

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 51, 57, 71, 75, 79 AND 93]

General Provisions; Fishing; Boating

The Fish and Boat Commission (Commission) amends Chapters 51, 57, 71, 75, 79 and 93 to read as set forth in Annex A. The Commission is publishing this final-omitted rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code) and other authorities described as follows.

A. *Effective Date*

This final-omitted rulemaking will go into effect immediately upon publication of this order in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on this final-omitted rulemaking, contact Laurie E. Shepler, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-omitted rulemaking is available on the Commission's web site at www.fishandboat.com.

C. *Statutory Authority*

This final-omitted rulemaking is published under the statutory authority of section 506 of The Administrative Code of 1929 (71 P.S. § 186). This final-omitted rulemaking is published in accordance with section 204 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1204), known as the Commonwealth Documents Law (CDL), which provides that an agency may omit or modify the procedures specified in sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) if, among other things, the administrative regulation or change relates to agency organization, management or personnel, agency procedure or practice, or Commonwealth property or the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefore in the order adopting the administrative regulation or change therein) that the procedures specified in sections 201 and 202 of the CDL are under the circumstances impracticable, unnecessary or contrary to the public interest.

D. *Purpose and Background*

Under § 51.5 (relating to correction of regulations), the Executive Director is authorized to take immediate corrective action on the Commission's behalf if the Executive Director or the Commission's staff discovers an error or omission in the text of a Commission regulation as published in the *Pennsylvania Code* or *Pennsylvania Bulletin*. The purpose of this final-omitted rulemaking is to update the Commission's regulations with current contact information.

E. *Summary of Changes*

The Commission amends §§ 51.2, 51.82, 57.11, 71.2, 71.7, 75.4, 79.3, 79.57—79.8, 79.12 and 93.119 because a recent review of the Commission's regulations by staff revealed that some contact information is no longer

current and is in need of updating. The Commission amends these sections to read as set forth in Annex A.

F. *Paperwork*

This final-omitted rulemaking will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

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

H. *Public Involvement*

Under section 204 of the CDL, an agency may omit the procedures in sections 201 and 202 of the CDL if the administrative regulation or change relates to agency organization, management or personnel, or agency procedure or practice. The Commission, therefore, did not publish a proposed rulemaking or solicit public comment.

Findings

The Commission finds that:

(1) Inaccurate or outdated contact information was discovered in §§ 51.2, 51.82, 57.11, 71.2, 71.7, 75.4, 79.3, 79.5—79.8, 79.12 and 93.119.

(2) Under § 51.5, the Executive Director is authorized to take immediate corrective action on behalf of the Commission, including, if necessary, the issuance of an order to make the necessary correction, if the Executive Director or the Commission's staff discovers an error in the text of a Commission regulation as published in the *Pennsylvania Code*.

(3) Because the nature of the amendments is minor and designed to correct errors or update contact information, the Commission finds that the procedures of sections 201 and 202 of the CDL are unnecessary.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapters 51, 57, 71, 75, 79 and 93, are amended by amending §§ 51.2, 51.82, 57.11, 71.2, 71.7, 75.4, 79.3, 79.5—79.8, 79.12 and 93.119 to read as set forth at Annex A, with ellipses referring to the existing text of the regulations.

(b) The Executive Director shall submit this order and Annex A to the Attorney General for approval as to legality as required by law.

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

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

JOHN A. ARWAY,
Executive Director

Fiscal Note: 48A-278. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 51. ADMINISTRATIVE PROVISIONS

Subchapter A. PRELIMINARY PROVISIONS

§ 51.2. Commission offices.

(a) The address of the principal office of the Commission is:

Pennsylvania Fish and Boat Commission
Post Office Box 67000
Harrisburg, Pennsylvania 17106-7000

(b) The address of the Centre Region Office of the Commission is as follows:

Pennsylvania Fish and Boat Commission
595 East Rolling Ridge Drive
Bellefonte, Pennsylvania 16823

**Subchapter I. PERMITS TO DRAW OFF
IMPOUNDED WATERS**

§ 51.82. Application for permits.

(a) An application for a permit to draw down impounded waters is available from the Fish and Boat Commission, Division of Environmental Services, 595 East Rolling Ridge Drive, Bellefonte, Pennsylvania 16823.

(b) A completed permit application shall be submitted to the address set forth in subsection (a) no later than 30 days prior to proposed commencement of draw down operations.

CHAPTER 57. STATEMENTS OF POLICY

Subchapter A. FISHERIES POLICIES

§ 57.11. Listing of wild trout streams.

(a) *Maintenance of list.* It is the policy of the Commission to accurately identify and classify streams supporting naturally reproducing populations of trout as wild trout streams. The Fisheries Management Division will maintain the list of wild trout streams. The Executive Director, with the approval of the Commission, will from time-to-time publish the list of wild trout streams in the *Pennsylvania Bulletin* and on the World Wide Web. Persons with comments, objections or suggestions about the classification of streams listed may submit them to the Commission for review.

