

# PROPOSED RULEMAKING

## DEPARTMENT OF STATE

[ 4 PA. CODE CHS. 161, 163 AND 167 ]

### Regulations Implementing the Revised Uniform Law on Notarial Acts

The Department of State (Department) proposes to amend §§ 161.1 and 163.1 (relating to schedule of fees; and applicability of general rules), add § 161.2 (relating to notary public fee schedule), rescind § 165.1 (relating to lesser offenses incompatible with the duties of a notary public—statement of policy) and add Chapter 167 (relating to notaries public) to read as set forth in Annex A. This proposed rulemaking implements 57 Pa.C.S. Chapter 3 (relating to Revised Uniform Law on Notarial Acts) (act).

#### *Statutory Authority*

Proposed § 161.2 and Chapter 167 are authorized under section 327(a) of the act (relating to regulations), which authorizes the Department to promulgate regulations to implement the act, and section 329.1(a) of the act (relating to fees of notaries public), which states that the fees of notaries public shall be fixed by the Department by regulation. The amendments to §§ 161.1 and 163.1 are authorized under section 506 of The Administrative Code of 1929 (71 P.S. § 186), which states that the heads of administrative departments are empowered to prescribe rules and regulations, not inconsistent with law, for the government of their respective departments, the conduct of their employees and clerks, the distribution and performance of their business, and the custody, use and preservation of the records, books, documents, and property pertaining thereto. Furthermore, section 802(b) of The Administrative Code of 1929 (71 P.S. § 272(b)) grants the Department the power and the duty “to furnish to any person, upon request and the payment of such charges as may be required and fixed by law, certificates of matters of public record in the department, or certified copies of public papers or documents on file therein.” Concurrently, the Department is authorized under section 3 of The Administrative Code of 1929 (71 P.S. § 282) to adopt rules and regulations pertaining to its powers and duties under The Administrative Code of 1929.

#### *Effective Date*

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

#### *Background and Need for Amendments*

The act of October 9, 2013 (P.L. 609, No. 73) (Act 73) adopted the act which, when it became fully effective on October 26, 2017, completely replaced the former Notary Public Law and Uniform Acknowledgment Act with modern language and best practices.

Under section 5 of Act 73, immediately effective on October 9, 2013, was the Department’s authority to promulgate regulations to implement the act, the Department’s authority to approve basic and continuing notary education courses, and the Department’s authority to fix the fees of notaries public by regulation. The Department also needed to have an examination in place for first-time applicants and those applicants with expired commissions, as required under the act. A contract for development, administration and maintenance of the exam was awarded in June 2016, with a requirement that the

notary public examination be available in summer 2017. The Department issued a call for new notary education courses on September 13, 2016, and began the process of reviewing and approving notary education which is act-compliant. The Department published notice at 47 Pa.B. 2518 (April 29, 2017) that it had approved notary education courses and that the remainder of the act would take effect on October 26, 2017, 180 days after publication of the notice.

At the same time, the Department deemed it necessary to adopt comprehensive regulations to implement the act. Under Executive Order 1996-1, the Department sought comments and suggestions on a draft rulemaking released for public comment on December 16, 2014. Written comments were received from 21 commentators. The Department reviewed those comments and made revisions to the draft rulemaking.

#### *Description of Proposed Amendments*

##### *Overview*

The Department’s Bureau of Commissions, Elections and Legislation (Bureau) is responsible for the appointing and commissioning of notaries public. This proposed rulemaking amends existing regulations regarding Bureau and notary fees. Proposed Chapter 167 includes ten subchapters pertaining to notary public qualifications, practice and procedure, and discipline complement, and further clarifies the requirements of the act. There are approximately 86,000 commissioned notaries in this Commonwealth who will be affected by the act and this proposed rulemaking. This proposed rulemaking parallels the statute—they do not broaden the scope of the act, instead reflect current practices and mandate currently-optional best practices. When appropriate, the Department incorporated into this proposed rulemaking the details and explanations provided by the Uniform Law Commission’s comments to the act text, dated November 15, 2010. This proposed rulemaking serves to preserve the uniformity of the Revised Uniform Law on Notarial Acts (and its predecessor the Uniform Law on Notarial Acts) as enacted by 19 states to date.

##### *Fees*

The Department is proposing to amend the existing regulation on schedule of fees regarding commissions. The authority for proposing to amend Chapter 161 (relating to fees) is varied and is explained under Statutory Authority.

The proposed amendments to Chapter 161 delete Bureau bond fees which are no longer collected under 16 Pa.C.S. §§ 1121—1133 (relating to County Officer and Employee Fiscal Security Act), but were previously authorized by section 809 of The Administrative Code of 1929 (71 P.S. § 279). Section 809 of The Administrative Code of 1929 requires the Department to file bonds of county officers in addition to issuing commissions to those county elected officials. Section 1131(b)(3) of 16 Pa.C.S. (relating to custody and filing of required security documents) mandates that, after filing a copy of the recorded fiscal security documents with the Department, no tax, fee or other charge shall be imposed as a result of the issuance of the commissions to elected county officials. Since the enactment of 16 Pa.C.S. §§ 1121—1133, the Department has not charged the enumerated fees for the issuance of commissions specified under § 161.1 and is proposing to delete these fees, as part of the overhaul of Subpart C (relating to commissions and notaries public).

The proposed amendments to Chapter 161 also codify existing Bureau policies for duplicate commissions, blank bonds, copying and authentication of documents or matters of public record. New fees are proposed for lists of notaries public, data requests and preapproval of notary public education courses. List and data requests are frequently made by companies seeking to contact notaries for commercial purposes. The generation of these lists involves Bureau and information technology staff time to generate. The fee for preapproval of notary public courses is based on the estimated Bureau and legal staff time to review and approve the 3-hour education courses.

The fees that may be charged by notaries public are fixed by the Department and in proposed § 161.2. A fee for “witnessing or attesting a signature” (a new notarial act per the act) is proposed, while “taking depositions, per page” is proposed to be deleted. The act does not contain “taking depositions” as a distinct notarial act, but it does include “certifying or attesting a copy or deposition” as a notarial act. As notarial officers authorized to administer oaths or affirmation, notaries public may continue to take depositions and charge for administering the oath and latter certifying or attesting the deposition. Nothing in these regulations or the act precludes a notary from charging for his services in taking depositions.

The remaining existing maximum permissible fees which may be charged by notaries public are included in proposed § 161.2. Three commentators, all companies or associations representing approximately 40,300 notaries, requested that notary fees be doubled from \$5 to \$10. The Department declines to raise the fees that notaries may charge at this time. The Department acknowledges that notary fees were set at \$2 in 1984 and were last raised to \$5 on May 28, 2005. The Department also acknowledges that the act will impose additional costs on some notaries—an examination cost for first-time notary applicants and continuing education costs for those notaries who were “grandfathered in” by the Pennsylvania Supreme Court ruling in *Tritt v. Cortés*, 578 Pa. 317 (2004) and not obligated to comply with the education requirement imposed by 2002 amendments to the former Notary Public Law. Notary operating expenses, such as the option for professional liability insurance (errors and omissions), have also increased over the past 10 years.

Clearly, notaries perform valuable services preventing fraud and forgery and providing confidence that a signature is authentic and was made voluntarily. However, the Consumer Price Index does not justify a doubling of fees at this time. Raising notary fees to \$10 would make notary fees in this Commonwealth higher than those of surrounding states. According to the National Association of Secretaries of State as of April 2016, the states surrounding this Commonwealth (Delaware, Maryland, New Jersey, New York, Ohio, West Virginia and Washington, DC) cap fees at levels between \$2 and \$5 per notarial act for most transactions. Eight states (California, Colorado, Florida, Michigan, New Hampshire, Oregon, South Dakota and Washington) permit fees up to \$10 for at least some notarial acts. Six states (Alaska, Iowa, Kansas, Louisiana, Massachusetts and Tennessee) do not have a specific cap on permissible fees. Other states specify various caps ranging from 50¢ to \$10. Finally, while there are organized notary associations coordinating the request to raise fees, there is not an organized group representing the users of notary services to request lower or unchanged fees.

Lastly, proposed § 161.2 also codifies several long-standing but unwritten policies as to receipts and display of fees by notaries public.

### § 163.1. *Applicability of general rules*

The name of Bureau is proposed to be corrected to make it clear that the provisions of the general rules of administrative practice and procedure apply to the activities of the Department pertaining to commissions and notaries public.

### *Chapter 165. Notaries public*

#### § 165.1. *Lesser offenses incompatible with the duties of a notary public—statement of policy*

The statement of policy in § 165.1 is proposed to be rescinded. The text is included in proposed § 167.111 (relating to offenses involving fraud, dishonesty or deceit).

#### *Subchapter A. General provisions*

The scope of Chapter 167 is stated in § 167.1 (relating to scope) and terms used in Chapter 167 are defined in § 167.2 (relating to definitions). The definition of “address” is specified to include street and number because a post office box is not a sufficient address for Department records.

#### *Subchapter B. Qualifications for appointment and commission*

This proposed subchapter clarifies the eligibility for appointment and commission as a notary public stated in section 321 of the act (relating to appointment and commission as notary public; qualifications; no immunity or benefit) in proposed §§ 167.11–167.13 (relating to eligibility for appointment and commission—applicants not residing in this Commonwealth; eligibility for appointment and commission—applicants holding state and Federal office; and eligibility for appointment and commission—deemed resignation). The existing procedures for appointment and commission remain the same under the act, with the addition of the examination, and are in proposed §§ 167.14–167.18. Proposed § 167.15 (relating to notary public examination) sets forth details on the examination required under section 322(a) of the act (relating to examination, basic education and continuing education) for first-time applicants and those notaries who previously held a commission but whose commission has since expired. This section establishes the rules for passing scores and retaking the examination, which will be administered by the Department’s examination vendor PearsonVUE. Computer-based testing will be available widely throughout this Commonwealth. PearsonVUE has made available 80 testing sites across this Commonwealth in 44 counties.

#### *Subchapter C. Official stamp, stamping device and embosser*

Proposed § 167.21 (relating to official stamp) sets forth the requirements for the appearance of the former notary seal, now known as the official stamp under the act. The section adds the notary commission identification number to the stamp, which will enable the public to distinguish between notaries when there is a common name and large county (for example, John Smith, Philadelphia County). This section also sets forth a visual example of the required stamp and a transitional provision permitting a notary public who holds a current commission to continue to use the notary’s existing seal until the expiration of the notary’s current commission.

Proposed § 167.22 (relating to stamping device) sets forth the requirements for use, security and reporting of loss of the stamping device used to make the official stamp. Existing policy on embossers is continued in proposed § 167.23 (relating to embosser).

*Subchapter D. Journal*

Sections 167.31—167.36 implement the requirements in section 319 of the act (relating to journal) for the notary journal (formerly called a register). Proposed § 167.31 (relating to identification of notary public in journal) requires the attribution of the notary in each journal. Proposed § 167.32 (relating to journal entries) clarifies section 319(c) of the act. The definition of “personal financial or identification information” is modeled after the definition of “personal information” in section 2 of the Breach of Personal Information Notification Act (73 P.S. § 2302). Proposed § 167.32 also sets forth a transitional provision permitting a notary public who holds a current commission to continue to use the notary’s existing or current journal until the expiration of the notary’s current commission.

Proposed §§ 167.33 and 167.34 (relating to form and content of journal maintained on a tangible medium; and form and content of an electronic notarial journal) specify the form and content of journals maintained on a tangible medium (typically paper) or electronically, respectively. Proposed § 167.35 (relating to custody and control of journal; notification of lost or stolen journal) details the process a notary shall follow in reporting the loss or theft of a journal. Proposed § 167.36 (relating to inspection and certified copies of journal; response to subpoenas and investigative requests) codifies existing policy as to requests for a copy of a notary’s journal.

*Subchapter E. Standards of practice*

This proposed subchapter sets forth the standards of practice for notaries public, most of which have been the best practices recommended by the Department for years. Proposed § 167.41 (relating to name of notary public) details the format of the name under which a notary public may be commissioned. Name change and other notification procedures are also the same and included in proposed §§ 167.42 and 167.43 (relating to notification of change in information; and change of name). Proposed § 167.44 (relating to authority of notary public to perform notarial act) states the authority of the notary to perform acts only inside this Commonwealth, unless authorized by another jurisdiction to perform notarial act. Proposed § 167.45 (relating to conflict of interest) further explains the prohibition in section 304(b) of the act (relating to authority to perform notarial act) that a notary public may not perform a notarial act with respect to a record in which the notary public or the notary’s spouse has a direct or pecuniary interest. Proposed § 167.46 (relating to duty of candor) codifies a duty of candor to the Department.

Proposed § 167.47 (relating to personal appearance) clarifies that personal appearance before the notary public, as required under section 306 of the act (relating to personal appearance required), requires physical presence before the notary public and does not include what is often referred to as “remote notarization” or “distance notarization.” Proposed §§ 167.48 and 167.49 (relating to identification of individual appearing before notary public—personal knowledge; and identification of individual appearing before notary public—satisfactory evidence) address the concepts of “personal knowledge” and “satisfactory evidence.” Both are terms from former law, but section 307(b) of the act (relating to identification of individual) applies a more stringent standard as to the documents that may be used by a notary for “satisfactory evidence” of identity of an individual appearing before a notary. The proposed regulations describe what specific documentation may be used.

Proposed § 167.50 (relating to language and use of interpreter) describes the permissible use of an interpreter and dealing with documents in other languages. Proposed § 167.51 (relating to refusal to perform notarial acts) clarifies the general authority to refuse to perform notarial acts provided in section 308(b) of the act (relating to authority to refuse to perform notarial act) to make clear that notaries may not refuse to perform notarial acts on a discriminatory basis. Proposed § 167.52 (relating to notarizing documents which contain blank spaces) continues the best practice prohibition on notarizing documents which contain blank spaces. Proposed § 167.53 (relating to employer-employee relationship) clarifies the employer-employee relationship contemplated in sections 319(h) and 329.1(d) of the act in relation to a notary commission and notary services provided in the context of an employment relationship.

*Subchapter F. Notarial acts*

This proposed subchapter details the requirements for performing each of the six notarial acts defined by the act (acknowledgements, oaths and affirmations, verifications on oath or affirmation, witnessing or attestation of signatures, certified or attested copies and depositions, and protests of negotiable instruments). Proposed § 167.65 (relating to certified or attested copies and depositions) is based on the Uniform Law Commission’s comments in the act regarding certified copies. It also states the Department’s policy on issuing authentications, which is to prefer to certify copies of documents officially certified by the custodian of the archive when available, as these certifications are official evidence of the state of the public archive or collection, and they may be better evidence of the original record than a copy certified by a notary public. Proposed § 167.66 (relating to protests of negotiable instruments) is based on 13 Pa.C.S § 3505(b) (relating to evidence of dishonor).

*Subchapter G. Notarial certificates*

While section 316 of the act (relating to short form certificates) sets forth the language for short form certificates, proposed § 167.71 (relating to certificate of notarial act) further clarifies rules pertaining to certificates.

*Subchapter H. Use of electronic notarization*

Proposed §§ 167.81 and 167.82 (relating to notification regarding use of electronic notarization; and electronic notarization requirements) retain the current process for obtaining authorization as an “electronic notary” or “e-notary” prior to performing notarial acts with respect to electronic records.

*Subchapter I. Notary public education*

This proposed subchapter sets forth the procedures the Department will use in the approving notary education courses of study required under section 322(b) and (c) of the act for notaries. This is essentially a codification of the approval process used under former law. All education providers shall obtain approval, evidenced by a certificate of approval, from the Department for each course offered prior to offering the class to notaries public. This subchapter also provides for providers to issue certificates of education to attendees and to maintain a list of attendees for 5 years. This subchapter also includes provisions governing situations in which a course is cancelled or delayed, a provider’s certificate of approval is terminated, or a provider cancels its certificate of approval.

