

PROPOSED RULEMAKING

GAME COMMISSION

[58 PA. CODE CHS. 135, 141 AND 143]

Lands and Buildings; Hunting and Trapping; Hunting and Furtakers Licenses

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 15, 1997, meeting, proposed the following amendments:

Amend § 135.41 (relating to State game lands) by granting the Executive Director authority to restrict recreational or other uses of State game lands.

Amend § 141.25 (relating to early and late goose hunting seasons) by increasing the daily bag and possession limits and establishing new geographical boundaries for these seasons.

Amend § 143.51 (relating to application and issuance of bonus tags) by removing the dollar amount of the fee for antlerless deer licenses.

These amendments will have no adverse impact on the wildlife resources of this Commonwealth.

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

These proposals were made public at the April 15, 1997, meeting of the Commission and comments on these proposals can be sent to the Executive Director of the Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797 until June 18, 1997.

Proposed amendment to § 135.41

1. Introduction

Section 722(a) of the code (relating to use of property) provides that lands or waters to which title has been acquired by the Commission "... may be used only to create and maintain public hunting and furtaking, game or wildlife propagation areas ... or other uses incidental to hunting, furtaking and game or wildlife resource management." The Commission has had a policy of allowing bike riding and horseback riding on game lands as an incidental public use. Unfortunately, intense use of some game lands for those purposes has led to erosion and habitat destruction.

Section 721(a) of the code places the administration of all lands and waters owned or controlled by the Commission under the sole control of the Executive Director (Director) and authorizes the Commission to promulgate regulations "... for its use and protection as necessary to properly manage these lands or waters." Although the Director has the authority to control the use of game lands under section 721 of the code, the Commission wishes to confirm that authority and establish guidelines for closure of game lands by the proposed change to § 135.41.

2. Purpose and Authority

The purpose and authority of the proposed change are outlined in the Introduction. The change would confirm the Director's authority to close all or part of State game lands to specified uses when those uses may or have become detrimental or when they conflict with the statutorily mandated uses of the lands.

3. Regulatory Requirements

The proposed change would make it unlawful to violate restrictions on and closure of State game lands. It is anticipated that this authority will be used only when necessary and, therefore, will be limited.

4. Persons Affected

Individuals wishing to use State game lands for specified detrimental uses will be affected. Most affected likely will be trail bikers and horseback riders.

5. Cost and Paperwork Requirements

There will be additional cost to the Commission in posting closed or restricted areas. It is expected that the additional cost will be small.

6. Effective Date

The change would be effective on final publication in the *Pennsylvania Bulletin* and would remain in effect until changed by the Commission.

Proposed amendment to § 141.25

1. Introduction

To effectively manage the wildlife resources of this Commonwealth, the Commission, at its April 15, 1997, meeting, proposed changing § 141.25(a)(3) to provide for an increased daily bag limit and possession limit in an area encompassing approximately the southeastern one-eighth of Pennsylvania. The change would be made under the authority contained in sections 322(c)(3) and 2102 of the code (relating to rules and regulations).

2. Purpose and Authority

Southeastern Pennsylvania continues to have a problem with damage caused by nuisance Canada geese. Since the United States Fish and Wildlife Service has not provided for a regular Canada goose hunting season in the area, the problem must be dealt with in the early and late seasons. The Federal framework allows the Commonwealth to have a daily bag limit of 5 and possession limit of 10. The late season already has these limits. The proposed change would establish the same limits for the early seasons.

Section 322(c)(3) of the code authorizes the Commission to: "Increase or reduce bag limits or possession limits." Section 2102(b) of the code directs the Commission to promulgate regulations relating to bag limits. The change is being proposed under these provisions.

3. Regulatory Requirements

The proposed change would increase bag and possession limits during the early Canada goose season in the southeastern part of Pennsylvania.

4. Persons Affected

Individuals wishing to hunt Canada geese in the southeastern part of Pennsylvania in the early season would be affected. Individuals suffering damage from nuisance Canada geese should benefit from the change.

