

RULES AND REGULATIONS

Title 37—LAW

OFFICE OF ATTORNEY GENERAL

[37 PA. CODE CH. 309]

Dog Purchaser Protection

The Office of Attorney General (OAG) has adopted Chapter 309 (relating to dog purchaser protection), to read as set forth in Annex A.

Effective Date

These final-form regulations will go into effect upon publication in the *Pennsylvania Bulletin* as final rule-making.

Contact Person

The contact person concerning this rulemaking is Frank T. Donaghue, Chief Deputy Attorney General, Bureau of Consumer Protection, 14th Floor, Strawberry Square, Harrisburg, PA 17120, (717) 787-9707.

Statutory Authority

This rulemaking is made under the authority of section 9.3(g)(1) of the Unfair Trade Practices and Consumer Protection Law (act) (73 P. S. § 201-9.3(g)(1)).

Purpose of the Rulemaking

This rulemaking implements section 9.3(g)(1) of the act which requires the Attorney General to promulgate regulations specifying the information to be contained in the notice to prospective dog purchasers which must be conspicuously posted at the seller's place of business.

Summary of Public Comments and Changes

Written comments, suggestions and objections regarding the proposed regulations were requested within a 30 day period following publication of proposed rulemaking.

Comments were received from Senator Stewart Greenleaf (Chairperson of Senate Judiciary Committee and prime sponsor of the act), Pet Industry Joint Advisory Council, Pennsylvania Legislative Animal Network, Pennsylvania Federation of Dog Clubs, Inc., Bucks County SPCA, Park City Pet Center, Inc., Mr. and Mrs. Charles Smith and the Independent Regulatory Review Commission (IRRC). Following is a summary of the major comments received and the OAG's response to those comments.

Comment: IRRC and several commentators suggested that the word "breeding" be deleted from the definition of "kennel."

Response: This change was made.

Comment: IRRC suggested the inclusion of the statutory definition of "veterinarian."

Response: This change was made.

Comment: IRRC suggested that § 309.2 (relating to notice to be posted) be split into two subsections.

Response: This change was made.

Comment: IRRC suggested that the paragraphs of the notice be numbered instead of bulleted.

Response: This change was made.

Comment: IRRC and another commentator suggested the inclusion of language to clarify that the notice is a summary of the act and not a complete rendition.

Response: This change was made.

Comment: IRRC and two other commentators were concerned that the language in paragraphs one and two of the notice were not consistent with the act.

Response: IRRC suggested changes that addressed these concerns and these changes were made.

Comment: IRRC and another commentator believed that paragraph (3) of the notice did not clearly state the purchaser's rights relative to a veterinarian's examination within 10 days of purchase and the fact that a dog will not be unfit for purchase on account of injury sustained or illness most likely contracted subsequent to the date of sale.

Response: IRRC suggested changes that addressed these concerns and these changes were made.

Comment: IRRC and another commentator suggested that paragraph (4) did not clearly state that the purchaser is entitled to a refund or other listed remedies for a defect only if it adversely affects the animal's health.

Response: IRRC suggested changes that addressed these concerns and these changes were made.

Comment: IRRC suggested that paragraph (5) should emphasize the 2-business-day rule and include illness, defect or death.

Response: This change was made.

Comment: IRRC commented that section 9.3(c) of the act, which deals with the 2-business-days notice requirement, does not provide guidance for the delivery of the notice. IRRC further stated that the OAG should insert language in this regulation to provide the guidance.

Response: The OAG has inserted language in paragraph (5) pursuant to IRRC's comments. The language inserted is based upon language in section 7(a) of the act (73 P. S. § 201-7).

Comment: IRRC and several commentators pointed out a misplaced disclosure clause in paragraph (5). It was suggested this disclosure clause be included in paragraphs (3) and (4).

Response: This change was made.

Comment: IRRC commented that section 9.3(b)(1) of the act states that the purchaser may receive "a complete refund of the purchase price, not including the Sales Tax." According to IRRC the typical practice for refunds is to include the Sales Tax because the sale becomes null and void. IRRC suggested that the OAG, the Department of Revenue and the General Assembly should examine section 9.3(b)(1) of the act for consistency with other statutes and regulations relating to Sales Tax refunds.

Response: The OAG has contacted the General Assembly to initiate an examination of section 9.3(b)(1) as suggested by IRRC.

Comment: IRRC suggested that the OAG initiate a separate rulemaking to create OAG-approved forms for the certifications and other documents referred to in the act.

Response: The OAG is considering promulgating additional regulations pursuant to IRRC's suggestion, under section 3.1 of the act.

Comment: IRRC and several commentators suggested that the OAG determine a minimum size for the required notice.

Response: This change was made.

