the Department's web site. A petition shall be in writing. A writing includes an electronic petition submitted through the Department's web site. The Department will prescribe the form for a petition.

(e) *Contents.* A petition must contain the information, documentation and attachments required by statute and the following:

(1) *General.* Petitions must contain the following:

(i) The petitioner's name, address and telephone number.

(ii) The name, address and telephone number of the petitioner's authorized representative, if any.

(iii) The petitioner's signature. If the petitioner is a corporation or association, an officer of the corporation or association shall sign the petition. If an authorized representative files the petition for the petitioner, the authorized representative may sign the petition on behalf of the petitioner.

(iv) A detailed statement in separate numbered paragraphs of the facts and grounds relied upon. If based upon a written document, a copy of the document, or material part thereof, shall be attached.

(v) A statement specifying the relief requested.

(vi) A statement indicating whether or not a hearing is requested.

(vii) A signed statement certifying that the facts in the petition are true and correct to the petitioner's knowledge and belief and that the petition is not made for purposes of delay.

(2) *Appeal petitions.* In addition to the requirements of paragraph (1), an appeal petition must contain the following:

(i) Designation of the tax, including the year or other period, and the amount involved. A copy of any document relating shall be attached.

(ii) The petitioner's license number, account number, employer identification number, Social Security number, claim number, file number, corporate box number or other appropriate identifying designation.

(iii) In the case of an Inheritance and Estate Tax protest, the petition must contain the decedent's name, last known address, the file number and the assessment control number, if applicable.

(f) *Docketing of petitions.*

(1) The Department will docket upon receipt a filing that purports to be a petition or which otherwise claims relief that may be sought through the filing of a petition. If a filing fails to satisfy any statutory requirement for the filing of a petition, the Board will notify the petitioner of the deficiency in the filing and give the petitioner an opportunity to correct the deficiency. The petitioner shall remedy the deficiency within 30 days of the Board's notice. If the petitioner fails to remedy the deficiencies, the Board will summarily dismiss the petition.

(2) For purposes of section 806.1(a)(4) of the FC (72 P. S. § 806.1(a)(4)), the administrative review procedure will be deemed to be initiated on the date the Board docketed the petition.

(g) *Additional information.* Upon written request, the Board may require a petitioner to furnish additional information that may be necessary to define the issues or to determine the case.

(h) *Signatures.* A signature includes an electronic signature issued by the Department to the petitioner.

#### § 7.15. Board practice and procedure.

(a) *General rules.* Practice and procedure before the Board is as follows:

(1) *Burden of proof.* The petitioner shall have the burden of proof on all issues except fraud.

(2) *Representation.*

(i) An individual may appear on his own behalf or be represented by a person possessing the requisite technical education, training or experience. There is not a requirement that a petitioner be represented before the Board by an attorney or certified public accountant. A petitioner's representative shall be authorized in writing to represent the petitioner. A letter signed by the petitioner or a listing as a representative on the face of the petition signed by the petitioner will be accepted as authorization for representation. An authorization continues until the Board is notified in writing by the petitioner that the authorization is rescinded.

(ii) Only an attorney-at-law representing a petitioner, or the petitioner acting without representation before the Board, shall be permitted to raise or make a legal argument at a hearing before the Board.

(iii) A notice or other written communication to the petitioner shall be given to the petitioner's authorized representative and have the same force and effect as if given to the petitioner directly. Action before the Board taken by petitioner's authorized representative shall have the same force and effect as if taken by the petitioner.

(3) *Consolidation.* The Board may, upon its own motion or the request of a petitioner, consolidate or sever two or more proceedings at its discretion.

(4) *Hearings.*

(i) *Request for hearing.* The Board will provide a petitioner the opportunity for a hearing upon written request.

(ii) *Waiver.* The petitioner may waive the right to a hearing and rest the case upon the petition and record, with or without a written brief. The Board on its own motion may require a hearing.

(iii) *Notice of hearing.* When the petitioner requests a hearing in writing, or when the Board requires a hearing, reasonable notice will be given to the petitioner in writing specifying the date, time and place for the hearing.

(iv) *Continuances.* The Board may grant a reasonable request for continuance of a scheduled hearing. The request shall be made or confirmed in writing, state the reasons for the continuance and be received at least 5 days prior to the scheduled hearing. The Board may grant a request not in conformity with this paragraph in extraordinary circumstances.

(v) *Presiding officer.* Hearings will be conducted by a presiding officer who will be a Board member or a hearing officer designated by the Board. Additional Board

members or hearing officers may participate in a hearing at the discretion of the Board.

(vi) *Authority of presiding officer.* The presiding officer has authority to do the following:

(A) Regulate the conduct of hearings, including the scheduling thereof, subject to Board policy, and the recessing, reconvening and adjournment thereof, and to do acts and take measures necessary or proper for the efficient conduct of hearings.

(B) Administer oaths and affirmations.

(C) Rule upon offers of proof and receive evidence.

(D) Take or cause depositions to be taken.

(E) Hold appropriate conferences before or during hearings.

(F) Dispose of procedural requests or similar matters.

(G) Take other action necessary or appropriate to the discharge of the presiding officer's vested duties, consistent with statutory authority, regulations and Board policy.

(vii) *Contemptuous conduct.* Contemptuous conduct is grounds for exclusion from the hearing.

(5) *Evidence.* Hearings before the Board do not need to adhere to the technical rules of evidence or procedure. In cases involving issues of fact, oral testimony shall be under oath or affirmation. At the discretion of the Board's presiding officer, depositions or affidavits may be received instead of oral testimony if the actual presence of a witness is not feasible.

(6) *Subpoenas.* The Board, on its own motion or at the request of a petitioner, may compel the production of books, records, documents and other data pertinent to the issues and may require persons having information to appear and submit to oral examination under oath or affirmation. The petitioner shall pay the costs associated with the issuance of a subpoena requested by the petitioner as a condition precedent to the issuance of the subpoena.

(7) *Additional hearings and evidence.* After the conclusion of a hearing but prior to the issuance of a final decision, the Board or the presiding officer may, upon its own motion or upon request of the petitioner, allow one or more additional hearings or the submission of additional evidence.

(8) *Decision and order.* The Board will issue a final decision and order, as follows:

(i) The Board's final decision and order will include findings of facts and conclusions of law and dispose of all issues raised in the petition.

(ii) The Board's final decision and order will be in writing and signed by one or more members of the Board.

(iii) When provided by statute, the Board's exercise of equity power will be limited to situations when the petitioner establishes that he has acted in good faith, without negligence and with reasonable diligence.

(iv) One copy of the final decision and order will be mailed to the petitioner or to the petitioner's authorized representative at the mailing address shown on the petition.

(v) The Board may publish precedential decisions if the identity of the taxpayer is kept confidential.

(9) *Reconsideration.*

(i) Within the statutory appeal period and prior to the statutory time when the Board's failure to act results in a denial of an appeal, and upon the written request of a petitioner or upon request of the Department, the Board may reopen a case in which a final decision and order has been issued, for the following purposes:

(A) Correcting clerical or computational errors.

(B) Considering evidence that the Department or the Board received on or prior to the mailing date of the final decision and order and not taken into consideration as part of the final decision and order.

(ii) If the Board decides to reopen a case, a member of the Board will notify the petitioner in writing and provide an opportunity for a hearing. An amended decision and order will be issued.

(b) *Appeals.* In addition to subsection (a), practice and procedure before the Board related to appeals shall be as follows:

(1) *Nonapplicable law.* Sections 501—508 and 701—704 of 2 Pa.C.S. (relating to Administrative Agency Law) do not apply.

(2) *Confidential character of hearings.* Information gained from hearings shall be considered confidential information under section 731 of the FC (72 P. S. § 731).

(3) *Transcripts.* Written transcripts of hearings will not be prepared by the Board. A recording of the hearing may be made at the discretion of either the Board or the petitioner.

(4) *Decision and order.* In the Board's discretion, the Board's final decision and order involving an assessment of tax, interest, penalties or additions may separate the reassessment into one of the following:

(i) Reporting periods involving disputed and nondisputed tax, interest, penalties or additions.

(ii) Disputed and nondisputed tax, interest, penalties or additions.

(5) *Bonds and security.*

(i) *Sales, use and hotel occupancy tax bonds.*

(A) In the case of petitions involving the sales, use and Hotel Occupancy Tax, the Department may by notice require a petitioner to file a surety bond. This bond shall be filed within 5 days of the date of the notice. Surety bonds shall be on a form approved by the Department, in an amount of 120% of the amount of the assessment remaining unpaid at the time of notice of bond requirement and shall be issued by a surety company authorized to do business in this Commonwealth.

(B) A petitioner, instead of filing a bond, may deposit with the Department a certified check payable to the "Pennsylvania Department of Revenue" in the amount of the bond required. On written application to and approval by the Department, the petitioner may post other security.

(C) If a surety bond is required, a petitioner may, within the time for filing the bond, file a written request for a hearing before the Board regarding the need for or amount of the bond. The petitioner shall furnish a financial statement to the Board at the time the request for hearing is made. The validity of the assessment itself may not be considered at the hearing. The determination of the Board will be final and its order shall be complied with within 15 days after notice thereof is mailed to the

petitioner. If a taxpayer fails to appear at a scheduled hearing, the Board may immediately cause a lien to be filed under section 242 of the TRC (72 P. S. § 7242).

