

PROPOSED RULEMAKING

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 101]

Authorizing Appropriately Attired Persons to Direct, Control or Regulate Traffic

The Department of Transportation (Department), under the authority in 75 Pa.C.S. §§ 3102 and 6103 (relating to obedience to authorized persons directing traffic; and promulgation of rules and regulations by department), proposes to amend Chapter 101 (relating to authorizing appropriately attired persons to direct, control or regulate traffic) to read as set forth in Annex A.

Purpose of Chapter 101

The purpose of Chapter 101 is to identify those persons, other than uniformed police officers, who are authorized to direct, control or regulate traffic and to prescribe minimum suitable safety attire in accordance with 75 Pa.C.S. § 3102.

Purpose of the Proposed Rulemaking

The purpose of this proposed rulemaking is to update the list of authorized persons and the requirements for safety apparel to be worn by persons directing, controlling and regulating traffic. Chapter 101 will be amended to reflect industry practices that are consistent with standards established by the Federal Highway Administration (FHWA) and the Department's policies relative to persons directing, controlling and regulating traffic.

Summary of Significant Amendments

Section 101.2(2) (relating to persons authorized to direct traffic) is proposed to be amended to authorize adult school crossing guards to also assist the ingress and egress of school buses and school vans to and from a school.

Section 101.2(7) is proposed to be amended to reflect that Department of Conservation and Natural Resources personnel are authorized to direct, control and regulate traffic.

Section 101.2(8) is proposed to be added to include persons controlling traffic at authorized parades, processions or other public assemblies.

Section 101.2(9) is proposed to be added to include persons assisting the ingress and egress of traffic from an industrial or mineral extraction site.

Section 101.3 (relating to minimum attire) is proposed to be amended to meet FHWA and Department high-visibility safety apparel requirements for authorized persons within the highway's right-of-way. High-visibility safety apparel is described as personal protective safety clothing that is intended to provide conspicuity during daytime and nighttime usage that meets the Performance Class 2 or 3 requirements of the American National Standards Institute/International Safety Equipment Association (ANSI/ISEA) 107-2004, "American National Standard for High-Visibility Safety Apparel and Headwear." The proposed amendments also authorize emergency and incident responders to wear high-visibility safety apparel that meets the requirements of ANSI/ISEA 207-2006

Publication 6, "American National Standard for High-Visibility Public Safety Vests." The high-visibility safety apparel must be fluorescent orange, fluorescent yellow-green or a combination of these colors.

Proposed amendments to § 101.4 (relating to emergencies) clarify that anyone may temporarily direct traffic at the scene of an emergency until an authorized person as identified in Chapter 101 arrives. Proposed amendments to § 101.4 also define "emergency."

Persons and Entities Affected

This proposed rulemaking will affect persons who are authorized to direct, control or regulate traffic in accordance with this chapter and 75 Pa.C.S. § 3102.

Fiscal Impact

This proposed rulemaking should not require the expenditure of additional funds by the Commonwealth, local municipalities or persons referenced in § 101.2 and 75 Pa.C.S. § 3102 as the regulated community has already incurred costs to meet FHWA standards that are already followed by the regulated community.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 28, 2014, 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 House and Senate Transportation Committees. 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.

Sunset Provisions

The Department is not establishing a sunset date for these regulations since these regulations are needed to administer provisions required under 75 Pa.C.S. (relating to Vehicle Code) and FHWA standards. The Department, however, will continue to closely monitor these regulations for their effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Glenn C. Rowe, PE, Acting Chief, Highway Safety and Traffic Operations Division, Bureau of Maintenance and Operations, Department of Transportation, Commonwealth Keystone Building, 400 North Street, 6th Floor, Harrisburg, PA 17120, glowe@pa.gov within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Contact Person

The contact person for technical questions about this proposed rulemaking is Glenn C. Rowe, PE, Acting Chief, Highway Safety and Traffic Operations Division, Bureau

of Maintenance and Operations, Department of Transportation, Commonwealth Keystone Building, 400 North Street, 6th Floor, Harrisburg, PA 17120, (717) 783-6479, glrowe@pa.gov.

BARRY J. SCHOCH, PE,
Secretary

Fiscal Note: 18-461. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE VI. OPERATION OF VEHICLES

CHAPTER 101. AUTHORIZING APPROPRIATELY ATTIRED PERSONS TO DIRECT, CONTROL OR REGULATE TRAFFIC

§ 101.1. Purpose.