*Subchapter J. Prohibited acts and sanctions*

Proposed § 167.111 and proposed § 167.112 (relating to rebuttable presumption against appointment) clarify



which crimes or offenses are considered to involve fraud, dishonesty or deceit under section 323 of the act (relating to sanctions). This construct is patterned after the statement of policy in § 165.1. An individual who has been convicted of, pled guilty or nolo contendere, has been found not guilty due to insanity, found guilty but mentally ill or accepted Accelerated Rehabilitative Disposition for any felony offense or any misdemeanor offense involving fraud, dishonesty or deceit may rebut the presumption of ineligibility for appointment by providing evidence of rehabilitation. Evidence could include references, participation in civic, charitable and religious organizations, and the absence of further convictions.

Proposed § 167.113 (relating to reporting of crimes, disciplinary action and other matters) requires that notaries who are convicted of crimes, disciplined by another notary commissioning authority, found guilty of unauthorized practice of law, or have been found guilty or admitted liability in any criminal, civil or administrative proceeding shall notify the Department within 30 days of the conclusion of that event. Because the Department is authorized to discipline notaries for these actions, it is imperative that the Department receive these reports in a timely manner and not only when notaries renew their commissions every 4 years.

Proposed § 167.114 (relating to conduct providing the basis for disciplinary action) specifies actions which may provide the basis for disciplinary action of a notary commission. This list is meant to be provide examples and not to be exhaustive. Proposed § 167.115 (relating to factors considered in disciplinary action) incorporates existing practice as to the factors the Department considers when determining whether to deny an application or take disciplinary action against a notary public. Proposed § 167.116 (relating to unauthorized practice of law) states the factors that the Department will rely upon in a determination that a notary public has engaged in the unauthorized practice of law. Proposed § 167.117 (relating to advertising) sets forth the definition of “prominently” pertaining to advertising as used in section 325(d) of the act (relating to prohibited acts).

#### *Fiscal Impact and Paperwork Requirements*

This proposed rulemaking will have some adverse fiscal impact on the Department and the Bureau. The Bureau will incur additional costs in implementing this proposed rulemaking, largely for enhancements and changes to the notary public database, staff and legal time in writing the regulations and altering all forms, materials and the web site. The Bureau will need to communicate the statutory and regulatory changes to notaries public, other notarial officers and notary education providers. Additionally, due to the statutory changes, the 17 formerly-approved notary education providers are required to overhaul their notary education courses, develop and submit new curricula, each of which must be approved by the Department prior to being offered to notaries. Twelve new act-compliant basic education courses have been approved to date. To comply with the examination required under the act, the Department had to establish a psychometrically sound and legally defensible notary public examination. However, the actual process of appointing and commissioning notaries public changes little under the act.

This proposed rulemaking will have little adverse fiscal impact on the Commonwealth or its political subdivisions. There will not be additional paperwork requirements upon the Commonwealth or the counties, because the actual process of appointing and commissioning notaries public changes little under the act. County recorders of

deeds offices remain instrumental in recording the bond, oath and commission of each notary, while the prothonotary’s office remains the site where each notary registers an official signature.

This proposed rulemaking will have minimal adverse fiscal impact on currently-commissioned notaries public, most of whom already comply with education requirements. Since July 1, 2003, Pennsylvania notaries have been required under law to complete 3 hours of education with each 4-year appointment. Those who had active commissions on July 1, 2003, were subsequently exempted from the education by a court decision. Those notaries who are currently “grandfathered” and excluded from notary education make up about 20%—30% of the current notary population. Since the remainder of the act went into effect on October 26, 2017, all notaries are required to complete 3 hours of notary education every 4 years, at an estimated cost of \$39—\$99 per course. The new examination requirement imposed by the act will predominantly affect the approximately 6,700 persons that are newly commissioned as notaries public each year. The cost of the exam, which is set by PearsonVUE, the professional testing organization under contract with the Department to develop and administer the test, will be \$65. The transitional provisions regarding procurement of the official stamp and the notary journal will not require a currently-commissioned notary to procure a new stamping device or journal until his next commission.

#### *Sunset Date*

The Secretary of the Commonwealth and the Department monitor the regulations of the Bureau on a continuing basis. Therefore, a sunset date has not been assigned.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on August 22, 2018, 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 Senate State Government Committee and the House State Government Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey 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 in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) 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.

#### *Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Martha H. Brown, Assistant Counsel, Department of State, Office of Chief Counsel, 401 North Street, Room 306, Harrisburg, PA 17120 within 60 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16-59 (Revised Uniform Law on Notarial Acts) when submitting comments.

ROBERT TORRES,  
*Acting Secretary*

**Fiscal Note:** 16-59. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART VIII. BUREAU OF COMMISSIONS, ELECTIONS AND LEGISLATION

Subpart C. COMMISSIONS AND NOTARIES PUBLIC

CHAPTER 161. FEES

§ 161.1. Schedule of fees.

[ The Bureau of Commissions fee schedule shall conform with the following table:

<i>Description</i>	<i>Fees (in dollars)</i>
<b>COMMISSIONS</b>	
Commissioner of Deeds	\$25
Notary Public Commission	\$25
Railroad Police or Institutional Police Commission	\$5
Notice of Election of Sheriff (called Sheriff's Writ)	\$5
Treasures Commission	\$5
District Justices	\$3
Register of Wills Bond	\$2
Recorder of Deeds Bond	\$2
<b>CERTIFICATES</b>	
Great Seal Certificate	\$10
Certificate requiring Secretary's Seal	\$7
<b>MISCELLANEOUS</b>	
Writs including Great Seal	\$5
Filing Bond for any Public Office	\$2
Filing Recognizance for any Public Office	\$2
Photocopies	\$1
Department of State may charge equivalent fees for any service not specified.	
<b>NOTARY PUBLIC FEE SCHEDULE</b>	
Executing affidavits (no matter how many signatures)	\$5
Executing acknowledgments	\$5
In executing acknowledgments each additional name	\$2
Executing certificates (per certified copy)	\$5
Administering oaths (per individual taking an oath)	\$5
Taking depositions, per page	\$3
Executing verifications	\$5
Executing protests, per page	\$3 ]

(a) The fees of the Bureau of Commissions, Elections and Legislation (Bureau) relating to commissions and notaries public, including fees for the public acts and transactions of the Secretary of the Commonwealth and the Department of State administered through the Bureau, are as follows:

Description

COMMISSIONS

Duplicate copy of commission ..... \$15

Duplicate copy of blank bond ..... \$3

CERTIFICATES

For certifying copies of any public papers or documents on file with the Bureau, the copy fee (if the Bureau furnished the copy), plus \$15

For certifying matters of public record with the Bureau (including no record), the copy fee (if the Bureau furnished the copy), plus \$15

MISCELLANEOUS

Photocopies (per page) ..... \$1

Master list of notaries public ..... \$50

Master list of notaries public approved to electronically notarize ..... \$50

Other notary public-related lists and data requests ..... \$25

Approval of notary public education course.. \$700

Approval of revised lesson plan or re-approval of notary public education course..... \$200

(b) The Bureau may charge equivalent fees for any service not specified.

(Editor's Note: The following section is proposed to be added and printed in regular type to enhance readability.)

§ 161.2. Notary public fee schedule.

(a) The fees of notaries public as fixed by the Department of State under section 329.1 of the act (relating to fees of notaries public) for the notarial acts authorized under 57 Pa.C.S. Chapter 3 (relating to Revised Uniform Law on Notarial Acts) (act) are:

- Taking acknowledgment..... \$5
Taking acknowledgment (each additional name) .... \$2
Administering oath or affirmation (per individual taking oath or affirmation) ..... \$5
Taking verification on oath or affirmation (no matter how many signatures)..... \$5
Witnessing or attesting a signature (per signature) . \$5
Certifying or attesting a copy or deposition (per certified copy)..... \$5
Noting a protest of a negotiable instrument (per page)..... \$3

(b) A notary public shall provide an itemized receipt for all fees charged by the notary.

(c) A notary public may not charge any fee under subsection (a) for notarizing the supporting affidavit required in an Emergency Absentee Ballot or the affidavit of a person needing assistance to vote an absentee ballot.

(d) A notary public may not charge a fee under subsection (a) when other applicable law dictates that no fee may be charged. For example, see 51 Pa.C.S. § 9101 (relating to acknowledgments and administering oaths without charge).

(e) A notary public shall display or provide fees in accordance with section 329.1(c)(3) of the act. For purposes of display of fees, a place of business is the notary public's business office, residence or any other location where the notary public performs a notarial act.

CHAPTER 163. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

§ 163.1. Applicability of general rules.

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure), are applicable to the activities of and proceedings before the [ Commission Bureau ] Department of State relating to commissions and notaries public.

CHAPTER 165. [ NOTARIES PUBLIC ] (Reserved)

§ 165.1. [ Lesser offenses incompatible with the duties of a notary public—statement of policy. ] (Reserved).

[ (a) The Secretary of the Commonwealth reviews applications for appointment to the office of notary public under section 5 of The Notary Public Law (Act) (57 P.S. § 151). Section 5(b)(1) of the act requires that the applicant may not have been convicted of or pled guilty or nolo contendere to a felony or a lesser offense incompatible with the duties of a notary public during the 5-year period preceding the date of the application.

(b) Misdemeanor crimes involving a lack of honesty or elements of falsehood and fraud (crimen

falsi) are considered incompatible with the duties of a notary public, regardless of the jurisdiction in which crimes were committed.

(c) Under Pennsylvania law, misdemeanors include, but are not limited to, the following:

(1) Forgery and fraudulent practices which includes bad checks, insurance fraud and identity theft. See 18 Pa.C.S. Chapter 41 (relating to forgery and fraudulent practices).

(2) Theft which includes receiving stolen property and retail theft. See 18 Pa.C.S. Chapter 39 (relating to theft and related offenses).

(3) Criminal conspiracy if the underlying crime is incompatible. See 18 Pa.C.S. § 903 (relating to criminal conspiracy).

(4) Bribery. See 18 Pa.C.S. § 4701 (relating to bribery in official and political matters).

(5) Perjury or falsification in official matter which includes false swearing, unsworn falsification to authorities and tampering with evidence. See 18 Pa.C.S. Chapter 49, Subchapter A (relating to perjury and falsification in official matters).

(6) Obstructing governmental operations. See 18 Pa.C.S. Chapter 51, Subchapter A (relating to definition of offenses generally).

(d) The Secretary will consider all similar crimes committed in the courts of the United States or any other state, territory, possession or country to be incompatible with the duties of a notary public. ]

(Editor's Note: The following chapter is proposed to be added and printed in regular type to enhance readability.)

CHAPTER 167. NOTARIES PUBLIC

Subchap. A. GENERAL PROVISIONS
B. QUALIFICATIONS FOR APPOINTMENT AND COMMISSION
C. OFFICIAL STAMP, STAMPING DEVICE AND EMBOSSE
D. JOURNAL
E. STANDARDS OF PRACTICE
F. NOTARIAL ACTS
G. NOTARIAL CERTIFICATES
H. USE OF ELECTRONIC NOTARIZATION
I. NOTARY PUBLIC EDUCATION
J. PROHIBITED ACTS AND SANCTIONS

Subchapter A. GENERAL PROVISIONS

Sec. 167.1. Scope.
167.2. Definitions.

§ 167.1. Scope.

This chapter implements the act. This chapter governs the qualification, commissioning, notarial acts, conduct and discipline of notaries public in this Commonwealth.

§ 167.2. Definitions.

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

Act—57 Pa.C.S. Chapter 3 (relating to Revised Uniform Law on Notarial Acts).

Address—The term includes office and home, and must include street and number.

Applicant—An individual who seeks appointment or reappointment to the office of notary public.



*Appoint or Appointment*—The naming of an individual to the office of notary public after determination that the individual has complied with section 321(a) and (b) of the act (relating to appointment and commission as notary public; qualifications; no immunity or benefit) and Subchapter B (relating to qualifications for appointment and commission).

*Appointee*—An individual who has been appointed or reappointed to the office of notary public but who has not yet recorded the bond, oath of office and commission in compliance with section 321(d.2)(1) or (2) of the act.

*Bureau*—The Bureau of Commissions, Elections and Legislation of the Department or any successor bureau of the Department.

*Department*—The Department of State of the Commonwealth.

*Examination*—The examination described in § 167.15 (relating to notary public examination).

*Reappoint or reappointment*—The naming of an individual who previously held a commission as a notary public to the office of notary public after determination that the individual has complied with section 321(a) and (b) of the act and Subchapter B. The term includes “renewal of appointment.”

*Spouse*—An individual holding a marriage license issued or recognized under 23 Pa.C.S. §§ 1301—1310 (relating to marriage license) who is married to a notary public.

*Tangible*—Perceptible by touch when used in conjunction with “record,” “medium” or “symbol.”

### Subchapter B. QUALIFICATIONS FOR APPOINTMENT AND COMMISSION

Sec.	
167.11.	Eligibility for appointment and commission—applicants not residing in this Commonwealth.
167.12.	Eligibility for appointment and commission—applicants holding state and Federal office.
167.13.	Eligibility for appointment and commission—deemed resignation.
167.14.	Application for appointment.
167.15.	Notary public examination.
167.16.	Appointment and issuance of commission.
167.17.	Appointment if bond, oath and commission not recorded within 45 days.
167.18.	Reappointment.

#### § 167.11. Eligibility for appointment and commission—applicants not residing in this Commonwealth.

(a) If an applicant is not a resident of this Commonwealth, the applicant shall have a place of employment or practice in this Commonwealth.

(b) Employment or practice in this Commonwealth shall be on an ongoing basis.

(c) The Bureau may request that employment or practice in this Commonwealth be evidenced by written confirmation from the employer that a notary public commission is required for employment or practice.

#### § 167.12. Eligibility for appointment and commission—applicants holding state and Federal office.

The disqualifications of section 1 of the act of May 15, 1874 (P.L. 186, No. 120) apply to individuals who are elected or appointed to any office under the legislative, executive or judiciary departments of the United States government. Individuals who are employed by the legislative, executive or judiciary departments of the United

States government, but who are neither elected nor appointed to office, are eligible for appointment and commission as a notary public.

#### § 167.13. Eligibility for appointment and commission—deemed resignation.

If a notary public neither resides nor works in this Commonwealth, that notary public will be deemed to have resigned from the office of notary public as of the date the residency ceases or employment within this Commonwealth terminates. A notary public who resigns that notary public’s commission in accordance with this section shall notify the Department in writing or electronically within 30 calendar days of the effective date of the resignation.

#### § 167.14. Application for appointment.

(a) The first-time applicant shall submit evidence of successful completion of a basic education course with the application for appointment.

(b) The applicant for renewal of appointment shall submit evidence of successful completion of a continuing education course with the application for reappointment.

(c) Applications for appointment shall be typed or legibly written.

(d) The applicant’s signature on the application must match the applicant’s name as provided on the application. The applicant shall use a legible handwritten signature which can be attributed to the applicant by anyone examining or authenticating the signature. If an applicant’s preferred signature is not legible, so that the name on the application cannot be discerned from the signature alone, the applicant shall also legibly print his name immediately adjacent to his preferred signature. For the purposes of this subsection, a signature is legible if the letters are distinct and easily readable and the notary public’s full name may be determined by looking at the signature.

#### § 167.15. Notary public examination.

(a) Under section 322(a) of the act (relating to examination, basic education and continuing education), an applicant for a commission as a notary public who does not hold a current commission in this Commonwealth shall pass an examination as a condition of appointment. An applicant who does not hold a current commission as a notary public includes an applicant who never held a commission as a notary public and an applicant who previously held a commission as a notary public but whose commission has since expired.

(b) The written examination prescribed by the Department to determine the fitness of an applicant to exercise the functions of the office of notary public is a proctored examination administered by the Department or an agent of the Department. The examination will be administered by a professional testing organization under contract with the Department at times, places and costs established by the professional testing organization, but in no case prior to submission of and approval by the Department of an application for appointment.

