

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 53 AND 63]

Fishing

The Fish and Boat Commission (Commission) amends Chapters 53 and 63 (relating to Commission property; and general fishing regulations). 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 this 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 web site at www.fish.state.pa.us.

C. Statutory Authority

The amendment to § 53.24 (relating to tournament and fishing derby permits) is published under the statutory authority of section 741 of the code (relating to control of property). The amendment to § 63.40 (relating to fishing tournaments and fishing derbies) is published under the statutory authority of section 2102(a) 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 regulations pertaining to bass tournaments. The specific purpose of the amendments is described in more detail under the summary of changes.

E. Summary of Changes

The Commission has adopted amendments that prohibit bass fishing tournaments on the West Branch, North Branch and main stem of the Susquehanna River that permit the killing of black bass (*Micropterus spp*). This ban was generated in response to angler concerns about organized events that focus on taking black bass, especially at a time when agency biologists and bass anglers have concerns about the relatively weak reproduction of young smallmouth bass in parts of the river system in recent years. This rule will not apply to tournament harvest of species other than black bass.

On final-form rulemaking, the Commission adopted the amendments as set forth in the notice of proposed rulemaking with the following clarifications. The notice of proposed rulemaking simply referred to bass instead of black bass. In addition, the notice of proposed rulemaking used the term "harvest" instead of "kill." As a result of public input, the Commission determined that it would be useful to clarify that the Commission's use of the word "harvest" is intended to prohibit the killing of black bass during tournaments. Accordingly, the Commission adopted the amendments as set forth in Annex A.

F. Paperwork

The final-form rulemaking will not increase paperwork and will create new no 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. 6417 (December 8, 2007). Prior to the formal public comment period, the Commission received a total of 33 comments. Thirty-two of the comments supported the proposal. One supported catch and release fishing and personally practices it but believes that if individuals wish to keep some of their catch, they should be allowed to do so. During the formal public comment period, the Commission received 73 comments (of which 11 were from prior commentators). Of the 73 comments, 72 supported the proposal and one opposed it. The Commission received a total of six public comments after the close of the formal public comment period, all supporting the proposed amendments. 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 Chapters 53 and 63, are amended by amending §§ 53.24 and 63.40 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(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 immediately upon publication in the *Pennsylvania Bulletin*.

DOUGLAS J. AUSTEN, Ph.D.,

Executive Director

Fiscal Note: Fiscal Note 48A-199 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 53. COMMISSION PROPERTY

§ 53.24. Tournament and fishing derby permits.

* * * * *

(e) *Prohibited acts.* It is unlawful to conduct a fishing tournament or fishing derby on Commission owned or controlled property except in compliance with permit conditions. It is unlawful to conduct a tournament or fishing derby on Commission owned or controlled property on the opening day for any species of game fish unless the applicant has made an extraordinary showing that the proposed tournament will not interfere with other fishing and boating activities and the Commission issues a special activity permit containing a specific finding, based upon the applicant's showing, that the permitted activity will not constitute interference. It is unlawful to conduct or participate in a fishing tournament or fishing derby involving the catch or attempted catch of a particular species of fish during the closed season for that species. It is unlawful to conduct a fishing tournament on the North Branch, West Branch or main stem of the Susquehanna River that allows tournament anglers to kill black bass.

Subpart B. Fishing

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.40. Fishing tournaments and fishing derbies.

* * * * *

(d) *Prohibited acts.* It is unlawful to conduct a fishing tournament or fishing derby on Commonwealth waters except in compliance with permit conditions. It is unlawful to conduct a tournament or fishing derby on Commonwealth waters on the opening day for any species of game fish unless the applicant has made an extraordinary showing that the proposed tournament will not interfere with other fishing and boating activities and the Commission issues a special activity permit containing a specific finding, based upon the applicant's showing, that the permitted activity will not constitute interference. It is unlawful to conduct or participate in a fishing tournament or fishing derby involving the catch or attempted catch of a particular species of fish during the closed season for that species. It is unlawful to conduct a fishing tournament on the North Branch, West Branch or main stem of the Susquehanna River that allows tournament anglers to kill black bass.

[Pa.B. Doc. No. 08-621. Filed for public inspection April 4, 2008, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 421a AND 423a]

General Provisions; and Applications

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) amends Chapters 421a and 423a (relating to general provisions; and applications) to read as set forth in Annex A.

Purpose of the Final-Form Rulemaking

This rulemaking adds new provisions relating to advertising and abandoned applications.

Explanation of the Amendments to Chapters 421a and 423a

This rulemaking adds § 421a.6 (relating to advertising) which allows the Board to require slot machine, manufacturer and junket licensees to cease using inappropriate advertising; defines what will be considered to be adver-

tising; prohibits the use of false or misleading information; requires the inclusion of a toll-free gambling assistance telephone number in any advertisement which must be approved utilizing the process contained in § 501a.2(g) (relating to compulsive and problem gambling plan); and bars slot machine, manufacturer and junket licensees from using individuals to induce patrons to engage in gaming or play a specific slot machine.

