

PROPOSED RULEMAKING

DEPARTMENT OF CORRECTIONS

[37 PA. CODE CHS. 91, 93 AND 94]

Administration, State Correctional Institutions and Facilities and Release and Prerelease Programs

The Department of Corrections (Department) proposes to amend Chapters 91, 93 and 94 (relating to administration; State correctional institutions and facilities; and release and prerelease programs) to read as set forth in Annex A. The Department is acting under the authority of section 506 of The Administrative Code of 1929 (71 P. S. § 186). The proposed rulemaking revises outdated material.

Purpose

The proposed rulemaking amends Chapter 91 to update the section on use of force and restraints. The proposed rulemaking amends Chapter 93 to revise the section on inmate correspondence to provide alternative procedures for privileged correspondence. The sections on inmate visiting privileges and religious activities will be updated. The section on inmate discipline will be revised to change the procedures for inmate hearings. The section on prison medical services will be revised to clarify examination procedures and increase medical co-pay fees. The proposed rulemaking amends Chapter 94 to clarify pre-release procedures.

Fiscal Impact and Paperwork Requirements

Since the Department currently operates the State prison system in accordance with the proposed rulemaking, it does not expect the proposed rulemaking to have a fiscal impact on, or to create new paperwork requirements for, the Commonwealth, its political subdivisions or the private sector.

Effective Date

The proposed rulemaking shall be effective upon closure of the public comment period, the regulatory review process and final-form publication in the *Pennsylvania Bulletin*.

Sunset Date

No sunset date has been assigned; however, every facet of the proposed rulemaking will be continuously reviewed for effectiveness, clarity and whether they are serving the greater interests of citizens of this Commonwealth.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 2, 2004, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Judiciary Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior

to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment Period/Contact Person

Written comments concerning the proposed rulemaking shall be submitted to John S. Shaffer, Ph.D., Deputy Secretary for Administration, 2520 Lisburn Road, P. O. Box 598, Camp Hill, PA 17001-0598. Written comments must be received within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin* and must include the name, address and telephone number of the interested party.

JEFFREY A. BEARD, Ph.D.,
Secretary

Fiscal Note: 19-6. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 37. LAW

PART III. AGENCIES AND OFFICES

Subpart B. DEPARTMENT OF CORRECTIONS

CHAPTER 91. ADMINISTRATION

§ 91.1. Definitions.

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

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Community corrections center—A minimum security community-oriented facility operated **or contracted** by the Department for the purpose of facilitating special programs.

Contraband—Material listed as contraband in 18 Pa.C.S. §§ 5122 and 5123 (relating to weapons or implements for escape; and contraband), the Commonwealth of Pennsylvania *Department of Corrections Inmate Handbook*, or any Department document that is [**disseminated**] **available** to inmates, such as material that an inmate is prohibited from possessing or material that an inmate is permitted to possess that has been altered or is being used for something other than its intended purpose.

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Facility—An institution, motivational boot camp or community corrections center operated **or contracted** by the Department.

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§ 91.6. Use of force and restraints.

(a) Force and restraints will be used by corrections personnel only to accomplish legitimate [**peneological**] **penological** and law enforcement objectives.

(1) A staff member may not use any greater force against an inmate than is necessary to protect himself or others from bodily harm or to protect property from damage or destruction **or to prevent a criminal act or to effect compliance with rules when other methods of control are ineffective**.

(2) A staff member may only use deadly force against an inmate when such force is necessary to prevent death, serious bodily harm to himself or others, or to prevent [**an escape.**] **one or more of the following:**

(i) An escape from a correctional facility or while in immediate pursuit of an inmate escaping from a correctional facility.

(ii) An escape from a work detail, transport or other approved temporary absence when deadly force is necessary to prevent the escape and the inmate has been convicted of a forcible felony.

* * * * *

(c) Use of [mace] chemical munitions will be closely controlled. Appropriate medical attention will be provided for any person involved in an incident where [mace was] chemical munitions were used. Staff will follow the procedures [set forth] in Administrative Directives as to the availability and storage, method of use, training, medical staff role, and reporting of the use of [mace] chemical munitions.

