

# RULES AND REGULATIONS

## Title 37—LAW

### MUNICIPAL POLICE OFFICERS' EDUCATION AND TRAINING COMMISSION [ 37 PA. CODE CH. 203 ]

#### Administration of the Training Program

##### *Description and Purpose*

The State Police, Municipal Police Officers' Education and Training Commission (Commission) amends 37 Pa. Code § 203.11(a)(6) (relating to qualifications) to allow licensed physician's assistants and certified nurse practitioners to conduct physical examinations, which is consistent with current medical practice.

##### *Statutory Authority*

The amendment is authorized under 53 Pa.C.S. § 2164 (1), (8) and (14) (relating to powers and duties of commission).

##### *Effect*

This final-form rulemaking will affect recruits, out-of-State police officers seeking training waivers and certified schools.

##### *Effective Date/Sunset Date*

The amendment will be effective immediately upon final-form adoption. These regulations are continually monitored and updated as needed. Therefore, no sunset date has been set.

##### *Regulatory Review*

On July 10, 2006, copies of the proposed rulemaking were delivered to the Independent Regulatory Review Commission (IRRC) and the Majority and Minority Chairpersons of the House Judiciary Committee and the Senate Committee on Law and Justice. Notice of the proposed rulemaking was published at 36 Pa.B. 3828 (July 22, 2006) and provided for a 30-day comment period. The Commission received no comments from the public, IRRC or the House or the Senate Committees.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.1)), this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC, effective October 17, 2007.

##### *Contact Person/Public Comment*

The contact person is Syndi L. Guido, Policy Director, State Police, 1800 Elmerton Avenue, Harrisburg, PA 17110, (717) 772-0905. Persons with a disability that requires an alternative format of this document (that is, large print, audio tape, Braille) may contact Syndi Guido so that she may make the necessary arrangements.

##### *Findings*

The Commission finds that:

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

(2) A public comment period was provided and no comments were received.

(3) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statute.

##### *Order*

The Commission, acting under the authorizing statute, orders that:

(a) The regulations of the Municipal Police Officers' Education and Training Commission, 37 Pa. Code Chapter 203, are amended by amending § 203.11 to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

(b) The Commission will submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law for approval as to form and legality.

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

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

COL. JEFFREY B. MILLER,  
*Commissioner*

*(Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 37 Pa.B. 5951 (November 3, 2007).)

**Fiscal Note:** Fiscal Note 17-73 remains valid for the final adoption of the subject regulation.

#### Annex A

#### TITLE 37. LAW

#### PART IV. MUNICIPAL POLICE OFFICERS' EDUCATION AND TRAINING COMMISSION

#### Subpart A. MUNICIPAL POLICE OFFICERS' TRAINING PROGRAM

#### CHAPTER 203. ADMINISTRATION OF THE TRAINING PROGRAM

#### Subchapter B. POLICE OFFICER CERTIFICATION REQUIREMENTS

#### § 203.11. Qualifications.

(a) Except as provided in subsection (b), persons who are to be employed as police officers by police departments within this Commonwealth from December 21, 1996, shall:

\* \* \* \* \*

(6) Be personally examined by a physician, physician's assistant, or certified nurse practitioner who is licensed in this Commonwealth. The examination must include the following:

\* \* \* \* \*

[Pa.B. Doc. No. 07-2198. Filed for public inspection December 7, 2007, 9:00 a.m.]

# Title 58—RECREATION

## FISH AND BOAT COMMISSION

[ 58 PA. CODE CH. 69 ]

### Fishing; Fishing in Lake Erie and Boundary Lakes

The Fish and Boat Commission (Commission) amends Chapter 69 (relating to fishing in Lake Erie and boundary lakes). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

#### A. Effective Date

The final-form rulemaking will go into effect on January 1, 2008, and not upon publication in the *Pennsylvania Bulletin* as stated in the notice of proposed rulemaking.

#### B. Contact Person

For further information on the final-form rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's website at [www.fish.state.pa.us](http://www.fish.state.pa.us).

