

RULES AND REGULATIONS

Title 37—LAW

DEPARTMENT OF CORRECTIONS

[37 PA. CODE CH. 95]

County Correctional Institutions

The Department of Corrections (Department) hereby amends Chapter 95 (relating to county correctional institutions), to read as set forth in Annex A. The Department is acting under the authority of section 506 of The Administrative Code of 1929 (act) (71 P. S. § 186).

A. *Contact Person*

Interested persons are invited to submit in writing any questions regarding the amendments to Deputy Secretary for Intergovernmental Relations William M. Reznor, 2520 Lisburn Road, P. O. Box 598, Camp Hill, PA 17001-0598, (717) 975-4876.

B. *Statutory Authority*

The Department is amending Chapter 95 under the authority of section 506 of the act. Under section 506 of the act, the Department is empowered to prescribe rules and regulations for the performance of the Department's business. A portion of the Department's business includes establishing standards for county jails and prisons, including physical facilities, and standards for correctional programs of treatment, education and rehabilitation of inmates. See section 3 of the act of December 27, 1965 (P. L. 1237, No. 502) (61 P. S. § 460.3(3)).

C. *Purpose and Background*

Under the authority of Executive Order 1996-1, the Department undertook a review of its regulations relating to county correctional institutions. Based on that review, the Department found that many of the regulations are outdated, too technical and do not afford county prison administrators sufficient flexibility to address prison management problems that are strictly local in nature. While the Department still wants to ensure that county prisons maintain minimum professional standards for prison operations, it wants to provide county prison administrators with the flexibility they need to address strictly local issues in the manner the counties deem most appropriate and cost efficient. Therefore, the Department is amending Chapter 95 to read as set forth in Annex A.

D. *Compliance with Executive Order 1996-1, Regulatory Review and Promulgation*

Prior to drafting the proposed amendments, the Department sought and received input from county prison wardens from across this Commonwealth. In May of 1997, the Department mailed a preliminary survey to the wardens of all 63 counties which have county prisons asking them to rate the individual sections contained within Chapter 95 and to identify specific areas of concern. The overall response rate to the survey was 59%. The results from the survey were compiled by the Department's Planning and Research Division to develop a standard agenda for regional work sessions that the Department planned to conduct with county prison officials. The survey revealed that 12 sections of Chapter 95 were deemed most worthy of revision by the county wardens that responded to the survey. During the months of July and August 1997, five regional work sessions were conducted with county prison officials to discuss the 12 sections targeted for revision.

The five work sessions were held for the Northwest, Northeast, Southwest and Southeast regions of this Commonwealth and Philadelphia County. The work sessions were held in centralized locations in an effort to maximize warden participation by minimizing travel inconveniences. A team from the Department, which included representation from the Office of Chief Counsel, Bureau of Operations, Office of Grants and Special Projects, Bureau of Health Care and the Deputy Secretary for Intergovernmental Relations, was assembled to facilitate warden input at each of the work sessions and to develop recommendations for a reduction in the regulations of the targeted sections.

After the work sessions, and with due consideration being given to the input of the county prison officials, the Department drafted proposed amendments to the 12 regulatory sections that were targeted for revision. Those amendments were then submitted to a Warden's Committee representing the Pennsylvania Prison Wardens Association and the Courts and Corrections Committee representing the County Commissioners Association of Pennsylvania for final review and comment. After reviewing the comments submitted by the County Commissioners Association and the Warden's Committee the Department drafted the amendments.

E. *Summary of Amendments*

An introductory statement appears in § 95.220 (relating to purpose). The introductory statement is intended to impress upon county prison officials the need to develop, utilize and maintain local policies and procedures that are consistent with Pennsylvania law and recognized professional standards. The introductory statement also exempts compliance with the regulations if a county prison achieves American Correctional Association accreditation using Adult Local Detention Facilities standards. These are the same standards endorsed by the American Jailers Association. In addition, all Chapter 95 regulations governing medical and health care services will be waived if a county prison achieves accreditation from the National Commission on Correctional Health Care.

Twelve sections have been revised based on input from county wardens and prison administrators concerning the most burdensome regulations. Those sections include § 95.221, Personnel; § 95.222, Admissions; § 95.225, Classification; § 95.226, Housing; § 95.228, Clothing; § 95.231, Personal Hygiene; § 95.232, Medical and Health Services; § 95.234, Correspondence; § 95.236, Library; § 95.238, Recreation; § 96.239, Commissary; and § 95.240, Discipline and Punishment. The amendments are designed to reduce the number of technical, burdensome and mandatory requirements that are currently imposed on county prison administrators. The amendments are also designed to provide county prison administrators with sufficient flexibility to address purely local operational concerns within the confines of local budgetary constraints. At the same time, the amendments establish for county prison administrators the minimum general professional standards that should govern county prison operations.