CHAPTER 93. STATE CORRECTIONAL INSTITUTIONS AND FACILITIES

Subchapter A. RIGHTS AND PRIVILEGES

§ 93.2. Inmate correspondence.

* * * * *

(b) Restrictions. The following restrictions apply:

(1) Correspondence with inmates of other facilities, former inmates, probationers or victims of the criminal acts of the inmate will not be permitted except upon [special] approval of the facility manager or a designee.

* * * * *

(5) Mail addressed to an inmate organization will not be accepted unless the facility manager [has] and Secretary have approved the organization and it is addressed to the staff coordinator of the organization.

(c) Incoming mail. All mail sent to a facility will be opened and examined for contraband in the facility's mailroom or designated area except when permitted under paragraph (1).

(1) The Department may permit sealed mail to be opened in the presence of an inmate under the following conditions:

* * * * *

(ii) An attorney may obtain a control number from the Department's Office of Chief Counsel if the attorney wishes to have correspondence addressed to an inmate client opened in the presence of the inmate.

(A) An attorney shall submit a written request for a control number to the Office of Chief Counsel. The request shall include the attorney's name, address, telephone and facsimile numbers, state attorney identification number and a verification subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) that all mail sent to inmates using the control number will contain only essential, confidential, attorney-client communication and will contain no contraband.

(B) The attorney shall place the control number on each envelope that the attorney wishes to have opened in an inmate's presence. The number is confidential. It shall only be placed on the outside of the envelope so that it can be obliterated before it is delivered to an inmate client.

(C) If a control number does not appear on the envelope, the mail will be treated as regular mail and opened in the mailroom unless the procedures in subparagraph (i) were followed.

(D) The Department may change the control number for any reason upon notice to the attorney who requested it.

[(ii)] (iii) * * *

(2) Contraband in the form of money orders, certified checks, cash or other negotiable instruments will be recorded indicating the nature of the receipt, the sender, the amount received and the date. Personal checks, unless certified, will be returned to the sender. The facility is not responsible for cash sent through the mails. Confiscated coins and currency will be deposited in the Inmate General Welfare Fund. Contraband not specifically addressed in this section will be returned to the sender or destroyed [at the inmate's option unless it is transferred to appropriate criminal justice agencies at the discretion of the mailroom or security staff].

* * * * *

(e) Scrutiny of correspondence.

(1) The facility manager or a designee may read incoming or outgoing mail, except mail sealed in accordance with subsection (c)(1), when there is reason to believe that it may reveal or discuss illegal or unauthorized activity or for reasons set forth in any Department document that is [disseminated] available to inmates.

* * * * *

(f) Rejection of correspondence. An item of correspondence which appears to violate subsection (b) may be rejected by facility mailroom staff. The inmate and the sender, in cases when the inmate is not the sender, will be notified when the letter is rejected. The letter may be held for at least 7 business days after mailing of the notification to permit reasonable opportunity to protest the decision. If the letter is rejected, it will be returned to the sender.

(g) Incoming publications.

(1) [An incoming] A publication review committee [IPRC] consisting of staff designated by and reporting to the facility manager or a designee shall determine whether an inmate may receive a publication.

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(6) An inmate may receive only one copy of any publication unless granted permission by the [IPRC] publication review committee.

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§ 93.3. Inmate visiting privileges.

(a) Approved list of visitors. A list of approved visitors may contain [up to] at least 20 names or more if permitted by the Department. Inmates who can show that they have more than [20 regular visitors] the number of visitors permitted by the Department may be permitted to add additional names to their approved lists. [Members of a family living at the same address may be counted as one name.] Except for members of an inmate's immediate family, a minor's name may be placed on the approved list only with permission of the minor's parents or guardian. Children

under [12] 18 years of age may visit only when accompanied by [an adult and need not be placed separately on the official list] a parent, legal guardian or county children/youth services agency staff. A person may not be on more than one inmate's visiting list except in cases when the person is part of the immediate family of more than one inmate, unless special permission is granted by the facility manager. Changes or additions to the approved list may be made in accordance with established procedures. The name of a visitor may be removed [for good cause] upon authorization by the facility manager.

