

PROPOSED RULEMAKINGS

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CHS. 401 AND 403]

Uniform Construction Code

In accordance with section 304 of the Pennsylvania Construction Code Act (act) (35 P.S. § 7210.304), the Department of Labor and Industry (Department) is submitting a proposed rulemaking for the regulation of construction. The Department proposes to amend §§ 401.1 and 403.21 (relating to definitions; and Uniform Construction Code) under the act to read as set forth in Annex A.

Statutory Authority

This proposed rulemaking is issued under the authority in section 304(a)(3) of the act, which provides that the Department shall promulgate regulations updating accessibility standards by adopting Chapter 11 and Appendix E of the International Building Code of 2012, or its successor, by December 31 of the year of issuance of the new code.

Background

The act mandates a process for the adoption of updated building codes issued by the International Code Council. Although most building code provisions are reviewed by the Uniform Construction Code Review and Advisory Council, under section 107 of the act (35 P.S. § 7210.107), the General Assembly excluded accessibility provisions of the International Building Code from review. In 2011, the act was amended to require that the Department regularly adopt updated accessibility standards for the construction, repair or alteration of buildings in this Commonwealth by December 31 of the year of issuance, beginning with Chapter 11 and Appendix E of the International Building Code of 2012. Therefore, the Department is required to adopt these provisions by December 31, 2012. Adoption of the current accessibility standards will ensure that commercial buildings meet current standards for accessible and usable facilities.

The Department has sought input from the Accessibility Advisory Board (Board), created under section 106 of the act (35 P.S. § 7210.106). The Board consists of members appointed by the Secretary, including members with physical disabilities, an architect, a member of the business community, a representative of the multifamily housing industry and a municipal official. Under section 106(b) of the act, the Board has reviewed the proposed rulemaking and given its advice to the Secretary.

Purpose

The purpose of this proposed rulemaking is to adopt recognized international standards for accessible and usable buildings and structures, as directed by the act of April 25, 2011 (P.L. 1, No. 1). The proposed rulemaking brings the Commonwealth's standards for accessible and usable buildings to the current state of the art and conforms to standards issued by the United States Department of Justice under the Americans with Disabilities Act of 1990 (42 U.S.C.A. §§ 12101—12213). Adopting Chapter 11 and Appendix E of the 2012 International Building Code will allow the Department to comply with the act.

Summary of Proposed Rulemaking

§ 401.1. Definitions

This section amends the definition of "International Building Code" to provide that the term includes Chapter 11 and Appendix E of the 2012 edition of the International Building Code. It clarifies that the remaining adopted provisions of the International Building Code are the 2009 edition.

§ 401.21. Uniform Construction Code

This section excludes Chapter 11 and Appendix E of the 2009 International Building Code from the codes adopted as the Uniform Construction Code. It adopts Chapter 11 and Appendix E of the 2012 International Building Code.

Affected Persons

This proposed rulemaking will affect owners of new commercial buildings or commercial buildings undergoing addition, renovation or repair. It also ensures that persons with physical disabilities will be able to access and use commercial buildings in this Commonwealth.

Fiscal Impact

The Commonwealth will incur minimal additional costs under this proposed rulemaking. The costs are related to the purchase of updated code books for Commonwealth personnel. The cost to enforce the proposed rulemaking will be the same as the current regulations. This proposed rulemaking will not increase administrative, enforcement or legal activity.

Reporting, Recordkeeping and Paperwork Requirements

This proposed rulemaking will not require the creation of new forms or reporting requirements. Current forms may be updated.

Sunset Date

A sunset date is not appropriate for this proposed rulemaking. The act directs the Department to update the regulations with each new International Code Council, or successor code, edition.

Effective Date

This proposed rulemaking will take effect upon final-form publication in the *Pennsylvania Bulletin*.

Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Edward Leister, Director, Bureau of Occupational and Industrial Safety, Department of Labor and Industry, 16th Floor, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17120, eleister@pa.gov within 30 days of publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 23, 2012, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Committee on Labor and Industry and the House Labor Relations Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the

close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

JULIA K. HEARTHWAY,
Secretary

Fiscal Note: 12-94. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART XIV. UNIFORM CONSTRUCTION CODE

CHAPTER 401. UNIFORM CONSTRUCTION CODE TRAINING AND CERTIFICATION OF CODE ADMINISTRATORS

§ 401.1. Definitions.

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

* * * * *

International Building Code—Chapters [2—29] 2—10, 12—29 and 31—35 of the “International Building Code 2009” (first printing) issued by the ICC. **Chapter 11 and Appendix E of the “International Building Code 2012” issued by the ICC.** The term includes all errata issued by the ICC.

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CHAPTER 403. ADMINISTRATION

STANDARDS

§ 403.21. Uniform Construction Code.

(a) The Department adopts and incorporates by reference the following codes as the Uniform Construction Code:

(1) The provisions of Chapters [2—29] 2—10, 12—29 and 31—35 of the “International Building Code,” except that in occupancies in Use Group R-3 and within dwelling units in occupancies in Use Group R-2 the maximum riser height shall be 8 1/4 inches (210 mm) and the minimum tread depth shall be 9 inches (229 mm). A 1-inch (25 mm) nosing shall be provided on stairways with solid risers.

(2) **Chapter 11 of the International Building Code of 2012.**

(3) The “International Mechanical Code.”

[(3)] (4) “The International Fuel Gas Code.”

[(4)] (5) “The International Performance Code.”

[(5)] (6) “The International Plumbing Code.”

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[(6)] (7) The “International Residential Code,” except that:

* * * * *

[(7)] (8) The “International Fire Code.” Section 806.1.1 of the International Fire Code (relating to natural cut trees) is not adopted under this chapter. A municipality that elects to adopt an ordinance for the administration and enforcement of the Uniform Construction Code

may, by ordinance, restrict the placement of natural cut trees in an occupancy group. The ordinance restricting the placement of natural cut trees is not subject to section 503(b)—(k) of the act (35 P. S. § 7210.503(b)—(k)) and § 403.102(i)—(k) (relating to municipalities electing to enforce the Uniform Construction Code).

[(8)] (9) The “International Energy Conservation Code.”

[(9)] (10) The “International Existing Building Code.”

[(10)] (11) The “International Wildland-Urban Interface Code.”

[(11)] (12) Appendix E of the “International Building Code of 2012.”

[(12)] (13) Appendix H of the “International Building Code.”

[(13)] (14) Appendix G of the “International Residential Code.”

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[Pa.B. Doc. No. 12-608. Filed for public inspection April 6, 2012, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 61]

Fishing; Seasons, Sizes and Creel Limits

The Fish and Boat Commission (Commission) proposes to amend Chapter 61 (relating to seasons, sizes and creel limits). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. Effective Date

The proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2013.

B. Contact Person

For further information on the proposed rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission’s web site at www.fish.state.pa.us.

C. Statutory Authority

The proposed amendment to § 61.8 (relating to Lehigh River, Schuylkill River and tributaries) is published under the statutory authority of section 2102(b) of the code (relating to rules and regulations).

D. Purpose and Background

The proposed rulemaking is designed to improve, enhance and update the Commission’s fishing regulations. The specific purpose of the proposed amendment is described in more detail under the summary of proposal.