(c) Examination results will be valid for a period of 1 year from the date of the examination.

(d) An applicant shall attain a scaled score of 75 to pass the examination.

(e) An applicant may retake the examination within a 6-month period as many times as necessary to pass. The

maximum frequency with which the examination may be repeated is one time per 24-hour period.

(f) More information about the examination is available on the Department's web site at [www.dos.pa.gov/Other Services/Notaries](http://www.dos.pa.gov/Other_Services/Notaries).

**§ 167.16. Appointment and issuance of commission.**

(a) Upon determination that an applicant has complied with all requirements of the act and this chapter, the Department will appoint or reappoint the applicant to the office of notary public and issue a commission certificate.

(b) The Department will send the commission certificate to the recorder of deeds of the county where the appointee maintains an office.

(c) The Department will send the appointee notice that:

(1) The commission certificate has been issued and sent to the proper recorder of deeds.

(2) The appointee shall obtain a bond without delay.

(3) The appointee shall appear within 45 calendar days of the date of appointment to take the oath of office before the recorder of deeds in the proper county and record the bond, oath and commission in the office of the recorder of deeds.

(4) The appointee shall register his official signature in the proper county and office within 45 calendar days of the date of appointment in accordance with section 321(d.1) of the act (relating to appointment and commission as notary public; qualifications; no immunity or benefit).

(d) Before taking the oath of office or registering an official signature, an appointee shall present satisfactory evidence of the appointee's identity as set forth in section 307(b) of the act (relating to identification of individual).

(e) After administering the oath of office, the recorder of deeds shall deliver the commission certificate to the notary public.

**§ 167.17. Appointment if bond, oath and commission not recorded within 45 days.**

(a) The commission of a notary public who fails to record the bond, oath and commission or register his official signature within 45 calendar days of appointment will be null and void.

(b) An appointee who fails to record the bond, oath and commission within 45 calendar days of appointment may apply for appointment or reappointment as set forth in subsection (c).

(c) The appointee shall do all of the following:

(1) Submit a new application for appointment or reappointment.

(2) Submit another application fee.

(3) Submit evidence of completion of education in compliance with § 167.14(a) or (b) (relating to application for appointment). The certificate of education must be valid at the time of application.

(4) Comply with § 167.15 (relating to notary public examination). Examination results must be valid at the time of application.

**§ 167.18. Reappointment.**

Applications for reappointment to the office of notary public must be filed at least 60 calendar days prior to the expiration of the commission under which the notary public is acting.

**Subchapter C. OFFICIAL STAMP, STAMPING DEVICE AND EMBOSSE**

- Sec. 167.21. Official stamp.
- 167.22. Stamping device.
- 167.23. Embosser.

**§ 167.21. Official stamp.**

(a) The official stamp of a notary public must show all of the following clearly in the following order:

(1) The words "Commonwealth of Pennsylvania—Notary Seal."

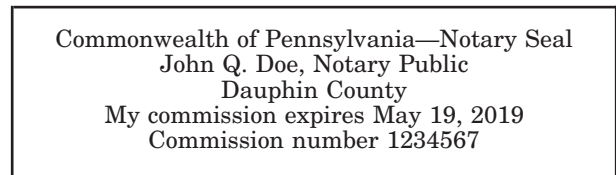
(2) The name as it appears on the commission of the notary public and the words "Notary Public."

(3) The name of the county in which the notary public maintains an office.

(4) The date the notary public's current commission expires.

(5) The seven-digit commission identification number assigned by the Department.

*Example of stamp:*



(b) Words or terms on the official stamp may not be abbreviated, except for name suffixes as specified in § 167.41(d) (relating to name of notary public).

(c) The official stamp must be stamped or affixed to the notarial certificate near the notary public's signature or attached to or logically associated with an electronic record containing the notary public's signature.

(d) A notary public may not place an imprint of the notary public's official stamp over any signature in a record to be notarized or over any writing in a notarial certificate.

(e) A notary public may not alter or deface the official stamp.

(f) A notary public may not use the notary public's official stamp for any purpose other than to perform a notarial act.

(g) A notary public may not permit any other person to use the notary public's official stamp for any purpose.

(h) A notary public may not use any other notary public's official stamp instead of the notary public's own official stamp to perform a notarial act.

(i) A notary public who holds a commission on \_\_\_\_\_ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*), may continue to use his official stamp until the expiration



of that commission, which may occur after \_\_\_\_\_ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.).

**§ 167.22. Stamping device.**

(a) A stamping device, as used in sections 302 and 318 of the act (relating to definitions; and stamping device), does not include a noninking embosser or crimper.

(b) A stamping device must be capable of affixing or logically associating the official stamp so that the record to which the official stamp is affixed or associated may be copied, filmed, scanned or otherwise legibly reproduced.

(c) The stamping device is the exclusive property of the notary public. The notary public shall maintain custody and control of the stamping device at all times during the duration of the notary public's commission. When not in use, the stamping device must be kept in a secure location and accessible only to the notary public. A secure location includes in the notary public's sole possession or in a locked location to which only the notary public has access.

(d) Notification of loss or theft of stamping device under section 318(b) of the act shall be made in writing or electronically to the Department within 10 calendar days after the date the notary public or personal representative or guardian discovers that the stamping device was lost or stolen. The notification must include all of the following:

(1) A statement of whether the stamping device is lost or stolen.

(2) An explanation of how the stamping device became lost or stolen.

(3) The date the notary public discovered that the stamping device was lost or stolen.

(4) A statement that the notary public does not possess the stamping device and does not know who possesses it or where it is located.

(5) A statement that if the notary public subsequently reacquires possession of the stamping device, the notary public shall file a written statement with the Department within 10 calendar days after the date the notary public reacquires possession of the lost or stolen stamping device.

(e) If a notary public subsequently reacquires possession of a lost or stolen stamping device, the notary public shall file with the Department a written statement of explanation of how the stamping device was recovered within 10 calendar days after the date the notary public reacquires possession of the stamping device.

(f) An individual whose notary public commission has been suspended or revoked shall deliver the stamping device to the Department within 10 calendar days after notice of the suspension or revocation from the Department.

**§ 167.23. Embosser.**

(a) A notary public may use an embossed or crimped image in the performance of a notarial act and only in conjunction with the use of an official stamp.

(b) A notary public may not place the embossing or crimping over any signature or printed material in a record to be notarized or over any signature or printed material in a notarial certificate.

**Subchapter D. JOURNAL**

Sec.	
167.31.	Identification of notary public in journal.
167.32.	Journal entries.
167.33.	Form and content of journal maintained on a tangible medium.
167.34.	Form and content of an electronic notarial journal.
167.35.	Custody and control of journal; notification of lost or stolen journal.
167.36.	Inspection and certified copies of journal; response to subpoenas and investigative requests.

**§ 167.31. Identification of notary public in journal.**

(a) Each journal of a notary public, whether maintained on a tangible medium or in an electronic format, must contain all of the following information in any order:

(1) The name of the notary public as it appears on the commission.

(2) The notary public's commission number.

(3) The notary public's commission expiration date.

(4) The notary public's office address of record with the Department.

(5) A statement that, in the event of the death of the notary public, the journal shall be delivered or mailed to the office of the recorder of deeds in the county where the notary public last maintained an office.

(6) The meaning of any not commonly abbreviated word or symbol used in recording a notarial act in the notarial journal.

(7) The signature of the notary public.

(b) If a notary public's name, commission expiration date or address changes before the notary public ceases to use the notarial journal, the notary public shall add the new information after the old information and the date which the information changed.

**§ 167.32. Journal entries.**

(a) *Separate entries.* Each notarial act must be indicated as a separate entry in the journal.

(b) *Optional entries.* In addition to the entries required under section 319(c) of the act (relating to journal), a journal may contain the signature of the individual for whom the notarial act is performed and any additional information about a specific transaction that might assist the notary public to recall the transaction.

(c) *Prohibited entries.* A journal may not contain any personal financial or identification information about the notary public's clients, such as complete Social Security numbers, complete drivers' license numbers or complete account numbers. Terminal numbers for these types of numbers, including the last four digits of a Social Security number, may be used to clarify which individual or account was involved.

(d) *Fees.* Each notarial fee charged should correspond to the notarial act performed. If a fee is waived or not charged, the notary public shall indicate this fact in the journal entry using notations such as "n/c," "0" (zero) or "—" (dash). Clerical and administrative fees, if charged, shall be separately itemized in the journal.

(e) *Address.* For purpose of journal entries, address means the city and state only.

(f) *Personal financial or identification information.* For the purpose of subsection (c), "personal financial or identification information" means:

(1) An individual's first name or first initial and last name in combination with and linked to any one or more of the following data elements when the data elements are not encrypted or redacted:

- (i) Social Security number.
- (ii) Driver's license number or a State identification card number issued instead of a driver's license.
- (iii) Financial account number, credit or debit card number, in combination with any required security code, access code or password that would permit access to an individual's financial account.

(2) The term does not include publicly available information that is lawfully made available to the general public from Federal, State or local government records.

(g) *Transitional provision.* A notary public who holds a commission on \_\_\_\_\_ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.), may continue to use the notary public's journal until the expiration of that commission, which may occur after \_\_\_\_\_ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.).

**§ 167.33. Form and content of journal maintained on a tangible medium.**

(a) A journal maintained on paper or on any other tangible medium may be in any form that meets the physical requirements in this section and the entry requirements in section 319(c) of the act (relating to journal).

(b) The cover and pages inside the cover must be bound together by any binding method that is designed to prevent the insertion, removal or substitution of the cover or a page. This includes glue, staples, grommets or another binding, but does not include the use of tape, paperclips or binder clips.

(c) Each page must be consecutively numbered from the beginning to the end of the journal. If a journal provides two pages on which to record the required information about the same notarial act, both pages may be numbered with the same number or each page may be numbered with a different number. A page number must be preprinted.

(d) Each line, or entry if the journal is designed with numbered entry blocks, must be consecutively numbered from the beginning to the end of the page. If a line extends across two pages, the line must be numbered with the same number on both pages. A line or entry number must be preprinted.

**§ 167.34. Form and content of an electronic notarial journal.**

(a) A journal maintained in electronic format may be in any form that meets the requirements in this section and the entry requirements in section 319(c) of the act (relating to journal).

(b) A journal maintained in electronic format must be designed to prevent the insertion, removal or substitution of an entry.

(c) A journal maintained in electronic format must be securely stored and recoverable in the event of a hardware or software malfunction.

(d) Entries from the notarial journal must be available upon request by the Department in a PDF format.

(e) If a signature of a signer is in an electronic notarial journal, the signature must be:

- (1) Attached to or logically associated with the electronic journal.
- (2) Linked to the data in a manner so that any subsequent alterations to the electronic notarial journal entry are detectable and may invalidate the electronic notarial journal entry.

(f) A journal maintained in electronic format which is delivered to the office of the recorder of deeds in compliance with section 319(e) of the act must be delivered in a format prescribed by the receiving recorder of deeds.

**§ 167.35. Custody and control of journal; notification of lost or stolen journal.**

(a) The notary public shall maintain custody and control of the journal at all times during the duration of the notary public's commission. When not in use, the journal must be kept in a secure location and accessible only to the notary public. A secure location includes in the notary public's sole possession or in a locked location to which only the notary public has access.

(b) Notification of loss or theft of journal under section 319(d) of the act (relating to journal) must be made in writing or electronically within 10 calendar days after the date the notary public or personal representative or guardian discovers the loss or theft of a journal. For the purpose of this section, the term "loss" includes journals that are misplaced, destroyed or otherwise made unavailable. The notification must include all of the following:

- (1) A statement of whether the journal is lost or stolen.
- (2) An explanation of how the journal became lost or stolen.
- (3) The date the notary public discovered that the journal was lost or stolen.
- (4) A statement that the notary public does not possess the journal and does not know who possesses it or where it is located.

(5) A statement that if the notary public subsequently reacquires possession of the journal, the notary public shall file a written statement with the Department within 10 calendar days after the date the notary public reacquires possession of the lost or stolen journal.

(c) If a notary public subsequently reacquires possession of a lost or stolen journal, the notary public shall file with the Department a written statement of explanation of how the journal was recovered within 10 calendar days after the date the notary public reacquires possession of the journal.

**§ 167.36. Inspection and certified copies of journal; response to subpoenas and investigative requests.**

(a) *Inspection.* The notary public shall permit inspection of the journal to any person requesting to view the journal.

(b) *Certified copies.* A request for certified copies of the journal made in accordance with section 319(g.1) of the act (relating to journal) must be reasonable in scope and specify the particular entry or time period sought. A request may, but is not required to be, in writing. The notary public shall provide the certified copy within 10 calendar days of receipt of the request. If the scope of the request is not clear, the notary public may offer to have

the requester inspect the journal at the notary public's office to identify the specific pages or dates that the requester is seeking.

(c) *Subpoenas and investigative requests.* A request for inspection or certified copies of a journal made through an investigative request by law enforcement or by the Department or in a subpoena in the course of criminal or civil litigation shall be complied with in the manner specified in the request or subpoena.

### Subchapter E. STANDARDS OF PRACTICE

Sec.	
167.41.	Name of notary public.
167.42.	Notification of change in information.
167.43.	Change of name.
167.44.	Authority of notary public to perform notarial act.
167.45.	Conflict of interest.
167.46.	Duty of candor.
167.47.	Personal appearance.
167.48.	Identification of individual appearing before notary public—personal knowledge.
167.49.	Identification of individual appearing before notary public—satisfactory evidence.
167.50.	Language and use of interpreter.
167.51.	Refusal to perform notarial acts.
167.52.	Notarizing documents which contain blank spaces.
167.53.	Employer-employee relationship.

#### § 167.41. Name of notary public.

(a) Whenever the act and this chapter refer to the name of a notary public, the reference is to the legal name of the notary public as it appears on the notary public's current commission and oath of office.

(b) For the purposes of this chapter, the legal name on the notary public commission and oath of office must be proven by satisfactory evidence in accordance with section 307(b) of the act (relating to identification of individual). Unless proven otherwise, the name of a notary public consists of any one of the following:

- (1) A first personal name (first name), additional name or initial (middle name or initial), and surname (family or last name).
- (2) A first name and last name, omitting the middle name or middle initial.
- (3) A first initial, middle name and last name.

(c) Neither initials alone nor nicknames will be accepted on the application or as part of the signature required on a notarial act.

(d) The name of a notary public may include suffixes such as Junior, Senior, II, III, IV or any abbreviations thereof. The name of a notary public may not include prefixes, suffixes or titles such as "Doctor," "Reverend," "Esquire" or any abbreviations thereof.

#### § 167.42. Notification of change in information.

(a) A notary public shall notify the Department within 30 calendar days of any change in the information on file with the Department, including the notary public's:

- (1) Legal name.
- (2) Office address (includes place of employment or practice in this Commonwealth, if not a resident of this Commonwealth).
- (3) Home address.
- (4) Name of electronic notarization vendor.
- (5) Voluntary resignation.

(b) The notice may be made in writing or electronically and must state the effective date of the change.

(c) Notice of a change in legal name on file with the Department must be on a form prescribed by the Department and accompanied by evidence of the name change (such as a marriage certificate, court order or divorce decree).

(d) Notice of a change in legal name on file with the Department shall also be made to the recorder of deeds of the county in which the notary public maintains an office.

#### § 167.43. Change of name.

(a) When the legal name of a notary public is changed, the notary public may continue to perform official acts in the name in which he was commissioned until the expiration of his term.

(b) The Department will mark the public records relating to the notary public name change. Application for reappointment of the notary public shall be made in the new name.

#### § 167.44. Authority of notary public to perform notarial act.

(a) A notary public may perform the notarial acts authorized by the act in any county in this Commonwealth.

(b) Notaries public may not perform the notarial acts authorized by the act outside the geographical borders of this Commonwealth or in other states or jurisdictions, unless authorized by the other state or jurisdiction to perform the acts.

