

RULES AND REGULATIONS

Title 34—LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 65]

Unemployment Compensation; Extended Filing

In accordance with section 201(a) of the Pennsylvania Unemployment Compensation Law (UC Law) (43 P.S. § 761(a)), section 204(3) of the Commonwealth Documents Law (CDL) (45 P.S. § 1204(3)), and section 6(d) of the Regulatory Review Act (RRA) (71 P.S. § 745.6(d)), the Department of Labor and Industry (Department), Office of Unemployment Compensation Benefits Policy, amends § 65.43a (relating to extended filings), to read as set forth in Annex A.

Statutory Authority

This emergency certified final-omitted rulemaking is issued under the authority of section 201(a) of the UC Law. That section provides that the Department “shall have power and authority to adopt, amend, and rescind such rules and regulations, require such reports from employers, employes, the board and from any other person deemed by the department to be affected by this act, make such investigations, and take such other action as it deems necessary or suitable.”

Under section 201 of the CDL (45 P.S. § 1201), an agency is required to provide public notice of its intention to promulgate, amend or repeal administrative regulations. Section 202 of the CDL (45 P.S. § 1202) requires agencies to review and consider any written comments submitted under section 201 and authorizes agencies to hold the public hearings as appropriate. However, under section 204 of the CDL, an agency may omit or modify the procedures specified in sections 201 and 202, if:

The agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the order adopting the administrative regulation or change therein) that the procedures specified in sections 201 and 202 are in the circumstances impracticable, unnecessary, or contrary to the public interest.

These regulations are promulgated under section 204(3) of the CDL, because, as explained herein, the Department has determined that the provisions of sections 201 and 202 of the CDL are, in these circumstances impracticable, unnecessary or contrary to the public interest.

These regulations are also being submitted as emergency certified regulations. Section 6(d) of the RRA allows an agency to immediately implement a final-omitted regulation when the Governor certifies that promulgation is necessary to respond to an emergency circumstance specified in the RRA. On October 23, 2020, Governor Tom Wolf issued a Certification of Need for Emergency Regulation finding that this final-omitted rulemaking is required to protect the public health, safety and welfare.

Governor Tom Wolf has determined that this emergency certified final-omitted rulemaking is necessary because of the unprecedented novel coronavirus (COVID-19) global pandemic. Governor Tom Wolf issued a Proclamation of Emergency Disaster on March 6, 2020, and subsequently ordered the closure of non-life-sustaining businesses, resulting in significant unemployment in this Commonwealth.

This emergency certified final-omitted rulemaking is required to protect the public health, safety and welfare as authorized by the CDL and the RRA. Specifically, the amendment in this emergency certified final-omitted rulemaking is immediately necessary, as it impacts the financial welfare of citizens in this Commonwealth with new and continued unemployment compensation (UC) claims, by authorizing the backdating of UC applications and claims for as many as 52 weeks during this unprecedented period of high unemployment directly related to the COVID-19 global pandemic. This amendment will give the Department the authority to expedite the processing of UC applications and claims for claimants who filed late due to the COVID-19 global pandemic. Accordingly, utilizing the procedures specified in sections 201 and 202 of the CDL for this amendment is, under these circumstances, impracticable and contrary to the public interest.

Background

The criteria to be eligible for UC benefits in section 401(c) of the UC Law (43 P.S. § 801(c)) include a requirement that a claimant has made a claim for compensation “in the proper manner and on the form prescribed by the Department.” Claimants are required to file claims for compensation biweekly under § 65.43 (relating to claims for compensation—when to file). Upon filing an application for UC benefits, the Department provides the claimant with a personal identification number (PIN). The PIN is unique to each claimant and allows the claimant to access the Department’s Internet claims’ filing system and to use PA Teleclaims (PAT), the Department’s system for filing claims by telephone. The existing regulation in § 65.43a permits claimants to “backdate” their claims in certain circumstances and provides a limitation on the number of weeks that a claimant can be permitted this extended filing.