(b) *Religious advisor.* Designation by an inmate of a religious advisor as defined in § 93.6 (relating to religious activities) may be made at any time. The designation shall be in addition to the names on the approved list and will not be counted against the total [of 20] designated by the Department.

(c) *Attorneys.* An inmate may designate attorneys for whom the inmate desires visiting privileges at any time. The designation shall be in addition to the names on the approved list and will not be counted against the total [of 20] designated by the Department.

* * * * *

(g) *Initial [visits] visits.* The inmate's first visit after admission should be scheduled following the medical quarantine period and may be held in the presence of a staff caseworker.

(h) *Number, time and place of visits.* Inmates shall be permitted to have visits as often as the situation at the facility will allow.

(1) *Visiting days.* Visits may be permitted every day of the year at the discretion of the facility manager.

(2) *Visiting hours.* Morning and afternoon visiting hours will be maintained at the discretion of the facility manager. Evening visits may be maintained at the discretion of the facility manager.

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(6) *Place.* Inmates in the general population will be permitted contact visits in a relaxed setting, under official supervision unless otherwise restricted as set forth in the Commonwealth of Pennsylvania Department of Corrections Inmate Handbook, or any Department document that is available to inmates.

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(j) *Media representatives.* Media representatives will have the same visiting privileges as visitors on an inmate's approved list of visitors as described in Department policy concerning inmate visitation. A media representative will not be in addition to the names on the approved list and will be counted against the total [of 20] designated by the Department.

(1) [Upon request, media] Media representatives [will be provided with] may obtain a copy of the Department's policy regarding inmate visitation on the Department's website (www.cor.state.pa.us).

* * * * *

§ 93.6. Religious activities.

(a) [Policy. It is the policy of the Department to permit each inmate to satisfy the needs of his religious life, consistent with the security needs

and orderly administration of the facility. The Department will provide chapel facilities at each facility. The Department will also permit inmates to possess approved religious items and make reasonable accommodation for dietary restrictions.] Chapel facilities. The Department will provide chapel facilities at each facility and will permit inmates to request religious accommodations not already being permitted.

(b) *Religious advisors.*

(1) [If the facility contains a sufficient number of inmates of the same faith, a qualified representative of that faith from the outside community will be appointed or approved by the facility manager and will be permitted to hold regular services in the facility. Qualified representative means a person from the outside community who has received endorsement from his faith group authority.] Staff or volunteers will be permitted to hold services that are consistent with the security needs and orderly administration of the facility.

(2) Each inmate will be permitted to select a religious advisor from the outside community [who has received endorsement from the faith group authority] subject to security needs and orderly administration of the facility. This person will be permitted to visit the inmate on an individual basis in accordance with general rules governing visitation.

[(c) Accommodation of faiths. Requests for accommodation of faiths will be handled as follows:

(1) Facility officials will secure written information from the outside faith group authority, including publications which describe the goals, beliefs and practices of the group.

(2) Information material will be forwarded to the Director of Chaplaincy Services for the Department for evaluation.]

§ 93.7. Telephone calls.

(a) Inmates in general population may make phone calls in accordance with 66 Pa.C.S. § 2907 (relating to state correctional institutions) and the Commonwealth of Pennsylvania Department of Corrections Inmate Handbook. Phone calls, except confidential communications between attorneys and inmates, shall be subject to monitoring in accordance with 18 Pa.C.S. Chapter 57 (relating to wiretapping and electronic surveillance).

* * * * *

§ 93.9. Inmate complaints.