(ii) *Personal income tax security requirement in jeopardy assessment appeals.* A petition for reassessment of a jeopardy assessment shall be accompanied by a bond or other security in an amount that the Department deems necessary. The bond shall be executed by a surety company which is authorized to do business in this Commonwealth. A petitioner may deposit with the Department cash or a certified check payable to the "Pennsylvania Department of Revenue" in the amount required by the Department. On written application to and approval by the Department, the petitioner may post other security. In the case of failure to post an acceptable bond or other security, the Board will nonetheless accept the petition, if filed within the 10-day period provided by statute. If an acceptable bond or other security is not posted, the Department has the right to file a lien or otherwise proceed with collection of the assessment, even though the assessment has been appealed.

(c) *Administrative proceedings.* In addition to subsection (a), practice and procedure before the Board related to administrative proceedings shall be as follows:

(1) *Applicable law.* Sections 501—508 and 701—704 of 2 Pa.C.S. (relating to Administrative Agency Law) and other applicable laws and regulations related to the proceeding apply.

(2) *Record.* A full and complete record shall be kept of the proceedings.

(3) *Transcripts.* Hearings and testimony provided during hearings shall be stenographically recorded. Copies of hearing transcripts will be made available to the petitioner at the petitioner's cost.

#### § 7.16. Security upon petition for review.

(a) *General rule.* The Pennsylvania Rules of Appellate Procedure provide that a petition for review of an order of the Board of Finance and Revenue in a tax matter filed with the Commonwealth Court operates as a supersedeas upon the filing of appropriate security.

(b) *Alternate procedure.* If appropriate security is not filed as described in subsection (a), the Department will pursue collection activity, including the filing of a lien, to collect unpaid tax, interest, additions or penalties subject to the Commonwealth Court's review except as provided subsection (c).

(c) *Rules and procedures.*

(1) *Request for Department review.* A person may submit a request to the Department to determine whether the amount of unpaid tax, interest, additions or penalties is in jeopardy of collection if appropriate security is not provided.

(2) *Determination.* If the Department determines that the amount of unpaid tax, interest, additions or penalties is not in jeopardy, then the Department will not pursue collection activities during the Commonwealth Court's review. The Department's determination will be based upon the documentation required to be submitted in paragraph (3). The Department's determination under this paragraph is made solely at the Department's discretion.

(3) *Procedure.* The request under paragraph (1) shall be made in writing on a form prepared by the Department. The written request shall include the person's most recent financial statements, including a balance sheet,

income statement and all notes pertaining to the statements. The Department may request other financial documentation. An individual may be required to submit a personal balance sheet.

(4) *Appeal rights.* There is not a right to appeal the Department's determination under paragraph (2).

### PART VII. LOCAL OPTION SMALL GAMES OF CHANCE

#### CHAPTER 901. LOCAL OPTION SMALL GAMES OF CHANCE

##### Subchapter A. GENERAL PROVISIONS DEFINITIONS

###### § 901.1. Definitions.

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

\* \* \* \* \*

Board—[ **The Small Games of Chance Board of the Department** ] **The Board of Appeals of the Department as provided for in Chapter 7 (relating to Board of Appeals).**

\* \* \* \* \*

##### Subchapter B. LICENSING AND REGISTRATION BOARD PROCEDURES

###### § 901.161. Jurisdiction and purpose.

The Board will receive and review petitions challenging the Department's decisions to deny an application for a manufacturer registration certificate or game of chance approval or a distributor license. The Board will also receive and review petitions from manufacturers or distributors challenging the Department's revocation of a manufacturer registration certificate, game of chance approval or a distributor license. [ **The Board will provide petitioners with the opportunity for a hearing and will make recommendations to the Secretary regarding petitions.** ]

###### § 901.162. [ Composition ] (Reserved).

[ **The Board will be comprised of the following members appointed by the Secretary:**

(1) **A Deputy Secretary of the Department or a designee.**

(2) **The Chief Counsel of the Department or a designee.**

(3) **A Department employee. ]**

###### § 901.163. [ Powers and duties ] (Reserved).

[ **The Board will do the following:**

(1) **Receive, consider and act upon petitions for review of decisions of the Department.**

(2) **Conduct hearings at the request of the Petitioner prior to making a recommendation to the Secretary.**

(3) **Determine procedural matters.**

(4) **Determine issues of fact and law raised by petitions.**

(5) **Make findings, decisions and orders as may be necessary and proper.**

(6) **Make recommendations to the Secretary regarding the disposition of petitions.**

(7) Perform other acts which may be necessary and proper. ]

§ 901.164. Petitions.

[ (a) *Time for filing.* ] A petition shall be filed within 15 days after the applicant, registrant or licensee receives notice of the Department's decision.

[ (b) *Place for filing.* A petition shall be filed with the Bureau of Business Trust Fund Taxes, Department 280901, Harrisburg, Pennsylvania 17128-0901. A change of address will be published as a notice in the *Pennsylvania Bulletin*.

(c) *Form and content.* A petition shall be in writing, signed by the petitioner, a responsible person or authorized representative, and shall contain:

(1) The petitioner's name, address and telephone number.

(2) The name, address and telephone number of the authorized representative, if any.

(3) A copy of the notice of the Department's decision.

(4) A detailed statement in separate numbered paragraphs of the facts and grounds relied upon, specifically stating why the Department's decision is improper.

(5) A copy of the documents relevant to the petition.

(6) A statement specifying the relief requested by the petitioner.

(7) A statement indicating whether or not a hearing is requested.

(8) A signed statement certifying that to the petitioner's knowledge and belief, the facts contained in the petition are true and correct and that the petition is not made for purposes of delay.

(9) The petition shall contain pertinent data known to the petitioner.

(d) *Number of copies.* Four copies of the petition and documentation shall be submitted.

(e) *Additional information.* Upon written request, the Board may require a petitioner to furnish additional information that may be necessary to define the issues or to determine the case. The Board may deny the petition for failure to furnish the additional information within a stated, reasonable amount of time after the request. ]

§ 901.165. Board practice and procedure.

[ (a) *General.* The provisions of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the administrative agency law) do not apply to practice and procedure before the Board to the extent that those provisions are inconsistent with §§ 901.161—901.164, this section and §§ 901.166—901.168 (relating to Board recommendation; decision and order; and stay of appeal).

(b) *Representation.*

(1) A petitioner is not required to be represented before the Board by an attorney. An individual or a partner in a partnership, corporation or association may be represented by a bona fide officer thereof or another person upon a showing of adequate authorization. A petitioner's representative shall be

authorized in writing to represent the petitioner. A letter signed by the petitioner or a listing as a representative on the face of the petition signed by the petitioner will be accepted as authorization for representation. An authorization continues until the Board is notified in writing by the petitioner that the authorization is rescinded. A party may be represented by a member in good standing of the bar of this Commonwealth.

(2) Only an attorney-at-law representing a petitioner, or the petitioner acting without representation before the Board, is permitted to raise or argue a legal question at a hearing before the Board.

(3) Notices and other written communications to the petitioner will be given to the petitioner's authorized representative, and will have the same force and effect as if given to the petitioner directly. Action before the Board taken by the petitioner's authorized representative will have the same force and effect as if taken by the petitioner.

(c) *Hearings.*

(1) *Waiver.* The petitioner has the right to a hearing or to have the case decided upon the petition and record. A hearing shall be requested in writing. If a hearing is not requested, it is considered waived.

(2) *Notices of hearing.* When the petitioner requests a hearing in writing, reasonable notice will be given to the petitioner in writing specifying the date, time and place of the hearing.

(3) *Continuances.* The Board may grant a reasonable request for continuance of a scheduled hearing. The request shall be made or confirmed in writing, state the reasons for the continuance and be received at least 5 days prior to the scheduled hearing. The Board may grant a request that is not in conformity with this paragraph under extraordinary circumstances. The Board will notify the petitioner of its decision on the requested continuance.

(4) *Presiding officer.* The Deputy Secretary or a designee shall conduct the hearings.

(5) *Transcripts.* Written transcripts of hearings will not be prepared by the Board unless specifically requested in writing. The cost of the transcript is \$1.50 per page. A recording of the hearing will be made.

(6) *Contemptuous conduct.* Contemptuous conduct is grounds for exclusion from the hearing.

(d) *Authority of presiding officer.* The presiding officer has authority to:

(1) Regulate the conduct of hearings, including scheduling, recessing, reconvening and adjourning, and to do acts and take measures necessary or proper for the efficient conduct of hearings.

(2) Administer oaths and affirmation.

(3) Receive evidence.

(4) Take or cause depositions to be taken.

(5) Hold appropriate conferences before or during hearings.

(6) Take other action necessary or appropriate to the discharge of the duties vested in the officer, consistent with statutory authority, regulations and Board policy.

(7) Participate in making decisions.

(8) Rule upon offers of proof and receive relevant evidence.

(9) Dispose of procedural requests or similar matters.

(e) *Service.* Notices and decisions issued under §§ 901.161—901.164, this section and §§ 901.166—901.168 will be sent by first class mail, postage prepaid.

(f) *Consolidation.* Two or more proceedings may be consolidated or severed by the Board at its discretion.

(g) *Bond.* A registrant or licensee whose license or registration has been revoked due to Commonwealth tax liabilities, and who has been notified of the revocation, shall file a bond in an amount of 120% of the tax and interest with the Department for an appeal of the revocation to stay the revocation.

(h) *Evidence and subpoenas.* The presentation of evidence and the issuance of subpoenas relating to hearings before the Board are governed by 1 Pa. Code Chapter 35 Subchapter C (relating to evidence and witnesses).

