

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 111]

Boating

The Fish and Boat Commission (Commission) has amended Chapter 111 (relating to special regulations counties). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The final-form rulemaking amends the regulations relating to boating in Allegheny County.

A. Effective Date

The final-form rulemaking will go into effect immediately upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on this final-form rulemaking, contact Jason E. Oyler, 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 § 111.2 (relating to Allegheny County) is published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. Purpose and Background

The final-form rulemaking is designed to improve, enhance and update the Commission's boating regulations. The specific purpose of the amendment is described in more detail under the summary of changes.

E. Summary of Changes

Several years ago, the Commission amended § 111.2(c) to extend the slow, no-wake zone (SNW) on the Allegheny River from the Fort Duquesne Bridge upriver to the Fort Wayne (Norfolk Southern) Bridge. The Commission, however, has been unable to enforce this extension of the SNW zone because it has not been properly marked.

Commission staff made numerous attempts to receive permission from the bridge owner to place SNW signs on the bridge, but a suitable agreement could not be reached. Staff subsequently received permission from the Department of Transportation to place SNW signs on the 9th Street Bridge, which is downriver approximately 1,000 feet from the Fort Wayne (Norfolk Southern) Bridge. The signs were installed on the 9th Street Bridge in May of last year.

Accordingly, the Commission proposed to amend its regulation to change the upper limit of the SNW zone on the Allegheny River from the Fort Wayne (Norfolk Southern) Bridge to the 9th Street Bridge. The Commission's Boating Advisory Board considered this change and recommended that the Commission adopt the amendment on final-form rulemaking. The Commission adopted the amendment as set forth in the notice of proposed rulemaking.

F. Paperwork

The final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no new costs on the private sector or the general public.

H. Public Involvement

A notice of proposed rulemaking was published at 37 Pa.B. 6416 (December 8, 2007). The Commission did not receive any public comments regarding 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 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 111, are amended by amending § 111.2 to read as set forth in 37 Pa.B. 6416.

(b) The Executive Director will submit this order and 37 Pa.B. 6416 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 37 Pa.B. 6416 and deposit them with the Legislative Reference Bureau as required by law.

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

DOUGLAS J. AUSTEN, Ph.D.,

Executive Director

Fiscal Note: Fiscal Note 48A-196 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 08-565. Filed for public inspection March 28, 2008, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Fishing

The Fish and Boat Commission (Commission) has amended Chapter 65 (relating to special fishing regulations). 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 immediately upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on this final-form rulemaking, contact Jason E. Oyler, 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 amendments to §§ 65.4a, 65.5—65.7, 65.10, 65.14 and 65.15 are published under the statutory authority of section 2102(a) 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 amendments is described in more detail under the summary of changes.

E. Summary of Changes

In recent months, the public as well as staff from the Commission's Bureaus of Fisheries and Law Enforcement have raised concerns regarding a number of existing special regulation programs for trout on waters that may be large enough to permit boating. When regulation changes occur along a stream and a person angling from a boat that traverses from a section of stream that is under one set of regulations into another section under different regulations, that person could be in violation of the law for the section he just entered. For example, if one section of stream is managed under § 61.1 (relating to Commonwealth inland waters) for trout, a creel limit of five fish is in effect from the first Saturday after April 11 until Labor Day and bait is permitted. However, if the next downstream section is regulated under § 65.6 (relating to delayed harvest artificial lures only areas), harvest is only permitted from June 15 until Labor Day, the creel limit during this period is three, and bait is not permitted. Anglers boating from the upstream section to the downstream section any time before June 15 in this example would be in violation of the delayed harvest regulations if they had either trout or bait on board, even though these fish had been taken lawfully and gear used lawfully in the upstream section.

To address this matter, the Commission has amended §§ 65.5—65.7 and 65.14 to allow, notwithstanding the requirements of those sections, an angler in a boat to possess bait and fish caught in compliance with the seasons, sizes and creel limits in effect for the waters from which taken, provided that the boat angler floats through the specially regulated area without stopping or engaging in the act of fishing or the boat angler takes out his boat at an access point within the specially regulated area. For §§ 65.4a, 65.10 and 65.15, the reference to bait will be eliminated. On final-form rulemaking, the Commission adopted the proposed amendments as set forth in the notice of proposed rulemaking.