(b) *Criteria for classifying wild trout streams.* The classification of a stream as a wild trout stream means that the trout found there have resulted from natural reproduction and that the habitat supports wild trout. Identification of streams for the presence of wild trout typically involves:

(1) *Location and habitat.* Classifications of wild trout streams will involve examination of one or more sites, which may vary in size, within the stream. The exercise of judgment by the investigator is essential in describing the extent of the stream continuum to which the examination applies. The investigator should find that the habitat is such as would support natural reproduction of trout.

(2) *Exclusion of stocked trout.* In classifying a wild trout stream, the investigator should find trout resulting

from natural reproduction in the stream section or upstream and downstream areas and their tributaries. In making this finding, the investigator will specifically exclude trout stocked as fingerlings or adults and trout that escape from a hatchery. The exercise of judgment is required in examining the trout for physical appearance such as coloration, fin condition and body configuration as indicators of the source of the trout. Direct evidence of natural reproduction of trout is a factor in making this classification, but it is not required if the other elements are present.

(3) *Biological criteria.* In identifying a wild trout stream, the investigator should find one or more of the following:

(i) Young of the year trout less than 150 mm occur at some time in the stream section.

(ii) Two or more ages of wild trout occur at some time within the stream section.

(4) *Tributary linkages.* Tributaries to wild trout streams are classified as wild trout streams for their function as habitat for segments of wild trout populations, including nurseries and refuges, and in sustaining water quality necessary for wild trout.

(c) *Existing list.* The streams identified as wild trout streams on or before January 1, 2002, and listed as such by the Fisheries Management Division will continue to be considered as wild streams by the Commission.

(d) *Requests for evaluation or re-evaluation of streams.* The Commission staff will evaluate or re-evaluate the classification of streams as wild trout streams at the request of the Department of Environmental Protection (DEP) in connection with permitting decisions. Requests for evaluation or re-evaluation from persons or parties other than DEP will be considered for review consistent with available staff and resources and prioritized based on the status of DEP permitting decisions related to the sites. Requests that the Commission staff evaluate or re-evaluate stream sections for inclusion on or removal from the list of streams supporting naturally reproducing populations of trout may be addressed to the Bureau of Fisheries, Pennsylvania Fish and Boat Commission, 595 East Rolling Ridge Drive, Bellefonte, Pennsylvania 16823. In evaluating requests to remove streams from the list of wild trout streams, the Commission will take into account circumstances where human intervention or manmade changes have diminished the capacity of a stream to meet the criteria set forth in this section. Streams will not be removed from the list of wild trout streams in circumstances where the investigator finds evidence that their characteristics and trout populations have been changed solely or principally as a result human intervention.

(e) *Appeals.* A person aggrieved by the classification of a stream section as a wild trout stream section may appeal the agency action by filing a notice of appeal with the Executive Director, Pennsylvania Fish and Boat Commission, Post Office Box 67000, Harrisburg, Pennsylvania 17106-7000 within 15 days after publication of the notice that the stream section had been so classified in the *Pennsylvania Bulletin*. Nothing in this subsection will be construed to enlarge or diminish the appeal rights of persons or parties in connection with permitting decisions and other actions of DEP.

Subpart B. FISHING
CHAPTER 71. PROPAGATION AND
INTRODUCTION OF FISH INTO
COMMONWEALTH WATERS

§ 71.2. Fish species approved for artificial propaga-
tion and introduction.

The Bureau of Fisheries will maintain a list of species by watershed for which the Department of Agriculture may issue registrations for artificial propagation and registrations for dealers of live aquatic animals. The Director of the Bureau of Fisheries may update or modify the list of authorized species by adding species to, or deleting species from, the list as necessary to provide for the protection and management of fish and fishing in this Commonwealth. The Commission will provide the list to the Department of Agriculture on or before January 31 each year and whenever the Commission updates or modifies the list. Copies of the list of authorized species are available upon request from the Pennsylvania Fish and Boat Commission, Bureau of Fisheries, 595 East Rolling Ridge Drive, Bellefonte, Pennsylvania 16823.

§ 71.7. Triploid grass carp.

(a) *Policy.* As a limited exception to the prohibition of grass carp (white amur) in this Commonwealth, it is the policy of the Commission to permit triploid grass carp, certified as such by the United States Fish and Wildlife Service (USFWS) and procured from a producer participating in the USFWS certification program, to be introduced into Commonwealth waters and imported and transported into this Commonwealth in accordance with this section.

(b) *Status.* The triploid grass carp (white amur) (*Ctenophryngodon idella*) is not a game fish.