(i) *Burden of proof.* The petitioner has the burden of proof. ]

This section and Chapter 7 (relating to Board of Appeals) govern practice and procedure before the Board.

§ 901.166. [ Board recommendation ] (Reserved).

[ The Board will make its recommendation to the Secretary within 15 days after a hearing, or if a hearing is not held, within 15 days of submission of documentation that the Board deems sufficient upon which to make a recommendation.

(1) The Board's recommendation will include findings of fact and conclusions of law that the Board deems necessary and upon which its recommendation is based.

(2) The Board's recommendation will be in writing and signed by a majority of the Board members.

(3) A dissenting recommendation may also be submitted. It will conform to the requirements of this section and will be attached to the Board's recommendation.

(4) The Board's recommendation will be the result of deliberations of a quorum of the members. If a hearing is held, only members present at the hearing will be eligible to participate in the Board's recommendation. ]

§ 901.167. [ Decision and order ] (Reserved).

[ (a) The Secretary's final decision will include findings of facts and discussion of law that the Secretary deems necessary.

(b) The Secretary's final decision will be in writing and signed by the Secretary.

(c) One copy of the final decision will be mailed to the petitioner or to the petitioner's authorized representative at the mailing address shown on the petition.

(d) The Secretary's final decision will be made within 15 days of the receipt of the Board's recommendation. ]

§ 901.168. Stay of appeal.

(a) [ Actions ] After a petition is filed, actions to revoke a registration, license or game approval will be stayed pending the decision of the [ Secretary when a petition has been filed with the ] Board.

(b) [ During the pendency of the appeal ] Pending the Board's decision and order, the certificate, game approval or license of the petitioner will be suspended. (See § 901.23a (relating to effect of denial, suspension, revocation, expiration of a certificate, license or game of chance).)

[Pa.B. Doc. No. 12-393. Filed for public inspection March 9, 2012, 9:00 a.m.]

## ENVIRONMENTAL QUALITY BOARD

[ 25 PA. CODE CH. 86 ]

### Coal Mining Fees

The Environmental Quality Board (Board) proposes to amend Chapter 86 (relating to surface and underground coal mining: general). The proposed rulemaking establishes a schedule of fees for coal mining activity permit applications.

This order was adopted by the Board at its meeting of October 12, 2010.

#### A. Effective Date

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

#### B. Contact Persons

For further information, contact Thomas Callaghan, Director, Bureau of Mining Programs, P. O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103; or Richard S. Morrison, Assistant Director, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service, (800) 654-5988 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us).

#### C. Statutory Authority

The rulemaking is proposed under the authority of section 5 of The Clean Streams Law (52 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a) and 1396.4b); section 3.2 of the Coal Refuse Disposal Control Act (52 P. S. § 30.53b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### D. Background and Purpose

Section 4(a) of the Surface Mining Conservation and Reclamation Act states: "The department is authorized to charge and collect from persons a reasonable filing fee. Such fee shall not exceed the cost of reviewing, adminis-

tering and enforcing such permit.” The proposed regulations revise permit application review fees for coal mining activity permits. A schedule of fees for coal mining activity permit applications is proposed.

The coal mining regulatory program (program) is funded, in part, through a grant from the Federal government under Title V of the Surface Mining Control and Reclamation Act (30 U.S.C.A. §§ 1201—1328). Under this grant, funds are provided to cover the costs of up to 50% of the program. The Commonwealth must provide matching funds. The State share has been provided through the General Fund appropriation to the Department. For the current Federal Fiscal Year (October 2011 through September 2012), the Title V grant provides about \$11.8 million towards total program costs of approximately \$23.7 million, with the State share of about \$11.8 million coming almost entirely from General Fund appropriations because the current fees generate only about \$50,000 per year in revenue. It is estimated that the revised fees established by this proposed rulemaking will generate about \$400,000 per year in revenue.

This fee proposal is the result of a process where the Department worked with the Mining and Reclamation Advisory Board (MRAB). The proposed fee amounts were calculated using a workload analysis system, the primary purpose of which is to manage staffing for the program. The workload analysis assigns a specific number of hours to each task (that is, type of application) based on historical data recording hours spent by staff for permit reviews. Factors used for the fee calculations include the hourly wage rates for the employees who typically perform a given task, benefits and overhead. Wages are paid in accordance with a pay scale that has 20 steps for each pay range. For the purpose of the proposed fee schedule, the first step (that is, the lowest wage rate) was used. Benefits (for example, health insurance, retirement and leave/holidays) cost the Commonwealth about 41% of the wage rate. Operational costs (for example, management, rent and utilities) cost the Commonwealth about 30% of the wage rate. The 30% figure is used to represent the costs described as “indirects” under the Title V grant application. This proposal establishes fees calculated to cover only a portion of the State share of the workload cost (that is, about 37%, or 3/8 of the total cost) for the selected authorizations. The list of authorizations included in the fee schedule is not exhaustive. There are other types of applications for which fees are not being proposed (for example, minor revisions, blast plans, completion reports, preapplications and annual bond reviews).

#### *Fee Calculation Example*

A new surface mining permit takes about 200 hours to review. These applications are reviewed by staff in pay range 8 (step 1 for 2010 is \$25.64/hour). Adding 41% for benefits, 30% for overhead and multiplying by 200 hours, then multiplying by 3/8 results in \$3,288 or \$3,250 if the amount is rounded.

#### *MRAB*

At a meeting in October 2009, the Department presented a proposed rulemaking package to the MRAB that included a proposed permit application fee schedule. The MRAB would not endorse the proposal and requested that the Department work with an MRAB committee to develop an alternative proposal. The strongest specific objection was the amount of the fees (for example, the proposed fee for a new surface mining permit was \$11,675). The October 2009 proposal contained permit

application fees designed to cover the State share of the Department’s costs to review mining permit applications. It was estimated that the October 2009 fee proposal would have generated about \$1.2 million per year in revenue.

In response to the MRAB’s recommendations, the Department met several times with the MRAB’s Regulatory, Legislative and Technical (RLT) Committee. During this process, various options were explored, including trying to develop a fee approach that would generate the full State share for funding the program (about \$11.8 million). This option was dismissed as unrealistic based on industry opposition and the fact that it would represent a dramatic policy shift from the status quo where the fees are nominal. The approaches taken by other states and the Federal Office of Surface Mining were also reviewed. The result of this process was a series of recommendations adopted by the MRAB at their January 2010 meeting. The recommendations are summarized as follows:

- Because permit fees have not gone up since 1982, a permit fee increase from the current amount of \$250 per application (\$500 for coal refuse disposal permit applications) is reasonable.
- An increase in permit fees should be dedicated exclusively to finance the program permit review process.
- The Department should not establish fees which would discourage or provide disincentives to re-mining activities and their reclamation benefits to the Commonwealth.
- It is reasonable to ask the industry to contribute to funding some part of the program.
- The MRAB would like to continue to advise the Department on appropriate permit fee assessment and allocations.

The RLT Committee met on March 15, 2010, and reviewed a proposal containing permit application fees and an annual administrative fee that would have generated about \$750,000 per year in revenue. The RLT Committee decided to report to the full Board their recommendation to proceed with the section of the draft regulations regarding permit application fees, but to recommend the Department not implement the annual administration fees. At the April 22, 2010, meeting, the MRAB recommended that the Department proceed with a fee approach that includes only permit application fees in a form that would generate about \$400,000 per year in revenue. This proposed rulemaking was prepared following these MRAB recommendations.

#### *E. Summary of Regulatory Requirements*

##### *§ 86.1. Definitions*

Definitions are being added for the “major permit revision” and “permit application fee.” These definitions are needed to implement the fee schedule.

##### *§ 86.3. Use of Coal Refuse Disposal Control Fund*

Proposed amendments to this section add subsection (b), which necessitates the lettering of the existing paragraph as subsection (a). Subsection (b) is intended to provide clarity regarding the use of the money collected from permit application fees that are deposited in the Coal Refuse Disposal Control Fund. This reflects the MRAB’s recommendation that the money collected from the fees should be used specifically for the Department’s cost of reviewing permits.

##### *§ 86.17. Permit and reclamation fees*

Proposed amendments to this section include a detailed fee schedule for coal mining permit activity applications.



The requirement to pay by check is being deleted from subsection (a) to allow applicants the option of paying by other methods (for example, credit card).

Subsection (b) sets forth the detailed permit application fee schedule.

Proposed amendments to subsection (c) specify that the money collected from permit application fees will be used by the Department to pay the costs of reviewing permit applications. This reflects the MRAB's recommendation that the money collected from the fees should only be used for the Department's cost of reviewing permits.

Proposed amendments to subsection (d) establish a framework for periodically reviewing the fee schedule and providing a report to the Board regarding the Department's costs and the necessity for changes to the permit application fees.

F. *Benefits, Costs and Compliance*

The proposed rulemaking will enable the Commonwealth to generate a small percentage (less than 5%) of the State share of the funds required to operate the program.

*Compliance Costs*

The proposed rulemaking will impose a total additional compliance cost on the regulated community (approximately 500 mine operators) of about \$350,000 per year. Currently, permit application fees cost the operators about \$50,000 per year. The proposed fee schedule is estimated to cost operators about \$400,000 per year.

*Compliance Assistance Plan*

The Department will provide written notification to coal mine operators to inform them of the adoption of this proposed rulemaking.