F. Paperwork

The final-form rulemaking will slightly increase paperwork and will create new paperwork requirements in that the Commission will have to post signs notifying anglers of the regulatory change on the water areas that are implicated.

G. Fiscal Impact

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The Commission's costs for signage will be modest. The

final-form rulemaking will impose no new costs on the private sector or the general public.

H. Public Involvement

A notice of proposed rulemaking was published at 37 Pa.B. 6418 (December 8, 2007). Prior to the formal public comment period, the Commission received one comment opposing the amendments. During the formal public comment period, the Commission received two comments opposing the amendments. Copies of all public comments were provided to the Commissioners.

Findings

The Commission finds that:

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

(2) A public comment period was provided, and the comments that were received were considered.

(3) The adoption of the amendments 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 65, are amended by amending §§ 65.4a, 65.5—65.7, 65.10, 65.14 and 65.15 to read as set forth at 37 Pa.B. 6418.

(b) The Executive Director will submit this order and 37 Pa.B. 6418 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 37 Pa.B. 6418 and deposit them with the Legislative Reference Bureau as required by law.

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

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: Fiscal Note 48A-198 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 08-566. Filed for public inspection March 28, 2008, 9:00 a.m.]

GAME COMMISSION
[58 PA. CODE CH. 143]
Hunting and Furtaking Licenses

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 29, 2008, meeting, adopted the following rulemaking:

Amend § 143.52 (relating to procedure for unlimited antlerless licenses) to change the over-the-counter sales date from the third Monday in September to the second Monday in September to permit county treasurers to begin accepting and processing antlerless deer applications prior to the opening day of the new archery season in Wildlife Management Units (WMUs) 2B, 5C and 5D.

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

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

Notice of proposed rulemaking was published at 37 Pa.B. 6750 (December 22, 2007).

1. Purpose and Authority

Formerly, § 143.52 permitted county treasurers that issued antlerless deer licenses for WMUs 2B, 5C and 5D to begin accepting applications over-the-counter on the third Monday in September. This date fell on September 17, 2007, this license year, which happened to be 2 days after the new opening date for archery deer season within those same WMUs. The relationship of these dates unintentionally precluded some hunters wishing to hunt antlerless deer in WMUs 2B, 5C and 5D from being able to purchase the necessary antlerless deer licenses over-the-counter at county treasurers' offices. In an effort to prevent this unintended result from occurring next year, the Commission is amending § 143.52 to change the over-the-counter sales date from the third Monday in September to the second Monday in September to permit county treasurers to begin accepting and processing antlerless deer applications prior to the opening day of the new archery season in WMUs 2B, 5C and 5D.

Section 2722(g) of the code (relating to authorized license-issuing agents) directs the Commission to adopt regulations for the administration, control and performance of license issuing activities. Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendment to § 143.52 was adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking amended § 143.52 to change the over-the-counter sales date from the third Monday in September to the second Monday in September to permit county treasurers to begin accepting and processing antlerless deer applications prior to the opening day of the new archery season in WMUs 2B, 5C and 5D.

3. Persons Affected

Certain county treasurers and persons wishing to hunt antlerless deer during the early days of the archery season in WMUs 2B, 5C and 5D may 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

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

6. Effective Date

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

7. Contact Person

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

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 143, are amended by amending § 143.52 to read as set forth at 37 Pa.B. 6750.

(b) The Executive Director of the Commission shall certify this order and 37 Pa.B. 6750 and deposit them with the Legislative Reference Bureau as required by law.

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

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-261 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 08-567. Filed for public inspection March 28, 2008, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 143]

Hunting and Furtaking Licenses

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 29, 2008, meeting, adopted the following rulemaking:

Amend § 143.12 (relating to hunter education training) to permit the Commission to waive hunter education course registration fees for its staff and volunteer instructors under certain circumstances.

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

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

Notice of proposed rulemaking was published at 37 Pa.B. 6749 (December 22, 2007).