#### C. Statutory Authority

The addition of § 69.3 (relating to transportation of VHS-susceptible fish out of the Lake Erie watershed) is published under the statutory authority of section 2102 of the code (relating to rules and regulations).

#### D. Purpose and Background

The final-form rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the new regulation is described in more detail under the summary of changes.

#### E. Summary of Changes

An infectious fish disease, caused by a variant of Viral Hemorrhagic Septicemia (VHS) Virus, has caused mortalities in the Great Lakes. Fish mortalities, where VHS has been isolated, have been confirmed since as early as 2003. Mortalities of muskies, yellow perch and gizzard shad were reported from Lake St. Clair, the St. Clair River in Michigan and western Lake Erie near Detroit in the spring of 2006. As spring progressed, freshwater drum, white bass and yellow perch mortalities were reported from western and central Lake Erie, including areas near the Pennsylvania/Ohio border. The disease was also reported from Lake Ontario. In 2007, VHS was confirmed in Lake Michigan, several inland lakes in Wisconsin and the New York Finger Lakes. Other variants of VHS known from Europe and the western United States have caused significant mortality in hatchery fish.

On October 24, 2006, the United States Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) issued an emergency order prohibiting the importation of certain live fish species from the Canadian provinces of Ontario and Quebec into the United States. In addition, export of live fish of 37 VHS-susceptible species was prohibited from the eight Great Lake boundary states: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. On November 14, 2006, APHIS issued an amended order that allowed restricted movement under requirements for testing and certification that fish are VHS-free. On May 4, 2007, APHIS further amended the order to allow for catch and release fishing activities.

In an effort to contain this disease, the Commission proposed to make it unlawful to transport live fish out of the Pennsylvania portion of the Lake Erie watershed. A notice of proposed rulemaking was published at 37 Pa.B. 1218 (March 17, 2007). By separate notice published at 37 Pa.B. 731 (February 10, 2007), the Executive Director, acting under the authority of § 65.25 (relating to temporary changes to fishing regulations), took immediate action to make it unlawful to transport or cause the transportation of live fish out of the Pennsylvania portion of the Lake Erie watershed. The temporary modification went into effect immediately and will remain in effect until January 1, 2008.

It should be noted that the notice of proposed rulemaking and the Executive Director's temporary modification of fishing regulations were broadly crafted to address not only VHS, but other diseases and invasive species as well. However, it has become increasingly apparent to the Commission that VHS is an issue that must be addressed separately and that the broader issue of invasive species and diseases other than VHS will have to be addressed as part of a separate rulemaking package at a later date.

Subsequent to the Commission's publication of a notice of proposed rulemaking and the Executive Director's action to temporarily modify the regulations, other Great Lakes states have been developing and promulgating regulations. In those states, certification of fish and fish production facilities, as having tested and found negative for VHS, is a frequent basis for permitting the transport and introduction of susceptible fish species. Therefore, the Commission modified the proposed regulation on final-form rulemaking to allow the transportation of VHS-susceptible fish out of the Lake Erie watershed when one of the following conditions is met:

- (1) The fish are being transported to a disease testing facility.
- (2) The fish are from a group of fish certified as having been tested and test results were negative for VHS based on approved testing protocols.
- (3) The fish are from a fish production facility certified as having been tested and test results were negative for VHS based on approved testing protocols.
- (4) The fish are being transported to a slaughter facility, processing plant or restaurant.
- (5) The fish are dead, recreationally caught fish that are being transported solely for human consumption.