*Paperwork Requirements*

The proposed rulemaking will require the Department to update its fact sheets explaining the law and regulations.

G. *Pollution Prevention*

The proposed rulemaking will not modify the pollution prevention approach by the regulated community and maintains the multimedia pollution prevention approach of existing requirements in 25 Pa. Code (relating to environmental protection).

H. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 29, 2012, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory

Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

J. *Public Comments*

*Written comments*—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by April 9, 2012. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by April 9, 2012. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

*Electronic comments*—Comments may be submitted electronically to the Board at RegComments@pa.gov and must also be received by the Board by April 9, 2012. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

MICHAEL L. KRANCER,  
*Chairperson*

**Fiscal Note:** 7-476. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION  
PART I. DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

**Subpart C. PROTECTION OF NATURAL  
RESOURCES**

**ARTICLE I. LAND RESOURCES**

**CHAPTER 86. SURFACE AND UNDERGROUND  
COAL MINING: GENERAL**

**Subchapter A. GENERAL PROVISIONS**

**§ 86.1. Definitions.**

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

\* \* \* \* \*

**Major permit revision**—A revision to a coal mining permit that requires public notice.

\* \* \* \* \*

**Permit application fee**—A nonrefundable filing fee due at the time of submission of an application. The permit application fee is required for an application to be considered complete.

\* \* \* \* \*

**§ 86.3. Use of Coal Refuse Disposal Control Fund.**

(a) Moneys, including permit application fees, fines, bond forfeitures and civil penalties deposited in the Coal Refuse Disposal Control Fund may be used by the Department for the elimination of pollution, the abatement of health and safety hazards and nuisances, reclamation and other related uses including conducting scien-

tific studies and research as authorized under the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66).

(b) Permit application fees required under this chapter for permit applications submitted under the Coal Refuse Disposal Control Act will be used by the Department to cover its costs to review applications.

**Subchapter B. PERMITS**

**GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS**

**§ 86.17. Permit and reclamation fees.**

(a) A permit application for coal mining activities shall be accompanied by a [ check for \$250 payable to the “Commonwealth of Pennsylvania.” ] payment to the “Commonwealth of Pennsylvania” for the amount of the permit application fee provided in the fee schedule in subsection (b) which corresponds to the type of application being submitted. For purposes of this subsection, permit applications include the applications in subsection (b).

(b) [ A permit application for a coal preparation plant shall be accompanied by a check for \$250 payable to the “Commonwealth of Pennsylvania.” ] The permit application fee schedule is as follows:

<i>(1) New Permits</i>	<i>Fee</i>
Surface Mining Permit	\$3,250
Coal Refuse Reprocessing Permit	\$1,900
Coal Refuse Disposal Permit	\$3,250
Coal Preparation Plant Permit	\$1,650
Anthracite Underground Mining Permit	\$1,650
Bituminous Underground Mining Permit	\$5,750
Post Mining Activity Permit	\$300
Incidental Extraction Permit	\$1,650
<i>(2) Major Permit Revisions</i>	<i>Fee</i>
Surface Mining Permit	\$300
Coal Refuse Reprocessing Permit	\$300
Anthracite Coal Refuse Disposal Permit	\$300
Bituminous Coal Refuse Disposal Permit	\$1,250
Anthracite Coal Preparation Plant Permit	\$300
Bituminous Coal Preparation Plant Permit	\$1,250
Anthracite Coal Underground Mining Permit	\$300
Bituminous Coal Underground Mining Permit	\$1,250
<i>(3) Permit Transfer</i>	<i>Fee</i>
All	\$250
<i>(4) Permit Renewal</i>	<i>Fee</i>
All	\$250
<i>(5) Other Actions</i>	<i>Fee</i>
Auger Safety Permit	\$200
Bond Liability Revision	\$100

(c) [ A renewal application, whether the site has not yet been activated or where coal is being extracted, shall be accompanied by a check for \$250 payable to the “Commonwealth of Pennsylvania.” A renewal application for reclamation activities requires no application fee. ] For surface coal mine facilities, coal refuse reprocessing facilities and coal mining activity facilities, except for bituminous underground mines, permit application fees collected will be deposited in the Surface Mining

Conservation and Reclamation Fund. Permit application fees collected for bituminous underground mines will be deposited in the Bituminous Mine Subsidence and Land Reclamation Fund. For coal refuse disposal facilities, permit application fees collected will be deposited in the Coal Refuse Disposal Control Fund. Permit application fees required under this section will be used by the Department to cover its costs to review permit applications.

(d) [ A permit application for coal refuse disposal activities shall be accompanied by a check for \$500 plus \$10 per acre for acreage in excess of 50 acres payable to the “Commonwealth of Pennsylvania.” ] The Department will review the adequacy of the permit application fees in this section at least once every 3 years and provide a written report to the EQB. The report will identify any disparity between the amount of program income generated by the fees and the costs to administer these programs and contain recommendations to increase fees to eliminate the disparity, including recommendations for regulatory amendments to increase program fees.

\* \* \* \* \*

[Pa.B. Doc. No. 12-394. Filed for public inspection March 9, 2012, 9:00 a.m.]

**GAME COMMISSION**

[ 58 PA. CODE CH. 141 ]

**Hunting and Trapping; Beaver Trapping**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its January 24, 2012, meeting to amend § 141.62 (relating to beaver trapping) to extend the 15-foot trap placement restriction near beaver dams and lodges Statewide and extend the body-gripping trap limit of 10 to wildlife management units (WMU) where beaver bag limits are 40 or more per season.

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

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

The proposed rulemaking was made public at the January 24, 2012, meeting of the Commission. Comments can be sent, until April 20, 2012, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

*1. Purpose and Authority*

In an effort to comply with its beaver management plan, the Commission is proposing two amendments to § 141.62. First, the 15-foot trap placement restriction near beaver dams and lodges should be enforced Statewide which will simplify regulations and help protect juvenile beavers in the colony. This can be accomplished by deleting references to WMUs 3B, 3C and 3D in § 141.62(b)(2). Secondly, the body-gripping trap limit of 10 should only apply to WMUs with high relative harvest/complaint density and with bag limit of 40 beavers per season. The purpose of this change is to lift the two body-gripping trap limit only in WMUs with high relative

beaver harvest and complaint densities. Because of the high efficiency of body-gripping traps, these devices should be limited to two in WMUs with medium to low beaver harvest and nuisance complaint densities. Limiting body-gripping traps also creates beaver trapping opportunities for the maximum number of trappers.

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 § 141.62 are proposed under this authority.

2. Regulatory Requirements

The proposed rulemaking will amend § 141.62 by extending the 15-foot trap placement restriction near beaver dams and lodges Statewide and extending the body-gripping trap limit of 10 to WMUs where beaver bag limits are 40 or more per season.

3. Persons Affected

Persons wishing to hunt or trap beavers within this Commonwealth will be affected by the proposed rule-making.

4. Cost and Paperwork Requirements

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

5. Effective Date

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

6. Contact Person

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

CARL G. ROE, Executive Director

Fiscal Note: 48-335. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART III. GAME COMMISSION
CHAPTER 141. HUNTING AND TRAPPING
Subchapter D. FURBEARERS

§ 141.62. Beaver trapping.

\* \* \* \* \*

(b) Unlawful acts. It is unlawful to:

\* \* \* \* \*

(2) [ Except in Wildlife Management Units 3B, 3C and 3D, place ] Place, check, reset or tend a trap or snare on an established beaver dam or beaver house, or within 15 feet of either a dam, or a house. Measurement shall be from directly above the trap or snare, across the water, ice or land to the nearest point of the structure.

\* \* \* \* \*

(4) Set, tend or operate more than a combined State-wide total of 20 traps or snares no more than 10 of which may be traps. No more than [ two ] 2 of the traps may be body gripping traps except in Wildlife Management Units [ 1B, 3A, 3B, 3C and 3D where the two body gripping trap limit does not apply ] where beaver bag limits are 40 or more per season.

\* \* \* \* \*

[Pa.B. Doc. No. 12-395. Filed for public inspection March 9, 2012, 9:00 a.m.]

[ 58 PA. CODE CH. 141 ]
Hunting and Trapping; Big Game

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its January 24, 2012, meeting to amend §§ 141.43 and 141.44 (relating to deer; and bear) to delete the sunset language to effectively make permanent the authorized general use of crossbows during the archery deer and bear seasons.

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

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

The proposed rulemaking was made public at the January 24, 2012, meeting of the Commission. Comments can be sent, until April 20, 2012, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Purpose and Authority

On January 27, 2009, the Commission adopted amendments to §§ 141.43 and 141.44 that authorized the general use of crossbows during archery deer and bear seasons. See 39 Pa.B. 1110 (February 28, 2009). The crossbow amendments are subject to a sunset provision that expires on June 30, 2012. The Commission is proposing to amend §§ 141.43 and 141.44 to delete the sunset language to effectively make permanent the authorized general use of crossbows during archery deer and bear seasons.

Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to §§ 141.43 and 141.44 are proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will amend §§ 141.43 and 141.44 by deleting the sunset language to effectively make permanent the authorized general use of crossbows during archery deer and bear seasons.

3. *Persons Affected*

Persons wishing to hunt deer or bear with a crossbow during archery season within this Commonwealth will be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

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

5. *Effective Date*

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

6. *Contact Person*

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

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** 48-339. No fiscal impact; (8) recommends adoption.