(a) The Department will maintain an inmate grievance system which will permit any inmate to seek review of problems which the inmate experiences during the course of confinement. The system will provide for review and resolution of inmate grievances at the most decentralized level possible. It will also provide for review of the initial decisionmaking and for possible appeal to the Central Office of the Department. An inmate will not be disciplined for the good faith use of the grievance systems. However, an inmate who submits a grievance for review which is false, frivolous or malicious may be subject to appropriate disciplinary procedures. Copies of the directive governing grievance procedures will be made available to the inmates.

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§ 93.10. Inmate discipline.

(a) Rules which define expectations and prohibitions for inmate behavior will be established by the Department and [distributed] made available to the inmate population. There shall be two classes of misconduct charges, Class I and Class II.

(1) Inmates found guilty of Class I misconduct charges may be subjected to one or more of the following sanctions:

* * * * *

(iii) Change of cell assignment, including placement in the restricted housing unit or restrictive confinement in a general population cell for a period not to exceed [6 months] 90 days for any one misconduct charge.

* * * * *

(b) Written procedures which conform to established principles of law for inmate discipline including the following will be maintained by the Department and [distributed] made available to the inmate population:

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(2) Hearing before an impartial hearing [body] examiner or an informal resolution process for charges specified by the Department in the Commonwealth of Pennsylvania Department of Corrections Inmate Handbook, or any Department document that is made available to inmates.

* * * * *

(4) Assistance from an inmate or staff member at the hearing if the inmate is unable to collect and present evidence effectively.

(5) Written statement of the decision and reasoning of the hearing body, based upon [the preponderance of the] some evidence.

(6) Opportunities to appeal the misconduct decision [of the hearing body] in accordance with procedures in the Commonwealth of Pennsylvania Department of Corrections Inmate Handbook.

§ 93.12. Prison Medical Services Program.

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(b) The following words and phrases, when used in this section, have the following meanings unless the context clearly indicates otherwise:

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Health care professional—

(i) Any physician, physician assistant, nurse, dentist, optometric professional or other person licensed to provide health care under the laws of the Commonwealth.

(ii) The term does not include a corrections health care administrator performing the administrative duties of that position.

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(c) The Department will charge a fee to an inmate for any of the following:

* * * * *

(6) Medical service provided to an inmate to determine whether his physical condition is suitable for participation in a sport unless the medical service is provided as

part of an inmate's [initial, annual or biennial] physical examination scheduled by the Department.

(d) The Department will not charge a fee to an inmate for any of the following:

* * * * *

(4) [Annual and biennial physical] Physical and dental examination scheduled by the Department.

* * * * *

(7) Medical treatment for a chronic or intermittent disease or illness.

(8) Infirmity care in a Department [of Corrections] facility excluding organ transplantation.

(9) Hospitalization outside of a Department [of Corrections] facility.

(10) Long-term care to an inmate not in need of hospitalization, but whose needs are such that they can only be met on a long-term basis [and who needs the care] or through personal or skilled care because of age, illness, disease, injury, convalescence or physical or mental infirmity.

* * * * *

(e) The fee for any medical service in subsection (c) is \$[2] 3, and this amount will be increased to \$4 on July 1, 2005, and \$5 on July 1, 2007, except that an inmate is required to pay a fee equivalent to [two-thirds of] the total cost of medical services provided to another inmate as a result of the inmate's assaultive conduct.

(1) The fee will be assessed each time a medical service in subsection (c) is provided to an inmate, except when multiple services are performed at one visit at the discretion of the health care professional.

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(f) Payment for any medical service in subsection (c) shall be accomplished according to the following procedures:

* * * * *

(2) An inmate who wishes to receive a medical service after being advised that a fee will be charged for the medical service, shall sign the authorization form acknowledging that his inmate account will be debited for the fee. [A nonemergency medical service will not be provided to an inmate who refuses to sign the authorization form after having been advised that a fee will be charged for the medical service.] An inmate who refuses to sign the authorization, who does not sign a refusal of treatment form, and who accepts medical treatment will receive the services and his account will be debited. An inmate will not be denied access to medical services because of an inability to pay the required fee. If an inmate lacks sufficient funds to pay a medical service fee, the inmate's account will be debited and the fee recouped as soon as sufficient funds are deposited in the inmate's account.

