

CHAPTER 145. HEARING PROCEDURES

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Authority

The provisions of this chapter issued under section 506 of The Administrative Code of 1929 (71 P. S. § 186); sections 305 and 315 of the act of June 3, 1937 (P. L. 1225, No. 316) (34 P. S. §§ 1311.305 and 1311.315) (Repealed); 45 Pa.C.S. §§ 501, 503, 506 and 507; and 2 Pa.C.S. §§ 101—106; amended under: the act of June 3, 1937 (P. L. 1225, No. 316) (34 P. S. §§ 1311.101—1311.1502) (Repealed); and 34 Pa.C.S. §§ 101—2965, unless otherwise noted.

Source

The provisions of this Chapter 145 adopted May 8, 1981, effective May 9, 1981, 11 Pa.B. 1577, unless otherwise noted.

Subchapter A. GENERAL HEARING AND APPEALS PROCEDURE

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§ 145.1. Purpose and scope.

(a) A complaint or a request for a hearing presented to the Commission within one of the following categories shall be governed by this chapter:

- (1) A complaint involving a final order, decree, decision, determination or ruling by the Commission affecting personal or property rights, privileges, immunities, duties, liabilities or obligations or a party to a Commission proceeding who deems himself adversely affected by Commission action. Excluded from this category are orders based upon a proceeding before a court of law and orders which involve the seizure or forfeiture of property.

- (2) A request for a hearing by a person whose hunting or furtaking privileges, or both, have been revoked under section 2741 of the act (relating to denial or revocation of licenses).
- (3) A request for a hearing by a person whose response to an order to show cause does not raise issues requiring a hearing or further proceedings.
- (b) Except where inconsistent with this chapter, appeals shall be governed by 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).
- (c) Matters relating to personnel actions and procedural matters relating to promulgation of regulations are excluded from this chapter.

Authority

The provisions of this § 145.1 amended under the act of June 3, 1937 (P.L. 1225, No. 316) (34 P.S. §§ 1311.101—1311.1502) (Repealed); and 34 Pa.C.S. §§ 101—2965.

Source

The provisions of this § 145.1 adopted July 10, 1981, effective July 11, 1981, 11 Pa.B. 2496; amended June 19, 1987, effective July 1, 1987, 17 Pa.B. 2464. Immediately preceding text appears at serial pages (104975) to (104976).

Cross References

This section cited in 58 Pa. Code § 145.3 (relating to request for a hearing).

§ 145.2. Definitions.

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

Adverse action—An action or a decision not to act which directly affects a respondent and with which a respondent disagrees.

Applicant—The party who makes or on whose behalf the applications are made.

Central office—The central office of the Commission.

Complainant—A person who complains of a Commission regulation or general order, or anything done or omitted in violation of a statute or other delegated authority administered by the Commission that directly affects that person's personal property rights.

Hearing—A proceeding where the relevant facts and applicable law will be heard and considered.

Hearing officer—A person designated by the Director to preside at hearings, take evidence and make factual and legal findings.

Party—The Commission, a complainant or a respondent.

Respondent—A party bringing an appeal, or a party against whom a complaint is brought.

- (b) Subsection (a) supplements 1 Pa. Code § 31.3 (relating to definitions).

Authority

The provisions of this § 145.2 amended under the act of June 3, 1937 (P. L. 1225, No. 316) (34 P. S. §§ 1311.101—1311.1502) (Repealed); and 34 Pa.C.S. §§ 101—2965.

Source

The provisions of this § 145.2 adopted July 10, 1981, effective July 11, 1981, 11 Pa.B. 2496; amended February 21, 1986, effective February 22, 1986, 16 Pa.B. 527; amended June 19, 1987, effective July 1, 1987, 17 Pa.B. 2464. Immediately preceding text appears at serial pages (104976) to (104977).

§ 145.3. Request for a hearing.

A request for a hearing may be made by a party applying for relief under § 145.1 (relating to purpose and scope).

