

PROPOSED RULEMAKING

GAME COMMISSION

[58 PA. CODE CH. 143]

Hunting and Furtaker Licenses

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its January 25, 2005, meeting, proposed the following rulemaking:

Add Chapter 143, Subchapter L (relating to special wild turkey licenses) to provide regulations establishing the opportunity for hunters to purchase a special wild turkey license to take a second bird during the spring gobbler season if the Commission sets a two-bird bag limit for the spring gobbler season.

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

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

The proposed rulemaking was made public at the January 25, 2005, meeting of the Commission. Comments should be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until April 22, 2005.

1. Purpose and Authority

The General Assembly recently amended section 2705 of the code (relating to classes of licenses) to permit the creation of a "special wild turkey license" to be used in conjunction with an adult or junior resident license, adult or junior nonresident license, senior resident lifetime license, senior lifetime combination hunting and furtaking license, or junior resident and nonresident combination hunting and furtaking license. Before the Commission can make this special license available, it must first generate the regulatory framework to implement its use. The Commission promulgated similar language when the General Assembly created an elk hunting license.

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 322(c)(3) of the code (relating to powers and duties of the commission) specifically empowers the Commission to "Increase or reduce bag limits or possession limits." Section 2102(b)(1) of the code (relating to regulations) authorizes the Commission to "promulgate regulations relating to seasons and bag limits for hunting or furtaking, the possession of certain species or parts thereof, the number and types of devices and equipment allowed, the identification of devices and the use and possession of devices." Section 2102(a) of the code (relating to regulations) provides that "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." This proposed rulemaking was made under this authority.

2. Regulatory Requirements

The proposed rulemaking will generate the regulatory framework to implement and make available a special wild turkey license to licensed hunters.

3. Persons Affected

Persons who wish to apply for a special wild turkey license to hunt for and take an additional turkey during the spring gobbler season will be affected by this proposed rulemaking.

4. Cost and Paperwork Requirements

The proposed rulemaking will result in some additional cost to the Commission in the form of printing and issuing the proposed special wild turkey licenses.

5. Effective Date

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

6. 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: 48-201. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 143. HUNTING AND FURTAKER LICENSES

Subchapter L. SPECIAL WILD TURKEY LICENSES

Sec.

- 143.221. Purpose and scope.
- 143.222. Application.
- 143.223. Validity of license.
- 143.224. Unlawful acts.
- 143.225. Penalties.

§ 143.221. Purpose and scope.

If the Commission establishes a two-bird bag limit for the spring gobbler season, this subchapter establishes methods of applying for special wild turkey licenses.

§ 143.222. Application.

(a) Applications for special wild turkey licenses shall be submitted to the Commission's Harrisburg Headquarters. The Director will set periods for accepting applications.

(b) Applications for special wild turkey licenses shall be made using an electronic application on the Commission's Internet website or a paper form made available by the Commission providing information as may be required by the Director.

§ 143.223. Validity of license.

The license will be valid only during the spring gobbler season for harvesting a spring gobbler.

§ 143.224. Unlawful acts.

It is unlawful for a person to do the following:

(1) Submit more than one application for a special wild turkey license during any hunting license year.

(2) Apply for or receive a license contrary to the act or this part.

§ 143.225. Penalties.

A person violating this subchapter shall, upon conviction, be sentenced to pay the fine prescribed in the act.

[Pa.B. Doc. No. 05-494. Filed for public inspection March 18, 2005, 9:00 a.m.]

[58 PA. CODE CH. 139]
Seasons and Bag Limits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 25, 2005, meeting, proposed the following rulemaking:

Amend § 139.4 (relating to seasons and bag limits for the license year) to provide updated seasons and bag limits for the 2005-2006 hunting license year.

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

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

The proposed rulemaking was made public at the January 25, 2005, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until April 22, 2005.

1. Introduction

The Commission is proposing to amend § 139.4 to provide for updated seasons and bag limits for the upcoming 2005-2006 license year.