#### § 167.45. Conflict of interest.

(a) In accordance with section 304(b) of the act (relating to authority to perform notarial act), a direct or pecuniary interest includes an interest in the transaction or record that results in actual or potential gain or advantage, financial or otherwise, other than receiving a regular salary, hourly wage or notarial fees. Regular salary or wage includes bonuses, provided the bonus is not related to or contingent upon the completion of a notarial act.

(b) A notary public may not perform a notarial act with respect to a record that the notary public is signing. A notary public may perform a notarial act with respect to a record that the notary public's spouse is signing, only if the notary public and the notary public's spouse have no direct or pecuniary interest in the record.

#### § 167.46. Duty of candor.

A notary public or an applicant for appointment and commission as a notary public has a duty of candor to the Department in all matters relating to the appointment and commission of the notary public and the performance of notarial acts, including an application for appointment or reappointment, and any request for information made by the Department.

#### § 167.47. Personal appearance.

(a) To appear personally before a notary public under section 306 of the act (relating to personal appearance required) is to be physically present before the notary public when the notarial act is executed.

(b) The notary public shall be able to observe and interact with the individual making the statement or executing the signature.

(c) The notary public and the individual for whom a notarial act is being performed shall be able to see, hear, communicate with and give identification documents to



each other without the use of electronic devices such as telephones, computers, video cameras or facsimile machines.

(d) Personal appearance does not include all of the following:

(1) Appearance by video technology even if the video is live or synchronous.

(2) Appearance by audio technology.

**§ 167.48. Identification of individual appearing before notary public—personal knowledge.**

When a notary public has personal knowledge of the identity of an individual, satisfactory evidence is not required.

**§ 167.49. Identification of individual appearing before notary public—satisfactory evidence.**

(a) *General.*

(1) For the purposes of section 307(b)(1)(i) of the act (relating to identification of individual), a notary public may rely upon any of the following:

(i) A passport or passport card issued by the United States Department of State which is current and unexpired.

(ii) A passport issued by a foreign government, which is current and unexpired, provided it uses letters, characters and a language that are read, written and understood by the notary public.

(iii) A driver's license or nondriver identification card issued by a state of the United States, which is current and unexpired.

(iv) A driver's license or nondriver identification card issued by a state or territory of Canada or Mexico, which is current and unexpired, provided it uses letters, characters and a language that are read, written and understood by the notary public.

(2) For the purposes of section 307(b)(1)(ii) of the act, other forms of government identification must be current, contain the signature or photograph of the individual to be identified, and must be satisfactory to the notary public. When there is a date of issuance on the other form of government identification specified in paragraph (3), it must be a date prior to the notarial act.

(3) For the purposes of section 307(b)(1)(ii) of the act, other forms of government identification may include any of the following:

(i) An identification card issued by any branch of the United States armed forces.

(ii) An inmate identification card issued by the Department of Corrections for an inmate who is currently in the custody of the Department of Corrections.

(iii) An identification card issued by the United States Department of Homeland Security.

(iv) A Social Security card.

(v) A Medicare card.

(vi) A State or State-related university identification card.

(b) *Credible witness.*

(1) The identity of the individual appearing before the notary public may be established by the affidavit of a

single credible witness personally known to the notary public and who personally knows the document signer.

(2) A credible witness may not have a direct or pecuniary interest with respect to the record being notarized.

(3) The credible witness shall make a verification on oath or affirmation that the following is true:

(i) The individual appearing before the notary public is the person named in the document.

(ii) The credible witness personally knows the individual appearing before the notary public through dealings sufficient to provide the credible witness with reasonable certainty that the individual has the identity claimed.

**§ 167.50. Language and use of interpreter.**

(a) A notary public shall be able to communicate directly with the individual for whom a notarial act is being performed in a language they both understand or indirectly through an interpreter who is physically present with the signer and notary public at the time of the notarization and communicates directly with the individual and the notary public in a language the interpreter understands.

(b) The certificate of notarial act must be worded and completed using the English language. The certificate may be simultaneously worded and completed in another language that is read, written and understood by the notary public and must be immediately adjacent to the English-language certificate, but the English-language certificate will prevail in the event of any conflict between the translations.

(c) A notary public may perform a notarial act on a document that is a translation of a document that is in a language that the notary public does not understand only if the person performing the translation signs a verification on oath or affirmation stating that the translation is accurate and complete. The notarized translation and verification must be attached to the document and must comply with the act and this chapter regarding certificate of notarial act.

**§ 167.51. Refusal to perform notarial acts.**

A notary public may not refuse to provide notarial services on the basis of a customer's race, color, National origin, religion, sexual orientation, sex or gender (including pregnancy), gender identity or expression, disability or marital status.

**§ 167.52. Notarizing documents which contain blank spaces.**

(a) A notary public may not perform a notarial act with respect to a record which is designed to provide information within blank spaces, when either of the following circumstances exist:

(1) The missing information has not been entered into a blank space.

(2) The signature of an individual signing the record is not present, unless the individual is signing in the presence of the notary public.

(b) For the purpose of subsection (a)(1), missing information does not include:

(1) An empty space with "N/A" or a line drawn through it.

(2) Additional signature lines designated for additional signers, if it is clear that the notarial act does not apply to the blank signature lines.

(c) A notary public performing a notarial act on nomination petitions or nomination papers with remaining empty lines for signatures shall mark a line through those blank spaces for signatures, or an "X" across the blank spaces for signatures, to prevent the later addition of signatures after the notarization.

**§ 167.53. Employer-employee relationship.**

Notwithstanding that an individual who holds a notary commission is responsible for exercising the duties and responsibilities of the notary commission, an employer, under an agreement with an employee who is, or seeks to become, a notary public, may pay for the education, testing, application or bond and the cost of the official stamp or other supplies required in connection with the appointment, commission or performance of the duties of the notary public. The agreement may also provide for the remission of fees collected by the notary public to the employer, for the increased compensation of the notary public for the amount of notary public fees collected and for reimbursement of the costs of obtaining a commission should the employee or employer terminate the employment.

**Subchapter F. NOTARIAL ACTS**

Sec.

167.61.	Acknowledgments.
167.62.	Oaths and affirmations.
167.63.	Verifications on oath or affirmation.
167.64.	Witnessing or attestation of signatures.
167.65.	Certified or attested copies and depositions.
167.66.	Protests of negotiable instruments.

**§ 167.61. Acknowledgments.**

(a) The individual making the acknowledgment shall appear personally before the notary public.

(b) The notary public shall have personal knowledge or satisfactory evidence of the identity of the individual making the acknowledgment.

(c) A record may be signed in the notary public's presence or a record may be signed prior to the acknowledgment. A record may not be signed subsequent to an acknowledgment.

(d) If the record is signed prior to appearance before the notary public, the individual making the acknowledgment shall acknowledge that the signature on the record is his own voluntary act.

(e) The notary public shall compare the signature on the record to the signature of the individual on the identification presented.

**§ 167.62. Oaths and affirmations.**

(a) The individual taking the oath or affirmation shall appear personally before the notary public.

(b) The notary public shall have personal knowledge or satisfactory evidence of the identity of the individual taking the oath or affirmation.

(c) An oath or affirmation may be verbal or in writing. If in writing, the oath or affirmation shall be signed in the presence of the notary public.

(d) In administering an oath or affirmation, the notary public shall require the individual taking the oath or affirmation to voluntarily swear or affirm that the state-

ments contained in the oath or affirmation are true or that the individual will perform an act or duty faithfully and truthfully.

**§ 167.63. Verifications on oath or affirmation.**

(a) The individual making the verification on oath or affirmation shall appear personally before the notary public.

(b) The notary public shall have personal knowledge or satisfactory evidence of the identity of the individual making the verification on oath or affirmation.

(c) A record containing a statement that is being verified on oath or affirmation shall be signed in the notary public's presence. A record containing a statement that is being verified may not be signed subsequent to the verification on oath or affirmation.

(d) The notary public shall compare the signature on the statement verified to the signature of the individual on the identification presented.

(e) In taking a verification on oath or affirmation, the notary public shall administer an oath or affirmation to the individual making the statement and require that the individual voluntarily swear or affirm that the statements contained in the record are true.

**§ 167.64. Witnessing or attestation of signatures.**

(a) The individual signing the record shall appear personally before the notary public.

(b) The notary public shall have personal knowledge or satisfactory evidence of the identity of the individual signing the record.

(c) A record containing a signature that is being witnessed or attested shall be signed in the notary public's presence. A record containing a signature that is being witnessed or attested may not be signed subsequent to the witnessing or attestation of the signature.

(d) The notary public shall compare the signature on the record signed to the signature of the individual on the identification presented.

(e) The notarial act of witnessing or attesting a signature differs from an acknowledgment in that the party relying on the record may know for certain that the record was signed on the same date that the notary public affixed the official stamp and signature to the document.

(f) The act of witnessing or attesting a signature differs from a verification on oath or affirmation in that the signer is merely signing the record, not swearing or affirming that the contents of the record are true.

**§ 167.65. Certified or attested copies and depositions.**

(a) The notary public shall be presented with the record, which may be in the possession of the requester, or in the case when there is an official repository of records, in the care and possession of the notary public who may be the custodian of the official archive or collection.

(b) For paper records, the notary public shall compare the original document to a copy made by the requester or by the notary public to determine that the copy is a complete and accurate transcription or reproduction of the original record.

(c) For electronic records, the notary public shall compare the original record to a copy made by the requester or by the notary public to determine that the copy is a complete and accurate transcription or reproduction of the original record.

(d) The notary public shall examine the record for alteration or tampering and to ensure that the original record itself is not a copy.

(e) In issuing a certified or attested copy, the notary public does not guarantee the authenticity of the original document, its contents or its effects.

(f) Records for which a notary public may not issue a certified copy include all of the following:

- (1) Vital records (birth and death certificates).
- (2) United States Naturalization Certificates.

(3) Any government-issued record that on its face states “do not copy,” “illegal to copy” or words of similar meaning.

(4) Any record that is prohibited by law to copy or certify.

(g) Subject to subsections (f)(4) and (h), records for which a notary public may issue a certified copy include all of the following:

- (1) Public records.
- (2) Passports.
- (3) Drivers’ licenses.
- (4) Transcripts.
- (5) Diplomas.
- (6) Contracts.
- (7) Leases.
- (8) Bills of sale.
- (9) Medical records, consents or waivers.
- (10) Powers of attorney.

(h) For purpose of this section, a public record is defined as any record that is filed in or issued by a domestic or international Federal, state or local government agency. If the record is intended to be sent overseas and will require an apostille or certification from the United States Department of State or from the Department, the record must be certified by the office where the original or official copy of the record is maintained or by the public official who issued the record. Examples include deeds, marriage records, court orders and corporate documents filed with a state office or state repository as the official record.

**§ 167.66. Protests of negotiable instruments.**

(a) A protest is a certificate of dishonor made by a United States consul or vice consul or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must:

- (1) Identify the negotiable instrument.
- (2) Certify either that presentment has been made or, if not made, the reason why it was not made.
- (3) State that the instrument has been dishonored by nonacceptance or nonpayment.

(b) The protest may also certify that notice of dishonor has been given to some or all parties.

(c) The individual requesting the protest shall appear personally before the notary public and be identified in the protest as the holder of the dishonored negotiable instrument.

(d) The notary public shall have personal knowledge or satisfactory evidence of the identity of the individual requesting the protest.

**Subchapter G. NOTARIAL CERTIFICATES**

Sec.  
167.71. Certificate of notarial act.

**§ 167.71. Certificate of notarial act.**

(a) “Commonwealth of Pennsylvania” may be used instead of “State of Pennsylvania” on certificates of notarial acts.

(b) For a certificate to be sufficient, it must contain the information required under section 315(c) of the act (relating to certificate of notarial act). A certificate may contain other information as may be required to satisfy any legal requirements, ethical or legal concerns, or the business needs of the parties to the transaction.

(c) For purposes of attaching a notarial certificate to a tangible record, “securely attached” means stapled, grommeted or otherwise bound to the tangible record. The term “securely attached” does not include the use of tape, paperclips or binder clips.

(d) When signing a paper certificate, the notary public shall use a legible, recognizable handwritten signature, which can be attributed to the notary public performing the notarial act by anyone examining or authenticating the signature. If a notary public’s preferred signature is not legible and recognizable, the notary public must also legibly print his name immediately adjacent to his preferred signature. For the purposes of this subsection, a signature is legible and recognizable if the letters are distinct and easily readable and the notary public’s full name may be clearly discerned by looking at the signature.

**Subchapter H. USE OF ELECTRONIC NOTARIZATION**

Sec.  
167.81. Notification regarding use of electronic notarization.  
167.82. Electronic notarization requirements.

**§ 167.81. Notification regarding use of electronic notarization.**

(a) A notary public who wishes to perform notarial acts with respect to electronic records shall hold a current and unrestricted commission.

(b) A notary public who wishes to perform notarial acts with respect to electronic records shall be authorized by the Department to act as an “electronic notary public” or “e-notary” prior to performing notarial acts with respect to electronic records.

(c) To obtain authorization as an “electronic notary public” or “e-notary,” a notary public shall submit the following information to the Department in a manner prescribed by the Department:

- (1) Name of notary public.
- (2) Commission number.
- (3) Office address.
- (4) E-mail address.



- (5) Name of electronic notarization solution provider.
- (6) Contact information for solution provider.
- (7) Web site for solution provider.

**§ 167.82. Electronic notarization requirements.**

(a) A notary public performing notarial acts with respect to electronic records shall use an electronic notarization solution approved by the Department. Before performing any electronic notarization, the notary public shall take reasonable steps to ensure that the solution used is valid and has not expired, been revoked or been terminated by the solution provider.

(b) All requirements of a notarial act performed with respect to a tangible record apply to an electronic record, including the personal appearance and identification of the individual appearing before the notary public, completion of a notarial certificate, use of an official stamp and recording of the notarial act in the journal.

**Subchapter I. NOTARY PUBLIC EDUCATION**

Sec.	
167.91.	Definitions.
167.92.	Provider certificate of approval.
167.93.	Lesson plan.
167.94.	Deficient application or lesson plan.
167.95.	Notification of changes of provider information.
167.96.	Lesson plan revisions.
167.97.	Certificate of education.
167.98.	List of attendees.
167.99.	Representatives of the Department attending approved course of study.
167.100.	Duty to respond to a written request from the Department.
167.101.	Cancellation or delay of scheduled approved course of study.
167.102.	List of approved notary public education courses.
167.103.	Termination of certificate of approval.
167.104.	Cancellation of certificate of approval.

**§ 167.91. Definitions.**

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

*Certificate of approval*—A certificate issued by the Department under § 167.92 (relating to provider certificate of approval) signifying that the provider named therein offers an education program curriculum preapproved by the Department and has complied with the requirements of this subchapter. The certificate of approval does not imply endorsement of any other products or services offered by the provider.

*Certificate of education*—A certificate issued by a provider under § 167.97 (relating to certificate of education) signifying that the person named therein has successfully completed the approved education program provided by the provider.

*Course of study*—Basic or continuing education, offered by live classroom instruction, correspondence course or interactive distance education means, such as online through the Internet or other network technologies.

*Notary public applicant*—A person who is required to attend a course of study to qualify for a commission as a notary public.

*Pennsylvania business registration number*—The number assigned by the Department's Bureau of Corporations and Charitable Organizations to a business entity or fictitious name registrant that is authorized to conduct business in this Commonwealth.

*Provider*—An individual or business entity that offers, supplies or provides an approved notary public education course of study.

**§ 167.92. Provider certificate of approval.**

(a) Before offering any course of study under section 322(b) or (c) of the act (relating to examination, basic education and continuing education), a provider shall obtain a certificate of approval from the Department for each course of study offered.

