

RULES AND REGULATIONS

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 1150]

Medical Assistance Program Payment Policies

The Department of Public Welfare (Department), by this order, adopts § 1150.51 (relating to general payment policies) to read set forth in Annex A, under sections 201(2) and 443.3(2)(ii) of the Public Welfare Code (62 P. S. §§ 201(2) and 443.3(2)(ii)) (code).

Omission of Proposed Rulemaking

Notice of proposed rulemaking is omitted under section 204(1)(iv) and (3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(1)(iv) and (3)), known as the Commonwealth Documents Law (CDL), and 1 Pa. Code § 7.4(1)(iv) and (3). The Department may omit proposed rulemaking because the amendment relates to Commonwealth grants and benefits. The Department also finds that notice of proposed rulemaking is, under the circumstances, unnecessary and contrary to the public interest because access to some medical services by Medical Assistance (MA) recipients may be jeopardized if the Department delays taking action to increase payment rates for selected medical services available under the MA Program.

Purpose

The purpose of this final-omitted rulemaking is to revise the current MA maximum reimbursement limit for services provided by a practitioner during any one period of hospitalization, retroactive to January 1, 2004, to allow for the same exception to the limit that exists for services provided on an outpatient basis.

Need for the Final-Omitted Rulemaking

The current regulatory limit for payment to a practitioner for services rendered during a single hospitalization has been in place since 1985. See 15 Pa.B. 1436 (April 20, 1985) and 18 Pa.B. 2212 (May 14, 1988). It currently has the unintended effect of discouraging practitioners from treating MA recipients. To avoid harm to MA recipients as a result of this unintended consequence, the Department has determined that it is necessary and proper to revise the current cap on payments made to a practitioner during a single period of hospitalization.

Background

Under current regulations, the Department limits payment to practitioners to \$1,000 per inpatient stay. See § 1150.51(e). By contrast, payment for services in an outpatient setting is limited to \$500 per day, unless the MA fee for an outpatient procedure is more than \$500, in which case the daily limit is the MA fee for that outpatient procedure. See § 1150.51(f). In 1985, when the limit for services in an inpatient setting was set at \$1,000, fees for individual practitioners' services were well below the regulatory limit. Various fee increases in the intervening years have resulted in the fees for many procedure codes on the MA Fee Schedule being equal to the limit. The maximum reimbursement limit was never intended to constrain the Department's ability to set payment rates for individual procedures. Nonetheless, the current effect of the limit is to keep fees for select procedure codes artificially depressed so as not to exceed

the limit. In addition to increasing the Department's flexibility to modify payment rates as needed to continue to assure recipient access to services, the final-form rulemaking will make the payment limit for services provided during a hospitalization consistent in principle with the payment limit for services provided in an outpatient setting.

Requirements

Section 1150.51(e) is amended to revise the maximum reimbursement limit for services provided by a practitioner during a single period of hospitalization to allow for an exception to the existing \$1,000 limit if the fee for a particular procedure rendered during the hospitalization is higher than \$1,000.

Affected Individuals and Organizations

Practitioners who provide services to hospitalized patients will be affected by the change, which revises the current cap on payment for services provided during an inpatient admission.

Accomplishments and Benefits

This final-omitted rulemaking revises the current MA reimbursement limit for services provided by a practitioner during a hospital stay. The anticipated effect is to provide greater incentive for physicians to remain in this Commonwealth as well as to attract physicians to this Commonwealth. In addition, MA recipients should benefit by continuing to have access to needed health care.

Fiscal Impact

There is no fiscal impact associated with this final-omitted rulemaking. Any fiscal impact would be addressed in the public notice issued under § 1150.61(a) (relating to guidelines for fee schedule changes), announcing the Department's decision to increase the payment rate for a particular procedure code.

Paperwork Requirements

No new or additional paperwork requirements result from the adoption of this final-omitted rulemaking.