2. Purpose and Authority

The Commission is required to set hunting and furtaking seasons and bag limits on an annual basis. The 2005-2006 seasons and bag limits have been amended to conform to scientific data, harvest reports, field surveys and observations, staff and field input, as well as recommendations received from organized sporting groups, members of the agricultural community and others interested in the wildlife resources of this Commonwealth. Some notable changes for hunters next season will be expanded deer hunting opportunities in WMU's 5C and 5D, expanded deer hunting opportunities through DMAP,

expanded bear hunting opportunities, and expanded elk hunting opportunities. Additionally, the Commission has given preliminary approval to increase the bag limit for spring turkey to allow two birds to be taken by hunters who purchase the special wild turkey license created by the amendment to section 2705 of the code (relating to classes of licenses). The Commission is proposing to amend § 139.4 to set seasons and bag limits for the 2005-2006 license year.

Section 322(c)(1) of the code (relating to powers and duties of the commission) specifically empowers the commission to "fix seasons, daily shooting or taking hours, and any modification thereof, and daily, season and possession limits for any species of game or wildlife." Section 2102(b)(1) of the code (relating to regulations) authorizes the commission to "promulgate regulations relating to seasons and bag limits for hunting or furtaking . . ." The amendment to § 139.4 was proposed under this authority.

3. Regulatory Requirements

The proposed rulemaking would establish when and where it is lawful to hunt and trap various game species and also place limits on the numbers that can be legally taken.

4. Persons Affected

Persons wishing to hunt and trap in this Commonwealth would be affected by the proposed rulemaking.

5. Cost and Paperwork Requirements

The proposed rulemaking should not result in any additional cost either to the Commission or to hunters and furtakers.

6. Effective Date

The effective dates of the proposed rulemaking are July 1, 2005, to June 30, 2006.

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: 48-199. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 58. RECREATION****PART III. GAME COMMISSION****CHAPTER 139. SEASONS AND BAG LIMITS****§ 139.4. Seasons and bag limits for the license year.**

(SEASONS AND BAG LIMITS TABLE)

**2005-2006 OPEN HUNTING AND FURTAKING SEASONS, DAILY LIMIT,
FIELD POSSESSION LIMIT AND SEASON LIMIT
OPEN SEASON INCLUDES FIRST AND LAST DATES LISTED**

Species	First Day		Last Day	Daily Limit	Field Possession Limit After First Day
Squirrels—(Combined species) Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law	Oct. 8		Oct. 14	6	12
Squirrels—(Combined species)	Oct. 15		Nov. 26	6	12
	Dec. 12	and	Dec. 23		
	Dec. 26	and	Feb. 4, 2006		
Ruffed Grouse—(Statewide)	Oct. 15		Nov. 26	2	4
	Dec. 12	and	Dec. 23		
	Dec. 26	and	Jan. 28, 2006		
Ruffed Grouse—There is no open season for taking ruffed grouse in that portion of State Game Lands No. 176 in Centre County which is posted "RESEARCH AREA—NO GROUSE HUNTING"					
Rabbits, Cottontail	Oct. 22		Nov. 26	4	8
	Dec. 12	and	Dec. 23		
	Dec. 26	and	Feb. 4, 2006		
Ringneck Pheasant—Male only in Wildlife Management Units 2A, 2B, 2C, 4C, 4E, 5A, 5B, 5C & 5D Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law	Oct. 8		Oct. 14	2	4
Ringneck Pheasant—Male or female combined in Wildlife Management Units 1A, 1B, 2D, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A, 4B & 4D Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law	Oct. 8		Oct. 14	2	4
Ringneck Pheasant—Male only in Wildlife Management Units 2A, 2B, 2C, 4C, 4E, 5A, 5B, 5C & 5D	Oct. 22		Nov. 26	2	4
Ringneck Pheasant—Male or female combined in Wildlife Management Units 1A, 1B, 2D, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A, 4B & 4D	Oct. 22		Nov. 26	2	4
	Dec. 12	and	Dec. 23		
	Dec. 26	and	Feb. 4, 2006		

