

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 65, 69, 75, 77 AND 111]

Fishing; Boating

The Fish and Boat Commission (Commission) proposes to amend Chapters 65, 69, 75, 77 and 111. The Commission is publishing the proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. Effective Date

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

B. Contact Person

For further information on the proposed rulemaking, 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 amendments to § 65.24 (relating to miscellaneous special regulations) are published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes). The proposed amendments to §§ 69.21 and 69.24 (relating to limitations on numbers and types of licenses; and limitations on gear) are published under the statutory authority of section 2903 of the code (relating to boat and net licenses for boundary lakes). The proposed amendment to § 75.1 (relating to endangered species) is published under the statutory authority of section 2305 of the code (relating to threatened and endangered species). The proposed amendments to § 77.2 (relating to reptile and amphibian hunt permits) are published under the authority of section 2904 of the code (relating to permits for protection and management of particular fish). The proposed amendments to § 77.6 (relating to season and daily possession limits) are published under the statutory authority of section 2102(b) of the code (relating to rules and regulations). The proposed amendments to §§ 111.6, 111.21 and 111.54 (relating to Berks County; Cumberland County; and Schuylkill County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. Purpose and Background

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

The Commission's Boating Advisory Board considered the proposed amendments to Chapter 111 (relating to special regulations counties) and recommended that the Commission publish a notice of proposed rulemaking containing the proposed amendments.

E. Summary of Proposal

(1) *Sections 65.24, 77.2 and 77.9.* A recent review of the Commission's regulations has revealed that certain

housekeeping changes should be made. Accordingly, the Commission proposes to amend these sections to read as set forth in Annex A.

(2) *Sections 69.21 and 69.24.* Beginning on January 1, 1996, the use of gill nets for fishing on boundary lakes became illegal. Since that time, there have been only three commercial fishermen who annually apply for trap net licenses to legally fish in this Commonwealth waters of Lake Erie.

Section 69.21 currently provides that up to 10 individuals may be licensed to fish with up to 20 trap nets each and that each net requires a separate license. Two of the three licensees have not recorded any fishing activity or landings for several years, a requirement for renewing and maintaining a commercial trap net license under § 69.23(c)(1) and (2) (relating to responsibility of licensees). Based upon the performance of the trap net fishery since 1996 and the lack of additional interest in its expansion, there is no reasonable expectation that a vigorous trap net fishery will prosper in the near future. Accordingly, the Commission proposes to amend §§ 69.21 and 69.24 to reduce the number of trap net licenses so that up to three individuals may be licensed to fish up to six trap nets each. The Commission intends to revisit this issue in the future and further reduce the number of trap net licenses if activity continues to be limited and interest is waning.

(3) *Section 75.1.* In 1990, the United States Department of Interior, Fish and Wildlife Service, designated *Alasmidonta heterodon* (dwarf wedgemussel) as Federally endangered in the entire range. This species of freshwater mussel is known to occur in Connecticut, Massachusetts, Maryland, North Carolina, New Hampshire, New Jersey, New York, Pennsylvania, Virginia, Vermont and New Brunswick, Canada. Until recently, the dwarf wedgemussel was considered extirpated from its former range in the Delaware River drainage.

During mussel surveys of the Upper Delaware Scenic and Recreation River by William Lellis of the United States Geological Survey, from July to August 2000, the dwarf wedgemussel was discovered at six locations in the upper Delaware River, Wayne County. Thirteen live specimens and four shells were located from north of Equinunk, PA to south of Callicoon, NY. Subsequent surveys in 2001 and 2002 by William Lellis have documented additional occurrences in the Upper Delaware River basin.

Section 102 of the code (relating to definitions) defines endangered species as "all species and subspecies of fish which (1) have been declared by the Secretary of the United States Department of Interior to be threatened with extinction and appear on the Endangered Species List or the Native Endangered Species List published in the *Federal Register*; or (2) have been declared by the executive director to be threatened with extinction and appear on the Pennsylvania Endangered Species List published in the *Pennsylvania Bulletin*." Because this Federally endangered species recently has been rediscovered in this Commonwealth, the Commission proposes adding it to the Pennsylvania list of endangered species.

