

RULES AND REGULATIONS

Title 58—RECREATION

GAME COMMISSION [58 PA. CODE CH. 131]

Preliminary Provisions; Disclosure of Certain Records

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 29, 2010, meeting, added § 131.9 (relating to disclosure of certain records) to establish and define the manner that the Commission will respond to certain types of record requests.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 40 Pa.B. 3126 (June 12, 2010).

1. Purpose and Authority

It is the duty of the Commission to propagate, manage and preserve the game or wildlife of this Commonwealth. To effectively manage the wildlife resources of this Commonwealth, the Commission participates in various reviews for development projects across this Commonwealth. The two most common types of records and reviews are those collected under the Voluntary Wind Power Cooperative Agreements and those collected through the screening process with the Pennsylvania Natural Heritage Program. While some records may overlap, these are two distinct bodies of records. Many times the information gathered and shared is with regard to threatened and endangered species and even more often the information is with regard to species of special concern and greatest conservation need. In many cases, it is developed by developers themselves and is proprietary with regard to the site, the protocol and the findings. In all cases, information gathered and shared during these reviews is necessary to formulate policy and recommendations regarding policy and actions, including regulations and decisions about legal actions with regard to various types of development. In addition, the Commission keeps records regarding hunting and furtaking licenses to effectively manage the wildlife resources of this Commonwealth. Finally, many records contain personal identifying information which is necessary to predeliberative action, proprietary or the disclosure of which carries substantial and demonstrable risk of physical harm.

The Commonwealth established the Right-to-Know Law (act) (65 P. S. §§ 67.101—67.3104), effective January 1, 2009. Under the act, the definition of “public record” has changed and the list of exemptions to disclosure has grown. Under the prior law, documents regarding reviews would not have been of the kind or character to be a public record; under the act, they are classified as public records. In addition, hunting and furtaking license records were specifically exempt from disclosure by section 325 of the code (relating to limitation on disclosure of certain records). However, with the passage of the act, questions have again arisen with regard to these two classes of sensitive information. To clarify for Commission staff and the public how the act will be implemented with regard to the classes of records indicated as those col-

lected for review and those regarding hunting and furtaking licenses, the Commission adds § 131.9.

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 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.” The addition of § 131.9 was adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking adds § 131.9 to establish and define the manner that the Commission will respond to certain types of record requests.

3. Persons Affected

Persons seeking wind power records, Pennsylvania Natural Heritage Program records or recreational license records from the Commission may be affected by the final-form rulemaking.

4. Comment and Response Summary

The Commission received one official comment in opposition to the final-form rulemaking.

5. Cost and Paperwork Requirements

The final-form rulemaking should not result in additional cost or paperwork.

6. Effective Date

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

7. Contact Person

For further information regarding the final-form rulemaking, contact Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

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 thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 131, are amended by adding § 131.9 to read as set forth at 40 Pa.B. 3126.

(b) The Executive Director of the Commission shall certify this order and 40 Pa.B. 3126 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-306 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 10-1427. Filed for public inspection August 6, 2010, 9:00 a.m.]

GAME COMMISSION
[58 PA. CODE CH. 141]

Hunting and Trapping; Protective Material Required

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 29, 2010, meeting, amended § 141.20 (relating to protective material required) to eliminate the voluntary posting of protective material outside of manufactured blinds allowance. In the alternative, final-form rulemaking requires that hunters hunting during any firearms season for deer, elk or bear post a minimum of 100 square inches of daylight fluorescent orange-colored material within 15 feet of a blind meeting the requirements in section 2308(a)(3) of the code (relating to unlawful devices and methods) in a manner that is visible within a 360° arc in addition to requirement of the wearing of protective material on their persons.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 40 Pa.B. 3123 (June 12, 2010).

1. *Purpose and Authority*

At its April 18, 2007, meeting, the Commission adopted amendments to § 141.20 that permitted the posting of protective material within 15 feet of a blind meeting the requirements in section 2308(a)(3) of the code instead of wearing the required protective material on their person while hunting during any firearms season for deer, elk or bear. These amendments were made in response to concerns raised by hunters regarding the then current requirement that protective material be worn only on their person inside a manufactured blind where its visual effectiveness is severely diminished. This requirement did not afford adequate safety for hunters. Upon further reflection of this issue, the Commission determined that a mandatory posting of protective material outside a manufactured blind for hunters who choose to utilize them while hunting during any firearms season for deer, elk or bear will better protect their safety rather than the current voluntary alternative. To this end, the Commission amends § 141.20 to eliminate the voluntary posting of protective material outside of manufactured blinds allowance and in the alternative require that hunters hunting during any firearms season for deer, elk or bear post a minimum of 100 square inches of daylight fluorescent orange-colored material within 15 feet of a blind meeting the requirements in section 2308(a)(3) of the code

in a manner that is visible within a 360° arc in addition to the requirement of the wearing of protective material on their persons.

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.” The amendments to § 141.20 were adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amends § 141.20 to eliminate the voluntary posting of protective material outside of manufactured blinds allowance and in the alternative require that hunters hunting during any firearms season for deer, elk or bear post a minimum of 100 square inches of daylight fluorescent orange-colored material within 15 feet of a blind meeting the requirements in section 2308(a)(3) of the code in a manner that is visible within a 360° arc in addition to the requirement of the wearing of protective material on their persons.

3. *Persons Affected*

Persons wishing to hunt during any firearms season for deer, elk or bear from a blind meeting the requirements in section 2308(a)(3) of the code will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

There were no official comments received regarding the final-form rulemaking.

5. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

6. *Effective Date*

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

7. *Contact Person*

For further information regarding the final-form rulemaking, contact Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.20 to read as set forth in Annex A.