On March 6, 2020, Governor Tom Wolf issued a Proclamation of Emergency Disaster related to the COVID-19 global pandemic and ordered a shutdown of non-life-sustaining businesses in this Commonwealth. As a result the unemployment rate rose significantly and the Department received an overwhelming number of new claims. Due to the COVID-19 global pandemic, the Commonwealth’s unemployment rate spiked from 4.7% in February 2020 to 16.1% two months later in April 2020. For context, during the Great Recession, it took 34 months for the unemployment rate in this Commonwealth to reach its highest level, from 4.1% in May 2007 to 8.8% in March 2010. The 1.1% increase in the Commonwealth’s unemployment rate between February 2020 (4.7%) and March 2020 (5.8%) was the largest month-over-month increase on record at the time. The month-over-month increase between March 2020 and April 2020 (16.1%) was ten times higher—10.3%. Since March 6, 2020, the Department has received over 2.6 million initial claim applications for regular UC. In the 3 weeks between March 15, 2020, and April 4, 2020, the Commonwealth’s UC system experienced a surge of initial claims, receiving 1,068,493 claims in just 21 days. Because of the abrupt increase in claims, the Department has had difficulty responding to claimants who have filing issues or need additional assistance. Some of those claimants may have made a valid application for benefits but did not timely file biweekly claims because they were not aware that they were eligible. Other claimants have indicated that they attempted to file for regular UC benefits in March 2020

or April 2020 but their applications were not processed and PINs were never issued. Therefore, they were unable to timely file claims for benefits. Accordingly, UC Service Center staff are experiencing a significant number of claimants filing for regular UC who request backdating of their applications for benefits to March 2020 or April 2020.

This was not a problem unique to the Pennsylvania UC System. According to the Economic Policy Institute (EPI), millions of individuals in states across the nation were unable to file unemployment claims due to the unprecedented number of claims unemployment systems faced. According to the EPI, “[f]or every 10 people who said they successfully filed for unemployment compensation benefits” from mid-March to mid-April, “[t]hree to four additional people tried to apply but could not get through the system to make a claim” and “two additional people did not try to apply because it was too difficult to do so.” Bevins, J. (June 26, 2020). “Cutting off the \$600 boost to unemployment benefits would be both cruel and bad economics.” Retrieved from <https://www.epi.org/blog/cutting-off-the-600-boost-to-unemployment-benefits-would-be-both-cruel-and-bad-economics-new-personal-income-data-show-just-how-steep-the-coming-fiscal-cliff-will-be/>.

The high volume of requests for the backdating of UC claims has continued into the Fall of 2020. The Office of UC Service Centers collected data on the number of backdating requests received for the week of September 14, 2020. Each of the 239 UC claim examiners continued to receive between 5 to 10 backdating requests per week. The requests range from 10 to 26 weeks in backdated claims.

Under § 65.42 (relating to application for benefits—effective date), a claimant’s application for benefits is effective on the first day of the calendar week in which the application is filed or deemed filed in accordance with § 65.43a, whichever is earlier. Where a claimant requests that the application is backdated to an earlier date, there are several reasons that may form the basis for the backdating, as set forth in § 65.43a. Currently, the maximum amount of allowable weeks available to a claimant who was unable to have his or her application processed due to high call volume or a system malfunction, or both, is 10, specifically: 6 weeks for an excessive volume of telephone calls; 2 additional weeks for an unavailable/malfunctioning system; and 2 additional weeks for making all reasonable efforts to file timely but being unable to do so through no fault of the claimant. Under § 65.43a(h), if a claimant is prevented from timely filing an application for benefits and two or more of the reasons apply, the Department can “stack” the reasons to provide the longest extension. Section 65.43a(e) of the Department’s current UC regulations allows for up to 52 weeks of backdating where “[a] UC Office fails to accept a filing as a result of error or mistake by the Department;” however, this exception does not cover the vast majority of requests for backdating that the Department has received for UC applications and claims filed as a result of the COVID-19 global pandemic.