Authority

The provisions of this § 145.3 amended under the act of June 3, 1937 (P. L. 1225, No. 316) (34 P. S. §§ 1311.101—1311.1502) (Repealed); and 34 Pa.C.S. §§ 101—2965.

Source

The provisions of this § 145.3 adopted July 10, 1981, effective July 11, 1981, 11 Pa.B. 2496; amended February 21, 1986, effective February 22, 1986, 16 Pa.B. 527; amended June 19, 1987, effective July 1, 1987, 17 Pa.B. 2464. Immediately preceding text appears at serial pages (104977) to (104978).

§ 145.4. Time of filing.

(a) Requests for hearings shall be filed with the Director within 30 days following issuance of a notice of adverse action or central office recommended resolution.

(b) Subsection (a) supplements 1 Pa. Code § 31.11 (relating to timely filing required).

Authority

The provisions of this § 145.4 amended under the act of June 3, 1937 (P. L. 1225, No. 316) (34 P. S. §§ 1311.101—1311.1502) (Repealed); and 34 Pa.C.S. §§ 101—2965.

Source

The provisions of this § 145.4 adopted July 10, 1981, effective July 11, 1981, 11 Pa.B. 2496; amended February 21, 1986, effective February 22, 1986, 16 Pa.B. 527; amended June 19, 1987, effective July 1, 1987, 17 Pa.B. 2464. Immediately preceding text appears at serial pages (104978) and (113261).

§ 145.5. Form, content and filing fee.

(a) Requests for hearings shall be in writing and captioned “Petition for review” and shall contain the following information:

- (1) The name, address and telephone number of the complainant.
- (2) The name, address and telephone number of the respondent.

- (3) A concise statement of relevant facts and grounds on which the petition is based.
- (4) The relief being sought.
- (b) Requests for hearings shall be accompanied by a nonrefundable filing fee of \$35 in the form of a money order, certified check or bank cashier's check made payable to "Commonwealth of Pennsylvania."
- (1) A filing fee shall be submitted by each individual requesting a hearing under § 145.1 (relating to purpose and scope). Hearings requested under § 145.21 (relating to Deputy Game Protector hearing procedure) are exempted from filing fees.
- (2) A hearing will not be conducted, nor a request deemed filed, until the complete filing fees are received by the Commission in the form specified and within the time frame designated. If a filing fee is received after the time frame designated, or in a form not specified, the request for review will be deemed abandoned and dismissed. A filing fee received contrary to this section will be returned to the sender.
- (c) Subsection (b) supplements 1 Pa. Code §§ 32.21 and 32.22 (relating to filing fees; and mode of payment fees).

Authority

The provisions of this § 145.5 amended under the act of June 3, 1937 (P. L. 1225, No. 316) (34 P. S. §§ 1311.101—1311.1502) (Repealed); and 34 Pa.C.S. §§ 101—2965.

Source

The provisions of this § 145.5 adopted July 10, 1981, effective July 11, 1981, 11 Pa.B. 2496; amended February 21, 1986, effective February 22, 1986, 16 Pa.B. 527; amended November 7, 1986, effective November 8, 1986, 16 Pa.B. 4406; reserved June 19, 1987, effective July 1, 1987, 17 Pa.B. 2464; amended October 27, 1995, effective October 28, 1995, 25 Pa.B. 4611. Immediately preceding text appears at serial page (118740).

§ 145.6. Scheduling of the hearing.

- (a) Upon receipt of a petition for review, the Director will order a hearing officer to conduct the hearing.
- (b) The hearing officer shall notify the parties of the date, time and location of the hearing. A minimum of 10 days between issuance of a hearing notice and the date of the hearing will be given to allow notification of parties and their representatives.
- (c) Subsection (b) supplements 1 Pa. Code § 35.121 (relating to initiation of hearings).