Comment: IRRC and two commentators suggested that the OAG stipulate that the notice must be readily visible in areas where dogs are displayed for sale or where payments are made for dog purchases.

Response: This change was made.

Comment: IRRC suggested that language be added stating that the notice must be legible and that the notice be posted with minimum standards for typeset size.

Response: This change was made.

Benefits, Costs and Compliance

Benefits—The citizens of this Commonwealth will benefit from these regulations because it protects purchasers of dogs from unfair trade practices of dog sellers.

Compliance Costs—Affected sellers who advertise or represent that a dog is registered or registerable are required to post a public notice as set forth in Annex A, at their place of business. Costs of posting the notice are negligible and are to be borne by the seller.

Paperwork Requirements

The regulatory provisions should have no direct paperwork impact on the Commonwealth, local governments and political subdivisions. The private sector will have minimal paperwork in the form of posting of a public notice.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 8, 1999, the OAG submitted a copy of the notice of proposed rulemaking to IRRC and to the Chairpersons of the House and Senate Judiciary Committees for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the OAG also provided IRRC and the Committees with copies of all comments received. In preparing these final-form regulations, the OAG has considered all comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(a)), these final-form regulations were deemed approved by the House and Senate Committees on December 27, 1999. Under section 5.1(e) of the Regulatory Review Act, IRRC met on January 6, 2000, and approved the final-form regulations.

Sunset Date

The information required to be contained in the form of notice as set forth in Annex A is fixed by statute. Therefore, no sunset date is proposed for these regulations.

Findings

The OAG finds that:

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

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

Order

The Office of Attorney General, acting under the authorizing statutes, orders that:

(a) The regulations of the OAG, 37 Pa. Code Chapter 309, are amended by adding §§ 309.1 and 309.2 to read as set forth in Annex A.

(b) The OAG has reviewed the regulations for approval as to form and legality as required by law.

(c) The OAG shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(d) The regulations adopted by this order shall take effect upon final publication in the *Pennsylvania Bulletin*.

GERALD J. PAPPERT,

First Deputy Attorney General

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 30 Pa.B. 465 (January 22, 2000).)

Fiscal Note: Fiscal Note 59-6 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 37. LAW

PART V. BUREAU OF CONSUMER PROTECTION

CHAPTER 309. DOG PURCHASER PROTECTION

Sec.	
309.1.	Definitions.
309.2.	Notice to be posted.

§ 309.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings:

Kennel—A kennel as defined in section 102 of the Dog Law (3 P. S. § 459-101) or a dealer licensed by the United States Department of Agriculture under section 4 of the Animal Welfare Act (7 U.S.C.A. § 2134).

Pet shop—A pet shop-kennel as defined in section 102 of the Dog Law.

Seller—A kennel, pet shop operator or other individual who sells dogs to the public and who owns or operates a kennel or pet shop licensed by the Department of Agriculture or the United States Department of Agriculture. The term does not include nonprofit kennels as defined under section 102 of the Dog Law.

Veterinarian—An individual licensed under the laws of the Commonwealth or another state to practice veterinary medicine and surgery.

§ 309.2. Notice to be posted.

(a) A seller to whom this chapter applies shall keep posted at all times the following notice, in the following form:

Public Notice

This notice shall be conspicuously posted in the place of business of persons subject to this section as enforced by the Pennsylvania Office of Attorney General. This disclosure of rights is a summary of Pennsylvania law. A written notice setting forth the rights provided under Section 9.3 of the Unfair Trade Practices and Consumer Protection Law shall be provided to you at the time of the

sale. A civil penalty of up to \$1,000 shall be levied for each violation in addition to any other penalty under this law.

(1) A seller shall provide you with a health record for the dog at the time of sale. The health record must contain information as required by the law (73 P. S. § 201-9.3(a)(1)).

(2) The seller shall provide a health certificate issued by a veterinarian within 21 days prior to the date of sale or a guarantee of good health issued and signed by the seller. The health certificate and the guarantee of good health must contain information as required by the law. 73 P. S. § 201-9.3(a)(2)(i); 73 P. S. § 201-9.3(a)(2)(ii).

(3) To preserve your rights under the law, you must take your newly purchased dog to a licensed veterinarian for examination within 10 days of purchase. If a veterinarian determines, within 10 days of purchase, that your dog is clinically ill or has died from an injury sustained or illness likely to have been contracted on or before the date of sale and delivery, you have the following options:

- (i) Return the dog for a complete refund;
- (ii) Return the dog for a replacement dog of equal value; or
- (iii) Retain the dog and receive reimbursement for reasonable veterinary fees, not exceeding the purchase price. These options do not apply where a seller, who has provided a health certificate issued by a veterinarian, discloses in writing at the time of sale the health problem for which the buyer later seeks to return the dog.