(c) *Permit required.*

(1) The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that permits shall be required for possessing triploid grass carp (white amur) or introducing them into Commonwealth waters and for importing or transporting triploid grass carp into this Commonwealth to provide for proper protection and management of these fish and other fish in the waters of this Commonwealth. A pondowner, landowner or other person who wishes to possess triploid grass carp and introduce them into a pond or waters located on property owned, leased or otherwise controlled by the person shall, before placing triploid grass carp in the waters, obtain from the Commission a triploid grass carp possession/introduction permit for a fee of \$75. A person who wishes to import triploid grass carp into this Commonwealth shall, before doing so, obtain from the Commission a triploid grass carp importation/ transportation permit for a fee of \$75. Permits shall be applied for on forms supplied by the Commission. Applications for permits may be obtained from the Triploid Grass Carp Manager, Bureau of Fisheries, 595 East Rolling Ridge Drive, Bellefonte, Pennsylvania 16823. Permits will not be issued until after January 1, 1994.

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CHAPTER 75. ENDANGERED SPECIES

§ 75.4. Special permits.

The Executive Director, or a designee, may issue special permits under section 2305 of the code (relating to threatened and endangered species) to take, catch, kill or

possess threatened or endangered species upon written application on forms provided by the Commission.

(1) Special permits will be issued only upon a showing of unique or extraordinary circumstances justifying the permit and the applicant shows that the permitted action does one of the following:

(i) Has no demonstrable adverse impacts on the population of the species in this Commonwealth.

(ii) Is in the best interest of the protection, conservation and management of the species.

(iii) Is necessary and appropriate in the interests of public health and safety or promotes essential research or public education and information.

(2) Persons and institutions requesting special permits shall apply before taking, catching, killing, possessing or acquiring the threatened or endangered species. Application forms and information are available from the Natural Diversity Section, Division of Environmental Services, 595 East Rolling Ridge Drive, Bellefonte, Pennsylvania 16823.

CHAPTER 79. REPTILES AND AMPHIBIANS.

§ 79.3. Season and daily possession limits.

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(f) In prosecutions for violations of the possession limits, when venomous reptiles have been killed in apparent violation of the limits, it shall be a defense that the person who killed the venomous reptiles acted under a reasonable apprehension of immediate death or bodily harm to himself or other persons in his immediate vicinity, if no more venomous reptiles are killed than necessary to protect life and limb and if the person reported the kills in writing to the Natural Diversity Section Chief, Division of Environmental Services, 595 East Rolling Ridge Drive, Bellefonte, Pennsylvania 16823, within 5 business days after the kill. It is unlawful for a person to possess a venomous reptile, in whole or in parts, that was killed under this subsection.

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§ 79.5. Snapping turtle permits.

(a) The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that it is necessary for the proper protection and management of the common snapping turtle (*Chelydra serpentina*) that persons who hunt, take, catch or kill this species for the purpose of sale, barter or trade have an annual permit for the activity. Application for a permit must be made on a form prescribed by the Commission and must be accompanied by the appropriate fee. Permits may be obtained by applying to the Natural Diversity Section Chief, Division of Environmental Services, 595 East Rolling Ridge Drive, Bellefonte, Pennsylvania 16823. The fee for residents is \$50 per year; the fee for nonresidents is \$100 per year. The denial of a permit under this section is appealable in the manner provided by Chapter 51, Subchapter E (relating to permit procedures).

(b) It is unlawful to hunt, take, catch, kill or possess the common snapping turtle for purposes of sale, barter or trade without first procuring the required permit. The required permit shall be in possession of the permittee at all times while hunting. Permittees shall comply with the terms and conditions of the permit and furnish the reports required thereby. It is unlawful to alter, borrow, lend or transfer a permit under this section.

(c) It is unlawful to sell, barter, trade or offer for sale a common snapping turtle, dead or alive, in whole or in parts, taken from lands or waters of this Commonwealth without first procuring the permit required under this section.

§ 79.6. Venomous snake permits.

(a) *Application.* The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that it is necessary for the proper protection and management of the timber rattlesnake (*Crotalus horridus*) and copperhead (*Agkistrodon contortrix*) that persons who hunt, take, catch or kill these species have a permit for the activity. Application for a permit must be made on a form prescribed by the Commission and accompanied by the appropriate fee. Permits may be obtained by applying to the Natural Diversity Section Chief, Division of Environmental Services, 595 East Rolling Ridge Drive, Bellefonte, Pennsylvania 16823. The fee for residents is \$25 per year; the fee for nonresidents is \$50 per year. The denial of a permit under this section is appealable in the manner provided by Chapter 51, Subchapter E (relating to permit procedures).

(b) *Required permit.* It is unlawful to hunt, take, catch, kill or possess a timber rattlesnake or copperhead, in whole or in parts, without first procuring the required permit from the Commission. The required permit shall be in the possession of the permittee at all times while hunting. Permittees shall comply with the terms and conditions of the permit and furnish the reports required thereby. It is unlawful to alter, borrow, lend or transfer a permit under this section.

(c) *Reporting.* Within 10 business days following the capture or kill, or if no snake is captured or killed, within 10 days of the conclusion of the season, the permittee shall complete a report on the form prescribed by the Commission and shall mail the report to the Commission's Natural Diversity Section, 595 East Rolling Ridge Drive, Bellefonte, Pennsylvania 16823.