With an amendment to allow up to 52 weeks of backdating during this current period of “high unemployment” as defined in section 405-A(a.1)(2) of the UC Law (43 P.S. § 815(a.1)(2)), those claimants who were unable to successfully file their applications at the beginning of the COVID-19 global pandemic will not lose benefits to which they are entitled and, if otherwise eligible, will receive their much-needed funds.

According to section 203(f) of the Federal-State Extended Unemployment Compensation Act of 1970,

26 U.S.C.A. § 3304 *note*, (Pub.L. No. 102-318, Title IV, § 401(a)(1), July 3, 1992) a period of high unemployment exists where, for the most recent 3 months for which data for all states is published, the average total unemployment rate (TUR) in the state (seasonally adjusted) for the most recent 3-month period equals or exceeds 8.0%. Further, a high unemployment period occurs when the average TUR in the state (seasonally adjusted) equals or exceeds 110% of the average TUR for either or both corresponding 3-month periods in the 2 preceding calendar years. *Id.* With the announcement of the 13.7% unemployment rate for July 2020, the Commonwealth’s 3-month average TUR reached 13.4%, exceeding the threshold of 8.0% to constitute a period of high unemployment. Based on current projections, the Commonwealth’s TUR could remain above 8.0% (and 110% for the same period for one or both of the previous 2 years), and thus a period of high unemployment would remain, until September 2021.

Governor Tom Wolf has determined that the inability of claimants to retroactively file claims during a period of high unemployment, for weeks of benefits to which they would otherwise be entitled, constitutes a condition which may threaten the public health, safety or welfare. As a result, he has executed a Certification of Need for Emergency Regulation. Amending the regulations to include 52 weeks of backdating for applications and claims filed on or after March 6, 2020, through the end of the period of high unemployment, as that term is defined in section 405-A(a.1)(2) of the UC Law related to the COVID-19 global pandemic, would allow the Department to backdate application and claim filings delayed by the pandemic, permit the Department’s UC staff to accept backdated claims without conducting time-intensive fact finding, and allow otherwise eligible claimants who were unable to successfully file their applications at the beginning of the COVID-19 global pandemic to receive their much-needed benefits. Specifically, this regulation will benefit many of the individuals who filed the 1,068,493 claims in the 3 weeks between March 15, 2020, and April 4, 2020, and the 2.6 million claims filed since March 6, 2020. Lastly, an immediate amendment to the regulation is necessary to protect the health, safety and welfare of individuals who are unemployed as a result of the COVID-19 global pandemic.

Compliance with Executive Order 1996-1

Since March 2020, the Department has received thousands of comments and questions from claimants, legislators, and members of the general public about backdating and the delays to the processing and resolution of claims that have resulted from the 2.6 million claims received in less than 6 months, a historic figure unlikely to be surpassed in the future. The Department has received input from claimants, legislators and members of the public through various channels—hundreds of thousands of calls and hundreds of thousands of e-mails received and responded to by the UC Service Centers, thousands of e-mail and telephone inquiries from legislators and legislative staff, in addition to weekly calls held by the Department and legislative leadership and in testimony provided on multiple occasions to the House and Senate Labor and Industry Committees.

In the interest of ensuring that this regulation represents stakeholder consensus to the greatest degree possible, the Department has solicited input from additional stakeholders before proceeding. On October 9, 2020, the Department contacted the AFL-CIO, Community Legal Services, Philadelphia Legal Assistance and the Pennsylvania Chamber of Business and Industry to discuss the

contents of this emergency certified final-omitted rulemaking in its draft form and to seek their comments. On Friday, October 16, 2020, the Pennsylvania Chamber of Business and Industry expressed they had no objection to this emergency regulation. On October 20, 2020, Community Legal Services and Philadelphia Legal Assistance expressed their approval of the emergency regulation. As of submittal of this emergency certified final-omitted rulemaking to the Independent Regulatory Review Commission, the House and Senate Labor and Industry Committees and the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, the Department has yet to receive comment from the AFL-CIO.