This rulemaking also amends § 423a.4 (relating to deficient applications) by adding new provisions governing abandoned applications.

Comment and Response Summary

Notice of proposed rulemaking was published at 37 Pa.B. 5804 (October 27, 2007).

The Board received comments from International Gaming Technology (IGT) during the public comment period. On December 26, 2007, comments on the proposed rulemaking were received from the Independent Regulatory Review Commission (IRRC). The comments were reviewed by the Board and are discussed in detail as follows.

On § 421a.6(a), IRRC commented that the phrases "as expeditiously as possible" and "within the spirit of the act" lacked clarity. IRRC suggested that a specific time period be established in lieu of "as expeditiously as possible" and that specific criteria be inserted to define what would be "within the spirit of the act."

The Board agrees that "as expeditiously as possible" does not set a specific time period. However, the wide range of types of advertisements restricts the Board's ability to set a reasonable specific time period that would work for all types of advertisements. For example, television and radio advertisements may be able to be discontinued within days but print advertisements may require much longer time frames. To provide some flexibility for the affected licensees, the Board is retaining the proposed language. The Board will work with licensees on a case by case basis to discontinue inappropriate advertisements as quickly as possible.

Concerning IRRC's second suggestion for this subsection, the Board has replaced the phrase "is not within the spirit of the act" with the phrase "could adversely impact the public or the integrity of gaming." This should provide licensees with a better understanding of what the Board will be looking for in advertisements.

On § 421a.6(b), IRRC asked if this regulation would apply to emails to existing or potential customers and if there is a difference between "advertisements" and "promotions."

As IRRC has noted, many advertisers today use email as a direct means of reaching existing and potential customers. Accordingly, email has been added to the list of items that are considered to be advertisements in the final-form regulation.

Advertisements are intended to encourage individuals to come to a licensed facility. Promotions, which generally offer something to individuals as an inducement for the individuals to participate in gaming, are just one type of advertising. Therefore, the use of the term "promotion" in the regulation is somewhat redundant and is not necessary. For this reason, the Board has eliminated the term in the final-form regulation.

On § 421a.6(d), IGT had two suggestions. First, IGT suggested that the Board add specific language that would be acceptable to the Board so that individual

reviews by the Director of the Office of Compulsive and Problem Gambling (Office) would not be necessary. Second, IGT suggested that messages transmitted to a player from a slot machine be exempt from this section. IRRC concurred with IGT's first suggestion and asked if this requirement would also apply to promotions.

To give licensees some flexibility, the Board has elected not to mandate specific language that must be used by all licensees. However, to reduce the need for numerous filings the Board has added the phrase "if it has not been previously approved by the Director of the Office of Compulsive and Problem Gambling" to subsection (d). This will substantially reduce the number of approvals the affected licensees will have to obtain. For example, if a slot machine licensee has received approval under § 501a.5(b) or § 421a.6 or the text and font size for print advertisements, each time the slot machine licensee does a new print advertisement, the slot machine licensee would not need to have the text and font size approved again unless it wanted to make a change. Additionally, the Board adopted a statement of policy on January 24, 2008, which provides guidelines on acceptable text and font sizes.

Concerning IGT's second suggestion, it was not the Board's intent to apply subsection (d) to the messages printed on slot machines at this time. The Board is currently reviewing the messaging capabilities of slot machines and slot monitoring and casino management systems. If the Board finds that there is a need to expand subsection (d) to include these messages, it will do a new proposed rulemaking.

As to IRRC's question concerning promotions, as noted previously the Board has deleted the term "promotion" because promotions are a type of advertisement.

In § 421a.6(e), IGT and IRRC asked for clarification of the term "virtual facsimile."

The Board's intent in this provision was to ban the use of individuals or video or electronic reproductions of individuals to pressure patrons to engage in gaming or to play a particular machine. However, it was not the Board's intent to prohibit slot machines from using general messages to attract a player's attention. Because technological advances in displays used on slot machines now allow life-like video reproductions, the Board has eliminated the phrase "virtual facsimile" from this subsection of the regulation. To further clarify the Board's intent, the term "induce" has been replaced with "persuade or convince."

Additional Revisions

In addition to the revisions discussed previously, the Board added the phrase "or the statement required under subsection (d)" to § 421a.6(c)(2) to make it clear that the prohibitions in subsection (c) also apply to the statement pertaining to assistance for gambling problems.

Additionally, minor formatting changes were made to § 421a.6(c) to improve clarity.

Affected Parties

Under this final-form rulemaking, slot machine, manufacturer and junket licensees will be required to cease using inappropriate advertising upon receipt of written notice from the Board and will have to have the language relating to a toll-free gambling assistance telephone number that will be used in any advertisement approved by the Director of the Office. There are 11 currently approved slot machine licensees, 16 licensed manufacturers and no licensed junkets.

Applicants whose applications are deemed abandoned, instead of being denied, will be able to file a new application immediately instead of having to wait 5 years.