(d) *Tagging of timber rattlesnakes.*

(1) A person who takes, catches, kills or possesses a timber rattlesnake shall immediately complete the possession tag that is attached to his permit and detach the tag from the permit in the field. The possession tag shall be completed in accordance with the instructions printed on the tag, and the information to be provided includes, but is not limited to, the municipality and county where the snake was captured or killed, the date of capture or kill and a description of the snake, including color phase, sex, number of subcaudal scales and length in inches. The possession tag shall be kept in a safe location so that it can be presented along with the timber rattlesnake to which it pertains upon the request of an officer authorized to enforce the code.

(2) After the possession tag is detached from the permit, it is unlawful to take, catch, kill or possess another timber rattlesnake except as otherwise provided in this chapter.

(3) It is unlawful to alter, borrow, lend or transfer possession tags under this section.

(4) When presenting a timber rattlesnake to a taxidermist for mounting, the tag must remain with the rattlesnake while in the possession of the taxidermist.

(e) *Field dressing of timber rattlesnakes.* A permittee may field dress a timber rattlesnake so long as the head and tail remain intact.

(f) *Measurement of timber rattlesnakes.* Upon the request of an officer authorized to enforce the code, a permittee shall measure a timber rattlesnake to determine its length. If the permittee is unable to measure the timber rattlesnake, the officer may seize the snake so that a measurement may be taken at another location.

§ 79.7. Organized reptile and amphibian hunt permits.

(a) *Application.* The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that it is necessary for the proper protection and management of reptiles and amphibians in this Commonwealth that organized reptile and amphibian hunts be conducted under permits issued under this section. The sponsor of an organized reptile and amphibian hunt shall apply for a permit by no earlier than January 1 and no later than March 1 of the year for which the hunt is proposed. Application for a permit must be made on a form prescribed by the Commission and must be accompanied by the appropriate fee. Permits may be obtained by applying to the Natural Diversity Section Chief, Division of Environmental Services, 595 East Rolling Ridge Drive, Bellefonte, Pennsylvania 16823. The fee for the permit is \$100. The denial of a permit under this section is appealable in a manner provided by Chapter 51, Subchapter E (relating to permit procedures).

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§ 79.8. Artificial propagation and dealers of live reptiles and amphibians.

(a) *General.* Except for hobby breeders and pet stores as defined in 3 Pa.C.S. Chapter 42 (relating to Aquaculture Development Law), it is unlawful to artificially propagate or deal in live reptiles and amphibians without being registered with the Department of Agriculture (Department) under 3 Pa.C.S. Chapter 42. It is unlawful for anyone, regardless of whether or not registered, to artificially propagate reptiles and amphibians except those species, subspecies and color morphs that the Commission has approved for artificial propagation in this Commonwealth in accordance with this section.

(b) *Approved lists.* The Bureau of Fisheries will maintain lists of species, subspecies and color morphs for which the Department may issue registrations for artificial propagation and registrations for dealers of live reptiles and amphibians. The Bureau of Fisheries will maintain two separate lists—one that the Commission has approved for artificial propagation in an open system and one that the Commission has approved for artificial propagation in a closed system. The Director of the Bureau of Fisheries may update or modify the lists of approved species, subspecies and color morphs by adding species, subspecies or color morphs to or deleting species, subspecies or color morphs from the lists as necessary for the protection and management of reptiles and amphibians in this Commonwealth. The Commission will provide the lists to the Department on or before January 31 each year and whenever the Commission updates or modifies the lists. Copies of the lists of approved species, subspecies and color morphs are available upon request from the Pennsylvania Fish and Boat Commission, Bureau of Fisheries, 595 East Rolling Ridge Drive, Bellefonte, Pennsylvania 16823.

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§ 79.12. Color morphs of native species.

(a) For purposes of this chapter, it is presumed that color morphs of certain native species that are held in captivity were not taken from the wild. Therefore, the Commission has determined that color morphs of certain native species are exempt from the requirements of this chapter as provided in this section. The Commission will publish in the *Pennsylvania Bulletin* a list of color morphs of native species to which the following provisions apply:

(1) Color morphs of native species designated by the Commission are not subject to the possession limits of § 79.3 (relating to season and daily possession limits) provided they are not taken from the wild.

(2) Color morphs of native species designated by the Commission may be artificially propagated provided they are not taken from the wild and they are propagated in a closed system meeting the requirements of § 79.8 (relating to artificial propagation and dealers of live reptiles and amphibians).

(3) Color morphs of native species designated by the Commission may be sold by artificial propagators and dealers registered in accordance with 3 Pa.C.S. Chapter 42 (relating to Aquaculture Development Law) provided they are not taken from the wild.