This chapter indicates those persons, other than a uniformed police [**officers**] **officer, sheriff, constable or, in an emergency, a railroad or street railway police officer**, who are authorized to direct, control or regulate traffic, and [**to prescribe minimum suitable attire and equipment for those persons**] **prescribes minimum suitable safety apparel.**

§ 101.2. Persons authorized to direct traffic.

The following persons are authorized to direct, control or regulate traffic:

(1) Traffic control persons on utility, maintenance or construction projects.

(2) Adult school crossing guards for assisting school children across busy or hazardous highways **or for assisting the ingress or egress of school buses and school vans to and from a school.**

(3) Railroad crossing guards at railroad grade crossings, for purposes of stopping vehicular traffic to permit the safe passage of trains.

(4) Civil defense, National Guard and military police while performing their regular duties or during National or local emergencies.

(5) Personnel of emergency organizations such as, **but not limited to**, fire departments, hospitals, river rescue associations, ambulance associations and personnel of emergency vehicles designated by the State Police under 75 Pa.C.S. § 6106 (relating to designation of emergency vehicles by the Pennsylvania [**police**] **State Police**) while performing their duties.

(6) Highway service vehicle personnel of tow trucks and road service vehicles.

(7) [**Park Maintenance Supervisors, Park Rangers I and Environmental Education Specialists of the Department of Environmental Resources, Bureau of State Parks, who have completed the Department of Environmental Resources' Traffic Control Training Course, while performing their official duties.**] Department of Conservation and Natural Resources personnel while performing their official duties.

(8) Persons controlling traffic at authorized parades, processions or other public assemblies. These persons shall have successfully completed

and participated in a formal flagging procedures and guidelines training course as defined and outlined by the Department.

(9) Persons assisting to improve highway safety by the directing, control or regulation of traffic volumes created by the ingress or egress to or from a commercial, industrial, manufacturing, agricultural, or natural resource or mineral extraction operation. These persons shall have successfully completed and participated in a formal flagging procedures and guidelines training course as defined and outlined by the Department.

(10) Persons authorized by 75 Pa.C.S. § 3102 (relating to obedience to authorized persons directing traffic).

§ 101.3. Minimum attire.

[This section sets forth standards for minimum attire and equipment so that persons directing, controlling or regulating traffic are easily distinguishable and so that their directions can be understood.

(1) Traffic control persons on utility, maintenance or construction projects shall wear orange, fluorescent red-orange or fluorescent yellow-orange vests and a protective helmet. In addition, they shall be equipped with a flagman traffic control sign, a paddle with a Stop sign on one face and a Slow sign on the opposite face, as described in Publication 203 of the Department.

(2) Adult school crossing guards shall wear as a minimum a safety vest or safety belt manufactured from retroreflective and fluorescent material visible both day and night at 300 feet to approaching motorists.

(3) Members of the National Guard or military police shall wear their official uniforms and members of the civil defense shall wear their official arm bands and white hats or other distinctive clothing.

(4) Emergency vehicle personnel and Park Maintenance Supervisors, Park Rangers I and Environmental Education Specialists of the Department of Environmental Resources, Bureau of State Parks, shall wear their official uniform or shall utilize a red flag to control traffic during daylight hours and a flashlight with a red luminaire during hours of darkness. A firefighter's hat is sufficient attire for a firefighter and an official hat and badge is sufficient attire for fire police.

(5) Personnel of highway service vehicles shall wear red or yellow fluorescent vests which shall be reflectorized for nighttime operations.

(6) Railroad crossing guards shall be equipped with a red flag during daylight hours and with a lighted lantern capable of providing both red and white aspects during the hours of darkness.]

This section sets forth the minimum standards for high-visibility safety apparel for authorized persons directing, controlling or regulating traffic so that they are more easily distinguishable. Authorized persons directing, controlling or regulating traffic as identified in § 101.2 (relating to persons authorized to direct traffic) shall wear high-visibility safety apparel as follows:

(1) High-visibility safety apparel is personal protective safety clothing that is intended to provide conspicuity during daytime and nighttime usage, and that meets the Performance Class 2 or 3 requirements of the American National Standards Institute/International Safety Equipment Association (ANSI/ISEA) 107-2004, "American National Standard for High-Visibility Safety Apparel and Headwear," including future amendments or an equivalent designated by the Department through publication in the *Pennsylvania Bulletin*.