(4) If, within 30 days of purchase, a licensed veterinarian determines that your dog has a congenital or hereditary defect which adversely affects the animal's health or that your dog died from a congenital or hereditary defect, you have the same options as outlined in section 3 (above).

(5) Within 2 business days of a veterinarian's certification of your dog's illness, defect or death, you must notify, in writing, the seller of the name, address and telephone number of the examining veterinarian. Such notice shall be effective upon depositing the same in the United States mail or upon other service which provides the seller the required information. Failure to notify the seller within 2 business days will result in forfeiture of rights.

(6) Refunds or reimbursements shall be made no later than 14 days after the seller receives the veterinarian certification. Veterinarian certification shall be presented to the seller not later than 5 days after you receive it.

(7) Registerable Dogs—If the seller does not provide within 120 days all documentation to effect registration, you may exercise one of the following options:

- (i) Return the dog and receive a full refund of the purchase price; or
- (ii) Retain the dog and receive a 50% refund of the purchase price.

(8) If registerable, the seller shall provide at the time of sale: the breeder's name and address, the name and registration number of the dam and sire, and the name and address of the pedigree registry organization where the dam and sire are registered.

For further information concerning your rights under section 9.3 of the Unfair Trade Practices and Consumer

Protection Law, contact: Pennsylvania Office of Attorney General, Consumer Protection Hotline (800) 441-2555, www.attorneygeneral.gov.

(b) The notice in subsection (a) must be:

(1) Visible where dogs for purchase are displayed or where payments are made for dog purchases at the seller's place of business.

(2) A minimum size of 8.5 inches by 14 inches.

(3) In plain language and legible.

(4) A minimum 12 point typeset for the body of the notice and a minimum 48 point typeset for the title "Public Notice."

[Pa.B. Doc. No. 00-237. Filed for public inspection February 11, 2000, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CHS. 141 AND 143]

Hunting Hours; Conditions for Appointment

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 5, 1999, meeting, adopted the following changes:

Amend § 141.4 (relating to hunting hours) by making an editorial change to paragraph (2). The proposed change is required as a result of the deletion of a paragraph and resulting renumbering of the paragraphs.

Amend § 143.27 (relating to conditions for appointment) by raising the minimum security required for license issuing agents.

These amendments are adopted under the authority of 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Amendment to § 141.4

1. Introduction

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its meeting held on October 5, 1999, proposed, and at its January 11, 2000, meeting finally adopted, an editorial change to § 141.4. The change is required as a result of the deletion of a subparagraph and resulting renumbering of the subsections by a regulation finally adopted at the Commission's June 8, 1999, meeting. This change was adopted under sections 322(c)(1) and 2102(a) of the code (relating to powers and duties of commission; and regulations).

2. Purpose and Authority

At its June 8, 1999, meeting, the Commission expanded hunting hours for hunting mourning doves by deleting paragraph (1) of § 141.4. In doing so, the Commission failed to change a reference in then paragraph (3) to paragraph (2), which became paragraph (1). The adopted change will remedy this situation.

Section 322(c)(1) of the code empowers the Commission to fix daily shooting or taking hours. Section 2102(a) of the code authorizes the Commission to promulgate regulations relating to the hunting of game or wildlife in this Commonwealth. The change was adopted under this authority.

3. Regulatory Requirements

The amendments do not result in additional regulatory requirements but rather only clarify the existing regulation.

4. Persons Affected

The amendment is editorial in nature and will not impact anyone.

5. Comment Response Summary

No official comments were received with regard to the adopted change.

6. Cost and Paperwork Requirements

The amendments should not result in any additional cost or paperwork.

Amendment to § 143.27

1. Introduction

To more effectively manage the wildlife resources of this Commonwealth and administer its license issuing system, the Commission at its meeting held on October 5, 1999, proposed, and at its January 11, 2000, meeting finally adopted, changing § 143.27 to raise the minimum security required for license issuing agents from \$10,000 to \$18,000. This change was adopted under section 2722(g) of the code (relating to authorized license-issuing agents).

2. Purpose and Authority

With the July 1, 1999, effective date of amendments to the code providing for license fee increases, many hunting license issuing agents discovered that they did not have sufficient security to allow them to obtain adequate supplies of licenses for issuance. In addition to reducing the availability of licenses, this resulted in greater workload for the agents and the Commission by reason of the need to order licenses more frequently. As a result, the Commission has decided to amend § 143.27 to raise the minimum security to be posted by agents from \$10,000 to \$18,000.

Section 2722(g) of the code directs the Commission to adopt regulations for the administration, control and performance of license issuance. The amendment is made under that authority.

3. Regulatory Requirements

The amendment increases the amount of security which must be posted by most hunting license issuing agents but should reduce the amount of time and effort required to order licenses.

