

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 53 AND 93]

Access Areas and Marinas; Registration and Titling of Boats

The Fish and Boat Commission (Commission) proposes to amend Chapters 53 and 93 (relating to Commission property; and registration and numbering). The Commission is publishing these amendments as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments relate to Commission property and the registration and titling of boats.

A. *Effective Date*

The proposed amendments, if approved on final-form rulemaking, will go into effect upon publication of an order adopting the amendments in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the proposed amendments contact Laurie E. Shepler, Assistant Counsel, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposed rulemaking is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

C. *Statutory Authority*

The proposed amendment to § 53.12a (relating to access areas and marinas) is published under the statutory authority of section 741 of the code (relating to control of property). The proposed amendment to § 93.14 (relating to proof of ownership for initial registration) is published under the statutory authority of section 5122 of the code (relating to registration, licenses, permits, plates and statistics). The proposed amendments to §§ 93.113—93.116 are published under the statutory authority of section 5325 of the code (relating to rules and regulations).

D. *Purpose and Background*

The proposed amendments are designed to update, modify and improve the Commission's regulations pertaining to its property and the registration and titling of boats. The specific purpose of the proposed amendments is described in more detail under the summary of proposal.

E. *Summary of Proposal*

(1) *Section 53.12a.* The Commission's regional law enforcement offices from time to time receive complaints from boaters that anglers are blocking boat launch areas (docks, in particular). Although § 53.12a currently provides that the Executive Director may impose additional restrictions on the use of Commission access areas and marinas and that these restrictions will be effective when posted at the site, the Commission believes that it would be desirable to have a regulation in place that expressly states that boats have the right-of-way over fishing from boat launch areas and that it is unlawful to fish from boat launch areas when posted. Accordingly, the Commission proposes to amend this section to read as set forth in Annex A.

(2) *Section 93.14.* With the continued popularity of canoes and kayaks, sales of these boats have been strong. Also, because of their relatively small size and low cost, they are readily available from many distribution outlets besides traditional boat dealers. These other outlets include sporting goods and discount type retail stores.

Because these nontraditional outlets are not familiar with documentation requirements, purchasers frequently are not provided with the manufacturer's certificate of origin (MCO). Under current regulations, the original MCO is required for the initial registration of a boat. This requirement for nonpowered boats, such as canoes and kayaks, sold from retail establishments is causing significant delays in registration, imposing unreasonable "paper chase" requirements on applicants and raising frustration and customer service issues.

Accordingly, the Commission proposes that the MCO requirement be eliminated for boats that are registered voluntarily under section 5303 of the code (relating to voluntary and special registrations) when the boat has a retail value of less than \$2,000. The Commission also proposes that the regulation be reorganized to read as set forth in Annex A.

(3) *Sections 93.113—93.116.* On July 1, 2001, revised 13 Pa.C.S. Division 9 (relating to secured transactions) went into effect in this Commonwealth. Also going into effect on July 1, 2001, were amendments to sections 5323 and 5327 of the code (relating to content and effect of certificate of title; and fees). These changes were made so that the code conforms with the revised Division 9. Changes to the Commission's titling regulations that pertain to security interests also are required so that these regulations conform with the revised Division 9. Accordingly, the Commission proposes amending §§ 93.113—93.116 to read as set forth in Annex A.

F. *Paperwork*

The proposed amendments will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendments will impose no 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 the proposed amendments 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 by e-mail to rafpbcregs@state.pa.us. A subject heading of the proposal and a return name and address must be included in each transmission. All electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-124. 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

§ 53.12a. Access areas and marinas.

(a) *General provisions.*

* * * * *

(5) Boats have the right-of-way over fishing from boat launch areas or boat docks. It is unlawful for persons fishing from a boat launch area or boat dock to permit their fishing activity to interfere with boat traffic into and out of the boat launch area or boat dock. It is unlawful to fish from a boat launch area or boat dock when posted at the site.

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Subpart C. BOATING

CHAPTER 93. REGISTRATION AND NUMBERING

Subchapter A. REGISTRATION OF BOATS

§ 93.14. Proof of ownership for initial registration.

(a) [Proof of ownership for initial registration shall be established by a manufacturer's certificate of origin indicating transfer of ownership from the manufacturer, distributor or dealer to the applicant if the boat was manufactured after January 1, 1993. When registering a new boat for the first time, the original manufacturer's certificate of origin shall be attached to the Form REV-336 and submitted to the Commission.] This section applies only to the initial registration of a boat in this Commonwealth. It does not apply to registration of boats previously or currently registered in this Commonwealth.

(b) [If a manufacturer's certificate of origin is not available, proof of ownership shall be established by one of the following:

(1) A bill of sale or invoice executed by the seller showing the following:

- (i) The name and address of the seller.
- (ii) The name and address of the purchaser.
- (iii) The name and address of the legal owner.