(2) Emergency and incident responder personnel may wear high visibility safety apparel that meets the performance requirements of the ANSI/ISEA 207-2006 Publication 6, "American National Standard for High-Visibility Public Safety Vests," including future amendments or an equivalent designated by the Department through publication in the *Pennsylvania Bulletin*.

(3) The high-visibility safety apparel must be fluorescent orange, fluorescent yellow-green, a combination of fluorescent orange and yellow-green, or another color designated by amendments to the ANSI/ISEA or the Department through publication in the *Pennsylvania Bulletin*.

§ 101.4. Emergencies.

[Nothing in this chapter precludes a person from temporarily directing traffic at the scene of an emergency.]

(a) A person at the scene of an emergency may temporarily direct traffic, with or without being properly attired in high-visibility safety apparel, until an authorized person as identified in § 101.2 (relating to persons authorized to direct traffic) arrives.

(b) An emergency as used in subsection (a) means an unplanned or unforeseen incident that warrants an immediate action to direct, control or regulate traffic to minimize threats to public health or public safety.

[Pa.B. Doc. No. 14-2311. Filed for public inspection November 7, 2014, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 143]

Hunting and Furtaker Licenses; Hunter Education Training

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its September 23, 2014, meeting proposed to amend § 143.12 (relating to hunter education training) to authorize the Commission to develop and implement an online hunter-trapper education course of study and assess vendor fees that may be incurred through the course of instruction and certification.

The proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public at the September 23, 2014, meeting of the Commission. Comments can be sent, until January 23, 2015, to the Director, Bureau of Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

Hunter education delivery methods continue to evolve across the United States. The use of independent study is one delivery method which has been in use for nearly a decade in this Commonwealth. A student studies the majority of the course on his own then attends an abbreviated 2-hour class to meet the local Wildlife Conservation Officer, who leads a lesson on hunting laws and regulations. At the conclusion of this lesson, the student completes the certification exam and receives a training certificate.

Recently, online training programs have been developed to not only provide the training component, but also enable online testing and certification of students as well. Upon successful completion of the course of study, a student can print a certificate of training and purchase a hunting license. This capability continues to improve customer service and convenience. Additionally, it removes potential barriers for students who are unable to attend a traditional, instructor-led class or one of the Commission's independent study classes. It provides another tool for the Commission to reach a large audience of people interested in learning to hunt or trap.

Vendors who develop and manage online hunter education training and certification courses typically charge a user fee to recover the ongoing development and maintenance costs of the program. The proposed amendment to § 143.12 enables the Commission to offer a completely online hunter-trapper education training and certification course while providing for a convenience fee to be paid by those students who choose this option. The Commission will continue to offer nearly 1,000 instructor-led hunter-trapper education classes each year. These classes will continue to meet the legislative mandate for hunter-trapper education instruction to be free of charge.

Section 2102(a) of the code (relating to regulations) provides that "[t]he 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 § 143.12 are proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will amend § 143.12 to authorize the Commission to develop and implement an online hunter-trapper education course of study and assess vendor fees that may be incurred through the course of instruction and certification.

3. *Persons Affected*

Persons seeking hunter-trapper education within this Commonwealth may be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

The proposed rulemaking will not result in additional cost or paperwork.

5. *Effective Date*

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

6. *Contact Person*

For further information regarding the proposed rulemaking, contact Thomas P. Grohol, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

R. MATTHEW HOUGH,
Executive Director

Fiscal Note: 48-369. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 58. RECREATION****PART III. GAME COMMISSION****CHAPTER 143. HUNTING AND FURTKAKER
LICENSES****Subchapter A. GENERAL****§ 143.12. Hunter education training.**

(a) *Course registration fees.* Upon application for enrollment in each fee-based hunter education course, a student shall remit the associated, nonrefundable course registration fee in the form of cash, credit card, check or money order. Checks or money orders must be made payable to the "Pennsylvania Game Commission."