(b) The Commission recognizes that the captive breeding of color morphs approved for propagation by the Commission in this section may result in animals that have a normal color appearance (typical phenotype). The typical phenotype progeny of these color morphs may be sold provided that the following conditions are met:

(1) They are sold by an artificial propagator or dealer registered in accordance with 3 Pa.C.S. Chapter 42.

(2) They were propagated in a closed system meeting the requirements of § 79.8 by a registered propagator.

(3) The artificial propagator or dealer that intends to sell them shall file an initial inventory on the form prescribed by the Commission that contains the numbers in possession as of December 31, 2006, and other information that the Commission requires. The artificial propagator or dealer shall submit the inventory to the Commission's Natural Diversity Section Chief, Division of Environmental Services, 450 Robinson Lane, Bellefonte, Pennsylvania 16823 by no later than January 31, 2007.

(4) The artificial propagator or dealer selling them shall maintain a current inventory on a form prescribed by the Commission, showing their origin, numbers and other information that the Commission requires. Artificial propagators or dealers shall maintain the inventory at their place of business and shall have the inventory in their possession when selling them. The inventory shall be presented upon the request of an officer authorized to enforce the code.

(5) The artificial propagator or dealer selling them shall submit an annual report on the form prescribed by the Commission that includes changes in the numbers possessed (for example, gains and losses to the inventory) and other information that the Commission requires. The artificial propagator or dealer shall submit the report to the Commission's Natural Diversity Section Chief, Division of Environmental Services, 595 East Rolling Ridge Drive, Bellefonte, Pennsylvania 16823 by no later than January 31 of the following year.

Subpart C. BOATING**CHAPTER 93. BOAT REGISTRATION AND NUMBERING****Subchapter B. TITLING OF BOATS****§ 93.119. Forms.**

(a) The Commission will provide suitable forms of applications, title, notice of security interests, and other notices and forms necessary to carry out this subchapter.

(b) Except as otherwise provided in this subchapter, all forms and notices required in this subchapter shall be forwarded to the Fish and Boat Commission, Division of Licensing and Registration, Post Office Box 68900, Harrisburg, Pennsylvania 17106-8900.

[Pa.B. Doc. No. 18-438. Filed for public inspection March 23, 2018, 9:00 a.m.]

Title 58—RECREATION**FISH AND BOAT COMMISSION****[58 PA. CODE CH. 65]****Fishing; Special Fishing Regulations**

The Fish and Boat Commission (Commission) amends 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 Fish and Boat Code) (code).

A. Effective Date

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

B. Contact Person

For further information on this final-form rulemaking, contact Laurie E. Shepler, 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.fishandboat.com.

C. Statutory Authority

The amendment to § 65.14 (relating to catch and release fly-fishing only) is published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. Purpose and Background

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

E. Summary of Change

In an ongoing attempt to simplify regulations, the Commission is continually looking at ways to improve upon current regulations. One area that has come into question recently is the 18-foot maximum length of leader material or monofilament line allowed in catch and release fly-fishing only areas.

In examining this question, it was brought to the Commission's attention that this limitation also excludes several acceptable fly-fishing practices such as European Nymphing. Law enforcement staff indicate that rarely is the length of leader material measured as it does not create significant problems streamside.

Based on these findings, the Commission amends § 65.14 to read as set forth in the proposed rulemaking published at 47 Pa.B. 5786 (September 16, 2017).

F. Paperwork

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

G. Fiscal Impact

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

H. Public Involvement

Notice of proposed rulemaking was published at 47 Pa.B. 5786. The Commission did not receive any public comments.

Findings

The Commission finds that:

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

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

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

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 § 65.14 to read as set forth at 47 Pa.B. 5786.

(b) The Executive Director will submit this order and 47 Pa.B. 5786 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 47 Pa.B. 5786 and deposit them with the Legislative Reference Bureau as required by law.

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

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-277 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 18-439. Filed for public inspection March 23, 2018, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CHS. 135 AND 147]

Hunting and Trapping; Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 30, 2018, meeting amended §§ 135.2 and

135.48—135.55 and added Chapter 147, Subchapter AA (relating to disabled person access permit) to permit the use of wheelchairs anywhere persons may lawfully walk, define “mobility devices,” provide for the use of mobility devices and motor vehicles on suitable designated routes on State game lands and define the parameters of acceptable use of mobility devices on State game lands to avoid or minimize damage to wildlife resources or conflicts with other lawful users of the State game lands system.

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 47 Pa.B. 7852 (December 30, 2017).

1. Purpose and Authority

The Commission has concluded an extensive review of public access to State game lands by persons with mobility challenges. This evaluation included various public meetings and requests for public comment. Based upon the results of this evaluation, the Commission sought improvements that would enhance public access to its State game lands by persons with mobility disabilities while simultaneously protecting the wildlife resources and avoidance or minimization of conflicts with other lawful users of the State game lands system. To reach this purpose, the Commission amends §§ 135.2 and 135.48—135.55 and adds Chapter 147, Subchapter AA. Among other things, these amendments will permit the use of wheelchairs anywhere persons may lawfully walk, define “mobility devices,” provide for the use of mobility devices and motor vehicles on suitable designated routes on State game lands and define the parameters of acceptable use of mobility devices on State game lands to avoid or minimize damage to wildlife resources or conflicts with other lawful users of the State game lands system.