(iv) The location, date of sale and description of the boat, including the hull identification number if the boat was built after October 31, 1972.

(v) Any other serial number on the boat if it was built prior to October 31, 1972.

(2) A properly endorsed document indicating title if the boat has been registered and issued a title by another state.] An applicant for initial registration shall establish proof of ownership as follows:

(1) For a boat manufactured after January 1, 1993, a manufacturer's certificate of origin indicating transfer of ownership from the manufacturer, distributor or dealer to the applicant. The original manufacturer's certificate of origin shall be attached to the Form REV-336 and submitted to the Commission.

(2) For a boat manufactured before January 1, 1993, or when the manufacturer's certificate of

origin is not available, a bill of sale or invoice issued or prepared by the seller showing all of the following:

- (i) The name and address of the seller.
- (ii) The name and address of the purchaser.
- (iii) The name and address of the legal owner.

(iv) The location, date of sale and description of the boat, including the hull identification number for boats built after October 31, 1972, or other serial number for boats built prior to October 31, 1972.

(3) For a boat that was registered and issued a title by another state, a properly endorsed document indicating title.

(c) [If neither a manufacturer's certificate of origin nor the documents described in subsection (b) are available, the applicant shall submit an executed Form PFBC-734 (Affidavit of Purchase/Ownership) fully setting forth the facts to support the applicant's claim of ownership in the boat. Applications seeking to prove ownership of homemade boats shall be supported with bills of sale for the major components of the boat. Affidavits are executed under penalty of law.] If none of the documents described in subsection (b)(1) and (2) are available, the applicant shall submit an executed Form PFBC-734 (Affidavit of Purchase/Ownership) fully setting forth the facts to support the applicant's claim of ownership in the boat. Applications seeking to prove ownership of homemade boats shall be supported with bills of sale for the major components of the boat. Affidavits are executed under penalty of law.

(d) [A manufacturer, dealer or other person may not sell or otherwise transfer a new watercraft to a dealer for the purposes of display or resale without delivering to the dealer a completed manufacturer's certificate of origin. A dealer may not purchase or acquire a new watercraft without obtaining from the seller thereof the manufacturer's certificate.] An applicant for initial registration of a boat with a retail value of less than \$2,000 that is being registered voluntarily under section 5303 of the code (relating to voluntary and special registrations) may substitute the original receipt issued by a dealer or other retailer for the manufacturer's certificate of origin.

(e) [This section applies to initial registration of a boat. It does not apply to registration of boats previously or currently registered in this Commonwealth.] A manufacturer, dealer or other person may not sell or otherwise transfer a new boat to a dealer for the purposes of display or resale without delivering to the dealer a completed manufacturer's certificate of origin. A dealer may not purchase or acquire a new boat without obtaining from the seller thereof the manufacturer's certificate.

Subchapter B. TITLING OF BOATS

§ 93.113. Creation and perfection of security interests in boats.

(a) [An owner creates a security interest in a boat when the owner signs a note, agreement or other instrument containing terms that create a security interest.] When an owner creates a security interest in a boat:

(1) The owner shall [provide lienholder information on the space on the title or on a separate form that the Commission prescribes. The information provided shall include the name and address of the secured party and the date of the security agreement. The owner shall have the title, application and fee to be delivered to the Commission], at the request of the secured party, immediately execute an application on a form prescribed by the Commission including the name and address of the secured party. The owner shall tender the existing certificate of title, if any, the application and the required fee to the Commission.

(2) The security interest is perfected [as of the time of its creation if delivery and payment to the Commission are completed within 20 days of the date of its creation; otherwise, perfection shall be as of the time of its delivery and payment] at the time that the application, existing certificate of title and an amount equal to or greater than the required fee are received by the Commission.

(3) Upon receipt of the title, application and the required filing fee, the Commission will endorse on the existing title or on a new title that it then issues, the name and address of all secured parties, and mail or deliver the title to the first secured party named on the certificate of title.

(b) [A] Except as provided in 13 Pa.C.S. § 9311(d), 9315(c) and (d) and 9316(d) and (e) (relating to perfection of security interests in property subject to certain statutes, regulations and treaties; secured party's rights on disposition of collateral and in proceeds; and continued perfection of security interest following change in governing law), a security interest in a boat is not valid against creditors of the owner or subsequent transferees or secured parties of the boat until perfected as provided by this subchapter.

[(c) The issuance of a title, other than in the case of the initial issuance to a purchaser from a dealer, does not invalidate a previously perfected security interest under 13 Pa.C.S. (relating to Uniform Commercial Code), other than a dealer's security interest in inventory.]

§ 93.114. Assignments of security interests.