Species	First Day	Last Day	Daily Limit	Field Possession Limit After First Day
Bobwhite Quail—The hunting and taking of bobwhite quail is permitted in all Wildlife Management Units except in Wildlife Management Units 4A, 4B, 5A, 5B, 5C & 5D where the season is closed.	Oct. 22	Nov. 26	4	8
Hares (Snowshoe Rabbits) or Varying Hares	Dec. 26	Dec. 31	1	2
Woodchucks (Groundhog)	No closed season except during the regular firearms deer seasons and until noon daily during the spring gobbler turkey season.		Unlimited	
Species	First Day	Last Day	Daily Limit	Season Limit
Turkey—Male or Female			1	1
Wildlife Management Units 1A & 1B (Shotgun, Bow & Arrow only)	Oct. 29	Nov. 12		
Wildlife Management Units 2A & 2B (Shotgun, Bow & Arrow only)	Oct. 29	Nov. 19		
Wildlife Management Units 2C, 2E, 4A, 4B & 4D	Oct. 29	Nov. 12		
Wildlife Management Units 2D, 2F, 2G, 3A, 3B, 3C, 3D, 4C & 4E	Oct. 29	Nov. 19		
Wildlife Management Units 5A & 5B	Closed to fall turkey hunting			
Wildlife Management Units 5C & 5D	Oct. 29	Nov. 4		
Turkey (Spring Gobbler) Statewide ⁵ Bearded Bird only	April 29, 2006	May 27, 2006	1	2
Turkey (Spring Gobbler) Statewide Youth Hunt ⁵ Bearded Bird only Eligible junior hunters only with the required license and when properly accompanied	April 24, 2006	April 24, 2006	1	1

MIGRATORY GAME BIRDS

Except as further restricted by this chapter, the seasons, bag limits, hunting hours and hunting regulations for migratory game birds shall conform to regulations adopted by the United States Secretary of the Interior under authority of the Migratory Bird Treaty Act (16 U.S.C. §§ 703—711) as published in the *Federal Register* on or about August 27 and September 28 of each year. Exceptions:

- (a) Hunting hours in § 141.4 (relating to hunting hours).
- (b) Nontoxic shot as approved by the Director of the United States Fish and Wildlife Service is required for use Statewide in hunting and taking of migratory waterfowl.
- (c) Subject to approval by the United States Fish and Wildlife Service, an early season for Canada geese will be held as defined in § 141.25 (relating to early goose hunting season).

Species	First Day	Last Day	Daily Limit	Field Possession Limit After First Day
Crows (Hunting permitted on Friday, Saturday and Sunday only)	July 1 and Dec. 30	Nov. 27 and April 2, 2006		Unlimited
Starlings and English Sparrows	No closed season except during the regular firearms deer seasons and until noon daily during the spring gobbler turkey season			Unlimited

Species	First Day	Last Day	Daily Limit	Field Possession Limit After First Day
FALCONRY				
Squirrels—(Combined species)	Sept. 1	Mar. 31, 2006	6	12
Quail	Sept. 1	Mar. 31, 2006	4	8
Ruffed Grouse	Sept. 1	Mar. 31, 2006	2	4
Cottontail Rabbits	Sept. 1	Mar. 31, 2006	4	8
Snowshoe or Varying Hare	Sept. 1	Mar. 31, 2006	1	2
Ringneck Pheasant—Male and Female—(Combined)	Sept. 1	Mar. 31, 2006	2	4

Migratory Game Birds - Seasons and bag limits shall be in accordance with Federal regulations.