Section 721(a) of the code (relating to control of property) provides “[t]he administration of all lands or waters owned, leased or otherwise controlled by the commission shall be under the sole control of the director, and the commission shall promulgate regulations consistent with the purpose of this title for its use and protection as necessary to properly manage these lands or waters.” 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.” The amendments to §§ 135.2 and 135.48—135.55 and the addition of Chapter 147, Subchapter AA are adopted under these authorities.

2. Regulatory Requirements

This final-form rulemaking amends §§ 135.2 and 135.48—135.55 and adds Chapter 147, Subchapter AA to permit the use of wheelchairs anywhere persons may lawfully walk, define “mobility devices,” provide for the use of mobility devices and motor vehicles on suitable designated routes on State game lands and define the parameters of acceptable use of mobility devices on State game lands to avoid or minimize damage to wildlife resources or conflicts with other lawful users of the State game lands system.

3. *Persons Affected*

Persons with mobility disabilities who wish to access State game lands within this Commonwealth will be affected by this final-form rulemaking.

4. *Comment and Response Summary*

There were two official written comments received regarding this final-form rulemaking—one in support and one in opposition.

5. *Cost and Paperwork Requirements*

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

6. *Effective Date*

This 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 this final-form rulemaking, contact Randy S. Shoup, 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 Chapters 135 and 147, are amended by adding §§ 147.1021—147.1024 and amending §§ 135.2 and 135.48—135.55 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(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 48-423 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 135. LANDS AND BUILDINGS

Subchapter A. GENERAL PROVISIONS

§ 135.2. Unlawful actions.

In addition to the prohibitions in the act on lands, waters or buildings under Commission ownership, lease, agreement, control or jurisdiction, it is unlawful, except with the permission of the person in charge of the lands, or the written permission of the Director to:

(1) Camp or use campsites.

(2) Plant, gather, cut, dig, remove or otherwise injure plants or parts thereof, including trees, shrubs, vines, flowering plants, cultivated crops, mushrooms and fruits of berry-producing plants.

(3) Travel on lands by means of vehicle or conveyance propelled by motorized power. This provision is not intended to restrict travel by certain devices used for persons with mobility disabilities as specifically authorized under Subchapter C (relating to State game lands).

* * * * *

Subchapter C. STATE GAME LANDS

§ 135.48. Purpose and scope.

It is the policy of the Commission to promote public access to State game lands for persons with mobility disabilities in compliance with the United States Department of Justice regulations in 28 CFR Part 35 (relating to nondiscrimination on the basis of disability in state and local government services). Sections 135.49—135.55 set forth how, where and when persons with mobility disabilities may access State game lands with powered wheelchairs, powered mobility devices and motor vehicles.

§ 135.49. Definitions.

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

ATV—All-terrain vehicle—A device meeting the definition in 75 Pa.C.S. § 7702 (relating to definitions).

Designated route—

(i) State game land access or maintenance roads and trails that have been designated by the Director to be open for travel by persons with mobility disabilities using certain powered vehicles and conveyances.

(ii) The term does not include roads that are open to motor vehicle access by the general public.

Disability—A person's physical or mental impairment that substantially limits his mobility.

Disabled person access permit—A permit issued by the Commission under Chapter 147, Subchapter AA (relating to disabled person access permit) to authorize persons with mobility disabilities to utilize mobility devices and motor vehicles to access designated routes on State game lands.

Mobility device—

(i) A power-driven device, other than a wheelchair, that is used by a person with a mobility disability for the purpose of locomotion. The term includes ATVs, golf carts, Segways® and other mobility devices designed to operate in areas without defined pedestrian routes, regardless of whether it is designed primarily for use by persons with mobility disabilities.

(ii) This term does not include motor vehicles.

Transport vehicle placard—A placard provided by the Commission to disabled person access permit holders that must be displayed on the dashboard or in a window of the transport vehicle.

Universal access symbol—A symbol displaying a wheelchair, generally blue and white, that is widely recognized as evidence that the person who is displaying the symbol is disabled.

Wheelchair—

(i) A manually-operated or power-driven device designed primarily for use by individuals with mobility disabilities for the main purpose of indoor or outdoor locomotion, or both.

(ii) The term includes power-driven scooters.

(iii) For the purposes of this subchapter, a wheelchair may not be construed as a mobility device.

§ 135.50. State game lands open to wheelchair access.

(a) Persons with mobility disabilities may use wheelchairs to access any portion of State game lands where pedestrian foot travel is authorized. In the event the Commission restricts pedestrian foot travel in any location through posted signage, wheelchair access will also be restricted.