(b) *Online hunter-trapper education independent study.* The Commission may develop and implement an online hunter-trapper education course of study as a convenience to license buyers seeking first-time or supplemental training and certification. The Director will establish the course of instruction and assess vendor fees that may be incurred through this course of instruction and certification.

[(b)] (c) *Training certificate.* The Commission will issue an appropriate certificate of training to each student who successfully completes an approved hunter education course. The Commission will issue a replacement hunter education training certificate to a person who provides sufficient affirmation or evidence of successful completion of that course of instruction. A certificate replacement fee shall be remitted by any person requesting a replacement hunter education training certificate.

[(c)] (d) *Waiver.* The Director may waive any course registration fee required by this section when the waiver is determined to be consistent with the Commission's hunter education training program or the intent of the act.

[(d)] (e) *Establishment of fees.* The Director will establish the value of a course registration fee or certificate replacement fee required under this section.

[Pa.B. Doc. No. 14-2312. Filed for public inspection November 7, 2014, 9:00 a.m.]

[58 PA. CODE CH. 131]**Preliminary Provisions; Pennsylvania Hunting
Heritage Registration Plate Fee**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its September 23, 2014, meeting proposed to add § 131.10 (relating to Pennsylvania Hunting Heritage registration plate fee) to require applicants seeking authorization to request a Pennsylvania Hunting Heritage registration plate to pay a fee of \$25.

The proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public at the September 23, 2014, meeting of the Commission. Comments can be sent, until January 23, 2015, to the Director, Bureau of Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

Section 1355.1 of 75 Pa.C.S. (relating to Pennsylvania Hunting Heritage registration plates) establishes the Department of Transportation's authority, in consultation with the Commission, to issue Pennsylvania Hunting Heritage registration plates for eligible classes of vehicles. Section 1355.1 of 75 Pa.C.S. requires the Commission to charge a fee for the authorization to request the registration plate, but does not itself establish the fee amount. The Commission is proposing to add § 131.10 to require applicants seeking authorization to request a Pennsylvania Hunting Heritage registration plate to pay a fee of \$25.

Section 2102(a) of the code (relating to regulations) provides that "[t]he 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." Section 131.10 is proposed to be added under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will add § 131.10 to require applicants seeking authorization to request a Pennsylvania Hunting Heritage registration plate to pay a fee of \$25.

3. *Persons Affected*

Persons seeking Pennsylvania Hunting Heritage registration plates for eligible classes of vehicles will be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

The proposed rulemaking will result in a new fee of \$25 for applicants seeking authorization to request the new Pennsylvania Hunting Heritage registration plate. This fee will be in addition to any fee collected by the Department of Transportation under 75 Pa.C.S. § 1931(b) (relating to personal and organization registration plates). The proposed rulemaking will also create new paperwork

requirements for the implementation of this program. However, these new paperwork requirements are anticipated to be minimal.

5. *Effective Date*

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

6. *Contact Person*

For further information regarding the proposed rulemaking, contact Thomas P. Grohol, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

R. MATTHEW HOUGH,
Executive Director

Fiscal Note: 48-370. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 131. PRELIMINARY PROVISIONS

§ 131.10. Pennsylvania Hunting Heritage registration plate fee.

Applicants seeking authorization to request a Pennsylvania Hunting Heritage registration plate issued under 75 Pa.C.S. § 1355.1 (relating to Pennsylvania Hunting Heritage registration plates) will be assessed a fee of \$25 in addition to fees collected by the Department of Transportation under 75 Pa.C.S. § 1931(b) (relating to personal and organization registration plates).

[Pa.B. Doc. No. 14-2313. Filed for public inspection November 7, 2014, 9:00 a.m.]

[58 PA. CODE CH. 147]

Special Permits; Nuisance Wildlife Control Operator

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its September 23, 2014, meeting proposed to amend § 147.726 (relating to operation) to authorize the use of raptors for nuisance wildlife abatement by persons in possession of a Nuisance Wildlife Control Operator Permit and a Special Purpose—Abatement Using Raptors Permit.

The proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public at the September 23, 2014, meeting of the Commission. Comments can be sent, until January 23, 2015, to the Director, Bureau of Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

The United States Fish and Wildlife Service has the authority to issue a Special Purpose—Abatement Using Raptors Permit. This permit generally allows qualified individuals to utilize raptors to handle nuisance wildlife issues for other persons. The Commission requires a

person to obtain a Nuisance Wildlife Control Operators Permit if that person conducts nuisance wildlife control work for another person in this Commonwealth. For raptors to be utilized by properly permitted nuisance wildlife control operators in this Commonwealth, the Commission must amend its regulations. The Commission is proposing to amend § 147.726 to authorize the use of raptors for nuisance wildlife abatement by persons in possession of a Nuisance Wildlife Control Operator Permit and a Special Purpose—Abatement Using Raptors Permit.

Section 2901(b) of the code (relating to authority to issue permits) provides that “the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued.” The amendments to § 147.726 are proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will amend § 147.726 to authorize the use of raptors for nuisance wildlife abatement by persons in possession of a Nuisance Wildlife Control Operator Permit and a Special Purpose—Abatement Using Raptors Permit.

3. *Persons Affected*

Persons wishing to utilize raptors for nuisance wildlife abatement within this Commonwealth will be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

The proposed rulemaking will not result in additional cost or paperwork.

5. *Effective Date*

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

6. *Contact Person*

For further information regarding the proposed rulemaking, contact Thomas P. Grohol, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

R. MATTHEW HOUGH,
Executive Director

Fiscal Note: 48-371. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 147. SPECIAL PERMITS

Subchapter T. NUISANCE WILDLIFE CONTROL OPERATOR

§ 147.726. Operation.

(a) Approved methods and devices are as follows:

* * * * *

(4) Dogs used to harass nuisance geese. The authorization to harass geese with dogs is prohibited at any time when goslings are present at the site and during the period from June 16 to July 20, when the majority of adult birds are flightless.

(5) **Raptors may be utilized for nuisance wildlife abatement by a permitted nuisance wildlife control operator only when the permitted nuisance wildlife control operator possesses a valid Special Purpose—Abatement Using Raptors Permit issued by the United States Fish and Wildlife Service. Other regulations pertaining to nuisance wildlife control operators apply to persons using this approved method and device.**

(b) The agent shall have the approval of the property owner or lessee and confine all activities to that property.

* * * * *

[Pa.B. Doc. No. 14-2314. Filed for public inspection November 7, 2014, 9:00 a.m.]

[58 PA. CODE CHS. 133 and 147]

Wildlife Classification of Birds; Special Permits for Falconry

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its September 23, 2014, meeting, proposed to amend §§ 133.21 and 147.101 (relating to classification of birds; and definitions) and to add § 147.111b (relating to Arctic peregrine limited take special permit) to authorize the limited take of Arctic Peregrine Falcons (*Falco peregrinus tundrius*) within this Commonwealth by qualified falconers.

The proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public at the September 23, 2014, meeting of the Commission. Comments can be sent, until January 23, 2015, to the Director, Bureau of Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

The United States Fish and Wildlife Service (Service) has the authority to grant states within the Atlantic Flyway the ability to permit certain qualified falconers the opportunity to take Arctic Peregrine Falcons (*Falco peregrinus tundrius*) for falconry purposes. Although various states within the Atlantic Flyway currently participate in the limited allowable take of Arctic Peregrine Falcons (*Falco peregrinus tundrius*), the Commonwealth does not.

For the Commission and qualified falconers in this Commonwealth to participate in this program, it must amend its regulations to distinguish between Arctic Peregrine Falcons (*Falco peregrinus tundrius*) and Peregrine Falcon (*Falco peregrines anatum*) which is currently listed as a Pennsylvania endangered species. Furthermore, the Commission must define the allowable take to establish limitations on the number of Arctic Peregrine Falcons (*Falco peregrinus tundrius*) that can be taken in any given permit year. Finally, the Commission must establish a special permit program that includes eligibility criteria as well as application and issuance standards.

Upon the establishment of this regulatory structure, the Commission will seek approval from the Service for the Commonwealth and qualified falconers to participate

in the limited take of Arctic Peregrine Falcons (*Falco peregrinus tundrius*) within this Commonwealth. The Commission is proposing to amend §§ 133.21 and 147.101 and to add § 147.111b to authorize the limited take of Arctic Peregrine Falcons (*Falco peregrinus tundrius*) within this Commonwealth by qualified falconers.