**Annex A**  
**TITLE 58. RECREATION**  
**PART III. GAME COMMISSION**  
**CHAPTER 141. HUNTING AND TRAPPING**  
**Subchapter C. BIG GAME**

§ 141.43. **Deer.**

(a) *Archery deer season.*

(1) *Permitted devices.* It is lawful to hunt deer during the archery deer season with any of the following devices:

\* \* \* \* \*

(ii) *A crossbow and bolt.* A crossbow must have a peak draw weight of at least 125 pounds. A bolt must be equipped with a broadhead that has an outside diameter or width of at least 7/8 inch with at least two cutting edges located on the same plane throughout the length of the cutting surface, and may not exceed 3 inches in length. **[ This subparagraph shall become effective July 1, 2009, and expire on June 30, 2012, unless the Commission authorizes its continued legal effectiveness prior to June 30, 2012. ]**

\* \* \* \* \*

§ 141.44. **Bear.**

(a) *Archery bear season.*

(1) *Permitted devices.* It is lawful to hunt bear during the archery bear season with any of the following devices:

\* \* \* \* \*

(ii) *A crossbow and bolt.* A crossbow must have a peak draw weight of at least 125 pounds. A bolt must be equipped with a broadhead that has an outside diameter or width of at least 7/8 inch with at least two cutting edges located on the same plane throughout the length of the cutting surface, and may not exceed 3 inches in length. **[ This subparagraph shall become effective**

**July 1, 2009, and expire on June 30, 2012, unless the Commission authorizes its continued legal effectiveness prior to June 30, 2012. ]**

\* \* \* \* \*

[Pa.B. Doc. No. 12-396. Filed for public inspection March 9, 2012, 9:00 a.m.]

**[ 58 PA. CODE CH. 141 ]**  
**Hunting and Trapping; Hunting Hours**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its January 24, 2012, meeting to amend Chapter 141, Appendix G (relating to hunting hours) by updating the current hunting hours table and migratory bird hunting hours table to accurately reflect the dates and hours of legal hunting for the 2012-2013 hunting license year.

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

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

The proposed rulemaking was made public at the January 24, 2012, meeting of the Commission. Comments can be sent, until April 20, 2012, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

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 in Appendix G are amended and updated each year to reflect the current year's hunting dates and corresponding legal hunting hours. The Commission is proposing to amend Appendix G to update the tables of hunting hours for the 2012-2013 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 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 Appendix G are proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will amend Appendix G to update the tables of hunting hours for the 2012-2013 hunting year to reflect the annual change in days and subsequent hunting times.

3. *Persons Affected*

Persons wishing to hunt or trap game or wildlife within this Commonwealth during the 2012-2013 hunting year will be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

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

5. *Effective Date*

The effective dates of the proposed rulemaking are July 1, 2012, to June 30, 2013.

6. *Contact Person*

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

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** 48-338. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART III. GAME COMMISSION**

**CHAPTER 141. HUNTING AND TRAPPING**

**APPENDIX G. HUNTING HOURS**

*(Editor's Note:* As part of this proposed rulemaking, the Commission is proposing to delete the text of the tables which appear in 58 Pa. Code pages 141-33—141-35, serial pages (357031)—(357033) and replace them with the following tables.)

**HUNTING HOURS TABLE  
FOR JULY 1, 2012 THROUGH JUNE 30, 2013**

<i>Dates</i>	<i>Begin A.M.</i>	<i>End P.M.</i>
July 1—7	5:09	9:02
July 8—14	5:14	8:59
July 15—21	5:20	8:54
July 22—28	5:26	8:48
July 29—Aug. 4	5:32	8:40
Aug. 5—11	5:39	8:32
Aug. 12—18	5:46	8:22
Aug. 19—25	5:52	8:12
Aug. 26—Sept. 1	5:59	8:01
Sept 2—8	6:05	8:00
Sept. 9—15	6:12	7:39
Sept. 16—22	6:19	7:27
Sept. 23—29	6:25	7:15
Sept. 30—Oct. 6	6:32	7:04
Oct. 7—13	6:39	6:53
Oct. 14—20	6:47	6:43
Oct. 21—27	6:54	6:34
Oct. 28—Nov. 3	7:02	6:25
Nov. 4—Nov. 10* ends	6:10	5:18
Nov. 11—17	6:18	5:12
Nov. 18—24	6:26	5:08
Nov. 25—Dec. 1	6:34	5:06
Dec. 2—8	6:40	5:05
Dec. 9—15	6:45	5:05
Dec. 16—22	6:49	5:07

<i>Dates</i>	<i>Begin A.M.</i>	<i>End P.M.</i>
Dec. 23—29	6:52	5:10
Dec. 30—Jan. 5	6:53	5:09
Jan. 6—12	6:52	5:21
Jan. 13—19	6:51	5:28
Jan. 20—26	6:48	5:36
Jan. 27—Feb. 2	6:43	5:44
Feb. 3—9	6:37	5:53
Feb. 10—16	6:29	6:01
Feb. 17—23	6:21	6:09
Feb. 24—Mar. 2	6:11	6:17
Mar. 3—9	6:01	6:25
Mar. 10—16* begins	6:50	7:32
Mar. 17—23	6:39	7:40
Mar. 24—30	6:27	7:47
Mar. 31—Apr. 6	6:16	7:54
Apr. 7—13	6:05	8:01
Apr. 14—20	5:54	8:08
Apr. 21—27	5:44	8:15
Apr. 28—May 4	5:34	8:22
May 5—11	5:26	8:29
May 12—18	5:18	8:36
May 19—25	5:12	8:43
May 26—June 1	5:07	8:49
June 2—8	5:04	8:54
June 9—15	5:02	8:58
June 16—22	5:02	9:01
June 23—30	5:05	9:03

\* Daylight Saving Time

**MIGRATORY GAME  
BIRD HUNTING HOURS TABLE**

<i>Dates</i>	<i>Begin A.M.</i>	<i>End P.M.</i>
Aug. 26—Sept. 1	5:59	7:31
Sept. 2—8	6:05	7:30
Sept. 9—15	6:12	7:09
Sept. 16—22	6:19	6:57
Sept. 23—29	6:25	6:45
Sept. 30—Oct. 6	6:32	6:34
Oct. 7—13	6:39	6:23
Oct. 14—20	6:47	6:13
Oct. 21—27	6:54	6:04
Oct. 28—Nov. 3	7:02	5:55
Nov. 4—10* ends	6:10	4:48
Nov. 11—17	6:18	4:42
Nov. 18—24	6:26	4:38
Nov. 25—Dec. 1	6:34	4:36
Dec. 2—8	6:40	4:35
Dec. 9—15	6:45	4:35
Dec. 16—22	6:49	4:37

<i>Dates</i>	<i>Begin A.M.</i>	<i>End P.M.</i>
Dec. 23—29	6:52	4:40
Dec. 30—Jan. 5	6:53	4:39
Jan. 6—12	6:52	4:51
Jan. 13—19	6:51	4:58
Jan. 20—26	6:48	5:06
Jan. 27—Feb. 2	6:43	5:14
Feb. 3—9	6:37	5:23
Feb. 10—16	6:29	5:31
Feb. 17—23	6:21	5:39
Feb. 24—Mar. 2	6:11	5:47
Mar. 3—9	6:01	5:55
Mar. 10—16* begins	6:50	7:02
Mar. 17—23	6:39	7:10
Mar. 24—30	6:27	7:17
Mar. 31—Apr. 6	6:16	7:24
Apr. 7—13	6:05	7:31

\* Daylight Saving Time

[Pa.B. Doc. No. 12-397. Filed for public inspection March 9, 2012, 9:00 a.m.]

**[ 58 PA. CODE CH. 141 ]**

**Hunting and Trapping; Special Regulations Areas**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its January 24, 2012, meeting to amend § 141.1 (relating to special regulations areas) to permit hunters to legally harvest deer during any deer season through the use of bait on properties authorized under a valid deer control permit (red tag farms) in wildlife management units (WMU) 5C and 5D in the southeastern Pennsylvania special regulations areas.

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

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

The proposed rulemaking was made public at the January 24, 2012, meeting of the Commission. Comments can be sent, until April 20, 2012, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

*1. Purpose and Authority*

On March 31, 2010, the Commission’s 3-year evaluation of the effectiveness of a broad scale and widely accessible authorization permitting the baiting of white-tailed deer across the southeast special regulations areas expired. The Commission’s final review of the baiting authorization generally concluded that broad scale and widely accessible baiting did not establish viable increases in harvest rates to justify an extension of the experimental program. Agricultural deer damage continues to be a challenge in the more developed areas of this Commonwealth. Special hunting regulations exist for these areas, but hunting and permitted control provisions at times create conflicting regulations. On February 1, 2011, the Commission amended §§ 147.552 and 147.556 (relating to application; and lawful devices and methods) to create a

focused, limited authorization permitting the baiting of white-tailed deer in WMUs 5C and 5D on approved properties enrolled in the Red Tag Program. See 41 Pa.B. 1767 (April 2, 2011). In furtherance of the Commission’s continuing efforts to find effective tools to manage the population on agriculture lands in this area of this Commonwealth, the Commission is proposing to amend § 141.1 to permit hunters to legally harvest deer during any deer season through the use of bait on properties authorized under a valid deer control permit (red tag farms) in WMUs 5C and 5D in the southeastern Pennsylvania special regulations areas.

Section 2102(a) of the code (relating to regulations) provides that “The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth.” The amendment to § 141.1 is proposed under this authority.