* * * * *

(b) [The] An assignee who desires to become the secured party of record shall deliver to the Commission the title, if available, and an assignment by the secured party named in the title in the form the Commission may prescribe, accompanied by the filing fee required by law. [The assignee's security interest is perfected as of the time of its creation if delivery and payment to the Commission are completed within 20 days of the date of its creation; otherwise, perfection is as of the time of its delivery and payment.]

(c) The provisions of this section are subject to 13 Pa.C.S. § 9308(c) (relating to when security interest or agricultural lien is perfected; continuity of perfection).

§ 93.115. Satisfaction of security interests.

(a) [Within] Unless otherwise agreed by the owner, within 20 days of the satisfaction of a security interest in a boat, the secured party shall mail or deliver

the title with the release to the owner and notify the Commission of the release of security interest.

(b) [A lien shall be deemed satisfied within 10 years of issuance, unless the lienholder otherwise notifies the Commission.] Perfection of a security interest under this subchapter is effective for 10 years, dating from the time of perfection as provided in § 93.113 (relating to creation and perfection of security interests in boats) unless renewed as provided in subsection (c).

(c) The effectiveness of perfection lapses on the expiration of the period specified in subsection (b) unless a renewal form signed by the secured party of record is filed within the 6 months immediately preceding expiration. Upon the timely filing of the renewal form and the tender of the required fee, the effectiveness of perfection continues for 5 years from the date on which perfection would have become ineffective in the absence of renewal. Perfection may be successively renewed.

§ 93.116. Exemptions.

The provisions of this subchapter relating to procedures for creating, perfecting, assigning and satisfying security interests do not apply to the following:

* * * * *

(3) A security interest in a boat [created by a manufacturer or dealer who holds the boat for sale, but a buyer in the ordinary course of trade from the manufacturer or dealer takes free of the security interest] held by a manufacturer or a dealer as described in 13 Pa.C.S. § 9311(d) (relating to perfection of security interests in property subject to certain statutes, regulations and treaties).

* * * * *

(5) [A security interest claimed on proceeds, if the original security interest did not have to be noted on the title in order to be perfected.

(6) [A boat for which a title is not issued under this subchapter.

[Pa.B. Doc. No. 02-343. Filed for public inspection March 1, 2002, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CHS. 131, 139, 141 AND 143]

Seasons and Bag Limits; Hunting Hours; Small Game; Big Game; Elk Licenses

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 15, 2002, meeting, proposed the following amendments:

Amend § 131.2 (relating to definitions) by defining the terms "arrow," "bow," "broadhead" and "crossbow bolt" to help avoid confusion and misinterpretation.

Amend § 139.2 (relating to definitions) by redefining the terms "antlered deer," defining "point" and "protected deer."

Amend § 141.4 (relating to hunting hours) to allow bobcat permitholders to take bobcats while hunting deer

and to restrict the taking of coyotes only by those persons lawfully engaged in hunting deer or bear; § 141.22(a)(8) (relating to small game) to provide lawful methods for taking small game and § 174.22(c) to allow licensed furtakers to trap nuisance woodchucks for farmers; and § 141.48 (relating to elk management areas) by combining some of the elk management areas to provide fewer, but larger management areas.

Amend § 143.203 (relating to drawing) to eliminate reference to the 2001 license year and to establish that the number of licenses issued be set by the Commission.

These proposed 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 Game and Wildlife Code) (code).

These proposed amendments were made public at the January 15, 2002, meeting of the Commission and comments on these proposed amendments can be sent to Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until March 29, 2002.

Proposed Amendments to § 131.2

1. Introduction

Due to the many new technologies in the archery equipment field, the Commission believes it is necessary to define certain terms for regulatory purposes. The Commission, at its meeting held on January 15, 2002, therefore, proposed adding definitions of "arrow," "bow," "broadhead" and "crossbow bolt" to § 131.2. These proposed amendments are being made under the authority contained in section 2102 of the code (relating to regulations).

2. Purpose and Authority

Advancements in technology and archery hunting techniques have made it apparent that certain terms need to be defined for regulatory purposes. The Commission has therefore proposed adding definitions of "arrow," "bow," "broadhead" and "bolt" to § 131.2. These definitions should help clarify regulatory requirements and avoid confusion.

Section 2102(a) of the code directs the Commission to "... promulgate such regulations as it deems necessary and appropriate concerning... the ways, manner, methods, and means of hunting or furtaking..." Section 2102(d) also directs the Commission to promulgate regulations stipulating "... the type of firearms and ammunition and other devices which may be used..." The change was adopted under this authority.

3. Regulatory Requirements

The proposed amendments define the terms "arrow," "bow," "broadhead" and "crossbow bolt." These proposed definitions may exclude the use of certain devices.

4. Persons Affected

Individuals wishing to hunt using bows and arrows and crossbows will be affected by these proposed amendments.