F. *Fiscal Impact*

The amendments are not expected to have any negative fiscal impact upon the Commonwealth, its political subdivisions or the general public.

G. *Paperwork Requirements*

The amendments are not expected to have any significant effect on the paperwork requirements of the Commonwealth, its political subdivisions or the public.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 4, 1999, the Department submitted a copy of its notice of proposed rulemaking published at 29 Pa.B. 1504 (March 20, 1999) to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Judiciary Committees.

The Department submitted a copy of the final-form amendments to IRRC and the Chairpersons of the House and Senate Judiciary Committees on November 16, 1999. In addition to submitting the proposed amendments, the Department provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Improving Government Regulations." A copy of this material is available to the public upon request. In preparing these final-form regulations, the Department has considered the comments received from IRRC. The Department did not receive any comments from the public. The only comment received from the House and Senate Judiciary Committee addressed a section of the regulation which was being deleted.

Review of the final-form regulations was tolled on December 6, 1999. The regulations were deemed approved by the House and Senate Judiciary Committees on December 16, 1999. IRRC met on January 6, 2000, and approved the regulations in accordance with Section 5.1(e) of the Regulatory Review Act. The Office of General Counsel and the Office of Attorney General approved the final-form regulations on December 14, 1999, and January 31, 2000, respectively.

I. *Effective Date*

The amendments shall take effect upon completion of the regulatory review process and final publication in the *Pennsylvania Bulletin*.

Findings

The Department finds that:

- (1) Notice of proposed rulemaking was published at 29 Pa.B. 1504 as required by 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) A public comment period was provided as required by law and no public comments were received by the Department for consideration.
- (3) The adoption of these amendments in the manner provided by this order is necessary and appropriate for the administration of the Department.

Order

(a) The regulations of the Department, 37 Pa. Code Chapter 95, are amended by amending §§ 95.221, 95.222, 95.225, 95.226, 95.228, 95.231, 95.232, 95.234, 95.236 and 95.238—95.240; and by adding §§ 95.220, 95.220a and 95.220b to read as set forth in Annex A.

(b) The Department shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General for approval as required by law.

(c) The Secretary of Corrections shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* as required by law.

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

MARTIN F. HORN,
Secretary

(*Editor's Note:* The addition of §§ 95.220a and 95.220b was not included in the proposal at 29 Pa.B. 1506.)

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 30 Pa.B. 465 (January 22, 2000).)

Fiscal Note: Fiscal Note 19-4 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 37. LAW

PART III. AGENCIES AND OFFICES

Subpart B. DEPARTMENT OF CORRECTIONS

CHAPTER 95. COUNTY CORRECTIONAL INSTITUTIONS

Subchapter B. ADMINISTRATIVE STANDARDS, REGULATIONS AND FACILITIES

COUNTY PRISONS

§ 95.220. Purpose.

This subchapter is designed to encourage county prisons to develop and utilize local policies and procedures that are in keeping with existing State law and recognized professional standards for all sections addressed in this chapter.

§ 95.220a. Definitions.

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

Department—The Department of Corrections of the Commonwealth.

Health care professional—A medical doctor, doctor of osteopathy, physician's assistant, registered nurse or licensed practical nurse licensed by the appropriate licensing board of the Department of State, Bureau of Professional and Occupational Affairs.

Health care provider—An employe or contractor of the prison who is responsible for ensuring that adequate health care is provided to inmates.

Health care screening—A process developed by the prison's health care provider to assess inmates upon admission as set forth in written local policy.

Health care training—Training required by the county prison's health care provider as part of the prison's health care delivery system as set forth in written local policy.

Written local policy—Local policy that clearly explains practices and procedures to be followed, requires compliance therewith, and provides for enforcement thereof. The Department will review the policies when inspecting county prisons.

§ 95.220b. Scope.

Each section sets forth minimum requirements, which are mandatory. For those counties achieving American Correctional Association accreditation using Adult Local Detention Facilities standards, this subchapter will be

waived in its entirety. Section 95.232 (relating to medical and health services) will be waived for those counties which achieve National Commission on Correctional Health Care accreditation.

§ 95.221. Personnel.