(4) *Section 111.6.* The Commission adopted special regulations in 1971 to allow and control the use of the Felix Dam pool of the Schuylkill River for waterskiing and other uses inconsistent with the 100-foot rule and other special boating requirements. The dam is a very old

wooden crib structure and was breached several years ago during a flood event. It does not appear that the dam will be reconstructed, and the regulations have become superfluous because the type of boating that the regulations were intended to permit can no longer take place. Accordingly, the Commission proposes to delete the regulation as set forth in Annex A.

(5) *Section 111.21.* The Commission adopted special regulations in 1979 to control the use of boats on the pool behind the Good Hope Mill Dam on the Conodoguinet Creek. The dam was removed in 2001, and the circumstances that required these special regulations no longer exist. The general boating regulations adequately regulate boating in this area. Accordingly, the Commission proposes to delete the regulation as set forth in Annex A.

(6) *Section 111.54.* A recent staff review of the Commission's regulations has revealed that they do not include Tuscarora Lake in Schuylkill County as being electric motors only. Accordingly, the Commission proposes to add this lake to its list of electric motors only restrictions as set forth in Annex A.

F. Paperwork

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

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking 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 rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically to ra-pfbregs@state.pa.us. A subject heading of the proposal and a return name and address must be included in each transmission. In addition, 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-139. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART II. FISH AND BOAT COMMISSION
Subpart B. FISHING
CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.24. Miscellaneous special regulations.

The following waters are subject to the following miscellaneous special regulations:

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
	* * * * *	
[Lehigh]	[Leasor Lake]	[Closed to public fishing.]
	* * * * *	
[Westmoreland]	[Northmoreland]	[Closed to public fishing.]
[Westmoreland]	[Bridgeport Dam]	[Until December 31, 1994, Bridgeport Dam is a catch-and-release/no-harvest fishery for all species. It is unlawful to take, kill or possess, while in the act of fishing, fish taken from the waters of Bridgeport Dam.]
	* * * * *	

CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES

Subchapter C. COMMERCIAL FISHING LICENSES

§ 69.21. Limitations on numbers and types of licenses.

(a) The number and types of commercial fishing licenses for fishing in Lake Erie shall be limited as follows:

- (1) Trap nets: Up to [ten] three individuals may be

licensed to fish up to [20] six trap nets each. Each trap net requires a separate license.

* * * * *

§ 69.24. Limitations on gear.

(a) A licensed trap netter may not use or fish more than [20] six trap nets, singularly or in a series or tandem set, at any one time.

* * * * *

CHAPTER 75. ENDANGERED SPECIES

§ 75.1. Endangered species.

* * * * *

(b) *Fish.* The following species are endangered:

* * * * *

(31) Dwarf wedgemussel, *Alasmidonta heterodon.*

* * * * *

CHAPTER 77. REPTILES AND AMPHIBIANS

§ 77.2. Reptile and amphibian hunt permits.

* * * * *

(b) The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that it is necessary for the proper protection and management of the timber rattlesnake (*Crotalus horridus*) that persons who hunt, take, catch or kill timber rattlesnakes have an individual permit for the activity. It is unlawful to take, catch, kill or possess a timber rattlesnake no matter how obtained without procuring the required permit from the Commission. Application for a permit shall be made on a form prescribed by the Commission. Permits may be obtained by applying to: Herpetology and Endangered Species Coordinator, [**Bureau of Fisheries**] **Division of Environmental Services**, 450 Robinson Lane, Bellefonte, Pennsylvania 16823-9616. It is unlawful for a permittee to hunt for

timber rattlesnakes without having in his possession the required permit at all times while engaged in the activities. Permittees under this section shall comply with the terms and conditions of the permit, including the requirement for catch reports. The fee for the permit is \$5 per year.

(c) The Commission finds, under section 2904 of the code, that it is necessary for the proper protection and management of reptiles and amphibians in this Commonwealth that organized reptile and amphibian hunts be conducted under permits issued under this section. The sponsor of one or more organized reptile and amphibian hunts shall apply for a permit by no earlier than January 1 and no later than March 1 of the year for which the hunt is proposed on a form prescribed by the Commission. Permits may be obtained by applying to: Herpetology and Endangered Species Coordinator, [**Bureau of Fisheries**] **Division of Environmental Services**, 450 Robinson Lane, Bellefonte, Pennsylvania 16823-9616. It is unlawful to engage in organized reptile and amphibian hunts unless the sponsors of the hunts have first procured the required permit for each hunt. The required permits shall be held in possession of the sponsor at all times during each hunt. Permittees shall comply with the terms and conditions of each permit and furnish reports required thereby. The fee for each permit is \$25.