Proposed Amendments to § 139.2

1. Introduction

To more effectively manage the wildlife resources of this Commonwealth, the Commission, at its January 15, 2002, meeting, proposed amending § 139.2 to add definitions of "protected deer" and "point" and amend the definition of "antlered deer." These amendments were proposed under the authority contained in section

322(c)(1) of the code (relating to powers and duties of the commission) and section 2102(b)(1) of the code.

2. Purpose and Authority

The Commission is proposing that an antlered deer, legal for harvest, have four or more points to an antler in 11 counties and three or more points to an antler in the remaining 56 counties. This requires amending the definition of "antlered deer" and defining the term "point." This proposed rulemaking also creates a category of deer that do not meet the definition of "antlered deer" or "antlerless deer" and therefore must be defined as "protected deer" since they may not be legally taken in any deer season. The proposed addition to § 139.2 would accomplish this purpose.

The Commission is required to set hunting and furtaking seasons and bag limits on an annual basis. Section 322(c) of the code specifically empowers the Commission to "... fix seasons... and daily, seasons and possession limits for any species of game or wildlife." Section 2102(b) of the code mandates that the Commission promulgate regulations relating to seasons and bag limits. These sections provide the authority for the proposed amendments.

3. Regulatory Requirements

The proposed amendment to "antlered deer" redefines what a legal antlered deer is. The addition of the definition of "point" will facilitate requiring deer hunters to identify points. The addition of the definition of "protected deer" provides for a deer that does not meet the definition of "antlered deer" or "antlerless deer."

4. Persons Affected

Individuals wishing to hunt deer will be affected by this proposed amendment.

Proposed Amendments to §§ 141.1 and 141.22

1. Introduction

To effectively manage the wildlife resources of this Commonwealth, the Commission, at its January 15, 2002, meeting, proposed amending § 141.4(1) to allow coyotes to be taken during deer and bear season only by persons who are lawfully engaged in hunting deer or bear and who possess a valid tag, amending § 141.4(2) to allow bobcat permit holders to take a bobcat while hunting deer, adding § 141.22(a)(8) to explicate lawful devices for taking small game, and adding § 141.22(c) to allow licensed furtakers to trap nuisance woodchucks for farmers.

2. Purpose and Authority

The Commission has allowed hunters who possess a valid deer tag to hunt coyotes during deer season and to hunt coyotes during bear season regardless of tag. Coyote hunters taking advantage of this opportunity were not mandated to comply with fluorescent orange or hunting hour requirements. The proposed amendment would allow hunters to take coyotes during the deer and bear season only while engaged in lawfully hunting deer and bear. Hunters would therefore have to possess a valid tag and comply with other restrictions pertaining to deer and bear hunting including wearing of fluorescent orange.

Hunters in possession of bobcat permits have asked to be able to take bobcats while hunting for deer. With the limited number of bobcat permits issued the Commission has no concern about allowing this additional opportunity.

Woodchucks cause damage to farmer's fields, crops and equipment. Farmers have asked the Commission to allow

furtakers to assist them in controlling nuisance woodchucks by allowing furtakers to trap woodchucks with the farmer's permission.

Since the codification of the code, lawful methods for taking small game have not been clearly defined. The proposed amendments will clearly define the methods for lawfully taking small game.

Section 322(c)(5) of the code authorizes the Commission to fix the type and number of devices which may be used to take game or wildlife. Section 2102(a) of the code authorizes the Commission to promulgate regulations relating to the hunting of game or wildlife in this Commonwealth. The amendments were proposed under this authority.

3. *Regulatory Requirements*

The proposed amendments would relax the requirements for taking bobcats and woodchucks, and further restrict coyote hunters and small game hunters.

4. *Persons Affected*

Farmers, furtakers, coyote hunters and small game hunters would be affected.

Proposed Amendments to §§ 141.48 and 143.203

1. *Introduction*

To effectively manage this Commonwealth's growing elk herd, the Commission, at its January 15, 2002, meeting, proposed amending § 141.48 by combining some of the elk management areas to provide fewer, but larger management areas and changing § 143.203 to eliminate the reference to the 2001 license year and to have the number of elk licenses issued set by the Commission.

2. *Purpose and Authority*

In the 2001-2002 license year, the Commission issued 30 licenses to allow hunters to harvest elk for the first time in this Commonwealth since 1932. After reviewing harvest data biologists have determined that the Commission can more effectively manage the elk herd by creating fewer but larger management areas, which requires amending § 141.48.

Section 143.203(e) needs to be amended to eliminate the reference to the year 2001 and to establish that the number of licenses issued be set by the Commission. This section currently states the number shall be set by the Bureau of Wildlife Management with concurrence of the Executive Director.

Section 2102(a) of the code authorizes the Commission to "... promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting. . ."