Public Comment

Although this final-omitted rulemaking is being adopted without publication as proposed rulemaking, interested persons are invited to submit written comments, suggestions or objections regarding it to John Hummel, Regulations Coordinator, Office of Medical Assistance Programs, c/o Deputy Secretary's Office, 515 Health and Welfare Building, Harrisburg, PA 17120. Comments will be reviewed and considered in any subsequent revision of the section.

Persons with a disability who require an auxiliary aid or service may submit comments by using the AT&T Relay Service at (800)-654-5984 (TDD users) or (800) 654-5988 (voice users).

Sunset Date

There is no sunset date.

Regulatory Review Act

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5.1(c)), on May 14, 2004, the Department submitted a copy of this final-omitted rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public

Health and Welfare. On the same date, the final-omitted rulemaking was submitted to the Office of the Attorney General for review and approval under Commonwealth Attorneys Act (71 P. S. §§ 731-101—732-506).

Under section 5.1(j.1) and (j.2) of the Regulatory Review Act, this final-omitted rulemaking was deemed approved by the Committees on June 23, 2004. IRRRC met on June 24, 2004, and approved the final-omitted rulemaking.

In addition to submitting the final-omitted rulemaking, the Department has provided IRRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

Findings

The Department finds that:

(a) Notice of proposed rulemaking is omitted in accordance with section 204(1)(iv) and (3) of the CDL and 1 Pa. Code § 7.4(1)(iv) and (3) because the regulation relates to Commonwealth grants and benefits and notice of proposed rulemaking is unnecessary and contrary to the public interest.

(b) Adoption of this final-omitted rulemaking in the manner provided by this order is necessary and appropriate for the administration and enforcement of the code.

Order

The Department, acting under the code, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapter 1150, are amended by amending § 1150.51 to read as set forth in Annex A.

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

(c) The Secretary of the Department shall certify and deposit this order and Annex A with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication and applies retroactively to January 1, 2004.

ESTELLE B. RICHMAN,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 34 Pa.B. (July 10, 2004.))

Fiscal Note: 14-484. No fiscal impact; (8) recommends adoption. There are currently no procedure codes that exceed the \$1,000 cap. Any fiscal impact would be addressed in separate public notices announcing the Department's decision to increase the payment for a particular procedure code.

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1150. MA PROGRAM PAYMENT POLICIES

PAYMENT FOR SERVICES

§ 1150.51. General payment policies.

(a) Payment will be made to providers. Payment may be made to practitioners' professional corporations or partnerships if the professional corporation or partnership is composed of like practitioners. Payment will be

made directly to practitioners if they are members of professional corporations or partnerships composed of unlike practitioners. Practitioners who render services at eligible provider hospitals, either through direct employment or through contract, may direct that payment be made to the eligible provider hospital. Payment will be made for medical services or items covered by the program, furnished by enrolled providers subject to the conditions and limitations established in this chapter, Chapter 1101 (relating to general provisions) and the specific chapters for each provider type. Payment will not be made for a covered medical service or item if payment is available from another agency or another insurance or health program. Payment will not be made for services that are not medically necessary.

(b) To the extent that this chapter conflicts with the regulations that relate to reimbursement for various services or items contained in the specific MA provider chapters which were in effect on January 1, 1983, this chapter controls. To the extent that this chapter does not address a reimbursement question answered by a regulation contained in a specific provider chapter, the regulation in the specific provider chapter controls.

(c) This chapter shall be used by practitioners, hospitals providing outpatient and emergency room services, facilities and practitioners rendering services which require a PSR or second opinion, or both; independent clinics; and other noninstitutional providers including medical supplies, independent laboratories, ambulance companies, pharmacies, portable X-ray providers, funeral directors and home health agencies.

(d) Each section of the MA Program Fee Schedule which is contained in the Provider's Handbook includes the following:

- (1) An all-inclusive listing of covered services and items.
- (2) The provider type eligible under MA to bill for each service and item.
- (3) The appropriate procedure code for each service or item.
- (4) The appropriate type of service for each procedure code.
- (5) The applicable limitations for each service or item.
- (6) The maximum allowable fee for each service or item.