Species	First Day	Last Day	Season Limit
DEER			
Deer, Antlered & Antlerless— (Statewide) ¹ (Archery—Bows and Arrows Only) Crossbows may be used in Wildlife Management Units 2B, 5C and 5D	Oct. 1	Nov. 12	One antlered and an antlerless deer with each required antlerless license.
	Dec. 26	Jan. 14, 2006	
Deer, Regular Antlered & Antlerless—(Statewide) ¹	Nov. 28	Dec. 10	One antlered, and an antlerless deer with each required antlerless license.
Deer, Antlerless only—(Statewide) Only Junior and Senior License Holders, ² PGC Disabled Person Permit Holders (to use a vehicle as a blind), and Residents serving on active duty in the U.S. Armed Forces, or in the U.S. Coast Guard, with required antlerless license	Oct. 20	Oct. 22	An antlerless deer with each required antlerless license.
Deer, Antlerless only—(Statewide) (Muzzleloading season)	Oct. 15	Oct. 22	An antlerless deer with each required antlerless license.
Deer, Antlered or Antlerless—(Statewide) ¹ (Flintlock Muzzleloading season)	Dec. 26	Jan. 14, 2006	One antlered, or one antlerless-plus an additional antlerless deer with each required antlerless license.
Deer, Antlerless Wildlife Management Unit 2B	Dec. 26	Jan. 14, 2006	An antlerless deer with each required antlerless license.
Deer, Antlerless Wildlife Management Units 5C & 5D	Dec. 12	Dec. 23	An antlerless deer with each required antlerless license.
	Dec. 26	Jan. 28, 2006	
Deer, Antlerless (Letterkenny Army Depot, Franklin County and New Cumberland Army Depot, York County and Fort Detrick, Raven Rock Site, Adams County)	Hunting is permitted on days established by the United States Department of the Army.		An antlerless deer with each required antlerless license.

PROPOSED RULEMAKING

BEAR

Species	First Day	Last Day	Daily Limit	Season Limit
Bear, any age—(Statewide) ⁴	Nov. 21	Nov. 23	1	1
Bear, any age ⁴ Wildlife Management Units 3B, 3C, 3D, 4C and 4E	Nov. 28	Dec. 3	1	1
Bear, any age ⁴ Rockview Prison	Nov. 28	Dec. 3	1	1

ELK

Species	First Day	Last Day	Daily Limit	Season Limit
Elk, Antlered & Antlerless ⁶ (With each required license)	Nov. 7, 2005	Nov. 12, 2005	1	1
Elk, Antlered & Antlerless ⁶ (With each required license)	Sept. 18, 2006	Sept. 23, 2006	1	1

FUR TAKING—TRAPPING

Species	First Day	Last Day	Daily Limit	Season Limit
Minks and Muskrats—(Statewide)	Nov. 19	Jan. 7, 2006		Unlimited
Beaver—(Statewide)	Dec. 26	Mar. 31, 2006		
Wildlife Management Units 2F & 2G (Combined)			20	20
Wildlife Management Units 1A, 1B, 3A, 3B, 3C & 3D (Combined)			20	40
Wildlife Management Units 2A, 2B, 2C, 2D, 2E, 4A, 4B, 4C, 4D & 4E (Combined)			10	10
Wildlife Management Units 5A, 5B, 5C & 5D (Combined)			6	6
Coyotes, Foxes, Opossums, Raccoons, Skunks, Weasels—(Statewide)	Oct. 16	Feb. 18, 2006		Unlimited
Bobcat ³ Wildlife Management Units 2C, 2E, 2F, 2G, 3A, 3B, 3C & 3D	Oct. 16	Feb. 18, 2006	1	1

FUR TAKING—HUNTING

Species	First Day	Last Day	Daily Limit	Season Limit
Coyotes—(Statewide)				Unlimited
Coyotes—(During any archery deer season)				
Coyotes—(During the regular firearms deer season and any bear season)				
Coyotes—(During the spring gobbler turkey season)				
Opossums, Skunks, Weasels ⁷ (Statewide)				

Outside of any deer or bear season may be taken with a hunting license or a furtaker's license and without wearing orange.

May be taken while lawfully hunting deer or with a furtaker's license.

May be taken while lawfully hunting deer or bear or with a furtaker's license while wearing 250 square inches of daylight fluorescent orange-colored material in a 360° arc.

May be taken by persons who have a valid tag and meet fluorescent orange and shot size requirements.