Section 2705(15) of the code (relating to classes of officers) provides that: "To ensure sound management of Pennsylvania's wild elk population, the commission may promulgate regulations to establish a limited number of licenses."

These provisions provide the statutory authority for the proposed changes.

3. *Regulatory Requirements*

The proposed amendments would create fewer, larger elk management areas and require that the number of elk licenses issued be set by the Commission.

4. *Persons Affected*

Individuals wishing to hunt elk will be affected.

Cost and Paperwork Requirements

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

Effective Dates

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

Contact Person

For further information regarding these proposed amendments, contact David E. Overcash, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-139. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 131. PRELIMINARY PROVISIONS

§ 131.2. Definitions.

In addition to the definitions contained in section 102 of the act (relating to definitions), the following words and terms, when used in this part, [**or in the act**] have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Arrow—A projectile shot from a bow with an overall length exceeding the brace height of the bow with fletching designed only for guidance at the aft end and a broadhead mounted on the fore end. Arrow and broadhead shall have a combined weight of at least 400 grains. No electronic device may be a part of or attached to the arrow. No device, material or system capable of causing damage or injury to the animal in excess of that inflicted by the cutting edges of the broadhead may be a part of or attached to any arrow.

* * * * *

Bow—In addition to the definition in section 102 of the act, a device for launching an arrow, which derives its propulsive energy solely from the bending and recovery of two limbs. The energy used to propel the arrow may not be derived from another source. These limitations may not exclude the mechanical leverage advantage provided by eccentric wheels or cams so long as the available energy stored in the bent limbs of the bow is the sole result of a single, continuous and direct pulling effort by the shooter. The bowstring shall be released as a direct and conscious action of the shooter either relaxing the tension of the fingers or triggering the release action of a hand held release aid. A bow shall have a peak draw weight not less than 35 pounds.

Broadhead—Shall have an outside diameter or width of at least 7/8 inch with no less than two cutting edges in the same plane throughout the length of the cutting surface. Broadheads may not

exceed 3 inches in length measured from the tip of the broadhead to the point that fits against the arrow shaft.

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Crossbow bolt—An arrow propelled by a crossbow.

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CHAPTER 139. SEASONS AND BAG LIMITS

§ 139.2. Definitions.

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

Antlered deer—[A deer having two or more points to one antler, or with one antler 3 inches or more in length.]

(i) In the counties of Allegheny, Armstrong, Beaver, Butler, Crawford, Erie, Indiana, Lawrence, Mercer, Washington and Westmoreland, a deer having four or more points to one antler.

(ii) In all other counties a deer having three or more points to one antler.

* * * * *

Point—An antler projection at least 1 inch in length from base to tip, the brow tine and main beam tip shall be counted as points.

Protected deer—A deer not defined as an antlered deer or an antlerless deer.

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CHAPTER 141. HUNTING AND TRAPPING

Subchapter A. GENERAL

§ 141.4. Hunting hours.

During open hunting seasons, wild birds and animals may be taken 1/2 hour before sunrise to sunset unless further restricted.

(1) During the regular antlered and antlerless deer seasons, it is unlawful to take or attempt to take other wild birds or mammals from 1/2 hour before sunrise to sunset. Game birds on regulated hunting grounds and migratory waterfowl are excepted. Coyotes may be taken [by persons licensed to hunt deer] from the first day to the last day inclusive of any deer or bear season only by persons lawfully engaged in hunting deer or bear who have a valid [deer] tag.

(2) Raccoon, fox, skunk, opossum, coyote [, bobcat] and weasel may be taken any hour, day or night, except

during restricted periods in paragraph (1), and woodchuck, coyote, opossum, skunk and weasel may not be hunted prior to 12 noon during the spring gobbler season.

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Subchapter B. SMALL GAME

§ 141.22. Small game.

(a) *Unlawful activities.* It is unlawful to:

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(8) Unless otherwise provided in the act or this title, hunt or take small game with anything other than a shotgun with fine shot, muzzleloading rifle or handgun .36 caliber or less, rimfire rifle or handgun .22 caliber or less, or bow and arrow with or without broadheads. The caliber restrictions do not apply to rifles or handguns while hunting woodchuck.

* * * * *

(c) *Permitted acts.* Woodchucks may be trapped by properly licensed furtakers with permission of the person in charge of the land. For the purposes of this subsection, a person shall mean a person as defined in section 2121(c) of the act (relating to definition). Traps and methods shall comply with provisions in section 2361 of the act (relating to unlawful acts concerning taking of furbearers) except that traps may be set closer than 5 feet from any woodchuck hole or den.

Subchapter C. BIG GAME

§ 141.48. Elk management areas.

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(b) The outline map of Pennsylvania sets forth elk management areas. Elk Management Area [15] 13 comprises all areas outside areas 1-[14] 12 inclusive. See Appendix F.