(b) Access to State game lands under this section does not require a permit issued under section 2923 of the act (relating to disabled person permits) or Chapter 147, Subchapter AA (relating to disabled person access permit).

(c) Persons using motorized wheelchairs are subject to the restrictions of section 2308(a)(7) of the act (relating to unlawful devices and methods) concerning on the use of power-driven vehicles or conveyances to hunt, except as may otherwise be authorized under section 2923 of the act.

(d) Persons using motorized wheelchairs on State game lands are subject to the restrictions on loaded firearms in, on or against a vehicle under section 2503 of the act (relating to loaded firearms in vehicles), except as may otherwise be authorized under section 2923 of the act.

§ 135.51. Designated routes open to mobility devices and motor vehicles.

(a) Persons in possession of a valid disabled person access permit issued under Chapter 147, Subchapter AA (relating to disabled person access permit) may use mobility devices and motor vehicles to access designated routes on State game lands that have been approved by the Director. Designated routes will be classified to authorize mobility device and motor vehicle combined access or mobility device only access, as determined by route selection assessment criteria approved by the Director.

(b) Designated routes will be open for use by persons with disabled person access permits from 14 days prior to the opening day of the archery season to the closing day of the late muzzleloader/archery season and during the spring turkey season. Travel authorized by this section is subject to further limitation based upon existing weather or road conditions or the need for emergency or administrative closure, as indicated by conspicuous signage or postings.

§ 135.52. Towing vehicle placard for persons using mobility devices.

A vehicle used to transport a mobility device for use on designated routes must be marked with a transport vehicle placard issued by the Commission if the transport vehicle is parked on State game lands. The transport vehicle placard must be conspicuously displayed on the dashboard or in a window of the transport vehicle. A transport vehicle placard will be issued by the Commission upon issuance of a disabled person access permit issued under Chapter 147, Subchapter AA (relating to disabled person access permit).

§ 135.53. Operation of mobility devices and motor vehicles on designated routes.

Persons with a valid disabled person access permit issued under Chapter 147, Subchapter AA (relating to disabled person access permit) may operate mobility devices and motor vehicles on designated routes subject to all of the following conditions:

(1) *Safe operation.* Mobility devices and motor vehicles may not be operated on a designated route:

(i) In negligent disregard for the safety of persons or property.

(ii) In excess of 25 miles per hour on any designated route classified for mobility device and motor vehicle combined access.

(iii) In excess of 5 miles per hour on any designated route classified for mobility device only access.

(2) *Marking required.* Mobility devices operated on designated routes must be marked with a universal access symbol placard or sticker that is at least 3 inches by 3 inches in size and displayed in a conspicuous manner.

(3) *ATVs and snowmobiles as mobility devices.* An ATV or snowmobile used as a mobility device on a designated route must be registered with the Department of Conservation and Natural Resources and display the valid registration plate or registration decal as required under 75 Pa.C.S. §§ 7711.1 and 7711.2 (relating to registration of snowmobile or ATV; and limited registration of snowmobile or ATV).

(4) *Spark arrestors required.* Mobility devices powered by an internal combustion engine must be equipped with a fully functional spark arrestor while operating on a designated route.

(5) *Classification of designated route.* Mobility devices meeting the requirements of this subchapter may access designated routes classified for mobility device and motor vehicle combined access and mobility device only access. Motor vehicles meeting the requirements of this subchapter may access only designated routes classified for motor vehicle access.

(6) *Limited deviation from designated route authorized.* Persons with a valid disabled person access permit issued under Chapter 147, Subchapter AA may traverse a maximum of 100 yards perpendicular to the nearest designated route road or trail edge to establish a hunting or trapping location, and may not traverse streams, springs, wet areas, food plots or other areas posted against travel.

(7) *Size, weight and noise limited.* Mobility devices may not exceed 65 inches in width and 1,800 pounds in weight. The noise level may not exceed 99 decibels when measured at 20 inches.

(8) *Use of vehicle to hunt restricted.* Persons using mobility devices and motor vehicles on designated routes are subject to the restrictions of section 2308(a)(7) of the act (relating to unlawful devices and methods) concerning the use of power-driven vehicles or conveyances to hunt.

(9) *Loaded firearms.* Persons using mobility devices and motor vehicles on designated routes are subject to the restrictions on loaded firearms in, on or against a vehicle under section 2503 of the act (relating to loaded firearms in vehicles), except as may otherwise be authorized under section 2923 of the act (relating to disabled person permits).

§ 135.54. Transport of passengers restricted.

A person with a valid disabled person access permit issued under Chapter 147, Subchapter AA (relating to disabled person access permit) who is incapable of operating the mobility device or motor vehicle, whichever is applicable, may be accompanied by up to one other person who will serve as the operator, provided the mobility device or motor vehicle is designed and manufactured to carry a passenger. Additional passengers are not authorized.

§ 135.55. Unlawful acts; penalties.