Section 322(c)(8) of the code (relating to powers and duties of commission) specifically empowers the commission to “[a]dd to or change the classification of any wild bird or wild animal.” Section 2901(b) of the code (relating to authority to issue permits) provides that “the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued.” The amendments to §§ 133.21 and 147.101 and the addition of § 147.111b are proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will amend §§ 133.21 and 147.101 and add § 147.111b to authorize the limited take of Arctic Peregrine Falcons (*Falco peregrinus tundrius*) within this Commonwealth by qualified falconers.

3. *Persons Affected*

Qualified falconers wishing to participate in the limited take of Arctic Peregrine Falcons within this Commonwealth will be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

The proposed rulemaking will not result in additional cost or paperwork.

5. *Effective Date*

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

6. *Contact Person*

For further information regarding the proposed rulemaking, contact Thomas P. Grohol, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

R. MATTHEW HOUGH,
Executive Director

Fiscal Note: 48-372. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 58. RECREATION
PART III. GAME COMMISSION
CHAPTER 133. WILDLIFE CLASSIFICATION
Subchapter B. BIRDS**

§ 133.21. **Classification of birds.**

The following birds are classified:

- (1) *Endangered.*

* * * * *

- (v) Peregrine Falcon (*Falco [peregrinus] peregrines anatum*)

* * * * *

**CHAPTER 147. SPECIAL PERMITS
Subchapter F. FALCONRY**

§ 147.101. **Definitions.**

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

Allowable take—The total number of Arctic Peregrine Falcons authorized by the United States Fish and Wildlife Service to be taken from the wild within this Commonwealth during a given permit year.

Bate—Attempt to fly.

* * * * *

(*Editor's Note:* The following section is new and printed in regular type to enhance readability.)

§ 147.111b. Arctic peregrine limited take special permit.

(a) *Purpose.* This permit is intended to permit the limited take of the Arctic Peregrine Falcon (*Falco peregrinus tundrius*) solely for use in the practice of falconry.

(b) *Application.*

(1) Applications for the Arctic peregrine limited take special permit issued under this section shall be made on PGC-12 (Special Permit/Examination Request-Application).

(2) Applications shall be completed in full and include a copy of the applicant's falconry permit, Pennsylvania hunting license and a nonrefundable application fee of \$25.

(3) Applications shall be sent directly to the Special Permits Enforcement Division in Harrisburg.

(4) Applications will be accepted beginning May 1 and must be submitted no later than July 31 to be eligible for the drawing for that permit year.

(5) Only one application per eligible falconer may be submitted during each permit year. If more than one application is submitted by an eligible falconer, the applications submitted by the applicant will be rejected and the applicant will be ineligible for that year's drawing.

(c) *Eligibility.*

(1) Applications will only be accepted from persons who possess a current and valid master class falconry permit issued under this subchapter and Pennsylvania resident hunting license.

(2) Applicants shall be a resident of this Commonwealth.

(3) Applicants who were successfully drawn for an Arctic peregrine limited take special permit during the previous 2 permit years are ineligible to make application.

(d) *Drawing.*

(1) Each year the Commission will determine the allowable take of Arctic Peregrine Falcons for the season based on the guidelines provided by the United States Fish and Wildlife Service.

(2) If the allowable take authorized for this Commonwealth is one or more in any given year, the Commission will hold a public drawing by August 15 at a location to be determined by the Commission to determine the successful applicants.

(3) The Commission will randomly draw the names of eligible applicants up to and including the total allowable take. The number of permits issued will be based solely on the total allowable take each year. When the total allowable take number is reached, the drawing will be closed and additional permits will not be issued.

(4) The Commission will issue an Arctic peregrine limited take special permit to successful applicants by August 31 each year.

(e) *Authorized activities.*

(1) Arctic Peregrine Falcons (*Falco peregrinus tundrius*) may only be taken by persons in possession of a valid master class falconry permit, a resident Pennsylvania hunting license and an Arctic peregrine limited take special permit.

(2) Arctic Peregrine Falcons (*Falco peregrinus tundrius*) may be taken only during the period of September 20 to October 20, inclusive.

(3) Banded Peregrine Falcons may not be taken under the authorizations of this section. Banded Peregrine Falcons shall be released immediately upon capture and the band numbers of the released birds shall be reported to the Special Permits Enforcement Division within 24 hours.

(4) Arctic Peregrine Falcons may only be captured by devices authorized under § 147.105a(4) (relating to resident falconers).