Authority

The provisions of this § 145.6 amended under the act of June 3, 1937 (P. L. 1225, No. 316) (34 P. S. §§ 1311.101—1311.1502) (Repealed); and 34 Pa.C.S. §§ 101—2965.

Source

The provisions of this § 145.6 adopted July 10, 1981, effective July 11, 1981, 11 Pa.B. 2496; amended February 21, 1986, effective February 22, 1986, 16 Pa.B. 527; amended June 19, 1987, effective July 1, 1987, 17 Pa.B. 2464. Immediately preceding text appears at serial pages (113261) to (113262).

§ 145.7. Continuances.

(a) Requests for continuances shall comply with the following:

(1) Hearings shall commence on the day and time scheduled. Continuances may not be granted by the hearing officer except in extraordinary circumstances.

(2) Requests for a continuance shall be in writing and delivered to the hearing officer and all parties or their attorneys.

(3) A party requesting a continuance shall first consult the opposing party to seek agreement to the request. The written request shall state whether the request is unopposed.

(4) Objections to a continuance shall be in writing and delivered to the hearing officer and all parties or their attorneys.

(b) If a respondent or respondent's representative fails to appear at the scheduled hearing without good cause, as determined by the hearing officer, the complaint shall be deemed abandoned and dismissed with prejudice.

(c) Subsection (a) supplements 1 Pa. Code § 31.15 (relating to extensions of time).

Authority

The provisions of this § 145.7 amended under the act of June 3, 1937 (P. L. 1225, No. 316) (34 P. S. §§ 1311.101—1311.1502) (Repealed); and 34 Pa.C.S. §§ 101—2965.

Source

The provisions of this § 145.7 adopted July 10, 1981, effective July 11, 1981, 11 Pa.B. 2496; amended February 21, 1986, effective February 22, 1986, 16 Pa.B. 527; amended June 19, 1987, effective July 1, 1987, 17 Pa.B. 2464. Immediately preceding text appears at serial pages (113262) to (104981).

§ 145.8. Conduct of the formal hearing.

(a) Unless deemed in the best interest of the Commission by the Director or a designee, hearings shall be conducted at the central office.

(b) The hearing officer appointed by the Director shall preside at the hearing.

(c) Subsection (b) supplements 1 Pa. Code § 35.123 (relating to conduct of hearings).

Authority

The provisions of this § 145.8 amended under the act of June 3, 1937 (P. L. 1225, No. 316) (34 P. S. §§ 1311.101—1311.1502) (Repealed); and 34 Pa.C.S. §§ 101—2965.

Source

The provisions of this § 145.8 adopted February 21, 1986, effective February 22, 1986, 16 Pa.B. 527; corrected March 7, 1986, 16 Pa.B. 686; amended June 19, 1987, effective July 1, 1987, 17 Pa.B. 2464. Immediately preceding text appears at serial page (104981).

§ 145.9. Purpose of the hearing.

- (a) Afford the respondent an opportunity to appear in person and present testimony, witnesses and documentary evidence relevant to the issue in question.
- (b) Afford the parties an opportunity to cross-examine the opposing party's witnesses.
- (c) Assure that documents and records presented or referred to during the course of the hearing are made part of the hearing transcript.

Authority

The provisions of this § 145.9 issued under the act of June 3, 1937 (P. L. 1225, No. 316) (34 P. S. §§ 1311.101—1311.1502) (Repealed); and 34 Pa.C.S. §§ 101—2965.

Source

The provisions of this § 145.9 adopted June 19, 1987, effective July 1, 1987, 17 Pa.B. 2464.

§ 145.10. Stenographic record.

- (a) A stenographic record or electronic recording shall be made of the proceedings.
- (b) Subsection (a) supplements 1 Pa. Code § 35.131 (relating to recording of proceedings).

Authority

The provisions of this § 145.10 issued under the act of June 3, 1937 (P. L. 1225, No. 316) (34 P. S. §§ 1311.101—1311.1502) (Repealed); and 34 Pa.C.S. §§ 101—2965.