* * * * *

(g) An inmate who has medical insurance shall pay for his own medical needs through that insurance by cooperating with the Department in submitting the proper paperwork to the insurance carrier.

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Subchapter C. MOTIVATIONAL BOOT CAMPS

§ 93.303. Selection committee.

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[(d) The superintendent of the State correctional institution in which a diagnostic and classification center is operated shall make the final decision as to inmate participation in a motivational boot camp.]

§ 93.307. Inmate discipline.

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(b) Serious rule infractions which constitute Class I misconducts listed in DC-ADM 801—*Inmate [Disciplinary and Restricted Housing Procedures] Discipline*—may result in an inmate's expulsion from a motivational boot camp.

(c) Minor rule infractions which constitute Class II misconducts listed in the DC-ADM 801—*Inmate [Disciplinary and Restricted Housing Procedures] Discipline*—will be dealt with according to a three-tiered approach.

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CHAPTER 94. RELEASE AND PRERELEASE PROGRAMS

§ 94.2. Prerelease programs.

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(c) *Community corrections.*

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(2) *Group home residency.* This is a program which complements community corrections center residency and consists of publicly or privately owned agencies approved by the Department for use by its residents. These residences provide specialized residential treatment, for example, drug and alcohol treatment, **or additional bed resources** and include 24-hour supervision, living quarters and special services for selected residents, and provisions for continued jurisdiction by community corrections. An exception to this paragraph shall have prior approval by the Director, Community Corrections Division and final approval by the Secretary or a designee.

(3) *Community corrections furlough program.* This is a program which complements community corrections center residency and is permitted with the approval of the community corrections center **[staff] director or contract coordinator**. It is the authorized leave of an inmate from a community corrections center or group home for a period not to exceed 7-consecutive days for the purpose of furthering the inmate's reintegration into the community. The inmate is required to return to the center or group home at a designated time.

§ 94.3. Procedures for participation in prerelease programs.

(a) The criteria for eligibility for prerelease programs are as follows:

(1) Inmates who have been sentenced to death or life imprisonment **or other offenses as specified in State and Federal statutes or specified by the Department in the Commonwealth of Pennsylvania Department of Corrections Inmate Handbook or any Department document that is available to inmates** are not eligible.

* * * * *

(4) The inmate may have had no Class I misconduct and no more than one Class II misconduct during the 9 months prior to application, and have sustained no Class I **[misconducts] misconduct** and no more than one Class II misconduct from the time of application to the time of transfer.

* * * * *

(6) The inmate's application shall be approved by the facility manager **and by the Secretary or regional director of the Department, or both, if an inmate is serving a sentence for an offense specified in the Commonwealth of Pennsylvania Department of Corrections Inmate Handbook, or any Department document that is available to inmates that requires approval.**

* * * * *

(9) The inmate shall execute a written **[agreement which requires him] acknowledgement that he is required** to abide by the rules and regulations of the prerelease program. In the case of community corrections placement, the written agreement shall be signed prior to transfer.

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§ 94.5. Notification process.

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(b) If the inmate has not finished his minimum sentence and an objection is received from the judge or court, if the judge is unavailable, within 30 days of his receipt of the proposed prerelease plan, representatives of the Department will contact the judge or court and if necessary arrange for a meeting to attempt to resolve the disagreement. If, within 20 days of the Department's receipt of the objections, the judge or court does not withdraw the objection and the Department does not withdraw its proposal for transfer, or the judge and the Department do not agree on an alternate proposal for transfer, the Department will refer the matter to the Board for **[arbitration] a hearing.**

§ 94.6. Staff responsibilities.

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(b) It is the primary responsibility of the **[classification and treatment manager] Corrections Classification Program Manager (CCPM) or other staff person designated by the facility manager** to coordinate the staff evaluation and recommendation process.

(1) The **[classification and treatment manager] CCPM or other staff person designated by the facility manager** will chair a meeting of designated facility staff who shall make recommendations regarding prerelease programs. The inmate shall be present at this staff meeting for input.