Fiscal Impact

Commonwealth

There will be no new costs to the Board or other Commonwealth agencies as a result of this rulemaking. The Director of the Office currently reviews the toll-free gambling assistance telephone number message that is used in advertisements.

Political Subdivisions

This final-form rulemaking will have no fiscal impact on political subdivisions of the Commonwealth.

Private Sector

The Board anticipates that there will be no significant new costs or savings to slot machine, manufacturer and junket licensees as a result of these amendments because they reflect existing requirements.

Applicants whose applications are deemed abandoned will be able to apply for a license, permit or registration immediately thereby increasing their ability to be employed in the gaming industry.

General Public

This final-form rulemaking will have no fiscal impact on the general public.

Paperwork requirements

This final-form rulemaking does not change or add new reporting, recordkeeping or paperwork requirements.

Effective Date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Contact Person

The contact person for questions about this final-form rulemaking is Richard Sandusky, Director of Regulatory Review, (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (act) (71 P. S. § 745.5(a), on October 15, 2007, the Board submitted a copy of the proposed rulemaking, published at 37 Pa.B. 5804, and a copy of the Regulatory Analysis Form to IRRC and the Chairpersons of the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development.

Under section 5(c) of the act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the act (71 P. S. § 745.5a(j.2)), the final-form rulemaking was deemed approved by the House and the Senate Committees. Under section 5.1(e) of the act (71 P. S. § 745.5a(e)), IRRC met March 6, 2008, and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of intention to adopt these amendments was given under sections 201 and 202 of the act of

July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part VII (relating to gaming).

Order

The Board, acting under 4 Pa.C.S. Part VII, orders that:

(a) The regulations of the Board, 58 Pa. Code Chapters 421a and 423a, are amended by amending § 423a.4 to read as set forth at 37 Pa.B. 5804 and by adding § 421a.6 to read as set forth in Annex A.

(b) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

MARY DIGIACOMO COLINS,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 1646 (April 5, 2008).)

Fiscal Note: Fiscal Note 125-72 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 421a. GENERAL PROVISIONS

§ 421a.6. Advertising.

(a) Slot machine, junket and manufacturer licensees will be required to discontinue as expeditiously as possible the use of a particular advertisement upon receipt of written notice from the Board that the Board has determined that the use of the particular advertisement in, or with respect to, this Commonwealth could adversely impact the public or the integrity of gaming.

(b) For purposes of this section, the term "advertisement" means marketing materials including signs, billboards, print, radio and television advertisements, emails and any notice or communication by a slot machine, junket or manufacturer licensee or its agent to the public through broadcasting, publication, mailing or other means of dissemination.

(c) Advertisements used by slot machine, junket or manufacturer licensees may not:

(1) Contain false or misleading information.

(2) Use a font, type size, location, lighting, illustration, graphic depiction or color obscuring any material fact or the statement required under subsection (d).

(3) Fail to disclose any material conditions or limiting factors associated with the advertisement.

(d) Advertisements must contain a statement that is similar to the following: "If you or someone you know has a gambling problem, help is available. Call (toll-free telephone number)." The complete text of the statement and type size to be used for the statement, if it has not been previously approved by the Director of the Office of Compulsive and Problem Gambling, shall be submitted to the Director of the Office of Compulsive and Problem Gambling for approval utilizing the process contained in § 501a.2(g) (relating to compulsive and problem gambling plan).

(e) A slot machine, junket or manufacturer licensee or an agent thereof may not employ or contract with an individual, persuade or convince a person to engage in gaming or play a specific slot machine at a licensed facility.

[Pa.B. Doc. No. 08-622. Filed for public inspection April 4, 2008, 9:00 a.m.]

Title 37—LAW

PART I. STATE POLICE

[37 PA. CODE CH. 23]

Corrective Amendment to 37 Pa. Code Chapter 23

The Pennsylvania State Police has discovered a discrepancy between the agency text of 37 Pa. Code Chapter 23, as deposited with the Legislative Reference Bureau, and the official text which appeared at 34 Pa.B. 6325 (November 27, 2004) and was published in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 363) and as currently appearing in the *Pennsylvania Code*. The final section in the chapter was included erroneously and should be eliminated.

Therefore, under 45 Pa.C.S. § 901: The Pennsylvania State Police has deposited with the Legislative Reference Bureau a corrective amendment to 37 Pa. Code Chapter 23. The corrective amendment to 37 Pa. Code Chapter 23 is effective as of November 27, 2004, the date the defective official text appeared in the *Pennsylvania Bulletin*.

The correct version of 37 Pa. Code Chapter 23 consists of § 23.1 (relating to definitions) and §§ 23.21—23.23 (relating to required training; age compliance checks; and notification of results of age compliance check).

SYNDI L. GUIDO,
Policy Director
Pennsylvania State Police

[Pa.B. Doc. No. 08-623. Filed for public inspection April 4, 2008, 9:00 a.m.]