* * * * *

§ 77.6. Season and daily possession limits.

* * * * *

(e) The following seasons, sizes and catch limits apply to amphibians and reptiles except endangered and threatened species:

<i>SPECIES</i>	<i>SEASON</i>	<i>DAILY LIMIT</i>	<i>POSSESSION LIMIT</i>
	* * * * *		
Timber rattlesnake (<i>Crotalus horridus</i>)	Second Saturday in June to July 31	[1]	[1 (annual limit)]
	* * * * *	1 (annual limit)*	
	* * * * *		

***It is unlawful for a person to take, catch or kill more than one timber rattlesnake per calendar year. It is unlawful for a person to possess more than one timber rattlesnake at any time.**

Subpart C. BOATING

**CHAPTER 111. SPECIAL REGULATIONS
COUNTIES**

§ 111.6. Berks County.

* * * * *

(b) [*Felix Dam Pool, Schuylkill River.* The following special regulations apply to Felix Dam Pool, Schuylkill River:

(1) A boat may not tow more than one water skier at a time.

(2) Ski lines shall be taken onboard immediately after being used by the skier.

(c) [*Hopewell Lake—French Creek State Park.* The operation of boats powered by internal combustion motors is prohibited.

[(d)] (c) * * *

[(e)] (d) * * *

§ 111.21. Cumberland County.

(a) [*Good Hope Mill Dam, Conodoquinet Creek.*

(1) Boats are limited to a slow, minimum height swell speed from the Good Hope Mill Dam upstream to the Sample Bridge Road Bridge.

(2) Air propeller driven boats and boats designed for racing, hydroplanes, jet boats, all terrain vehicles, air cushion effect vehicles or similar unique designs and personal watercraft are prohibited.

(b) [*Laurel Lake—Pine Grove Furnace State Park.* The operation of boats powered by internal combustion motors is prohibited.

[(c)] (b) * * *

[(d)] (c) *Power Company Dam (Cove Hill)*
 [*Conodoquinet*] *Conodoquinet Creek.*

* * * * *

§ 111.54. Schuylkill County.

(a) *Locust Lake—Locust Lake State Park.* The operation of boats powered by internal combustion motors is prohibited.

(b) *Tuscarora Lake—Tuscarora Lake State Park.* The operation of boats powered by internal combustion motors is prohibited.

[Pa.B. Doc. No. 03-511. Filed for public inspection March 21, 2003, 9:00 a.m.]

[58 PA. CODE CHS. 91, 109 AND 117]

Boating

The Fish and Boat Commission (Commission) proposes to amend Chapters 91, 109 and 117 (relating to general provisions; specialty boats and waterskiing activities; and boat rental businesses). The Commission is publishing the proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. *Effective Date*

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

B. *Contact Person*

For further information on the proposed rulemaking, 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 amendments to §§ 91.4, 91.6, 91.7, 109.3 and 117.4 are published under the statutory authority of section 5123 of the code (relating to general boating regulations).

D. *Purpose and Background*

The proposed rulemaking is designed to update, modify and improve the Commission's regulations pertaining to boating. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposal. The Commission's Boating Advisory Board considered the proposed rulemaking and recommended that the Commission publish a notice of proposed rulemaking containing the proposed amendments.

E. *Summary of Proposal*

(1) *Section 91.4.* The act of December 9, 2002 (P. L. 1542, No. 199) (Act 199), which went into effect on February 7, 2003, requires persons born on or after January 1, 1982, to have a Boating Safety Education Certificate to operate a boat propelled by a motor greater than 25 horsepower. As a result of Act 199, certain parts of § 91.6 (relating to Boating Safety Education Certificates) regarding personal watercraft use have become redundant. The proposed amendments eliminate operational requirements for persons 12 to 15 years of age that are redundant with § 109.3(h) (relating to personal watercraft) and Act 199.