The Department has also engaged with the General Assembly about this emergency certified final-omitted rulemaking. On Tuesday, October 20, 2020, the Department provided testimony to the House Labor and Industry Committee, including testimony about its intent to file this emergency certified final-omitted rulemaking to allow a claim to be backdated for up to 52 weeks because of the COVID-19 global pandemic.

Purpose

The purpose of this emergency certified final-omitted rulemaking is to permit up to 52 weeks of extended filing, or backdating, of UC claims of individuals who are unemployed through no fault of their own for the duration of the period that began with the Governor's issuance of the Proclamation of Emergency Disaster on March 6, 2020, related to the COVID-19 global pandemic, until the end of the current period of "high unemployment," as that term is defined section 405-A(a.1)(2) in the UC Law.

Summary of Final-Omitted Rulemaking

§ 65.43a. Extended filing

This emergency certified final-omitted rulemaking amends subsection (e) to add an additional option for backdating: permitting backdating of UC applications and claims for up to 52 weeks, where a claimant who is unemployed through no fault of his or her own failed to timely file an application or biweekly claims. This emergency certified final-omitted rulemaking limits the availability of such extended filing to the period from March 6, 2020, through the end of the current "period of high unemployment" as defined in section 405-A(a.1)(2) of the UC Law.

Affected Persons

This emergency certified final-omitted rulemaking will affect individuals who could have filed applications or claims, or both, for UC benefits on or after March 6, 2020, through the end of the current statutorily-defined period of high unemployment.

Fiscal Impact

Costs associated with this amendment are too speculative to reliably quantify. By allowing for up to 52 weeks of backdating, the UC Trust Fund may reach insolvency faster and take longer to return to the legislatively-defined level of solvency. However, the moneys in the fund are paid by claimants and their employers for the benefit of claimants when they are unemployed.

This amendment will immediately realize cost savings due to a reduction in the UC staff's fact-findings tasks. The current process for a claimant to request backdating beyond the standard 2 or 6 weeks permitted in the regulation, is time consuming and involves at least two UC staff members. A claimant first speaks with a member of the UC call center staff, who refers the backdating matter to a UC claims' examiner. The UC claims' examiner contacts the claimant, which may take several

attempts. Calls between the UC claims' examiner and claimants can last between 10 to 15 minutes. Ultimately, the UC claims' examiner must issue a denial for the requested weeks of backdating beyond what the current regulation allows. If claimants were able to successfully backdate for all eligible weeks, the UC call center staff may be able to approve the claimant's backdated claim without the need for a UC claims' examiner. The staff time saved by the amendment can be redirected to processing claims, providing customer service and UC administration.

There will be other financial benefits realized as a result of the amendment. Unemployment benefits provide substantial economic benefits to communities with rising unemployment as those benefits allow for continued, although reduced, consumer spending. Accordingly, those claimants who were unable to file their applications successfully at the beginning of the pandemic will receive their much-needed funds.

Reporting, Recordkeeping and Paperwork Requirements

There are no additional reporting, record keeping or paperwork requirements.

Sunset Date

There is no sunset date for these regulations. The authorization for the backdating of UC applications and claims will cease once the statutorily-defined high unemployment period ends.

Contact Person

The contact person is Susan Dickinson, Office of UC Benefits Policy, Department of Labor and Industry, 6th Floor, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17120, (717) 787-4403, sdickinson@pa.gov.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on October 27, 2020, the Department submitted a copy of this emergency certified final-omitted rulemaking to the Chairpersons of the Senate Committee on Labor and Industry and the House Committee on Labor and Industry, the Independent Regulatory Review Commission (IRRC), and the Office of Attorney General. In addition to submitting the emergency certified final-omitted rulemaking, the Department has provided the Committees, IRRC, and the Office of Attorney General with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 6(d) of the Regulatory Review Act (71 P.S. § 745.6(d)), the Governor has certified that this final-omitted regulation is required to meet an emergency condition that threatens the public health, safety and welfare. As such, this emergency certified final-omitted regulation is effective upon publication in the *Pennsylvania Bulletin*. Under section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), IRRC will review this regulation at its meeting on December 3, 2020.