CHAPTER 143. HUNTING AND FURTAKER LICENSES

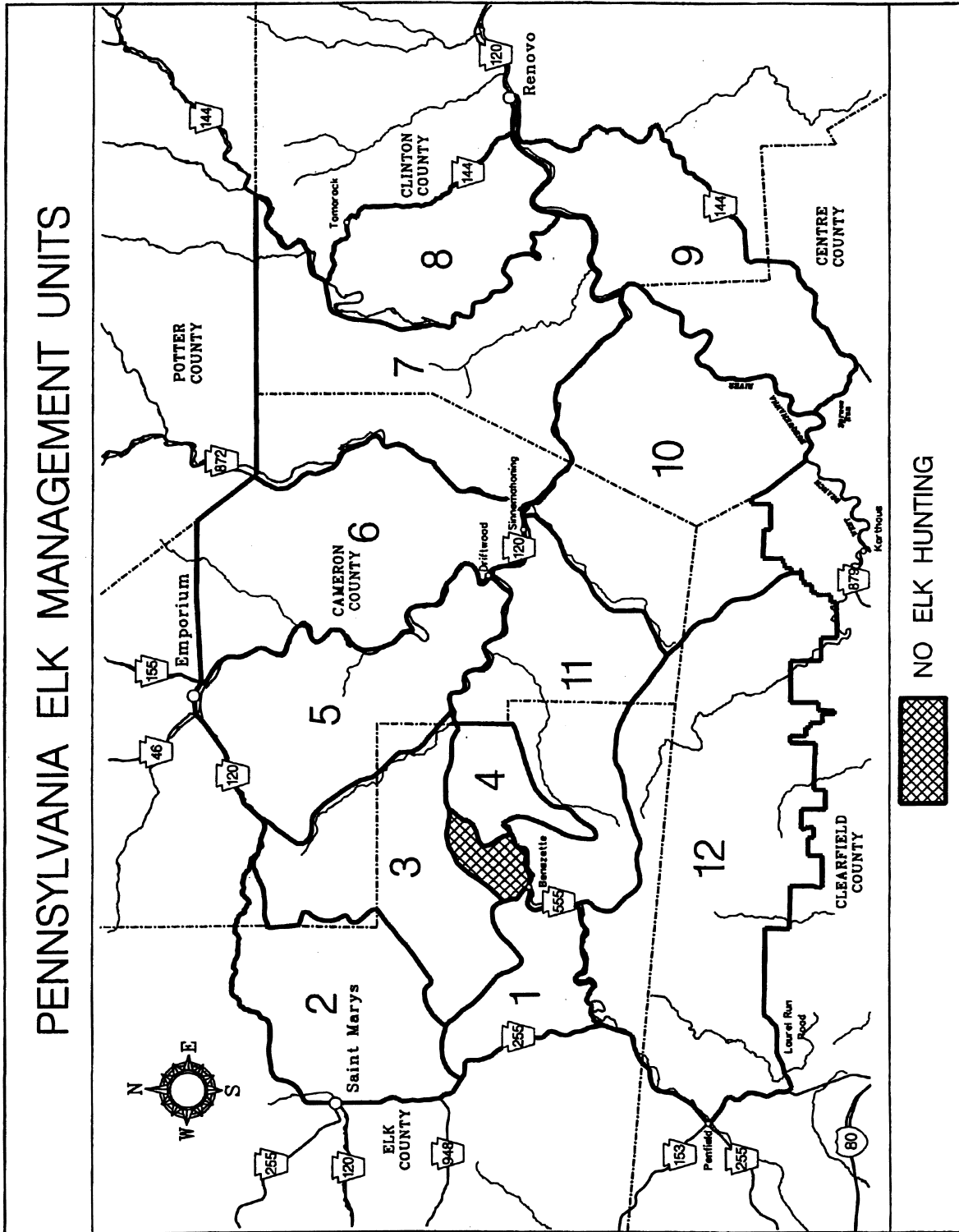
Subchapter K. ELK LICENSES

§ 143.203. Drawing.

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(e) The number of licenses shall be limited to a number set by the [Bureau of Wildlife Management with concurrence of the Executive Director for the year 2001 only] Commission.

APPENDIX F



[Pa.B. Doc. No. 02-344. Filed for public inspection March 1, 2002, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 135]

Use of and Permissible Activities on State Game Lands

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its January 15, 2002, meeting, proposed the following amendments:

Amend §§ 135.2 and 135.41 (relating to unlawful actions; and State game lands) to restrict specified detrimental uses and further define permitted acts and unlawful activities.

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

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

These proposed amendments were made public at the January 15, 2002, meeting of the Commission, and comments on this proposal can be sent to the Director of Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until March 29, 2002.