(2) The staff's findings, recommendations and rationale shall be forwarded to the facility manager through both the Office of the Deputy Superintendent for **[Treatment] Centralized Services** and the Deputy Superintendent for **[Operations] Facilities Management**, with comments by both.

(c) It is the responsibility of the facility manager to give final approval or disapproval of recommendations regarding prerelease programs. The inmate will be advised by the **[classification and treatment] unit manager**, in the presence of the inmate's counselor, of the

final decision and its rationale. The decision and rationale will be documented in the cumulative adjustment record.

(d) Letters to judges and district attorneys shall be signed by the facility manager **or a designee**.

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[Pa.B. Doc. No. 04-1005. Filed for public inspection June 11, 2004, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 137]

Wildlife; Feeding

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 20, 2004, meeting, proposed the following rulemaking:

Amend § 137.33 (relating to feeding of certain wildlife prohibited) to allow the ban on feeding bears to remain in effect, until amended or deleted by the Commission, by removing the expiration language from the section.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the April 20, 2004, meeting of the Commission. Comments can be sent until June 21, 2004, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Introduction

The Commission is proposing to amend § 137.33 to allow the ban on feeding bears to remain in effect, until amended or deleted by the Commission, by removing the expiration language from the section.

2. Purpose and Authority

In recent years, bear populations have increased in parts of this Commonwealth. These increases in bear populations have unfortunately resulted in increased instances of bear/human conflicts. The feeding of bears has consistently been an aggravating factor in many of these conflicts, because this feeding has attracted bears to developed areas. In an effort to limit bear/human conflicts, Chapter 137 (relating to wildlife) was amended to make it unlawful to feed bears. This amendment, however, contained expiration language which directed that "This section shall expire October 31, 2004, unless a regulation is promulgated reauthorizing it." The Commission is proposing to reauthorize § 137.33 and allow it to remain in effect until it is amended or deleted by removing the expiration language.

Section 103(a) of the code (relating to ownership, jurisdiction and control of game and wildlife) states that "The ownership, jurisdiction over and control of game or wildlife is vested in the commission . . ." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife . . . including regulations relating to the protection, preservation and management of game or wildlife and game . . . in this Commonwealth." The amendment to § 137.33 is proposed under this authority.

3. Regulatory Requirements

The proposed rulemaking will amend § 137.33 by removing the expiration language, thus allowing the ban on feeding bears to remain in effect until it is amended or deleted by the Commission.

4. Persons Affected

Persons living within areas where black bears are located would be affected by the proposed rulemaking.

5. Cost and Paperwork Requirements

The proposed rulemaking should not result in additional cost or paperwork.

6. Effective Date

The proposed rulemaking will be effective on final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-188. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 137. WILDLIFE

§ 137.33. Feeding of certain wildlife prohibited.

It is unlawful to, except for normal or accepted farming, habitat management practices, oil and gas drilling, mining, forest management activities or other legitimate commercial or industrial practices, intentionally lay or place food, fruit, hay, grain, chemical, salt or other minerals anywhere in this Commonwealth for the purpose of feeding bear, or to intentionally lay or place food, fruit, hay, grain, chemical, salt or other minerals that may cause bear to congregate or habituate an area. If songbird feeders are being used by bears, the Commission may issue a written notice prohibiting the songbird feeding. **[This section shall expire October 31, 2004, unless a regulation is promulgated reauthorizing it.]**

[Pa.B. Doc. No. 04-1006. Filed for public inspection June 11, 2004, 9:00 a.m.]

[58 PA. CODE CH. 137]

Wildlife; Release

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 20, 2004, meeting, proposed the following rulemaking:

Amend § 137.2 (relating to release of turkeys) to make unlawful the release of captive held or captive raised game or wildlife into the wild without first securing a permit.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the April 20, 2004, meeting of the Commission. Comments can be sent until June 21, 2004, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Introduction

The Commission is proposing to amend § 137.2 to make unlawful the release of captive held or captive raised game or wildlife into the wild without first securing a permit.