Additionally, the current regulations place restrictions on the operation of boats propelled by a motor greater than 10 horsepower. Because Act 199 regulates the use of powerboats based on a horsepower limitation of greater than 25 horsepower, the Commission will retain the current regulations regulating the age-based use of boats powered by motors of 25 horsepower or less.

Accordingly, the Commission proposes to remove the redundant sections and reword the regulation for clarity. The proposed rulemaking does not change the original intent of the regulations, and the current prohibitions remain in effect.

(2) *Section 91.6.* The current definition of a Boating Safety Education Certificate in this section does not adequately define what information a Boating Safety Education Certificate must contain. Accordingly, the Commission proposes to amend this section to include this information.

In addition, Act 199 establishes that persons who violate the new law commit a summary offense of the second degree, which carries a penalty of \$100 or imprisonment not exceeding 20 days. Currently, persons who violate § 91.6 commit a summary offense of the third degree, which carries a penalty of \$50. Accordingly, the Commission has designated § 91.6 as being for the protection of the health and safety of persons on boats, towed by boats or on, in or along the waters of this Commonwealth and has promulgated this section in accordance with section 5123(a)(1) of the code. Persons who violate a rule or regulation promulgated under this subsection and paragraph commit a summary offense of the second degree.

(3) *Section 91.7.* Act 199 requires that the Commission adopt criteria for courses and certificates that are acceptable for the purposes of Act 199. The Commission proposes to add § 91.7 (relating to criteria for courses of instruction in boating safety education) to address this requirement. Under § 91.7, the Commission will accept courses that meet the requirements of the National Association of State Boating Law Administrators (NASBLA). These standards for education courses were developed through a United States Coast Guard grant and meet Nationally accepted education standards for course content. States that incorporate these Nationally accepted standards by adopting NASBLA approval as a minimum requirement assure a degree of uniformity among the states that helps boaters who travel between the states meet the education certification requirements of the states they travel through.

(4) *Sections 109.3 and 117.4.* Section 109.3(f) and (h)(1) refers to the rental of personal watercraft. Therefore, the Commission proposes that these subsections be moved to § 117.4 (relating to personal watercraft liveries).

Section 109.3(h)(2) and (3) provides for the issuance of temporary Boating Safety Education Certificates for purchasers of new personal watercraft. These provisions were initially intended to help boat buyers who could not readily attend a boating class after they had purchased a boat. Since the Commission promulgated this regulation, the Commission has instituted an Internet and a video course that is acceptable for obtaining a certificate. The provision is no longer needed because boaters are able to obtain their permanent certificates in a reasonable amount of time. Dealers should encourage prospective buyers to review the video or go online while they are making purchase decisions or the boat is being prepared

for delivery. Accordingly, the Commission proposes that the provisions for dealer-issued temporary certificates for boat buyers be eliminated.

In addition, the Commission has designated § 109.3 as being for the protection of the health and safety of persons on boats, towed by boats or on, in or along the waters of this Commonwealth and has promulgated this section in accordance with section 5123(a)(1) of the code.

F. Paperwork

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

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking 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 rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically to ra-pfbcregs@state.pa.us. A subject heading of the proposal and a return name and address must be included in each transmission. In addition, 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-140. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART II. FISH AND BOAT COMMISSION
Subpart C. BOATING
CHAPTER 91. GENERAL PROVISIONS

§ 91.4. Age of operator.

(a) [**The following age restrictions apply to the operation of a motorboat propelled by a motor greater than 10 horsepower (other than personal watercraft):**

(1)] A person 11 years of age or younger may not operate [**such a watercraft**] a personal watercraft or a boat propelled by a motor greater than 10 horsepower.

[(2) A person 12 through 15 years of age may not operate such a watercraft unless the person has obtained and has in his possession a Boating Safety Education Certificate or at least one person 16 years of age or older is present onboard.]

(b) [**The following age restrictions apply to the operation of personal watercraft:**

(1) A person 11 years of age or younger may not operate a personal watercraft.

(2) A person 12 through 15 years of age may not operate a personal watercraft unless he has obtained and has in his possession a Boating Safety Education Certificate.

(3)] A person 12 through 15 years of age may not operate a boat propelled by a motor greater than 10 horsepower unless the person has obtained and has in his possession a Boating Safety Education Certificate or at least one person 16 years of age or older is present onboard.

(c) A person 12 through 15 years of age may not operate a personal watercraft if there are any passengers onboard 15 years of age or younger.