1. Introduction

Section 722(a) of the code (relating to use of property) provides that land or water titles which have 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." Section 721(a) of the code (relating to control of property) places the administration of all lands and waters owned or controlled by the Commission under the sole control of the Executive Director and authorizes the Commission to promulgate regulations "... for its use and protection as necessary to properly manage these lands or waters."

The Commission has allowed various recreational uses of the State game lands system. Unfortunately an increase of these recreational uses has resulted in a corresponding increase in user conflicts and habitat degradation and fragmentation. The Commission at its January 15, 2002, meeting proposed amendments to §§ 135.2 and 135.41 to place restrictions on some of these recreational uses and to clarify permitted acts.

2. Purpose and Authority

The purpose and authority of the proposed amendments are outlined in the Introduction of this Preamble. The amendments would clarify existing regulations regarding use of and permissible activities on game lands, and restrict certain recreational uses by the time of year, areas to be used and number of participants. The proposed amendments would also make it unlawful, while on State game lands, to consume or possess alcohol, possess controlled substances or engage in any commercial activity without the written permission of the Executive Director.

3. Regulatory Requirements

The proposed amendments would make it unlawful to violate restrictions on specified recreational uses or to engage in prohibited activities.

4. Persons Affected

Individuals wishing to use State game lands for specified detrimental uses will be limited. Individuals wishing to use State game lands for other uses will be affected.

5. Cost and Paperwork Requirements

There will be additional costs to the Commission in posting designated routes for specified users as well as posting new regulations on State game lands to inform users of changes. Usual, customary costs associated with signage for any new program can be expected. The anticipated costs are minimal.

6. Effective Dates

The proposed amendments will be effective February 1, 2003, and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding these amendments, contact David E. Overcash, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Secretary

Fiscal Note: 48-140. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 135. LANDS AND BUILDINGS

Subchapter A. GENERAL PROVISIONS

§ 135.2. Unlawful actions.

In addition to the prohibitions in the act on lands, waters or buildings under Commission ownership, lease or jurisdiction, it is unlawful, except with the permission of the person in charge of the lands, to:

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(2) [**Contaminate, pollute or degrade springs or streams.**] **Plant, gather, cut, dig, remove or otherwise injure plants or parts thereof, including trees, shrubs, vines, flowering plants, cultivated crops, mushrooms and fruits of berry-producing plants.**

(3) [**Graze or permit the grazing of domestic livestock.**] **Travel on lands by means of vehicle or conveyance propelled by motorized power. This prohibition does not include the travel by individuals permanently confined to a wheelchair propelled by electric power obtained from batteries. Individuals desiring to hunt from an electric powered wheelchair shall have a disabled person permit under section 2923 of the code (relating to disabled person permits).**

(4) [**Place private advertisements, signs or posters.**] **Swim in a dam, pond, lake or stream.**

(5) [**Plant, gather, cut, dig, remove or otherwise injure plants or parts thereof, including trees, shrubs, vines, flowering plants, cultivated crops, mushrooms and fruits of berry-producing plants.**] **Injure, destroy or cause damage to property—real, personal or mixed.**

(6) [Travel on lands by means of a vehicle or conveyance propelled by motorized power. This prohibition does not include the travel by individuals permanently confined to a wheelchair propelled by electric power obtained from batteries. Individuals desiring to hunt from an electric powered wheelchair shall have a disabled person permit under section 2923 of the code (relating to disabled person permits).] Remove or attempt to remove any manmade or natural object except wildlife and fish lawfully taken during the open season. Objects which may not be removed include animals, rocks, minerals, sand and historical or archaeological artifacts.

(7) [Ride animals on fields, except during sanctioned field trials and then only in accordance with the permit.] Participate in, become a part of, contribute to or engage in disorderly conduct as defined in 18 Pa.C.S. §§ 5503 and 5505 (relating to disorderly conduct; and public drunkenness).

(8) [Drive motor vehicles with or without attachments having a gross weight in excess of 11,000 pounds.] Kindle, use or maintain an open fire.

(9) [Use boats propelled by a motor.] Travel on roads open to vehicular travel with vehicle or conveyance propelled by motorized power which is not licensed or authorized for operation on a public highway under 75 Pa.C.S. (relating to the Vehicle Code).

(10) [Fish from dam breasts posted against fishing.] Violate, fail or neglect to follow instructions posted on signs authorized by the Director.

(11) [Swim in a dam, pond, lake or stream.] Travel by mechanical or motorized conveyance or ride animals on newly constructed, seeded or planted roads, or other areas, when posted against the travel.

[(12) Injure, destroy or cause damage to property—real, personal or mixed.

(13) Remove sand, clay, stone, minerals or other products.

(14) Participate in, become a part of or contribute to boisterous, immoral or indecent conduct.

(15) Kindle, use or maintain an open fire.

(16) Travel on roads open to vehicular travel with a vehicle or conveyance propelled by motorized power which is not licensed or authorized for operation on a public highway under 75 Pa.C.S. §§ 101—9910 (relating to the Vehicle Code).