(b) To apply for a certificate of approval, a provider shall submit to the Department a completed Notary Public Education Provider Application or Amendment form on a form prescribed by the Department, an active Pennsylvania business registration number, the fee required under the Department and a lesson plan satisfying the requirements of § 167.93 (relating to lesson plan).

(c) The Department will issue either a certificate of approval, in accordance with subsection (d), or a deficiency notice, in accordance with § 167.94 (relating to deficient application or lesson plan), within 90 calendar days of receipt of an application and lesson plan.

(d) Upon approval of an application and lesson plan, the Department will send a certificate of approval to the provider by first class mail to the address listed on the Notary Public Education Provider Application or Amendment form.

(e) The certificate of approval will include all of the following:

- (1) The name of the provider.
- (2) The name of the approved course of study and whether it is basic education or continuing education.
- (3) The date the course of study was approved by the Department.

(f) A provider may not alter or substitute the lesson plan reviewed and approved by the Department, unless the revisions are approved by the Department in accordance with § 167.96 (relating to lesson plan revisions).

(g) A provider is responsible for all employees, agents, instructors, contractors and subcontractors providing or involved in providing an approved course of study on behalf of the provider and the acts of the employees, agents, instructors, contractors and subcontractors will be deemed the acts of the provider.

(h) The certificate of approval will expire 3 years from the date of issuance. A provider may reapply for reapproval of a notary public course of study up to 90 calendar days before the expiration of the certificate of approval.

(i) A certificate of approval is nontransferable and may not be conveyed to another provider or applied to another course of study.

**§ 167.93. Lesson plan.**

(a) A lesson plan must meet all of the following requirements:

(1) The lesson plan must be based on the laws, regulations, procedures and ethics of the Commonwealth concerning the functions and duties of a notary public.

(2) The lesson plan must contain a table of contents. The pages of the lesson plan must be consecutively numbered.

(3) The lesson plan must provide sufficient detail to enable the Department to evaluate the specific information to be presented and to determine the accuracy of the information to be presented.

(4) The lesson plan must contain the procedures to establish the identity of a person physically attending a classroom course of study or virtually attending a course of study through interactive means to whom proof of completion may be issued in accordance with § 167.97 (relating to certificate of education).

(5) The lesson plan must contain the procedures to ensure that the information contained in the certificate of education under § 167.97 cannot be viewed by any person other than the approved vendor issuing the certificate, an employee, agent, instructor, contractor or subcontractor of the approved vendor issuing the certificate, or the notary public applicant or notary public named in the certificate.

(6) The lesson plan must contain the procedures to ensure that a person physically attending a classroom course of study or virtually attending a course of study through interactive means is present for the required time.

(7) The lesson plan must include a schedule of the time allotted for all of the following:

- (i) Break periods, if any.
  - (ii) Each major subject area.
  - (iii) Each audio-visual aid to be used, if any.
  - (iv) Each student participation activity, if any.
  - (v) Completion, correction and discussion of any practice tests used and the method of correction to be used, if any.
  - (vi) If any movie or video is used for instruction, the lesson plan must include a brief synopsis of the information presented therein. The synopsis must detail the specific information presented by the movie or video. In addition, the provider shall include the movie or video in the materials presented to the Department for review.
- (b) Copies of any handout materials, workbooks, visuals aids, description of student participation exercises and practice tests used during the course of study must be submitted for approval with the lesson plan.
- (c) If the course provides for an evaluation by the students, time to complete the evaluation may not be included as part of the course of study.
- (d) All materials submitted to the Department under this section become the property of the Department and may be returned to the provider at the sole discretion of the Department.

**§ 167.94. Deficient application or lesson plan.**

(a) If the Department determines that a Notary Public Education Provider Application or Amendment form is incomplete, or that a lesson plan does not satisfy the requirements of section 322 of the act (relating to examination, basic education and continuing education) or this chapter, the Department will issue a deficiency notice containing an itemized description of the deficiencies identified. The deficiency notice will be sent by first class mail to the provider's address listed on the Notary Public Education Provider Application or Amendment form or communicated in a manner agreed to by the Department and the provider.

(b) A provider has 60 calendar days from the date on which the deficiency notice was sent or communicated by the Department to submit documentation to the Department curing the deficiencies identified in the deficiency notice.

(c) The Department may issue more than one deficiency notice to a provider regarding the same Notary Public Education Provider Application or Amendment form and lesson plan at any time during the review process.

(d) The Department may disapprove a Notary Public Education Provider Application or Amendment form if the deficiencies are not cured in accordance with subsection (b).

(e) The disapproval of a provider's application or amendment is subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with 2 Pa.C.S. Chapter 5, Subchapter A and Chapter 7, Subchapter A (relating to practice and procedure of Commonwealth agencies; and judicial review of Commonwealth agency action).

**§ 167.95. Notification of changes of provider information.**

Within 30 calendar days of any changes in the information in the most recent application approved by the Department, a provider shall submit to the Department a Notary Public Education Provider Application or Amendment form identifying the changes. A provider may confirm receipt by the Department by phone or e-mail.

**§ 167.96. Lesson plan revisions.**

(a) A provider shall revise an approved lesson plan as necessary to ensure that the information provided in an approved course of study reflects a new law, regulation, court decision or administrative action.

(b) Proposed revisions to the contents or methods of instruction detailed in an approved lesson plan must be approved by the Department prior to implementing the proposed revisions in an approved course of study.

(c) To apply for a certificate of approval for a revised lesson plan, a provider shall submit a completed Notary Public Education Provider Application or Amendment form, the fee required by the Department, and a revised lesson plan in accordance with § 167.92 (relating to provider certificate of approval).

(d) Sections 167.92—167.94 apply to a revised lesson plan.

(e) Upon approval of a revised lesson plan, the Department will issue a certificate of approval in accordance with § 167.92.

(f) A provider shall follow the lesson plan corresponding to the most current certificate of approval.

**§ 167.97. Certificate of education.**

(a) A provider shall issue a certificate of education to a notary public applicant upon completion of an approved course of study.

(b) The certificate of education shall be issued by the provider to a notary public applicant only after the person has successfully completed the approved course of study.

(c) The certificate of education must consist of a certificate signed by a provider or an employee, agent, instructor, contractor or subcontractor of a provider, which contains all of the following information:

- (1) The name of the education provider as it appears on the certificate of approval issued by the Department for the approved course of study.

(2) The name of the approved course of study and whether it is basic education or continuing education.

(3) The name of the notary public applicant who completed the approved course of study.

(4) The date the notary public applicant completed the approved course of study.

(5) The statement that the certificate of education is valid for a period of 6 months from the date of issuance.

(d) A provider shall submit revisions to the contents or appearance of the certificate of education to the Department for approval at least 30 calendar days prior to issuing the revised certificate to a notary public.

**§ 167.98. List of attendees.**

(a) A provider shall maintain a list of persons who attend each session of an approved course of study, whether they physically attend a classroom course of study or virtually attend a course of study offered through interactive means.

(b) The list of attendees must be maintained for 5 years from the date of issuance of the certificates of education corresponding to that session.

(c) The list of attendees must include all of the following:

(1) The name of the provider as listed in the certificate of approval for the approved course of study.

(2) The name of the instructor or instructors who taught the approved course of study.

(3) The date, time and location of the approved course of study.

(4) The names of all the attendees in alphabetical order by the last name of the attendee.

(d) A provider may not collect the Social Security numbers of any attendees.

(e) Upon request, a provider shall submit a list of attendees in the data format specified by the Department.

**§ 167.99. Representatives of the Department attending approved course of study.**

A provider shall permit representatives of the Department to attend any approved course of study, without prior notice and at no charge, for the purpose of observation, monitoring, auditing and investigating the instruction given.

**§ 167.100. Duty to respond to a written request from the Department.**

A provider shall respond in writing within 30 calendar days of receiving a written request for information from the Department. A written request may be sent to the mailing address, facsimile number or e-mail address listed on the most current Notary Public Education Provider Application or Amendment form.

**§ 167.101. Cancellation or delay of scheduled approved course of study.**

(a) Before charging any fees to a notary public applicant for an approved course of study, a provider shall disclose the refund policy of the provider.

(b) A provider shall refund all fees within 30 calendar days of a scheduled course date to any notary public applicant who registered to attend an approved course of study if one of the following occurs:

(1) An instructor fails to appear at the scheduled time, date or place of the approved course of study.

(2) An approved course of study is delayed in starting more than 15 minutes after the scheduled time, a notary public applicant immediately informs the provider of his request for a refund, and the notary public applicant leaves the approved course of study before its start.

(3) The provider does not hold a current certificate of approval for the course of study.

**§ 167.102. List of approved notary public education courses.**

(a) The Department will make a list of approved education courses available on the Department's web site. The approved course list will include all of the following information:

(1) Name of the approved course and whether it is approved for basic or continuing education.

(2) Name and contact information for the provider, including mailing address, telephone number, e-mail address and web site address.

(b) The Department will update the list of approved courses to add, delete or amend provider information that is filed in accordance with § 167.95 (relating to notification of changes of provider information) and add or delete courses that are approved or terminated in accordance with this subchapter.

**§ 167.103. Termination of certificate of approval.**

(a) The Department may terminate a certificate of approval upon any of the following grounds:

(1) Violation of any of the provisions of the act or this chapter.

(2) Misrepresentation of the laws of the Commonwealth concerning the duties and functions of a notary public.

(3) Deviation from the lesson plan for a course of study approved by the Department.

(4) Failure to respond to a request for information from the Department.

(5) Representations by the provider that any other product, goods or services provided by the provider are endorsed or recommended by the Department.

(6) Failure to prepare course attendees to pass the notary public examination so that an adequate pass rate is not maintained.

(b) Termination of a certificate of approval is subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with 2 Pa.C.S. Chapter 5, Subchapter A and Chapter 7, Subchapter A (relating to practice and procedure of Commonwealth agencies; and judicial review of Commonwealth agency action).

**§ 167.104. Cancellation of certificate of approval.**

(a) A provider may cancel its certificate of approval by submitting a written notice of cancellation to the Department. Unless otherwise stated in the notice of cancellation, the effective date of the cancellation of the certificate of approval is 30 calendar days after receipt of the notice of cancellation. The provider may confirm receipt by the Department by phone or e-mail.

(b) Within 30 calendar days of the effective date of a cancellation of a certificate of approval, a provider shall refund all fees to individuals who paid to take an



approved course from a provider, if the course is scheduled after the effective date of the cancellation.

### **Subchapter J. PROHIBITED ACTS AND SANCTIONS**

Sec.

- 167.111. Offenses involving fraud, dishonesty or deceit.
- 167.112. Rebuttable presumption against appointment.
- 167.113. Reporting of crimes, disciplinary action and other matters.
- 167.114. Conduct providing the basis for disciplinary action.
- 167.115. Factors considered in disciplinary action.
- 167.116. Unauthorized practice of law.
- 167.117. Advertising.

#### **§ 167.111. Offenses involving fraud, dishonesty or deceit.**

(a) Conviction of, or acceptance of Accelerated Rehabilitative Disposition in resolution of, offenses involving a lack of honesty or elements of falsehood and fraud (crimen falsi) will be considered to be evidence of a lack of honesty, integrity, competence or reliability to act as a notary public, regardless of the jurisdiction in which the crimes were committed.

(b) Under Commonwealth law, offenses involving fraud, dishonesty or deceit include the following:

(1) Theft and related offenses, which includes all offenses defined in 18 Pa.C.S. Chapter 39, Subchapter B (relating to definition of offenses).

(2) Forgery and fraudulent practices, which includes all offenses defined in 18 Pa.C.S. Chapter 41 (relating to forgery and fraudulent practices).

(3) Bribery and related offenses, which includes all offenses defined in 18 Pa.C.S. Chapter 47 (relating to bribery and corrupt influence).

(4) Perjury or falsification in official matters and related offenses, which includes all offenses defined in 18 Pa.C.S. Chapter 49, Subchapter A (relating to perjury and falsification in official matters).

(5) Obstructing governmental operations and related offenses, which includes all offenses defined in 18 Pa.C.S. Chapter 51, Subchapter A (relating to definition of offenses generally).

(6) Abuse of office and related offenses, which includes all offenses defined in 18 Pa.C.S. Chapter 53 (relating to abuse of office).

(7) Criminal attempt if the underlying crime involves fraud, dishonesty or deceit. See 18 Pa.C.S. § 901 (relating to criminal attempt).

(8) Criminal solicitation if the underlying crime involves fraud, dishonesty or deceit. See 18 Pa.C.S. § 902 (relating to criminal solicitation).

(9) Criminal conspiracy if the underlying crime involves fraud, dishonesty or deceit. See 18 Pa.C.S. § 903 (relating to criminal conspiracy).

(c) The Department will consider all convictions or comparable dispositions obtained in the courts of the United States, the Commonwealth or any other state, territory, possession or country involving fraud, dishonesty or deceit.

#### **§ 167.112. Rebuttable presumption against appointment.**

(a) Any person who has been convicted of or accepted Accelerated Rehabilitative Disposition (ARD) for any felony offense or any misdemeanor offense involving fraud, dishonesty or deceit as set forth in § 167.111

(relating to offenses involving fraud, dishonesty or deceit) within 5 years preceding the date of application for appointment is presumed ineligible for appointment as a notary public.

(b) The presumption of ineligibility for appointment may be rebutted in extraordinary circumstances by a showing of clear and convincing evidence of the applicant's full rehabilitation. It is the intent of this provision that overcoming this presumption will occur only infrequently and in truly exceptional circumstances.

(c) There is no presumption of ineligibility for conviction of or acceptance of ARD for a felony or an offense involving fraud, dishonesty or deceit more than 5 years preceding the date of application for appointment, but the conviction and related facts may be considered in determining whether the applicant has the requisite honesty, integrity, competence or reliability to act as a notary public.

(d) The 5-year period will be measured from the date of the conviction or acceptance into ARD, rather than the date of the act which constituted the offense.

(e) For the purposes of this subchapter, "conviction" and "convicted of" include a conviction after a bench or jury trial, a guilty plea, a plea of nolo contendere or a finding of not guilty due to insanity or of guilty but mentally ill. Acceptance of ARD is also included, regardless of whether the court considers it a conviction or a form of judgment without verdict.

#### **§ 167.113. Reporting of crimes, disciplinary action and other matters.**

(a) A notary public shall notify the Department of a conviction of or acceptance of Accelerated Rehabilitative Disposition in resolution of a felony or a misdemeanor offense involving fraud, dishonesty or deceit within 30 calendar days of the disposition or on the next application for appointment and commission, whichever is sooner.

(b) A notary public shall notify the Department of disciplinary action in the nature of a final order taken against the notary public's commission by the commissioning authority of another state, territory or country within 30 calendar days of receiving notice of the disciplinary action or on the next application for appointment and commission, whichever is sooner.

(c) A notary public shall notify the Department of a finding against, or admission of liability by, the notary public in any criminal, civil or administrative proceeding within 30 calendar days of conclusion of the legal proceeding or on the next application for appointment and commission, whichever is sooner.

(d) A notary public shall notify the Department of a finding by the Pennsylvania Bar Association or the courts of the Commonwealth or the bar or courts of any other state or nation finding that the notary public has engaged in the unauthorized practice of law within 30 calendar days of conclusion of the proceeding or on the next application for appointment and commission, whichever is sooner.

#### **§ 167.114. Conduct providing the basis for disciplinary action.**

(a) In addition to the acts and omissions specified in section 323(a) of the act (relating to sanctions), the following acts or omissions demonstrate that an individual lacks the honesty, integrity, competence or reliability to act as a notary public:

- (1) Notarizing his own signature or statement.

(2) Notarizing a spouse's signature or statement, when the notary public or the spouse has a direct or pecuniary interest in the record.

(3) Notarizing records in blank.

(4) Postdating or predating notarial acts.

(5) Altering a document after it has been notarized.

(6) Issuing to the order of a State agency or the Commonwealth a personal check without sufficient funds on deposit.