No closed season. These species may not be hunted prior to noon during the spring gobbler turkey season.

Species	First Day	Last Day	Daily Limit	Season Limit
Raccoons and Foxes—(Statewide) ⁷	Oct. 15	Feb. 18, 2006		Unlimited
Bobcat ³ Wildlife Management Units 2C, 2E, 2F, 2G, 3A, 3B, 3C & 3D	Oct. 15	Feb. 18, 2006	1	1

No open seasons on other wild birds or wild mammals.

¹ Only one antlered deer (buck) may be taken during the hunting license year.

² Includes persons who have reached or will reach their 65th birthday in the year of the application for the license and hold a valid adult license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions).

³ Bobcat may only be taken by furtakers in possession of a Bobcat Hunting-Trapping Permit and may not be taken during the regular antlered and antlerless deer season from 1/2 hour before sunrise to sunset.

⁴ Only one bear may be taken during the hunting license year.

⁵ Second spring gobbler may only be taken by persons who possess a valid special wild turkey license as provided for in section 2709 (relating to license costs and fees) of the act.

⁶ Only one elk may be taken during the hunting license year.

⁷ May not be taken during the regular antlered and antlerless deer season from 1/2 hour before sunrise to sunset.

[Pa.B. Doc. No. 05-495. Filed for public inspection March 18, 2005, 9:00 a.m.]

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

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its January 25, 2005, meeting, proposed the following rulemaking:

Amend §§ 147.672, 147.674 and 147.676 (relating to definitions; issuance of DMAP harvest permits; and unlawful acts) to allow any defined hunting club to enroll its property in the Deer Management Assistance Program (DMAP), to allow a DMAP applicant to issue up to two coupons to qualified individuals per license year, and to allow the Commission to deny refund of any application fees paid for DMAP harvest permits to persons who fail to complete and submit report and survey information from the prior season.

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

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

The proposed rulemaking was made public at the January 25, 2005, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until April 22, 2005.

1. *Introduction*

DMAP has been in effect for almost two full seasons and has already proven to be an asset to both public and private landowners as a tool for the effective management of local white-tailed deer herds on lands where excessive deer numbers have compromised the landowners' land management objectives, land uses and other legitimate interests. In response to these successes, the Commission has identified a few changes that could make the program even more successful in the future.

2. *Purpose and Authority*

Currently, hunting clubs that wish to enroll in DMAP must own 1,000 or more contiguous acres. Due to the success of DMAP thus far, the Commission would like to

make the program more accessible to smaller hunting clubs that desire to enroll in the program. Specifically, the Commission is proposing to redefine "hunting club" in § 147.672 by removing the restrictive and limiting language related to acreage. This proposed rulemaking should make DMAP more accessible to hunting clubs that do not own or do not wish to enroll 1,000 or more contiguous acres.

Currently, the requirements and restrictions of §§ 147.674 and 147.676 limit a DMAP enrollee's ability to issue more than one coupon for each qualified individual per license year. Due to the success of DMAP thus far, the Commission would like to make the program more effective by permitting an additional coupon to be issued.

Recently, the Commission amended § 147.674 to declare that DMAP harvest permits will not be issued to persons who failed to complete and submit harvest report and survey information from the prior season. Accurate harvest data is critically important to making the program work effectively. The Commission believes additional measures are needed to ensure complete compliance with reporting requirements by all DMAP harvest permit holders. Therefore, the Commission is proposing to amend § 147.674 to allow the Commission to deny refund of any application fees paid for DMAP harvest permits to persons who fail to complete and submit harvest report and survey information from the prior season.

Section 2901(b) of the code provides "The commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." Section 2102(a) of the code provides "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting . . . in this Commonwealth, including regulations relating to the . . . management of game or wildlife . . ." The amendments to §§ 147.672, 147.674 and 147.676 were proposed under this authority.