4. Persons Affected

Hunting license issuing agents who must post bonds will be affected by the change.

5. Comment and Response Summary

No official comments were received with regard to the amendment.

6. Cost and Paperwork Requirements

The amendment will result in additional cost to agents for security. At the same time, it should decrease the amount of paperwork and ordering costs. Also, agents did receive a fee increase when the license fees were increased.

Effective Date

The amendment is effective on final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

Contact Person

For further information on the amendment, contact William L. Hutson, Director, Bureau of Law Enforcement, (717) 783-6526, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

Findings

The Commission finds that:

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

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

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 141 and 143, are amended by amending § 141.4 to read as set forth at 29 Pa.B. 6118 and by amending § 143.27 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall submit this order, 29 Pa.B. 6118 and Annex A, and deposit them with the Legislative Reference Bureau as required by law.

(c) This order is effective upon final publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-114 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 143. HUNTING AND FURTKER LICENSES

Subchapter B. APPOINTMENT OF AGENTS

§ 143.27. Conditions for appointment.

A person desiring consideration for appointment as an agent shall meet the following conditions:

(1) Be a resident of this Commonwealth or an entity registered to do business in this Commonwealth.

(2) Operate a bona fide sporting goods sales outlet where the public expects to find this service.

(3) Be open to the public during reasonable daylight and evening hours.

(4) Not operate on a seasonal or part-time basis.

(5) Agree to and demonstrate ability to provide full license service and cooperation to the public throughout the entire license sales period, and keep records required by the Commission and by statute.

(6) Provide security to the Commission in an amount of at least \$18,000.

[Pa.B. Doc. No. 00-238. Filed for public inspection February 11, 2000, 9:00 a.m.]

**[58 PA. CODE CH. 147]
Special Permits**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 5, 1999, meeting, adopted the following changes:

Amend Chapter 147, Subchapter R (relating to deer control) to provide more relief to qualified farmers and expand opportunities for junior resident license holders.

These amendments are adopted under the authority of 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Amendment to Subchapter R

1. *Introduction*

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its October 5, 1999, meeting, proposed, and at its January 11, 2000, meeting, finally adopted, changing Subchapter R to relax several requirements. The changes involve the authorization of twice the number of subpermits, the issuance of subpermits to residents under 18 years of age and to those who qualify for license and fee exemptions and reporting on a monthly rather than weekly basis. These changes were adopted under authority contained in section 2901(b) of the code (relating to regulations for permits).

2. *Purpose and Authority*

Regulations currently in place for the issuance of agricultural deer control permits authorize the issuance of a maximum of one subpermit for every 10 acres under cultivation (§ 147.553), prohibit issuance of subpermits to residents under 18 years of age (§ 147.554), do not provide for issuance of subpermits to individuals exempt from license and fee requirements and require weekly reports of activities conducted under the permits (§ 147.557). As a result of comments and input received from the agricultural community, the Commission decided to propose and finally adopt changes in the requirements as outlined.

Section 2901(b) of the code authorizes the Commission to promulgate regulations for the issuance of a permit. This provides the authority for the adopted changes.

3. *Regulatory Requirements*

The adopted changes relax existing requirements.

4. *Persons Affected*

Persons wishing to obtain an agricultural deer control permit and their subpermittees will be affected by the changes.

5. *Comment and Response Summary*

No official comments were received with regard to the adopted change.

6. *Cost and Paperwork Requirement*

The amendments will increase the number of subpermits that can be issued but will reduce the number of required reports.

7. *Effective Date*

These amendments will be effective on final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

8. *Contact Person*

For further information on the amendments contact William L. Hutson, Director, Bureau of Law Enforcement, (717) 783-6526, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

Findings

The Commission finds that:

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

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

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending §§ 147.554 and 147.557 to read as set forth at 29 Pa.B. 6340, and by amending §§ 147.553 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall submit this order, 29 Pa.B. 6340 and Annex A, and deposit them with the Legislative Reference Bureau as required by law.

(c) This order is effective upon final publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-115 remains valid for the final adoption of the subject regulations.

**Annex A
TITLE 58. RECREATION
PART III. GAME COMMISSION
CHAPTER 147. SPECIAL PERMITS
Subchapter R. DEER CONTROL
AGRICULTURE**

§ 147.553. Permit.

The deer control permit authorizes the permittee to enlist the aid of a limited number of subpermits. The maximum number of subpermits issued will be no more than one for every 5 acres of land that is under cultivation and enrolled in the Deer Damage Area Program unless the wildlife conservation officer recommends an increase in the number due to warranted circumstances.

[Pa.B. Doc. No. 00-239. Filed for public inspection February 11, 2000, 9:00 a.m.]