The following are the minimum requirements applicable to personnel at county prisons:

(1) Before being assigned duties, all corrections personnel shall be given training in their general and specific responsibilities, including the use of force, prohibition on the seeking and dispensing of favors to and from the inmate population and instruction in the facility's code of conduct and ethics.

(2) Full time corrections personnel shall receive basic training from a training program approved by the Department within 12 months of assuming their duties.

(3) Part-time corrections personnel shall be provided training required under paragraph (1). Part-time corrections personnel who have not completed an approved training program under paragraph (2) may not be permitted to work without close supervisory direction by a person who has received the training.

(4) Written local policy shall provide for training and staff development as described in paragraphs (1)—(3).

§ 95.222. Admission.

The following are the minimum requirements applicable to admissions:

(1) With all admissions to the prison, commitment under proper legal authority and completeness of paperwork shall be verified.

(2) An inmate may not be admitted into the prison when it is determined that the inmate is in need of medical treatment that cannot be provided by the prison. In those cases, a written verification of treatment from a medical doctor shall be provided by the transporting authority prior to admission.

(3) Admission procedures relating to contraband searches, property disposition, notification and medical assessments and personal hygiene shall be specified in written local policy.

(4) As part of the admission process, basic personal information shall be obtained for identification and classification purposes. This basic information shall include:

- (i) The name of the inmate.
- (ii) Date of birth.
- (iii) Race.
- (iv) Gender.
- (v) Social Security number.
- (vi) State identification number (SID).
- (vii) Country of birth.
- (viii) Citizenship.
- (ix) Any aliases.
- (x) The previous address of the inmate.
- (xi) A physical description of the inmate, including height, weight, hair, eye color and any scars or tattoos.
- (xii) The occupation of the inmate.
- (xiii) Education.
- (xiv) Offense committed and a summary of the facts of the crime committed.

(xv) Religious affiliation.

(xvi) The date of commitment.

(xvii) Committing county.

(xviii) The authority for the commitment.

(ixx) Previous criminal record and any detainers.

(xx) The name and address of the person to be contacted in event of an emergency.

(xxi) Marital status and any children.

(xxii) Medical history, including any substance abuse.

(xxiii) The name and address of the inmate's attorney.

(5) Upon admission, a copy of the rules of the prison shall be provided to each inmate.

(6) Written local policy shall specify how an inmate can notify a relative of the inmate's location.

§ 95.225. Classification.

The following minimum requirements apply to classification:

(1) An inmate classification plan shall be documented in written local policy.

(2) This plan shall establish classification based on the degree of security risk and need for supervision. The classification plan shall specify the following:

- (i) How the classification process is accomplished.
- (ii) What process of appeals exist.
- (iii) The review mechanism utilized.
- (iv) Explicit procedures for reclassification.

§ 95.226. Housing.

The following are the minimum requirements applicable to housing:

(1) Written local policy shall specify the process for segregation, removal or transfer of inmates requiring medical attention.

(2) An inmate who is mentally ill or known to have a contagious disease shall be separated from the general population.

(3) Female inmates shall be completely separated from male inmates. This does not preclude rehabilitative projects and food service assignments where male and female inmates could participate together with proper supervision.

(4) In determining housing adequacy, the following factors shall be considered:

- (i) Climatic conditions.
- (ii) Minimum floor space.
- (iii) Heating.
- (iv) Ventilation. Each room shall allow the entrance of fresh air.
- (v) Lighting. Artificial light sufficient for inmates to read or work without injury to eyesight shall be provided.
- (vi) Sufficient toilet facilities are required.
- (vii) Bathing facilities shall be provided so that every inmate may use them as frequently as necessary for personal hygiene.

(5) All parts of the prison used by inmates shall be properly maintained and kept clean at all times.

§ 95.228. Clothing.

The following are the minimum requirements applicable to clothing:

- (1) Written local policy shall provide for each inmate to receive suitable clean clothing including adequate footwear and underwear.
- (2) Written local policy shall stipulate whether inmates may possess personal clothing.
- (3) Written local policy shall determine whether a prison elects to store personal clothing.

§ 95.231. Personal hygiene.

The following are the minimum requirements applicable to personal hygiene:

- (1) Inmates shall be required to maintain proper hygiene standards.
- (2) Inmates shall bathe at least twice a week.
- (3) An inmate determined to be indigent shall be provided with articles to attain satisfactory personal hygiene.
- (4) Inmate hair styles shall comply with sanitation and security policies of the prison.
- (5) Female inmates shall be provided articles for feminine hygiene when needed.
- (6) Written local policy shall provide a means for inmates to obtain clean clothing on a weekly basis.