3. Regulatory Requirements

The proposed rulemaking will remove limitations and expand the eligibility of certain hunting clubs to enroll in DMAP, expands a DMAP applicant's ability to issue two coupons to qualified individuals per license year rather than one, and will allow the Commission the ability to deny refund of any application fees paid for DMAP harvest permits to persons who fail to complete and submit harvest report and survey information from the prior season.

4. Persons Affected

Persons wishing to apply to have their land enrolled in DMAP and persons wishing to submit a DMAP coupon for a DMAP harvest permit will be affected by the proposed rulemaking.

5. Cost and Paperwork Requirements

The proposed rulemaking should not result in additional cost or paperwork.

6. Effective Date

The proposed rulemaking will be effective upon 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 rule-making, 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: 48-200. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 147. SPECIAL PERMITS

Subchapter R. DEER CONTROL

DEER MANAGEMENT ASSISTANCE PROGRAM PERMITS

§ 147.672. Definitions.

The following words and terms, when used in this section and §§ 147.671 and 147.673—147.676, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Hunting club—A corporation or legal cooperative which owns [1,000 or more contiguous] its enrolled acres in fee title, was established prior to January 1, 2000, and has provided its club charter and list of current members to the Commission.

* * * * *

§ 147.674. Issuance of DMAP harvest permits.

* * * * *

(b) [One coupon] Two coupons for the DMAP area may be issued each license year to persons who possess a valid Pennsylvania hunting license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions).

* * * * *

(e) Permits and refunds will not be issued to persons who failed to complete and submit harvest report and survey information from the prior season.

§ 147.676. Unlawful acts.

It is unlawful to:

(1) Use, possess or attempt to use or possess more than [one] two DMAP harvest [permit] permits for a specific DMAP area in any license year.

* * * * *

(4) Issue more than [one coupon] two coupons to any person for a specific DMAP area in any license year.

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[Pa.B. Doc. No. 05-496. Filed for public inspection March 18, 2005, 9:00 a.m.]

MILK MARKETING BOARD

[7 PA. CODE CH. 145]

Transactions Between Dealers and Customers; Dealer Inducements

The Milk Marketing Board (Board) proposes to amend §§ 145.11, 145.21, 145.25 and 145.26 to read as set forth in Annex A.

Purpose of Proposed Rulemaking

The principal purpose of the proposed rulemaking is to prohibit loans made by Board-licensed milk dealers to their customers. Section 807 of the Milk Marketing Law (law) (31 P. S. § 700j-807) provides that "[n]o method or device shall be lawful whereby milk is bought or received . . . , or sold . . . or delivered . . . , or offered to be bought or received . . . , or sold . . . or delivered . . . , at a price less than the minimum price applicable to the particular transaction. . . ." Milk dealers, in the course of acquiring new customers, sometimes make loans to those customers. Examining those loans to determine if they have the effect of bringing any particular transaction below the minimum price applicable for that transaction raises a myriad of valuation and enforcement issues. Widespread use of loans also has the potential to cause market disruption in some areas of this Commonwealth. In addition, the Board believes that the majority of milk dealers do not want to provide loans to customers, but in many cases the dealers feel that they must make a loan to retain or acquire a customer. The Board believes that prohibiting loans will tend to reduce the potential for market disruption and will lead to improved compliance with the law's minimum pricing provisions.

Summary of Proposed Rulemaking

The Board currently enforces regulations regarding transactions between milk dealers and their customers and regulations regarding dealer inducements to customers and potential customers.

Section 145.11 (relating to financing) currently prohibits dealers from providing financial accommodations to wholesale customers by, in general, guaranteeing the payment of any obligation of the customer. The proposed rulemaking would also prohibit milk dealers from providing financial accommodations to customers by lending the customers money or by paying any obligation of the customer.

Section 145.21 (relating to giveaways) currently prohibits milk dealers from giving money, among other items, to a customer or prospective customer as an inducement for soliciting or securing the business of that customer or prospective customer. The proposed rulemaking would also prohibit milk dealers from lending money to a customer or prospective customer as an inducement to solicit or secure the business.

