

Notice of Proposed Rulemaking

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) proposes to amend Chapter 73 (relating to transportation of live fish into the Commonwealth). The Commission is publishing this proposed rulemaking under the authority of 30 Pa. C.S. (relating to the Fish and Boat Code) (code).

A. *Effective Date*

The proposed rulemaking, if approved on final-form rulemaking, will go into effect immediately upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the proposed rulemaking, contact Laurie Shepler, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. *Statutory Authority*

The proposed 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 proposed rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the proposed amendment is described in more detail under the summary of proposal.

E. *Summary of Proposal*

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 the 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 through 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 U.S. 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 proposes that §73.3(d) be amended to delete paragraph (1) as set forth in Annex A. 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), already has taken immediate action to rescind §73.3(d)(1). This temporary modification went into effect immediately and will remain in effect until the Commission, by appropriate action, rescinds the regulation.

F. *Paperwork*

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

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

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Pennsylvania Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.fishandboat.com/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

For the Pennsylvania Fish and Boat Commission

Douglas J. Austen, Ph.D.
Executive Director

Annex A

Regulation No. 48A-213

Title 58. Recreation

Part II. Fish and Boat Commission

Subpart B. Fishing

CHAPTER 73. TRANSPORTATION OF LIVE FISH INTO THE COMMONWEALTH

§73.3. Transportation and importation of VHS-susceptible species of fish.

* * *

(d) *International movement.* 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 (relating to general provisions for VHS-regulated fish) are met.] Reserved.**

(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.