E. Summary of Proposal

The Lehigh and Schuylkill Rivers represent the two largest tributaries to the Delaware River, draining 3,529.7 km² and 4,951.2 km², respectively. The annual numbers of American shad that migrate to both rivers is dependent upon successful passage at multiple fishways. The first of these fishways on the Lehigh River is

situated near the confluence with the Delaware River at the Easton Dam (RM 0.0). On the Schuylkill River, the first impediment to shad passage is the Fairmount Dam (RM 8.5). Multiple factors contribute to the successful passage of shad, such as adequate fishway attraction flows, river flow, river water temperature and abundance of the returning population. Shad passage varies annually as monitored at both fishways by surveillance cameras and passage efficiency is poor. For example, passage of shad monitored through the Chain Dam (RM 3.0) on the Lehigh River is typically less than 20% of Easton passage. Only 5.0% of the American shad that passed the Easton Dam passed the Chain Dam in 2011. Shad passage is not monitored on any upstream fishway on the Schuylkill River, with the exception of some monitoring in 2010 and 2011 by Normandeau Associates for Exelon Energy at the Black Rock Dam.

Both rivers have been the subject of long-term restoration efforts by the Commission. American shad fry resulting from fish culture at the Commission's Van Dyke Hatchery have been stocked in both the Lehigh and Schuylkill Rivers for many years. The long-term contribution of hatchery-stocked fish to the annual runs of American shad is 74% and 96% for the Lehigh River and Schuylkill River, respectively.

Since 1995 on the Lehigh River and 2005 on the Schuylkill River, the American shad season has been open year-round with a daily creel limit of one shad, with no minimum size on both rivers; however, the fishery is focused on the Delaware River mainstem. An estimate of angler use and harvest is not available for either the Lehigh or Schuylkill River. A few anglers have been noted to fish the tidal reach of the Schuylkill River.

Management of marine and diadromous fisheries in state waters on the Atlantic Coast is coordinated through the Atlantic States Marine Fisheries Commission (ASMFC). The adoption of Amendment 3 to the ASMFC Interstate Fishery Management Plan for Shad and River Herring in 2010 calls for a moratorium on commercial fisheries and a catch and release regulation for recre-

ational American shad fisheries that cannot be demonstrated to be sustainable by January 1, 2013. Given that both the Lehigh and Schuylkill Rivers remain under restoration, that there is currently inefficient fishway passage and that data that can demonstrate sustainability is currently inadequate, the Commission cannot determine that the fisheries are sustainable on either river. Therefore, the Commission proposes that § 61.8 be amended to read as set forth in Annex A to impose catch and release only regulations for American shad in both rivers.

F. Paperwork

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose new costs on the private sector or the general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.fishandboat.com/reg comments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,
Executive Director

Fiscal Note: 48A-234. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS

§ 61.8. Lehigh River, Schuylkill River and tributaries.

* * * * *

(d) The following seasons, sizes and creel limits apply to the Lehigh River upstream of the first dam in Easton, Pennsylvania and its tributaries and the Schuylkill River upstream of the I-95 Bridge and its tributaries:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
AMERICAN SHAD	Open year-round	No Minimum	[1] Catch and Release Only

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[Pa.B. Doc. No. 12-609. Filed for public inspection April 6, 2012, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 139]

Seasons and Bag Limits; Correction

An error occurred in the proposed rulemaking published at 42 Pa.B. 1238, 1240 (March 10, 2012). In the listing for “Ring-necked Pheasant—Male only in WMUs 2C, 4C, 4E, 5A and 5B” in § 139.4 (relating to seasons and bag limits for the license year), WMU 2A was inadvertently omitted. The correct version of this entry is as follows, with ellipses referring to the remaining text of the proposed rulemaking.

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)

**2012-2013 OPEN HUNTING AND FUR TAKING SEASONS, DAILY LIMIT, FIELD POSSESSION LIMIT AND SEASON LIMIT
OPEN SEASON INCLUDES FIRST AND LAST DATES LISTED**

<i>Species</i>	<i>First Day</i>		<i>Last Day</i>		<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
	*	*	*	*	*	
Ring-necked Pheasant—Male only in WMUs 2A, 2C, 4C, 4E, 5A and 5B Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law	Oct. 6		Oct. 13		2	4
	*	*	*	*	*	

[Pa.B. Doc. No. 12-401. Filed for public inspection March 9, 2012, 9:00 a.m.]