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

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-308 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter A. GENERAL

§ 141.20. Protective material required.

(a) The following requirements apply:

(1) *General.* Except as otherwise provided in subsection (b), it is unlawful to hunt or assist to hunt game or wildlife or move to or from a hunting location, from 1 hour before legal hunting hours to 1 hour after legal hunting hours outside of a motorized vehicle, at any time without wearing a minimum of 250 square inches of daylight fluorescent orange-colored material on the head, chest and back combined so that it is visible in a 360° arc. This shall include going to or from a hunting location before or after legal shooting hours. Except as provided in subsection (b)(2) and (3), camouflage orange clothing is lawful provided it contains the minimum amount of fluorescent orange-colored material.

(2) *Additional requirements.* It is unlawful to hunt during any firearms season for deer, elk or bear from any blind meeting the requirements in section 2308(b)(3) of the act (relating to unlawful devices and methods) without placing a minimum of 100 square inches of daylight fluorescent orange-colored material within 15 feet from the blind so it is visible in a 360° arc.

(b) *Permitted acts.* It is lawful to:

(1) Hunt without wearing daylight fluorescent orange-colored material for:

(i) Crows.

(ii) Doves.

(iii) Waterfowl.

(iv) Any wildlife that can be lawfully harvested while hunting under the authority of a valid falconry permit.

(v) Deer during the flintlock muzzleloader season with lawful firearms and ammunition for the flintlock muzzleloader season by properly licensed flintlock muzzleloader hunters.

(vi) Deer during the archery deer season with a bow and arrow or crossbow and bolt by properly licensed archery hunters except as provided in paragraphs (3)(ii) and (4).

(vii) Bear during the archery bear season with a bow and arrow by properly licensed bear hunters except as provided in paragraph (3)(iii).

(viii) Furbearers.

(ix) Coyotes except from the first day to the last day inclusive of the regular firearms deer season, any firearms bear season and spring turkey season within each wildlife management unit.

(x) Turkey during the spring turkey season.

(2) Hunt for woodchucks while wearing a hat made of solid daylight fluorescent orange-colored material on the head only.

(3) Move about or relocate while wearing a hat containing a minimum of 100 square inches of a solid daylight fluorescent orange-colored material on the head only and be stationary without wearing the required orange-colored material when hunting for:

(i) Turkey during the fall turkey season in Wildlife Management Units 1A, 1B, 2A, 2B, 5B, 5C and 5D.

(ii) Deer with a bow and arrow or crossbow and bolt during any deer archery season which is concurrent with the fall turkey season within each wildlife management unit.

(iii) Bear with a bow and arrow during any bear archery season, which is concurrent with the fall turkey season within each wildlife management unit.

(4) Be on stand and stationary while hunting for turkey during the fall season in Wildlife Management Units 2C, 2D, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A, 4B, 4C, 4D, 4E and 5A or deer during any firearms deer season that precedes the regular firearms deer season and in lieu of the required 250 square inches place a minimum of 100 square inches of daylight fluorescent orange-colored material within 15 feet of the hunter's location so it is visible in a 360° arc.

(c) A person who violates this section shall be subject to the penalties as provided in the act.

[Pa.B. Doc. No. 10-1428. Filed for public inspection August 6, 2010, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 141]

Hunting and Trapping; Wild Pheasant Recovery Areas

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 29, 2010, meeting, amended § 141.28 (relating to wild pheasant recovery areas) to create and define the geographic location of the Hegins-Gratz Valley wild pheasant recovery area (WPRA) and prohibit the hunting of small game and dog training activities from the first Sunday in February through July 31st within any area designated as a WPRA.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 40 Pa.B. 3124 (June 12, 2010).

1. Purpose and Authority

The Ring-necked Pheasant Management Plan calls for restoring self-sustaining and huntable ring-necked pheasant populations in suitable habitats by establishing at least four WPRAs by 2015. Wild-trapped pheasants will

be released in WPRAs in an effort to establish populations of at least ten hens per square mile in the spring, while WPRAs will remain closed to game farm pheasant stocking, pheasant hunting and dog training activities. Small game hunting within WPRAs will also be restricted during critical periods during the population establishment phase. Three WPRAs were listed in 2009 and one additional area, the Hegins-Gratz Valley WPRAs, was adopted to prepare for pheasant releases in 2011.

Section 322(c)(4) of the code (relating to powers and duties of commission) specifically authorizes the Commission to "Define geographic limitations or restrictions." Section 2102(c) of the code (relating to regulations) directs that "The commission shall promulgate regulations concerning the transportation, introduction into the wild, importation, exportation, sale, offering for sale or purchase of game or wildlife or the disturbing of game or wildlife in their natural habitat." Section 2102(a) of the code 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." The amendments to § 141.28 were adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amends § 141.28 to create and define the geographic location of the Hegins-Gratz Valley WPRAs and prohibits the hunting of small game and dog training activities from the first Sunday in February through July 31st within areas designated as WPRAs.

3. *Persons Affected*

Persons wishing to hunt wild pheasants, release propagated pheasants, train dogs or hunt small game within areas designated as WPRAs may be affected by the final-form rulemaking.

4. *Comment and Response Summary*

There were no official comments received regarding the final-form rulemaking.

5. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

6. *Effective Date*

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

7. *Contact Person*

For further information regarding the final-form rulemaking, contact Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.28 to read as set forth at 40 Pa.B. 3124.

(b) The Executive Director of the Commission shall certify this order and 40 Pa.B. 3124 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-307 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 10-1429. Filed for public inspection August 6, 2010, 9:00 a.m.]