2. Purpose and Authority

Currently, the Commission has no law or regulation that prohibits the release of captive held or captive raised game or wildlife into the wild. Release of captive held or captive raised game or wildlife into the wild is a sizable concern due to the possibility of the transmission of disease, unnatural predation and habitat competition. The transmission of disease by released animals is a concern because of the potential devastating effects that certain current diseases could have on the native wild animals of this Commonwealth. The recent problems with monkey pox or chronic wasting disease in other areas are prime examples. Released captive held or captive raised game or wildlife can also negatively impact native species by direct predation and by competition for habitat. The amendments to § 137.2 make unlawful the release of captive held or captive raised game or wildlife into the wild without first securing a permit.

Section 2102(c) of the code (relating to regulations) directs that "The commission shall promulgate regulations concerning the transportation, introduction into the wild, importation, exportation, sale, offering for sale or purchase of game or wildlife or the disturbing of game or wildlife in their natural habitat." Section 2102(a) of the code provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendment to § 137.2 is proposed under this authority.

3. Regulatory Requirements

The proposed rulemaking will make unlawful the release of captive held or captive raised game or wildlife into the wild without first securing a permit.

4. Persons Affected

Persons who release captive held or captive raised game or wildlife into the wild in this Commonwealth without first securing a permit will be affected by the proposed rulemaking.

5. Cost and Paperwork Requirements

The proposed rulemaking should not result in additional cost or paperwork.

6. Effective Date

The proposed 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 the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

(Editor's Note: A proposal to amend this section which appeared at 33 Pa.B. 4680 (September 20, 2003), has been withdrawn by the Commission.)

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-187. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 137. WILDLIFE

§ 137.2. Release of [turkeys] animals.

[It is unlawful to release turkeys into the wild without first obtaining a permit from the Commission. The permit applicant shall provide proof the turkeys to be released have been tested using procedures prescribed by the Department of Agriculture in 7 Pa. Code Chapter 15 (relating to control and eradication of pullorum disease) and have been found free of disease. If the turkeys to be released have been raised in this Commonwealth in accordance with 7 Pa. Code Chapter 15 and regularly tested under those regulations within 12 months of release, a permit is not required.] Except as otherwise provided, it is unlawful to release captive held or captive raised game or wildlife on to any lands, public or private, without first securing a permit from the Commission. Lawfully acquired mallard ducks, ringneck pheasant, bobwhite quail and chukar partridge may be released for dog training or hunting purposes.

[Pa.B. Doc. No. 04-1007. Filed for public inspection June 11, 2004, 9:00 a.m.]

[58 PA. CODE CHS. 141]

Hunting and Trapping; Protective Material

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 20, 2004, meeting, proposed the following rulemaking:

Amend § 141.20 (relating to protective material required) to expand and clarify the list of specific animal species that may be hunted without wearing daylight fluorescent orange-colored material.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the April 20, 2004, meeting of the Commission. Comments can be sent until June 21, 2004, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Introduction*

The Commission is proposing to amend § 141.20 to expand and clarify the list of specific animal species that may be hunted without wearing daylight fluorescent orange-colored material.

2. *Purpose and Authority*

In an effort to clarify the applicability of § 141.20, the Commission is proposing to add furbearers and coyotes (except from the first day to the last day inclusive of the regular firearms deer season or any bear season) to the list of specific animal species that may be hunted without wearing daylight fluorescent orange-colored material. This expansion should reduce the confusion to the public and enforcement officers relative to the wearing of daylight fluorescent orange protective clothing while hunting and trapping.

Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to . . . the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendment to § 141.20 is proposed under this authority.

3. *Regulatory Requirements*

The proposed rulemaking will add furbearers and coyotes (except from the first day to the last day inclusive of the regular firearms deer season or any bear season) to the list of specific animal species that may be hunted without wearing daylight fluorescent orange-colored material. Regulatory requirements will therefore be relaxed by the proposed rulemaking.