§ 95.232. Medical and health services.

The following are the minimum requirements applicable to medical and health services:

- (1) Written local policy shall specify that all inmates admitted to the prison receive a health care screening performed and recorded by a person with health care training within 24 hours of admission. A record of the result of the examination shall be kept as a part of the permanent prison document.
- (2) An inmate determined upon admission not to be in good health shall be assessed by a health care professional within 24 hours.
- (3) Following review of the initial commitment screening by a health care professional, a medical history and physical shall be performed by the prison health care provider within 14 days following admission.
- (4) Written local policy shall specify routine screening procedures utilized for infectious diseases, acute illness and suicide risk.
- (5) Written local policy shall designate a health care provider responsible for control of the delivery of health care services including mental health services. A health care provider or professional shall have sole province on matters involving medical judgment.
- (6) Written local policy shall provide that the health care provider report in writing on the health care delivery system to the prison providing information sufficient to demonstrate that adequate health care is being provided to inmates and review findings with prison administrators annually.
- (7) Written local policy shall provide for an annual documented review of a prison's health care delivery system by the prison and when necessary, revisions shall be made to each health care procedure and program by the prison.

(8) Written local policy shall provide for access to emergency care 24 hours a day for all inmates. A written plan shall outline onsite treatment, evacuation, transportation and security procedures and designate emergency facilities to be utilized.

(9) Written local policy shall provide for the management of pharmaceuticals.

(10) Written local policy shall provide for a suicide prevention and intervention program and shall outline the program review mechanisms utilized and staff training procedures for program implementation.

§ 95.234. Inmate mail privileges.

The following are the minimum requirements applicable to inmate mail privileges. Inmates shall be permitted to send and receive mail consistent with the following:

- (1) Incoming and outgoing mail may be examined for contraband.
- (2) Incoming and outgoing mail to and from public officials, courts and attorneys will not be opened for purposes of examining for contraband unless the interested inmate is present.
- (3) Incoming and outgoing mail to a person or entity may be read by the prison warden if reasonable grounds exist to believe that receipt of the mail is likely to jeopardize prison security or public safety and welfare, or both.
- (4) The sending and receipt of mail shall be restricted or prohibited for valid penological reasons such as introduction of contraband, threats to security or the public, or when requested by intended recipients.

§ 95.236. Access to legal resources.

The following are the minimum requirements applicable to access to legal resources:

- (1) To enable inmates to exercise their right of access to the courts, inmates shall be permitted access to adequate legal resources. Written local policy shall provide a means of assistance for an inmate that does not speak English.
- (2) County wardens shall have discretion in determining the type of legal resources to be made available to ensure inmates can exercise their right to access to the courts.

§ 95.238. Recreation.

The following are the minimum requirements applicable to recreation:

- (1) Jails shall provide all prisoners at least 2 hours daily, physical exercise in the open, weather permitting. If the weather is inclement, each inmate shall have 2 hours physical exercise daily indoors.
- (2) Written local policy shall describe the prison's recreational programming for inmates.
- (3) Physical exercise schedules for males, females and juveniles shall be arranged to provide for segregation. Jail administrators may separate inmates further based on age, vulnerability and other appropriate security criteria.
- (4) Inmates under disciplinary status or segregation shall receive 1 hour of outdoor activity 5 days a week.

§ 95.239. Commissary.

The following are the minimum requirements that apply to commissaries:

(1) County prisons may provide commissary services if the county so chooses.

(2) Funds associated with commissary services shall be audited and reported on an annual basis by an independent party using generally accepted accounting principles.

§ 95.240. Inmate disciplinary procedures.

The following are the minimum requirements applicable to inmate disciplinary procedures:

(1) County prisons shall operate a disciplinary process that provides clear notice of prohibited behavior and consistently applied sanctions for violations of prison rules.

(2) Violation of prison rules may result in the imposition of discipline. Discipline may not be imposed unless the prisoner has been informed of the offense charged in writing, has had an opportunity to present a defense and has been found guilty of the charge by an impartial party or board designated by the prison administrator.

(3) Findings of guilt or innocence shall be made by an impartial party to be designated by the prison administrator. Findings shall be expressed in writing and based on information presented. Written findings of guilt shall state the reasons for the finding.

(4) Disciplinary charges and written findings shall be recorded and made a permanent part of an inmate's prison file.

(5) Disciplinary sanctions imposed after a finding of guilt may include loss of privileges, segregation or other sanctions as set forth in written local policy.