(5) Persons issued an Arctic peregrine limited take special permit shall abide by other applicable State and Federal falconry laws and regulations.

(6) Upon successful capture of an Arctic Peregrine Falcon the permittee shall notify the Special Permits Enforcement Division with 24 hours. The permittee shall arrange for inspection within 3 days of the capture as directed by the Special Permits Enforcement Division.

(7) Upon inspection by the Commission as indicated, the Arctic Peregrine Falcon shall be marked with a permanent, nonreusable numbered leg band provided by the Commission.

(f) *Conformance with Federal regulations.* If the Federal regulations regarding dates or times of application, drawing or take change, the Executive Director has the authority to conform the Commonwealth's dates to the Federal regulations for that year in which the dates under Federal regulations have changed.

(g) *Violations.* Violations of the requirements of this section are subject to the penalties in the act.

[Pa.B. Doc. No. 14-2315. Filed for public inspection November 7, 2014, 9:00 a.m.]

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 3]

Breweries

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), proposed to add § 3.93 (relating to breweries).

Summary

The purpose of § 3.93 is to clarify the privileges of breweries with regard to on-premises consumption of the malt or brewed beverages (beer) produced on the licensed premises. Recent changes to the Liquor Code prompt the need for this proposed rulemaking.

Formerly, and for many years, section 440 of the Liquor Code (47 P. S. § 4-440) prohibited manufacturers from offering beer for on premises consumption:

No manufacturer shall sell any malt or brewed beverages for consumption on the premises where sold . . . nor shall any manufacturer maintain or operate within the Commonwealth any place or places other than the place or places covered by his or its license where malt or brewed beverages are sold or where orders are taken.

(Emphasis added.)

The act of February 18, 1998 (P. L. 162, No. 25) (Act 25) created the brewery pub license, whereby a brewery could operate a restaurant or brewery pub on the licensed premise. See section 446(a)(2) of the act (47 P. S. § 4-446(a)(2)). When Act 25 was enacted, the only location where a brewery could sell its own beer for on-premises consumption was by obtaining a license for a brewery pub. The brewery pub was to be operated under the conditions and regulations as the Board deemed appropriate. Ultimately, those conditions were codified at § 3.92 (relating to brewery pubs).

The act of December 22, 2011 (P. L. 530, No. 113) (Act 113) triggered the need for this proposed rulemaking. Act 113 amended section 440 of the Liquor Code, allowing a brewery to permit on premises consumption: “*A manufacturer may sell malt or brewed beverages produced and owned by the manufacturer to individuals on the licensed premises for consumption on the licensed premises where sold only if it complies with the conditions and regulations placed upon holders of brewery licenses under section 446(a)(1).*” (Emphasis added.)

The reference to section 446(a)(1) of the Liquor Code is significant to this proposed rulemaking because it provides the Board with the specific authority to clarify under what circumstances a brewery may sell for on premises consumption. Section 446(a)(1) of the Liquor Code states that holders of a brewery license may “[s]ell malt or brewed beverages produced and owned by the brewery under such conditions and regulations as the board may enforce, to individuals for consumption on the licensed premises in any container or package of any volume and to hotel, restaurant, club and public service liquor licensees.” (Emphasis added.)

Although section 446(a)(1) of the Liquor Code now provides that breweries are permitted to offer beer for on premises consumption, they may only do so “under such conditions and regulations as the board may enforce.” Because the regulations do not presently address consumption on a brewery’s premises in the absence of a brewery pub license, there has been confusion in the industry in this regard. The purpose of this proposed rulemaking is to provide the industry with guidance as to the lawful consumption of beer on a brewery’s premises.

Affected Parties

As of September 9, 2014, there were 170 breweries with active licenses issued by the Board. Approximately 1/3 of these breweries also hold retail licenses, such as a restaurant liquor license, which allow them to sell any type of liquor or beer. Another third of these brewers also hold brewery pub licenses, which allows a brewery to sell its own beer for consumption on the brewery pub premises. Therefore, this proposed rulemaking most directly affects the final third of breweries that, without this proposed section, may not allow patrons to consume beer on the licensed premises.

In addition, the proposed rulemaking states clearly that a brewery may offer tastings, for on-premises consumption, of the malt or brewed beverages the brewery has

produced on the licensed premises. This proposed rulemaking, therefore, may benefit every licensed brewery in this Commonwealth.

