

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 61]

Fishing; Seasons, Sizes and Creel Limits

The Fish and Boat Commission (Commission) amends Chapter 61 (relating to seasons, sizes and creel limits). 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, 2013.

B. *Contact Person*

For further information on the final-form rulemaking, contact Wayne Melnick, 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 § 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 final-form rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the amendment is described in more detail under the summary of change.

E. *Summary of Change*

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 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 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 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 Rivers, 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 recreational 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. The Commission therefore amends § 61.8 to read as set forth in the proposed rulemaking published at 42 Pa.B. 1862 (April 7, 2012) to impose catch and release only regulations for American shad in both rivers.

F. *Paperwork*

The final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

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

H. *Public Involvement*

A notice of proposed rulemaking was published at 42 Pa.B. 1862. The Commission did not receive any public comments concerning the proposed rulemaking.

Findings

The Commission finds that:

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

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

(3) The adoption of the amendment 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 61, are amended by amending § 61.8 to read as set forth at 42 Pa.B. 1862.

(b) The Executive Director will submit this order and 42 Pa.B. 1862 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 42 Pa.B. 1862 and deposit them with the Legislative Reference Bureau as required by law.

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

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-234 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 12-1945. Filed for public inspection October 5, 2012, 9:00 a.m.]

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 43]

Temporary Registration Cards and Plates

The Department of Transportation (Department), under the authority in 75 Pa.C.S. § 6103 (relating to promulgation of rules and regulations by department), amends §§ 43.1 and 43.9 (relating to purpose; and bond) and rescinds § 43.11 to read as set forth in Annex A. This rulemaking is being submitted as a final regulation with proposed rulemaking omitted under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204), known as the Commonwealth Documents Law (CDL). Insofar as these sections have been superseded by amendments to 75 Pa.C.S. (relating to Vehicle Code), specifically 75 Pa.C.S. § 7502.1(a) (relating to supersession), public notice of the proposed rulemaking is unnecessary, impractical and contrary to the public interest under 204(c) of the CDL.

Purpose of Chapter 43

The purpose of Chapter 43 (relating to temporary registration cards and plates) is to establish the rules and regulations governing the issuance of temporary registration plates and cards by authorized agents of the Department.

Purpose of the Final-Omitted Rulemaking

The purpose of this final-omitted rulemaking is to amend or rescind the parts of Chapter 43 that have been expressly superseded by 75 Pa.C.S. § 7502.1(a). Section 7502.1 of 75 Pa.C.S. provides that Department regulations regarding the amount of a bond, hearings, written warnings, suspensions, revocations and fines do not apply to an agent service under contract with the Department. As required under 75 Pa.C.S. § 7501 (relating to authorization of messenger and agent services), agent services are now performed under contract with the Department.

Persons and Entities Affected

This final-omitted rulemaking will not affect persons or entities as the affected sections were expressly superseded by 75 Pa.C.S. § 7502.1(a).

Fiscal Impact

This final-omitted rulemaking will not result in the expenditure of additional funds by the Commonwealth or local municipalities.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on August 10, 2012, the Department submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on September 19, 2012, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 20, 2012, and approved the final-omitted rulemaking.

Sunset Provisions

The Department is not establishing a sunset date.

Contact Person

The contact person for this final-omitted rulemaking is Andrew C. Cleaver, Department of Transportation, Bureau of Motor Vehicles, Customer Service Division, 4th Floor, Riverfront Office Center, 1101 South Front Street, Harrisburg, PA 17104, acleaver@pa.gov.

Order

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 43, are amended by deleting § 43.11 and by amending §§ 43.1 and 43.9 to read as set forth in Annex A.

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

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

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

BARRY J. SCHOCH, P.E.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 6352 (October 6, 2012).)

Fiscal Note: 18-428. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE III. REGISTRATION

CHAPTER 43. TEMPORARY REGISTRATION CARDS AND PLATES

§ 43.1. Purpose.

This chapter established rules and regulations governing the issuance of temporary registration plates and cards by authorized dealers, manufacturers, full agents and card agents under 75 Pa.C.S. §§ 1310 and 1331

(relating to temporary registration cards; and issuance and reissuance of registration plates).

§ 43.9. Bond.

(a) *Authorized dealers, manufacturers and full agents to be bonded.* Every authorized dealer, manufacturer and full agent shall file and maintain with the Bureau a bond executed by a surety company authorized to transact business in this Commonwealth. The bond shall be for the use and benefit of the Commonwealth and a person who has sustained a monetary loss within the limitations of the bond as specified in subsection (d).

(b) *Amount of bond.* Issuing agents, other than card agents, shall be bonded in the amount as set forth in the Agent Services Agreement.

(c) *Decrease in amount of bond.* If the amount of the bond is decreased, or if there is a final judgment outstanding against the bond, the right of the authorized dealer, manufacturer or full agent to issue temporary registration cards and plates will be suspended until steps are taken, satisfactory to the Bureau, to restore the original amount of the bond, provide additional bond or satisfy the judgment.