5. Cost and Paperwork Requirements

The proposed change would not result in additional costs or paperwork requirements.

6. *Effective Date*

The change would be effective on final publication in the *Pennsylvania Bulletin* and would remain in effect until changed by the Commission.

Proposed amendment to § 143.51

1. *Introduction*

Section 143.51(e) requires the payment of a specific amount, \$5.75, to accompany an application for a bonus tag. There is currently a bill pending before the Legislature which would increase hunting license fees. To avoid confusion and the need to change § 143.51(e) with any changes in fees, the Commission at its April 15, 1997, meeting, proposed changing the regulation to require payment as specified in the code. This is being done under the authority of sections 2102 and 2721 of the code (relating to rules and regulations; and license issuance supervision).

2. *Purpose and Authority*

As outlined in the Introduction, the change is being proposed to eliminate mention of a specified dollar amount which would require modification with every license fee change. Section 2102 of the code authorizes the Commission to promulgate regulations "... permitting or prohibiting hunting or furtaking." Section 2721 of the code requires that the issuance of all hunting and furtaking licenses be "... in accordance with the regulations of the Commission."

3. *Regulatory Requirements*

The proposed change does not involve additional regulatory requirements.

4. *Persons Affected*

The proposed change would affect hunters seeking "bonus" or "surplus" antlerless deer licenses.

5. *Cost and Paperwork Requirements*

The proposed change would not result in additional cost or paperwork requirements.

6. *Effective Date*

The change would be effective on final publication in the *Pennsylvania Bulletin* and would remain in effect until changed by the Commission.

Contact Person

For further information on the proposed change, contact James R. Fagan, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

DONALD C. MADL,
Executive Director

(Editor's Note: An amendment to § 143.51, which is proposed to be amended in this document, appeared at 27 Pa.B. 2417 (May 17, 1997).)

Fiscal Note. 48-99 (1) Game Fund; (2) Implementing Year 1996-97 is \$minor; (3) 1st Succeeding Year 1997-98 is \$minor; 2nd Succeeding Year 1998-99 is \$minor; 3rd Succeeding Year 1999-00 is \$minor; 4th Succeeding Year 2000-01 is \$minor; 5th Succeeding Year 2001-02 is \$minor; (4) Fiscal Year 1995-96 \$n/a; Fiscal Year 1994-95

\$n/a; Fiscal Year 1993-94 \$n/a; (7) Game Fund; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 135. LANDS AND BUILDINGS

Subchapter C. STATE GAME LANDS

§ 135.41. State game lands.

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(b) *Closure of game lands.*

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(2) [**It shall be unlawful to violate restrictions or closure placed on these lands by the Director.**] The Director has the authority to close State game lands or portions thereof, to recreational or other uses, when the specified uses may be or have become detrimental to those lands or the flora or fauna thereon, or where the uses conflict with legal hunting, furtaking or fishing activities or the Commission's management or administration of State game lands. The closure may be seasonal or year-round and shall remain in effect until the Director removes the restrictions.

(3) **It is unlawful to violate restrictions or closure placed on these lands by the Director.**

CHAPTER 141. HUNTING AND TRAPPING

Subchapter B. SMALL GAME

§ 141.25. Early and late goose hunting seasons.

(a) *Early season and description.*

* * * * *

(3) [**There is a daily bag limit of three and a possession limit of six with the exception of the closed areas in Crawford and Lancaster/Lebanon Counties**] **Bag limit.**

(i) **There is a daily bag limit of five and a possession limit of ten in the area east of I-83 from the Maryland State line to the intersection of U. S. Route 30 to the intersection of S. R. 441, east of S. R. 441 to the intersection of I-283, east of I-283 to I-83, east of I-83 to the intersection of I-81, east of I-81 to the intersection of I-80, and south of I-80 to the New Jersey State line.**

(ii) **There is a daily bag limit of three and a possession limit of six in the remainder of the State with the exception of the closed areas in Crawford and Lancaster/Lebanon Counties.**

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CHAPTER 143. HUNTING AND FURTAKER LICENSES

Subchapter C. ANTLERLESS DEER LICENSES

§ 143.51. Application and issuance of bonus tags.