It is unlawful to operate a mobility device, motor vehicle or other conveyance on State game lands outside of the authorizations in this subchapter. A person who violates a provision of this subchapter shall be subject to the penalties provided in the act.

CHAPTER 147. SPECIAL PERMITS**Subchapter AA. DISABLED PERSON ACCESS PERMIT**

Sec.

147.1021. Purpose and scope.

147.1022. Eligibility and application.

147.1023. Disabled person access permits.

147.1024. Violations.

§ 147.1021. Purpose and scope.

This subchapter provides for disabled person access permits to be issued to eligible persons to authorize their holders to utilize mobility devices and motor vehicles to access designated routes on State game lands.

§ 147.1022. Eligibility and application.

(a) A disabled person access permit will only be issued to a person who provides satisfactory evidence of a mobility disability, which includes any of the following:

(1) A disability parking placard issued by the Department of Transportation (Department). This proof can be either the placard or an identification card issued by the Department documenting the issuance of a disability parking placard.

(2) A disability vehicle registration plate issued by the Department. This proof will be the vehicle registration card bearing a registration number beginning in "PD."

(3) A formal document issued by a state other than the Commonwealth, the District of Columbia, Puerto Rico, Guam, American Samoa, Virgin Islands, Trust Territory of the Pacific Islands and Northern Mariana Islands officially recognizing the existence of a mobility disability.

(4) A disabled person permit issued by the Commission under section 2923 of the act (relating to disabled person permits).

(5) A formal document issued by a medical doctor certifying that the applicant has a mobility disability.

(6) Other satisfactory evidence indicating that the applicant has a mobility disability.

(b) A state-issued proof of a mobility disability must be in the applicant's name and unexpired. If the state-issued proof of a mobility disability evidences an expiration date or the mobility disability is temporary in nature, the Commission will apply a corresponding expiration date to a permit issued under this subchapter.

(c) An application for a disabled person access permit issued under this subchapter shall be made on a form provided by the Commission.

(d) An application must include the name, customer identification number and contact information of the permit applicant.

(e) There is not a fee for a disabled person access permit.

§ 147.1023. Disabled person access permits.

A disabled person access permit issued under this subchapter authorizes the permittee to use mobility devices and motor vehicles to access designated routes on State game lands as is more specifically set forth in Chapter 135, Subchapter C (relating to State game lands).

§ 147.1024. Violations.

The Director may deny, revoke or suspend a permit for a violation of this subchapter upon written notice to the permittee.

[Pa.B. Doc. No. 18-440. Filed for public inspection March 23, 2018, 9:00 a.m.]

Title 58—RECREATION**GAME COMMISSION****[58 PA. CODE CH. 147]****Special Permits; Falconry**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 30, 2018, meeting amended § 147.102 (relating to application, examination and fees) to expand the examination period to year-round testing and to require advance scheduling of examinations.

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 47 Pa.B. 7052 (November 18, 2017).

1. Purpose and Authority

Each year the Commission facilitates the examination of persons seeking a falconry permit. Historically, this testing process has only been available from January 1 through June 30 each year. In an effort to provide greater opportunity for falconry applicants, the Commission amends § 147.102 to expand the examination period to year-round testing and to require advance scheduling of examinations.

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." The amendments to § 147.102 are adopted under this authority.

2. Regulatory Requirements

This final-form rulemaking amends § 147.102 to expand the examination period to year-round testing and to require advance scheduling of examinations.

3. *Persons Affected*

Persons wishing to apply for a falconry permit in this Commonwealth may be affected by this final-form rule-making.

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 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 rule-making, contact Randy S. Shoup, 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 § 147.102 to read as set forth at 47 Pa.B. 7052.

(b) The Executive Director of the Commission shall certify this order and 47 Pa.B. 7052 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 48-422 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 18-441. Filed for public inspection March 23, 2018, 9:00 a.m.]

Title 58—RECREATION

**PENNSYLVANIA GAMING CONTROL BOARD
[58 PA. CODE CHS. 1101—1120]**

Video Gaming; Temporary Regulations; Correction

An error occurred in the temporary rulemaking published at 48 Pa.B. 1524, 1551 (March 17, 2018). The cross-reference in § 1113.5(b) (relating to video gaming terminal master lists) was incorrect. The cross-reference is corrected to § 1113.3 (relating to video gaming terminals location in video gaming area) in Annex A, with ellipses referring to the existing text of the regulations.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart N. VIDEO GAMING

**CHAPTER 1113. POSSESSION OF VIDEO GAMING
TERMINALS—TEMPORARY REGULATIONS**

§ 1113.5. Video gaming terminal master lists.

* * * * *

(b) A Video Gaming Area Video Gaming Terminal Master List must list all video gaming terminals located in the video gaming area in consecutive order by the device location number under § 1113.3 (relating to video gaming terminals location in video gaming area) and contain all of the following:

* * * * *

[Pa.B. Doc. No. 18-442. Filed for public inspection March 23, 2018, 9:00 a.m.]