Source

The provisions of this § 145.10 adopted June 19, 1987, effective July 1, 1987, 17 Pa.B. 2464.

§ 145.11. Order of formal hearing.

- (a) At the outset, the hearing officer shall state:
 - (1) The purpose of the hearing.
 - (2) The procedure the hearing will follow.
 - (3) The deciding authority.
 - (4) The manner in which the decision will be transmitted to the parties.
- (b) The hearing officer may ask each party to state the issue being contested.
- (c) The parties may present their case through witnesses or documentary evidence.
- (d) The hearing officer may question any witness to clarify the witness's testimony.

(e) When documentary evidence is introduced, the hearing officer may rely solely upon documents and reports introduced when satisfied as to their authenticity, relevancy and accuracy.

(f) The hearing officer shall give each party an opportunity to make a closing statement before terminating the hearing.

(g) The hearing may be recessed and continued to another date at the discretion of the hearing officer.

(h) Subsection (c) supplements 1 Pa. Code § 35.161 (relating to form and admissibility of evidence). Subsection (d) supplements 1 Pa. Code § 35.137 (relating to oral examination).

Authority

The provisions of this § 145.11 amended under the act of June 3, 1937 (P. L. 1225, No. 316) (34 P. S. §§ 1311.101—1311.1502) (Repealed); and 34 Pa.C.S. §§ 101—2965.

Source

The provisions of this § 145.11 adopted May 8, 1981, effective May 9, 1981, 11 Pa.B. 1577; amended February 21, 1986, effective February 22, 1986, 16 Pa.B. 527; amended June 19, 1987, effective July 1, 1987, 17 Pa.B. 2464. Immediately preceding text appears at serial pages (104981) to (104982).

§ 145.12. Hearing authority.

(a) The hearing authority is the Director.

(b) It is the function of the hearing officer to do the following:

- (1) Determine the facts.
- (2) Determine the appropriate regulations that apply.
- (3) Interpret a regulation when the regulation is ambiguous.
- (4) Apply the law to the facts to determine the correct result.
- (5) Recommend that the Director adopt the result.
- (6) The hearing officer's recommendation shall be submitted to the Director or a designee within 30 days of the conclusion of the hearing.

(c) Subsections (a) and (b) supplement 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers).

Authority

The provisions of this § 145.12 issued under the act of June 3, 1937 (P. L. 1225, No. 316) (34 P. S. §§ 1311.101—1311.1502) (Repealed); and 34 Pa.C.S. §§ 101—2965.

Source

The provisions of this § 145.12 adopted June 19, 1987, effective July 1, 1987, 17 Pa.B. 2464.

§ 145.13. Decision of the Director or Commission.

(a) Matters may be decided by the Director or, at the discretion of the Director, by the Commission. If a matter is decided by the Commission, action on the matter will be taken at a regular meeting or a special meeting of the Commission.

(b) After a recommendation has been proposed by the hearing officer, parties will not be afforded an opportunity to submit oral or written statements of their position to the Director or a designee.

(c) Findings of fact made by the hearing officer are not subject to reversal, but the Director or a designee may return the case to the hearing officer for further findings of fact.

(d) The Director or a designee will issue an Opinion and Order within 30 days of the conclusion of the hearing or at the Director's discretion, and submit it to the Commission at the earliest possible regular or special meeting.

(e) Copies of the opinion and order of the Director or action taken by the Commission will be sent to all parties.

Authority

The provisions of this § 145.13 issued under the act of June 3, 1937 (P. L. 1225, No. 316) (34 P. S. §§ 1311.101—1311.1502) (Repealed); and 34 Pa.C.S. §§ 101—2965.

Source

The provisions of this § 145.13 adopted June 19, 1987, effective July 1, 1987, 17 Pa.B. 2464.