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(e) [**Five dollars and seventy-five cents**] **Remittance** in the form of a negotiable check or money order[,] **for the total amount due as specified in the**

act, payable to "County Treasurer," shall accompany the application.

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[Pa.B. Doc. No. 97-829. Filed for public inspection May 23, 1997, 9:00 a.m.]

STATE ATHLETIC COMMISSION

[58 PA. CODE CH. 21] HIV Testing Requirements

The State Athletic Commission (SAC) proposes to amend Chapter 21 (relating to professional boxing) to require that professional boxers and kickboxers submit, as part of their annual application for licensure, a report from a licensed medical laboratory or a facility operated by the Department of Health (Department) that the applicant has tested negative for the Human Immunodeficiency Virus (HIV). The test is required to have been initiated no more than 60 days prior to the date of application. The proposed amendment to Chapter 21 is set forth in Annex A.

Purpose

The purpose of this proposed amendment is to protect boxers and kickboxers from being infected with HIV during contests or exhibitions. In professional boxing and kickboxing events, there are open wounds and bleeding, and bodily fluids are frequently sprayed around the ring. Boxers wear minimal clothing and are in constant physical contact with each other. While SAC is unable to determine the probability of transmitting HIV at professional boxing events, contracting HIV can be fatal and there is no known cure.

Statutory Authority

SAC's authority to promulgate the amendment is set forth in 5 Pa.C.S. §§ 101—2110 (relating to Athletic Code) (code). In particular, the following sections of the code are applicable to this proposed rulemaking: section 910(a) (relating to standards for issuance of licenses and permits); section 103(b) (relating to duties of Commission); section 105(8) (relating to powers and duties of Executive Director); section 501 (relating to Medical Advisory Board); section 701 (relating to boxing regulated); section 901 (relating to power of the Commission to issue, withhold, suspend or revoke licenses and permits); and section 912(3) (relating to applications for licenses and permits).

Fiscal Impact

The 400 professional boxers and 40 kickboxers licensed in this Commonwealth will be required to visit a licensed medical laboratory or a Department facility and be tested for HIV. Boxers and kickboxers who test positively for HIV will not be able to submit a license application and obtain an annual license.

Costs

Assuming 70% of licensees (308 individuals) who would not otherwise do so avail themselves of Department tests, at \$4 per test, it will cost the Department an additional

\$1,232 in the first year. If a test is positive, a confirmation test must be performed at a cost of approximately \$34 per test. The Department statistics reveal approximately 1.5% of initial tests are positive. Consequently, if 308 tests are performed by the Department, approximately five additional confirmation tests would need to be performed at a total cost of \$170. The 308 additional tests that will be performed for SAC licensees represents about 1.2% of the approximately 26,420 total HIV tests performed for the 1995-calendar year by the Department.

During the first year of implementation, SAC's staff will have to dedicate additional time helping licensees adjust to the new requirement. However, SAC does not anticipate adding staff to implement the proposed amendment. Consequently, the only incremental cost is the printing of a one-page form that will accompany the renewal application which will be used to certify that the licensed medical laboratory or Department facility checked the identity of the licensee before taking the blood sample. The cost to develop and duplicate the form will be less than \$200.

Benefits

Although not all individuals who contract HIV subsequently develop Autoimmune Deficiency Syndrome (AIDS), the occurrence of AIDS in HIV positive persons is invariably fatal. SAC was unable to determine the probability of an athlete's contracting HIV at a boxing or kickboxing match. For those reasons, it is difficult to put a monetary value on preventing HIV-infected licensees from participating in events.