*2. Regulatory Requirements*

The proposed rulemaking will amend § 141.1 by permitting hunters to legally harvest deer during any deer season through the use of bait on properties authorized under a valid deer control permit (red tag farms) in WMUs 5C and 5D in the southeastern Pennsylvania special regulations areas.

*3. Persons Affected*

Persons wishing to hunt deer through the use of bait in the southeast special regulations areas will be affected by the proposed rulemaking.

*4. Cost and Paperwork Requirements*

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

*5. Effective Date*

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

*6. Contact Person*

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

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** 48-333. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART III. GAME COMMISSION**

**CHAPTER 141. HUNTING AND TRAPPING**

**Subchapter A. GENERAL**

**§ 141.1. Special regulations areas.**

\* \* \* \* \*

(d) *Permitted acts.* It is lawful to:

\* \* \* \* \*

**(6) Hunt or take deer during any deer season through the use of or by taking advantage of bait on private property currently operating under a valid deer control permit when approval for limited baiting activities has previously been obtained under § 147.552 (relating to application).**

[Pa.B. Doc. No. 12-398. Filed for public inspection March 9, 2012, 9:00 a.m.]

**[ 58 PA. CODE CH. 141 ]**

**Hunting and Trapping; Wild Pheasant Recovery Areas**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its January 24, 2012, meeting to amend § 141.28 (relating to wild pheasant recovery areas) to eliminate the Pike Run wildlife pheasant recovery area (WPRAs) and include crows to the list of species that can be hunted within WPRAs from the first Sunday in February through July 31.

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

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

The proposed rulemaking was made public at the January 24, 2012, meeting of the Commission. Comments can be sent, until April 20, 2012, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

**1. Purpose and Authority**

The Pike Run WPRAs study in southwestern Pennsylvania has concluded unsuccessfully. Habitat patch analysis shows that Pike Run meets only one of five habitat targets in the pheasant model. Pheasant densities are at one hen per square mile, far short of the ten hens per square mile objective. In light of the area's habitat characteristics and low pheasant densities, and in keeping with the pheasant management plan, it is proposed that this area be opened to either sex pheasant hunting and stocking of game farm pheasants be reinstated beginning with the 2012-13 season. To complement this proposed season change, the Commission is proposing to amend § 141.28 to eliminate the Pike Run WPRAs. The Commission is additionally proposing to amend § 141.28(b)(2) to include crows along with waterfowl and woodchucks to the list of species that can be hunted within WPRAs from the first Sunday in February through July 31. This addition will not have a detrimental effect on pheasant recovery.

Section 322(c)(4) of the code (relating to powers and duties of 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 are proposed under this authority.

**2. Regulatory Requirements**

The proposed rulemaking will amend § 141.28 by eliminating the Pike Run WPRAs and including crows to the list of species that can be hunted within WPRAs from the first Sunday in February through July 31.

**3. Persons Affected**

Persons wishing to hunt wild pheasants, release propagated pheasants, train dogs or hunt small game within the area designated as the Pike Run WPRAs will be affected by the proposed rulemaking. Persons wishing to hunt crows within an area designated as a WPRAs from the first Sunday in February through July 31 will also be affected by the proposed rulemaking.

**4. Cost and Paperwork Requirements**

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

**5. Effective Date**

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

**6. Contact Person**

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

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** 48-334. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART III. GAME COMMISSION**

**CHAPTER 141. HUNTING AND TRAPPING**

**Subchapter B. SMALL GAME**

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

(a) *Definition.* For the purpose of this section, the phrase "wild pheasant recovery area" (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) ] (2) *Central Susquehanna WPR*A. 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 Mausdale, then north on PA Rt. 642 to just south of Jerseytown, proceeding east on Eysersgrove Rd. to Eysers 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 WPR A. 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.

[ (4) ] (3) *Hegins-Gratz Valley WPR*A. That portion of WMU 4E in Schuylkill and Dauphin Counties from Matterstown Road (Rt. 1007) to PA Rt. 901 at Taylorsville. The WPR A is bounded on the north by the Mahantango Creek. Beginning at the town of Pillow in Dauphin County, proceeding east on Market Street (Rt. 1026) to the Mahantango Creek, which is the Northumberland and Dauphin County border until entering Schuylkill County at Klingerstown. Continuing northeast along the Mahantango Creek in Schuylkill County to Taylorsville Road (Rt. 4039) at Haas, to Taylorsville and then proceeding south on PA Rt. 901. Proceeding south

and southeast on PA Rt. 901 to I-81. Proceeding southwest on I-81 and then west on PA Rt. 25, then from PA Rt. 25, proceeding south and west on Dell Road and then northwest and west on Pine Drive (State Hwy. 4009), continuing west on Pine Drive, T593 and north on T592 to Pine Creek. The southern boundary then follows Pine Creek west along the northern side of Broad Mountain to Spring Glen. From Spring Glen, continuing west on PA Rt. 25, crossing into Dauphin County to Gratz, then proceeding southwest from Gratz on Specktown Road (State Hwy. 1014) to South Crossroads Road (PA Rt. 1009). Proceeding south on South Crossroads Road (PA Rt. 1009) to PA Rt. 209 and southwest to Elizabethville. From Elizabethville continue west on Main Street (PA Rt. 209), then turn north onto Botts Road (T462). At the first intersection, turn north onto Feidt Road (T461), then turn east onto West Matterstown Road (Rt. 4008), turn north onto Matterstown Road (Rt. 1007). Turn right or east onto Berrysburg Road (PA Rt. 25) which turns into Market St. Turn left or north onto Lykens St. Turn right or east onto Mountain Road (T639). Turn left or north on PA Rt. 225 into Pillow on PA Rt. 225, ending at Market St. (Rt. 1026).

[ (5) ] (4) *Franklin County WPR*A. That portion of WMUs 4A and 5A in Franklin County form PA Rt. 30 on the northern border to the Pennsylvania/Maryland state border on the southern border, and from Cove Mountain on the western border to the towns of Laurich and Williamson and the Conococheague Creek on the eastern border. The WPR A is bounded on the north by PA Rt. 30 (Lincoln Highway). Beginning at the town of Fort Loudon at the intersection of PA Rt. 30 (Lincoln Highway) and PA Rt. 75, proceed east on PA Rt. 30 (Lincoln Highway), through St. Thomas and continue east to Laurich. Just east of Laurich, proceed south along Back Creek to SR 3012 (Jack Road). Proceed west along SR 3012 (Jack Road), then south along Weber Road. Continue south and southwest along Weber Road to the intersection of Weber, Grapevine and Jacks Mill Roads. Proceed southwest along Grapevine Road and then northwest to intersection with SR 3013. Turn south onto SR 3013 (St Thomas Williamson Road) and then west onto State Rt. 995. Proceed west and then south on State Rt. 995 through Williamson to the West Branch of the Conococheague Creek (north-east of Welsh Run). Proceed along the West Branch of the Conococheague Creek to the confluence with Conococheague Creek. Follow the Conococheague Creek south to the Pennsylvania/Maryland state border. Proceed west along the Pennsylvania/Maryland state border to State Rt. 456. Proceed northeast along State Rt. 456 to State Rt. 16. Proceed east on State Rt. 16 to Mountain Road. Proceed northeast on Mountain Road to State Rt. 75. Proceed northwest on State Rt. 75 to the intersection of State Rt. 75 and State Rt. 30 at Fort Loudon.

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

\* \* \* \* \*

(2) Train dogs in any manner or hunt small game except **crows**, woodchucks and waterfowl from the first Sunday in February through July 31 within any area designated as a WPR A.

[Pa.B. Doc. No. 12-399. Filed for public inspection March 9, 2012, 9:00 a.m.]



## [ 58 PA. CODE CH. 135 ]

**Lands and Buildings; All-Terrain Vehicles**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its January 24, 2012, meeting to amend § 135.50 (relating to definitions) to delete references to 75 Pa.C.S. § 7702(3) (relating to definitions), which no longer exists, and replace them with a generic exclusory reference.

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

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

The proposed rulemaking was made public at the January 24, 2012, meeting of the Commission. Comments can be sent, until April 20, 2012, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

Section 135.50 defines the term "ATV—All-terrain vehicle" for the purpose of restricting the type and design of off-road vehicles that may be operated on State Game Lands under applicable allowances. Section 135.50 contains a specific reference to 75 Pa.C.S. § 7702 to aid in defining this term. The act of June 25, 2001 (P. L. 701, No. 68) (Act 68) amended the meaning given to the terms "all-terrain vehicle" and "ATV" under 75 Pa.C.S. § 7702. The Act 68 amendments were not incorporated in § 135.50. The Commission is proposing to amend § 135.50 to eliminate references to 75 Pa.C.S. § 7702(3), which no longer exists, and replace them with a generic exclusory reference. This proposed rulemaking is nonsubstantive and is not intended to further expand or further limit the types of off-road vehicles that may be operated on State Game Lands under applicable allowances.

Section 721(a) of the code (relating to control of property) provides "The administration of all lands and waters owned, leased or otherwise controlled by the commission shall be under the sole control of the director, and the commission shall promulgate regulations . . . for its use and protection as necessary to properly manage these lands or waters." The amendments to § 135.50 are proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will amend § 135.50 by deleting references to 75 Pa.C.S. § 7702(3), which no longer exists, and replacing them with a generic exclusory reference.