(d) *Limitations of bond.* The bond required under this section shall cover transactions in which the Commonwealth or a person specified in subsection (a) has sustained a monetary loss due to the agent, dealer or manufacturer submitting a dishonored or uncollectible check to the Commonwealth (including protest and uncollectible check fees), or failing to remit to the Commonwealth a fee or tax when the monetary loss is incurred in connection with the business of the dealer or manufacturer. A check which is dishonored upon presentment, or an application for title or registration which is received without a required fee or tax, shall constitute a monetary loss. Failure to pay a monetary penalty within 45 days of assessment shall also constitute a monetary loss. The bond required under this section may not cover a loss for a transaction which is not mentioned in this subsection relating to the issuance of temporary registration cards or plates in connection with the business of the dealer, manufacturer or full agent. If the dealer, manufacturer or full agent has one or more branch offices, the amount of the bond shall be as specified in the Agent Services Agreement.

(e) *Bond already on file.* An authorized dealer, manufacturer or full agent who has filed a bond with the Commonwealth will not be required to file a separate bond under this section, if the bond already on file with the Commonwealth is in the name of the Commonwealth and at least equal to the amount and coverage of the bond required under this section.

(f) *Acceptance.* The surety and terms of bonds or riders shall be subject to review and acceptance by the Bureau.

(g) *Change of address.* When a change of address occurs, a stipulation or rider to the original bond shall be submitted for the new address.

(h) *Authorized claims.* The Bureau has the right to make and settle claims upon the bond with the surety company on behalf of the Commonwealth and a person who has incurred a monetary loss as specified in subsection (a). The Bureau will, upon written request, assign this right to a person for that person's claim; however, in this event, the Commonwealth is released from any duty to the person towards obtaining satisfaction of that person's claim. The Commonwealth will have priority, to the exclusion of all others, in receiving payment from the

surety. If the aggregate amount of valid claims exceeds the amount of the bond, priority for the payment of claims shall be as follows:

- (1) Claims made by the Commonwealth.
- (2) Claims made by the Commonwealth for persons.
- (3) Claims made by persons who obtained assignment from the Bureau.

§ 43.11. (Reserved).

[Pa.B. Doc. No. 12-1946. Filed for public inspection October 5, 2012, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 255]

Messenger Services

The Department of Transportation (Department), under the authority in 75 Pa.C.S. § 6103 (relating to promulgation of rules and regulations by department), amends § 255.4 (relating to bond) and rescinds § 255.7 to read as set forth in Annex A. This rulemaking is being submitted as a final regulation with proposed rulemaking omitted under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204), known as the Commonwealth Documents Law (CDL). Insofar as these sections have been superseded by amendments to 75 Pa.C.S. (relating to Vehicle Code), specifically 75 Pa.C.S. § 7502.1(a) (relating to supersession), public notice of the proposed rulemaking is unnecessary, impractical and contrary to the public interest under 204(c) of the CDL.

Purpose of Chapter 255

The purpose of Chapter 255 (relating to messenger services) is to establish the rules regarding the qualifications and duties of messenger services.

Purpose of the Final-Omitted Rulemaking

The purpose of this final-omitted rulemaking is to amend or rescind the parts of Chapter 255 that have been expressly superseded by 75 Pa.C.S. § 7502.1(a). Section 7502.1 of 75 Pa.C.S. provides that Department regulations regarding the amount of a bond, hearings, written warnings, suspensions, revocations and fines do not apply to a messenger service under contract with the Department. As required under 75 Pa.C.S. § 7501 (relating to authorization of messenger and agent services), messenger services are now performed under contract with the Department.

Persons and Entities Affected

This final-omitted rulemaking will not affect persons or entities as the affected sections were expressly superseded by 75 Pa.C.S. § 7502.1(a).

Fiscal Impact

This final-omitted rulemaking will not result in the expenditure of additional funds by the Commonwealth or local municipalities.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on August 10, 2012, the Department submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Commit-

tees. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on September 19, 2012, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 20, 2012, and approved the final-omitted rulemaking.

Sunset Provisions

The Department is not establishing a sunset date.

Contact Person

The contact person for this final-omitted rulemaking is Andrew C. Cleaver, Department of Transportation, Bureau of Motor Vehicles, Customer Service Division, 4th Floor, Riverfront Office Center, 1101 South Front Street, Harrisburg, PA 17104, acleaver@pa.gov.

Order

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 225, are amended by deleting § 255.7 and by amending § 255.4 to read as set forth in Annex A.

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

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

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

BARRY J. SCHOCH, P.E.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 6352 (October 6, 2012).)

Fiscal Note: 18-427. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE IX. MISCELLANEOUS PROVISIONS

CHAPTER 255. MESSENGER SERVICES

§ 255.4. Bond.

(a) *General.* Messengers shall file and maintain with the Department bonds in the amount as set forth in the Messenger Services Agreement, executed by a surety company authorized by law to transact business within this Commonwealth.

(1) The bond shall be for the use of the Commonwealth and persons who have sustained a monetary loss attributable to the intentional or negligent conduct of the messenger service or its agents or employees, including, but not limited to, losses incurred in negotiating checks or other instruments drawn by the messenger service.

(2) If the amount of the bond is decreased, or if there is a final judgment outstanding on the bond, the messenger service's certificate of authorization shall be suspended until steps are taken, satisfactory to the Department, to do one of the following:

- (i) Restore the original amount of the bond.
- (ii) Satisfy the judgment.

(b) *Substitute.* If the bond is terminated or becomes unsatisfactory for any reason, the authorization to operate a messenger service will be suspended or terminated until the messenger service furnishes the Commonwealth with a satisfactory substitute bond in the amount required by the Messenger Services Agreement.

§ 255.7. (Reserved).

[Pa.B. Doc. No. 12-1947. Filed for public inspection October 5, 2012, 9:00 a.m.]