Assuming that an individual who tested positive for HIV has an increased risk of developing AIDS and would therefore require extensive medical treatment, one empirical measure of the benefits of reducing the transmission of HIV is the avoided medical costs of caring for a person with AIDS. The Department reports that it costs private agencies that are supported by the Commonwealth about \$120,000 to care for a patient in the advanced stages of AIDS. Most boxers do not have large annual incomes from boxing or other employment. Therefore, they are likely to require public support for AIDS treatment. Consequently, if this proposed amendment prevents one individual from contracting HIV from an applicant with HIV, which then develops into AIDS, then the savings in medical treatment alone would exceed the cost of administering this proposed amendment over several decades.

A secondary benefit could derive from changes in individuals' behavior. If an applicant who would not otherwise be tested for the virus, learns that he has contracted HIV, that individual would then be able to modify his conduct in order to decrease the probability of infecting other individuals. Increased self-awareness of an HIV-positive individual's status could benefit the community at large.

Paperwork Requirements

Applicants for annual renewal of a boxing license currently must complete a form that consists of 19 simple questions and is less than one page in length. As a result of this proposed amendment, applicants will be required to attach to the application a one-page laboratory report provided by the laboratory and a form signed by the laboratory indicating that the laboratory confirmed the

identity of the applicant before the test was administered. This form will be provided to applicants along with the annual application form.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), SAC submitted a copy of this proposed amendment on May 12, 1997, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Committees on State Government. In addition to submitting the proposed amendment, SAC has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by SAC in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendment, it will notify SAC within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by SAC, the General Assembly and the Governor of objections raised.

Sunset Review

HIV is a constantly changing virus and medications to control or eliminate the virus may be available in the future. SAC, together with the Department and SAC's Medical Advisory Committee, will continue to monitor the risks posed by HIV. If, in the future, HIV transmission in a boxing context is no longer considered to be a serious health risk, SAC will act immediately to suspend enforcement of this regulation and initiate a rulemaking to delete.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections to Gregory Sirb, Executive Director, State Athletic Commission, 116 Pine Street, Harrisburg, PA 17101. Comments, suggestions or objections must be received within 30 days of publication of this proposed amendment.

GREGORY SIRB,
Executive Director

Fiscal Note: 16-13. (1) General Fund; (2) Implementing Year 1996-97 is \$minimal; (3) 1st Succeeding Year 1997-98 is \$minimal; 2nd Succeeding Year 1998-99 is \$minimal; 3rd Succeeding Year 1999-00 is \$minimal; 4th Succeeding Year 2000-01 is \$minimal; 5th Succeeding Year 2001-02 is \$minimal; (4) Fiscal Year 1995-96 \$198,862; Fiscal Year 1994-95 \$188,330; Fiscal Year 1993-94 \$195,141; (7) Athletic Commission Augmentation Account; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART I. STATE ATHLETIC COMMISSION

SUBPART B. BOXING

CHAPTER 21. PROFESSIONAL BOXING

§ 21.8. Boxers.

(a) Professional boxers shall be licensed by the Commission. The Commission will not license or renew any license of a professional boxer unless the license application is accompanied by a report from a Department of Health facility, a laboratory possessing a permit from the Department of Health under 28 Pa. Code § 15.11 (relating to permit, requirements, application and conditions) or a report from a laboratory licensed in another jurisdiction that meets the requirements of 28 Pa. Code § 15.11, and is acceptable to the Commission, which indicates that the applicant has been tested for any virus, antibody, antigen or etiologic agent determined to cause or indicate the presence of human immunodeficiency virus and the results of those tests were negative. The tests shall have been initiated no more than 60 days prior to the date of filing the application. A boxer whose application for license has been denied has the right to a hearing before the Commission under 2 Pa.C.S. (relating to administrative law and procedure). The applicant shall apply, in writing, to the Commission requesting a hearing at which time the Commission will conduct a hearing within 10 business days from the receipt of the written request.

- [(a)] (b) * * ***
- [(b)] (c) * * ***
- [(c)] (d) * * ***
- [(d)] (e) * * ***
- [(e)] (f) * * ***
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- [(j)] (k) * * ***
- [(k)] (l) * * ***
- [(l)] (m) * * ***

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