(7) For surgical and obstetrical procedures, the allowable number of postoperative or postpartum days during which no additional payment will be made for office or home visits for a purpose other than early and periodic screening, diagnosis and treatment visits to the practitioner who performed the procedure. This policy does not apply to other members of a group practice of a different specialty.

(8) The maximum allowable fee for anesthesia for each procedure.

(e) The maximum payment made to a practitioner for all services provided to a patient during any one period of hospitalization will be the lowest of:

- (1) The practitioner's usual charge to the general public for the same service.
- (2) The MA maximum allowable fee.
- (3) A maximum reimbursement limit of \$1,000 unless a procedure provided during the hospitalization has a fee

which exceeds \$1,000, in which case that fee is the maximum reimbursement for the period of hospitalization.

(f) Maximum payments to various categories shall be as follows:

(1) The maximum payment made to a provider or practitioner, or their professional corporation or partnership, or a clinic for outpatient procedures provided to a nonhospitalized patient for treatment during 1 day will be the lowest of:

(i) The usual charge to the general public for the same service.

(ii) The MA maximum allowable fee.

(iii) A maximum reimbursement limit of \$500 per day unless the outpatient procedure has a fee which exceeds \$500, in which case the fee is the maximum reimbursement on a daily basis, for that day only.

(2) The maximum payment made to a dentist, medical supplier or pharmacy, or their professional corporation or partnership, or a clinic for outpatient procedures provided to a nonhospitalized patient for treatment during 1 day will be the lower of:

(i) The usual charge to the general public for the same service.

(ii) The MA maximum allowable fee.

(g) Services shall be performed in an efficient and economical manner.

(h) No payment will be made to a provider:

(1) For physical therapy except when provided and billed as an integral part of hospital inpatient, hospital outpatient, rural health clinic, home health agency or nursing home services.

(2) For a surgical procedure and an office or clinic visit for the same patient on the same day.

(3) For standby services except to practitioners for Cesarean sections and high risk deliveries.

(4) For an emergency room visit and a hospital clinic visit for the same patient on the same day for the same condition.

(5) For the removal of sutures and casts.

(6) For procedures not listed in the MA Program Fee Schedule, except as specified in § 1150.63 (relating to waivers).

[Pa.B. Doc. No. 04-1236. Filed for public inspection July 9, 2004, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 63]

General Fishing Regulations; Commercial Landing of Finfish and Shellfish

The Fish and Boat Commission (Commission) amends Chapter 63 (relating to general fishing regulations). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and

Boat Code) (code). The final-form rulemaking relates to the commercial landing of finfish and shellfish in this Commonwealth.

A. *Effective Date*

The final-form rulemaking will go into effect immediately upon publication of this order in the *Pennsylvania Bulletin*.

B. *Contact Person*

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

C. *Statutory Authority*

The addition of § 63.47 (relating to landing of finfish, shellfish, crustaceans and other marine seafood) is published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. *Purpose and Background*

Commercial harvest quotas and caps are powerful regulatory tools in managing marine shellfish and finfish stocks. Quotas and caps are used to prevent over-harvest, to control the take of limited resources and to provide a means of distributing harvest among jurisdictions and individual users. Normally, the jurisdiction where the fishery is located or where the commercial boat is headquartered governs the harvest take. When a boat lands, the harvest is reported (credited) to that jurisdiction. When used in this context, a landing occurs when a boat comes to shore (dock, ramp, and the like) and off loads cargo, in this case, finfish, shellfish, crustaceans or other marine seafood. These landings are then reported to various state and Federal agencies and form the basis for adjusting harvest limits for the rest of the season and for planning limits for the next season. Landings of finfish, shellfish, crustaceans and other marine seafood are not the same as seafood trucked or flown into this Commonwealth for sale at retail and wholesale markets because generally that seafood is landed elsewhere and should be counted in the appropriate jurisdiction.