(17) Violate, fail or neglect to follow instructions posted on signs authorized by the Director.

(18) Travel by mechanical or motorized conveyance or ride animals on newly constructed, seeded or planted roads, or other areas, when posted against the travel.]

Subchapter C. STATE GAME LANDS

§ 135.41. State game lands.

(a) *Restrictions limited.* The following exceptions to § 135.2 (relating to unlawful actions) pertain to lands and waters designated as State game lands:

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(2) [Open fires are permitted, except when the fire index rating used by the Bureau of Forestry, Department of Conservation and Natural Resources, is high, very high or extreme.] Small open fires for cooking or warming purposes are permitted only at places where adequate precautions are taken to prevent the spread of fire which may damage adjacent areas and shall be attended at all times and completely extinguished before leaving the site of the fire. Open fires are prohibited when the fire index rating used by the Department of Conservation and Natural Resources, is high, very high or extreme. A person causing a wildfire, in addition to possible criminal penalty, is liable for all damages, cost of extinguishing and fines.

(3) Snowmobiles, as defined in 75 Pa.C.S. § 7702 (relating to definitions) may be driven beginning on the third Sunday in January [15] through April 1 on designated areas, roads and trails marked with appropriate signs, so long as snowmobiles are registered and display valid registration plate as required under 75 Pa.C.S. §§ 7711.1 and 7711.2 (relating to registration of snowmobile or ATV; and limited registration of snowmobile or ATV).

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(c) In addition to the prohibitions contained in the act pertaining to State game lands and § 135.2 (relating to unlawful actions), except with the written permission of the Director, it is unlawful to:

(1) Contaminate, pollute or degrade groundwaters or surface waters or any waterways.

(2) Graze or permit the grazing of livestock, place or maintain beehives or beekeeping apparatus.

(3) Solicit, or place advertisements, signs or posters.

(4) Ride a nonmotorized vehicle, conveyance or animal, except on roads normally open to public travel, or designated routes as posted, or while lawfully engaged in hunting, trapping or fishing.

(5) Ride a nonmotorized vehicle, conveyance or animal from the second Saturday in September until the third Saturday in January, and the second Saturday in April through the last Saturday in May inclusive, except on Sundays or while lawfully engaged in hunting, trapping or fishing.

(6) Ride a nonmotorized vehicle, conveyance or animal, on roads open to foot travel only.

(7) Drive motor vehicles with or without attachments having a registered gross vehicle weight in excess of 12,000 pounds.

(8) Use boats propelled by a motor. Battery powered electric motors may be used on waterways unless posted otherwise.

(9) Consume, possess or transport any alcohol, liquor, beer, malt or brewed alcoholic beverage.

(10) Use or possess any controlled substance as defined or classified under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-143).

(11) Occupy, use or construct, place or maintain structures or other tangible property, except that portable hunting blinds or stands may be used, provided no visible damage is caused to trees.

(12) Feed wildlife or lay or place any food, fruit, hay, grain, chemical, salt or other minerals.

(13) Release domestic animals, captive bred or captive raised game or wildlife.

(14) Operate a motor vehicle in willful and wanton disregard for the safety of persons or property or in excess of posted speed limits, or where no speed limit is posted, in excess of 25 miles per hour.

(15) Target shoot with firearms, bows and arrows or devices capable of launching projectiles in a manner that could cause injury to persons or property, or on areas posted closed to those activities.

(16) Except as provided in Subchapter J (relating to shooting ranges), discharge any firearm, bow and arrow, or device capable of launching projectiles that is not a lawful device to hunt game or wildlife.

(17) Engage in an activity or event involving more than ten persons, which may conflict with the intended purposes or uses as defined in section 722 of the act (relating to use of property), or poses a potential environmental or safety problem.

(18) Sell, distribute, deliver, service, guide or rent any equipment, material or commodity or otherwise transact or engage in any commercial activity. Commercial activity is any activity in which a

person directly or indirectly accepts consideration of value as compensation for the provision of goods or services, including transportation.

(19) Use State game lands for any personal, organizational or commercial purpose other than the intended use as defined in section 722 of the code (relating to use of property).

(20) Operate under authority of a contract, lease, agreement or permit and fail to abide by the terms and conditions contained in the contract, lease, agreement or permit.

(21) Except on Sundays, be present on State game lands from the second Saturday in September until the third Saturday in January and the second Saturday in April through the last Saturday in May inclusive when not engaged in lawful hunting or trapping and fail to wear a minimum of 250 square inches of daylight fluorescent orange-colored material on the head, chest and back combined or, in lieu thereof, a hat of the same colored material. The material shall be worn so it is visible in a 360° arc. Persons using shooting ranges are exempted from this requirement.

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