Findings

The Department finds that:

(a) This emergency certified final-omitted rulemaking is authorized by section 201(a) of the Pennsylvania Unemployment Compensation Law (43 P.S. § 761(a)), section 204(3) of the Commonwealth Documents Law (45 P.S. § 1204(3)), and section 6(d) of the Regulatory Review Act (71 P.S. § 745.6(d)).

(b) Use of the emergency-certified rulemaking procedure provided in section 6(d) of the Regulatory Review Act (71 P.S. § 745.6(d)) is appropriate because this regu-

lation is required to protect the public health, safety and welfare based on Governor Tom Wolf's Certification of Need for Emergency Regulation dated October 23, 2020.

Order

The Department, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 34 Pa. Code Chapter 65, are amended by amending § 65.43a to read as set forth in Annex A.

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

(c) The Department shall submit this regulation to Independent Regulatory Review Commission and the Senate and House Labor and Industry Committees as required by law.

(d) The Secretary of the Department shall certify this regulation and deposit it with the Legislative Reference Bureau as required by law.

(e) This emergency-certified final-omitted rulemaking takes effect immediately upon publication in the *Pennsylvania Bulletin*.

W. GERARD OLEKSIAK,
Secretary

Fiscal Note: 12-113. No fiscal impact; (8) recommends adoption.

GOVERNOR'S OFFICE

Certification of Need for Emergency Regulation

Whereas, the Pennsylvania Unemployment Compensation Law (UC Law), 43 P.S. §§ 751-919.105, authorizes the Department of Labor and Industry (Department) to promulgate regulations to implement the UC Law, pursuant to section 201(a), 43 P.S. § 761(a); and

Whereas, sections 65.41, 65.42, 65.43 and 65.43a of the regulations in Title 34 of the *Pennsylvania Code*, 34 Pa. Code §§ 65.41, 65.42, 65.43 and 64.43a, provide the requirements for filing Unemployment Compensation (UC) benefits applications and claims; and

Whereas, section 65.41 of the regulations (relating to filing methods), 34 Pa. Code § 65.41, describes the acceptable methods of filing applications and claims by one of the following: telephone, internet, or application form sent via U.S. Mail or by facsimile; and

Whereas, section 65.42 of the regulations (relating to application for benefits—effective date), 34 Pa. Code § 65.42, defines the application for benefits' effective date as the first day of the calendar week in which the application is filed or deemed filed in accordance with section 65.43a (relating to extended filing), whichever is earlier; and

Whereas, section 65.43 of the regulations (relating to claims for compensation—when to file), 34 Pa. Code § 65.43, requires claimants to file biweekly claims for benefits no later than the last day of the week immediately following the two-week period; and

Whereas, subsections (c), (d) and (e) of section 65.43a of the regulations (regarding extended filing), 34 Pa. Code § 65.43a, permit claimants to extend the filing deadline for applications and claims under certain circumstances, which is a process referred to as "backdating" because it allows a claimant's application or claim to be backdated to an earlier time than the actual filing; and

Whereas, in most instances, section 65.43a of the existing regulations does not allow an application or claim to be backdated by more than six (6) weeks; and

Whereas, the COVID-19 global pandemic caused historic numbers of initial UC applications in Pennsylvania, including 1,068,493 initial claims filed in the twenty-one day period from March 15, 2020 through April 4, 2020, surpassing the highest number of initial applications previously filed in one year (over 960,000 in 2009); and

Whereas, the influx of UC applications and claims caused by the COVID-19 global pandemic caused delays in filing and processing applications and claims; and

Whereas, following Proclamation of Emergency Disaster for the COVID-19 outbreak on March 6, 2020, a significant number of individuals attempted to file applications and claims requiring more than six (6) weeks of backdating; and

Whereas, since March 6, 2020, the Department has received over 2.5 million initial UC claim applications; and