(7) Performing a notarial act within this Commonwealth when the person was not commissioned as a notary public or was otherwise not authorized to perform a notarial act.

(8) Performing a notarial act in another state under the authority of the notary public's Pennsylvania commission.

(9) Making a representation that the notary public has powers, qualifications, rights or privileges that the notary public does not have.

(10) Use of the term "notario," "notario publico," "notario publica" or any non-English equivalent term in a manner which misrepresents the authority of the notary public.

(11) Engaging in the unauthorized practice of any regulated profession, including law.

(12) Endorsing or promoting a product, service, contest or other offering by using the notary public's title or official stamp.

(13) Failure to require the physical presence of an individual making a statement in or executing a signature on a record.

(14) Failure to have personal knowledge or satisfactory evidence of the identity of an individual appearing before the notary public.

(15) Executing a notarial certificate that contains a statement known to the notary public to be false.

(16) Using the notary public's official stamp for a purpose other than to perform a notarial act.

(17) Using another notary public's stamping device or embosser to perform a notarial act.

(18) Relating to commercial protests as defined in 13 Pa.C.S. § 3505(b) (relating to evidence of dishonor), failure to identify the negotiable instrument, certify either that presentment has been made or, if not made, the reason why it was not made, and certify that the instrument has been dishonored by nonacceptance or nonpayment, or any combination of the above.

(19) Issuance of a certificate of dishonor of a negotiable instrument, also known as a protest of commercial paper as defined in 13 Pa.C.S. § 3505(b), that was owned or held for collection by a financial institution, trust company or investment company when the notary public was a party to the commercial paper in an individual capacity.

(20) Issuance of a certificate of dishonor of a negotiable instrument, also known as a protest of commercial paper as defined in 13 Pa.C.S. § 3505(b), of a noncommercial or other record that does not fit the definition of negotiable instrument as defined in 13 Pa.C.S. § 3104 (relating to negotiable instrument).

(21) Issuance of a certificate of dishonor of a negotiable instrument, also known as a protest of commercial paper as defined in 13 Pa.C.S. § 3505(b), in a manner not in accordance with 13 Pa.C.S. § 3505.

(22) Submission of the following types of records to the Department or Secretary of the Commonwealth in reply to correspondence from the Department or other government agency or initiating proceedings through the following record types:

(i) Conditional Acceptance, or a similar record purporting to "conditionally accept" presentment of an official record, and demanding proof of a list of claims to fully accept the official record.

(ii) Affidavit in Support of Conditional Acceptance, or a similar record purporting to attest to the facts of a record and signed by the same notary public who is attesting.

(iii) Notice of Dishonor, or a similar record purporting to give notice that a Conditional Acceptance has not been accepted by the government agency to which it was sent and thereby was dishonored.

(iv) Accepted for Value, or similar stamp or certificate purporting to accept for a disclosed or undisclosed value an official record sent to the notary public by the Department, the Secretary of the Commonwealth or other governmental agency. The certificate claims to establish an amount of money payable or accrued to the signor of the certificate.

(v) Notice of Protest, or a similar record purporting to be a Protest of Commercial Paper that has been dishonored, when the Commercial Paper is not, in fact, a negotiable instrument under 13 Pa.C.S. Division 3 (relating to negotiable instruments) and subject to the laws stated therein regarding dishonor and protest.

(vi) Other records attempting to apply 13 Pa.C.S. Division 3 to non-negotiable instruments or other records not included in the scope of Division 3.

(vii) Other record types purporting to follow the Uniform Commercial Code and not related to a filing under 13 Pa.C.S. Division 9 (relating to secured transactions).

**§ 167.115. Factors considered in disciplinary action.**

When determining whether to deny an application or take disciplinary action against a notary public, the Department may consider a variety of factors including the following:

(1) Nature, number and severity of any acts, offenses, official misconduct or crimes under consideration.

(2) Evidence pertaining to the honesty, credibility, truthfulness and integrity of the applicant or notary public.

(3) Actual or potential monetary or other harm to the general public, group, individual or client.

(4) History of complaints received by the Department.

(5) Prior disciplinary record or warning from the Department.

(6) Evidence in mitigation.

(7) Evidence in aggravation.

(8) Occupational, vocational or professional license disciplinary record.

(9) Evidence of rehabilitation, such as reference letters and proof of class attendance.

- (10) Criminal record
- (11) Reports from law enforcement agencies.
- (12) Willfulness.
- (13) Negligence.

**§ 167.116. Unauthorized practice of law.**

(a) In determining whether a notary public has assisted a person in drafting legal records, gave legal advice or is otherwise practicing law in violation of section 325 of the act (relating to prohibited acts), the Department will take into consideration the factors in Pennsylvania Bar Association Unauthorized Practice of Law (UPL) Committee Formal Opinion 2006-01 or any successor document to that opinion.

(b) Among the acts that constitute the practice of law are the preparation, drafting or selection or determination of the kind of any legal document, or giving advice in relation to any legal documents or matters.

(c) A person who represents himself in a legal matter will not be considered to have engaged in the unauthorized practice of law.

**§ 167.117. Advertising.**

For the purpose of the statements required under section 325(d) of the act (relating to prohibited acts), the term “prominently” in section 325(d)(ii) of the act means that the entire statement “I am not an attorney” must be in at least 10-point type and the term “prominently” in section 325(d)(iii) of the act means that the entire statement “I am not an attorney” must be displayed in an area open and accessible to the public at the place of performance of the notarial act.

[Pa.B. Doc. No. 18-1351. Filed for public inspection August 31, 2018, 9:00 a.m.]

## FISH AND BOAT COMMISSION

### [ 58 PA. CODE CHS. 71 AND 79 ]

#### Fishing; Reptiles and Amphibians

The Fish and Boat Commission (Commission) proposes to amend Chapters 71 and 79 (relating to propagation and introduction of fish into Commonwealth waters; and reptiles and amphibians) to read as set forth in Annex A. The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code).

**A. Effective Date**

This proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2019.

**B. Contact Person**

For further information on this proposed rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission’s web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

**C. Statutory Authority**

The proposed amendments to § 71.7 (relating to triploid grass carp) are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The proposed amendments to §§ 79.5, 79.6

and 79.7 (relating to snapping turtle permits; venomous snake permits; and organized reptile and amphibian hunt permits) are published under the statutory authority of 2904 of the code (relating to permits for protection and management of particular fish).

**D. Purpose and Background**

The specific purpose and background of the proposed amendments is described in more detail under the summary of proposal.

**E. Summary of Proposal**

The Commission adopted regulations in § 71.7 pertaining to the possession and introduction of triploid grass carp (white amur). To provide for proper protection and management of these fish and other fish in the waters of this Commonwealth. Section 71.7 provides that permits shall be required for possessing triploid grass carp, introducing them into Commonwealth waters and importing or transporting them into this Commonwealth. A pondowner, landowner or other person who wishes to possess triploid grass carp and introduce them into a pond or waters located on property owned, leased or otherwise controlled by the person shall, before placing triploid grass carp in the waters, obtain from the Commission a triploid grass carp possession/introduction permit. A person who wishes to import triploid grass carp into this Commonwealth shall obtain from the Commission a triploid grass carp importation/transportation permit.

This Triploid Grass Carp Program (Program) was initiated by the Commission in January 1994. Two types of permits with associated fees were established. A triploid grass carp possession/introduction permit was \$20. A triploid grass carp importation/transportation permit was \$50. In 2012, the fee structure was reassessed and increased to offset inflation and increasing program costs. A triploid grass carp possession/introduction permit was increased to \$75. A triploid grass carp importation/transportation permit was increased to \$75.

The Aquatic Resource Section within the Commission’s Bureau of Fisheries, Division of Environmental Services, administers the Program. Administering the Program requires staff to review permit applications, maintain a database, process and approve the permits. Reviewing the applications requires a technical review, some field views and clerical support.

The Commission currently issues approximately 350 triploid grass carp permits per year. Staff proposes to increase the permit fees to offset increasing Program costs using the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index (CPI) tool that is based on annual inflation rates since the fee structure was last updated in January 2012. The proposed permit fee changes adjusted with CPI inflation rate values since January 2012 for the triploid grass carp possession/introduction permit is proposed to be \$85 and the triploid grass carp importation/transportation permit is proposed to be \$85.

Similarly, several amphibian and reptile permits have increasing program cost demands, and a similar increase in the fee structure approach to offset inflation and increasing program costs are proposed (for example, using the CPI inflation tool).

In January 2008, Chapter 79 was overhauled, reorganized and updated. A permit was developed for individuals interested in the commercial collection and sale of



snapping turtles in § 79.5. The snapping turtle permit fee was established at \$50 for residents of this Commonwealth and \$100 for nonresidents. Under § 79.6, the venomous snake permit was updated to allow permit holders to hunt for both the copperhead and timber rattlesnake. The fee for the venomous snake permit was increased from \$5 to \$25 for residents of this Commonwealth, and \$50 for nonresidents in January 2008. This Program has grown significantly. The past 2 years have experienced a record number of permits issued since the Program began in 1984. In 2017, 1,437 venomous snake permits were issued. For groups or organizations that want to conduct competitive organized hunts for reptiles and amphibians, an organized reptile and amphibian hunt permit may be obtained under § 79.7. There are currently only six permits issued per year, which mainly focus on the timber rattlesnake, where competitions for the largest and heaviest male snakes occur. One “turtle derby” organized hunt is also permitted annually. The organized reptile and amphibian hunt permit was updated in January 2008 from \$25 to \$100.

The Commission’s Bureau of Law Enforcement (Bureau) issues the snapping turtle and venomous snake permits. Bureau staff review incoming applications and issue permits, answer questions from hunters about the application process and hunting regulations, and process permits and payments. A significant amount of time is spent on law enforcement details and permit compliance for the Venomous Snake Permit Program. The Natural Diversity Section of the Division of Environmental Services receives, reviews and databases hunter reports, and develops end-of-year summary reports for the programs. Natural Diversity Section staff also administer the Reptile and Amphibian Organized Hunt Program (review permit applications, issue permits and attend hunts for permit compliance purposes).

The Commission proposes to increase the permit fees for these three permit programs to offset increasing program costs using the CPI tool that is based on annual inflation rates since the fee structure was last updated in January 2008. The following table summarizes the last fees update and newly proposed fees for January 2019:

<i>Chapter 79 Permit</i>	<i>2008</i>	<i>2019 (proposed)</i>
Snapping Turtle Permit—Resident	\$50	\$60
Snapping Turtle Permit—Nonresident	\$100	\$120
Venomous Snake—Resident	\$25	\$30
Venomous Snake—Nonresident	\$50	\$60
Organized Reptile and Amphibian Hunt	\$100	\$120

The Commission proposes to amend §§ 71.7, 79.5, 79.6 and 79.7 to read as set forth in Annex A.

*F. Paperwork*

This proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

*G. Fiscal Impact*

This proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendments to § 71.7 will increase the triploid grass carp permit fee from \$75 to \$85. The proposed amendments to § 79.5 will increase the snapping turtle permit from \$50 to \$60 for residents of this Commonwealth and from \$100 to \$120 for nonresidents. The proposed amendment to § 79.6 will increase the

venomous snake permit from \$25 to \$30 for residents of this Commonwealth and from \$50 to \$60 for nonresidents. The proposed amendment to § 79.7 will increase the organized reptile and amphibian hunt permit fee from \$100 to \$120.

*H. Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/reg](http://www.fishandboat.com/reg) comments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,  
*Executive Director*

**Fiscal Note:** 48A-287. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart B. FISHING**

**CHAPTER 71. PROPAGATION AND INTRODUCTION OF FISH INTO COMMONWEALTH WATERS**

**§ 71.7. Triploid grass carp.**

\* \* \* \* \*

(c) *Permit required.*

(1) The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that permits shall be required for possessing triploid grass carp (white amur) or introducing them into Commonwealth waters and for importing or transporting triploid grass carp into this Commonwealth to provide for proper protection and management of these fish and other fish in the waters of this Commonwealth. A pondowner, landowner or other person who wishes to possess triploid grass carp and introduce them into a pond or waters located on property owned, leased or otherwise controlled by the person shall, before placing triploid grass carp in the waters, obtain from the Commission a triploid grass carp possession/introduction permit for a fee of [ \$75 ] \$85. A person who wishes to import triploid grass carp into this Commonwealth shall, before doing so, obtain from the Commission a triploid grass carp importation/transportation permit for a fee of [ \$75 ] \$85. Permits shall be applied for on forms supplied by the Commission. Applications for permits may be obtained from the Triploid Grass Carp Manager, Bureau of Fisheries, 595 East Rolling Ridge Drive, Bellefonte, Pennsylvania 16823. Permits will not be issued until after January 1, 1994.

\* \* \* \* \*

CHAPTER 79. REPTILES AND AMPHIBIANS

§ 79.5. Snapping turtle permits.

(a) The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that it is necessary for the proper protection and management of the common snapping turtle (Chelydra serpentina) that persons who hunt, take, catch or kill this species for the purpose of sale, barter or trade have an annual permit for the activity. Application for a permit must be made on a form prescribed by the Commission and must be accompanied by the appropriate fee. Permits may be obtained by applying to the Natural Diversity Section Chief, Division of Environmental Services, 595 East Rolling Ridge Drive, Bellefonte, Pennsylvania 16823. The fee for residents is [ \$50 ] \$60 per year; the fee for nonresidents is [ \$100 ] \$120 per year. The denial of a permit under this section is appealable in the manner provided by Chapter 51, Subchapter E (relating to permit procedures).

\* \* \* \* \*

§ 79.6. Venomous snake permits.

(a) Application. The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that it is necessary for the proper protection and management of the timber rattlesnake (Crotalus horridus) and copperhead (Agkistrodon contortrix) that persons who hunt, take, catch or kill these species have a permit for the activity. Application for a permit must be made on a form prescribed by the Commission and accompanied by the appropriate fee. Permits may be obtained by applying to the Natural Diversity Section Chief, Division of Environmental Services, 595 East Rolling Ridge Drive, Bellefonte, Pennsylvania 16823. The fee for residents is [ \$25 ] \$30 per year; the fee for nonresidents is [ \$50 ] \$60 per year. The denial of a permit under this section is appealable in the manner provided by Chapter 51, Subchapter E (relating to permit procedures).

\* \* \* \* \*

§ 79.7. Organized reptile and amphibian hunt permits.

(a) Application. The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that it is necessary for the proper protection and management of reptiles and amphibians in this Commonwealth that organized reptile and amphibian hunts be conducted under permits issued under this section. The sponsor of an organized reptile and amphibian hunt shall apply for a permit by no earlier than January 1 and no later than March 1 of the year for which the hunt is proposed. Application for a permit must be made on a form prescribed by the Commission and must be accompanied by the appropriate fee. Permits may be obtained by applying to the Natural Diversity Section Chief, Division of Environmental Services, 595 East Rolling Ridge Drive, Bellefonte, Pennsylvania 16823. The fee for the permit is [ \$100 ] \$120. The denial of a permit under this section is appealable in a manner provided by Chapter 51, Subchapter E (relating to permit procedures).

\* \* \* \* \*

[Pa.B. Doc. No. 18-1352. Filed for public inspection August 31, 2018, 9:00 a.m.]

FISH AND BOAT COMMISSION

[ 58 PA. CODE CH. 65 ]

Fishing; Special Fishing Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapter 65 (relating to special fishing regulations) to read as set forth in Annex A. The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code).

A. Effective Date

This proposed rulemaking, if approved on final-form rulemaking, will go into effect upon final-form publication in the Pennsylvania Bulletin.

B. Contact Person

For further information on this proposed rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The proposed amendment to § 65.21 (relating to waters limited to specific purposes—exclusive use fishing areas) is published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. Purpose and Background

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

E. Summary of Proposal

Under section 2307 of the code, the Commission has the authority to promulgate regulations for exclusive use fishing areas. Those regulations are laid out in § 65.21. In subsection (b) the term "children" is defined as a person "12 years of age or under."