Notes of Decisions

The due process rights of hunters whose licenses were revoked was violated where the hearing officers acted as both judge and prosecutor at the hearing and the Commission's acceptance of the hearing officer's recommendation created an appearance of bias. *Marich v. Game Commission*, 639 A.2d 1345 (Pa. Cmwlth. 1994).

The Executive Director of the Commission has the authority to review a hearing officer's recommendation but does not have the authority to affirm or reverse a Commission decision to revoke a hunting license. [Court cited former § 145.7.] *Pfingstl v. Game Commission*, 531 A.2d 821, 833 (Pa. Cmwlth. 1987); appeal denied 542 A.2d 1373 (Pa. 1988).

§ 145.14. Transcripts.

(a) A respondent requesting copies or causing the record to be reproduced by appeal to Commonwealth Court or for another reason shall be responsible for the transcription costs. Transcripts may be received upon payment of the following fixed fees:

- (1) Original transcripts—\$80 plus \$2.25 per page.
- (2) Additional copies of the transcript—\$10 plus 25¢ per page.

(b) Subsection (a) supplements 1 Pa. Code § 35.133 (relating to copies of transcripts).

Authority

The provisions of this § 145.14 issued under the act of June 3, 1937 (P. L. 1225, No. 316) (34 P. S. §§ 1311.101—1311.1502) (Repealed); and 34 Pa.C.S. §§ 101—2965.

Source

The provisions of this § 145.14 adopted June 19, 1987, effective July 1, 1987, 17 Pa.B. 2464.

Subchapter B. SPECIAL HEARING PROCEDURES

Sec.
145.21. Deputy wildlife conservation officer hearing procedure.

§ 145.21. Deputy wildlife conservation officer hearing procedure.

(a) Deputy wildlife conservation officers will not be dismissed from Commission service without first being granted an opportunity for a hearing, unless the hearing is waived by the Deputy whose dismissal is proposed.

(b) A Deputy wildlife conservation officer who is suspended and recommended for dismissal on the grounds of negligence, disregard of duties, conduct unbecoming an officer, unsatisfactory work or indiscreet act will be cited for a hearing and dismissal on the grounds of inefficiency, indiscretion or insubordination.

(c) Charges against a Deputy wildlife conservation officer for reason of negligence, disregard of duties, conduct unbecoming an officer, unsatisfactory work or indiscreet act may be brought by a superior officer, in writing, and filed with the Director.

(d) When charges are filed, the Director will promptly transmit a copy of the written charges to the Deputy, with notice the Deputy may file a written answer. A hearing shall be requested within 30 days from the date the charges are mailed to the Deputy. If no written request for a hearing is received within the 30-day period, the Deputy's commission will be recalled and the Deputy will be dismissed.

(e) If a hearing is requested, the Director will appoint a member of the staff as hearing officer to hear the charges. Hearings conducted under this subchapter are considered disciplinary matters and will be closed to the public.

(f) The hearing officer will give written notice to the Deputy charged of the hearing time, including notice that he may appear in person, with or without counsel, and that he and his witnesses will be heard. Hearings will be held at the central office of the Commission, except when deemed in the best interest of the Commission by the hearing officer.

(g) The hearing officer is not required to follow technical rules of evidence or court procedure.

(h) At the conclusion of the hearing, the hearing officer will make findings and conclusions, including a recommendation for dismissal or reinstatement of the person charged, and certify the same to the Director.

(i) The Director will review the findings of the hearing officer and decide the matter within 30 days of the hearing's conclusion.

Authority

The provisions of this § 145.21 issued under The Game Law (34 P. S. § 1311.101—1311.1502) (Repealed); and the Game and Wildlife Code, 34 Pa.C.S. §§ 101—2965.

Source

The provisions of this § 145.21 adopted June 19, 1987, effective July 1, 1987, 17 Pa.B. 2464; amended February 26, 1999, effective February 27, 1999, 29 Pa.B. 1071. Immediately preceding text appears at serial page (202807).

[Next page is 147-1.]

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