Section 145.25 (relating to loans and credit; wholesale customers) currently provides that loans will be deemed an extension of credit as that term is used in section 807 of the law. The proposed rulemaking would rescind this section. As noted, examining loans to determine if they result in sales below the minimum price applicable to a particular transaction raises issues regarding the value and legitimacy of the loan. In addition, the Board is becoming increasingly concerned that widespread use of loans by milk dealers has the potential to cause market disruption in some areas of this Commonwealth. Rescinding this section is also necessary for consistency with the other amendments, as they would prohibit loans; if loans are prohibited, there is no reason to deem them extensions of credit.

Section 145.26 (relating to extension of credit to whole sale customers) prohibits extensions of credit to most wholesale customers beyond 30 days from the date of invoice. This section also provides that after 30 days, dealers must place the customers on a cash basis. At a public meeting dealing with the loan issue, some dealers expressed concern over not being able to secure payment from these cash customers if loans were prohibited. To clarify that dealers may make arrangements to secure those payments, the proposed rulemaking provides that dealers with customers on a cash payment schedule under the terms of § 145.26 may secure those payments with a promissory note, a lien or by some other method.

During preliminary discussions and the public meeting regarding this proposed rulemaking, the Pennsylvania Food Merchants' Association raised the issue of grocery wholesalers. The Board does license some grocery wholesalers as milk dealers. Some of the grocery wholesalers, in conjunction with supplying customers with the complete line of groceries including milk, do make loans to those customers, whether they be wholly-owned subsidiaries, franchisees, affiliates or nonaffiliated customers. Language was added to §§ 145.11, 145.21 and 145.26 to clarify that loans made by grocery wholesalers, to the extent the loans are not inducements related to acquiring or retaining the milk business of any customers, are not prohibited.

Dean Foods Company also expressed some concern during the preliminary discussions that the prohibition on dealer loans could cause competitive issues outside this Commonwealth if the Board enforced the prohibition on transactions that take place outside this Commonwealth. The Board recognizes that it may not enforce the law or regulations on transactions that take place outside this Commonwealth and has no intention or desire to enforce its regulations on transactions that take outside this Commonwealth.

Statutory Authority

Section 307 of the law (31 P. S. § 700j-307) provides the Board with the authority to adopt and enforce regulations necessary or appropriate to carry out the law.

Public Hearing

On December 15, 2004, the Board, after due notice, conducted a public hearing to receive comments on the

proposed rulemaking. Among the attendees were representatives of the Pennsylvania Association of Milk Dealers, Pennsylvania Food Merchants' Association, Pennsylvania Farm Bureau, Dean Foods Company, Dairy Marketing Services, Lehigh Valley Dairies, Schneider's Dairy, Pennsylvania Department of Agriculture, United Dairy Company and Land O' Lakes. The Pennsylvania Food Merchants' Association raised the issue of grocery wholesalers making loans to customers in conjunction with the full line of grocery sales to those customers. The proposed rulemaking addresses that issue by clarifying that loans made by grocery wholesalers in conjunction with transactions that may include milk sales are not prohibited if the loans are only incidentally related to the milk sales and are not made as an inducement to secure or retain the milk business of the customer.

The Board also held a public meeting on June 29, 2004, to generally discuss the issues surrounding loans made by dealers to customers. Among the attendees were the Pennsylvania Association of Milk Dealers, Pennsylvania Food Merchants' Association, Pennsylvania Farm Bureau, Dean Foods Company, Lehigh Valley Dairies, Rutter's Dairy, Pocono Mountain Dairy, Ritchey's Dairy, Galliker's Dairy, Vale Wood Farms, Crowley Foods, Upstate Farms Cooperative and Land O' Lakes. The first draft of the proposed rulemaking was written as a result of the discussion and comments at that public meeting.

Fiscal Impact

The Board believes that adoption of this proposed rulemaking will eliminate the potential for market disruption, and hence the potential for negative fiscal impact on at least some dealers and their customers.