In recent discussions Commissioners and staff have questioned why the age is set at 12 years of age when an individual is not required to purchase a license until they have reached 16 years of age. The Commission has explored the history of the age determination and has not found evidence suggesting why the lower age was adopted in § 65.21. Additionally, the Commission has been looking for additional opportunities to get more youth interested in fishing. The rationale in changing the age to 15 years of age and under for these areas is to bring more angling opportunities to a broader range of youth.

The Commission proposes to amend § 65.21 to read as set forth in Annex A.

F. Paperwork

This proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

This proposed rulemaking will not have adverse fiscal impacts on the Commonwealth or its political subdivisions. This proposed rulemaking will not impose new costs on the private sector or the general public.

### H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/regcomments](http://www.fishandboat.com/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,  
*Executive Director*

**Fiscal Note:** 48A-281. No fiscal impact; (8) recommends adoption.

### Annex A

#### TITLE 58. RECREATION

#### PART II. FISH AND BOAT COMMISSION

#### Subpart B. FISHING

#### CHAPTER 65. SPECIAL FISHING REGULATIONS

#### § 65.21. Waters limited to specific purposes—exclusive use fishing areas.

\* \* \* \* \*

(b) As used in this section, the term “children” means persons [ 12 ] 15 years of age or under. The term “special populations” means persons who are exempt from the fishing license requirement by section 2709(b) of the code (relating to exemptions from license requirements), persons whose visual acuity with best correcting lens is 3/60 or 10/200 or poorer in the better eye, persons whose vision is such that the widest diameter of the visual field of the better eye has contracted to such an extent that it subtends an angular distance of not greater than 20° or persons permanently deprived of the full use of a leg or both legs.

\* \* \* \* \*

[Pa.B. Doc. No. 18-1353. Filed for public inspection August 31, 2018, 9:00 a.m.]

## FISH AND BOAT COMMISSION

### [ 58 PA. CODE CH. 51 ]

#### General Provisions

The Fish and Boat Commission (Commission) proposes to amend Chapter 51 (relating to administrative provisions) to read as set forth in Annex A. The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments update the Commission’s regulations for distribution of its *Summary of Fishing Regulations and Laws* publication (summary book).

#### A. Effective Date

This proposed rulemaking, if approved on final-form rulemaking, will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

#### B. Contact Person

For further information on this proposed rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission’s web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

#### C. Statutory Authority

The proposed amendments to § 51.38 (relating to operation of the issuing agent for the Pennsylvania Automated Licensing Service (PALS)) are published under the statutory authority of section 2711 of the code (relating to issuing agents).

#### D. Purpose and Background

The specific purpose and background of the proposed amendments is described in more detail under the summary of proposal.

#### E. Summary of Proposal

At its January 2018 meeting, staff presented initial information to the Board of Commissioners (Board) on 46 funding concepts. As part of the presentation, Board members were asked to individually prioritize the concepts and to provide feedback to the Executive Director. As a result, seven staff proposed concepts were recognized as priorities and one additional concept was added and listed as a priority through the Commissioner review process. It was also acknowledged that the remaining concepts, while not a priority, should be advanced as they are more fully reviewed and developed by staff.

One of the remaining funding concepts is to establish a cover price or fee for the annual summary book of fishing laws and regulations in this Commonwealth. This publication is prepared and printed annually by the Commission and contains a summary of the Commonwealth’s fishing regulations and fishing tips. Historically, this publication has been offered to license holders and the public at no cost or free of charge. While reviewing its regulations, the Commission determined that § 51.38 indicates that issuing agents shall provide a summary book when issuing a fishing license. This is inconsistent with intended practice, as fishing license purchasers are not required to take a summary book. Fishing license purchasers may forgo the paper summary book or obtain an electronic version from the Commission’s web site at the customer’s convenience.

To facilitate the operations of the issuing agency and to accommodate this practice with respect to distribution of the summary book, the Commission proposes to amend § 51.38 to read as set forth in Annex A.

#### F. Paperwork

This proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

#### G. Fiscal Impact

This proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions.

#### H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.



Comments also may be submitted electronically by completing the form at [www.fishandboat.com/regcomments](http://www.fishandboat.com/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,  
*Executive Director*

**Fiscal Note:** 48A-285. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart A. GENERAL PROVISIONS**

**CHAPTER 51. ADMINISTRATIVE PROVISIONS**

**§ 51.38. Operation of the issuing agent for the Pennsylvania Automated Licensing Service (PALS).**

(a) *Sale of licenses.*

\* \* \* \* \*

(4) Issuing agents shall [ **provide** ] **offer** a *Summary of Fishing Regulations and Laws* with each license issued. Issuing agents also shall [ **provide** ] **offer** a copy of the summary book to any holder of a Senior Resident Lifetime Fishing License **or other individual** who requests one. [ **Issuing agents are encouraged to provide a copy of the summary book, if adequate numbers are available, to other individuals who request one.** ]

\* \* \* \* \*

[Pa.B. Doc. No. 18-1354. Filed for public inspection August 31, 2018, 9:00 a.m.]

**FISH AND BOAT COMMISSION**

**[ 58 PA. CODE CH. 51 ]**

**General Provisions; Administrative Provisions**

The Fish and Boat Commission (Commission) proposes to amend Chapter 51 (relating to administrative provisions) to read as set forth in Annex A. The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments update the Commission's fees for scientific collectors' permits.

**A. Effective Date**

This proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2019.

**B. Contact Person**

For further information on this proposed rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

**C. Statutory Authority**

The proposed amendments to § 51.71 (relating to scientific collectors' permits) are published under the statutory authority of section 2905 of the code (relating to permits for scientific and educational fish collecting activities).

**D. Purpose and Background**

The specific purpose and background of the proposed amendments is described in more detail under the summary of proposal.

**E. Summary of Proposal**

Under section 2905 of the code, the Executive Director, with the Commission's approval, may issue permits to catch fish in waters within or bordering on this Commonwealth at any season of the year and with any kind of devices without regard to size or possession limits to a person who possesses a valid Pennsylvania fishing license and is engaged in scientific or educational research or other collecting activities approved by the Commission. This section also authorizes the Commission to promulgate regulations and to establish fees.

In 1985, the Commission adopted § 51.71, which requires a valid and current scientific collector's permit issued by the Commission to collect, take or maintain for scientific or educational purposes any species of Pennsylvania fishes, amphibians, reptiles or aquatic organisms during seasons not permitted by regulations governing holders of a valid Pennsylvania fishing license or other license or permit issued by the Commission (for example, venomous snake permit, organized reptile and amphibian hunt permit).

In July 1978, the Commission established various fees for different permit types within the scientific collector permit program through terms and conditions of the scientific collectors' permit. Three types of permits with associated fees through this program were developed: Type 1 permit (Research) \$10, assistants and permit amendments had no fee; Type 2 (Government) free permit, assistants and permit amendments had no fee; and Type 3 permit (Consulting) \$50, and \$10 each assistant and permit amendments. Permit conditions require that all collectors (scientific collector permit holders and their assistants) have current valid fishing licenses prior to issuance of the scientific collectors' permit and any subsequent collecting activity. In January 2008, the long-term policy was codified, and the fee structure was updated: Type 1 permit (Research) \$30, assistants free and permit amendments \$15; Type 2 (Government) free permit, assistants and permit amendments free; and Type 3 permit (Consulting) \$150, \$30 each assistant and permit amendments \$75.

The Natural Diversity Section, housed within the Commission's Bureau of Fisheries, Division of Environmental Services, administers the Scientific Collector Permit Program (Program). This Program has significant staff demands. Administering the Program requires staff to receive and review new and renewal permit applications and amendments, and process end-of-year permit reports. A significant part of this administration is ongoing clerical support (dealing with applicant questions, changes to permits, processing payments for permits and amendments) and continual database and system maintenance support provided by our Information Technology staff. Reviewing the applications requires a technical review and substantial staff interaction with potential collectors, often resulting in changes to proposed collections. Staff also periodically check for permit compliance in the field. Permit collection reports are filed by staff and relevant collection information (that is, rare, threatened and endangered species data) is extracted from reports and submitted to the Pennsylvania Natural Heritage Program to be included in a Statewide database for rare species (Pennsylvania Conservation Explorer) that is consulted

during the environmental permit review process. Staff also review and issue special permits under § 75.4 (relating to special permits) for applicants that qualify to conduct threatened and endangered species research and surveys.

Currently, Commission staff review new, renewal and amended applications and issue approximately 420 scientific collector's permits annually. To address an increasing trend of permits and ongoing program demands, Commission Natural Diversity Section and Information Technology staff have been working together to streamline the permit application process and improve the application and reporting process with an interactive, web-based computer application that is accessible to the public. This web-based application is the first of its kind for the Commission and requires regular maintenance and upgrades. Staff proposes to increase the permit fees to offset increasing program costs using the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index (CPI) tool that is based on annual inflation rates since the fee structure was last updated in January 2008. The proposed permit fee changes adjusted with CPI inflation rate values since January 2008 follow: Type 1 permit (Research) \$40, assistants free and permit amendments \$20; Type 2 (Government) free permit, assistants and permit amendments free (no changes proposed); and Type 3 permit (Consulting) \$180, \$40 each assistant and permit amendments \$90. The following table summarizes the historic and proposed fee structure for the Program:

<i>Scientific Collectors' Permit</i>	<i>1978</i>	<i>2008</i>	<i>2019 (proposed)</i>
Type 1 (Research)	\$10	\$30	\$40
Each Assistant	\$0	\$0	\$0
Permit Amendments	\$0	\$15	\$20
Type 2 (Government)	\$0	\$0	\$0
Each Assistant	\$0	\$0	\$0
Permit Amendments	\$0	\$0	\$0
Type 3 (Consulting)	\$50	\$150	\$180
Each Assistant	\$10	\$30	\$40
Permit Amendments	\$10	\$75	\$90

Staff propose that § 51.71 be amended to read as set forth in Annex A.

*F. Paperwork*

This proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

*G. Fiscal Impact*

This proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The increased fees will help offset the Commission's continuing expenses to administer the Program and the costs of the interactive, web-based application.

This proposed rulemaking will increase fees for permit applicants. The fee for a Type I permit for Nonprofit Research and Education will increase from \$30 to \$40, assistants on Type I permits will remain free and the fee for a Type I permit amendment will increase from \$15 to \$20. The fee for a Type II permit for Government remains free and assistants and permit amendment also remain free. The fee for a Type III permit for Consulting will increase from \$150 to \$180, the fee for assistants on Type III permits will increase from \$30 to \$40 and the fee for a Type III permit amendment will increase from \$75 to \$90.

With regard to all permit types, the Commission will utilize the fees to offset the costs associated with permit issuance and processing and data compilation. It is expected that the Commission will recover its costs for the permits for which fees are charged and that the Commission will absorb the costs associated with the free permits.

*H. Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/reg](http://www.fishandboat.com/reg) comments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,  
*Executive Director*

**Fiscal Note:** 48A-283. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart A. GENERAL PROVISIONS**

**CHAPTER 51. ADMINISTRATIVE PROVISIONS**

**Subchapter H. PERMITS FOR FISH COLLECTING ACTIVITIES**

**§ 51.71. Scientific collectors' permits.**

\* \* \* \* \*

(b) The Commission will issue three categories of scientific collectors' permits: nonprofit research and education, governmental and consulting.

(1) *Type I Permit: Nonprofit Research and Education.* The Commission will issue a Type I (Nonprofit Research and Education) permit to individuals whom the Commission deems to be qualified to competently and capably conduct research or educational programs and who are not engaged in scientific collecting for monetary gain.

\* \* \* \* \*

(iii) *Fees.* The fee for a Type I permit holder is [ **\$30** ] **\$40**. Each assistant is free. Permit amendments are [ **\$15** ] **\$20** each.

(2) *Type II Permit: Governmental.* A Type II (Governmental) permit is a free permit that the Commission issues, at the discretion of the Executive Director, to State and Federal employees who are engaged in scientific collecting as a part of their required duties. A Type II permit may be Statewide or regional depending upon the application.

(3) *Type III Permit: Consulting.* The Commission will issue a Type III (Consulting) permit to individuals whom the Commission deems to be qualified to engage in scientific collecting and who are engaged in private consulting for profit. The Commission will issue a Type

III permit to qualified individuals only and will not issue one in the name of a corporation or other business entity.

\* \* \* \* \*

(iii) *Fees.* The fee for a Type III permit holder is [ \$150 ] ~~\$180~~. Each assistant is [ \$30 ] ~~\$40~~. Permit amendments are [ \$75 ] ~~\$90~~ each.

\* \* \* \* \*

[Pa.B. Doc. No. 18-1355. Filed for public inspection August 31, 2018, 9:00 a.m.]

## FISH AND BOAT COMMISSION

### [ 58 PA. CODE CHS. 51 AND 93 ]

#### General Provisions; Boating

The Fish and Boat Commission (Commission) proposes to amend Chapters 51 and 93 (relating to administrative provisions; and boat registration and numbering) to read as set forth in Annex A. The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments update the Commission's regulations for issuing agents.

#### A. *Effective Date*

This proposed rulemaking, if approved on final-form rulemaking, will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

#### B. *Contact Person*

For further information on this proposed rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

#### C. *Statutory Authority*

The proposed amendment to § 51.37 (relating to application and prerequisites to becoming an issuing agent for the Pennsylvania Automated Licensing Service (PALS)) is published under the statutory authority of section 2711 of the code (relating to issuing agents). The proposed amendment to § 93.13 (relating to issuing agents) is published under the statutory authority of section 5304 of the code (relating to issuing agents).

#### D. *Purpose and Background*

The specific purpose and background of the proposed amendments is described in more detail under the summary of proposal.

#### E. *Summary of Proposal*

(1) Strategy 1B of the Commission's Strategic Plan is to "Increase traditional revenue sources and secure alternative funding to deliver core programs and services to benefit anglers, boaters, and trust species; deliver select discretionary programs and services to benefit all residents of this Commonwealth; and meet mandatory personnel costs." This strategy is designed in part to encourage the review and enhancement of existing revenue sources and to investigate and explore the development of alternative funding concepts.

Declines in traditional revenues, rapidly escalating costs associated with maintaining angler and boater demanded fishing and boating programs, and the lack of

an enhancement to the fee structure for fishing licenses and permits necessitates the need to develop and implement several new or alternative funding concepts.

At its January 2018 meeting, staff presented initial information to the Board of Commissioners (Board) on 46 funding concepts. As part of the presentation, Board members were asked to individually prioritize the concepts and to provide feedback to the Executive Director. As a result, seven staff-proposed concepts were recognized as priorities and one additional concept was added and listed as a priority through the Commissioner review process. It was also acknowledged that the remaining concepts, while not a priority, should be advanced as they are more fully reviewed and developed by staff.

One of the remaining funding concepts is to evaluate the fee associated with the Commission's required application fee when a person, sole proprietorship, partnership or corporation apply to become a fishing license issuing agent of the Commission. The Executive Director may grant an application when accompanied by a security bond and the required application fee. The current application fee of \$150 was established in 2006. In 2017, the Commission processed 23 applications.

To bring the application fee up to current standards, the Commission proposes that § 51.37 be amended to read as set forth in Annex A.

(2) Another of the remaining funding concepts is to evaluate the fee associated with the Commission's required application fee when a person, sole proprietorship, partnership or corporation apply to become an issuing agent for temporary boat registrations of the Commission. The Executive Director may grant an application when accompanied by a security bond and the required application fee. The current application fee of \$100 was established in 2001. In 2017, the Commission processed 32 applications.

To bring the application fee up to current standards, staff propose that § 93.13 be amended to read as set forth in Annex A.

#### F. *Paperwork*

This proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

#### G. *Fiscal Impact*

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendment to § 51.37 will increase the application fee to become a fishing license issuing agent of the Commission from \$150 to \$250. The proposed amendment to § 93.13 will increase the application fee to become an issuing agent for temporary boat registrations of the Commission from \$100 to \$250.