4. *Persons Affected*

Persons wishing to hunt or trap furbearers or coyotes within this Commonwealth will be affected by the proposed rulemaking.

5. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in additional cost or paperwork.

6. *Effective Date*

The proposed 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 the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-186. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART III. GAME COMMISSION
CHAPTER 141. HUNTING AND TRAPPING
Subchapter A. GENERAL

§ 141.20. Protective material required.

* * * * *

(b) *Permitted acts.* It is lawful to:

(1) Hunt without wearing daylight fluorescent orange-colored material for:

* * * * *

(vi) **Furbearers.**

(vii) **Coyotes except from the first day to the last day inclusive of any deer or bear season.**

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[Pa.B. Doc. No. 04-1008. Filed for public inspection June 11, 2004, 9:00 a.m.]

[58 PA. CODE CHS. 147]
Special Permits; Taxidermy

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 20, 2004, meeting, proposed the following rulemaking:

Amend § 147.123 (relating to taxidermy examination) to clarify requirements regarding the use of reproductions and associated parts in addition to the types of species that may be used to mount fish, both in the General and Specialty class.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the April 20, 2004, meeting of the Commission. Comments can be sent until June 21, 2004, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Introduction*

The Commission's taxidermy testing procedures and process has long been admired and respected throughout the country. Few other states impose professional standards on their taxidermists and it shows in the quality of completed work. In keeping with these standards, the Taxidermist Board has recommended to the Commission that the following amendments be made relative to the mounting of fish, both in the General and Specialty class.

2. *Purpose and Authority*

The Taxidermist Board has concerns that current regulations do not adequately address the use of reproductions and associated artificial parts in addition to the types of species that may be used to mount fish, both in the General and Specialty class, to complete the taxidermy examination. The amendments to § 147.123 are intended to eliminate this confusion while also maintaining the high standards and skill level required for a taxidermy permit.

Section 2901(b) of the code (relating to authority to issue permits) provides that "the commission may, as deemed necessary to properly manage the game or wild-life 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." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife. . . in this Commonwealth. . ." The amendments to § 147.123 are proposed under this authority.

3. *Regulatory Requirements*

The proposed rulemaking will identify what types of reproductions and associated artificial parts in addition to the types of species that may be used to mount fish, both in the General and Specialty class, to complete the taxidermy examination.

4. *Persons Affected*

Persons wishing to obtain a taxidermy permit within this Commonwealth will be affected by the proposed rulemaking.

5. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in additional cost or paperwork.

6. *Effective Date*

The proposed rulemaking will be effective on final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the proposed rule-making, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-189. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART III. GAME COMMISSION
CHAPTER 147. SPECIAL PERMITS
Subchapter G. TAXIDERMY

§ 147.123. Taxidermy examination.

(a) General taxidermy permit applicants shall present five specimens that have been mounted by the applicant within the last 3 years. The required specimens shall be: One antlered whitetail deer head, one small mammal, one upland game bird, one duck or other waterfowl and one fish. **The fish must be skin mounted and the applicant would be permitted to use artificial cast head, fins or eyes.** All birds shall be mounted with the feet and legs visible. All specimens shall be found in the wild within this Commonwealth.

(b) Restricted taxidermy permit applicants shall present five specimens that have been mounted by the applicant within the last 3 years in the category they are attempting to secure a permit. Big and small game applicants shall present one antlered whitetail deer head, one other big game specimen, two small game specimens and one furbearer specimen. Fish applicants shall present five different fish specimens **[, game] to include two warm water specimens, two cold water specimens and one of the applicant's choice. Four of the specimens must be skin mounted. The fifth specimen can be a skin mount or a reproduction. If it is a reproduction, it must be cast by the applicant. It cannot be a commercially produced fish body.** Game bird applicants shall present one wild turkey, two upland game birds and two waterfowl specimens. All birds and waterfowl shall be mounted with the feet and legs visible. All specimens must be found in the wild within this Commonwealth.

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[Pa.B. Doc. No. 04-1009. Filed for public inspection June 11, 2004, 9:00 a.m.]