(6) The imposition of discipline may not violate an inmate's right to be free from cruel and unusual punishment.

[Pa.B. Doc. No. 00-284. Filed for public inspection February 18, 2000, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 53, 61, 63, 65, 93 AND 97]

Commission Property; Fishing and Boating

The Fish and Boat Commission (Commission) by this order amends Chapters 53, 61, 63, 65, 93 and 97. The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendments relate to Commission property, fishing and boating.

A. Effective Date

The amendments will go into effect upon publication of this order in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the amendments, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This final rulemaking is available electronically through the Commission's Web site at <http://www.fish.state.pa.us>.

C. Statutory Authority

The amendments to § 53.8 (relating to boats) are published under the statutory authority of section 741 of the code (relating to control of property). The amend-

ments to §§ 61.1 and 63.8 (relating to Commonwealth inland waters; and long bows, spears and gigs) are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The amendments to § 65.21 (relating to waters limited to specific purposes—exclusive use fishing areas) are published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes). The amendments to § 93.5 (relating to display of registration number and validation decal) are published under the statutory authority of section 5122 of the code (relating to registration, licenses, permits, plates and statistics). The amendments to Chapter 97, Appendix A (relating to flotation devices) are published under the statutory authority of section 5123 of the code (relating to general boating regulations).

D. Purpose and Background

The amendments are designed to update, modify and improve Commission regulations relating to Commission property, fishing and boating. The specific purpose of the amendments is described in more detail under the summary of changes. The Commission's Boating Advisory Board considered those amendments relating to boating and recommended adoption by the Commission.

E. Summary of Changes

(1) *Section 53.8.* The Commission's property regulations require that any boat using a Commission owned lake or access area be registered and display an official registration number and current validation sticker. This regulation is appropriate when the Commonwealth is the state of principal operation. However, other states' requirements for unpowered watercraft vary regarding display of decals and numbers. In fact, many states do not require this display. This may result in visitors to this Commonwealth being unable to utilize Commission facilities.

To accommodate visitors to this Commonwealth and promote tourism in this Commonwealth, the Commission proposed adding three new sentences to subsection (h). On final rulemaking, the Commission adopted the amendments as proposed with certain stylistic changes and with a clarification that unpowered boats participating in events authorized under § 109.6 (relating to special marine events) are exempt from the requirements of subsection (h). The amendments as adopted by the Commission are set forth at Annex A.

(2) *Section 61.1.* A recent staff review of this regulation revealed that certain corrections were warranted. Therefore, the Commission has adopted amendments to this regulation as proposed.

(3) *Section 63.8.* Commission staff recently received an inquiry as to whether the use of crossbows by persons other than those with disabilities who are issued permits under § 63.8(e) is permitted. In an effort to clarify that other crossbow use is prohibited, the Commission had amended the regulation as proposed.

(4) *Section 65.21.* At the July 1999 Commission meeting, the Commission placed a moratorium on the designation of exclusive use areas to give Commission staff an opportunity to review the Commission's regulation in light of the Americans with Disabilities Act of 1990 (42 U.S.C.A. §§ 12101—12213) and regulations promulgated thereunder. Based upon that review, staff made recommendations to the Commission. The Commission has amended this section as proposed.

(5) *Section 93.5.* Federal law provides that vessels possessing a valid marine document and used for recreational purposes may be registered (but not numbered) in

the state of their principal operation. To clarify the issue for owners of documented vessels used for recreational purposes when this Commonwealth is the state of principal operation, the Commission has amended this section as proposed.

(6) *Appendix A to Chapter 97.* A recent staff review of this appendix revealed that certain corrections were warranted. Therefore, the Commission has adopted amendments to this appendix as proposed.

F. Paperwork

The amendments will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

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

H. Public Involvement

A notice of proposed rulemaking was published at 29 Pa. B. 5725 (November 6, 1999). With the exception of the amendment to § 53.8, the Commission did not receive public comments regarding the proposals. The Commission received one public comment supporting the changes to § 53.8.

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 at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and the comments 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 Chapters 51, 61, 63, 65, 93 and 97 are amended by amending §§ 61.1, 63.8, 65.21 and 93.5 and Chapter 97, Appendix A to read as set forth at 29 Pa.B. 5725 and by amending § 53.8 to read as set forth in Annex A.

(b) The Executive Director will submit this order, 29 Pa.B. 5725 and Annex A to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order, 29 Pa.B. 5725 and Annex A 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*.