#### H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/reg](http://www.fishandboat.com/reg) comments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the



comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,  
*Executive Director*

**Fiscal Note:** 48A-286. No fiscal impact; (8) recommends adoption.

### Annex A

## TITLE 58. RECREATION

### PART II. FISH AND BOAT COMMISSION

#### Subpart A. GENERAL PROVISIONS

#### CHAPTER 51. ADMINISTRATIVE PROVISIONS

##### Subchapter D. ISSUING AGENTS

§ 51.37. **Application and prerequisites for becoming an issuing agent for the Pennsylvania Automated Licensing Service (PALS).**

(a) A person, sole proprietorship, partnership or corporation may apply to become an issuing agent of the Commission for the purpose of selling fishing licenses and permits through the PALS.

(1) An applicant seeking to become an issuing agent shall complete and submit to the Commission an application on the form prescribed by the Commission and pay a one-time, nonrefundable fee of [ \$150 ] \$250.

\* \* \* \* \*

##### Subpart C. BOATING

#### CHAPTER 93. REGISTRATION AND NUMBERING

##### Subchapter A. REGISTRATION OF BOATS

§ 93.13. **Issuing agents.**

(a) *Designation.*

(1) The designation of issuing agents for temporary boat registrations shall be limited to the Commission and Commission offices, county treasurers, businesses dealing in boats, boating equipment or sporting goods and temporary tag services or messenger services approved by the Department of Transportation for the issuance of temporary boat trailer registrations.

(2) An applicant seeking to become an issuing agent for temporary boat registrations shall complete and submit to the Commission an application on the form prescribed by the Commission and shall pay a one-time, nonrefundable fee of [ \$100 ] \$250. Applications shall be accompanied by a bond in favor of the Commission in a minimum amount specified by the Executive Director or a designee.

\* \* \* \* \*

[Pa.B. Doc. No. 18-1356. Filed for public inspection August 31, 2018, 9:00 a.m.]

## FISH AND BOAT COMMISSION

[ 58 PA. CODE CH. 53 ]

### General Provisions; Commission Property

The Fish and Boat Commission (Commission) proposes to amend Chapter 53 (relating to Commission property) to read as set forth in Annex A. The Commission is publishing this proposed rulemaking under the authority of 30

Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments update the Commission's fees for cutting and removal of firewood from Commission property.

#### A. *Effective Date*

This proposed rulemaking, if approved on final-form rulemaking, will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

#### B. *Contact Person*

For further information on this proposed rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

#### C. *Statutory Authority*

The proposed amendment to § 53.17 (relating to cutting and removal of firewood from Commission property) is published under the statutory authority of section 741(a) of the code (relating to control of property).

#### D. *Purpose and Background*

The specific purpose and background of the proposed amendment is described in more detail under the summary of proposal.

#### E. *Summary of Proposal*

Strategy 1B of the Commission's Strategic Plan is to "Increase traditional revenue sources and secure alternative funding to deliver core programs and services to benefit anglers, boaters, and trust species; deliver select discretionary programs and services to benefit all residents of this Commonwealth; and meet mandatory personnel costs." This strategy is designed in part to encourage the review and enhancement of existing revenue sources and to investigate and explore the development of alternative funding concepts.

Declines in traditional revenues, rapidly escalating costs associated with maintaining angler and boater demanded fishing and boating programs, and the lack of an enhancement to the fee structure for fishing licenses and permits necessitates the need to develop and implement several new or alternative funding concepts.

At its January 2018 meeting, staff presented initial information to the Board of Commissioners (Board) on 46 funding concepts. As part of the presentation, Board members were asked to individually prioritize the concepts and to provide feedback to the Executive Director. As a result, seven staff-proposed concepts were recognized as priorities and one additional concept was added and listed as a priority through the Commissioner review process. It was also acknowledged that the remaining concepts, while not a priority, should be advanced as they are more fully reviewed and developed by staff.

One of the remaining funding concepts is to evaluate the fee associated with the Commission's permit that authorizes the cutting and removal of dead firewood from Commission property. The Executive Director may issue permits to interested persons when it is determined to be in the best interest of the Commission. The current fee of \$10 for each standard rough cord of wood was established in 1984. In 2017, the Commission authorized the cutting and removal of 56 cords of firewood.

To bring the per cord permit fee up to current market values, the Commission proposes that § 53.17 be amended as set forth in Annex A.

F. Paperwork

This proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The increased fees will help offset the Commission's continuing expenses to administer the program.

This proposed rulemaking will increase fees for permit applicants. The fee for each standard rough cord of wood will increase from \$10 to \$50.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/regcomments](http://www.fishandboat.com/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,  
Executive Director

**Fiscal Note:** 48A-284. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart A. GENERAL PROVISIONS**

**CHAPTER 53. COMMISSION PROPERTY**

**§ 53.17. Cutting and removal of firewood from Commission property.**

\* \* \* \* \*

(c) Firewood permits cost [ \$10 ] **\$50** per standard rough cord. A standard rough cord is a pile of stacked wood 4 by 4 by 8 feet (128 cubic feet, including air spaces).

\* \* \* \* \*

[Pa.B. Doc. No. 18-1357. Filed for public inspection August 31, 2018, 9:00 a.m.]

**PENNSYLVANIA PUBLIC  
UTILITY COMMISSION**

[ 52 PA. CODE CH. 53 ]

**Advance Notice of Proposed Rulemaking Order  
Regarding Use of Fully Projected Future Test  
Year; Doc. No. L-2012-2317273**

This Secretarial Letter establishes a schedule and agendas for further stakeholder meetings in the captioned proceeding. The comment period remains suspended. This

letter will be published in the *Pennsylvania Bulletin* and posted on the Commission website under this docket number.

On December 22, 2017, the Commission entered the Advance Notice of Proposed Rulemaking (ANOPR) Order at Docket No. L-2012-2317273 relating to use of a fully projected future test year (FPFTY) by jurisdictional energy and water/wastewater utilities in the Commonwealth.<sup>1</sup> The ANOPR, inter alia, established February 27, 2018, as the due date for comments and late March as the time frame for a stakeholder meeting. By Secretarial Letter issued on February 26, 2018, in response to stakeholder request,<sup>2</sup> the filing date for comments was suspended, and a stakeholder meeting was scheduled for April 3, 2018.

Following substantive and procedural discussion of the December 22nd ANOPR Order, the consensus at the April 3rd stakeholder meeting was that further stakeholder meetings before a call for written comments would be extremely productive.

Following the April 3rd stakeholder meeting, Commission staff sought input from stakeholders concerning the scheduling and topics/direction of discussion for the future stakeholder meetings to ensure that topic/subject matter experts (SMEs) would be available to address items on the schedule. By consensus, a preliminary meeting attended by representatives of the stakeholder utility groups, statutory advocates, and Commission staff was held on May 31, 2018, to develop such a schedule and agendas.<sup>3</sup>

The May 31st attendees recommended four (4) stakeholder meetings to be held on Thursday, September 27, 2018; Tuesday, October 30, 2018; Wednesday, November 28, 2018; and Wednesday, January 23, 2019. The meetings will be held in Executive Chambers, Third Floor, at the Commission Office, 400 North Street, Harrisburg, Pennsylvania 17020, starting at 10 AM. The attendees proposed agendas for these suggested stakeholder meetings, as detailed below, and agreed that the pertinent "standard data requests"<sup>4</sup> related to each agenda topic be part of the stakeholder meeting discussion.

*Suggested Agenda Topics—September 27, 2018:*

**I. General Issues Concerning Provision of Info/Data at Start of Case**

**a. Years of Data**

<sup>1</sup> The ANOPR addresses 52 Pa. Code § 53.53 in particular and the remaining portions of Chapter 53 in general.

<sup>2</sup> The revised timeline was supported by the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the National Association of Water Companies—Pennsylvania Chapter (NAWC-PA Chapter), Aqua Pennsylvania, and the members of the Energy Association of Pennsylvania, Electric distribution company (EDC) members of EAP include Citizens' Electric Company; Duquesne Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; Pike County Light & Power Company; PPL Electric Utilities; UGI Utilities, Inc.—Electric Division; Wellsboro Electric Company; and West Penn Power Company. Natural gas distribution company (NGDC) members of EAP include Columbia Gas of Pennsylvania, Inc.; Leatherstocking Gas Company, LLC; National Fuel Gas Distribution Corp.; PECO Energy Company; Peoples Natural Gas Company, LLC; Peoples Gas Company (formerly Peoples TWP); Philadelphia Gas Works; Pike County Light & Power Company; UGI Central Penn Gas, Inc.; UGI Penn Natural Gas, Inc.; UGI Utilities, Inc.; and Valley Energy, Inc.

<sup>3</sup> The May 31st attendees included Christine Hoover (Office of Consumer Advocate); Elizabeth Triscari (Office of Small Business Advocate); Gina Miller (Commission Bureau of Investigation and Enforcement); Alex Stahl (Aqua); Renee Marquis (Aqua); Erin Sweeney (Aqua); Nicole Paloney (Columbia Gas/Nisource); Donna MJ Clark (Energy Association of Pennsylvania); John Cox (PAWC); JoAnne Lontz (PAWC); Beth Johnson (PPL); Mark Morrow (UGI); Rein Laudenslager (Commission Bureau of Technical Utility Services), and Louise Fink Smith (Commission Law Bureau).

<sup>4</sup> Some utilities provide "standard" information with their filings. This "standard" information is filed in anticipatory response to "standard data requests" that have developed over time but are not codified in regulations. This process shortens the discovery interval by eliminating the need for the statutory advocates to request the "standard" information. The standard data requests were not specifically factored into the draft Exhibit E in the December 22nd Order.

- b. Confidentiality of Data
- c. Data that is Publicly Available (provide reference)
- d. Paper v. Electronic Submissions, including document retention obligations

II. Rate Base & Depreciation (Subsection II—C & J at p. 6 of ANOPR Order)

*Suggested Agenda Topics—October 30, 2018:*

I. Employee Costs/Operating Expense/Operating Revenue (Subsection II—I, G & H at p. 6 of ANOPR Order)

*Suggested Agenda Topics—November 28, 2018:*

I. Taxes and Rate of Return (Subsection II—K & D at P. 6 of ANOPR Order)

II. Income Statement and Statement of Cash Flow/Balance Sheet (Subsection II—F & E at p. 6 of ANOPR Order)

*Suggested Agenda Topics—January 23, 2019:*

I. LTIIP and AAO Plan/Description of Utility Operations/Summary of Filing (Subsection II—L, B & A at p. 6 of ANOPR Order)

II. Industry specific data (Subsection II—M at p. 6 of ANOPR Order)

III. Customer Notice Issues

IV. Issues and Data Requests in Base Rate Case concerning Universal Service & Conservation Plans (May Need a Separate Meeting?)

At the May 31st session, attendees noted the need for and potential benefits of updating the existing Exhibits A, C, and D to 52 Pa. Code § 53.53 regardless of whether FPFTY regulations stand alone in a separate exhibit, such as the draft Exhibit E in the December 22nd ANOPR Order, or are incorporated into the existing Exhibits A, C, and D.<sup>5</sup> The May 31st attendees articulated a strong preference for stakeholders to review existing regulatory requirements and data requests that may entail production of information that is no longer relevant or used in base rate cases. The effective date for the last substantial overhaul of the data requests in Exhibits A, C, and D was June 1996. Commission staff noted that, from their perspective and not binding on the Commission, it had yet to be conclusively determined whether FPFTY regulations regarding data requests would be better set out in a separate exhibit or better incorporated into the existing industry-specific Exhibits A, C, and D.

Additional topic areas identified for discussion at future stakeholder meetings include customer notices; the standard data requests; and issues surrounding discovery requests in base rate (or rider) proceedings related to Universal Service and Energy Conservation Plan proceedings of energy utilities. Additional discussion highlighted the extensive requirement of multiple paper copies of information that might otherwise be available electronically as well as document retention obligations.

<sup>5</sup> Section 53.53 relates to “information to be furnished with proposed general rate increase filings in excess of \$1 million” when the covered utilities file their proposed tariffs or tariff supplements. The responses required by Section 53.53 are in addition to “data required by other provisions” and in addition to discovery requests and interrogatories. Exhibit A covers all utilities except communications, electric, and water and waste water. Exhibit C covers electric utilities. Exhibit D covers water and waste water utilities. (Exhibit B, covering communications utilities, is not at issue because communications utilities cannot use a FPFTY.)

The May 31st attendees further suggested that, prior to each stakeholder meeting, each participant prepare and exchange a “position paper” on the agenda topics and commit to review all such position papers to facilitate resolution of issues where possible. The May 31st attendees suggested that the position papers be based on an agreed-upon template. A sample position paper template is attached. The position papers should be exchanged via email in a Word-accessible format. The position papers would not be binding on the parties but should reflect considerations that would give rise to reaching consensus on the topics.

The stakeholders anticipate that the work and discussion at stakeholder meetings will assist the Commission in meeting its objectives to codify procedures and filing requirements for use of a FPFTY as required under Act 11 of 2012 and may further provide collective input on how to update the existing Exhibits A, C, and D at 52 Pa. Code § 53.53 relative to use of historic test years and future test years, as well as to identify filing requirements and standard date requests that are duplicative or no longer necessary.

The Commission agrees that this collaborative process has significant potential to facilitate the process at this docket. Accordingly, staff is directed to continue facilitating this stakeholder meeting process in order to focus and streamline the eventual comment process, improve the end product, and facilitate the review of Chapter 53, using the schedule and agendas outlined herein. The comment period remains deferred.

Documents pertinent to this proceeding may be accessed through the Commission’s website using docket number for this proceeding and the search feature at [http://www.puc.pa.gov/about\\_puc/search\\_results.aspx](http://www.puc.pa.gov/about_puc/search_results.aspx).

If there are any questions, contact Erin Laudenslager, [erinlaudensla@pa.gov](mailto:erinlaudensla@pa.gov), or Louise Fink Smith, [finksmith@pa.gov](mailto:finksmith@pa.gov). Parties are directed to ensure that they have entered an appearance as a party of record at this docket with the Secretary of the Commission and that they have provided, to Ms. Laudenslager and Ms. Fink Smith, the contact names, telephone numbers, and email addresses for persons in their organizations to be used for the informal exchange of information related to this proceeding. Emails to Ms. Laudenslager and Ms. Fink Smith should also be sent to [RA-PC-FPFTY2317273E@pa.gov](mailto:RA-PC-FPFTY2317273E@pa.gov).

ROSEMARY CHIAVETTA,  
*Secretary*

### Template

Topic Area:

A. Current Requirement Under Existing Regulation—Exhibit A, C and/or D: [cite]

B. Identify Any Relevant Standard Data Requests (SDR)<sup>6</sup>: [provide sufficient details]

C. ANOPR Proposed Change to Requirement or Proposal to Eliminate Requirement—Draft Exhibit E: [cite ANOPR Order and/or Draft Exhibit E, as applicable]

D. Observations re ANOPR Proposal, Draft Exhibit E, and/or Standard Data Request:

<sup>6</sup> Some utilities provide “standard” information with their filings. This “standard” information is in essence filed in anticipatory response to “standard data requests” that have developed over time but are not codified in regulations. This process shortens the discovery interval by eliminating the need for the statutory advocates to request the “standard” information. The standard data requests were not specifically factored into the draft Exhibit E in the December 22nd Order.



E. Rationale for Modifying/Eliminating Existing Regulation or Filing Requirement, ANOPR Proposal, Draft Exhibit E, and/or Standard Data Request:

F. General Concerns: [use this sequence but all may not apply]

1. Confidential
2. Years of Data
3. Publicly Available
4. Burdensome
5. Relevance
6. Redundant or Conflicting
7. Other

[Pa.B. Doc. No. 18-1358. Filed for public inspection August 31, 2018, 9:00 a.m.]

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