1. Purpose and Authority

The Commission's hunter education program has grown in recent years to include not only the basic Hunter-Trapper Education curriculum for all first-time license buyers, but also a mandatory Remedial Hunter Education training program and a Cable Restraint Certification curriculum required for certain trapping activities. A

voluntary advanced training program titled "Successful Bowhunting" was also developed to improve bowhunters' knowledge, skills and abilities. Future curriculum expansion is envisioned with additional species-specific and discipline-specific advanced training programs. With the growth in this program, the Commission has recognized a notable improvement in the knowledge and skills of the staff and volunteer instructors that have attended these training programs. In an effort to further promote participation in these and future training programs by staff and volunteer instructors, the Commission amended § 143.20 to permit the Commission to waive hunter education course registration fees for these individuals. The subject fee waiver will be further defined by formal, written hunter education policy and subject to review and approval by the Director.

Section 2722(g)(2) of the code (relating to authorized license-issuing agents) directs the Commission to adopt regulations for the administration, control and performance of activities related to license issuing. 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 § 143.12 were adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amended § 143.12 to permit the Commission to waive hunter education course registration fees for its staff and volunteer instructors under certain circumstances.

3. *Persons Affected*

Staff and volunteer instructors of the Commission participating in any of the Commission's hunter education training courses may 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*

The final-form rulemaking may result in a nominal increase in additional cost (income avoidance) and paperwork to the Commission in implementing this fee waiver authority, however, such an increase should be absorbed by the Commission's current budget or staffing, or both.

6. *Effective Date*

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

7. *Contact Person*

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

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

Order

The Commission, acting under authorizing statute, order that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 143, are amended by amending § 143.12 to read as set forth at 37 Pa.B. 6749.

(b) The Executive Director shall certify this order and 37 Pa.B. 6749 and deposit them with the Legislative Reference Bureau as required by law.

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

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-257 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 08-568. Filed for public inspection March 28, 2008, 9:00 a.m.]

GAME COMMISSION
[58 PA. CODE CH. 141]
Hunting and Trapping

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 29, 2008, meeting, adopted the following rulemaking:

Amend § 141.20 (relating to protected material required) to eliminate the protective material requirement for the spring turkey season.

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

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

Notice of proposed rulemaking was published at 37 Pa.B. 6750 (December 22, 2007).

1. *Purpose and Authority*

Various hunters and sporting organizations recently requested a review or reconsideration of the former regulatory mandate that turkey hunters wear at least 100 square inches of solid fluorescent orange-colored material on the head while moving about or relocating during the spring turkey season. Safety of hunters afield is without a doubt one of the paramount concerns of the Commission, especially as it relates to hunters shooting other hunters in mistake for game. However, notwithstanding anecdotal indications that the protective material requirement does in fact prevent some accidents, the available statistical data relating to hunting related shooting incidents (HRSI's) during the spring turkey season is devoid of

clear evidence that the protective material requirement has made any appreciable reduction in the occurrence of HRSI's since its inception. Therefore, after thorough discussion and review, the Commission amended § 141.20 to eliminate the protective material requirement for the spring turkey season. Despite this amendment, the Commission will remain attentive to the affect the removal has on the occurrence of HRSI's and strongly recommends that hunters continue to wear fluorescent orange during the spring turkey season.

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 amendment to § 141.20 was adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking amended § 141.20 to eliminate the protective material requirement for the spring turkey season.

3. Persons Affected

Persons wishing to hunt turkey during the spring turkey season within this Commonwealth will be affected by the final-form rulemaking.

4. Comment and Response Summary

The Commission received 76 comments regarding this final-form rulemaking. Out of this total, 70 were in support and 6 were in opposition to the Commission's proposal to eliminate the protective material requirement for the spring turkey season.

5. Cost and Paperwork Requirements

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

6. Effective Date

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

7. Contact Person

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

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

Order

The Commission, acting under authorizing statute, order that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.20 to read as set forth at 37 Pa.B. 6750.

(b) The Executive Director shall certify this order and 37 Pa.B. 6750 and deposit them with the Legislative Reference Bureau as required by law.

