

RULES AND REGULATIONS

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 137]

Wildlife; Chronic Wasting Disease

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its October 4, 2011, meeting amended § 137.34 (relating to Chronic Wasting Disease and emergency authority of Director) to update its terminology and procedures to be consistent with the Commonwealth's Interagency Chronic Wasting Disease Response Plan.

The final-form rulemaking will not have an 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 41 Pa.B. 4637 (August 27, 2011).

1. Purpose and Authority

The recent discovery of Chronic Wasting Disease in a free-ranging deer in Allegany County, Maryland, just over 10 miles from the Pennsylvania border, prompted a review and updating of the Commonwealth's Interagency Chronic Wasting Disease Response Plan. This update necessitates amending § 137.34 to bring the terminology and procedures in the regulation in line with the response plan.

Section 322(c)(9) of the code (relating to powers and duties of commission) specifically empowers the Commission to "Prohibit the possession, importation, exportation or release of any species of birds or animals which may be considered dangerous or injurious to the general public or to the wildlife of this Commonwealth." 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 § 137.34 are adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking amends § 137.34 by adding language to update its terminology and procedures to be consistent with the Commonwealth's Interagency Chronic Wasting Disease Response Plan.

3. Persons Affected

Persons wishing to import, hunt, feed, possess or rehabilitate deer within this Commonwealth will be affected by the final-form rulemaking.

4. Comment and Response Summary

There were no official comments received regarding the 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 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(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 137, are amended by amending § 137.34 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*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-330 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 137. WILDLIFE

§ 137.34. Chronic Wasting Disease and emergency authority of Director.

(a) The Director has emergency authority to take actions to mitigate risk factors and to determine the prevalence and geographic distribution of Chronic Wasting Disease (CWD), if the Director concludes that the spread of CWD poses a threat to human safety, farm animals, pets or other cervids within or adjacent to this Commonwealth.

(1) The Director has emergency authority to:

(i) Prohibit the importation of high risk cervid parts from areas that are known to harbor CWD.

(ii) Define and designate Disease Management Areas (DMAs) in this Commonwealth.

(2) The Director has emergency authority within designated DMAs to:

- (i) Allow the taking of cervids without regard to established seasons and bag limits and methods of take.
- (ii) Require mandatory checking of hunter-killed cervids.
- (iii) Prohibit the removal of high risk cervid parts.
- (iv) Prohibit the rehabilitation of cervids.
- (v) Prohibit the use and possession of cervid urine-based attractants.
- (vi) Prohibit the feeding of cervids.
- (vii) Prohibit any new permits to possess or transport live cervids.

(3) Notwithstanding paragraphs (1) and (2), the emergency authority of the Director will not be construed to extend to the regulation of captive cervids held under 3 Pa.C.S. Chapter 27 (relating to Domestic Animal Law) or the requirements of a lawful quarantine order issued by the Department of Agriculture.

(b) It is unlawful for a person to violate a provision of an Executive Order issued by the Director under the authority of this section. A person violating this section will, upon conviction, be sentenced to pay the fine prescribed in the act.

[Pa.B. Doc. No. 11-2185. Filed for public inspection December 23, 2011, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 147]

Special Permits; Furbearer Hunting-Trapping Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its October 4, 2011, meeting amended § 147.701 (relating to general) to reduce the applicability of the Convention on International Trade in Endangered Species (CITES) tag to bobcats and international exports only.

The final-form rulemaking will not have an 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 41 Pa.B. 4420 (August 13, 2011).

1. Purpose and Authority

CITES is a comprehensive conservation treaty signed by 175 countries, including the United States. This international agreement regulates the commercial trade of wildlife species and works to ensure that international trade of species is sustainable and does not threaten their survival. In relevant part, CITES requires permanent tags to be affixed to carcasses or parts of species being exported internationally. The bobcat, while not threatened with extinction, is listed in CITES and trade is controlled to protect endangered cats that have fur and parts similar in appearance; therefore, CITES applies to international exportation of this species. CITES does not currently apply to fishers.

Current Commission regulations take this requirement a step further by requiring permittees to obtain and the

Commission to issue CITES tags for every bobcat and fisher harvested that will be exported beyond this Commonwealth. The Commission has determined that this requirement is unnecessarily restrictive on permittees, over burdensome on the Commission and simply not applicable to fishers. The amendments to § 147.701 will reduce the applicability of the CITES tag to bobcats and international exports only.

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 § 147.701 are adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking amends § 147.701 by reducing the applicability of the CITES tag to bobcats and international exports only.

3. Persons Affected

Persons wishing to export bobcats harvested within this Commonwealth internationally will be affected by the final-form rulemaking.

4. Comment and Response Summary

There were no official comments received regarding the 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 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(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 § 147.701 to read as set forth at 41 Pa.B. 4420.

(b) The Executive Director of the Commission shall certify this order and 41 Pa.B. 4420 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 48-331 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 11-2186. Filed for public inspection December 23, 2011, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD
[58 PA. CODE CH. 401a]

Corrective Amendment to 58 Pa. Code § 401a.3

The Pennsylvania Gaming Control Board has discovered a discrepancy between the agency text of 58 Pa. Code § 401a.3 (relating to definitions) as deposited with the Legislative Reference Bureau and published at 37 Pa.B. 2808 (June 23, 2007) and the official text as codified in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 412, March 2009) and as currently appearing in the *Pennsylvania Code*. The definition of “licensed entity representative” was printed incorrectly. A codification error resulted in subparagraphs (i) and (ii) from the definition of “licensed facility” duplicated in the definition of “licensed entity representative.”

Therefore, under 45 Pa.C.S. § 901: The Pennsylvania Gaming Control Board has deposited with the Legislative Reference Bureau a corrective amendment to 58 Pa. Code § 401a.3. The corrective amendment to § 401a.3 is effective as of March 7, 2009, the date the defective official text was announced in the *Pennsylvania Bulletin*.

The correct version of the definition of “licensed entity representative” in 58 Pa. Code § 401a.3 appears in Annex A, with ellipses referring to the existing text of the regulation.

Annex A

TITLE. 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401a. PRELIMINARY PROVISIONS

§ 401a.3. Definitions.

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

* * * * *

Licensed entity representative—A person acting on behalf of or representing the interest of an applicant, licensee, permittee or registrant, including an attorney, agent or lobbyist regarding any matter which may reasonably be expected to come before the Board.

Licensed facility—

(i) The physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines including the gaming floor, all restricted areas servicing slot operations, and food, beverage and retail outlets and other areas serving the gaming floor which are located either on or directly accessible from and adjacent to the gaming floor or the restricted areas servicing slot operations.

(ii) The term does not encompass areas or amenities exclusive to pari-mutuel activities, hotel activities including hotel rooms, catering or room service operations serving a hotel, convention, meeting and multipurpose facilities, retail facilities, food and beverage outlets and other amenities and activities not located on or adjacent to the gaming floor, or related to slot machine gaming operations.

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[Pa.B. Doc. No. 11-2187. Filed for public inspection December 23, 2011, 9:00 a.m.]