

RULES AND REGULATIONS

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 1187]

Corrective Amendment to 55 Pa. Code § 1187.2

The Department of Public Welfare has discovered discrepancies between the agency text in 55 Pa. Code § 1187.2 (relating to definitions) as deposited with the Legislative Reference Bureau and the official text as published at 32 Pa.B. 734, 758 and 759 (February 9, 2002) and the text which will be codified in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 329) (April, 2002). The definitions of "appraisal of nursing facilities," "fair rental value" and "interest-capital indebtedness" should have been deleted. In addition, the definition of "special rehabilitation facility" was inadvertently omitted.

Therefore, under 45 Pa.C.S. § 901: The Department of Public Welfare has deposited with the Legislative Reference Bureau a corrective amendment to 55 Pa. Code § 1187.2. The corrective amendment to 55 Pa. Code § 1187.2 is effective February 9, 2002, (retroactively effective November 1, 1999) the date the defective official text was printed in the *Pennsylvania Bulletin*.

The correct version of 55 Pa. Code § 1187.2 appears in Annex A, with ellipses referring to the existing text of the regulation.

FEATHER O. HOUSTOUN,
Secretary

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1187. NURSING FACILITY SERVICES

Subchapter A. GENERAL PROVISIONS

§ 1187.2. Definitions.

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

* * * * *

Appraisal—A determination of the depreciated replacement cost of fixed or movable property, made by qualified personnel of an independent appraisal firm under contract with the Department.

Audited MA-11 cost reports—MA-11 cost reports that have been subjected to desk or field audit procedures by the Commonwealth.

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Facility MA CMI—The arithmetic mean CMI for MA residents in the nursing facility for whom the Department paid an MA day of care on the picture date.

Federally Approved Pennsylvania (PA) Specific Minimum Data Set (MDS)—One of three components of the Federally designed Resident Assessment Instrument (RAI). The RAI includes the MDS, the Resident Assessment Protocols and Utilization Guidelines. The MDS is a minimum core of assessment items with definitions and coding categories needed to comprehensively assess a nursing facility resident.

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Interest—

(i) *Capital interest*. The direct actual cost incurred for funds borrowed to obtain fixed property, major movable property or minor movable property.

(ii) *Other interest*. The direct actual cost incurred for funds borrowed on a short-term basis to finance the day-to-day operational activities of the nursing facility, including the acquisition of supplies.

Intergovernmental Transfer Agreement—The formal document that executes the transfer of funds or certification of funds to the Commonwealth by another unit of government within this Commonwealth in accordance with section 1903 of the Social Security Act (42 U.S.C.A. § 1396b(w)(6)(A)).

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Special rehabilitation facility—A nursing facility with residents more than 70% of whom have a neurological/neuromuscular diagnosis and severe functional limitations.

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[Pa.B. Doc. No. 02-617. Filed for public inspection April 19, 2002, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 61 AND 65]

Seasons, Sizes and Creel Limits; Miscellaneous Special Regulations

The Fish and Boat Commission (Commission) amends §§ 61.1 and 65.24 (relating to Commonwealth inland waters; and miscellaneous special regulations). The Commission is publishing these final-form amendments under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The final-form amendments relate to reducing the daily creel limit for rock bass in the Juniata River and its tributaries.

A. *Effective Date*

The final-form amendments will go into effect on January 1, 2003.

B. *Contact Person*

For further information on the final-form amendments, contact Laurie E. Shepler, Assistant Counsel, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This final-form rulemaking is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

C. *Statutory Authority*

The final-form amendment to § 61.1 is published under the statutory authority of section 2102 of the code (relating to rules and regulations). The final-form amendment to § 65.24 is published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. Purpose and Background

The final-form amendments are designed to update, modify and improve the Commission's regulations pertaining to fishing. The specific purpose of the final-form amendments is described in more detail under the summary of changes.

E. Summary of Changes

The Commission recently sought public comment on a proposal to reduce the daily creel limit for panfish (sunfish, yellow perch, crappies, catfish, rock bass, suckers, carp and white bass) on inland waters from 50 (combined species) to 25 (combined species). The proposal involved an amendment to § 61.1.

The proposed rulemaking was prompted by suggestions from members of the angling public who expressed concerns about the 50-per-day panfish creel limit, particularly in regards to its impact on rock bass. Commission fisheries biologists have observed that the proposed amendment is unlikely to have any notable impact on harvest. The proposal was not motivated by fisheries management considerations as much as public policy input about the value of panfish and appropriate number that should be taken.