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

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-256 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 08-569. Filed for public inspection March 28, 2008, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CHS. 141 AND 147]

Hunting and Trapping; Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 29, 2008, meeting, adopted the following rulemaking:

Amend § 141.4 (relating to hunting hours) and create Chapter 147, Subchapter W (relating to snow goose conservation hunt permit) to define and create the regulatory structure necessary to implement the new snow goose conservation hunt program within this Commonwealth.

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

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

Notice of proposed rulemaking was published at 37 Pa.B. 6751 (December 22, 2007).

1. Purpose and Authority

In recent years, continental snow goose populations have experienced a rapid growth in their population. This dramatic increase in population size has in turn resulted in extensive, possibly irreversible, damage to arctic and subarctic breeding habitats of the continental snow goose, as well as other bird populations dependant on these habitats. The Federal government has proposed, by means of a Light Goose Management Final Environmental Impact Statement, to reduce and stabilize snow goose populations primarily by allowing additional hunting methods and days. The United States Fish and Wildlife Service intends to establish a conservation order that will authorize states, beginning in 2008, to use hunters to harvest snow geese during the period when all waterfowl seasons, excluding falconry, are closed inside or outside the migratory bird hunting season framework. Participating states are required to monitor and assess hunting activity and harvest conducted under this conservation order and annually report to the United States Fish and Wildlife Service each September. To this end, the Commission has amended § 141.4 and created Chapter 147, Subchapter W to define and create the regulatory struc-

ture necessary to implement the new snow goose conservation hunt program within this Commonwealth.

Section 2901(b) of the code (relating to authority to issue permits) provides "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." 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 § 141.4 and creation of Chapter 147, Subchapter W were adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amended § 141.4 and created Chapter 147, Subchapter W to define and create the regulatory structure necessary to implement the new snow goose conservation hunt program within this Commonwealth.

3. *Persons Affected*

Persons wishing for additional opportunities to hunt snow geese within this Commonwealth may be affected by this final-form rulemaking.

4. *Comment and Response Summary*

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

5. *Cost and Paperwork Requirements*

The final-form rulemaking may result in a nominal increase in additional cost and paperwork to the Commission in implementing this new program, however, such an increase should be absorbed by the Commission's current budget or staffing, or both.

6. *Effective Date*

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

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative 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).

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

(a) The regulations of the Commission, 58 Pa. Code Chapters 141 and 147, are amended by amending § 141.4 and adding §§ 147.781, 147.782 and 147.784 to read as set forth at 37 Pa.B. 6751 and by adding § 147.783 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall certify this order, 37 Pa.B. 6751 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-260 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 147. SPECIAL PERMITS

Subchapter W. SNOW GOOSE CONSERVATION HUNT PERMIT

§ 147.783. Permit.

(a) A snow goose conservation hunt permit issued under this subchapter authorizes the permittee to harvest snow geese within this Commonwealth during a period of time when all waterfowl seasons are closed.

(b) The permittee is required to maintain records specifying hunting activity and harvest by day, time of day, and any other detail required by the Commission. An annual report of this hunting record shall be submitted in a manner specified by the Commission within 30 days of the last hunting day of the conservation hunt period.

(c) Except as provided in § 141.4 (relating to hunting hours), the permittee shall comply with the applicable State and Federal regulations relating to the hunting and taking of snow geese during regular hunting seasons as adopted by the United States Secretary of the Interior and as published in the *Federal Register* each year.

[Pa.B. Doc. No. 08-570. Filed for public inspection March 28, 2008, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 147]

Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 29, 2008, meeting, adopted the following rulemaking:

Create Chapter 147, Subchapter V (relating to agricultural damage depredation permit) to define and create the regulatory structure necessary to implement the new agricultural damage depredation permit program within this Commonwealth.

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

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

Notice of proposed rulemaking was published at 37 Pa.B. 6753 (December 22, 2007).