3. *Persons Affected*

Persons wishing to exercise limited authorized operation of all-terrain vehicles on State Game Lands within this Commonwealth will be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

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

5. *Effective Date*

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

6. *Contact Person*

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

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** 48-337. No fiscal impact; (8) recommends adoption.

**Annex A****TITLE 58. RECREATION****PART III. GAME COMMISSION****CHAPTER 135. LANDS AND BUILDINGS****Subchapter C. STATE GAME LANDS****§ 135.50. Definitions.**

The following words and terms, when used in this section and §§ 135.49 and 135.51—135.55, have the following meanings, unless the context clearly indicates otherwise:

*ATV—All-terrain vehicle—*

(i) A Class I ATV as defined in 75 Pa.C.S. § 7702(1) [ and (3) ] (relating to definitions), or a motorized off-highway vehicle 58 inches or less in width, having a dry weight of 900 pounds or less traveling on four or more low-pressure tires and having a bench seat[ , which complies with restrictions in 75 Pa.C.S. § 7702(3) ].

(ii) The term does not include a motorized off-highway vehicle excluded from the definition of the term "all-terrain vehicle or ATV" under 75 Pa.C.S. § 7702.

\* \* \* \* \*

[Pa.B. Doc. No. 12-400. Filed for public inspection March 9, 2012, 9:00 a.m.]

## [ 58 PA. CODE CH. 139 ]

**Seasons and Bag Limits**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its January 24, 2012, meeting to amend § 139.4 (relating to seasons and bag limits for the license year) to provide updated seasons and bag limits for the 2012-2013 hunting license year.

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

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

The proposed rulemaking was made public at the January 24, 2012, meeting of the Commission. Comments can be sent until April 20, 2012, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

The Commission is required to set hunting and furtaking seasons and bag limits on an annual basis. Although the 2012-2013 seasons and daily season and possession limits are similar to those set in 2011-2012, the 2012-2013 seasons and bag limits have been amended to reflect 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 this Commonwealth.

Two changes are proposed for small game seasons. First, it is proposed to open wildlife management unit (WMU) 2B to the hunting of pheasant cocks and hens. The Pike Run Wild Pheasant Recovery Area study in southwestern Pennsylvania has concluded. Habitat patch analysis shows that Pike Run meets only one of five targets in the pheasant habitat model. Pheasant densities are at one hen per square mile, far short of the ten hens per square mile objective. In light of the area's habitat characteristics and low pheasant densities, and in keeping with the pheasant management plan, this area of this Commonwealth is to be opened to either sex pheasant hunting and stocking of game farm pheasants is to be reinstated beginning with the 2012-13 season. The second proposed change concerns reducing the porcupine daily bag to three and establishing a season limit of ten per hunter. This proposal is based on a growing concern for commercial exploitation of this species.

In WMUs 1A, 1B and 2A, the Commission proposed to remove the sporting arm limitations for the fall turkey season, which presently requires the use of shotguns, bows and arrows only.

An expansion of bear harvest opportunity is also proposed. The taking of black bear by properly licensed hunters during all deer seasons from September through mid-December in WMUs 1A, 2B, 5B, 5C and 5D will be allowed. The black bear population in this Commonwealth is larger and more widely distributed than ever and bear-human incidents are becoming commonplace, especially in more developed areas. Continued expansion of residential development into areas occupied by black bears has resulted in more frequent sightings and encounters between people and bears. In these five WMUs with relatively high human population densities there currently are low bear densities, the Commission wants to continue to have a minimum number of bears and the Commission wants hunters to have an opportunity to play an important role in bear population management in these areas.

Changes to beaver trapping regulations follow the recently implemented beaver management plan. Changes are proposed for WMUs 3A, 3D and 5D. Based on annual beaver harvest and nuisance complaint densities, WMUs fall into three categories of harvest and damage frequency characteristics. WMUs with high harvest rates (less than 50 beavers per 100 square miles) and high nuisance complaint rates (less than 1.5 complaints per 100 square miles) should have a combined bag limit of 40 beavers per season. WMUs with low harvest rates (less than ten beavers per 100 square miles) and low nuisance complaint rates (less than 0.60 complaint per 100 square miles) should have a combined bag limit of five beavers per season. WMUs that fall between the low and high harvest/complaint categories should have a combined bag limit of 20 beavers per season. WMUs 3A and 3D fall between the low and high harvest/complaint categories therefore it is proposed to reduce the season bag limit to

20 beavers in these WMUs. However, the nuisance complaint density in WMU 5D is currently the fourth highest in this Commonwealth. To help alleviate beaver damage complaints in WMU 5D, it is proposed to increase the beaver bag limit to 20. These bag limit changes will be monitored as to how they influence population numbers and nuisance complaint levels.

The addition of WMU 4C in the 2012-2013 bobcat hunting and trapping seasons has been proposed. This proposal is based on expanding population numbers and a trend of increased incidental captures of bobcats in WMU 4C. The addition of two WMUs, 2G and 4D, for fisher harvesting has been proposed. This is based on expanding fisher populations and increased numbers of incidental captures in these WMUs. As the next license year is fast approaching, the Commission is proposing to amend § 139.4 to provide updated seasons and bag limits for the 2012-2013 license year.

Section 322(c)(1) of the code (relating to powers and duties of 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 (relating to regulations) authorizes the Commission to "promulgate regulations relating to seasons and bag limits for hunting or furtaking . . ." The amendments to § 139.4 are proposed under this authority.

## 2. Regulatory Requirements

The proposed rulemaking will amend § 139.4 by establishing when and where it is lawful to hunt and trap various game species and also place limits on the numbers that can be legally taken during the 2012-2013 license year.

## 3. Persons Affected

Persons wishing to hunt or trap game or wildlife in this Commonwealth during the 2012-2013 license year may be affected by the proposed rulemaking.

## 4. Cost and Paperwork Requirements

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

## 5. Effective Date

The effective dates of the proposed rulemaking are July 1, 2012, to June 30, 2013.

## 6. Contact Person

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

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** 48-332. No fiscal impact; (8) recommends adoption.

*Editor's Note:* As part of this proposed rulemaking, the Commission is replacing the table which appears in 58 Pa. Code pages 139-3—139-14.1, serial pages (356985)—(356997) with the following table.)

## 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)

## 2012-2013 OPEN HUNTING AND FURTAKING SEASONS, DAILY LIMIT, FIELD POSSESSION LIMIT AND SEASON LIMIT OPEN SEASON INCLUDES FIRST AND LAST DATES LISTED

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Squirrel—(Combined species) Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law	Oct. 6	Oct. 12	6	12
Squirrel—(Combined species)	Oct. 13	Nov. 24	6	12
	Dec. 10	and Dec. 24		
	Dec. 26	and Feb. 23, 2013		
Ruffed Grouse	Oct. 13	Nov. 24	2	4
	Dec. 10	and Dec. 24		
	Dec. 26	and Jan. 26, 2013		
Rabbit, Cottontail— Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law	Oct. 6	Oct. 13	4	8
Rabbit, Cottontail	Oct. 20	Nov. 24	4	8
	Dec. 10	and Dec. 24		
	Dec. 26	and Feb. 23, 2013		
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 2C, 4C, 4E, 5A and 5B Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law	Oct. 6	Oct. 13	2	4
Ring-necked Pheasant—Male or female combined in WMUs 1A, 1B, 2B, 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. 6	Oct. 13	2	4
Ring-necked Pheasant—Male only in WMUs 2A, 2C, 4C, 4E, 5A and 5B	Oct. 20	Nov. 24	2	4
Ring-necked Pheasant—Male or female combined in WMUs 1A, 1B, 2B, 2D, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A, 4B, 4D, 5C and 5D	Oct. 20	Nov. 24	2	4
	Dec. 10	and Dec. 24		
	Dec. 26	and Feb. 2, 2013		
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. 20	Nov. 24	4	8

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Hare (Snowshoe Rabbit) or Varying Hare	Dec. 26	Jan. 1, 2013	1	2
Woodchuck (Groundhog)	No closed season except during the regular firearms deer seasons.		Unlimited	
<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Porcupine	Sep. 1	Mar. 31, 2013	3	10
Season closed during the overlap with the regular firearms deer seasons.				
WILD TURKEY				
Turkey—Male or Female			1	1
WMU 2B (Shotgun, Bow and Arrow only)	Oct. 27	Nov. 16		
	Nov. 22	Nov. 24		
and				
WMUs 1A, 1B, 2A, 2C, 2D, 2E, 4A, 4B and 4D	Oct. 27	Nov. 10		
	Nov. 22	Nov. 24		
and				
WMUs 2F, 2G, 3A, 3B, 3C, 3D, 4C and 4E	Oct. 27	Nov. 16		
	Nov. 22	Nov. 24		
and				
WMU 5A	Oct. 30	Nov. 1		
WMUs 5B, 5C and 5D	Closed to fall turkey hunting			
Turkey (Spring Gobbler) Statewide <sup>1</sup> Bearded Bird only			1	2
	Apr. 27, 2013	May 11, 2013	May be hunted 1/2 hour before sunrise to 12 noon	
	and			
	May 13, 2013	May 31, 2013	May be hunted 1/2 hour before sunrise to 1/2 hour after sunset	
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 20, 2013	April 20, 2013	1	1

**MIGRATORY GAME BIRD**

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.