§ 91.6. Boating Safety Education Certificates.

(a) *Definition.*

[(1) For residents of this Commonwealth, a Boating Safety Education Certificate is one issued to an individual by the Commission, another state or Canadian province. Upon proper application, the Commission may issue a Boating Safety Education Certificate to a resident of this Commonwealth who successfully completes a course offered by an organization designated by the Executive Director.

(2) For nonresidents, a Boating Safety Education Certificate is one issued to an individual who successfully completes a course offered by the Commission, another state, a Canadian province or an organization designated by the Executive Director.]

A Boating Safety Education Certificate is a certificate issued by a state to an individual upon the successful completion of a boating safety education course approved by the Commission and the National Association of State Boating Law Administrators (NASBLA). It shall contain the following information:

- (1) Name of the individual
- (2) Type of course
- (3) Certificate number
- (4) Date of issue
- (5) Date of birth
- (6) Eye color
- (7) Hair color
- (8) Sex
- (9) State of issuance
- (10) Whether course is NASBLA-approved

* * * * *

§ 91.7. Criteria for courses of instruction in boating safety education.

A course of instruction in boating safety education shall meet the National Boating Safety Education Standards of the National Association of State Boating Law Administrators (NASBLA) and shall have received the approval of NASBLA. These standards and procedures for approval may be obtained from NASBLA at 1500 Leestown Road, Suite 330, Lexington, KY 40511 or on the World Wide Web at http://www.nasbla.org/education_standards.htm.

CHAPTER 109. SPECIALTY BOATS AND WATERSKIING ACTIVITIES

§ 109.3. Personal watercraft.

* * * * *

(f) [A rental business may not lease, hire or rent a personal watercraft to or for use by a person who is 15 years of age or younger.

(g)] The operator of a personal watercraft with a capacity of two or less persons as determined by the manufacturer, may not tow [water skiers] water-skiers or engage in [water skiing] waterskiing or similar activities while operating a personal watercraft. Other personal watercraft may tow no more than one skier.

[(h)] (g) Except as otherwise provided in this subpart, [on or after January 1, 2000,] a person may not operate a personal watercraft on the waters of this Commonwealth unless the person has obtained a Boating Safety Education Certificate as defined in § 91.6 (relating to Boating Safety Education Certificates).

[(1) The Executive Director may authorize boat rental businesses to issue temporary boating safety education certificates, effective for the period of rental only, to operators of rental personal watercraft if the boat rental business and the operator comply with the requirements governing the rental of personal watercraft and the operation of personal watercraft rental businesses as defined in Chapter 117 (relating to boat rental business).

(2) The Executive Director may authorize issuance of temporary boating safety education certificates to operators of newly purchased personal watercraft upon completion of training and examination the Executive Director may require.

(3) New purchasers of personal watercraft and members of their immediate families may be eligible for issuance of temporary certificates, which shall be valid for 60 days from the date of purchase.]

CHAPTER 117. BOAT RENTAL BUSINESSES

§ 117.4. Personal watercraft liveries.

(a) A livery operator that rents personal watercraft shall verify that operators of rented personal watercraft comply with § 109.3 (relating to personal watercraft) and the guidelines on providing education and training issued by the Executive Director. A livery operator that rents personal watercraft also shall verify that operators of rented personal watercraft either possess a permanent Boating Safety Education Certificate or have obtained a temporary Boating Safety Education Certificate from the personal watercraft livery. **The Executive Director may authorize boat liveries to issue temporary Boating Safety Education Certificates, effective for the period of rental only, to operators of rental personal watercraft if the boat livery and the operator comply with the requirements governing the rental of personal watercraft and the operation of boat liveries as defined in this chapter. The Executive Director will establish rules and guidelines for the issuance of temporary certificates.**

* * * * *

(c) A personal watercraft livery may not lease, hire or rent a personal watercraft to or for use by a person who is 15 years of age or younger.