1. Purpose and Authority

On July 3, 2007, Governor Rendell signed into law House Bill 881, which, in relevant part, amended section 2121 of the code (relating to killing game or wildlife to protect property) to permit the Commission to authorize other individuals to assist eligible landowners in the destruction of wildlife causing agricultural damage to their property. This bill became effective September 1, 2007, however, before the Commission could begin the issuance of permits to authorize the aforementioned activity, the Commission was required to define and create the regulatory structure to implement this new program. To that end, the Commission added Chapter 147, Subchapter V to define and create the regulatory structure necessary to implement the new agricultural damage depredation permit program within this Commonwealth.

Section 2901(b) of the code (relating to authority to issue permits) provides "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." 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 creation of Chapter 147, Subchapter V was adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking created Chapter 147, Subchapter V to define and create the regulatory structure necessary to implement the new agricultural damage depredation permit program within this Commonwealth.

3. Persons Affected

Eligible landowners and persons wishing to assist eligible landowners with the destruction of wildlife causing agricultural damage on their property within this Commonwealth may 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

The final-form rulemaking may result in a nominal increase in additional cost and paperwork to the Commission in implementing this new program, however, such an increase should be absorbed by the Commission's current budget or staffing, or both.

6. Effective Date

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

7. Contact Person

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

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative regulations adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by adding §§ 147.761—147.765 to read as set forth at 37 Pa.B. 6753.

(b) The Executive Director of the Commission shall certify this order and 37 Pa.B. 6753 and deposit them with the Legislative Reference Bureau as required by law.

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

CARL G. ROE,
Executive Director

Fiscal Note: 48-259 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 08-571. Filed for public inspection March 28, 2008, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD [58 PA. CODE CHS. 405a AND 461a]

Bureau of Investigations and Enforcement; and Slot Machine Testing and Control

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1207, 1320 and 1517(a.2) (relating to regulatory authority of board; slot machine testing and certification standards; and investigations and enforcement), amends Chapters 405a and 461a (relating to Bureau of Investigations and Enforcement; and slot machine testing and control) to read as set forth in Annex A.

Purpose of the Final-Form Rulemaking

These amendments conform the language in the regulations to the language of 4 Pa.C.S. Part II (relating to Pennsylvania Race Horse Development and Gaming Act) (act), make provisions consistent with changes in subsequently adopted chapters and remove obsolete provisions.

Explanation of the Amendments to Chapters 405a and 461a

In § 405a.3(b) (relating to Office of Enforcement Counsel), the Board deleted the phrase "and operational" so

that this section mirrors the language in section 1517(a.2)(2) of the act (relating to investigations and enforcement). The title "Director of the Office of Enforcement Counsel" has been changed to "Chief Enforcement Counsel" in this section and in § 405a.5 (relating to investigatory subpoena) to match the Board's current organizational structure.

In § 405a.6 (relating to enforcement action), the Board updated citations and extended the time to file a notice of defense and request a hearing in subsections (c) and (d) from 15 days to 20 days to match the time period in § 493a.2(e) (relating to complaints).

In § 405a.6(e), the Board changed the requirement concerning the mailing of final orders. Final orders will be sent by first class mail instead of certified mail. Because a respondent's address is determined at the beginning of the proceeding there is no need to use certified mail for the final order.

In §§ 461a.3 and 461a.4 (relating to testing and approval generally; and submission for testing and approval), the Board removed the references and provisions relating to abbreviated testing and approval of slot machines and associated equipment. Section 1320 of the act (relating to category 1 slot machine license) allowed the Board to use certifications of equipment by other states or approved private testing laboratories until the Board established its testing facility. Now that the Gaming Laboratory is operational, the time period to use these alternate processes has expired.

In § 461a.7 (relating to slot machine minimum design standards), the Board deleted subsection (d) which contains the "payout requirement of 85% within 10 million plays" standard. Because the length of time that a slot machine is typically used today is shorter and because of the advent of server based games, this standard has become obsolete. The other requirements which reflect the statutory requirement of having a payout of at least 85% remain unchanged.

In § 461a.12 (relating to progressive slot machines), references to § 461a.7 have been updated to reflect the deletion of subsection (d).

Comment and Response Summary

Notice of proposed rulemaking was published at 37 Pa.B. 5799 (October 27, 2007).