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Crow (Hunting permitted on Friday, Saturday and Sunday only)	July 1	April 7, 2013	Unlimited	
Starling and English Sparrow	No closed season except during the regular firearms deer season.		Unlimited	

## FALCONRY

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Squirrel—(Combined species)	Sept. 1	Mar. 31, 2013	6	12
Quail	Sept. 1	Mar. 31, 2013	4	8
Ruffed Grouse	Sept. 1	Mar. 31, 2013	2	4
Cottontail Rabbit	Sept. 1	Mar. 31, 2013	4	8
Snowshoe or Varying Hare	Sept. 1	Mar. 31, 2013	1	2
Ring-necked Pheasant—Male and Female—(Combined)	Sept. 1	Mar. 31, 2013	2	4

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

## WHITE-TAILED DEER

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Season Limit</i>
Deer, Archery (Antlered and Antlerless) <sup>2</sup> (Statewide)	Sept. 29	Nov. 10	One antlered and an antlerless deer with each required antlerless license.
	Dec. 26	Jan. 12, 2013	
Deer, Archery (Antlerless only) WMUs 2B, 5C and 5D	Sept. 15	Sept. 28	An antlerless deer with each required antlerless license.
	Nov. 12	Nov. 24	
Deer, Archery (Antlered and Antlerless) <sup>2</sup> WMUs 2B, 5C and 5D	Jan. 14, 2013	Jan. 26, 2013	One antlered, and an antlerless deer with each required antlerless license.
Deer, Regular firearms (Antlered and Antlerless) <sup>2</sup> WMUs 1A, 1B, 2B, 3A, 3D, 4A, 4C, 5A, 5B, 5C and 5D	Nov. 26	Dec. 8	One antlered, and an antlerless deer with each required antlerless license.
Deer, Regular firearms (Antlered only) <sup>2</sup> WMUs 2A, 2C, 2D, 2E, 2F, 2G, 3B, 3C, 4B, 4D and 4E	Nov. 26	Nov. 30	One antlered deer.
Deer, Regular firearms (Antlered and Antlerless) <sup>2</sup> WMUs 2A, 2C, 2D, 2E, 2F, 2G, 3B, 3C, 4B, 4D and 4E	Dec. 1	Dec. 8	One antlered, and an antlerless deer with each required antlerless license.
Deer, Special firearms (Antlerless only) (Statewide) Only Junior and Senior License Holders, <sup>3</sup> Commission Disabled Person Permit Holders (to use a vehicle as a blind), and Residents serving on active duty in the United States Armed Forces, or in the United States Coast Guard, with required antlerless license	Oct. 18	Oct. 20	An antlerless deer with each required antlerless license.
Deer, Muzzleloading (Antlerless only) (Statewide)	Oct. 13	Oct. 20	An antlerless deer with each required antlerless license.
Deer, Flintlock (Antlered or Antlerless) <sup>2</sup> (Statewide)	Dec. 26	Jan. 12, 2013	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. 26, 2013	An antlerless deer with each required antlerless license.

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Season Limit</i>
Deer, Extended Regular firearms (Antlerless) WMUs 2B, 5C and 5D	Dec. 26	Jan. 26, 2013	An antlerless deer 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**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Bear, Archery <sup>4</sup> WMUs 2B, 5C and 5D	Sep. 15	Sep. 28	1	1
Bear, Archery <sup>4</sup> WMUs 1A, 2B, 5B, 5C and 5D	Sep. 29	Nov. 10	1	1
Bear, Archery <sup>4</sup> Statewide	Nov. 12	Nov. 16	1	1
Bear, Muzzleloading <sup>4</sup> WMUs 1A, 2B, 5B, 5C and 5D	Oct. 13	Oct. 20	1	1
Bear, Regular firearms <sup>4</sup> Statewide	Nov. 17	Nov. 21	1	1
Bear, Extended firearms <sup>4</sup> WMUs 3A, 3C, and	Nov. 26	Dec. 1	1	1
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.				
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 Swissdale), 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, Extended firearms <sup>4</sup> WMUs 1A, 2B, 5B, 5C and 5D	Nov. 26	Dec. 8	1	1
Bear, Extended firearms <sup>4</sup> WMUs 3D, 4C, 4D and 4E	Nov. 28	Dec. 1	1	1

**ELK**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Elk, Regular firearms <sup>5</sup> (Antlered and Antlerless)	Nov. 5	Nov. 10	1	One elk with required license
Elk, Special Conservation <sup>5</sup> (Antlered and Antlerless)	Sep. 1	Nov. 10	1	One elk with required license
Elk, Extended firearms <sup>5</sup> (Antlered and Antlerless)	Nov. 12	Nov. 17	1	One elk with required license

**FURTAKING—TRAPPING**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Mink and Muskrat (Statewide)	Nov. 17	Jan. 6, 2013	Unlimited	
Beaver (Statewide)	Dec. 26	Mar. 31, 2013		
WMUs 1A, 1B and 3C (Combined)			20	40

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
WMUs 2A, 2B, 2D, 2E, 2F, 3A, 3B, 3D and 5D (Combined)			20	20
WMUs 2C, 2G, 4A, 4B, 4C, 4D, 4E, 5A, 5B and 5C (Combined)			5	5
Coyote, Fox, Opossum, Raccoon, Skunk, Weasel—(Statewide)	Oct. 21	Feb. 17, 2013	Unlimited	
Coyote and Fox—(Statewide) (Cable restraint devices may be used)	Dec. 26	Feb. 17, 2013	Unlimited	
Bobcat (with appropriate permit) WMUs 2A, 2C, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A, 4C, 4D and 4E	Dec. 15	Jan. 6, 2013	1	1
Fisher (with appropriate permit) WMUs 2C, 2D, 2E, 2F, 2G and 4D	Dec. 15	Dec. 20	1	1

**FURTAKING—HUNTING**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Coyote—(Statewide)			Unlimited	
Coyote—(During any big game season)				
Opossum, Skunk, Weasel (Statewide)				
Raccoon and Fox—(Statewide)	Oct. 20	Feb. 16, 2013	Unlimited	
Bobcat (with appropriate permit) WMUs 2A, 2C, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A, 4C, 4D and 4E	Jan. 15, 2013	Feb. 5, 2013	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> 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>4</sup> Only one bear may be taken during the hunting license year.

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

[Pa.B. Doc. No. 12-401. Filed for public inspection March 9, 2012, 9:00 a.m.]

### [ 58 PA. CODE CH. 147 ]

#### Special Permits; Mentored Youth Hunting Program Permit

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its January 24, 2012, meeting to amend § 147.804 (relating to general) to allow a mentor to transfer a valid fall turkey license issued to him to an eligible mentored youth upon the harvest of a fall turkey.

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

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

The proposed rulemaking was made public at the January 24, 2012, meeting of the Commission. Comments can be sent, until April 20, 2012, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

#### 1. Purpose and Authority

The National Wild Turkey Federation and others have continued to express an interest in having the Commission expand mentored youth turkey hunting opportunities to include fall turkeys. Commission staff has expressed conditional support as long as fall turkey harvest would not increase. With the advent of mentored youth license exemption language in the code, the Board has the ability to amend its regulations to allow for the transfer of a

mentor fall turkey tag by amending § 147.804(c) and adding § 147.804(h). This proposed rulemaking will not significantly increase the fall harvest or negatively impact the ongoing fall hen harvest rate and survival study and is consistent with the goal of providing additional mentored youth hunting opportunity as identified in the Wild Turkey Management Plan for this Commonwealth. The Commission is proposing to amend § 147.804 to allow a mentor to transfer a valid fall turkey license issued to him to an eligible mentored youth upon the harvest of a fall turkey.

Section 2711(a.1) of the code (relating to unlawful acts concerning licenses) states that “For the sole purpose of implementing and enhancing a mentored youth hunting program within this Commonwealth, the commission may establish regulations exempting certain limited youth hunting activities from the prohibitions specified in subsection (a)(1), (3), (5) and (8).” 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 § 147.804 are proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will amend § 147.804 by allowing a mentor to transfer a valid fall turkey license issued to him to an eligible mentored youth upon the harvest of a fall turkey.

3. *Persons Affected*

Persons wishing to hunt wild turkey within this Commonwealth under the mentored youth hunting program will be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

The proposed rulemaking may result in some additional cost and paperwork associated with the affects transferring tags will have on the Pennsylvania Automated License System. However, the Commission has determined that if there is an additional expense associated

with this effort, it will not be substantial and will be absorbed by the current budget.

5. *Effective Date*

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

6. *Contact Person*

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

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** 48-336. No fiscal impact; (8) recommends adoption.

**Annex A**  
**TITLE 58. RECREATION**  
**PART III. GAME COMMISSION**  
**CHAPTER 147. SPECIAL PERMITS**  
**Subchapter X. MENTORED YOUTH HUNTING**  
**PROGRAM PERMIT**

§ 147.804. **General.**

\* \* \* \* \*

(c) A mentored youth’s hunting eligibility is restricted to the following species: squirrel, woodchuck, coyote, deer and wild turkey[ , **spring gobbler season only** ].

\* \* \* \* \*

**(h) Notwithstanding the prohibitions in section 2711(a)(3) and (5) of the act, mentors are authorized to transfer fall turkey tags issued to them to eligible mentored youth. The fall turkey tag shall be valid and in the possession of the mentor at all times while hunting fall turkey. The transfer of the fall turkey tag may not occur until after the mentored youth has harvested the fall turkey, but before tagging the carcass. A mentored youth may not receive by transfer more than one fall turkey tag each license year.**

[Pa.B. Doc. No. 12-402. Filed for public inspection March 9, 2012, 9:00 a.m.]