The issue of marine finfish and shellfish being landed or sold in this Commonwealth is not new. The Commission previously promulgated regulations specific to hard clams, weakfish and horseshoe crabs. Recently, however, commercial harvesters landed several thousand pounds of finfish and shellfish in the Philadelphia area because the quotas for these species had been filled in the home jurisdiction. There is concern that there may be a loophole in Commonwealth law that enables harvesters to circumvent harvest quotas or caps in home jurisdictions. Because this Commonwealth has not been allocated a quota for harvest of any Atlantic coastal fish or crustacean stock, the landing of Atlantic caught fish and crustaceans should not be permitted.

E. *Summary of New Regulation*

The Commission has adopted a new section that places restrictions on the landing of finfish, shellfish, crustaceans and other marine seafood in this Commonwealth. Specifically, the Commission has made it unlawful to land finfish, shellfish, crustaceans and other marine seafood when harvest quota allocations to the Commonwealth have been met or otherwise capped by action of the Executive Director under the fishery management plans and harvest allocations of the Mid-Atlantic Fishery Man-

agement Council and the Atlantic States Marine Fisheries Commission. In the event quotas have been met or otherwise capped in this Commonwealth, the landing of finfish, shellfish, crustaceans and other marine seafood is permitted only if the species have been properly reported as part of an unmet quota of another jurisdiction. The provisions of this section will not apply to the landing of fish at Lake Erie, which is already governed by Chapter 69 (relating to fishing in Lake Erie and boundary lakes). The Commission has added § 63.47 to read as set forth in the notice of proposed rulemaking.

F. *Paperwork*

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

G. *Fiscal Impact*

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

H. *Public Involvement*

A notice of proposed rulemaking was published at 34 Pa.B. 1457 (March 13, 2004). The Commission did not receive any public comments concerning the proposal.

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 no comments were received.
- (3) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

- (a) The regulations of the Commission, 58 Pa. Code Chapter 63, are amended by adding § 63.47 to read as set forth at 34 Pa.B. 1457.
- (b) The Executive Director will submit this order and 34 Pa.B. 1457 to the Office of Attorney General for approval as to legality as required by law.
- (c) The Executive Director shall certify this order and 34 Pa.B. 1457 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*.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: Fiscal Note 48A-155 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 04-1237. Filed for public inspection July 9, 2004, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Special Conservation Waters; Crawford County

The Fish and Boat Commission (Commission) amends Chapter 65 (relating to special fishing regulations). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendments relate to terminating the Commission's Warmwater/Coolwater Species Special Conservation Waters Program (program) and imposing a new miscellaneous special regulation for muskellunge on Sugar Lake, Crawford County.

A. *Effective Date*

The final-form rulemaking will go into effect on January 1, 2005.

B. *Contact Person*

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

C. *Statutory Authority*

The deletion of § 65.8 is published under the statutory authority of section 2102 of the code (relating to rules and regulations). The amendment to § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. *Purpose and Background*

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

E. *Summary of Changes*

(1) *Section 65.8.* At its April 1986 meeting, the Commission adopted regulations for its new program. The program began a major Commission initiative to provide enhanced management for warmwater/coolwater fisheries. Rationale for the more restrictive length and creel limits included the need for additional protection of new or reclaimed lake fisheries, rehabilitating fisheries significantly impacted by angling pressure and restructuring of fish populations where the sport fish communities are not of the composition desired to provide recreational angling closer to the capability of the individual water. Since implementation of the program, use has been expanded to major riverine habitat and to select reservoirs during major drawdowns.

Considerable evaluation work, both biologically and angler demand wise, occurred on a number of waters involved in the program during the years following implementation. At the same time, development of other special regulation programs for managing warmwater/coolwater fisheries gave fisheries managers alternatives to the more inclusive and sometimes unnecessary regulations in the Conservation Waters Program. Results of biological and angler sampling provided the means for the Commission to shift waters in this program to other programs, including the big bass and, more recently, the panfish enhancement programs.