PETER A. COLANGELO,
Executive Director

Fiscal Note: Fiscal Note 48A-102 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 53. COMMISSION PROPERTY

§ 53.8. Boats.

(a) An internal combustion engine may not be used to propel a boat or to provide energy to the motor on Commission lakes. Boats propelled by battery-powered electric motors and nonmechanically propelled boats, subject to restrictions on sailboats and inflatables, may be used either with or without internal combustion engines attached. Notwithstanding this subsection, internal combustion engines may be used in the performance of official duties by persons authorized by the Commission.

(b) Occupants of sculls, shells and racing kayaks are required to carry or wear Coast Guard approved personal flotation devices.

(c) Overnight mooring of boats is permitted at designated mooring areas from April 1 to November 30. A boat utilizing mooring areas shall be registered and display the official registration number and current validation stickers described under Subpart C (relating to boating) and Part III of the code (relating to boats and boating). The mooring is at the sole risk of the owner.

(d) The Commission may refuse to permit the mooring of a boat considered unseaworthy. Boats may not be rented or offered for hire at Commission lakes except for boats owned and moored by authorized concessionaires.

(e) Boats abandoned, sunken, obviously unseaworthy or unidentifiable will be impounded. The district waterways conservation officer will notify the owner, if known, of the impoundment and require the removal of the vessel within 10 days. Impounded vessels will be sold or destroyed if not claimed by the owner within 3 months.

(f) Boats may not remain at boarding piers on Commission lakes or controlled property longer than the time necessary for loading and unloading.

(g) Inflatable boats used on Commission lakes shall be at least 7 feet in length, made of durable reinforced fabric and have at least two separate buoyancy chambers exclusive of any inflatable floor or bottom.

(h) A boat using a Commission lake or access area shall be registered and display the official registration number and current validation stickers described under Subpart C and Part II of the code.

(1) This subsection does not apply to noncommercial users to access areas on the Delaware River and West Branch of the Delaware River bounded by the State of New York.

(2) Exempt from this subsection are public service boats as defined under section 5302(a)(3) of the code (relating to exemptions from registration) and unpowered boats participating in events authorized under § 109.6 (relating to special marine events). Unpowered kayaks, sculls, sailboards and other low volume boats of similar design are exempt from displaying registration numbers, but shall display a current validation sticker.

(3) Unpowered boats with a state of principal operation other than this Commonwealth shall meet the requirements of this subsection if they are in compliance with the registration and display requirements of their state of principal operation. There is a rebuttable presumption

that the state of principal operation of any boat using a Commission lake or access area is this Commonwealth. The owner or operator of a boat may overcome this presumption by providing documentary evidence to show the state of principal operation is elsewhere.

[Pa.B. Doc. No. 00-285. Filed for public inspection February 18, 2000, 9:00 a.m.]

FISH AND BOAT COMMISSION
[58 PA. CODE CH. 65]
Special Fishing Regulations

The Fish and Boat Commission (Commission) by this order amends Chapter 65 (relating to special fishing regulations). The Commission is publishing this amendment under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). This amendment relates to fishing.

A. Effective Date

This amendment will go into effect upon publication of an order adopting the amendments in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the changes, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This final rulemaking is available electronically through the Commission's Web site at <http://www.fish.state.pa.us>.

C. Statutory Authority

This amendment is published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. Purpose and Background

This amendment is designed to update, modify and improve Commission regulations relating to fishing. The specific purpose of this amendment is described in more detail under the summary of changes.

E. Summary of Changes

A recent review of the Commission's regulations by the Bureau of Law Enforcement has revealed that there are two miscellaneous special regulations that state that the creel limit for trout is eight per day. When the Commission amended its Statewide trout regulations last year to reduce the creel limit from eight to five, these miscellaneous regulations should have been amended as well. Accordingly, the Commission has adopted the amendment to § 65.24 (relating to miscellaneous special regulations) as proposed.

F. Paperwork

This amendment will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

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

H. Public Involvement

A notice of proposed rulemaking was published at 29 Pa.B. 6116 (December 4, 1999). The Commission did not receive public comments regarding the 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 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 this 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 65, are amended by amending § 65.24 to read as set forth at 29 Pa.B. 6116.

(b) The Executive Director will submit this order and 29 Pa.B. 6116 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 29 Pa.B. 6116 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*.

PETER A. COLANGELO,
Executive Director

Fiscal Note: Fiscal Note 48A-103 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 00-286. Filed for public inspection February 18, 2000, 9:00 a.m.]