Briefings by the Commission's fisheries management staff have shown that the proposed amendment in creel limits will not affect the panfish fisheries resource. Even though the change from a creel limit of 50 per day to 25 per day seems large, only a handful of the most skilled or avid panfish anglers actually take more than 25 panfish during a day of fishing. Creel surveys show that one would have to set the creel limit at considerably less than 25 per day to have appreciable resource impacts. Lowering the creel limit would have no demonstrable positive or negative resource impacts.

Although the proposal is not justified from a resource impact perspective, it does represent a value or policy judgment concerning how many panfish an angler should expect to take in a day of fishing. There is a concept that a lower panfish creel limit enhances the perceived value of these fish and represents the appropriate number of these fish for an angler to take in a day.

On final-form rulemaking, the Commission considered four alternatives. Under Option A, the daily creel limit for yellow perch, crappies, catfish, rock bass, suckers, carp and white bass was 25, and the daily creel limit for sunfish remained at 50. Option A also made it clear that "other gamefish" are subject to a 50 per day creel limit. This latter change is necessitated by the fact that the term "gamefish" is defined in the code as including all other species of fish except bait fish.

Option B set the daily creel for rock bass at 25. This option recognized that the principal impetus for the proposed amendment was concerns about rock bass. Although creel surveys show that reducing the creel limit for rock bass from 50 to 25 on a Statewide basis will have no resource protection impacts, it would represent a value judgment as to the relative value of these fish from a creel limit perspective. Instead of changing the creel limit for all panfish (except sunfish) from 50 to 25, the option would change the Statewide creel limit for rock bass only from 50 to 25. This option has the additional advantage of allowing the Commission's fisheries managers to evaluate more fully the impacts of the panfish enhancement special regulation without a change in the Statewide creel limits during the evaluation period.

Option C further refined the results of the public input by focusing on rock bass on the Juniata River and its

tributaries. Instead of making a Statewide change in rock bass creel limits, this option created a miscellaneous special regulation setting the rock bass creel limit at 10 per day or, possibly, 25 per day in the Juniata River and its tributaries. Under this option, there was no amendment to § 61.1 (except the addition of the wording on other game fish not otherwise listed); rather § 65.24 was amended to provide for a 10 per day (or 25 per day) creel limit on rock bass in the Juniata River and its tributaries.

Option D was the no action alternative. It provided for no change in existing creel limits for any panfish. It added the wording regarding other game fish (not otherwise listed) to § 61.1.

The Commission, on final-form rulemaking, adopted Option C that amends § 65.24 to provide for a ten per day creel limit on rock bass in the Juniata River and its tributaries. The Commission also amended § 61.1 to clarify that the daily creel limit for game fish not otherwise listed is 50.

F. Paperwork

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

G. Fiscal Impact

The final-form amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form 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 31 Pa.B. 5106 (September 8, 2001). Although the public comment period was initially a period of 90 days or until December 7, 2001, it was extended until January 15, 2002. The Commission received 65 comments. The majority of those comments (40) opposed the proposed amendments.

The Commission also hosted a public information meeting and hearing on this subject on December 19, 2001, in Huntingdon, PA. Thirty-four members of the public attended and provided input on the proposed amendments. Most of the commentators favored the proposed amendments. The suggestions received at that meeting and copies of all public comments submitted throughout the comment period have been provided to the Commissioners.

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 (1 Pa. Code §§ 7.1 and 7.2).

(2) A public comment period was provided, and the comments that were 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 61 and 65, are amended by amending §§ 61.1

and 65.24 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Executive Director will submit this order 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 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*.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-122. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS

§ 61.1. Commonwealth inland waters.

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(d) Except as otherwise provided in this subpart, the following seasons, sizes and creel limits apply to inland waters of this Commonwealth and the Youghiogheny Reservoir:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
* * * * *			
SUNFISH, YELLOW PERCH, CRAPPIES, CATFISH, ROCK BASS, SUCKERS, CARP, WHITE BASS AND OTHER GAMEFISH NOT OTHERWISE LISTED	Open year-round	No minimum	50 (combined species)
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CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.24. Miscellaneous special regulations.

The following waters are subject to the following miscellaneous special regulations.

<i>County</i>	<i>Name of Water</i>	<i>Special Regulation</i>
* * * * *		
Blair, Huntingdon, Juniata, Mifflin and Perry	Juniata River and its Tributaries	Rock bass—Daily creel limit is 10; open year-round; no minimum size limit
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