To consolidate the number of special regulations used in managing warmwater/coolwater fisheries, the Commis-

sion has redesignated the remaining three conservation lakes to other programs, effective January 1, 2005. Thus, there is no need to retain the regulations for warmwater/coolwater species special conservation waters. Accordingly, the Commission has deleted this section as set forth in the notice of proposed rulemaking.

(2) *Section 65.24.* Sugar Lake, a 90-acre productive natural lake in Crawford County, was added to the program in 1987. The new set of regulations involved increased minimum length limits and reduced possession limits as part of a major initiative for enhanced management of warmwater/coolwater species. Since program inception, management of warmwater/coolwater species has evolved considerably with the establishment of §§ 65.9 and 65.11 (relating to big bass special regulations; and panfish enhancement special regulation) and considerable study on response of fish populations to more restrictive regulations. Thus, the Commission has moved several conservation waters to other programs.

Sugar Lake contains an abundant bass population, a rather dense panfish population characterized by slow growing individuals (bluegill, black crappie and yellow perch) and a robust muskellunge population for the size of the lake. Sugar Lake serves as a brood lake in muskellunge propagation activities. To maintain and enhance fishing opportunities there, the Commission already has added Sugar Lake to the list of waters managed and regulated under § 65.9, effective January 1, 2005. The Commission also proposed that a miscellaneous special regulation for muskellunge be adopted that imposes a 36-inch minimum size limit and a one fish daily creel limit. Although Commission staff has not sampled intensively the muskellunge in Sugar Lake, the higher minimum size limit has led to improvements in size structure. For all other species, Commonwealth inland regulations will apply. The Commission has amended § 65.24 to read as set forth in the notice of proposed rulemaking.

F. Paperwork

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

G. Fiscal Impact

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

H. Public Involvement

A notice of proposed rulemaking was published at 34 Pa.B. 1458 (March 13, 2004). The Commission did not receive any public comments concerning the proposed rulemaking.

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 no comments were received.

(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 Chapter 65, are amended by amending § 65.24 and by deleting § 65.8 to read as set forth at 34 Pa.B. 1458.

(b) The Executive Director will submit this order and 34 Pa.B. 1458 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 34 Pa.B. 1458 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on January 1, 2005.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: Fiscal Note 48A-152 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 04-1238. Filed for public inspection July 9, 2004, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Special Fishing Regulations; Huntingdon County

The Fish and Boat Commission (Commission) amends Chapter 65 (relating to special fishing regulations). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. Effective Date

The final-form rulemaking will go into effect upon publication of this order in the *Pennsylvania Bulletin*.

B. Contact Person

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

C. Statutory Authority

The amendment to § 65.24 (relating to miscellaneous special regulations) 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 rulemaking is designed to update, modify and improve the Commission's regulations pertaining to the use of cast or throw nets at Raystown Lake, Huntingdon County. The specific purpose of the amendment is described in more detail under the summary of change.

E. Summary of Change

Several years ago, the Commission adopted a miscellaneous special regulation that enabled the Executive Director or a designee to issue permits for use of cast or throw nets at Raystown Lake, Huntingdon County. This special gear makes it possible for anglers to capture live gizzard shad and alewife, preferred striped bass bait. The permits limit cast or throw nets to no more than 6 feet in radius (12 feet in diameter) with a mesh size of at least

3/8 inch. Recently, the Commission was approached by Raystown Lake anglers seeking use of a larger cast net. It appears that gizzard shad and alewife can more easily evade capture with the smaller nets because of the time that it takes for weights to sink the net and the relatively small surface area involved, even when the net fully opens with the perfect cast. Anglers requested cast nets with a larger radius.