Whereas, requests for backdating require the Department's UC Staff to conduct time-intensive fact-finding activities, which can further delay the payment of benefits to unemployed Pennsylvanians; and

Whereas, amending the Department's UC regulations to include fifty-two (52) weeks of backdating for applications and claims filed on or after March 6, 2020 through the end of the current high unemployment period, as that term is defined in the UC Law (43 P.S. § 815(a.1)(2)), related to the COVID-19 pandemic, will authorize the Department to backdate applications and claim filings delayed by the pandemic; and

Whereas, amending the UC regulations to include fifty-two (52) weeks of backdating will permit the Department's UC Staff to accept backdated claims without conducting time-intensive fact finding; and

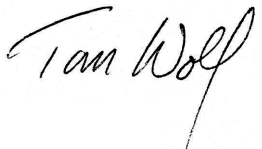
Whereas, amending the UC regulations to allow up to fifty-two (52) weeks of backdating will permit otherwise eligible claimants who were unable to successfully file their applications at the beginning of the pandemic to receive their much-needed benefits and help restore their financial welfare; and

Whereas, an immediate amendment to the UC regulations is necessary to protect the public health, safety and welfare of individuals who are unemployed as a result of the COVID-19 pandemic.

Now Therefore, I do hereby certify that the regulatory amendment to 34 Pa. Code, Part II, Subpart A, Chapter 65, following hereto as ANNEX A is required to meet the emergency conditions enumerated in the recitals above and to safeguard the public health, safety and welfare as described therein;

Further, I hereby authorize the Secretary of the Department of Labor and Industry to publish this amendment in the *Pennsylvania Bulletin* as an Emergency Certified Final-Omitted Rulemaking consistent with the provisions of Section 6(d) of the Regulatory Review Act, *as amended*, 71 P.S. § 745.6(d).

Given under my hand and the Seal of the Governor, at the City of Harrisburg, on this 23rd day of October in the year of our Lord two thousand and twenty, and of the Commonwealth the two hundred and forty fifth.


Governor

Annex A

TITLE 34. LABOR AND INDUSTRY

PART II. BUREAU OF EMPLOYMENT SECURITY

Subpart A. UNEMPLOYMENT COMPENSATION

CHAPTER 65. EMPLOYEE PROVISIONS

Subchapter C. APPLICATION PROCEDURE

APPLICATION FOR BENEFITS AND CLAIMS FOR COMPENSATION

§ 65.43a. Extended filing.

* * * * *

(c) The Department will deem an application for benefits to be filed prior to the week in which it actually is filed if the claimant did not file the application earlier for a reason listed in subsection (e). The Department will deem the application to be filed during the week that precedes the week of actual filing by the number of weeks indicated in subsection (e).

(d) If a claimant fails to file a claim for compensation within the time allowed in subsection (a) or (b) or § 65.43 (relating to claims for compensation—when to file), for a reason listed in subsection (e), the time for filing the claim is extended for the number of weeks indicated in subsection (e).

(e) For purposes of subsections (c) and (d) the number of weeks is determined as follows:

<i>Reason</i>	<i>Number of weeks</i>
The Department suspends accepting filings or is unable to handle all filings, due to an excessive volume of telephone calls or other reasons.	6
The claimant attempts to file by telephone, Internet or fax transmission in accordance with § 65.41 (relating to filing methods), the method used to attempt to file is unavailable or malfunctions, and the attempt to file occurs on the last day that the claimant could timely file by the method used	2
A UC Office fails to accept a filing as a result of error or mistake by the Department.	52
Sickness or death of a member of the claimant's immediate family or an act of God.	2
Other, if the claimant makes all reasonable and good faith efforts to file timely but is unable to do so through no fault of the claimant.	2
During the period following the issuance of the March 6, 2020 Proclamation of Emergency Disaster, issued under 35 Pa.C.S. § 7301 (relating to general authority of Governor) due to the novel coronavirus (COVID-19) global pandemic, until the end of the current "high unemployment" period, as that term is defined in section 405-A(a.1)(2) (43 P.S. § 815(a.1)(2)).	52

* * * * *

[Pa.B. Doc. No. 20-1538. Filed for public inspection November 6, 2020, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 141]

Hunting and Trapping; General

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its September 26, 2020, meeting amended § 141.18 (relating to permitted devices) to authorize the use of hand-held and firearm-mounted night-vision and infrared optics used solely for furbearer hunting.