[Pa.B. Doc. No. 03-512. Filed for public inspection March 21, 2003, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 143]

Deer Management Assistance Program

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 7, 2003, meeting, proposed the following amendments:

Add Subchapter L (relating to deer management assistance program licenses) to provide hunters the opportunity to purchase and use area specific deer management assistance program (DMAP) licenses that have been allotted to qualifying applicant landowners.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public at the January 7, 2003, meeting of the Commission. Comments can be sent until April 4, 2003, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Introduction

The Commission is proposing to add Subchapter L to Chapter 143 (relating to hunting and furtaker licenses) to implement the DMAP, which is designated to specially assist landowners experiencing particularly severe problems related to excessive deer herd populations.

2. Purpose and Authority

Under proposed Subchapter L, the regulations will provide qualified landowners with a determined allotment of coupons, which may then be distributed by the landowners to hunters. Hunters receiving the coupons will then be permitted to submit the coupons to purchase and use DMAP antlerless licenses in the qualified specific area related to that coupon. The number of coupons that will be allotted to any qualifying applicant landowner will be determined based on the specific program the landowner qualifies for as well as any approved deer management plans submitted by the landowner. The county treasurer will issue the DMAP licenses without regard to the regular, annual, antlerless license allocation for each wildlife management unit. The intention behind DMAP is to provide both public and private landowners with an additional tool for the future management of local white-tailed deer herds on lands where excessive deer numbers have compromised the landowners' land uses and other interests. Subchapter L will establish application procedures, coupon distribution limits and eligibility guidelines for landowners.

Section 2722(g) of the code (relating to authorized license-issuing agents) directs the Commission to adopt regulations for the administration, control and performance of license issuing activities. Section 2102(a) of the

code (relating to regulations) provides "The Commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." These two provisions provide the statutory authority for the proposed rulemaking.

3. *Regulatory Requirements*

The proposed rulemaking will establish a DMAP whereby landowners may qualify to have additional antlerless licenses issued to hunters to harvest antlerless deer on their lands.

4. *Persons Affected*

Persons wishing to hunt for antlerless deer and persons wishing to have more deer harvested from their land will be affected by the proposed rulemaking.

5. *Cost and Paperwork Requirements*

The proposed rulemaking will result in some additional cost to the Commission in the form of printing additional antlerless deer licenses and printing and distributing coupons to landowners for this program.

6. *Effective Date*

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

7. *Contact Person*

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-156. (1) Game Fund; (2) Implementing Year 2003-04 is \$1,490; (3) 1st Succeeding Year 2004-05 is \$1,490; 2nd Succeeding Year 2005-06 is \$1,490; 3rd Succeeding Year 2006-07 is \$1,490; 4th Succeeding Year 2007-08 is \$1,490; 5th Succeeding Year 2008-09 is \$1,490; (4) 2002-03 Program—\$n/a; 2001-02 Program—\$n/a; 2000-01—\$n/a; (7) General Government Operations; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 143. HUNTING AND FURTAKER LICENSES

Subchapter L. DEER MANAGEMENT ASSISTANCE PROGRAM LICENSES

- Sec. 143.301. Purpose and scope.
- 143.302. Definitions.
- 143.303. Eligibility and application for DMAP.
- 143.304. Issuance of DMAP licenses.
- 143.305. Validity of license.
- 143.306. Unlawful acts.

§ 143.301. Purpose and scope.

This subchapter establishes rules for application and issuance of antlerless deer licenses for use on lands enrolled in a DMAP and will be reviewed by the Commission in January 2004.

§ 143.302. Definitions.

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

Coupon—The coupon issued by the Commission to approved DMAP areas entitling the holder to one DMAP license for the DMAP area indicated on the coupon.

DMAP—The Deer Management Assistance Program.

DMAP license—The numbered back tag which is issued by the county treasurer authorizing the holder thereof to hunt antlerless deer in a specific DMAP area. Each license has its own antlerless deer ear tag and antlerless deer harvest report card attached to be used only for tagging and reporting an antlerless deer harvested.

Private land—Land not defined as public land and owned or leased by 3 or fewer natural persons which are not incorporated.

Public land—Any land owned or controlled by a Federal or State agency, or municipal political subdivision.

§ 143.303. Eligibility and application for DMAP.

(a) In the 2003-2004 license year, DMAP applications will only be accepted for public land, and private land enrolled in one of the Commission's public access programs (Farm Game, Forest Game or Safety Zone—P.10203). Owners or lessees of private land or authorized officers or employees of political subdivisions or government agencies shall apply for the DMAP in a manner and on a form required by the Director for one of the following programs:

(1) *Small landowner program.* Less than 1,000 contiguous acres of land. One DMAP license will be allocated for every 50 acres enrolled in the DMAP. Additional DMAP licenses may be allocated dependent on current conditions relative to goals and objectives outlined in a Commission approved management plan.