The proposed rulemaking should also have a positive fiscal impact on the Board in that resources spent examining and valuing loans made by dealers to customers will be spent on other enforcement priorities.

Paperwork Requirements

There are no paperwork requirements.

Effective Date; Sunset Date

The amendments will become effective upon publication in the *Pennsylvania Bulletin* as final-form rulemaking. There is no sunset date.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), a copy of this proposal was submitted on March 4, 2005, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Agriculture and Rural Affairs. In addition to submitting the proposed rulemaking, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form. A copy of this material is available to the public upon request.

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

Public Comment

Interested persons are invited to submit written comments, suggestions or objections concerning the proposed rulemaking to Chief Counsel, Milk Marketing Board,

2301 North Cameron Street, Harrisburg, PA 17110, within 30 days following publication in the *Pennsylvania Bulletin*.

BOYD E. WOLFF,
Chairperson

Fiscal Note: 47-11. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART IV. MILK MARKETING BOARD

CHAPTER 145. TRANSACTIONS BETWEEN DEALERS AND CUSTOMERS

REFRIGERATION EQUIPMENT

§ 145.11. Financing.

[Dealers shall] Milk dealers and their affiliates, subsidiaries, or representatives thereof may not provide financial accommodations for a wholesale customer by **lending money to the customer, or by paying or guaranteeing the payment of any obligation of the customer, or by acting as a cosigner on a promissory note or other obligation of **[said]** the customer, or by depositing money or collateral with a third party, person or organization which will lend money or extend credit to **[a wholesale]** the customer. **This section does not apply to transactions between grocery wholesalers and their subsidiaries, affiliates, franchisees or wholesale customers to the extent the transactions occur in the normal course of the grocery wholesaler's business and are only incidentally related to acquisition or retention of the fluid milk business of the subsidiary, affiliate, franchisee or wholesale customer.****

DEALER INDUCEMENTS

§ 145.21. Giveaways.

[(a)] Milk dealers [shall] and their affiliates, subsidiaries or representatives thereof may not give or lend any milk, milk products, money, article, prize, award[,] or any other item to a customer or a prospective customer, as an inducement for the purpose of soliciting or securing business [or making collections for said dealer, unless such person is a regular employee of the dealer]. This section does not apply to transactions between grocery wholesalers and their subsidiaries, affiliates, franchisees or wholesale customers to the extent the transactions

occur in the normal course of the grocery wholesaler's business and are only incidentally related to acquisition or retention of the fluid milk business of the subsidiary, affiliate, franchisee or wholesale customer.

[(b) Subsection (a) shall not apply to persons employed by "Welcome Wagon Service," any similar organization, any accredited collection agency, or attorneys retained for collection purposes.]

§ 145.25. [Loans and credit; wholesale customers] (Reserved).

[Loans by a dealer, or an affiliate, subsidiary, or representative thereof to wholesale customers of fluid milk shall be deemed an extension of credit as that term is used under section 807 of the act (31 P. S. § 700j-807), and are prohibited insofar as an extension of credit is prohibited under such section.]

§ 145.26. Extension of credit to wholesale customers.

* * * * *

(b) For the purpose of this section, cash payment basis may, at the option of the dealer, be interpreted to mean weekly payments for the delivery of the past weeks plus [not less than] at least 4% of the past due account to be received by the dealer, on a regular and continuing weekly basis until the customer has reduced the past due balance below the maximum 30-day credit limitation. A dealer who has placed a customer on a cash payment basis under this section may, with approval of the Board, require the customer to execute a promissory note in favor of the dealer, or to grant the dealer a lien on assets of the customer, or to otherwise secure payment of the past due balance to the dealer. The dealer shall immediately notify the Board of the full details of an action taken to secure the payment of a past due balance under this section.

(c) This section does not apply to transactions between grocery wholesalers and their subsidiaries, affiliates, franchisees or wholesale customers to the extent the transactions occur in the normal course of the grocery wholesaler's business and are only incidentally related to acquisition or retention of the fluid milk business of the subsidiary, affiliate, franchisee or wholesale customer.

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