This final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 50 Pa.B. 4744 (September 19, 2020).

1. *Purpose and Authority*

With the recent passage of House Bill 1188, the Commission now has the regulatory oversight to approve the use of night vision (light enhancement) and infrared (thermal) optical equipment. Each year the Commission is asked to review the prospective use of certain devices for hunting or trapping purposes that are otherwise prohibited by statute or regulation. As part of the review process, the Commission generally reviews to what degree use of a given device might negatively impact principles of resource conservation, equal opportunity, fair chase or public safety. The Commission has recently been requested to formally review the use of hand-held and firearm-mounted night-vision and infrared optics for furbearer hunting. The Commission has reviewed these devices and determined that their use will have no or negligible negative impacts to the previously mentioned principles. The Commission amends § 141.18 to authorize the use of hand-held and firearm-mounted night-vision and infrared optics used solely for furbearer hunting.

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 § 141.18 are adopted under this authority.

2. *Regulatory Requirements*

This final-form rulemaking amends § 141.18 to authorize the use of hand-held and firearm-mounted night-vision and infrared optics used solely for furbearer hunting.

3. *Persons Affected*

Persons wishing to hunt furbearers using hand-held or firearm-mounted night-vision or infrared optics within this Commonwealth will be affected by this final-form rulemaking.

4. *Comment and Response Summary*

The Commission received a total of 20 official comments concerning this final-form rulemaking. Out of this total, 15 supported and 5 opposed the use of hand-held and firearm-mounted night-vision and infrared optics used solely for furbearer hunting

5. *Cost and Paperwork Requirements*

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

6. *Effective Date*

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

7. *Contact Person*

For further information regarding this final-form rulemaking, contact Jason L. DeCoskey, 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 amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), known as the Commonwealth Documents Law, and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking; and adoption of regulations).

(2) The adoption of the amendments 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 the authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.18 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*.

BRYAN J. BURHANS,
Executive Director

Fiscal Note: Fiscal Note 48-461 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

§ 141.18. Permitted devices.

Notwithstanding the prohibitions in § 141.6 (relating to illegal devices), the following devices may be used to hunt or take wildlife:

(1) Firearms that use an electronic impulse to initiate discharge of ammunition. This provision is not intended to authorize use of these devices when these firearms are otherwise prohibited devices for the applicable hunting or trapping season.

* * * * *

(10) Electronic dove decoys used solely for hunting dove.

(11) Electronic hand-held and firearm-mounted night-vision and infrared optics used solely for furbearer hunting.

[Pa.B. Doc. No. 20-1539. Filed for public inspection November 6, 2020, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 147]

Special Permits; Canada Geese Depredation

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its September 26, 2020, meeting amended § 147.746 (relating to exceptions for resident Canada geese) to align State-level regulations with recent Federal amendments to depredation orders.

This final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 50 Pa.B. 4744 (September 19, 2020).

1. *Purpose and Authority*

The Commission amends § 147.746 to align State-level regulations with recent Federal amendments to depredation orders. Depredation orders for resident Canada geese were established in Federal and State regulations in 2006 and have been successful in providing affected individuals and businesses with methods to reduce goose-related

damage and conflicts, especially in situations where recreational hunting is impractical or insufficient for population control. Based on a recent review of the existing depredation orders which found the time frames for certain control activities to be overly restrictive, the United States Fish and Wildlife Service has amended depredation order regulations to allow nest and egg control to occur at any time of year, and to expand the previous May–August time period for take under the agricultural depredation order to also include the month of April in the Atlantic Flyway. Incorporating these Federal changes into State regulations is not expected to result in a large increase in take of Canada geese and will have little to no impact on overall goose populations. However, individual landowners, property managers and agricultural producers will benefit from additional flexibility to address localized instances of negative impacts from this species.