Paperwork Requirements

The proposed rulemaking seeks to clarify the privileges inherent with the issuance of a brewery license. Therefore, additional paperwork on behalf of a brewery licensee is not required. In fact, as a result of this proposed rulemaking, some breweries may decide to discontinue holding a brewery pub license. This decision would result in less paperwork for that brewery, as the additional brewery pub license paperwork would not need to be filed.

Fiscal Impact

The brewery industry provides a significant fiscal impact on the economy in this Commonwealth. The Brewers Association, a nonprofit organization dedicated to America’s craft brewers, determined that small and independent American craft brewers contributed \$33.9 billion to the United States economy in 2012. See www.brewersassociation.org/statistics/economic-impact-data/. That figure is calculated from the total impact of craft-brewed beer moving through the three-tier system (breweries, wholesalers and retailers) and all nonbeer products, such as food and merchandise sold by brewpubs and breweries. According to the Brewers Association, the craft brewing industry also provided more than 360,000 jobs, including 108,440 jobs at breweries and brewpubs.

In 2012, Pennsylvania ranked in the top five states (bested only by California, Texas and New York) when looking at the impact of the craft brewing industry on a state’s economy. The Brewers Association calculated the economic impact of craft brewers in this Commonwealth to be \$2 billion in 2012.

The proposed rulemaking would provide meaningful support to this important industry. For example, in early 2012, the Commonwealth of Virginia passed a bill allowing breweries to sell beer for on-premises consumption. In the 8 years before the passage of this bill, the number of breweries increased an average of 2.7 breweries a year. In the 2 years after the passage of the bill, the number of breweries increased by 33, for an average of 16.5 breweries a year.

The proposed rulemaking can also have a positive fiscal impact not only on the number of breweries, but also with production volumes. In 2013, states that allowed on premises consumption by breweries had greater production volumes (2.8 gallons produced per adult resident over 21 years of age) than states that do not allow on premises consumption (1/2 gallon produced per adult resident over 21 years of age).

Effective Date

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

Public Comments

Interested persons are invited to submit written comments about the proposed rulemaking to Rodrigo Diaz, Executive Deputy Chief Counsel, or Norina Blynn, Assistant Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001 within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Public comments will be posted on the Independent Regulatory Review Commission’s (IRRC) web site. Personal information will not be redacted from the public comments received.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 28, 2014, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the House Liquor Control Committee and Senate Committee on Law and Justice. 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 Board, the General Assembly and the Governor of comments, recommendations or objections raised.

JOSEPH E. BRION,
Chairperson

Fiscal Note: 54-80. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 3. LICENSE APPLICATIONS

Subchapter J. MALT OR BREWED BEVERAGE MANUFACTURERS

§ 3.93. Breweries.

(a) The holder of a brewery license may not allow patrons to consume alcohol on the licensed premises except as set forth in this section.

(b) If the holder of a brewery license has obtained a brewery pub, restaurant liquor, eating place retail dispenser or hotel license for use on the licensed premises, it may allow on-premises consumption of alcohol on the licensed premises in conformity with the requirements of the brewery pub, restaurant liquor, eating place retail dispenser or hotel license.

(c) If the holder of a brewery license has not obtained a brewery pub, restaurant liquor, eating place retail dispenser or hotel license for use on the licensed premises, it may allow on-premises consumption of alcohol on the licensed premises only under the following conditions:

(1) Consumption may occur between 10 a.m. and midnight.

(2) The only alcohol that may be consumed on the licensed premises is the malt or brewed beverages produced on the licensed premises by the brewery.

(3) There must be at least ten seats on the licensed premises for use by patrons while they are consuming alcohol.

(4) The brewery shall make food available to each patron who is consuming alcohol on the licensed premises while that person is consuming alcohol. Food must, at a minimum, consist of potato chips, pretzels and similar foods. Food may be prepared by the brewery or by a third party.

(d) The holder of a brewery license may offer tastings of malt or brewed beverages produced on the licensed premises by the brewery in accordance with §§ 13.201 and 13.211 (relating to definitions; and tasting events).

[Pa.B. Doc. No. 14-2316. Filed for public inspection November 7, 2014, 9:00 a.m.]