

## Order Adopting Amendment

### COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA FISH AND BOAT COMMISSION

#### Title 58. Recreation Part II. Fish and Boat Commission Chapter 73 Fishing

## Preamble

The Fish and Boat Commission (Commission) amends Chapter 73 (relating to transportation of live fish into the Commonwealth). 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 the final-form rulemaking, contact Laurie Shepler, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's website at [www.fish.state.pa.us](http://www.fish.state.pa.us).

C. *Statutory Authority*

The amendment to § 73.3 (relating to transportation and importation of VHS-susceptible species of fish) is published under the statutory authority of section 2102(c) 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 amendment is described in more detail under the summary of changes.

E. *Summary of Changes*

Viral hemorrhagic septicemia (VHS) is an infectious disease found in a variety of fish species. Effective January 1, 2009, the Commission adopted §73.3 to help prevent the spread of the disease in this Commonwealth. Under §73.3(d), it is unlawful to import or cause the importation of VHS-susceptible species of fish into this Commonwealth from a VHS-affected or VHS-at risk region, except as follows: (1) VHS-susceptible species of live fish may be imported into the United States if the requirements of 9 CFR §§93.910--93.916 are met; or (2) VHS-susceptible species of dead fish may be imported into the United States if the fish are recreationally caught and are for human consumption.

At the time of adoption, the language of §73.3(d)(1) was consistent with the interim rule of the United States Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) that was slated to go into effect on January 9, 2009. However, by notice published in the *Federal Register* (74 FR 1), the United States Department of Agriculture announced that it has delayed the effective date of the interim rule indefinitely to provide APHIS with time to make some adjustments to the interim rule that are necessary for the rule to be successfully implemented. The provisions of §73.3(d)(1), therefore, have no effect.

Accordingly, the Commission has amended §73.3(d) to delete paragraph (1) as set forth in the notice of proposed rulemaking. This amendment is a “housekeeping” change that is limited to the movement of live VHS-susceptible species of fish from the Canadian provinces of Ontario and Quebec. It will not affect the Commission’s regulations with respect to intrastate and interstate transportation or the international movement of dead fish. Under §73.3(d)(2), VHS-susceptible species of dead fish may be imported into the United States from Ontario and Quebec if the fish are recreationally caught and are for human consumption. However, until such time as APHIS adopts a rule pertaining to the international movement of live fish, the Commission’s regulations will be silent on the subject. Prior orders issued by APHIS regarding international movement of live VHS-susceptible species of fish will govern, but the Commission’s waterways conservation officers will not be able to enforce them.

By notice published in the *Pennsylvania Bulletin* at 39 Pa. B. 1368 (March 14, 2009), the Executive Director, acting under the authority of 58 Pa. Code §65.25 (relating to temporary changes to fishing regulations), took immediate action to rescind §73.3(d)(1). The temporary modification went into effect immediately and will remain in effect until publication of this order rescinding the regulation.

F. *Paperwork*

The final-form rulemaking will not increase paperwork and will not create 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 Comments*

A notice of proposed rulemaking was published at 39 Pa. B. 3458 (July 11, 2009). The Commission did not receive any public comments regarding this proposal.

**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, 1202) and the regulations promulgated thereunder, 1 Pa. Code §§7.1 and 7.2.

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

(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 Chapters 73, are amended by amending §73.3 to read as set forth in 39 Pa. B. 3458.

(B) The Executive Director will submit this order and 39 Pa. B. 3458 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 39 Pa. B. 3458 and deposit them with the Legislative Reference Bureau as required by law.

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

For the Pennsylvania Fish and Boat Commission

Douglas J. Austen, Ph.D.  
Executive Director