Section 2901(b) of the code (relating to authority to issue permits) provides “[t]he 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 § 147.746 are adopted under this authority.

2. *Regulatory Requirements*

This final-form rulemaking amends § 147.746 to align State-level regulations with recent Federal amendments to depredation orders.

3. *Persons Affected*

Persons wishing to control populations of Canada geese using a depredation permit within this Commonwealth will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

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

5. *Cost and Paperwork Requirements*

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

6. *Effective Date*

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

7. *Contact Person*

For further information regarding this final-form rulemaking, contact Jason L. DeCoskey, 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 amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), known as the Commonwealth Documents Law, and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking; and adoption of regulations).

(2) The adoption of the amendments 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 the authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending § 147.746 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*.

BRYAN J. BURHANS,
Executive Director

Fiscal Note: Fiscal Note 48-459 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 147. SPECIAL PERMITS

Subchapter U. DEPREDAATION

§ 147.746. Exceptions for resident Canada geese.

(a) *Egg addling and nest destruction.* Private landowners and managers of public lands and their employees or agents may destroy the nests and eggs of resident Canada geese on lands under their jurisdiction when necessary to resolve or prevent injury to people or damage to property or agricultural crops without the need for a joint state/Federal permit when the following conditions have been met:

(1) Private landowners or managers of public land have registered with the United States Fish and Wildlife Service at <https://epermits.fws.gov/eRCGR/geSI.aspx>. Each person who will be conducting the activity shall be registered at this site prior to implementing control activities.

(i) Eggs may be addled by shaking, freezing with CO₂ or oiling. If addled by oil, only 100% corn oil may be used.

(ii) Nests and eggs may be disposed of by burying or burning.

(2) Persons exercising privileges authorized by this subchapter shall file a report with the United States Fish and Wildlife Service at <https://epermits.fws.gov/eRCGR/geSI.aspx> no later than October 31 of each year. Failure to file a report may result in the denial of permission to addle the eggs or destroy the nests of resident Canada geese in subsequent years.

(3) It shall be unlawful to interfere with the nest or eggs of resident Canada geese without first registering with the United States Fish and Wildlife Service as required by this subchapter.

(b) *Agricultural facilities.*

(1) *Commercial agricultural production.* Persons actively engaged in commercial agriculture production may apply for a State-issued resident Canada goose depredation permit. This permit allows a commercial agricultural producer and its legitimate employees and agents to engage in the shooting or capture of resident Canada geese when necessary to prevent damage to agricultural

crops and other interests by resident Canada geese. The permit will prescribe the method of taking and the number of resident Canada geese that may be taken. The permit will be valid from April 1—August 31 of the year in which the permit was issued. The permittee shall file a written report on a form provided by the Commission, regarding the activities authorized by the permit no later than October 31 of the year in which the permit was issued. Failure to file the report as required may result in future applications being denied.

(2) *Application fee.* An application fee of \$50 in the form of check or money order shall be remitted to the Commission by the applicant at the time of application.

(c) *Airports and military airfields.*

(1) *Federal requirement.* Airports that are part of the National Plan of Integrated Airport Systems and have

received Federal grant-in aid assistance and military airfields may control resident Canada geese on property that is under their jurisdiction without the need for a State or joint state/Federal depredation permit if they comply with 50 CFR 21.49 (relating to control order for resident Canada geese at airports and military airfields).

(2) *Unlawful acts.* It shall be unlawful to control resident Canada geese on airport or military airfield property through lethal control or to destroy eggs and nests of resident Canada geese unless the participants are in compliance with 50 CFR 21.49 or are in possession of a joint state/Federal Canada goose depredation permit as prescribed in § 147.744 (relating to depredation permits for migratory waterfowl).

[Pa.B. Doc. No. 20-1540. Filed for public inspection November 6, 2020, 9:00 a.m.]