Species of fish that are susceptible to VHS will be defined by the Commission by notice published in the *Pennsylvania Bulletin*. Initially, the list will contain the following fish species: black crappie (*Pomoxis nigromaculatus*), bluegill (*Lepomis macrochirus*), bluntnose minnow (*Pimephales notatus*), brown bullhead (*Ictalurus nebulosus*), brown trout (*Salmo trutta*), burbot (*Lota lota*), channel catfish (*Ictalurus punctatus*), chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*Oncorhynchus kisutch*), emerald shiner (*Notropis atherinoides*), freshwater drum (*Aplodinotus grunniens*), gizzard shad (*Dorosoma cepedianum*), herring (*Clupea spp*), largemouth bass (*Micropterus salmoides*), muskellunge (*Esox masquinongy*), northern pike (*Esox lucius*), pink salmon (*Oncorhynchus gorbuscha*), pumpkinseed (*Lepomis gibbosus*), rainbow trout (*Oncorhynchus mykiss*), redbreast sunfish (*Moxostoma spp*), rock bass (*Ambloplites rupestris*), smallmouth bass (*Micropterus dolomieu*), walleye (*Sander vitreus*), white bass (*Morone chrysops*), white perch (*Morone americana*), whitefish (*Coregonus spp*) and yellow perch (*Perca flavescens*).

The Commission also adopted restrictions on the use of VHS-susceptible fish, parts thereof or their eggs as fishbait in Commonwealth waters outside the Lake Erie watershed.

Commission staff met on several occasions with staff from the Department of Agriculture (Department) in an effort to develop a coordinated approach for dealing with VHS. There is a significant amount of overlap in the jurisdictional responsibilities of the agencies. The Commission has broad jurisdiction under the code, and the Department has jurisdiction under both the Domestic Animal Law and the Aquacultural Development Law. By notice published at 37 Pa.B. 5534 (October 13, 2007), the Department issued a quarantine order that addresses intraState and interstate movement of VHS-susceptible species of fish by propagators and dealers registered with the Department. This order is consistent with the Commission's new regulation. It is the intent of the Commission to continue to work with the Department so that the agencies have a common approach for addressing this issue.

F. *Paperwork*

The final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no new costs on the private sector or the general public.

H. *Public Involvement*

A notice of proposed rulemaking was published at 37 Pa.B. 1218 (March 17, 2007), and the Commission did not receive any public comments regarding the proposal.

*Findings*

The Commission finds that:

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

(2) A public comment period was provided, and no comments were received.

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

*Order*

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 69, are amended by adding § 69.3 to read as set forth in Annex A.

(b) The Executive Director will submit this order and Annex A to the Office of Attorney General for approval as to legality as required by law.

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

(d) This order shall take effect on January 1, 2008.

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-191 remains valid for the final adoption of the subject regulation.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart B. Fishing**

**CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES.**

**§ 69.3. Transportation of VHS-susceptible fish out of the Lake Erie watershed.**

(a) For purposes of this section, species of fish that are susceptible to Viral Hemorrhagic Septicemia (VHS) are those species that the Commission has defined as such by notice published in the *Pennsylvania Bulletin*.

(b) It is unlawful to transport or cause the transportation of VHS-susceptible species of fish out of the portion of the Lake Erie watershed in this Commonwealth into other watersheds of this Commonwealth except when one of the following conditions is met:

(1) The fish are being transported to a disease testing facility and the persons transporting the fish have taken adequate measures to prevent escape and to disinfect discharged water and equipment used in the transportation of the fish and the fish are accompanied in transit by documentation stating the point of origin of the fish and the destination to which they are to be delivered for testing.

(2) The fish are from a group of fish certified as having tested negative for VHS in accordance with the testing protocols adopted by the Department of Agriculture (Department) and approved by the Commission. Persons selling the fish shall have in their possession, and present upon the request of an officer authorized to enforce the code, a copy of the fish health certification reports for all VHS-susceptible fish owned or kept at the place of sale.

(3) The fish are from an artificial propagation facility certified as having tested negative for VHS in accordance with the testing protocols adopted by the Department and approved by the Commission. Artificial propagation facilities shall have in their possession, and present upon the request of an officer authorized to enforce the code, a copy of the fish health certification report for the facility.

(4) The fish are being transported to a slaughter facility, processing plant or restaurant and the fish are accompanied in transit by documentation stating the point of origin of the fish and the destination to which they are to be delivered for slaughter, processing or consumption.