The Board received comments from International Gaming Technology during the public comment period in support of the proposed changes. By letter dated December 26, 2007, the Independent Regulatory Review Commission (IRRC) notified the Board that IRRC had no objections, comments or recommendations to offer on these amendments.

No changes have been made to this final-form rulemaking.

Affected Parties

Under this final-form rulemaking, manufacturers submitting slot machines for testing and certification will be affected by no longer being able to request alternate certification of their slot machines and related equipment. There are 16 currently licensed manufacturers.

Respondents to complaints will also be affected. The Board projects that there may be approximately 2,000 complaints filed over the next 12 months.

Fiscal Impact

Commonwealth

By mailing Board orders by first class mail instead of certified mail, the Board estimates this final-form rulemaking will save up to \$10,000 annually.

Political Subdivisions

This final-form rulemaking will have no fiscal impact on political subdivisions of this Commonwealth.

Private Sector

The Board anticipates that there will be no significant costs or savings to the regulated public as a result of these amendments.

General Public

This final-form rulemaking will have no fiscal impact on the general public.

Paperwork requirements

These amendments do not change or add new reporting, recordkeeping or paperwork requirements.

Effective Date

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

Contact Person

The contact person for questions about this final-form rulemaking is Richard Sandusky, Director of Regulatory Review, (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (act) (71 P.S. § 745.5(a), on October 12, 2007, the Board submitted a copy of the proposed rulemaking, published at 37 Pa.B. 5799 (October 27, 2007), and a copy of the Regulatory Analysis Form to IRRC and the Chairpersons of the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development.

Under section 5(c) of the act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the act (71 P.S. § 745.5a(j.2)), the final-form rulemaking was deemed approved by the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development on February 20, 2008. Under section 5(g) of the act, the final-form rulemaking was deemed approved by IRRC effective February 20, 2008.

Findings

The Board finds that:

(1) Public notice of intention to adopt these amendments was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II.

Order

The Board, acting under 4 Pa.C.S. Part II, orders that:

(a) The regulations of the Board, 58 Pa. Code Chapters 405a and 461a, are amended by amending §§ 405a.3, 405a.5, 405a.6, 461a.3, 461a.4, 461a.7 and 461a.12 to read as set forth at 37 Pa.B. 5799.

(b) The Chairperson of the Board shall certify this order and 37 Pa.B. 5799 and deposit them with the Legislative Reference Bureau as required by law.

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

MARY DIGIACOMO COLINS,
Chairperson

Fiscal Note: Fiscal Note 125-71 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 08-572. Filed for public inspection March 28, 2008, 9:00 a.m.]

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 113]

Corrective Amendment to 61 Pa. Code § 113.7(1)

The Department of Revenue (Department) has discovered a discrepancy between the agency text of 61 Pa. Code § 113.7(1) (relating to correcting mistakes), as deposited with the Legislative Reference Bureau, and published at 2 Pa.B. 259, 272 (February 19, 1972), and the official text published in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 1) and as cur-

rently appearing in the *Pennsylvania Code*. The initial codification of paragraph (1) was inaccurate.

Therefore, under 45 Pa.C.S. § 901: The Department has deposited with the Legislative Reference Bureau a corrective amendment to 61 Pa. Code § 113.7(1). The corrective amendment to 61 Pa. Code § 113.7(1) is effective as of February 19, 1972, the date the correct text appeared in the *Pennsylvania Bulletin*.

The correct version of 61 Pa. Code § 113.7(1) appears in Annex A, with ellipses referring to the existing text of the section.

Annex

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE V. PERSONAL INCOME TAX

CHAPTER 113. WITHHOLDING OF TAX

§ 113.7. Correcting mistakes.

An overpayment or underpayment of tax shall be corrected in the following manner:

(1) If the correct amount of tax is withheld, but because of an underpayment or an overpayment an incorrect amount is remitted to the Commonwealth, proper adjustment may be made within the same calendar year on the first return or later returns filed after the error is discovered. In the case of such an overpayment, the employer shall file an application for refund if the error is not corrected by the end of the year.

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[Pa.B. Doc. No. 08-573. Filed for public inspection March 28, 2008, 9:00 a.m.]