(2) *Agriculture program.* Land where material destruction of cultivated crops, fruit trees or vegetables by deer has been or can be documented by the Commission. One DMAP license will be allocated for every 5 acres enrolled in the DMAP. Additional DMAP licenses may be allocated dependent on current conditions relative to goals and objectives outlined in a Commission approved management plan.

(3) *Urban program.* Land owned or controlled by municipalities or community associations. The number of DMAP licenses allocated will depend on current conditions relative to goals and objectives outlined in the management plan.

(4) *Conservation program.* Land where deer damage to threatened or endangered plant or animal species, or both, or communities in which they live has been documented or can be documented by the applicant. The number of DMAP licenses allocated will depend on current conditions relative to goals and objectives outlined in a Commission approved management plan.

(5) *Large landowner program.* One thousand or more contiguous acres of land. The number of DMAP licenses allocated will depend on current conditions relative to goals and objectives outlined in a Commission approved management plan. Applicants engaged in forestry practices shall provide information about forestry practices for the property in the management plan.

(b) Applications shall be submitted to the appropriate regional office by July 1 immediately preceding the first fall deer hunting season.

(c) When a management plan is required with the application, the procedure is as follows:

(1) An application for approval of a management plan that will allow the use of DMAP licenses on a designated land area shall contain the following information:

(i) The name of the owner, lessee, political subdivision or government agency that is requesting approval of a deer management plan.

(ii) If the application is for the urban program, Conservation program or public land, the name and address of the authorized officer or employee of the political subdivision or government agency who will be the contact person for the plan.

(iii) A map showing the location and boundaries of the area and the county, township and Commission wildlife management unit the site is located in.

(iv) A description of the management area delineated on the map in subparagraph (iii) including the size in acres, cover types (forested, nonforested), principal land uses, huntable areas and safety zones and hunter access points.

(v) A brief description of the area including access points that the person in control of the land wants to have posted on the Commission web site, as well as the name and address of a contact person for more information.

(vi) An explanation of deer management goals and objectives for the area. Goals include deer density, deer impacts, habitat condition, forest regeneration, other wildlife and recreational opportunities.

(vii) An explanation to substantiate why the person in control of the land wants to increase the harvest of antlerless deer by allowing use of DMAP on the area. Area specific information shall be provided that supports the deer management goals and objectives, such as deer density estimates, indices of deer abundance, buck/doe ratios, fawn/doe ratios, deer condition, habitat conditions, plant species abundance or diversity, forest regeneration and hunter success rates.

(d) Upon approval of the application, the person in control of the land will conspicuously post the site boundary and all public roadways traversing the property

with signs approved by the Commission. Posting shall be completed by the opening date of the first fall antlerless deer season.

(e) Approved applicants shall receive one coupon for each DMAP license the DMAP area is entitled to. Unused coupons shall be returned to the Commission by January 31 of each license year.

§ 143.304. Issuance of DMAP licenses.

(a) DMAP licenses shall be made available without regard to quota limitations and shall be issued by the county treasurer in the county where the majority of the land enrolled in the DMAP is situated.

(b) One coupon for the DMAP area may be issued to persons who possess a valid Pennsylvania hunting license.

(c) Coupon holders shall present the coupon along with an application for an antlerless license to the county treasurer in the county where the majority of the land enrolled in the DMAP is situated and be issued a DMAP license after paying the prescribed antlerless license fee.

§ 143.305. Validity of license.

(a) DMAP licenses are valid only during open seasons for hunting antlerless deer.

(b) DMAP licenses are valid only on the DMAP area indicated on the license.

§ 143.306. Unlawful acts.

It is unlawful to:

(1) Use, possess or attempt to use or possess more than one DMAP license for a specific DMAP area in any license year.

(2) Issue more than one coupon to any person for a specific DMAP area in any license year.

(3) Fail to tag any deer taken in accordance with provisions of this part and the act relating to tagging big game.

(4) Fail to complete harvest report and survey information in accordance with instructions provided on the report card and/or the survey.

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