The Commission does not see a problem with the use of a larger net. Any catch other than gizzard shad and alewife already has to be immediately returned to the water. Thus, the Commission amended § 65.24 to increase cast or throw net size to 10 feet in radius (20 feet in diameter). The Commission amended this miscellaneous special fishing regulation to read as set forth in the notice of proposed rulemaking.

F. *Paperwork*

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

G. *Fiscal Impact*

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

H. *Public Involvement*

A notice of proposed rulemaking was published at 34 Pa.B. 1461 (March 13, 2004). The Commission received three public comments supporting the proposed rulemaking. Copies of the public comments were provided to the Commissioners.

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 the comments that were received were considered.
- (3) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

- (a) The regulations of the Commission, 58 Pa. Code Chapter 65, are amended by amending § 65.24 to read as set forth at 34 Pa.B. 1461.
- (b) The Executive Director will submit this order and 34 Pa.B. 1461 to the Office of Attorney General for approval as to legality as required by law.
- (c) The Executive Director shall certify this order and 34 Pa.B. 1461 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*.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: Fiscal Note 48A-153 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 04-1239. Filed for public inspection July 9, 2004, 9:00 a.m.]

FISH AND BOAT COMMISSION
[58 PA. CODE CH. 111]
General Provisions; Boating

The Fish and Boat Commission (Commission) amends Chapter 111 (relating to special regulations counties). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. *Effective Date*

The final-form rulemaking will go into effect upon publication of this order in the *Pennsylvania Bulletin*.

B. *Contact Person*

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

C. *Statutory Authority*

The amendment to § 111.48 (relating to Northampton County) is published under the statutory authority of section 5124 of the code (relating to particular areas of water). A person violating this regulation commits a summary offense of the third degree for which a \$50 fine is imposed.

D. *Purpose and Background*

The final-form rulemaking is designed to update, modify and improve the Commission's regulations by imposing a "slow, minimum height swell speed" zone on the Lehigh River in the vicinity of the Route 33 access ramp, Northampton County. The specific purpose of the amendment is described in more detail under the summary of change. The Commission's Boating Advisory Board considered the proposed change to § 111.48 and recommended that the Commission not adopt the amendment until staff sought additional input from the Bethlehem Boat Club. Prior to consideration by the Commission on final-form rulemaking, staff contacted the club and received no comments.

E. *Summary of Change*

A new Route 33 access launch area in Northampton County on the Lehigh River is now open. The Commission's District Waterways Conservation Officer (officer) reports that wakes from boat traffic could potentially cause difficulties for boaters using the ramp. There are currently three slow-no-wake buoys at the access ramp placed approximately 100 feet from the shoreline. According to the district officer, this provides only limited protection to the ramp, boaters launching and retrieving watercraft and shoreline anglers. The officer reports that boaters passing through this area outside of the buoys still create large enough wakes to impact the shoreline

with sufficient force to do damage. The officer suggested that an expanded "slow, minimum height swell speed" zone be established on the river immediately in front of the Commission's ramp.

The Commission accordingly proposed that this zone extend across the main channel of the river to the shoreline of Turkey Island directly opposite the ramp. The zone was proposed to extend 150 feet upstream and 150 feet downstream from the boat ramp. This zone will have little impact on the unlimited horsepower boating in the area and should do a lot to protect boaters and anglers at the access area. The Commission amended this section to read as set forth in the notice of proposed rulemaking.

F. Paperwork

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

G. Fiscal Impact

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

H. Public Involvement

A notice of proposed rulemaking was published at 33 Pa.B. 5929 (December 6, 2003). The Commission sought public comments regarding this proposal during an extended comment period of 60 days. The Commission did not receive any public comments concerning 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 the amendment of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 111, are amended by amending § 111.48 to read as set forth at 33 Pa.B. 5929.

(b) The Executive Director will submit this order and 33 Pa.B. 5929 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 33 Pa.B. 5929 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*.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: Fiscal Note 48A-151 remains valid for the final adoption of the subject regulation.

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