(5) The fish are dead, recreationally caught fish that are being transported solely for the purpose of human consumption.

(c) It is unlawful to use VHS-susceptible species of fish, parts thereof or their eggs taken from the Lake Erie watershed as fishbait in Commonwealth waters outside the Lake Erie watershed except when the fish are from a group of fish certified as having tested negative for VHS or are from an artificial propagation facility certified as having tested negative for VHS.

[Pa.B. Doc. No. 07-2199. Filed for public inspection December 7, 2007, 9:00 a.m.]

**FISH AND BOAT COMMISSION**  
**[ 58 PA. CODE CH. 111 ]**  
**Boating; Special Regulations Counties**

The Fish and Boat Commission (Commission) amends 58 Pa. Code Chapter 111 (relating to special regulations counties). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

*A. Effective Date*

The final-form rulemaking will go into effect immediately upon publication in the *Pennsylvania Bulletin*.

*B. Contact Person*

For further information on the final-form rulemaking, contact Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7827. This final-form rulemaking is available on the Commission's website at [www.fish.state.pa.us](http://www.fish.state.pa.us).

*C. Statutory Authority*

The amendments to §§ 111.20 and 111.33 (relating to Crawford County; and Jefferson County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

*D. Purpose and Background*

The final-form rulemaking is designed to improve, enhance and update the Commission's boating regulations. The specific purpose of the amendments is described in more detail under the summary of changes.

*E. Summary of Changes*

(1) *Section 111.20.* The Commission received a petition to amend the regulations to increase the horsepower limit on Sugar Lake, Crawford County, from the current 6 horsepower to 10 horsepower. The Commission directed staff to prepare a report with recommendations concerning the merits of the petition. The staff report was considered and reviewed by the Boating Advisory Board (Board), and the Board recommended that the horsepower be increased as proposed by the petitioner. The increase in horsepower is consistent with other lakes in Crawford County. At a subsequent meeting, the Board again considered this item and recommended that the Commission adopt the amendment on final rulemaking. On final-form rulemaking, the Commission adopted the proposed amendment as set forth in the notice of proposed rulemaking.

(2) *Section 111.33.* Cloe Lake, Jefferson County, is a Commission-owned lake. Under § 53.8(a) (relating to boats), the operation of internal combustion engines is prohibited on Commission lakes. In accordance with this regulation, Cloe Lake has been regulated as an electric motors only lake. A recent review of the Commission's regulations in Chapter 111 revealed that they do not include Cloe Lake as being electric motors only, which would be made explicit by the amendment. The Board considered this item and recommended that the Commission adopt the amendment on final rulemaking. On final-form rulemaking, the Commission adopted the proposed amendment as set forth in the notice of proposed rulemaking.

*F. Paperwork*

The final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

*G. Fiscal Impact*

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no new costs on the private sector or the general public.

*H. Public Involvement*

A notice of proposed rulemaking was published at 37 Pa.B. 1218 (March 17, 2007). With respect to the proposed amendment for Sugar Lake, the Commission received the following comments: two public comments before the official public comment period opposing the proposed amendment; two public comments during the official public comment period opposing it; and 39 public comments well after the official public comment period, two of which supported it and 37 of which were opposed. The majority of the comments in opposition cited negative environmental impacts and increased boat traffic on a small lake as the reason for their opposition. No comments were received with respect to the proposed amendment for Cloe Lake. Copies of all public comments were provided to the Commissioners.

*Findings*

The Commission finds that:

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

(2) A public comment period was provided, and the comments that were received were considered.

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

*Order*

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 111, are amended by amending §§ 111.20 and 111.33 to read as set forth at 37 Pa.B. 1218.

(b) The Executive Director will submit this order and 37 Pa.B. 1218 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 37 Pa.B. 1218 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on immediately upon publication in the *Pennsylvania Bulletin*.

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-189 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 07-2200. Filed for public inspection December 7, 2007, 9:00 a.m.]